SOUTH EAST EUROPEAN UNIVERSITY
Faculty of Contemporary Social Sciences & Faculty of Law

RULE OF LAW, GOVERNANCE AND SOCIETY IN THE TIME OF PANDEMIC

Jeton Shasivari – Ali Pajaziti
Adnan Jashari – Memet Memeti (eds.)

Book of Proceedings of 2nd Online International Scientific Conference on Social and Legal Sciences (OISCSLS '20)

Skopje, 2021

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FOREWORD

It is with great satisfaction that I write this foreword to the Proceedings of the 2nd International Conference on **„RULE OF LAW, GOVERNANCE AND SOCIETY IN THE TIME OF PANDEMIC** organized jointly by the Faculty of Contemporary Social Sciences and Law Faculty at SEEU.

The conference, ought to be seen as forum for a reflection on the UNPRECEDENTED challenges of PANDEMIC on rule of law and governance. The conference brought together scholars with research interests in governance issues in general, doctoral candidates dealing with complex issues of principles of good governance and rule of Law. We are pleased to have papers from higher education institutions from more than 10 countries present their research in the conference proceedings.

Let me dwell shortly on the topic of COVID 19 and Public Governance It's an accepted truth that the **COVID 19 and public governance are interconnected** due to the fact that public policy interventions and the existing overall capacities of the governance system ARE KEY to respond to this challenge.. In addition, the pandemic has changed the world – the way citizens think, how they act, with this in parallel expectations from government have changed. For public administration, understanding what ARE the new priorities is essential to better serve the citizens/and the tax payers. **THUS IN times of crisis PUBLIC governance matters more than ever.**

Governance systems/ arrangements have played a critical role in countries' responses, and will continue to be crucial both to the recovery and to building a "new normal" once the crisis has passed. In this Time, adherence to the principles of good governance literally makes the difference between the ‚life and death„ of the citizens. Public TRUST on government, capacity to transform traditional services to -eservices, potency and willingness to innovate, capacity to UNDERTAKE RISK management were trademarks of success stories of government responses to the COVID 19 pandemic. In parallel, we are at the end of the tunnel , the Crisis is an avenue for the governance systems to reflect upon their performance not only in the light of the PANDEMIC, but on how government systems were performing before the crisis and with

this it **is once in life time opportunity** for our governance systems and bureaucracies to introduce long standing innovations that would result to more inclusive, accountable, efficient and effective policy interventions and initiatives.

Papers contributing to Conference attempted to respond to the question of what is the role of political leadership in envisioning future developments challenging the post covid governance and implications on principles of good governance.

These proceedings hopefully will furnish researchers, academics, and students with an excellent source for their further research. The Faculty will work harder in organization of the next conference under the same theme for this upcoming year while extending its network and bring more participants from the world to share their research findings.

We thank all authors and participants for their contributions.

Prof. Dr. Memet Memeti,
Dean of Faculty of Contemporary Social Sciences, SEE University

Prof. Dr. Adnan Jashari,
Dean of Faculty of Law, SEE University

KEYNOTE SPEECHES

REFLECTIONS ON HUMAN RIGHTS AND RULE OF LAW IN THE TIME OF PANDEMIC

Prof. Rudina Jasini
Law Faculty, University of Oxford, United Kingdom

Dear Rector, Deans, colleagues and participants!

First of all, I would like to express my gratitude to the South East European University and to the organisers of this conference for their kind invitation, as well as for offering me an opportunity and a platform to talk about the Rule of Law, Governance and Society in the time of pandemic, and more specifically the threat posed to the human rights and the rule of law order.

Pandemics stand indeed as a mirror in the face of humanity. They reflect the morality of the society, testing this way all its balances. With their virulence they have the capacity to change societies, their political and economic structures, to suppress revolutions, to shift players in the world geopolitical map by lowering some superpowers and raising some others. Perhaps, we should understand that the history of the world as such, is not only written and made by humans only, but also by microbes. This has been true since the first documented pandemic, known as the "Plague of Justinian" (after subduing Emperor Justinian himself, even though he was one of the few to have survived it), which began in the city of Pelusium, in northeastern Egypt, and spread to Constantinople, Rome, and as far as Britain. This pandemic began in the year 541AD and is thought to have lasted for a considerable period of time. The end of the pandemic brought also a new world order characterised by geopolitical changes, the rise and strengthening of the Islamic faith, and a drastic decline in the population of Rome in some thousands. As renowned Yale University Professor Frank M. Snowden argues in his book Epidemics and Society: From the Black Plague to the Present, human history has always been accompanied by the presence of epidemics and the way societies coped with them has determined the course of life and have directly influenced by radically shaping the stages of human development.

The world today is facing a new pandemic, that of the coronavirus "Covid-19", which is sadly continuing to spread at a rapid rate and on a frightening scale, bringing with it the greatest global crisis of our generation. The reality is that the current pandemic is striking hard all balances in all dimensions and is having profound consequences not only for the public health, but also the economic order, fundamental human rights and freedoms and the level of global cooperation. Over the past year and currently, our lives have been consumed every day physically, emotionally and psychologically by the reality of this pandemic that has already engulfed the entire globe. Even in the UK, where I have lived for several years, the pandemic is shaking all the foundations of the country's health, economic, political and social system.

Nonetheless, if there is one constant question that should make all of us think in this extraordinary situation, is what world we will inherit from this pandemic? This question becomes even more important now that the reality of this pandemic is confronting us with severe restrictions on the rights and freedoms of the individual, an increase concentration of authority on the executive power, and a weakening of international solidarity and cooperation.

The individual today, not only in Albania or Macedonia, but in almost all societies of liberal democracies, has been asked to sacrifice many of the fundamental freedoms and rights against the drastic measures taken, to some extent justified, to cope with the extraordinary pandemic situation. But in this real challenge, we must be more vigilant than ever to not allow the fragile balance between the individual rights and the power of the executive, to shift to the side of authority. Furthermore, any action taken must be temporary and in proportion with the risk posed by this pandemic. I would like to mention here the latest developments in this regard, where a number of countries, including countries in the European Union, such as Hungary, have managed to pass legislation that has resulted in a concentration of autocratic authority in the hands of the executive, which as a consequence has posed a threat to fundamental human rights.

Such measures have undermined the free flow of information, effective communication and transparency, accurate reporting on strategies and policies undertaken to combat this pandemic, and have significantly affected the trust that people have in their government to manage the crisis. The development of technology has also provided another powerful platform to increase surveillance capabilities, the real consequences

of which we will only be able to grasp in the months and perhaps years to come. In this context, on March 16, 2020, a group of human rights experts submitted a joint report on this issue to the UN High Commissioner for Human Rights, which urgently attracted the attention of all states. The report stressed that, while the current health crisis situation has dictated the adoption of emergency measures in many countries, and this in accordance with international law, it is very important that any emergency measures taken to combat coronavirus should be proportionate to the need and non-discriminatory. And as such, these measures cannot be used as a basis for exercising authority against a particular group, over a minority or individual. In no way should these measures be taken to cover up repressive actions under the pretext of health protection, and as such cannot be used to suppress opinion of opposition.

We need to understand that Covid-19 is resulting in more than one deadly pandemic. It has already plunged the world economy into an even worse situation than the Great Depression of 1930. It has brought about a marked weakening of the global order and the force of globalisation, the authority of international organisations such as the UN, as well as the role and power of the EU. When this virus starts to slow down and the governments of every country start rebuilding, it will be more important than ever for us to recalibrate all those social, economic, political balances by breaking free from the pressure of isolation and strongly preserving the characteristics of solidarity and globalisation.

In the wake of the COVID-19 outbreak, at least ninety-five countries declared a national emergency, empowering governments to act in ways they would not normally do in order to protect citizens. Such exceptional measures pose major risks for democracy and human rights, providing opportunities for leaders and states to consolidate power. Here are five areas of concern.

1. LOCKDOWNS AND THEIR ENFORCEMENT

Most countries around the world adopted some form of lockdown, ranging from partial or night-time curfew to complete lockdown. Lockdowns may help to flatten the curve and curb the spread of disease, but for many they also impose extreme hardship. One study estimated that, across thirty countries in sub-Saharan Africa, only 6.8% of households could stay at home without major damage to their health and welfare.

In many countries, security forces were used to enforce lockdowns, and reports have documented several incidents of excessive force and rights violations. In Kenya, for instance, police fired tear gas and beat commuters ahead of imposing curfew. In India, which adopted one of the most stringent lockdowns with complete restriction on any non-essential activities, an estimated 900 people died due to the lockdown and its enforcement.

In South Africa, security forces brutally beat a man after finding him in possession of alcohol, which was restricted under coronavirus measures. The case of Collins Khosa, who died from his injuries, has subsequently become a rallying point for protest against police brutality.

In its ruling, the Pretoria-based High Court ordered the development of a code of conduct for security forces during the lockdown, including the absolute prohibition on torture. Nevertheless, police violence in poor neighbourhoods exacerbated by the lockdown has continued, underscoring the gap in many contexts between formal rules and practice.

2. LAWS TO CONSOLIDATE POWER

One case of this that has received a lot of global attention is Hungary, where Viktor Orban-led government passed a law in March 2020, allowing the prime minister to rule by decree for an indefinite time. While this "extraordinary legal order" was formally revoked in June 2020, another bill was passed, allowing similar powers during a state of medical emergency. Another example is Cambodia, where Prime Minister Hun Sen pushed for a sweeping State of Emergency Law described by Amnesty International as a "grave threat to human rights". The law passed in April grants the prime minister vast new powers, including unlimited surveillance of telecommunications, restrictions on freedom of movement and assembly, seizing of private property, and other measures deemed appropriate and necessary in response to the state of emergency.

3. THE CURBING OF DISSENT AND OPPOSITION

Closely related is the use of emergency laws to curb dissent and opposition. Citing emergency-linked restrictions on freedom of assembly, movement and information, states have arrested activists and political oppo-

sition leaders, and restricted protests. In many cases, these laws existed before the pandemic but were invoked during the pandemic to curb dissent. In Azerbaijan, the president, Ilham Aliyev called for the arrest of opposition leaders and termed them "traitors" in a speech on 19 March 2020, as part of the country's COVID-19 response. Since the speech, the country has witnessed the arrest of opposition leaders. Similarly, in Zimbabwe, the police arrested nurses and doctors during protests for salary hikes, on the grounds that they were violating lockdown.

4. RESTRICTIONS ON THE MEDIA

Some states have used the pretext of curbing the spread of "fake news" and "false information" about the coronavirus to restrict press freedoms, either by passing new laws or enforcing previously passed laws more strictly. Such laws have been used, as in Cambodia, China, and Egypt, as well as other countries, to arrest journalists critical of government policies. In India restrictive press laws have been used to force news organisations to adhere to the "official version" on COVID-related reporting. Reporters Without Borders has said that the coronavirus emergency laws "spell disaster for press freedom", offering examples from several dozen countries.

5. THE USE OF NEW SURVEILLANCE TECHNOLOGY

Government responses to the coronavirus have included the use of apps for contact tracing and other new surveillance technology. Many of these apps collect more data than necessary for contact tracing and allow for the possibility of individuals to be identified, with inadequate data protection for users.

In Russia, for instance, legislation was passed in June 2020 on the use of facial recognition technology and a unified federal register, supposedly to help authorities ensure social distancing. In Ghana, special emergency laws have given the government access to subscriber data from telecoms companies.

The major concern is whether these technologies will outlive the pandemic, and whether they could be used for continued monitoring and control of population. Alongside rollbacks in rights and freedoms as

well as the weakening of democratic institutions, these new surveillance tools raise strong concerns for the future.

The year 2020 as well as the current year have been like no others in recent memory. The unprecedented threat from COVID-19 has caused unimaginable suffering around the world. While this pandemic is first and foremost a public health crisis, we must not lose sight of related challenges that are consequential for containing this threat and for promoting a rapid and sustainable recovery. The struggle to uphold the rule of law is one of them.

Where governments respond with an expanded role and the forceful presence of police and other security actors, challenges can emerge, including perceptions of bias, disproportionate use of force, and other human rights issues. There is also a risk that some states may utilize emergency powers to consolidate executive authority at the expense of the rule of law, suppressing dissent and undermining democratic institutions, especially where courts and other oversight bodies struggle to perform due to COVID-related restrictions.

Some countries have seen a sharp increase in arrests. This runs counter to the need to decongest prisons, which have suffered disproportionally high infection rates, both among inmates and staff, spreading to surrounding communities and potentially triggering violence. The distribution of emergency aid, medical supplies, and economic stimuli provide ample opportunity for corruption and fraud. Without effective institutions that ensure transparency, accountability and oversight, much of it will not reach intended beneficiaries, deepening the social, medical and economic crisis and compromising and delaying recovery.

The pandemic also provides opportunities for armed groups, including terrorist organizations, to discredit state institutions, exploit gaps in public services and capitalise on public outrage, for example over the closure of places of worship. As some security personnel face reduced operational capacity because of their unavoidable exposure to the virus and competing new responsibilities, some armed groups are consolidating and extending control over territory.

These challenges can severely undermine the legitimacy of governments, which is critical for effective mitigation and containment strategies during public health crises, as observed in some countries battling the 2018/19 Ebola outbreak. It is therefore in the interest of governments to ensure that emergency restrictions on rights are necessary, proportionate, legal and time bound.

In the longer-term, the pandemic, as any crisis may also offer opportunities.

In the criminal justice sector, for example, it would be important to analyse the impact of practices developed in response to the pandemic on state budgets, communities and rehabilitation prospects with a view towards their institutionalisation. This should include the potential release of non-violent prisoners, adjusting arrest and prosecution strategies and non-custodial sentencing. It should also include e-filing and virtual judicial hearings as possible. While presenting challenges to some fair trial rights, these practices can make justice systems more accessible and efficient.

While the virus is resulting in the tragic loss of life, we must nonetheless prevent it from destroying our way of life – our understanding of who we are, what we value and the rights to which every citizen is entitled. The hope is that world leaders, as they discuss joint action to contain and overcome the pandemic, should consider the need to avoid enduring harm to rule of law principles and fundamental freedoms. This will help to avoid aggravating social tensions, grievances and underlying causes of conflict. Preventing conflict is perhaps an imperative now more than ever, as prospects for large-scale investment in conflict management and post-conflict recovery fall victim to scarce resources.

As historian Yuval Noah Harari, one of the brightest minds of our era argues, this pandemic should push humanity to choose global solidarity rather than isolationist nationalism. It should push it to elect leaders who want to unite their peoples, not divide them. “In short, we must open up and not close in on ourselves, emancipate the citizens instead of strengthening totalitarian control.” I want to join Harar’s optimistic outlook on the world to come, always hoping to put the individual at the centre of the empowerment of our global society. What we once knew as “normal” is a thing of the past. What will come next will be a new “normal”, the content and form of which will depend only on us.

REFLECTIONS ON PUBLIC ADMINISTRATON AND GOVERNANCE IN THE TIME OF PANDEMIC

Dr Anamarija Musa
Associate Professor of Administrative Science,
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In the wake of the pandemic situation, many of us expected just one more minor excess in the usually smooth development in the democracies all over the globe. We thought that it is only a matter of days or, in the worst-case scenario, weeks before the governments go back to think about economic policies, education system, or diplomacy, business will continue as usual, while citizens will return to their everyday lives. However, after a year or so, we can only conclude that the world has obviously changed, so it might never be possible to leave the 'new normal' and go back to 'good old days' (Figure 1). The health crisis has proved to be an economic, political and humanitarian crisis which has sought the transformation of how and what kind of decisions are made, rules are adopted and applied, and where and how the state and other levels of power perform their tasks. Translated into the language of law and governance, there is a strong case that the worst societal crisis of contemporary world has tremendously changed the policy, legal and governance responses of the state, expectations of the citizens and practices of business. The array of policies has to be formulated and implemented in the new situation, looking for innovative solutions to policy problems. Our legal systems had to adapt, become more flexible and allow the rule of law to accommodate the unprecedented restrictions to our rights and freedoms, with no possibility of escape to other jurisdictions. The collaboration and networks of governance emerged at different horizontal levels – at the national and regional or local, as well as regional or international level, looking for more cooperation, compromise and understanding between usually self-interested actors, built on information sharing and mutual learning.

In certain parts of the world – such as in the South East Europe – these challenges present themselves as even more demanding. In countries with fragile democratic institutions, and legal and administrative systems

that are in the process of adapting to the contemporary standards of good governance, protection of citizens' rights, and professional, accountable, open and effective administration. They are simultaneously facing challenges of economic deprivation, societal divides and extreme politicisation of society. In these circumstances, the adaptation to the new normal is testing the fundamental state and society relationship.

Figure 1: The pandemic, the response and the effects

Nevertheless, what is important though is that in addition to its negative effects and challenges for all cells of society and economy, this crisis, as any other actually, also has a positive potential for transformation and change, if managed well. In short, what we can do globally, is to see this crisis as a window of opportunity, a critical juncture for fundamental change of governance and administration and their relationship with society as more inclusive, more effective and more innovative. The light motive is public interest, as it has been infusing the direction of public actions worldwide. Looking to the public administration and governance, the visible effects are present at the macro-, meso- and micro level.

The figure 2 shows most important areas of change and responses of public administration affected by the current crisis. It is to a high degree based on the OECDs frameworks for Covid related governance responses. It shows that the pandemic has affected a whole range of governance instruments and areas, requiring new approaches and adaptation. The focus is on several issues that relate to the public governance capacity, the public administration processes, and the relationship with the society, namely (1) the return of the state as a key actor and expertise of the traditional sources of knowledge; (2) the changes in the system of public administration, administrative action and its traditional 'ways of doing things'; the (3) tremendous reliance on digital technology and critical importance of information disclosure and sharing.

Figure 2: Public administration responses to crisis

Source: adapted from OECD Evidence-based policy responses for substantial recovery https://www.oecd.org/governance/public-governance-responses-to-covid19/

1) BACK TO THE GOVERNMENT (AND EXPERTS)

As the Covid-19 has started to threaten to the core of our human existence, as social beings, and to devastate our societal and economic systems, this unexpected and continuing threat has created a high degree of uncertainty and has put focus back to the governments and states. Contrary to the trends pleading for thin state and neoliberal idea of strong society and economy with diminished role of the state and government which has been dominating the administrative doctrine for decades, the crisis has invited the governments on all levels to govern with more vigour and determination, regulating where they never regulated before (e.g. masks, distance between two human beings).

The government became central actor in the spotlight. We started to follow carefully (and only later dared to question) the government responses to the crisis, how they behave, how they communicate, and what kind of innovative and flexible solutions they provide to overcome the cumbersome situation and to save lives, to ensure provision of public services and the functioning of the economy.In some,if not all countries we accepted the restrictions at the level intrusion we nev-

er thought we could accept. In some countries, we requested stricter measures and detested reluctance. In any case, we assessed our governments in relation to how much effort they put into building innovative and effective responses to transform the institutions and policies so they fit to the new normal.

The process of recentralisation and strengthening of the steering from the centre, however, has been on the agenda for a while (see Lodge and Wegrich, 2014; Dahlström, Peters, Pierre, 2011). Since 1980s, the regulatory state concept has pleaded to 'less state' and inclusion of more or less independent and private actors in the provision of public services and performance of administrative tasks. The implementation of this neoliberal idea (Roberts, 2021) included an intensive fragmentation of governmental structure by decentralisation to newly created autonomous agencies, and by privatisation and outsourcing of public functions to private sector. The scattered public sector on one hand, and increasing proliferation of complex societal issues – so called wicked issues – have soon provoked the idea of the strengthening of the coordination at the centre of government and the firmer approach to ensure coherence among numerous actors and policies, and the success in achieving policy goals. In addition, crises that emerged in the last decades, such as terrorist attacks, organised crime, financial crisis of 2008, migrant crisis in mid 2010s, have added the arguments for stronger state. Thus, the idea of strengthening the core and its coordinating capacities while letting others to manage their public and private tasks gradually replaced the idea that the state might be irrelevant and unnecessary. The current pandemic only confirmed that the state and the government will continue to be important factors of economic and social life, as the representations of democratic will, political power, policy knowledge, and operational expertise, let alone dead, as some suggested.

In addition to governments, there is one more usually silent and more reserved group of people the public has turned to for answers – the experts. Doctors, virologists, epidemiologists, biologists, psychologists, traffic experts, criminologists, economists, legal experts, management experts, crisis experts, communication experts… All kind of experts have entered the spotlight along with the governments, giving statements and providing analyses on the internet media, TV or radio, publishing papers and writing tweets and Facebook posts on how to fight pandemic, stay safe or assess government accountability. The process is in sharp contrast to the recent trends of populist devaluation

of expert knowledge (see Hawkins et al., 2018) and 'populisation' of authority based on knowledge and information which have been dominating the public and political discourse in recent years with a widespread assumption that that anyone can be an expert on any topic - a cook, a singer, a journalist, an IT expert, a doctor, an expert in politics, human rights or public transport.etc. Thus, the fact that governing the crisis requires expertise might be an interesting turn from the last decade's obsession with widespread knowledge and the disgust with elites and expertise. A vivid example is the decision of French government to 'abolish' ENA, the French academy for the education of public servants, a widely known example of expert elite approach when it comes to public governance and to transform it into more acceptable and inclusive form of schooling for public functions. However, the pandemic has shown that not anyone can be an expert or provide solutions to the problems that are so complex and demanding. On one hand, the adverse effects of unjustified or nonprofessional advice can be devastating in times of crises. On the other hand, the times of insecurity seek to determine actors in the system who can offer guidance and support. Moreover, a joint efforts and knowledge sharing among the top elite scientific and expert actors is required when the societies face such a tremendous and complex problem to solve. What we seen is acceleration of research, information and knowledge sharing, mutual learning and even willingly giving up a financial gain (e.g. information on virus and vaccines).

In government and governing the crises as well as in relation to expert knowledge the key word is thenetwork (Rhodes, 2008) Instead of hierarchical, often monocratic, administrative government, the landscape became full of headquarters, councils, commissions, networks, forums, colleges, all kind of collegiate bodies and teams that jointly seek to address the challenges in the time of pandemic. It happens on the level of decision-making where representatives of key departments and institutions prepare or even take the decisions, as well as in relation to scientific councils, which advise the government on the right directions. In accordance with the anticipation, the networks are at least supplementing, if not replacing the hierarchical government, which has been dominating the governing for centuries.

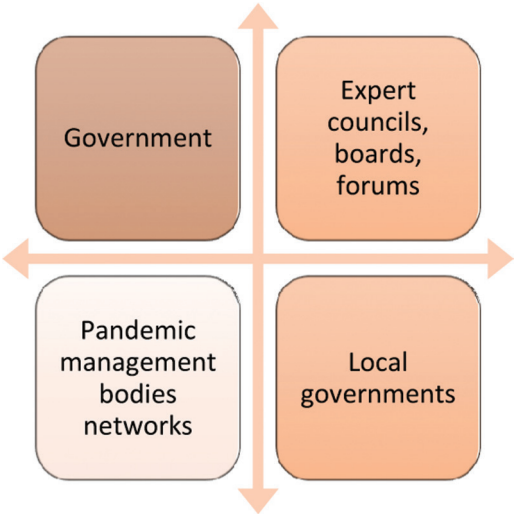

Figure 3: The actors in the pandemic

2) NEW WAYS OF DOING THINGS IN PUBLIC ADMINISTRATION

On the level of everyday work in public administration, much has changed. As if the public administrations worldwide has suddenly shifted to another world. The picture of traditional impersonal, unbiased, very formal and paper centred bureaucracy wasleft in the past and in sharp contrast to the public administration of new normal. Public servants, from street level bureaucrats to top civil servants have been working in new context and in new ways. For them, especially in Eastern Europe and the middle echelons of service, the word 'new', as well as innovation, adaptation, flexibility and thinking out of the box have not been top priorities.

Public servants' status and working conditions have changed in a way that has previously had been reserved only for the top tech and innovation companies. The most prominent example is remote work, which became a norm, something that seemed impossible just a year ago. In addition, once impersonal, almost untouchable public servant opened the window to their homes to conduct online meetings, hearings or other types of publicity. There has been much working arrangements flexibility including flexible daily, weekly, monthly and annual schedules and leaves; overtime work in some services; postponing regular activ-

ities, such as appraisal etc.They had to learn new skills – how to present or participate in an online meeting, for example. Something many of them never dreamt of doing in civil service. Better communication with citizens was required, by using different tools of communication, including social networks and websites, online messaging and similar.

Among persons working in the pandemic public administration, the leaders had to adapt most effectively to the new situation. *The public leadership* has been under pressure for quite some time, in the complex governance system. The traditional way of problem solving and regulatory responses have proven to be inadequate in the context of complex social problems(Lodge and Wegrich, 2014). As explained by Ansell et al (2020) both on level on organisation or the system, such as government, the emerging crisis causes conflicts between goals, motivation issues, and funding problems. When an organization or system faces an environmental turbulence such as pandemic, leaders play a crucial role by creating vision, ensuring support and incentivising innovation to tackle the challenges. This also requires steering competences and coordination instruments to ensure the achievement of the goals.

Ansell et al. (2020) describe the strategies used in fighting COVID and show nicely how much more agile, more prone to innovation, to flexibility and experimentation, more collaborative and open the public administrations became. They used scalability, a flexible mobilisation of resources across organisation and sector to provide resources (e.g. creation of public job banks of retired workers who apply to assist, especially in hospitals). Second, they turned to prototyping, as creating adaptive solutions, and their revision based on prompt feedback on the success of the implementation (e.g. introducing a solution, testing and improving, such as with various measures introduced to prevent the spreading of the virus). Third, there is a widespread use of modularisation, as division of solutions into series of modules, which are, introduced successively (e.g. measures, lockdowns, and reopening, economic packages). Fourth, there is a bounded autonomy, as a broadly based ownership of strategy, which involves local actors, who try to fit national rules to local conditions. Fifth, the bricolage assumes a flexible usage and combining of ideas, tools, and resources based on a collaboration of various actors and stakeholders (e.g. redirecting companies to provide medical equipment). Finally yet importantly, there is a strategic polyvalence, as designing solutions that can be used in new directions and for new purposes (e.g. testing people serves for different purposes, from work conditions decisions to school reopening, etc.).

3) DIGITAL INFORMATION & TRANSPARENCY

Every crisis is a challenge for the accepted values, ways of doing things, rules and their application. When it comes to transparency, the crisis was critical point that tested the transparency standards built throughout the decades, but also a point of no return when it comes to the expectations of the citizens on the availability of information. The crucial element was the inevitable use of digital technology and provision of information for fighting pandemic. These two circumstances have actually helped the access to information to

Many countries worldwide have adopted the laws guaranteeing the citizens their right to information, sometimes even at the constitutional level (Heald, 2006; Birkinshaw, 2006). Nevertheless, as it happens, in many countries good freedom of information laws, which are designed to ensure transparency, eradicate corruption, enhance effectiveness and improve accountability in practice did not manage to achieve much, mostly due to the resistance of governments and low citizens' awareness. The digital technology and internet facilitated the disclosure of public information on the internet, especially in form of open data available for the re-use in applications, analyses or other purposes.

During the time of pandemic, public information proved to be important in two aspects. On one hand, certain information was critical for informing the citizens about the pandemic and its parameters and measures. For example, the number of positive cases, deaths, vaccines, and other statistical data, data on facilities, hospital beds, and available equipment; decisions on measures and planned decisions; specific information on how to exercise one's rights in certain sectors (e.g. unemployment support or similar), etc. In order to manage crisis, the governments were required to provide timely, full and structured information on elements and effects of crisis. Without sufficient information for private and civil sector and public at large, the measures could have been unsuccessful. Thus, what we have witnessed though is the raise in proactive publication of Covid related information, especially in form of open data which allows visualisation and comparison (e.g. with other countries or regions). On the other hand, another kind of information was crucial for keeping governments accountable and under control in time of pandemic – financial information on spending and cuts, donations and subventions, public procurement, scientific base for government decisions and evidence for policy decisions, decision-making pro-

cess and results, general performance information as well as effects of the Covid on various sectors, especially economy at large, etc. The citizens were particularly interested in Covid related issues such as buying the vaccines or members of scientific advisory bodies that helped the government find the direction to manage the crisis. The government in the spotlight also meant that what the government is doing should be visible and explained to the citizens in order to legitimise the decisions.

The pandemic also introduced or reinforced some issues in relation to transparency. First, the pressure to disclose information and that information is very accurate and detailed also revealed the problems of information management in the public sector. In fact, the crisis has shown that the information management in the system is crucial to meet the challenges and to substantiate and legitimate the decisions based on evidence. Second, the general transparency was to some extent put on hold, due to the remote work, low priority or delays in the procedure of obtaining the information from public bodies. Especially in the peaks of pandemic, the public interest was mostly focus on Covid related issues while other important topics were not given the priority. Third, in some countries or some cases the issue of privacy protection and personal data became vulnerable -the personal data of positive cases or people that are ordered to quarantine were published in some jurisdictions in a panic attempt to fight pandemic.

In sum, the pandemic had a tremendously positive impact in relation to transparency and data disclosure. It showed that in general transparency is a good thing – informed citizens are more rational with their decisions. It showed that open data is a great way to bring complicated data to citizens, in forms of apps, visualisations, or similar. It also showed that being transparent builds trust. However, the pandemic also worked as an alarm for the public administration to pay more attention on information management and record keeping. As well as to be more careful with citizens' personal data. Thus, the pandemic situation gave a strong impetus for more data availability and quality, and thus created more space for building trust between citizens and government.

….

'Any crisis is an opportunity riding a dangerous wind.'To paraphrase this proverb, the pandemic is a danger, but it is at the same time a wind of opportunity for governance, public administration and state-society relationships. The keywords are steering, networks, experts, innovation and flexibility, information and transparency.

BIBLIOGRAPHY

1. Ansell, C., Sorensen, E., Torfing, J. (2021) The COVID-19 pandemic as a game changer for public administration and leadership? The need for robust governance responses to turbulent problems. Public Management Review 23(7): 949-960
2. Birkinshaw P (2006) Transparency as a Human Right. In: Hood C., Heald D. (eds.) *Transparency: The Key To Better Governance?* Oxford University Press, New York
3. Dahlström, C., Peters, B.G., Pierre, J. eds. (2011) Steering from the Centre. Strengthening political control in Western democracies. University of Toronto Press.
4. Hawkins, K., Carlin, R.E:, Littvay, L., Kaltwasser, C.R.(2018) The Ideational Approach to Populism. Routledge.
5. Heald, D. (2006) Varieties of Transparency. U: Hood, C., Heald, D., eds. *Transparency: The Key To Better Governance?* The British Academy. New York: Oxford University Press
6. Lodge, M, Wegrich, K. eds. (2014) The Problem Solving Capacity of Modern State. OUP
7. Rhodes, R. A. W. Policy Network Analysis (2008) In: Goodin, R.E., Moran, M., Rein, M. (eds.) The Oxford Handbook of Public Policy. OUP
8. Roberts, A. (2020) The third and Fatal Shock: How Pandemic Killed the Millennial Paradigm. Public Administration Review July/August 2020: 603-609

CHAPTER ONE:

Rule of Law and Human Rights in the time of Pandemic

COVID 19, AS CIRCUMSTANCES FOR NON-IMPLEMENTATION OF THE "PACTA SUNT SERVANDA" PRINCIPLE

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Abstract

Upon the moment of entering into the contract, the rights, obligations and responsibilities are caused between the contracting parties or exceptionally to the third parties. These rights, obligations and responsibilities depend on the existing circumstances. But there are cases when certain circumstances cannot be foreseen and due to such causing it can make it difficult or impossible to perform the contracts. The aim of this paper is to provide the analysis of Covid 19, as a circumstance for non-application of the principle "Pacta Sunt Servanda" ("Agreements must be kept"). Specifically, the paper aims to identify and analyse data whether the circumstances caused by COVID 19 can be considered as normal circumstances or as circumstances that have caused the meeting the obligations impossible and, in this regard, non-application of the principle pacta sunt servanda. In conclusion it was stated that it is not possible to give a general opinion on this issue, because it all depends on the specific situation. The assessment can be influenced by factors such as: the presence or absence of clauses of changed circumstances or force majeure at the time of entering into the contract, to what extent the government imposes available alternative measures, etc.

Keywords: Pandemic, force majeure, changed circumstances, contracts

1. IN GENERAL ON THE PRINCIPLE PACTA SUNT SERVANDA

In the contract law, thus, also in the law of obligations, contracts are concluded to be executed. This is the rule of the contractual law, because in legal circulation contracts are concluded to achieve certain goals and objectives of the contracting parties. We can achieve this goal if we enter into a final contract and if we respect the principle Pacta Sunt Servanda. According to the LMD[1], the created obligations must be fulfilled as they are. This provision requires compliance with the principle of Pacta Sunt Servanda, as a general rule for the contracting parties, as it requires them to comply with their obligations by making their fulfilment regular[2]. Respect for this principle, LMD, has provided in some provisions such as; the provisions with which it is treated, the objection for non-fulfilment, the termination of the contract due to non-fulfilment, the force majeure, the changed circumstances, the payment of interest on monetary obligations, penalties, criminal condition, etc.

Adherence to this principle can be done in normal conditions, but not in conditions that cause meeting of the contracted obligations impossible of. It is very important to determine that the circumstances caused by COVID 19, can be considered as normal circumstances or as circumstances that have caused the impossibility of fulfilling the obligations and in this respect non-application of the principle pacta sunt servanda.

2. COVID 19 AS CHANGED CIRCUMSTANCES

Covid19, has caused great difficulties in carrying out commercial activities as well as non-commercial activities, various services both public and non-public. As a result, both tangible and intangible damages have been caused. The first issue that arises is the compensation of damages caused with the circumstances caused by Covid 19. Therefore, the issue of finding out whether Covid 19, is a changed circumstance or not?

1. See more in: Law On the Relationship Of Obligations, article 10; Gale Galev, Obligaciono pravo, Skopje, 2009, 94; S. Veitch, Obligations, Routledge; 1st edition (February 23, 2021.
2. See more in: R. Zimmerman, The Law of Obligations, Clarendon Press; Reprint edition, 1996, p. 47; A. Robertson, The Law of Obligation, Routledge-Cavendish; 1st edition, 2012, p. 37; S.Veitch, Obligations,Routledge, 1st edition, 2021,p.52;;A. Alishani, E drejta e detyrimeve (pjesa e përgjithshme), Prishtinë, 2002, fq. 99.

2.1. Changed circumstances-meaning

If from the moment of entering into the contract, until the moment of its execution the circumstances that aggravate the execution of the contract are caused only to one contracting party, in such circumstances the question arises whether the contract entered into should be revised or terminated? Two opposing views have been raised on this issue. One view has to do with the fact that the contract entered into should be executed as it is, because it is the law for the parties, it is their deed, regardless of whether the aggravating circumstances for its execution have been caused This negative attitude has been argued based on the rules of fairness; because they have considered that there is no higher fairness than to be obliged to execute the contract at will. The other opinion is based on the principle of equality of the parties, the principle of equivalence of expectations, the principle of trust and fairness. The representatives of this opinion start from the fact that if from the moment of entering into contract until the moment of its execution the aggravating circumstances are caused for one of the contracting parties, then those circumstances should be taken into account[3]. These aggravating circumstances if the contracting party is fatally struck, then such a contract should be allowed to be revised or eventually terminated. This opinion must be defended, because he does not understand the contract dogmatically, but he understands it as a legal tool, but also as a flexible tool for the realization of the circulation of goods and provision of services. This position is also being applied in international law. In this regard, the Vienna Convention on the Law of Contracts, in 1969[4], provides that a substantial change in the circumstances which have arisen after entering into the contract, and which have not been foreseen by the parties, may not be used as a basis for revision or termination of the contract, unless these circumstances cause such effects as to alter the obligations to be performed by the contracting parties and the consent of both contractual parties.

Rebus sic stantibus (circumstances remain unchanged) is a legal instrument and institution of the contract law that enables the revision

3. See more in: Galev, G., Obligaciono pravo, fq. 530; A. Alishani, e drejta e detyrimeve (pjesa e përgjithshme, fq. 440.

4. Article 79 of the United Nations Convention on the International Sale of Goods, adopted in 1980, provides that:

"A party shall not be liable for the non-fulfilment of any of its obligations if it proves that the non-fulfilment was due to an obstacle beyond its control and that it could not reasonably be expected to take into account the obstacle at the time of entering into the contract or to avoid or overcome its consequences ".

or termination of the contract due to changed circumstances. The rules of clausula rebus sic stantibus, the principle of equivalence of expectations is protected, the principle of equality of arms, the principle of good faith, the principle of prohibition of infliction of harm and the principle of pacta sunt servanda. The injured party can use this legal remedy if it is caused by circumstances which aggravate the execution of the contract. The LMD[5] states: "if after entering into the contract the circumstances arise and make the fulfilment of obligations difficult for one party or because of them the purpose of the contract cannot be achieved, and in both cases to the extent, it is clear that the contract no longer corresponds to its expectations from the contracting parties and in the general opinion, it would be unfair to remain in force as it is, the party to which the contract has been difficult". Insisting on the fulfilment and observance of the pacta sun servanda principle, would cause unfair situations. The revision of contracts is considered a "magic tool", generally to correct injustices and maintain the stability of contractual relations.[6] This is a result of the creation of circumstances that are created after entering into the contract until its execution, and from the cause of which one of the contracting parties has been harmed. In these cases, the injured party can initiate a request for revision or termination of the contract, as these circumstances are assessed by the court in each specific case. In these cases, as well as in other cases, the opinion that the contract is inviolable in any case has been eliminated, as well as that the contract must be executed at all costs. Finally, the contract is not understood dogmatically, which means certain conditions and the rules of this clause enable the solution or review of the contract due to changed circumstances.

In cases when due to caused circumstances it becomes impossible to fulfil the contractual obligations, due to the occurrence of any circumstance after tendering into the contract and without the fault of the contracting parties, then they come to the termination of the obligation. It is another known circumstance as a major power (vis-maior)[7].

In order to express the application of the clause rebus sic stantibus, certain conditions must be met cumulatively, such as:

- The contract must have permanent expectations-in this condition it is important to have a contractual relationship and this relationship must

5. LMD a. 122
6. See more in: N.Dauti, E drejta e detyrimeve, Prishtinë, 2001, fq. 141; R. Zimmerman, The Law of Obligations, Clarendon Press; Reprint edition, 1996, p. 47.
7. See more in: A. Jashari, E drejta afariste statusore, Tetovë, 2016. fq. 82.

be rewarded in the final contract. In this condition, it is also important for the contract to be with permanent expectations. Therefore, it can be said that this condition is also the general rule for the implementation of the clause, because it is about the contract with reward that have permanent and successful expectations.

-To cause an extraordinary event-this event exists when unavoidable circumstances are caused, or which the parties or the party cannot avoid, nor can afford to face. This event should aggravate the fulfilment of contract or should cause added loss to one of the contractual parties. Otherwise, this event in concrete cases may be a natural action such as drought, floods, earthquakes, etc. But, may be certain administrative measures of the state, such as prohibition or restriction of export or import, can also be radical price changes, changes in foreseen price tariffs, extraordinary events can also be fire, snow accumulation (avalanche), sea storms, major epidemics, etc. The administrative measures, except for the mentioned cases, also include the determination of products which can be exported or not, the setting of new tariffs, new customs, various strikes of a certain duration, government, technical inventions, etc. In law case, this condition is expressed in many cases, so it is supported by legal doctrine. The changed circumstances for this condition are supported only if they aggravate the fulfilment of the duty of one contracting party, or if these circumstances affect the obstruction of the accomplishment of the purpose of the contract, or the action of the event cause injustice and incorrect relationship towards one contractual party.

- The event is caused before the expiration of the term of fulfilment of the contract- according to this condition; it is a rule for causing of extraordinary event before the expiration of the term for the execution of the contract. On the other hand, it is the rule that they will not apply if the event is caused after the expiration of the deadline for fulfilment.

-The event causes the aggravation of the fulfilment of the contract for one of the contractual parties-The changed circumstances cause difficulties in fulfilment if they aggravate the fulfilment of the contract to one of the contractual parties. Therefore, it happens when this fulfilment causes significant damage to this party or causes obvious loss to the contracting party. Regarding this condition it should be said that aggravating circumstances are those flows that fatally hit one contractual party, cause large losses or significant damage. In this case, the court must assess the gravity of the changed circumstances and decide

whether or not there are aggravating circumstances for the execution of the contract

2.2. COVID 19 as changed circumstance

Restrictions imposed by the government[8] can be considered as measures that have caused the impossibility toward fulfilling of obligations (vismaior) or as rebus sic stantibus. It will be considered vismaior or rebus sic stantibus, it will depend on the legal effect that the restrictive measure causes, as this measure really affects the ability of the contractual parties in fulfilling the contractual obligations.

The impossibility of fulfilling the contractual obligation is a real and objective cause which justifies the party to turn to the co-contractor to demand a new deadline for fulfilling the obligations. But, at the same time as the request for extension, it must prove its inability to find an alternative solution to the fulfilment of the obligation, such as replacing the obligation with another obligation if this obligation would be accepted by the other contractual party, and that he himself has taken all possible and necessary measures to avoid this situation, but the event was beyond his will and inability to stop or change it.

Restriction of national or international turnover of goods, and accomplishment of services, as a result of government measures, objectively causes the impossibility of fulfilling the contractual obligations, and at the same time the termination of the contract from which damage is caused. The responsibility for causing damage from non-performance of the contract is expressed. The LMD, in terms of causing damage, in cases of non-performance of the obligation, provides that whoever causes damage to another is liable to compensate, unless it is proven that the damage was not caused by his fault. In interpreting this determination, the party affected by the governmental measure must prove that the non-fulfilment of the obligation is a direct consequence of the Government Decisions, and that it has no responsibility for causing the event, and that it has been impossible to foresee these circumstances

8. For Government measures see more in: https://vlada.mk/covid19. The Government has adopted Decrees with legal force, including Decrees related to the field of contract law. Two decrees with legal force in the field of contract law have been adopted: the decree with legal force on the manner of changing the contract, the terms of credit exposure with banks and savings and the decree with legal force on the implementation of the law of obligations during the state of emergency with the calculation of legal interest.

before entering into the contract, and that despite having taken all the necessary measures to avoid it, it has been impossible to fulfil the contractual obligations.

On the other hand, the contracting party has the right to provide a deadline to the debtor within which according to objective circumstances he/she should meet the obligation, as otherwise he has the right to terminate the contract. For the additional deadline he is obliged to immediately notify the party that he was hit by the event. If the party in whose favour the deadline is set is no longer interested to meet the obligation, then the temporary impossibility becomes a complete impossibility and the only solution according to the law would be the termination of the contract. Government restrictive measures can also be considered as circumstances (rebus sic stantibus), according to which the party whose situation is difficult to fulfil, can turn to the other party to change the contractual terms, or terminate the contract as the change of circumstances is such and makes it impossible or extremely difficult to meet the obligations. All this is the result of causing unpredictable and unavoidable circumstances[9].

If a situation arises where the non-fulfilment of the obligation is caused due to the lack of the case (which is a result of the restriction of turnover), then the contracting party which is caused by such consequences has the right to refer to clausula rebus sic stantibus, requesting co-contractor to change the contract, due to difficulties in securing the subject matter of the contract. In order to modify the contractual terms, the affected party must first take all necessary actions to avoid the consequence, which consists in the possibility of replacing the subject of the contract with a similar and likable subject by the other party, or finding of other alternatives for fulfilling the obligation[10]. If in these cases, the non-performance is the result of the fault of a party, then we have liability on the basis of fault. If despite the changes caused, the contract does not lose its purpose, and the change of terms must be such as to put the parties in terms equal according to the principle of equivalence of expectations, then the contract can be fulfilled.

In circumstances where the non-fulfilment is a result of the infection of the party by Covid-19, and due to this the contracted obligation cannot be met, whereas it is a matter of personal obligations, which means that they cannot be fulfilled by third parties, in this case it is the matter objective of impossibility. In principle, this impossibility is regulated

9. LMD a. 117
10. LMD a. 117

in the LMD[11]. Whether or not the objective of impossibility has been caused, and whether the meeting of the obligation has become objectively impossible, depends on the specific circumstances of the disease, including its severity caused by the COVID-19 infection, and on the specific obligation to be fulfilled. If the infected party, whose symptoms are mild and the contractual obligation can be performed online from home, we cannot say that we are in front of conditions of impossibility. The perpetrator who is infected and under hospital treatment, would usually be justified in non-fulfilment of his contractual obligation. If the illness of the party or his employee does not make it impossible to fulfil the obligation, but makes it considerably more costly or severe, the law does not consider this a situation of impossibility. In such a case, the clause rebus sic stantibus could apply if the change in post-contractual circumstances would lead to a serious breach of the equivalence of expectations, which would be neither predictable nor avoidable.

In cases where the contracting party due to infection with COVID 19, decides to protect itself and its employees by deciding to isolate himself and discontinue business activities, and as a result, he cannot meet the contractual obligations, even for against the fact that the government has not imposed, or has already removed, protective measures, then we cannot call for the implementation of impossibility or clausula rebus sic statibus. In this case it will be considered that the circumstances caused have not become impossible to fulfil. According to the LMD[12], since the meeting of the obligation was not made impossible by a circumstance independent of the will of the party, it could not be considered as a circumstance to apply the clausola rebus sic stantibus, because the decision to be careful for a good reason, generally is attributed to the party itself which has the obligation to be correct in the contractual relationship. On the other hand, if it happens that the government does not adopt decisions, and caused circumstances can cause health hazards and this situation for meeting of obligations is so difficult that if fulfilled, the obligation would cause great costs, then in this case it could the doctrine clausula rebus sic stantibus applies.

If due to COVID 19, abnormal situations are caused in the state, such as the increase in the number of deaths, the increase of economic difficulties, a high rate of infection in the administrations of the police and military forces, the inability of the state to effectively maintain peace and

11. LMD a. 120.
12. LMD a. 120.
[13] LMD a. 120

order, may lead to disruption of social order, including riots and looting, or in another situation, certain sectors of the economy or public means of transporting goods and services may be temporarily disrupted due to a mix of imposed measures by the government and a small number of workers who are still unable to work, and all this creates a permanent obstacle to fulfilling contractual obligations that cannot be avoided, these circumstances can be considered as a case of impossibility[13]. If the obstacle to the performance of the contract is only temporary, this temporary impossibility in principle would lead to the implementation of the legal framework for postponing the fulfilment of the obligation on condition that that the created situation violates the principle of which as a circumstance affects the change of the contractual term or even the termination of the contract if the subsequent fulfillment of obligations would not make sense for the other party.

The position of the judicial authorities is very important regarding legal treatment of Covid 19, Shall it be considered as rebus sic stantibus or vismaior, or not. There are already strong indications that Coronavirus has been accepted as a changed circumstance. The Council for the Promotion of International Trade in China, for example, has identified Covid 19 as a major force for Chinese contractual parties, whereas the World Health Organization has identified the Coronavirus outbreak as a pandemic (which is generally accepted to be beyond the control of the contractual parties).

2.3. Rights of the injured party caused by COVID 19

According to the rules of the clausola rebus sic stantibus, and the rules of contract law, the injured party can exercise these rights under certain conditions: the right to revise the contract and its termination, which are the main rights, as well as the right to compensation for damage which is an accessory right.

The right to revise the contract[14]. On the basis of this right, the contract is adapted to the created conditions and it is enabled to remain in force. In order to accomplish this right, several conditions must be met: cause changed circumstances, the changed circumstance should aggravate the fulfilment of the contract, the other party should offer the possibility of eliminating the disproportion caused due to the changed circumstances, the damaged party should submit the request to the

13. LMD, a. 120
14. LMD, a. 122

other party and the other party must agree, the court should reject the request for termination of the contract and these circumstances should be caused after the conclusion of the contract and before the expiration of the deadline for its fulfilment[15].

The right to terminate the contract. Due to changed circumstances, the injured party has the right to request the termination of the contract. This right shall be exercised if the right to revise the contract is denied and if the extraordinary event is too serious as well as when the possibility of eliminating the disproportion caused to the expectations of the parties is not possible. The conditions that must be met are: cause changed circumstances, these circumstances to aggravate the execution of the contract, the circumstances should be caused before the expiration of the term for fulfilment of the contract, unable to review the contract and the injured party should submit the request for termination of the contract on time[16]. This right can be exercised on the basis of a lawsuit for termination of the contract or through opposition. The realization of this right causes the termination of the contract, whereas the main effect of this contract is in the future (ex nunc), so the effects derive from the moment when this contract is terminated.

The right to compensation. This right is an accessory right of the injured party and the accomplishment of this right this party must prove that it has indeed sufferedthedamage from any conduct of the other contractual party. The possibility of liability for damage to the injured party, is not expressed unless it notifies the other party that it is requesting the termination of the contract due to changed circumstances.[17]

2.4. Contractual exclusion of the impact of changed circumstances

The nature of the rules of contract law[18], offers the opportunity to the parties to exclude the possibility of being summoned in changed circumstances through the contract. With this the parties exclude the possibility to request the revision of the contract or its termination due to change of circumstances. Exclusion or termination can be foreseen but provided that this exception is not contrary to the principle of honesty and conscientiousness.

15. LMD a. 122
16. LMD a. 123
17. LMD a. 123
18. LMD a. 123

CONCLUSIONS

From the information discussed in the paper, we can conclude that it is not possible to give a general opinion on whether the circumstances caused by Covid 19 should be treated as changed or not, as it all depends on the specific situation. The assessment can be influenced by factors such as: the presence or absence of clauses of changed circumstances or force majeure at the time of entering into the contract, to what extent the government imposes available alternative measures, etc.

As for the onus probandi (burden of proof), based on the fact that it is a matter of notarial facts (known worldwide), there is no need to prove the existence of changed circumstances. It is also important to verify the existence of exception clauses or limitation of liability.

The Injured parties by changed circumstance must notify the other party as soon as possible and reasonably after the effects of the circumstance have begun. Without delay, after delivering such notification, the parties shall consult each other in good faith and make reasonable efforts to agree to mitigate the effects of the event caused by the Force Majeure and to facilitate the ongoing performance of the Contract. When the parties do not agree to such conditions, and such force majeure persists, or its consequences continue to be such that the affected party is unable to meet all or most of its obligations under this contract, either party may terminate this contract by giving prior notice to the other party ("Notice of termination of Contract due to force majeure events").

If as a result of the event caused by a force majeure, one party is not able to meet the obligations of the contract according to the conditions stipulated in the contract, then: the party may request an extension of the date of fulfilment of the contract obligation; Exemption from coercion insofar as it is affected by the event of force majeure; In the event if caused by force majeure, which becomes the cause for delays in connection with a certain part of the contractual obligations and which have claimed additional costs, the affected party may claim the right to compensation for additional costs; Exclusion from the termination of the contract through the fault of the injured party by force majeure insofar as the non-performance is caused or materially affected by the existence of force majeure.

LITERATURE

1. A. Jashari, E drejtaafaristekontraktore, Tetovë, 2017;
2. A. Jashari, E drejtaafaristestausore, Tetovë, 2016;
3. A. Alishani, E drejta e detyrimeve(pjesa e përgjitshme), Prishtinë, 2004;
4. Andrew Robertson, The Law of Obligation, Routledge-Cavendish; 1st edition, 2012;
5. G. Galev, Obligacionopravo, Skopje, 2009.
6. N. Dauti, E drejta e detyrimeve, Prishtine,2012;
7. N.Dauti, Kontratat, Prishtine, 2009;
8. M. Hetemi, E drejta me elementetësëdrejtësafariste, Prishtinë, 2000;
9. S. Veitch, Obligations,Routledge, 1st edition, 2021;
10. R. Zimmerman, The Law of Obligations, Clarendon Press; Reprint edition, 1996;
11. Konventa e Vienës mbi të Drejtën e Kontratave,1969;
12. Ligji për Marrëdhëniet e Detyrimeve i Maqedonisë;
13. Komentari i Ligjit për Marrëdhëniet e Detyrimeve, Libri I dhe II, Prishtinë, 2013.

EARLY PARLIAMENTARY ELECTIONS OF JULY 15, 2020 IN NORTH MACEDONIA DURING COVID-19 - CONSTITUTIONAL AND ADMINISTRATIVE LEGAL ASPECTS

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Abstract

For the first time in its history, North Macedonia as a result of COVID-19 declared a state of emergency and after that, held early parliamentary elections on 15 July 2020, as a result of the preliminary dissolution of Parliament on 16 February 2020. On 17 February, President of the Parliament Talat Xhaferi, in accordance with his constitutional authorizations according to article 67 of the Constitution of the country, announced that elections would be held on 12 April, which was then postponed to 15 July due to the situation caused by the COVID-19.

Prior to this, on 11 February, at the 113th session of the Parliament, on the agenda was the Law on Ratification of the North Atlantic Treaty. Adopting this law was the last stage in the process of becoming a full NATO member. It was supported by all MPs present and adopted with a total of 114 votes. The law ratifies the protocol for joining the NATO, which was passed by the MPs before the dissolution of the Parliament. The law came into force after the Spanish Parliament passed the protocol. Subsequently, on 27 March, the Republic of North Macedonia officially became the 30th member of the NATO.

On the other hand, regarding the political context of these elections, it should be noted that, the political decision to hold early parliamentary elections was made due to the fact that the EU did not set a date for opening accession negotiations with the North Macedonia. In October 2019, one day after the Council of Ministers of the European Union in Luxembourg and the Summit of the Heads of States and Governments in Brussels did not reach an agreement on opening

negotiations with North Macedonia and Albania, Prime Minister Zoran Zaev announced that he would convene a leadership meeting and propose early parliamentary elections. Shortly after the EU Summit, opposition leader Hristijan Mickoski stated that it was a defeat for the government's policy that the EU had not set a date and pointed out that early parliamentary elections were the only viable solution. The leadership meeting was held on 20 October 2019 at the residence of President of the Republic Stevo Pendarovski, and it was agreed to hold early parliamentary elections on 12 April 2020, and, in accordance with the Pržino Agreement to install a new Technical Government which would take up its work on 3 January 2020.

Therefore, the main purpose of this paper lies in the analysis of the constitutional and administrative legal aspects of this electoral process, especially focusing on some issues that arose in the public debate after the presentation of COVID-19 in North Macedonia, which had to do with the return of already dissolved Parliament; declaring a state of emergency; approval of decrees with legal force on electoral issues by the Technical Government on March 21 and June 15; and the constitutional review of these decrees by the Constitutional Court. Also, in this paper, the electoral system of the country will be analysed; administration of this electoral process as well as the election results; the constitution of the new parliamentary composition as well as the starting process for the formation of the new Government after these elections.

Keywords*:* early parliamentary elections, rule of law, human rights, decrees with the force of law, state of emergency, dissolution of the Parliament, constitutionality of the electoral process.

1. INTRODUCTORY REVIEWS: THE LEGAL AND POLITICAL BACKGROUND OF THESE ELECTIONS

The political decision to hold early parliamentary elections was made due to the fact that the EU did not set a date for opening accession negotiations with the North Macedonia. In October 2019, one day after the Council of Ministers of the European Union in Luxembourg and the Summit of the Heads of States and Governments in Brussels did not reach an agreement on opening negotiations with North Macedonia and

Albania, Prime Minister Zoran Zaev announced that he would convene a leadership meeting and propose early parliamentary elections. Shortly after the EU Summit, opposition leader Hristijan Mickoski stated that it was a defeat for the government's policy that the EU had not set a date and pointed out that early parliamentary elections were the only viable solution. The leadership meeting was held on 20 October 2019 at the residence of President of the Republic Stevo Pendarovski, and it was agreed to hold early parliamentary elections on 12 April 2020, and, in accordance with the Przino Agreement to install a new Technical Government which would take up its work on 3 January 2020[1].

As a result of this political decision, the Parliament of North Macedonia was dissolved on February 16 with the vote of 108 MPs; while on February 17 the President of the Parliament Mr. Talat Xhaferi, in accordance with his constitutional competence according to article 67 of the Constitution[2], announced the elections for April 12, while later, after the end of the state of emergency, he changed and supplemented that decision, with the new date, i.e., July 15[3].

Prior to this, on 11 February, at the 113th session of the Parliament, on the agenda was the Law on Ratification of the North Atlantic Treaty. Adopting this law was the last stage in the process of becoming a full NATO member. It was supported by all MPs present and adopted with a total of 114 votes. The law ratifies the protocol for joining the NATO, which was passed by the MPs before the dissolution of the Parliament. The law came into force after the Spanish Parliament passed the proto-

1. For more see at: *European Council Fails to Reward North Macedonia, Albania*, Balkan Insight, 17 October 2019, available online at: https://balkaninsight.com/2019/10/17/european-council-fails-to-reward-north-macedonia-albania/. *Early Elections Test North Macedonia's Unity over EU Drive,* Balkan Insight, 21 October 2019, available online at: https://balkaninsight.com/2019/10/21/early-elections-test-north-macedonias-unity-over-eu-drive/. Debeuf, Koert (21 October 2019), *Snap elections in North Macedonia after EU rejection*, EU Observer, available online at: https://euobserver.com/enlargement/146343. *North Macedonian leaders agree to hold snap election on April 12*, Reuters, 20 October 2019, available online at: https://www.reuters.com/article/us-north-macedonia-politics/north-macedonian-leaders-agree-to-hold-snap-election-on-april-12-idUSKBN1WZ0OB.

2. Article 67 of the Constitution stipulates that: *"The President of the Assembly issues notice of the election of MPs and of the President of the Republic",* available online at: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx.

3. For more see at: *North Macedonia parliament dissolves*, *sets poll date, after EU shuns talks*, Reuters, February 16, 2020, available at: https://www.reuters.com/article/us-north-macedonia-election/north-macedonia-parliament-dissolves-sets-poll-date-after-eu-shuns-talks-idUSKBN20A0ON. *Xhaferi signs decision scheduling July 15 elections*, Republika English, June 16, 2020, available online at: https://english.republika.mk/news/macedonia/xhaferi-signs-decision-scheduling-july-15-elections/.

col. Subsequently, on 27 March, the Republic of North Macedonia officially became the 30th member of the NATO[4].

On 12 January 2020, the World Health Organization (WHO) confirmed that a novel corona virus was the cause of a respiratory illness in a cluster of people in Wuhan City, Hubei Province, China, which was reported to the WHO on 31 December 2019[5]. In this regard, on 26 February, North Macedonia confirmed its first case of COVID-19, a 50-year-old woman that got tested at the Clinic for Infectious Diseases in Skopje. She had been in Italy for a month and was sick for two weeks. Upon returning to North Macedonia, she immediately reported herself to the clinic[6]. As the trend of increasing cases of COVID-19 in North Macedonia continued from the end of February until the beginning of the third week of March, in parallel the public debate took place, whether it is necessary to declare a state of emergency[7]. Finally, on March 18, the Government asked the Parliament to declare a state of emergency. But, since the majority of the MPs on February 16 had already approved the decision to dissolve the Parliament, and with this act they had collectively lost their mandates, and early parliamentary elections were announced for April 12 (which was later held on July 15); therefore, in this situation the President of the Republic Stevo Pendarovski on March 18 declared a state of emergency with a duration of 30 days. Regarding the early elections scheduled for April 12, President Pendarovski, before that, on March 17, called on all party leaders where a joint decision was reached that these elections should be postponed indefinitely and held after end of the Covid-19 crisis[8]. The author of this paper, prof. Shasivari on March 17, was part of a group of constitutional legal experts invited by President Pendarovski to determine the legal aspects of the decision to postpone the elections

4. For more see at: *North Macedonia joins NATO as 30th Ally*, March 27, 2020, available online at: https://www.nato.int/cps/en/natohq/news_174589.htm.
5. Reynolds, Matt (4 March 2020), *"What is coronavirus and how close is it to becoming a pandemic?"*, available online at: https://www.wired.co.uk/article/china-coronavirus.
6. *"First case of corona virus confirmed in North Macedonia"*, Al Jazeera, 26 February 2020, available online at: https://www.aljazeera.com/news/2020/02/china-coronavirus-outbreak-latest-updates-200226003835539.html.
7. For more see at: Prof. Jeton Shasivari: *"E nevojshme gjendja e jashtëzakonshme-State of emergency required",* Klan Macedonia, March 18, 2020, avaliable online at: http://klanmacedonia.mk/shasivari-e-nevojshme-gjendja-e-jashtezakonshme/.
8. For more information see at: *Political parties in Macedonia reach a consensus to postpone the elections*, META.MK, 17.03.2020, avaliable online at: https://meta.mk/en/political-parties-in-macedonia-reach-a-consensus-to-postpone-the-elections/, (accessed on July 22, 2020).

scheduled for April 12. The meeting discussed several possible solutions deriving from the Constitution of North Macedonia[9].

So, in order to effectively prevent the COVID-19 pandemic, for the first time in the history of North Macedonia by decision of the President of the Republic a state of emergency was established, which despite the intensified measures to protect public health implies the introduction of a special legal regime whose main features are: deviation from the principle the separation of powers and the assumption of legislative powers by the Government, the possibility of restricting basic human rights and freedoms and taking of intervention measures by the executive power in many spheres of social life.However, the Constitution does not contain more detailed provisions on the duration and limitation of the state of emergency in particular for the case when this is done by decision of the President of the Republic, therefore the President brought a total of five decisions for the state of emergency. In this regard, the constitutional provision of Art. 125 which determines its duration of up to 30 days, refers to the situation when the decision to declare a state of emergency is made by the Parliament. It does not provide any deadline for its duration when it is declared by a decision of the President, so it can be considered that its time limit should be determined by health circumstances, i.e. the duration of the pandemic and the need for the Government to issue decrees with the force of law. Due to this ambiguity of the constitutional provisions, the President, on April 16, 2020, adopted a new (second) decision to "determine" the already established, state of emergency in the next 30 days, and on May 15, a new (third) decision on state of emergency in the following 14 days; on May 30, a new (fourth) decision for a state of emergency in the next 14 days, ie. until June 13, 2020; while on June 15, a new (fifth) decision on the state of emergency for the next 8 days, which ended on June 22, 2020, at midnight[10].

In the same line with this intentional constitutional interpretation above, is the jurisprudence of the Constitutional Court which in two cases: on May 12 and July 8, 2020 has rejected the initiatives to declare unconstitutional these decisions of the President. In this context,

9. For more information see at: *Meeting of law and constitutional law experts in the Cabinet of the President of the Republic of North Macedonia, Stevo Pendarovski*, 17.03.2020, avaliable online at: https://pretsedatel.mk/en/meeting-of-law-and-constitutional-law-experts-in-the-cabinet-of-the-president-of-the-republic-of-north-macedonia-stevo-pendarovski/.

10. For more information see at: Завршува петтата вонредна состојба, од среда почнува изборната кампања, avaliable online at: https://www.slobodenpecat.mk/zavrshuva-petta-ta-vonredna-sostojba-od-sreda-pochnuva-izbornata-kampana/.

regarding the first decision of this Court of May 12, as disputable the question arises whether the state of emergency, for the same reasons, can be declared twice in 30 days, i.e., whether the state of emergency declared for the same reasons can last for 60 days. According to the Court, the Constitution does not limit, nor is it possible, how many times the state of emergency will be declared, if the competent bodies, i.e., the Parliament or the President of the Republic, assess that the conditions and needs for its declaration are met. The only limitation is that the decision to declare a state of emergency may be valid for a maximum of 30 days. This means that the Constitution stipulates that after the expiration of that period, the state of emergency ceases. If the conditions for the existence of a state of emergency remain, which is a constitutional basis, and then a new decision is made to declare a state of emergency. It is a guarantee that the state of emergency cannot be extended automatically, but there is a need for a new assessment of whether there are conditions and a need for a state of emergency, and if it is deemed necessary and justified, then a new decision on existence of a state of emergency is made for a certain period, which again cannot be more than 30 days. This is because the state of emergency implies the reduction of certain freedoms and rights recognized in International Law and determined by the Constitution, which must be an exception, due to which its time limit is necessary and subject to mandatory review[11]. While related to the second decision of this Court of July 8, according to the reasoning of the Court in this case, with a decision of 12 May 2020, the Court did not initiate a procedure for assessing the constitutionality of the decision for determining the existence of a state of emergency, namely, according to the Court, on April 14, 2020, the President of the Republic adopted a new decision on existence of a state of emergency, according to which the existence of a state of emergency is established on the territory of North Macedonia for a period of 30 days in order to protect and deal with the consequences of the spread of the COVID-19. The decision was made on the basis of Articles 125 and 126 of the Constitution, as well as on the basis of a reasoned proposal of the Government, which establishes the existence of the COVID-19 declared by the World Health Organization as a new type of virus that has spread to covers all the continents and also covers the territory of North Macedonia and the notification from the President of the Parliament that the Parliament in accordance with the Decision for its dissolution cannot hold a session. Hence, it follows that during the adop-

11. For more see the Constitutional Court Decision of May 12, 2020, У.бр.55/2020, avaliable online at: http://ustavensud.mk/?p=19269.

tion of the second decision for determining the state of emergency, as well as during the adoption of the first such decision, the Government submitted a detailed proposal to the President in which the existence of an epidemic is determined in the territory of the entire Republic, for which reasons there is a need to declare a state of emergency. Having in mind that the Court has already decided on the same issue, and there are no grounds for a different decision, the Court rejects the initiative for assessing the constitutionality of the decision of the President for determining the existence of a state of emergency[12].

2. CAN THE DISSOLVED PARLIAMENT COME TO LIFE AGAIN?

On April 23, a group of MPs submitted an initiative to convene an emergency parliamentary session in order to confirm the two declared states of emergency. The request was signed by 35 MPs from the SDSM coalition, MPs from the independent parliamentary group, BESA and DPA, but not by MPs from DUI and VMRO-DPMNE, who did not support the initiative. This initiative was unsuccessful[13]. Otherwise this initiative opened the public debate whether the already dissolved Parliament can be convened again.

In this regard, as I underlined in an article of mine entitled: "Parliamentary Dribbling", published on April 23, the recent initiative of the 35 former MPs to reconvene the session of the Parliament has no constitutional basis, and as such is contrary to the constitutional principle of exercising the power of citizens through democratically elected MPs, which is the key constitutional principle of the organization of state power in North Macedonia. When it comes to the jurisprudence of the Constitutional Court of North Macedonia as the only body in the constitutional system that protects the constitutionality and legality and also has the inviolable competence to assess the constitutional principles, it should be noted that, for the first time, this Court has reviewed and determined the reasoning basis of the issue of dissolution of the

12. For more see the Constitutional Court Decision of July 8, 2020, У.бр.207/2020, avaliable online at: http://ustavensud.mk/?p=19693.

13. For more information see at: Собранието се активира-состојбата се комплицира, 23.04.2020, available online at: https://www.slobodnaevropa.mk/a/%D0%BA%D0%BE%D1%80%D0%BE%D0%BD%D0%B0-%D1%81%D0%BE%D0%B1%D1%80%D0%B0%D0%BD%D0%B8%D0%B5-%D0%B8%D0%B7%D0%B1%D0%BE%D1%80%D0%B8/30570904.html.

Parliament, in its decision of 15 November v. 2006 which repealed the provision of Article 15 paragraph 4 of the Electoral Code (in which 35 former MPs are called today) which provided that the mandate of the MPs lasts from the day of its verification until the day of verification of the mandate of newly elected MPs. However, the Parliament with the approval of the Law on amending and supplementing the Electoral Code on October 30, v. 2008, with the provision of Article 6 again added the same legal provision above, showing with this action that the Parliament as a legislative body does not take into account at all the interpretations, views and constitutional legal reasoning of the Constitutional Court and that the decisions of this Court have no influence on the orientation of the content of laws adopted by Parliament[14].

However, what is important here is the constitutional legal reasoning of the Constitutional Court in determining the reasoning basis of the issue of dissolution of Parliament. At that time, the President of this Court was the distinguished lawyer from Tetovo, Mr. Mahmut Jusufi, where, among other things, it is stated that: "It is clear from the constitutional provisions that the mandate of the MPs begins to derive from the constitutive meeting of the Parliament and lasts 4 years and can be extended only in case of war or state of emergency as well as to be cut in case of dissolution of the Parliament or when the new Parliament is constituted before the expiration of four years. The Constitution does not stipulate that the mandate of the MPs in the Parliament to be extended in case of dissolution of the Parliament, and it is not foreseen that in this case, the MPs continue with their duty. Therefore, the Court finds that, because this disputed legal provision regulates the duration of the mandate of the MPs in the Parliament, contrary to the stated constitutional norms, exceeding the constitutional basis that the law regulates only the manner and conditions for the election of the MPs and not to regulate their mandate, since this issue is an already regulated constitutional issue, this legal provision is not in accordance with the Constitution"[15].

The above principle reasoning is also part of another decision of the Constitutional Court of 25 May 2016 by which this Court annulled the decision to dissolve the Parliament of 18 January 2016 and the decision to amend this decision of 23 February 2016, according to the constitutional initiative of the President of the Parliament from the previous parliamentary composition, Mr. Talat Xhaferi, who until now, strongly

14. For more see at: Prof. Jeton Shasivari *"Driblimi parlamentar-Parliamentary Dribbling",* 23.04.2020, avaliable online at: https://portalb.mk/679719-driblimi-parlamentar/.
15. Ibid.

stands behind the Constitution, arguing that the Parliament from the moment it is dissolved ceases to exist and that it has returned its sovereignty to those to whom it belongs, i.e. the citizens. Otherwise this attitude of Mr. Xhaferi is consistent with his constitutional initiative of 2016, when that initiative to the Constitutional Court then justified it with the fact that: "The Constitution does not provide for the postponement effect of the decision to dissolve the Parliament and change such a decision, but clearly provides that dissolution of the Parliament is valid from the day of the adoption of the decision for dissolution. The once approved decision on the dissolution of the Parliament can not be changed by another decision because the Parliament is already dissolved, which means that the Parliament cannot extend its competence and decide differently from what is regulated by the Constitution regarding its distribution and function"[16].

On the other hand, the reasoning of the initiative of the 35 former MPs for the reconvening of the session of the Parliament, that according to the decision of the Constitutional Court of May 25, 2016, the MPs can not gather again after the decision to dissolve the Parliament, except in state of war or state of emergency in accordance with Article 63 paragraph 4 of the Constitution, has no constitutional basis and represents a "throwing dribble", because the decision on the state of emergency was approved by the President 32 days after the collective early loss of mandates of the MPs i.e. on March 18, so, a mandate that does not previously exist, i.e. that has been previously lost, can not be extended, and the only constitutional possibility, to win the new functional, legal and legitimate parliamentary mandate by citizens are the new parliamentary elections. To have this clearer, as a school example, can serve, the nine-year term of the constitutional judge, Mr. Vladimir Stojanoski, whose nine-year constitutional mandate expired on April 14, but due to the preliminary declaration of the state of emergency on March 18, his mandate as a judge of the Constitutional Court was extended for the duration of the state of emergency[17].

When it comes to this issue, it is worth mentioning the views of the professor of the constitutional law prof. Svetomir Skaric, which states that, "the Constitutional Court does not accept the extension of the mandate of the MPs after the Parliament has already been dissolved. The Constitution does not allow the mandate of the MPs to be extended in case of a dissolved Parliament, nor does it allow the MPs to return to the

16. Ibid.
17. Ibid.

session again. Neither postponed effect of the decisions for dissolution of the Parliament, nor extension of the mandate of the MPs after the dissolution of the Parliament. These are two key points of the Constitutional Court contained in its decision to annul the two decisions to dissolve the Parliament. The state of emergency cannot help the dissolved Parliament. The Constitution allows the extension of the mandate of the MPs in a state of war and emergency only in case when the Parliament is taken by such a situation and when its four-year mandate is coming to an end. The Court finds that the state of deferred effect of the decision to dissolve and extend the mandate of the dissolved Parliament creates legal uncertainty and means a violation of the rule of law. The former President of the Parliament Mr. Xhaferi also took that position. In a short time, the Constitutional Court ruled twice to the detriment of the MPs and their supporters. The Constitutional Court took a resolution view-the dissolution of the Parliament is not disputed. Unanimously rejected the initiative to assess the constitutionality of the Decision to dissolve the Parliament of 16 February 2020, submitted by a constitutional judge. Earlier, at its April 15 session, the Court acted in the same way on another initiative on the same issue. The court considers the rejection of the first initiative as a "decisive matter". Due to that, the Court refused to discuss the same initiative again, although it was submitted "ex officio". Constitutional judges are well aware that their decisions are a source of constitutional law and that they cannot be changed for the same case"[18].

In this regard, the fact that the dissolution of Parliament means early termination of the mandate of MPs is emphasized in a study by Elliot Bulmer which states that: "The power of dissolution is the power to end the term of office of a parliament (or other legislative body) so as to require new elections to take place. Parliaments are compulsorily or automatically dissolved at the end of their scheduled term of office. Most parliamentary and semi-presidential systems also allow for the premature dissolution of parliament before the scheduled end of its term of office. This can be a way of breaking deadlocks within parliament, or between parliament and the government, by appealing to the people. Depending on the constitutional rules in each country, dissolution may also be used to renew a government's mandate, for example after a change of prime minister. However, the circumstances in which premature dissolution is permissible can vary considerably. In some

18. For more see at: Prof. Svetomir Skaric: *"Распуштеното Собрание не може да се врати-The dissolved Parliament cannot be returned"*, 18.05.2020, avaliable online at: https://respublica.edu.mk/mk/blog/2020-05-18-09-18-19.

constitutions an almost unfettered power of dissolution exists, while in others the dissolution power is very limited and can only be used in specific cases. Dissolution is the power to dismiss a parliament or other legislative assembly such that the members of the assembly cease to hold office and new elections are required. Dissolution thus differs from prorogation, which suspends the sitting of an assembly but does not cause the members to be removed from office or require new elections to be held"[19].

3. THE CONSTITUTIONALITY OF THE DECREE WITH THE FORCE OF LAW ON ISSUES RELATED TO THE ELECTION PROCESS

On March 21, 2020, the Government of North Macedonia adopted a Decree with the force of law on issues related to the electoral process, where Article 1 of this Decree stipulates that: "This Decree regulates issues related to the electoral process, amends and supplements the Electoral Code. Code and determines the issue of application of provisions of the laws related to the election process". Article 2 extends the mandate of the members of the State Election Commission. Article 3 determines the termination of election activities related to the elections scheduled for April 12, 2020, in Article 4 prescribes an obligation for the State Election Commission to keep the existing election documentation until the resumption of the elections. According to Article 5 the election activities will continue from the day of the cessation of the state of emergency. Article 6 prescribes an obligation for the State Election Commission to prepare a revised election schedule actions one day after the cessation of the state of emergency. Article 7 stipulates non-application of Articles 8-a, 75-d, 75-e and 84-a of the Electoral Code until the cessation of the state of emergency, Article 8 prescribes non-application of Article 34 of the Law on Prevention of Corruption and Conflict of Interest until the cessation of the state of emergency and according to Article 9, this Decree shall enter into force on the day of its publication in the "Official Gazette of North Macedonia"[20].

19. Elliot Bulmer, *Dissolution of Parliament*, International IDEA Constitution-Building Primer 16, Stockholm, 2017, p. 3 and 5.

20. For more on this Decree see the official website of the Government, available online at: https://vlada.mk/sites/default/files/dokumenti/Uredbi_Covid19/25_Sednica_21-03-2020/sednica_25_21.03.2020_uredba_so_zakonska_sila_za_prashanja_povrzani_so_izboren_proces.pdf.

On June 10, 2020, the Government adopted a Decree with the force of law amending the above Decree adopted on March 21, 2020 by prescribing obligations for the Ministry of Interior, the basic courts, the Registry Office, the body responsible for the execution of sanctions, the State Election Commission, the State Statistical Office, as well as the Ministry of Health in connection with the preparation of the remaining election activities related to the parliamentary elections.

On June 15, 2020, the President of the Republic adopted a Decision on determining the existence of a state of emergency, where item 1 of this decision stipulates that, the existence of a state of emergency on the territory of the Republic for a period of 8 days is determined, for the preparation and implementation of early parliamentary elections, with measures to protect public health in the face of the COVID-19 pandemic.

On June 15, 2020, the President of the Parliament adopted a decision to amend the decision for announcing early elections for MPs, where in item 1 of this decision it is determined that: Elections will be held on July 15, 2020, and item 2 provides that: All election activities undertaken in accordance with the provisions of the Electoral Code and the Decision on announcing early elections for Members of Parliament until the day of entry into force of the Decree with legal force on issues related to the election process are considered valid. The deadlines for undertaking the other election activities continue to run from the day of the cessation of the state of emergency.

On June 15, 2020, the Government adopted a Decree with the force of law on issues related to the elections for the Members of Parliament, whereby Article 2 determines the continuation of the election activities from the day of the cessation of the state of emergency, and according to paragraph 3 of the same article the previously undertaken election actions are considered valid. Furthermore, Article 3 again prescribes the State Election Commission to revise and announce the schedule for continuation of the election activities within one day from the entry into force of this decree; Article 4 redefines the responsibilities of the Ministry of Interior, the basic courts, the Registry Office, the body responsible for enforcing sanctions, the State Election Commission and the State Statistical Office regarding the continuation of election-related election activities of MPs scheduled for July 15, 2020. According to Article 5, the election campaign starts on June 24, 2020, with July 13 and July 14, 2020 being days of electoral silence, on July 13, 2020 voting by persons in domestic quarantine for a positive COVID-19 test. and

persons with a measure of self-isolation, on July 14, 2020, vote for the weak and sick, as well as the chronically ill; Article 6 stipulates that the other persons vote on July 15, 2020, starting from 07:00h until 21:00h, and the election boards cannot start counting the votes before 21:00h. Article 7 prescribes the duration of political advertising through broadcasters during the election campaign; Article 8 refers to the obligations of the Ministry of Health regarding the provision of protective masks, gloves and other necessary protective equipment; Article 9 stipulates that from the day of entry into force of this Decree until the day of termination of the state of emergency, Articles 8-a, 75-d, 75-e and 84-a of the Electoral Code, as and Article 34 of the Law on Prevention of Corruption and Conflict of Interest; and Article 10 stipulates that this Decree shall enter into force on the day of its publication in the "Official Gazette of North Macedonia".

Regarding the assessment of the constitutionality of these decrees, the Constitutional Court on 14 May and July 8, 2020 decided not to initiate a procedure for assessing the constitutionality of the Decree with the force of law on issues related to the election process.

The explanation of these decisions of the Court states that, in the specific case, the Government with this decree terminated all election activities for conducting the elections for Members of Parliament scheduled for April 12, 2020, counted from the day of entry into force of this Decree (March 21, 2020), with the determination that the election activities will continue from the day of the cessation of the state of emergency. Thereby, it is determined that all election activities undertaken in accordance with the provisions of the Electoral Code until the day of entry into force of this decree, are considered valid and the State Election Commission is obliged to announce within one day from the date of termination of the state of emergency on its website revised schedule for continuation of election activities. Given this factual and legal situation, it follows that the Government, guided by its constitutional powers, in conditions of a state of emergency that has been declared throughout the Republic to prevent the introduction, spread and management of COVID-19, and in accordance with this pandemic declared by the World Health Organization as a new type of virus that has spread to all continents and has invaded the territory of North Macedonia, reasonably assessed that the previously scheduled parliamentary elections on April 12, 2020, during the state of emergency, can not be held, due to which the electoral activities for conducting the elections must be interrupted for the period of the state of emergency and continue after its termination, within the

legally determined deadlines, when conditions for their uninterrupted holding will be created. It is indisputable that the interruption of the election activities is closely related, i.e. caused by the reason for declaring a state of emergency, which is COVID-19, which means that it is in line with the reason for the state of emergency and lasts until the end of the state of emergency. Therefore, this measure has a legitimate goal, social justification, it is reasonable, and proportionate to the goal that is to be achieved, and that is the return to a regular state. Hence, in conditions when the Parliament is dissolved and parliamentary elections are called, and a state of emergency is additionally declared on the territory of North Macedonia, the Court finds that the Government, by adopting this decree, did not suspend the Parliament but acted in accordance with its constitutional powers, in conditions of emergency, which did not violate the constitutional provisions. Therefore, the Court found that the question of the constitutionality of this decree could not be raised[21].

4. NORTH MACEDONIA'S ELECTORAL SYSTEM AND ADMINISTRATION OF THE ELECTORAL PROCESS OF EARLY PARLIAMENTARY ELECTIONS OF JULY 15, 2020

From the independence of North Macedonia until today, 10 cycles of parliamentary elections have been organized, in the years: 1990, 1994, 1998, 2002, 2006 as well as the early parliamentary elections of 2008, 2011, 2014, 2016 and 2020, which were held as a result of the dissolution of Parliament, in which case all electoral models were implemented: the majority model, the combined model and the proportional model (D'Hont method). The parliamentary elections of 1990 and 1994 were held as uninominal elections based on the principle: one MP was elected in one electoral unit. In these elections the electoral model of absolute or relative majority was applied, respectively in the first round for MP the candidate who won the absolute majority of votes was elected and, if this did not happen then the elections continued in the second round only for those candidates who in the first round, they won at least 7% of the votes from the electorate, so in this round the candidate who won the relative majority of votes was elected. In the 1998 elections the absolute dominance of the majority electoral model

21. For more on the Decision of the Constitutional Court see on the official website of the Court, available online at: http://ustavensud.mk/?p=19671.

was abandoned and the combined system was incorporated: 85 MPs on the basis of the majority model (in 85 constituencies) and 35 MPs on the basis of the proportional model (the whole state as one electoral unit). From the 2002 parliamentary elections onwards, for the first time a purely proportional model (according to D'Hont's method) was incorporated with the division of state territory into 6 electoral units where 20 MPs are elected in each unit. The same model was applied in the parliamentary elections of 2006, 2008, 2011, 2014, 2016 and 2020.

The election process in North Macedonia is regulated by the Electoral Code of 2006 (supplemented and amended several times) which incorporates legal provisions for all types of elections: parliamentary, local and presidential. The bodies for conducting the elections are: State Election Commission; municipal election commissions and election councils.

In recent years, the way SEC members are elected has undergone several changes. Thus, in the 2016 parliamentary elections and the 2017 local elections, the SEC members were elected according to the 2015 Przino Agreement, i.e., 3 professional members through a public competition, while 6 other members according to the political composition of the Parliament, with a 5-year term. However, even though they had a 5-year term, they were forced to resign, due to public pressure, after US Ambassador Bailey revealed that they had given themselves large rewards and large sums for travel and other expenses. In July 2018, a new amendment to the Electoral Code was implemented, with the consent of the political parties in Parliament, where the president of the SEC instead of being elected by professionals, according to this change, is now elected by the main opposition party. So, with this latest change, the SEC, instead of being an electoral body with a mixed composition, i.e., professional and political, again took the form of a political body which consists of the main parties in the Parliament[22].

In addition, amendments were made in February 2020. According to the supplements to Article 26, the SEC now has a total of seven members: a president, a vice president, and five members of the commission. The mandate of the members of SEC starts from the day of election, and lasts until the election of the next composition of the SEC, but it cannot exceed more than two years. The conditions to be met by the members of the SEC are stipulated in the amendments to Article 27 of the Electoral Code. According to the 2018 amendments, a person can be elected to these positions if he/she is a citizen of the Republic of

22. For more see at: Dr. Jeton Shasivari, *E drejta kushtetuese-Constitutional Law*, Second edition, Skopje, 2020, p. 311.

North Macedonia who permanently resides in the country, has completed higher education and has at least eight years of work experience, and is not affiliated to any party. The Parliament announces the call for election of the president, vice president, and members of the SEC in the "Official Gazette", as well as in the daily press. The call is open for eight days from the day of its publication in the "Official Gazette". The procedure for the election of members is prepared and implemented by the Parliamentary Committee on Election and Appointment Issues. This Committee prepares a draft list of registered candidates and submits it to the Parliament. Among the candidates on the draft list, the opposition proposes a president and two members, while the ruling parties propose a vice president and three members. All members are elected by a two-thirds majority of the total number of MPs. Article 28 of the Electoral Code was also amended, introducing new conditions for the termination of the mandate of the SEC members. According to the latest changes, termination can occur:

- by force of law;
- at their personal request;
- due to negligent performance and unprofessional conduct;
- due to fulfilling the conditions for retirement as stipulated by law;
- due to death; and

-if sentenced to more than six months of imprisonment. With a two-thirds majority regarding the total number of members, the SEC may submit a proposal to the Committee of Election and Appointment Issues of the Parliament on the dismissal of any of its members due to negligent performance and unprofessional conduct. Article 29, which refers to the deadline for proposing members of the SEC, was also amended. In accordance with this article, the President of the Parliament informs the political parties within three days to submit their proposals on the president and two members (for the opposition), i.e., the vice president and three members of the SEC (for the ruling parties). If the opposition and the ruling parties do not exercise the right to nominate candidates, the candidates will be nominated by the Committee for Election and Appointments Issues of the Parliament[23].

Members of the Parliament of North Macedonia are elected in general, direct and free elections via secret ballot for a four-year mandate. 120 to 123 MPs are elected at parliamentary elections, while the Constitu-

23. "Official Gazette": *Law on Amending and Supplementing the Electoral Code*, 99/2018.

tion allows for the Parliament to consist of 120 to 140 MPs. MPs are elected according to the proportional model with closed candidate lists, and each of the six electoral units within the state territory is represented by 20 MPs. Under the last amendments to the Electoral Code as of February 2020, the electoral units were restructured, moving two municipalities (Debar and Mavrovo-Rostuse) from the sixth to the fifth electoral unit[24]. The maximum deviation allowed for the number of voters in an electoral unit is plus or minus 5% of the average number of voters across the state territory. The mandates are distributed according to the D'Hondt method, whereas the results are determined for each electoral unit separately, according to the total number of votes cast for the candidate lists separately. The mandates for each political party are allocated according to the number of votes for their candidate list compared to the number of votes cast for the other candidate lists. If two lists have identical results, the last mandate will be assigned by lot. When distributing the mandates, the number of MPs corresponds with the number of mandates won by the list. Mandates are allocated to candidates according to their rank on the respective candidate lists. In this regard, voting abroad can only take place if the number of registered voters is equal or higher than the smallest number of votes with which an MP won a mandate in the previous parliamentary elections. According to the results of the last early parliamentary elections in 2016, this number is 6.700. Since the number of valid applications submitted was 6.096, which is less than the minimum as defined by law, voting in the diplomatic and consular missions and the state's consular offices abroad was not realized in these parliamentary elections; so, voters who have registered to vote abroad and meet the legal requirements was able to exercise the right to vote at the polling stations in the country according to their address of residence[25].

In accordance with the calendar for electoral activities on implementing the early parliamentary elections of the SEC, 15 political parties and coalitions submitted candidate lists for these elections. After reviewing the applications, the SEC decided to accept all 15 applications, so that, at these elections, 1.806336 citizens with the right to vote have the

24. *Electoral code* (proposed consolidated text), unofficial version drafted by the State Election Commission Professional Service, (Official Gazette, No. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16 136/16, 142/16, 67/17, 125/17, 35/18, 99/18, 140/18, 208/18, 27/19, 98/19 и 42/20).
25. For more see at the official website of SEC, available at: https://www.sec.mk/parlamentarni-izbori-2020/?_thumbnail_id=6946

choice between 15 political entities i.e., 12 political parties and three coalitions with 78 candidate list[26].

The official campaign period opened on 24 June and ended at midnight on 12 July, prior to the first day of early voting. A series of government decrees outlined safety measures to be applied at public meetings, including the use of hand sanitizer, social distancing and mask-wearing. The COVID-19 pandemic significantly altered the style of campaign as parties replaced traditional rallies with small-scale meetings and limited door-to-door canvassing. Despite the circumstances, parties campaigned actively and were able to deliver their messages. Contestants relied extensively on social media, posting videos of local meetings addressed by candidates and party leaders. Numerous campaign ads were aired in broadcast and social media and billboards were widely visible. Key campaign issues included NATO and EU accession, judicial reform, the economy, social welfare and healthcare. The campaign was marked by negative rhetoric, at the expense of substantive exchanges. The advertisements of the Internal Macedonian Revolutionary Organization-Democratic Party of Macedonian National Unity (VMRO-DPMNE) included personal attacks on the leader of the Social Democratic Union of Macedonia (SDSM), while the SDSM warned of a return to the "regime" of the former VMRO-DPMNE prime minister. A series of leaked clandestine recordings of political leaders further contributed to the negative tone. The proposal by the Democratic Union for Integration (DUI) of an ethnic-Albanian candidate for prime minister caused heated debate both within and between ethnic communities[27].

Both the election administration and voters largely respected the health protocols, but some of the visited premises were not sufficiently spacious to permit for the recommended distance between persons. As the number of voters allowed into a polling station equaled the number of booths, the queues that ensued resulted in crowds in common spaces, particularly where several polling stations were located in the same premises. The SEC reported disaggregated turnout data throughout the day and began publishing preliminary results shortly after the close of polls, contributing to transparency. A new web-based application was introduced in these elections for the electronic transmission of interval turnout data as well as of preliminary results. The reporting of turnout data throughout

26. For more see at the official website of SEC, available at: https://drive.google.com/file/d/1h-qw4VxInSu076IGiekg_-ce6JW0QIt1F/view.
27. *ODIHR SPECIAL ELECTION ASSESSMENT MISSION, Republic of North Macedonia-Early Parliamentary Elections, 15 July 2020*, STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS, p. 4.

the day was affected by temporary technical problems. On election night, the SEC president reported a cyber-attack, which limited the capacity of the SEC to share results data on its website. The SEC adapted by communicating preliminary results data on a YouTube live stream[28].

Regarding the overall assessment of these elections according to the ODIHR mission, it is emphasized that, the 15 July 2020 early parliamentary elections were generally administered effectively amid adjustments in response to the COVID-19 pandemic, but legal stability was undermined by substantial revisions to the Electoral Code and subsequent ad hoc regulations enacted during the state of emergency. The campaign, although negative in tone, was genuinely competitive and participants could deliver their messages despite limitations on traditional outreach. Media coverage of the elections lacked critical assessment of platforms and provisions regarding paid political advertisement favored the three largest parties. Election Day proceeded smoothly, despite technical challenges in publishing results and concerns related to voter registration[29].

Regarding the election results according to the conclusion of the SEC, in these elections the results (tabular presentation) were as follows:

TABLE 1[30]:

Tabular presentation of the election results: votes, percentage and number of parliamentary seats

The name of the Political Party/Coalition	Votes	Percentage	The number of parliamentary seats
SDSM and Coalition WE CAN	327.408	35.89%	46
VMRO-DPMNE and Coalition MACEDONIA RENEWAL	315.344	34.57%	44
DEMOCRATIC UNION FOR INTEGRATION	104.699	11.48%	15
Coalition Alliance for Albanians and Alternative	81.620	8.95%	12
THE LEFT	37.426	4.1%	2
Democratic Party of Albanians	13.930	1.53%	1

28. Ibid, p. 7-8.
29. Ibid, p. 1.
30. *Conclusion for announcing the final results and distribution of mandates for election of MPs*, STATE ELECTION COMISSION, available online at: https://drive.google.com/file/d/1d_ByEudB7wgYvRnJRyOD67_TXGRJud7V/view.

TABLE 2[31]:

Tabular presentation of election results distributed by six electoral units

The name of the Political Party/Coalition	EU 1	EU 2	EU 3	EU 4	EU 5	EU 6	TOTAL
SDSM and Coalition WE CAN	8	7	9	10	8	4	46
VMRO-DPMNE and Coalition MACEDONIA RENEWAL	7	7	10	10	8	2	44
DEMOCRATIC UNION FOR INTEGRATION	2	3	0	0	3	7	15
Coalition Alliance for Albanians and Alternative	2	3	0	0	1	6	12
THE LEFT	2	0	1	0	0	0	2
Democratic Party of Albanians	0	0	0	0	0	1	1

5. THE CONSTITUTION OF THE NEW PARLIAMENTARY COMPOSITION AND ENTRUSTING THE MANDATE TO FORM THE GOVERNMENT

The first constitutive session of the tenth parliamentary composition was held in the Parliament of North Macedonia on August 4, 2020, chaired by the President of the previous parliamentary composition Talat Xhaferi. The MPs who were elected in the early parliamentary elections, which took place on July 15, 2020, had their mandates verified. Previously, the Commission for Verification of the Mandates of the MPs was chaired by the MP Jagoda Shahpaska. The committee unanimously adopted the SEC Report on the Early Parliamentary Elections for the Election of the new 120 Members of Parliament. Then the Report of the Commission for Verification of the Mandates of the Members of Parliament was unanimously adopted by all Members of Parliament present at the constitutive session. The session was also attended by the President Stevo Pendarovski, the President of the SEC Oliver Derkovski, representatives of the highest state institutions, as well as representatives of diplomats in the country. The first constitutive session was held according to special protocols previously established by the Commission for Infectious Diseases. For that reason, the first plenary session

31. Ibid.

was held in the "Great Hall", and not in the "Macedonia" hall, where the plenary sessions are held[32].

In this regard, after this meeting, the chairman of the constitutive session, Mr. Talat Xhaferi, did not send any letter to President Pendarovski. As he says, without the election of the new Speaker, the Parliament has not yet been constituted. So, in public opinion, Pendarovski and Xhaferi came out with different legal interpretations. Article 90 of the Constitution states: "The President of the Republic is obliged, within 10 days of the constitution of the Parliament, to entrust the mandate for constituting the Government to a candidate from the party or parties which has/have a majority in the Parliament. Within 20 days from the day of being entrusted with the mandate, the mandator submits a program to the Parliament and proposes the composition of the Government. The Government is elected by the Parliament on the proposal of the mandator and on the basis of the program by a majority vote of the total number of MPs"[33]. But, at the same time, Article 110 of the Rules of Procedures of the Parliament states that: "The President of the Parliament, within three days from the day of receiving the notification from the President of the Republic, notifies the deputies about the candidate for Prime Minister (mandate)"[34]. In this case, it remains unclear-how within 3 days the Speaker of Parliament notifies the deputies when the legislature does not yet have a Speaker, so there is no one to send the notification to? Pendarovski Cabinet says that the letter for giving the mandate will be sent to the Parliament and not to the Speaker of the Parliament[35].

According to the chairman of the constitutive session, Talat Xhaferi, if President Stevo Pendarovski trustes the mandate to form the government, without electing a new Speaker of the Parliament, then his action would be unconstitutional. "It is unconstitutional to give the mandate without having a Speaker of the Parliament who will set in function the other deadlines that the Parliament will have to follow because the Par-

32. The official website of the Parliament of North Macedonia, available online at: https://www.sobranie.mk/2016-2020-srm-ns_article-na-konstitutivna-sednica-sobranieto-gi-verifikuvashe-mandatite-na-pratenicite-od-desettiot-parlament.nspx.

33. Article 90 of the Constitution: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx.

34. *Rules of Procedure of the Parliament*: https://www.sobranie.mk/rules-procedures-of-the-assembly-ns_article-rules-of-procedure-of-the-assembly-of-the-republic-of-macedonia-precisten-tekst-2013.nspx.

35. *Vakum juridik për mandatin, Presidenti thirret në Kushtetutën, Xhaferi në rregulloren/Legal vacuum for the mandate, the President invokes in the Constitution, Xhaferi in the Rules of Procedure*, RTV 21 Macedonia; 11.08.2020, https://tv21.tv/vakum-juridik-per-mandatin-presidenti-thirret-ne-kushtetuten-xhaferi-ne-rregulloren/.

liament starts the deadlines from the moment it receives the information from the President that the mandate have been given and the deputies cannot be informed by an unauthorized person". According to him, this is set out in the Rules of Procedure, and any other process that can be initiated could call into question the entire electoral process that has just ended. He also warns that if the mandate for forming the government is given without having a Speaker of Parliament, then there is a risk that the institutions will enter into constitutional-institutional crisis[36].

So, all these legal dilemmas arose from the legal question of when the Parliament is called constituted: with the verification of the mandates of MPs or with the election of the new Speaker of the Parliament?

Different legal interpretations about whether the Parliament has been constituted and whether the deadlines within which the chairman Xhaferi should inform President Pendarovski that the parliamentary majority has been formed. Xhaferi for TV21 stressed that the constitutive session has been interrupted, which did not form the Parliament, while he now has the role of the chairman and not the Speaker of Parliament. "Without an elected Speaker of Parliament, it cannot be considered that Parliament is constituted. This means that there is still no one to inform the President of the state that the new parliamentary majority has been formed, so the deadlines have not started to run yet" emphasizes Xhaferi. On this issue, reacted from the cabinet of President Pendarovski. From there, they emphasize that, according to Article 90 of the Constitution the deadline for granting the mandate is 10 days from the constitution of the Parliament. President Pendarovski is waiting for the letter of the chairman Xhaferi, with which he will inform that the Parliament has been constituted with the verification of the mandates of the MPs on August 4 of this year. However, the author of this paper, prof. Shasivari is of the legal opinion that there is no dilemma that the Parliament has not yet been constituted because its new Speaker has not yet been elected. Prof. Shasivari adds that until the first session is completed, the parliament cannot be considered constituted. According to him, this is very important because from the day when the new speaker of the Parliament is elected, according to the constitution, from that day the 10-day deadline within which the President of the state must entrust the mandate to form the government to the candi-

36. *Pendarovski mund të shkelë Kushtetutën?! Talat Xhaferi me paralajmërime për krizë Kushtetuese-institucionale/Pendarovski can violate the Constitution?! Talat Xhaferi with warnings about the Constitutional-institutional crisis*, RTV 21 Macedonia; 11.08.2020, https://tv21.tv/pendarovski-mund-te-shkele-kushtetuten-talat-xhaferi-me-paralajmerime-per-krize-kushtetuese-institucionale/.

date who has a parliamentary majority. But, with the opposite opinion is the Minister of Justice Renata Deskoska who wrote on Facebook that the mandate of the MPs according to the Constitution derives from the constitutive session. MPs cannot have a mandate in Parliament that has not been constituted. Parliament has already been constituted in the constitutive session[37].

When it comes to this legal issue, since in Article 63 of the Constitution there is no provision that states that the Parliament is constituted by verifying the mandates of MPs, the author of this paper, prof. Shasivari in a column on August 11 clarifies this legal issue in more detail. According to this explanation, based on the correct constitutional interpretation, which is essentially a intentional (teleological) interpretation of the Constitution, as a time when the Parliament is considered to be constituted is the moment (day) of election of the President (Speaker) of the Parliament and from that moment starts the 10-day constitutional deadline for the President of the Republic to entrust the mandate for the formation of the Government; or in other words: the Parliament is constituted at the moment (day) when the President of the Parliament is elected, who officially notifies the President of the Republic in writing; which legally means his reporting for a secured majority in the Parliament. The Rules of Procedure of the Parliament also specifically regulate the issue of constituting the Parliament in the second chapter (provisions from Article 9 to Article 28), as a procedural whole consisting of three phases, namely: first phase, constitutive session and verification of the mandate. of MPs; second phase, election of the Committee on Elections and Appointments, and third phase, election of the President (and Vice-Presidents) of the Parliament. As can be seen, the verification of the mandate of the MPs is only the first phase of the constitution of the Parliament, which was consumed on August 4; However, for the constitution of the Parliament, the second phase should be consumed, and especially the third phase, because with the election of the President of the Parliament, the constitutive session ends and from that moment the Parliament is constituted. All this means that, as of August 4, North Macedonia has 120 constituent MPs because on that day their mandate was verified (confirmed); but the Parliament has not been constituted yet because it does not have a President, so the

37. *Xhaferi: Pa kryetar, Parlamenti s'është konstituar. Shasivari: Zgjedhja e kryetarit të Parlamentit përcakton afatet/ Xhaferi: Without a speaker, the Parliament has not been constituted. Shasivari: The election of the Speaker of Parliament sets deadlines*, RTV 21 Macedonia, 10.08.2020, https://tv21.tv/xhaferi-pa-kryetar-kuvendi-seshte-konstituuar-shasivari-zgjedhja-e-kryetarit-te-kuvendit-percakton-afatet/.

Parliament of North Macedonia is currently dysfunctional and inactive because the Parliament is put into function and activated only by its President and the Parliament without its President as its main official can not decide on any issue for which it has constitutional competence to decide, and in particular on the election of the Government. Otherwise, the intentional (teleological) interpretation is determining the right and the exact meaning of the constitutional norm according to its purpose, i.e. with the application of which the goal (social value) of the constitutional norm in the society is best achieved. Therefore, it is usually rightly said that the targeted interpretation is definite, because all other types of interpretations essentially prepare the ground for this interpretation of the constitutional norm. In this sense, there is no best and easiest realization of the purpose (social value) of the constitutional norm for constituting the Parliament which would be better than the election of the President of the Parliament as a time or day when the Parliament will be considered constituted, because primarily, with that act the Parliament becomes functional and active and can decide on any issue for which it has constitutional competence to decide, and especially on the election of the Government; and on the other hand, as a legal consequence there is the public announcement of the fact of secured majority in the Parliament, whereby the President of the Republic will have no dilemma to which candidate to entrust the mandate to form a Government in accordance with Article 90 of the Constitution. To conclude with a school example of a clear and accurate constitution-maker who went further with the easiest realization of social value in society of the constitutional norm for constituting the Parliament, namely the provision of Article 73 paragraph 3 of the Constitution of Croatia which stipulates that the Croatian Parliament is constituted by electing a President (Speaker) at the first session, which is attended by a majority of MPs[38].

In this context, it is worth mentioning two professional legal positions that have been publicly expressed regarding the previous parliamentary election cycle of 2016. Those legal positions are in line with what was stated above, regarding the moment of the constitution of the Parliament.

The first position is of prof. Osman Kadriu (current judge in the Constitutional Court from January 2018), which states that: "The public is in a dilemma whether we have a constituent Parliament. I defend the view

38. Јетон Шасивари, Нефункционално Собрание не е конституирано Собрание*/A dysfunctional Parliament is not a constituted Parliament,* ПЛУСИНФО, 11.08.2020, avaliable online at: https://plusinfo.mk/nefunkcionalno-sobranie-ne-e-konstituirano-sobranie/.

that we do not yet have a constituent Parliament. It is scheduled, but the constitution of the Parliament is considered to be completed when we will be with the new President of the Parliament, but we only have the verification of the mandates at the first session. That we do not have a constituted Parliament will be shown by the following activity, namely a new session will be scheduled or a continuation of the first session? A continuation of the constitutive session will be scheduled. The very convening of the continuation of the constitutive session shows us that the Parliament has not been constituted yet. With the election of the parliamentary speaker, then the President of the country would receive official information about the forces of the political parties in the Parliament, and then the President of the country will be able to constitutionally and legitimately decide on the person who is a representative of a party or coalition that has the majority. Therefore, I have the opinion that the constitutional provision has been violated because the President of the country started the procedure for determining a candidate for prime minister prematurely"[39].

The second position is of professor of constituional law, Svetomir Skaric, which states that: "The constitutional deadline is 10 days from the constitution of the Parliament, and the moment is the election of the Speaker. It is a strict interpretation of the Constitution, the deadline runs from the constitution of the Parliament. A key moment is the day of the election of the Speaker of the Parliament, which completes the constitution of the new Parliament. So, Ivanov has the opportunity to immediately entrust the mandate, not to wait 10 days! The first is the constitution of the Parliament, the second is the decision to elect a speaker, which means to make it official by publishing it in the "Official Gazette", but it has no legal effect on the deadline for giving mandates. And third, the notification of the speaker of the Parliament that a parliamentary majority has been formed, which allows the President of the state to give the mandate without waiting for the 10-day deadline to expire"[40].

It is interesting to mention the position of the first Speaker of the Parliament, Mr. Stojan Andov (in the period 1991-1996 and 2000-2002) who even emphasizes that the constitutive session should not even be

39. Осман Кадриу на панел дискусијата „Македонија во правно и политичко лимбо"/ *Osman Kadriu at the panel discussion "Macedonia in legal and political limbo",* во организација на ЦИВИЛ, Скопје, 26.01.2017, avaliable online at: https://www.youtube.com/watch?v=rauzA-8n_d0, from 8:30-10:45 minute.

40. Шкариќ: Од 27 април тече уставниот рок за доделување мандат!/Skaric: the constitutional deadline for granting a mandate runs from April 27!, CIVIL, 10.05.2017, available online at: https://civilmedia.mk/schkari-od-27-april-ttch-ustavniot-rok-za-dodluva-mandat/.

related to the election of the Speaker of the Parliament and the formation of the Government. He states: "There is no such thing. It also mentions my case when I as chairman sent a letter to the President in 2006. It is complicated now. We can not now explain that case. If time passes, we will explain. The point here is that they link the election of the Speaker of Parliament and the constitution of Parliament to the giving of a mandate. The constitution of the Parliament and the election of the Speaker of the Parliament are different things. The election of the Speaker of the Parliament does not constitute the Parliament, but some parliamentary bodies must be elected". However, Andov also justifies the legal dilemmas regarding whether or not the Parliament should be constituted even though we do not have a Government and a Speaker of the Parliament, emphasizing that the Constitution has legal gaps, because when it was drafted it was made for a short time and we could not find adequate professionals. It was Lubomir Frckoski but he is also not a professional in constitutional law. "So there are many legal gaps in the Constitution and they need to be corrected in the future"[41].

Despite these significant legal dilemmas as well as despite the President Pendarovski's public statement of July 22, 2020 that, the President will not "play" with the mandate, so he will first hold consultations with the parties, and then hand over the mandate to the party that has a majority in Parliament[42], the President Pendarovski on August 13, 2020, when it is not yet known who the new parliamentary majority is and the new Speaker has not yet been elected in the Parliament, however, pursuant to Article 84 paragraph 1 indent 1 in accordance with Article 90 of the Constitution, he mandated the leader of the "We Can" coalition, Mr. Zoran Zaev, for the formation of the Government, and ran away from questions of reporters, leaving Social Democrat leader Mr. Zaev in charge of everything infront reporters[43].

41. *Xhaferi nuk ka plan kur e thërret seancën, Andov: Seanca konstituive nuk ka lidhje me mandatin/Xhaferi has no plan when he calls the session, Andov: The constitutive session has nothing to do with the mandate,* RTV 21 Macedonia, 14.08.2020, available online at: https://tv21.tv/xhaferi-nuk-ka-plan-kur-e-therret-seancen-andov-seanca-konstituive-nuk-ka-lidhje-me-mandatin/.

42. *Së pari konsultime me partitë, pastaj mandati, Pendarovski pret që të konstituohet Kuvendi, e më pas ta emërojë mandatarin/First consultations with the parties, then the mandate, Pendarovski expects the Parliament to be constituted, and then to appoint the mandator*, RTV 21 Macedonia, 22.07.2020, available online at: https://tv21.tv/se-pari-konsultime-me-partite-pastaj-mandati-pendarovski-pret-qe-te-konstituohet-kuvendi-e-me-pas-ta-emeroje-mandatarin/.

43. *Pendarovski e ndau mandatin dhe iku, Zaev beson se do të formojë Qeveri e nuk do ta ketë fatin e Gruevskit/Pendarovski entrusts the mandate and leaves, Zaev believes he will form the Government and will not have the Gruevski's fate*, RTV 21 Macedonia, 13.08.2020, available on-

This action of President Pendarovski caused a great revolt in the political party with the second number of MPs, the Coalition "Renewal of Macedonia and VMRO-DPMNE", so at the same day at 15:30h they requested a meeting with President Pendarovski. The meeting took place at the presidential residence with Mr. Hristijan Mickovski and many MPs of this coalition. After this meeting with President Pendarovski, it was announced that VMRO-DPMNE is freezing relations with President Pendarovski and will review the policies towards his cabinet. Namely, Mickovski left for the meeting with President Pendarovski with several MPs to ask Pendarovski for an answer as to why he entrusted the mandate for the composition of a new government to the leader of SDSM, Zoran Zaev without a secured parliamentary majority. Mickovski believes that this violates the Constitution and President Pendarovski abused his position. Pendarovski, on the other hand, told him that Zoran Zaev had assured him that he would secure a parliamentary majority, but according to Mickovski that was not enough, but the proof was needed that Zaev has a parliamentary majority of at least 61 MPs[44].

According to the author of this paper, prof. Shasivari, such action of the President Pendarovski, in the public caused significant dilemmas for the installation of a new political precedent in the current parliamentary history of the country, where the mandate to form the government was entrusted without any official letter to secure a parliamentary majority of at least 61 MPs, in circumstances where the Parliament is dysfunctional. The reason for this dilemma expressed in the opinion, stems from the combination of two constitutional articles, namely Article 84 with Article 90 of the Constitution, where President Pendarovski took over a constitutional function that he does not have according to the Constitution of North Macedonia; because the authorization to appoint the Prime-Minister without the obligation to consult in advance all parliamentary political parties is for the President of France, therefore as a result of this action, the state and citizens entered into situation of legal uncertainty, especially when no political party or party coalition has secured a parliamentary majority of at least 61 MPs and when the Parliament is dysfunctional[45].

line at: https://tv21.tv/pendarovski-e-ndau-mandatin-dhe-iku-zaev-beson-se-do-te-formoje-qeveri-e-nuk-do-ta-kete-fatin-e-gruevskit/.

44. Мицковски: ВМРО-ДПМНЕ ги замрзнува односите и комуникацијата со Пендаровски/ *Mickovski: VMRO-DPMNE freezes relations and communication with Pendarovski*, 13.08.2020, Радио Слободна Европа, avaliable online at: https://www.slobodnaevropa.mk/a/30782169.html.

45. *Pendarovski e mori funksionin e Makronit dhe vend i hyri në pasiguri juridike, vlerëson profesori Shasivari/Pendarovski took over the position of Macron and the country entered into legal uncertainty*, *estimates Professor Shasivari*, RTV 21 Macedonia, 14.08.2020, available online at:

In this regard, VMRO-DPMNE from August 15, is considering seriously submitting a constitutional initiative against entrusting the mandate to form the Government to the leader of the Social Democrats, Mr. Zoran Zaev. According to this party, President Pendarovski seriously violated the Constitution when he entrusted the mandate to Zaev, although Zaev had not secured a parliamentary majority of at least 61MPs. From this party they say that, very soon they will submit the initiative to the Constitutional Court and that it is up to this Court to protect the Constitution when it is violated. "We are considering submitting a constitutional initiative, because President Pendarovski usurped the mandate to the one of the 119 other MPs. He gave him the mandate and practically usurped the mandate, in order to give him more time, 20 days, to buy time and to be able to buy the MPs from the other lists which participate in the Parliament in an unprincipled way"[46].

Unlike all previous parliamentary elections, the last parliamentary elections as well as the previous parliamentary elections of 2016, resulted in an almost equal election result according to the number of MPs: in 2016 VMRO-DPMNE and the coalition had 2 more MPs (51) and SDSM and the coalition had 2 MP less (49) whereby SDSM as a second party formed a government; while in these elections SDSM and the coalition had 2 MPs more (46) while VMRO-DPMNE and the coalition had 2 MPs less (44) whereby SDSM as a first party will form the government. This narrow election result caused different interpretations of Article 90 of the Constitution, which are primarily political-party instrumentalized because for the same situation they give different interpretations depending on the political and party preferences of the interpreter. So, when their preferred political party comes first, they say, the mandate to form the government should be given to that party even though that party has not previously secured a parliamentary majority; and if their preferred political party is second, then they say, the President violates the Constitution if he gives the mandate to the first political party because that party has not secured a parliamentary majority. In other words, the strict or flexible interpretation of Article 90 of the Constitution depends on the election result of the preferred political party; if the preferred party is first then they give flexible (political) constitutional interpretation and if their party is second then they commit to strict

https://tv21.tv/pendarovski-e-mori-funksionin-e-makronit-dhe-vend-i-hyri-ne-pasiguri-juridike-vlereson-profesori-shasivari/.

46. *VMRO-ja, nismë në Kushtetuese për mandatin/VMRO, initiative to the Constitutional Court for the mandate*, ALSAT-M, 15.08.2020, available online at: https://alsat-m.tv/vmro-ja-nisme-ne-kushtetuese-per-mandatin/.

constitutional interpretation. Such political interpretations severely undermine constitutional scientific interpretation in North Macedonia. Therefore, in the near future, an amendment to Article 90 of the Constitution is needed, so that this issue can be precisely regulated; not to leave room for political interpretations of the Constitution either for the interests of the first party or for the interests of the second party, that aim to manipulate the democratically expressed will of the citizens in the parliamentary elections. Such amendment should also include the competence of the Constitutional Court to review the constitutionality of the actions of the President of the Republic regarding the entrusting the mandate for the formation of the Government to the candidate who has not declared majority of the minimum 61 MPs in the Parliament.

A part of this situation is described by Katerina Blazevska in one of her columns, where she states that: "Although Article 90 of the Constitution is clear, it is a question of the way in which lawyers interpret this article of the Constitution. Logic suggests that the majority should be declared within ten days, so that the President of the Republic can entrust the mandate, and then the mandator can use the next 20 days to prepare the government program and staff. But the problem is that the Constitution in our country is read and interpreted according to current needs and interests, and the problem is alerted after it is notified as a "practice". Mickoski knows that for sure, because he was in VMRO-DPMNE when former President Gjorge Ivanov entrusted the mandate to Nikola Gruevski on January 9, 2017, although he did not have a declared majority in the Parliament. At the criticism that it was unconstitutional, professors from the Faculty of Law at UKIM claimed that "this is exactly how it should be" and that "there is nothing unconstitutional in the procedure of President Ivanov". Some of those professors today are legal advisers to Mickoski, but now they claim the opposite. It reveals that their "holiness" or goal is not, nor it was the law and its observance, but only a tool for manipulation in the realization of party interests, to which those lawyers inclined. And once they provide such precedents, they open a wide maneuvering space for others to invoke it. In short, they create an alibi for a flexible interpretation of the Constitution, which then becomes a "legal" practice. Or, as Mickoski often wants to say, a poorly planted tree will grow crookedly. We come to the lesson: do not do to others what you do not want them to do to you. He, who stands for principles and the Rule of Law, does it continuously and consistently, and not when necessary or when the roles change, so he will find himself in a less favorable position. In our country, the problem is

in the long-term abuse of the law with permission and knowledge from lawyers and politics. We saw experts' parade in legal jerseys, dressed above the party members, who during one political term have one position, and in another term-a completely different position. And in Law, once you close your eyes to a constitutional provision, you have already created a deep enough crater in which the precedent creates free territory and "its" law"[47].

CONCLUSION

The political decision to hold early parliamentary elections was made due to the fact that the EU did not set a date for opening accession negotiations with the North Macedonia. In October 2019, one day after the Council of Ministers of the European Union in Luxembourg and the Summit of the Heads of States and Governments in Brussels did not reach an agreement on opening negotiations with North Macedonia and Albania, Prime Minister Zoran Zaev announced that he would convene a leadership meeting and propose early parliamentary elections. Shortly after the EU Summit, opposition leader Hristijan Mickoski stated that it was a defeat for the government's policy that the EU had not set a date and pointed out that early parliamentary elections were the only viable solution. The leadership meeting was held on 20 October 2019 at the residence of President of the Republic Stevo Pendarovski, and it was agreed to hold early parliamentary elections on 12 April 2020, and, in accordance with the Przino Agreement to install a new Technical Government which would take up its work on 3 January 2020. As a result of this political decision, the Parliament of North Macedonia was dissolved on February 16 with the vote of 108 MPs; while on February 17 the President of the Parliament Mr. Talat Xhaferi, in accordance with his constitutional competence according to article 67 of the Constitution, announced the elections for April 12, while later, after the end of the state of emergency, he changed and supplemented that decision, with the new date, i.e., July 15.

In order to effectively prevent the COVID-19 pandemic, for the first time in the history of North Macedonia by decision of the President of the Republic a state of emergency was established, which despite the intensified measures to protect public health implies the introduction

47. Катерина Блажевска, А замрзнување на комуникацијата со сезонските „експерти"?/ And a freeze on communication with seasonal «experts"? Дојче Веле, 14.08.2020.

of a special legal regime whose main features are: deviation from the principle the separation of powers and the assumption of legislative powers by the Government, the possibility of restricting basic human rights and freedoms and taking of intervention measures by the executive power in many spheres of social life. However, the Constitution does not contain more detailed provisions on the duration and limitation of the state of emergency in particular for the case when this is done by decision of the President of the Republic, therefore the President brought a total of five decisions for the state of emergency.

Regarding the issue can the dissolved Parliament come to life again, there is very important the constitutional legal reasoning of the Constitutional Court in determining the reasoning basis of the issue of dissolution of Parliament. This Court does not accept the extension of the mandate of the MPs after the Parliament has already been dissolved. The Constitution does not allow the mandate of the MPs to be extended in case of a dissolved Parliament, nor does it allow the MPs to return to the session again. Neither postponed effect of the decisions for dissolution of the Parliament, nor extension of the mandate of the MPs after the dissolution of the Parliament. These are two key points of the Constitutional Court contained in its decision to annul the two decisions to dissolve the Parliament. The state of emergency cannot help the dissolved Parliament. The Constitution allows the extension of the mandate of the MPs in a state of emergency only in case when the Parliament is taken by such a situation and when its four-year mandate is coming to an end. The Court finds that the state of deferred effect of the decision to dissolve and extend the mandate of the dissolved Parliament creates legal uncertainty and means a violation of the rule of law. The former President of the Parliament Mr. Xhaferi also took that position. In a short time, the Constitutional Court ruled twice to the detriment of the MPs and their supporters. The Constitutional Court took a resolution view-the dissolution of the Parliament is not disputed. Unanimously rejected the initiative to assess the constitutionality of the Decision to dissolve the Parliament of 16 February 2020, submitted by a constitutional judge.

Regarding the overall assessment of these elections according to the ODIHR mission, it is emphasized that, the 15 July 2020 early parliamentary elections were generally administered effectively amid adjustments in response to the COVID-19 pandemic, but legal stability was undermined by substantial revisions to the Electoral Code and subsequent ad hoc regulations enacted during the state of emergency. The

campaign, although negative in tone, was genuinely competitive and participants could deliver their messages despite limitations on traditional outreach. Media coverage of the elections lacked critical assessment of platforms and provisions regarding paid political advertisement favored the three largest parties. Election Day proceeded smoothly, despite technical challenges in publishing results and concerns related to voter registration

Unlike all previous parliamentary elections, the last parliamentary elections as well as the previous parliamentary elections of 2016, resulted in an almost equal election result according to the number of MPs: in 2016 VMRO-DPMNE and the coalition had 2 more MPs (51) and SDSM and the coalition had 2 MP less (49) whereby SDSM as a second party formed a government; while in these elections SDSM and the coalition had 2 MPs more (46) while VMRO-DPMNE and the coalition had 2 MPs less (44) whereby SDSM as a first party will form the government. This narrow election result caused different interpretations of Article 90 of the Constitution, which are primarily political-party instrumentalized because for the same situation they give different interpretations depending on the political and party preferences of the interpreter. So, when their preferred political party comes first, they say, the mandate to form the government should be given to that party even though that party has not previously secured a parliamentary majority; and if their preferred political party is second, then they say, the President violates the Constitution if he gives the mandate to the first political party because that party has not secured a parliamentary majority. In other words, the strict or flexible interpretation of Article 90 of the Constitution depends on the election result of the preferred political party; if the preferred party is first then they give flexible (political) constitutional interpretation and if their party is second then they commit to strict constitutional interpretation. Such political interpretations severely undermine constitutional scientific interpretation in North Macedonia. Therefore, in the near future, an amendment to Article 90 of the Constitution is needed, so that this issue can be precisely regulated; not to leave room for political interpretations of the Constitution either for the interests of the first party or for the interests of the second party, that aim to manipulate the democratically expressed will of the citizens in the parliamentary elections. Such amendment should also include the competence of the Constitutional Court to review the constitutionality of the actions of the President of the Republic regarding the entrusting

the mandate for the formation of the Government to the candidate who has not declared majority of the minimum 61 MPs in the Parliament.

REFERENCES

1. *"First case of corona virus confirmed in North Macedonia"*, Al Jazeera, 26 February 2020, available online at: https://www.aljazeera.com/news/2020/02/china-coronavirus-outbreak-latest-updates-200226003835539.html.
2. "Official Gazette": *Law on Amending and Supplementing the Electoral Code*, 99/2018.
3. *Conclusion for announcing the final results and distribution of mandates for election of MPs*, STATE ELECTION COMISSION, available online at: https://drive.google.com/file/d/1d_ByEudB7wgYvRnJRyOD67_TXGRJud7V/view.
4. Constitution of the Republic of North Macedonia: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx.
5. Constitutional Court Decision of July 8, 2020, У.бр.207/2020, avaliable online at: http://ustavensud.mk/?p=19693.
6. Constitutional Court Decision of May 12, 2020, У.бр.55/2020, avaliable online at: http://ustavensud.mk/?p=19269.
7. *Electoral code* (proposed consolidated text), unofficial version drafted by the State Election Commission Professional Service, (Official Gazette, No. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16 136/16, 142/16, 67/17, 125/17, 35/18, 99/18, 140/18, 208/18, 27/19, 98/19 и 42/20).
8. Elliot Bulmer, *Dissolution of Parliament*, International IDEA Constitution-Building Primer 16, Stockholm, 2017.
9. *European Council Fails to Reward North Macedonia, Albania*, Balkan Insight, 17 October 2019, available online at: https://balkaninsight.com/2019/10/17/european-council-fails-to-reward-north-macedonia-albania/. *Early Elections Test North Macedonia's Unity over EU Drive,* Balkan Insight, 21 October 2019, available online at: https://balkaninsight.com/2019/10/21/early-elections-test-north-macedonias-unity-over-eu-drive/. Debeuf, Koert (21 October 2019), *Snap elections in North Macedonia after EU rejection*, EU Observer, available online at: https://euobserver.com/enlargement/146343. *North Macedonian leaders agree to hold snap election on April 12*, Reuters, 20 October 2019, available online at: https://www.reuters.com/article/us-north-macedonia-politics/north-macedonian-leaders-agree-to-hold-snap-election-on-april-12-idUSKBN1WZ0OB.
10. Jeton Shasivari *"Driblimi parlamentar-Parliamentary Dribbling",* 23.04.2020, avaliable online at: https://portalb.mk/679719-driblimi-parlamentar/.

11. Jeton Shasivari, *E drejta kushtetuese-Constitutional Law*, Second edition, Skopje, 2020.

12. Jeton Shasivari: *"E nevojshme gjendja e jashtëzakonshme-State of emergency required",* Klan Macedonia, March 18, 2020, avaliable online at: http://klanmacedonia.mk/shasivari-e-nevojshme-gjendja-e-jashtezakonshme/.

13. *Meeting of law and constitutional law experts in the Cabinet of the President of the Republic of North Macedonia, Stevo Pendarovski*, 17.03.2020, avaliable online at: https://pretsedatel.mk/en/meeting-of-law-and-constitutional-law-experts-in-the-cabinet-of-the-president-of-the-republic-of-north-macedonia-stevo-pendarovski/.

14. *North Macedonia joins NATO as 30th Ally*, March 27, 2020, available online at: https://www.nato.int/cps/en/natohq/news_174589.htm.

15. *North Macedonia parliament dissolves sets poll date, after EU shuns talks*, Reuters, February 16, 2020, available at: https://www.reuters.com/article/us-north-macedonia-election/north-macedonia-parliament-dissolves-sets-poll-date-after-eu-shuns-talks-idUSKBN20A0ON.

16. *ODIHR SPECIAL ELECTION ASSESSMENT MISSION, Republic of North Macedonia-Early Parliamentary Elections, 15 July 2020*, STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS.

17. Official website of SEC, available at: https://www.sec.mk/parlamentarni-izbori-2020/?_thumbnail_id=6946

18. *Pendarovski e mori funksionin e Makronit dhe vend i hyri në pasiguri juridike, vlerëson profesori Shasivari/Pendarovski took over the position of Macron and the country entered into legal uncertainty*, *estimates Professor Shasivari*, RTV 21 Macedonia, 14.08.2020, available online at: https://tv21.tv/pendarovski-e-mori-funksionin-e-makronit-dhe-vend-i-hyri-ne-pasiguri-juridike-vlereson-profesori-shasivari/.

19. *Pendarovski e ndau mandatin dhe iku, Zaev beson se do të formojë Qeveri e nuk do ta ketë fatin e Gruevskit/Pendarovski entrusts the mandate and leaves, Zaev believes he will form the Government and will not have the Gruevski's fate*, RTV 21 Macedonia, 13.08.2020, available online at: https://tv21.tv/pendarovski-e-ndau-mandatin-dhe-iku-zaev-beson-se-do-te-formoje-qeveri-e-nuk-do-ta-kete-fatin-e-gruevskit/.

20. *Pendarovski mund të shkelë Kushtetutën?! Talat Xhaferi me paralajmërime për krizë Kushtetuese-institucionale/Pendarovski can violate the Constitution?! Talat Xhaferi with warnings about the Constitutional-institutional crisis*, RTV 21 Macedonia; 11.08.2020, https://tv21.tv/pendarovski-mund-te-shkele-kushtetuten-talat-xhaferi-me-paralajmerime-per-krize-kushtetuese-institucionale/.

21. *Political parties in Macedonia reach a consensus to postpone the elections*, META.MK, 17.03.2020, avaliable online at: https://meta.mk/en/political-parties-in-macedonia-reach-a-consensus-to-postpone-the-elections/.

22. Reynolds, Matt (4 March 2020), *"What is coronavirus and how close is it to becoming a pandemic?"*, available online at: https://www.wired.co.uk/article/china-coronavirus.

23. Rules of Procedure of the Parliament: https://www.sobranie.mk/rules-procedures-of-the-assembly-ns_article-rules-of-procedure-of-the-assembly-of-the-republic-of-macedonia-precisten-tekst-2013.nspx.

24. Së pari konsultime me partitë, pastaj mandati, Pendarovski pret që të konstituohet Kuvendi, e më pas ta emërojë mandatarin/First consultations with the parties, then the mandate, Pendarovski expects the Parliament to be constituted, and then to appoint the mandator, RTV 21 Macedonia, 22.07.2020, available online at: https://tv21.tv/se-pari-konsultime-me-partite-pastaj-mandati-pendarovski-pret-qe-te-konstituohet-kuvendi-e-me-pas-ta-emeroje-mandatarin/.

25. Svetomir Skaric: *"Распуштеното Собрание не може да се врати-The dissolved Parliament cannot be returned"*, 18.05.2020, avaliable online at: https://republica.edu.mk/mk/blog/2020-05-18-09-18-19.

26. The official website of the Parliament of North Macedonia, available online at: https://www.sobranie.mk/2016-2020-srm-ns_article-na-konstitutivna-sednica-sobranieto-gi-verifikuvashe-mandatite-na-pratenicite-od-desettiot-parlament.nspx.

27. Vakum juridik për mandatin, Presidenti thirret në Kushtetutën, Xhaferi në rregulloren/Legal vacuum for the mandate, the President invokes in the Constitution, Xhaferi in the Rules of Procedure, RTV 21 Macedonia; 11.08.2020, https://tv21.tv/vakum-juridik-per-mandatin-presidenti-thirret-ne-kushtetuten-xhaferi-ne-rregulloren/.

28. VMRO-ja, nismë në Kushtetuese për mandatin/VMRO, initiative to the Constitutional Court for the mandate, ALSAT-M, 15.08.2020, available online at: https://alsat-m.tv/vmro-ja-nisme-ne-kushtetuese-per-mandatin/.

29. Xhaferi nuk ka plan kur e thërret seancën, Andov: Seanca konstituive nuk ka lidhje me mandatin/Xhaferi has no plan when he calls the session, Andov: The constitutive session has nothing to do with the mandate, RTV 21 Macedonia, 14.08.2020, available online at: https://tv21.tv/xhaferi-nuk-ka-plan-kur-e-therret-seancen-andov-seanca-konstituive-nuk-ka-lidhje-me-mandatin/.

30. Xhaferi signs decision scheduling July 15 elections, Republika English, June 16, 2020, available online at:https://english.republika.mk/news/macedonia/xhaferi-signs-decision-scheduling-july-15-elections/.

31. Xhaferi: Pa kryetar, Parlamenti s'është konstituar. Shasivari: Zgjedhja e kryetarit të Parlamentit përcakton afatet/ Xhaferi: Without a speaker, the Parliament has not been constituted. Shasivari: the election of the Speaker of Parliament sets deadlines, RTV 21 Macedonia, 10.08.2020, https://tv21.tv/xhaferi-pa-kryetar-kuvendi-seshte-konstituuar-shasivari-zgjedhja-e-kryetarit-te-kuvendit-percakton-afatet/.

32. Завршува петтата вонредна состојба, од среда почнува изборната кампања, avaliable online at: https://www.slobodenpecat.mk/zavrshuva-pettata-vonredna-sostojba-od-sreda-pochnuva-izbornata-kampana/.

33. Јетон Шасивари, Нефункционално Собрание не е конституирано Собрание*/A dysfunctional Parliament is not a constituted Parliament,* ПЛУСИНФО, 11.08.2020, avaliable online at: https://plusinfo.mk/nefunkcionalno-sobranie-ne-e-konstituirano-sobranie/.

34. Катерина Блажевска, А замрзнување на комуникацијата со сезонските „експерти"?/And a freeze on communication with seasonal «experts"? Дојче Веле, 14.08.2020.

35. Мицковски: ВМРО-ДПМНЕ ги замрзнува односите и комуникацијата со Пендаровски*/Mickovski: VMRO-DPMNE freezes relations and communication with Pendarovski*, 13.08.2020, Радио Слободна Европа, avaliable online at: https://www.slobodnaevropa.mk/a/30782169.html.

36. Осман Кадриу на панел дискусијата „Македонија во правно и политичко лимбо"*/Osman Kadriu at the panel discussion "Macedonia in legal and political limbo",* во организација на ЦИВИЛ, Скопје, 26.01.2017, avaliable online at: https://www.youtube.com/watch?v=rauzA-8n_d0, from 8:30-10:45 minute.

37. Шкарић: Од 27 април тече уставниот рок за доделување мандат!/Skaric: the constitutional deadline for granting a mandate runs from April 27!, CIVIL, 10.05.2017, available online at: https://civilmedia.mk/schkari-od-27-april-ttch-ustavniot-rok-za-dodluva-mandat/.

DIVORCE, CHILD-PARENT CONTACTS AND COVID-19 PANDEMIC: CHALLENGES & OPPORTUNITIES

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Abstract

The Covid-19 pandemic, in addition to many economic, political and social problems, has brought significant consequences in the family relations sphere. Single-parent families, especially those divorced, face the problem of non-compliance with decisions made regarding the establishment of contacts and personal relationships with the parent who has not gained custody over the child/children after divorce, a problem that during the pandemic has further deepened. These problems of irregular functioning of divorced families are clearly observed in the Republic of Northern Macedonia. Many parents who do not live with their children have been prevented from meeting them, with the excuse that the child/children might be exposed to the virus when meeting with the other parent, an excuse that has been continuously used by the parent that has the custody.

In this paper, the authors provide data from legal practice regarding the impact of the Covid-19 pandemic on the functioning of divorced families. The authors pay special attention to the current problems that arise in divorced families in non-compliance with decisions re-

garding contacts with the parent with whom the child does not live; and provide answers to concrete questions regarding possibility for the conflicts between the ex-spouses to have further deepened due to the lack of communication during the pandemic.

The paper also focuses on the challenges faced by single-parent families during the pandemic, providing concrete results from the research of cases during the reconciliation procedure of the spouses and their legal and psychological counseling in order to reach an agreement for joint parenthood after the divorce. The Republic of North Macedonia currently has an outdated concept of exercising parental rights after divorce, which has not changed since the enactment of the Family Law Act in 1992, which poses a serious problem for children and divorced parents, especially for the parent who has the right to have contact with the child/children.

The authors conclude with concrete recommendations and proposals, highlighting the proposal for the incorporation of the concept of joint parenthood after divorce in the Family Law of the Republic of Northern Macedonia.

Keywords: divorce, contacts with the non-custodial parent, psychological impact of joint custody, the best interests of the child

INTRODUCTION

Parental care and parental responsibility are among the most researched issues in modern family law, which of course in recent years has been part of debates in family law in the Republic of North Macedonia.

Starting from the principle of the best interest of the child, parenting should be based on respect for this interest which is the basic and most important imperative that all international documents, modern family law and the indications of the European Court of Human Rights stand for. The right of children to be cared for and raised by their parents, whether living together or separately is certainly guaranteed by the most prominent document on the rights of the child, the UN Convention on the Rights of the Child. According to the Convention – 'A child shall not be separated from his or her parents against their will, except

when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.' (Article 9, para.1, Convention on the Rights of the Child, 1989).

In this paper, the authors present the current legal and practical situation regarding the custody of children after divorce, as well as the situations of contacts and personal relations of the child with the parent who does not acquire custody after separation. Due to the problems that arise in practice, precisely as a result of non-compliance with the CSW decision about meetings, which have deepened as a result of the lawsuit Covid-19, the authors give concrete proposals regarding the improvement of the newly created situations. They base their recommendations on comparative family law, individual research, and the expertise of specialists in the field of divorce. The conclusions of the authors are also based on the analysis of attitudes from practice regarding the realization of contacts, the level of information and awareness of parents about children's rights and their non-violation after divorce, the tense situation in divorced families during Covid-19 pandemic. The authors share the opinion that despite the created situation by the Covid-19 pandemic, the parent who lives with the child, has no right to deny meetings with the other parent on the grounds that the child is exposed to the corona virus, the constant reasoning on the part of the parent guardians. Therefore, depending on the subjective and objective situations, parents must respect the principle of joint parental responsibility even after the divorce. Although such a principle does not derive from the legal provisions of the country, parents should do so from the point of view of parental morality.

1. SHARED PARENTING MODEL AFTER DIVORCE ACCORDING TO THE FAMILY LAW ACT OF THE REPUBLIC OF NORTH MACEDONIA

Parents who live together (in marriage or in an extramarital union) perform their responsibilities together and by agreement and in the interest of the children. Parents decide together on all the rights and responsibilities of their minor children. They are equally responsible for

their upbringing, for ensuring a healthy and decent life in accordance with their capabilities. Parents realize the exercise of parental rights through: support of their children, schooling, representation, provision of an environment for the development of a mentally and physically healthy person to enable them to continue their life independently (Article 46, Family Law Act (FL), 1992). So, above all, parents, according to the principle of equality, exercise their rights and obligations: "*the family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases*" (Article 5 para.2, CEDAW, 1997).

It should be noted that life imposes situations that cause parents to decide to separate. Divorce is only a legal procedure that separates the joint life of the two partners, but in no aspect does it refer to the termination of parenthood by force of law. (Article 23 para.3, Draft Recommendation on the rights and legal status of children and parental responsibilities, 2010). Inter-partner misunderstandings that lead to divorce should in no case affect the continuation of parenthood towards children. The imposition of their problems and the race for mutual power puts children in the role of a victim, a behavior that can have further consequences in the life of children and in the stable development of their personality.

Based on the principle of equality guaranteed by both the Family Law Act and international conventions, parents are equal in the exercise of parental responsibility. Also, it is an undisputed right of the minor child to live with both parents, except in situations when living with both parents would be contrary to the respect of his highest interest. The one-parent model of child care comes into play when marriage ends, with the death of one parent, with divorce or annulment of marriage. Since the main topic in this paper is shared custody after divorce, only this aspect of shared parental responsibility is addressed.

In situations when the child's parents do not live together, then they decide with whom will the child remain and continue to provide care and education. If this can not be decided together or if their agreement does not correspond to the interests of the child, a decision on this will be brought by the Center for Social Work (CSW). If circumstances change, the decision for care and education may change. The Center for Social Work, at the request of one of the parents or ex officio, will bring a new decision for the care and education of the child if this is required as a result of the

changed circumstances (Article 78, FL). One of the most important issues that arises in situations where parents do not live together is the right to maintain personal contact with the child. (Article 79, FL). The legislator has created space and opportunities for parents to reach an agreement on how to regulate contacts with the child. The Family Law Act attest that with the decision on the divorce of marriage, the court must also decide on the custody, education and maintenance of joint children (Article 80 para.1, FL). If the parents have not agreed on how to exercise parental rights after the divorce or if their agreement does not correspond to the best interests of the child, the court, after obtaining the opinion of the CSW and after considering all the circumstances, will decide whether the children will remain in custody and upbringing with one parent or some will remain with the mother, while some with the father, or all will be entrusted to a third person or institution, while the other parent is charged with the obligation to pay alimony. Considering the cases from practice, we notice that the situations of not reaching an agreement on the way of maintaining personal relations and direct contacts with the child are very frequent, precisely because of the conflicting relations between the parents after the divorce, actions that negatively affect in the psychosocial development of the child. On the other hand, the parent who gains custody also gains the burden of full care, giving him/herself the right to alienate and exclude the other parent from the child's life, thus creating a monopoly on the child, counting him as personal property. In other words, the current legal provisions deepen the inter-parental conflict, precisely because the parent who gains custody also 'gains' the power to infringe on the other parent's right to contact their child. Therefore, the many problems that arise in practice are indications that divorce has negative consequences for children, especially due to the severance of children's contacts with their fathers (in most cases), and the same "old" model of custody turns out to be detrimental to the well-being of children and separated couples, which has been proven by persistent barriers to contact during the Covid-19 pandemic.

2. THE CONCEPT OF "JOINT PARENTHOOD" AFTER DIVORCE

The experience of the last years has shown that while marriage may be freely dissoluble, parenthood is not. Child support is now vigorously enforced in many countries and in some jurisdictions, spousal mainte-

nance, once strictly limited by reference to need is experiencing a revival (Parkinson, 2006, p.2).

The model of joint parenthood after divorce in developed countries dates back to the 70s (Boulanger, 1998, p.85-103), which has been motivated by the increasing number of employed women, raising awareness through feminist movements as well as from numerous researches which have emphasized the importance of the role of the father in the education and psychosocial development of children.[1] European family legislation through their norms proclaim joint custody and equal parenting after divorce as a dominant concept (Germany[2], Austria[3], France[4], Italy[5], Sweden[6], Norway[7], Switzerland[8] and other European countries). The principle of joint exercise of parental rights after divorce in the first place means interaction for all important issues related to the life of the child regulated through a joint agreement, which parents are obliged to respect once it takes a decisive form by the court. The institution of family mediation plays an important role here. Therefore, most countries recognize the pattern of co-parenting after divorce. The joint custody model largely corresponds to the principle of respecting the best interests of the child as opposed to the model of exercising

1. Research assessing the extent of access and father involvement on children's adjustment following divorce gives ample evidence that when children of different ages have involved fathers, they are more likely to achieve better social and behavioral outcomes. With children from birth to six years, higher levels of paternal involvement were associated with better adaptive behavior skills, and for the four to six year olds, better communication and socialization skills, compared to those young children with less paternal involvement (See more at, K. Pruett, et al.,2003)

2. See more at Dethloff, Martiny, *Parental Responsibility - National Report-Germany*. The full text of this national report for Parental Responsibility, available at http://ceflonline.net/wp-content/uploads/Germany-Parental-Responsibilities.pdf

3. See more at Roth, *Parental Responsibility - National Report-Austria.* The full text of this national report for Parental Responsibility, available at, http://ceflonline.net/wp-content/uploads/Austria-Parental-Responsibilities.pdf

4. See more at Ferrand, *Parental Responsibility - National Report-France.* The full text of this national report for Parental Responsibility, available at, http://ceflonline.net/wp-content/uploads/France-Parental-Responsibilities.pdf

5. See more at Patti, Carleo, Bellisario, *Parental Responsibility - National Report-Italy.* The full text of this national report for Parental Responsibility, available at http://ceflonline.net/wp-content/uploads/Italy-Parental-Responsibilities.pdf

6. . See more at Jänterä-Jareborg, Singer, Sörgjerd, *Parental Responsibility - National Report-Sweden.* The full text of this national report for Parental Responsibility, available at http://ceflonline.net/wp-content/uploads/Sweden-Parental-Responsibilities.pdf

7. See more at Lødrup, Sverdrup, *Parental Responsibility - National Report-Norway.* The full text of this national report for Parental Responsibility, available at http://ceflonline.net/wp-content/uploads/Norway-Parental-Responsibilities.pdf

8. See more at Hausheer, Wolf, Achermann-Weber, *Parental Responsibility - National Report-Switzerland.* The full text of this national report for Parental Responsibility, available at http://ceflonline.net/wp-content/uploads/Switzerland-Parental-Responsibilities.pdf

parental rights by only one parent[9] (in the context of the RNM, in most cases it would be the mother). The joint exercise of parental rights enables greater involvement and presence of the father in the life of the child and in the realization of parental responsibility, which also affects the sharing of costs of caring for the child between parents, in contrast to the model of determining alimony to the parent who is not given custody of the child (as is the case in our legislation) (Zendeli, Selmani-Bakiu, Mickovik, Ristov, 2020, p.266). According to the concept of Joint Custody, regardless of marital status, parents are jointly responsible and together will make important decisions for their child's life (schooling, eventual medical interventions, property interests, etc.), for which explicit consent on the part of both parents will be necessary. Another important aspect of joint parenthood after divorce is the equal distribution of time between parents and children. This concept is known as shared custody. Shared custody means equal and quality time spent with both parents, which of course aims to strengthen mutual relations. After spending enough time with the child, the parent will have the opportunity to be closer to the needs of the child, and of course this would play a significant role in avoiding the unpleasant feeling of separation from a joint life. The child will have two houses and of course one primary place of residence. In creating a successful plan for joint parenthood (see more at B. Kelly, 2005, p. 237-254) as well as organizing an evenly divided time for contacts, experts play an important role through mediation, which of course helps in overcoming all problems related to exercise of parenthood. Finally, from comparative practice, this concept provides equivalent care on the part of both parents who also share financial support for their child. Also, through joint parenthood, parents are obliged to respect the parental plan (Selmani-Bakiu, 2017, p. 155) through which, among other things, they assign the time of contacts when the parents live in the same city and the time of meetings when one parent lives in another city. In other words, this shared relationship would allow the child to be in a continuous relationship with both parents.

9. Meta-analysis of thirty-three studies found that children living in joint physical custody arrangements had better emotional, behavioral and general adjustment on multiple objective measures, and better academic achievement, when compared to children living in the sole physical custody of mothers.50 In fact, children in joint physical custody did not differ in their adjustment from married family children. Joint physical custody, generally defined by researchers as between 33 - 50% time with one parent and the remainder with the other, maintained its benefits even after controlling for the greater amount of conflict between parents in the sole physical custody sample, (See more at B. Kelly, 2005, p.249)

3. IMPACT OF THE COVID-19 PANDEMIC ON THE REALIZATION OF CONTACT BETWEEN THE CHILD AND THE NON-CUSTODIAL PARENT

Divorced family life is quite difficult in ordinary times, but the Covid-19 pandemic revealed new and severe forms of problems especially in divorced families because many children can not exercise their basic right of contact with the non-custodial parent. The world is no longer what it used to be, because it is on its way to liberating individual needs and freedoms, which has had its costs on our ability to endure the effects of the Covid-19 pandemic. Measures against the Covid-19 pandemic, especially social isolation, was one of the main reasons for the non-implementation of decisions made by the CSW to maintain personal relationships and direct contacts between children and the non-custodial parent. Social isolation is a state of complete lack of contact between an individual and society. It differs from loneliness, which reflects the temporary and involuntary lack of contact with other people in the world.

Social isolation can be the same for individuals of all ages, although symptoms may vary by age group (Khullar, Bhruv, 2016, p.12-22). The lack of some legal principles and rules brings problems in the realization of shared parenthood, because in the legislation of our country, there is no legal provision, which would regulate in detail the issue regarding the type and volume of personal contacts between the child and the parent with whom the child does not live. Therefore, during the Covid-19 pandemics, this lack of legal regulation had further impact on some consequences of social isolation. In this regard, social isolation has disbalanced the well-being of children and divorced parents for the following reasons: 1.Social isolation, i.e. the restriction of the time of movement as a measure against the spread of the Covid-19, greatly affected the regulation of the volume of contacts, their shortening in accordance with the time of limited movement, which was a strong reason for the custody parent not to fully respect the duration of the contacts of the child with the non-custodial parent as prescribed by the court decision, arguing that the measures implemented to stop the spread of the Covid-19 should be respected; 2. Social isolation as the last form of movement ban has resulted in the surfacing of concerns in divorced families because it disturbed the psychological and social balance of children and divorced parents; 3. The consequences of social isolation have contributed to the loss of control over the parent with

whom the child lives, as well as weakened professional and legal help to support and empower the non-custodial parent; 4. The consequences of social isolation deepened the conflicts between the ex-spouses due to the non-realization of the contacts of the children with the non-custodial parent during the period of the Covid-19 pandemics.

It should be noted that many family problems emerged during the Covid-19 pandemic, especially during the implementation of the spouse reconciliation procedure, because social isolation weakened the parental, legal and psychological potential in order to reach a joint custody agreement after the divorce, and especially in reaching an agreement for making contacts with their children. The practice proved that the motives for exhibiting problems in reaching a joint parental agreement after the divorce were more of a psychological nature, because most parents even after the divorce continue to take revenge on each other, unfortunately even by treating their children as an instrument to achieve their goals, desires and interests, which hurts and aggravates the emotional state of children. The most pronounced problems in practice during the Covid-19 pandemic, regarding the implementation of decisions, emerged when the child and the non-custodial parent did not live in the same city or in the same state, because legally prescribed measures against the spread of the Covid-19 pandemic, had to be respected by all, which denied the right of the non-custodial parent to contact their child.

It is also important to note that the challenges that families face during the Covid-19 pandemic are numerous, especially when implementing decisions regarding the contact of children with the parent with whom the child does not live. Due to the lack of contacts between children and non-custody parents, the psychological consequences were present to varying degrees, and the same are worrying for children living with one parent, because the pandemic forced them to do the following: 1. stay at home and not have physical contact with the non-custodial parent, which reduces the level of self-confidence and security in the child; 2. restricted the child's basic right to contact the non-custodial parent, as well as other family members who are important to the child's life, and who would influence the child to restore a sense of security; 3. limited the time and space necessary to the child in accordance with the appropriate age, to be informed about the situation and to confess how he feels in a pandemic situation; 4. restricted the freedom of children to express their emotions; if they are afraid - express it freely, if they are upset, and to share with both parents everything that is important to them; 5. restricted the need and the right of the child for parental

love, as well as the right to move and associate with other children. Taking into account the influence of the family on the child's development, especially their right to contact the non-custodial parent, during the Covid-19 pandemic, the CSW took measures to overcome the problems of divorced families by enabling the parents themselves to reach an agreement on the dynamics of maintaining contacts, namely to find other opportunities for making contacts, claiming that the Covid-19 pandemic could not be a reason for the non-custodial parent not to have access to contact with the children.

Contacts between children and non-custodial parents were made using alternative methods such as the use of the phone, video technologies via Skype, Viber, WhatsApp, Zoom platform, Google Meet, in order for children to be able to virtually see and communicate with non-custodial parents as not to lead to total stop of contact. The practice proved that the use of alternative methods, namely the use of video technology was not applicable to all age groups of children. Non custody parents had many complaints about the problems they had with video technology, and especially with the duration of contact through video technology, which for young children was inefficient and monotonous.

In this emergency situation, the obligation and responsibility of the parents is to reach an agreement and regulate the realization of personal relationships taking into account the measures to prevent the transmission of coronavirus and protect the health of the child.

However, the numerous indications of the need to prioritize and respect the best interests of the child, unfortunately, in times of pandemic are not taken into consideration, because many divorced parents justify their action by the new situation, being aware that the responsible institutions do not have effective measures against their actions.

Parents should be aware that the family is one of the most important foundations for building sustainability in a child. Parental behavior patterns, social and emotional interactions are some of the factors that are considered important during the development stages of children.

3.1 Shared parental responsibility and contacts under the rules of social distance during the Covid-19 pandemic

In the conditions of the Covid-19 pandemic, when people's health and lives are in question, parents have an obligation to take care of the protection of children's health in accordance with the Family Law and rec-

ommendations from relevant institutions for action under pandemic conditions. In these conditions, the parents need to agree on how to maintain contact between the child and the parent with whom they do not live. In this regard, the Centers for Social Work as adequate bodies are available to parents to provide the necessary professional and advisory support when agreeing on how to maintain relations between parents and children, because according to the Family Law both parents are obliged to exercise parental rights and obligations with awareness and responsibility and to take care of the protection of children's health (Ministry for Labour and Social Policy, 2020).

In practice, in general there are many difficulties both in determining the quality of the manner and time of meetings as well as in the implementation of decisions made by the relevant institutions to maintain direct contact of the child with the non-custodial parent. In addition to the parents themselves, often the competent institutions contribute to the deepening of the problem or provide insufficient solution of this problem as a result of legal gaps regarding the determination of the time of meetings. Namely, CSWs play a major role in protecting children during and after the divorce process, especially in problematic parental relationships. In practice, as a result of legal gaps, the CSW cannot effectively help overcome conflicting parental relationships. The Republic of North Macedonia currently has an outdated concept of exercising parental rights after divorce, which has not changed since the enactment of the Family Law Act in 1992, which poses a serious problem for children and separated parents, especially for the parent who has the right to make contacts.

The concept of parental values and responsibility refers to a functional system that allows full respect for the rights and freedoms of children, and their contribution to improving the quality of relations between parents and children as well as between its members, which helps strengthen the family cohesion despite the fact that parents do not live together. Family relationships are strengthened by maintaining close relationships with all family members, so that all family members have a common approach to solving family problems and mutual support. Especially in situations where children as a result of the divorce of their parents live with only one parent, parents need to be very responsible and make sure that these relationships have quality and are sustainable.

CONCLUSION

The parenting right should be implemented in accordance with three basic principles: equality of parents, joined responsibility for the education, raising and development of the child, and prohibition of the abuse of the parenting right (Selmani-Bakiu, 2017, p. 162)

After the termination of the marriage by annulment or divorce, the continuation of contacts with the other parent eases the emotional state, because childhood is a key factor for achieving emotional integrity, mitigates the consequences of separation of the child from the parent, thus creating optimal conditions for child development in a situation where he lives with only one parent.

Social isolation and psychological consequences during the period of Covid-19 pandemic have hit hard on divorced families. In this regard, the most at risk are divorced families who do not respect and are not able to reach an agreement on the implementation of decisions made to establish personal and direct contact of children with non-custodial parents.

In times of the Covid-19 pandemic, that is during social isolation, it is important for divorced families to be provided with psycho-social support and support strategies for overcoming problems and conflicts, enabling parents to reach an agreement on the dynamics of maintaining contacts, namely to find other opportunities for making contacts, attesting that the Covid-19 pandemic should not upset the balance between demands for respect for the rights of the child and the ability of parents to ensure that right.

The authors confirm the main hypothesis that the traditional and outdated model of assigning a child to only one parent (in many cases the mother), has shown that it results in the alienation of the child with the other parent by reducing and preventing close contact with the parent who does not receive custody of the child. Preventing the exercise of this right and this obligation does not only mean discrimination for the parent who does not have custody, but it also has consequences for the child in terms of manifestation of power and authority by the parent with whom he lives. Therefore, the process of introducing joint parenthood is a motivation that leads to solving the problems that arise after divorce. The authors also point out that co-parenting reduces the number of stressors by diluting the emotional reactions of divorced family members, which may put a child in front of a requirement to adapt

to new living conditions with divorced parents. Joint parenthood will avoid the alienation of the child from the non-custodial parent and will avoid the possibility of building hostile relations and behaviors towards parents by blaming them as reasons for family instability. Therefore, taking into account the problems that have arisen in divorced families and the deepening of these problems during the Covid-19 pandemic, a situation that has been used by the custody parents to alienate the child from the other parent, speaks of the need to take urgent legal measures in order to change the tradition of single parental custody, with the sole purpose of placing emphasis on respecting the highest interest of children by divorced families. The authors also emphasize the undertaking of measures related to the advancement of methods to facilitate the realization of contacts with the custodial parent under the conditions of the pandemic by the institutions dealing with child custody - the Ministry of Labor and Social Policy and the Centers for Social Work, which in these situations should promote family and social policies to improve the concrete situation. The authors also defend the opinion that in order to overcome these obstacles, the establishment of a family mediation institution should be initiated, which will play an important role in the preparation and psychological and legal education of ex-spouses, so that in the interest of children they can peacefully resolve disputes and hostilities between them.

The heaviest burden in overcoming the unpleasant situations related to meetings falls on the parents themselves, who must take into account the fact that *'children should not be the victims of the choices that adults make for them'.*

REFERENCES:

1. Ayoub, CC., Deutsch, R.M., Maraganora, A. 1999. ‚Emotional distress in children of high-conflict divorces'. In *Family Court Review*, 37 (3), 297 – 315.
2. Boulanger, F., 1998. ‚Les rapports juridiques entre parents et enfants, Perspectives comparatives and internationals', In *Economica*, Paris.
3. Dethloff, N., Martiny,D., *Parental Responsibility - National Report-Germany*., available at http://ceflonline.net/wp-content/uploads/Germany-Parental-Responsibilities.pdf
4. Ferrand, F., *Parental Responsibility - National Report-France.*, available at, http://ceflonline.net/wp-content/uploads/France-Parental-Responsibilities.pdf

5. Hausheer, H., Wolf, S., Achermann-Weber,C. *Parental Responsibility - National Report-Switzerland.*, available at http://ceflonline.net/wp-content/uploads/Switzerland-Parental-Responsibilities.pdf

6. Jänterä-Jareborg, M., Singer, A., Sörgjerd, C. *Parental Responsibility - National Report-Sweden.*, available at, http://ceflonline.net/wp-content/uploads/Sweden-Parental-Responsibilities.pdf

7. Kelly, J. B., 2005 'Developing Beneficial Parenting Plan Models for Children Following Separation and Divorce', In *Journal of the American Academy of Matrimonial Lawyers*, Vol. 19, Issue 2, 237-254.

8. Khullar, B. 2016. 'How Social Isolation Is Killing Us'. In *The New York Times*.

9. Kline Pruett,M., Y. Williams,T., Insabella,G., and D. LittleT. 2003. ‚Family and Legal Indicators of Child Adjustment to Divorce Among Families With Young Children', In *Journal of Family Psychology*, 169-180.

10. Lødrup, P., Sverdrup,T., *Parental Responsibility - National Report-Norway.*, available at http://ceflonline.net/wp-content/uploads/Norway-Parental-Responsibilities.pdf

11. Parkinson,P., 2006. ‚Family Law and the Indissolubility of Parenthood', In *Family Law Quarterly*, Vol. 40, No. 2, Sydney Law School Research Paper No. 06/3, 237-280.

12. Patti, S., Carleo, L., Bellisario,E. , *Parental Responsibility - National Report-Italy.*, available at, http://ceflonline.net/wp-content/uploads/Italy-Parental-Responsibilities.pdf

13. Roth, M., *Parental Responsibility - National Report-Austria.*, available at, http://ceflonline.net/wp-content/uploads/Austria-Parental-Responsibilities.pdf

14. Selmani-Bakiu, A. 2017. 'Joined and responsible parenting', In *SEEU Review*, Volume 12, Issue.1,. De Gruyter, Tetovo, Republic of Macedonia, 149-165.

15. Zendeli,E., Selmani-Bakiu,A.,Mickovik,D., Ristov.A., 2020. *E drejta familjare*, Tetovo.

16. Convention on the Elimination of All Forms of Discrimination against Women –CEDAW, (1997), available at http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm

17. Convention on the Rights of the Child (1989), available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

18. Draft Recommendation on the rights and legal status of children and parental responsibilities (2010), available at http://www.coe.int/

19. Family Law Act (1992), (Consolidate Version, 2015), available at "Sluzben Vesnik", available at http://www.slvesnik.com.mk/

20. Ministry of Labour and Social Policy of Republic of North Macedonia, Видувањата на децата со родителите да се одржуваат во договор меѓу двајцата родители, грижата за здравјето на децата да биде приоритет, (2021), available at www.mtsp.gov.mk

DEFENDING THE RIGHTS OF THE VICTIMS OF CORRUPTION IN THE REPUBLIC OF KOSOVO: WITH A SPECIAL FOCUS TO THE PANDEMIC COVID-19

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Abstract

Corruption is not a victimless crime! Therefore, the main intention of this paper is to enlighten that protecting the rights of the victims of corruption is one of the crucial battles in the war against corruption. Wining this battle during the pandemic Covid-19 is grinding but of vital importance at the same time!

Corruption has already been a remaining concern in the Republic of Kosovo. Notwithstanding, the situation with the pandemic Covid-19 has made the justice system, and not only, more fragile. Consequently, we are currently living in a perfect environment for corruption acts where the victims of corruption are not acknowledged and sometimes even "garbled" with the victims of Covid-19!

It is important more than ever to ensure effective remedies for persons who have suffered from corruption acts including the possibility of compensation for their damage. Indeed, the Republic of Kosovo is not a state party of the Civil Law Convention on Corruption. Yet this convention shall be the guide for establishing such legal avenues while the good practices of the United Kingdom and the French Republic shall be the aim and motivation for this.

Keywords: Corruption, Victims, Republic of Kosovo, Covid-19.

INTRODUCTION

According to the United Nations, every year $1 trillion US Dollars is paid in bribes while an estimated $2.6 trillion are stolen annually through corruption! This sum is equivalent to more than 5% of the global GDP (United Nations, 2019).

Nevertheless, corruption today is not just about money! Corruption is a consistent threat to the fundamental human rights and freedoms. Its consequences are revealed particularly in developing countries. For instance, Transparency International has reported that "*Corruption could costs lives in Latin America's response to the Coronavirus*" (Transparency International, 2020). Reducing corruption while facing with Covid-19 could be just enough to ensure a proper mobility of relevant institutional stakeholders there. *Vice versa* (otherwise), the consequences could be even more devastating than they already are! Under these circumstances, costs of corruption might have to be paid also with lives of innocents, who because of corruption had no proper protection from their government. From this point of view, corruption could costs lives also in Western Balkans or elsewhere during the combat against Covid-19! After all, eventually a medicine will be invented against the pandemic Covid-19 but no antivirus is going to be invented soon against corruption!

Where ever corruption will be, there will also be poverty, unemployment, nepotism, poor health and education system, no rule of law and yes, people might have to pay also with their lives because someone in the health system or elsewhere is corrupted! On the other hand, it seems that the situation with the pandemic Covid-19 has changed our lives forever. This pandemic is not simply about the Covid-19 affecting our health system only. It is also about our economy and welfare, our justice system, our education, our lifestyle and much more that is harmed because of Covid-19! In other words, this new challenging situation has become the perfect environment for corrupt dark hands. Covid-19 will end soon hopefully and no more victims shall be because of it. Nevertheless, what is the difference between the victims who have died because of Covid-19 despite their medical treatment and the victims who have died because they had no medical treatment at all because someone was corrupted in the hospital during the pandemic? Indeed, at the end of the day both of them are just victims and cannot be distinguished but on their victimization factors. Both of these victims need to be recognized. Both of them need to be protected.

Corruption acts and corruption victims are very important issues to pay attention on even during Covid-19 and not only! This article is focused on protecting the rights of the victims of corruption in the Republic of Kosovo. On the following is to be found a thorough comparative analysis between the Civil Law Convention on Corruption (hereinafter "CLCC") and the legal framework in the Republic of Kosovo. If we ensure the rights of the corruption victims, we will win another battle not only in the war against corruption but also in the war against Covid-19, social inequality, unemployment, poverty and much more.

It is indisputable that corruption does encourage social inequality, which leads us to major consequences especially during Covid-19. But who benefits from corruption today and what are the exact costs? This question cannot be answered straight yet through accurate numbers or graphs! After all, there is no measuring unit for corruption but only perception and no one really knows the exact dark number of corruption today. Therefore, this paper intends to raise awareness that no one should benefit from corruption, because the costs of corruption that victims are paying today, are simply unjust and inhuman! This is what we shall stand for all together, during the pandemic Covid-19 and after it.

1. CORRUPTION AS A REMAINING CONCERN FOR THE REPUBLIC OF KOSOVO EVEN DURING THE COVID-19

One of the conclusions in the Kosovo Progress Report for 2019 from the European Commission is that "*corruption is widespread and remains an issue of concern*" (European Commission, 2019, p. 19). Unfortunately, this conclusion is confirmed also from Transparency International. Due to the Corruption Perceptions Index (CPI) of 2019, Kosovo is ranked no. 101/180 with a 36/100 score or eight (8) positions and one (1) score worse than in 2018 when Kosovo was ranked no. 93/180 with a 37/100 score (Transparency International, 2019). One area in focus because of corruption is the procurement system in Kosovo. Even before the pandemic Covid-19, the procurement procedures in Kosovo have been under the loupe for eventual corruption affairs! For instance one of the recommendations repeated over again is to "*increase competitiveness and fairness of public procurement tenders by widening access to more companies and limiting the influence of political connections on bidder success*" (Fazekas, 2017). Of course, this recommendation shall be a priority for Kosovo especially during the pandemic Covid-19. Otherwise, it

will be more than enough room for corruption acts that will result with many innocent corruption victims! One thing in common between Corruption and Covid-19 is that "they do not discriminate"! Corruption just like the Covid-19 does not select victims but does also not hesitate to take lives of innocents.

From 24 March 2020 when the first cases of Covid-19 have been confirmed in Kosovo, all procurement procedures of the Ministry of Health have been based on negotiation only! This means that no calls for offers are published and contractors are selected with no real competitiveness! The media in Kosovo has reported that only during March, April and May, the Ministry of Health in Kosovo has purchased over 30 of these procurement procedures concluded with million euro contracts (Insajderi, 2020). Media has also reported that some contracted companies such "Agani ltd" and "Lego shpk" are closely connected to Arben Vitia former minister of health in Kosovo (Insajderi, 2020). Similar suspicions for corruption during Covid-19 are not only for the Ministry of Health but for the municipalities as well. The official web pages of these institutions provide only deficient information on these matters. Therefore, the media are the only available source currently since the police and the prosecutors have no answers on this yet!

Among 12.683 infections currently registered, 488 persons have died (Ministry of Health of the Republic of Kosovo, 2020). These dark statistics are just getting worse every single day. Adding corruption affairs to it, could be just too much to handle with for the people in Kosovo. **P**reventing the perpetrators and **P**rotecting the corruption victims, these two '**P**' need to be ensured in Kosovo immediately during Covid-19 and not only! Nevertheless, this paper on the following is focused only on the second 'P' like protection for the victims of corruption. Everyone knows that corruption is a global concern since the very existence of human society. Indeed, Kosovo is not an exception but nor are the roots of corruption in or from Kosovo! Yet, we need to be committed for successful combat of corruption in all forms and shapes. An essential part of this commitment shall be ensuring effective remedies for corruption victims, including the possibility of obtaining compensation for damage. It is indubitable that Kosovo is responsible to ensure the protection of the rights of corruption victims. The situation with Covid-19 makes this aim more gridding but also more imported than ever.

2. THE CIVIL LAW CONVENTION ON CORRUPTION AND ITS ROLE IN THE FIGHT AGAINST CORRUPTION

The possibility to tackle corruption phenomenon through civil law measures is an outstanding feature of the Council of Europe (hereinafter "CoE") approach to the fight against corruption (Council of Europe, 1999, Strasbourg, p. 2). The Committee of Ministers of CoE on 6th November 1997 adopted Resolution (97) 24 on the 20 Guiding Principles for the fight against Corruption. Principle 17 specifically indicates that States should "*ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption*" (Council of Europe, 1997). Indeed, when fighting corruption civil law is directly linked to criminal law. If an offence such as corruption is prohibited under criminal law, a claim for damages can be made which is based on the commission of the criminal act. Victims might find it much easier to safeguard their interests under civil law than to use criminal law (Council of Europe, 1999, Strasbourg). Consequently, on 1st November 2003 entered into force the Civil Law Convention on Corruption (CLCC) as the first attempt to define common international rules in the field of civil law and corruption (Council of Europe, Treaty Office).

The purpose of CLCC is for state parties "to provide in their internal law for effective remedies for persons who have suffered damage as a result of corruption acts, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage" (Council of Europe, 1999, Strasbourg, p. art. 1). The emphasis is on the responsibility of each state party to provide in its internal law appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State (Council of Europe, 1999, Strasbourg, p. art. 5). In order for the damage to be compensated, the following conditions are to be fulfilled: **a)** *the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption*; **b)** *the plaintiff has suffered damage*; and **c)** *there is a causal link between the act of corruption and the damage* (Council of Europe, 1999, Strasbourg, p. art. 4 par. 1). If several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable (Council of Europe, 1999, Strasbourg, p. art. 4 par. 2). In order to obtain compensation, the plaintiff has to prove the occurrence of the damage, whether the defendant acted with intent or

negligently and the causal link between the corrupt behaviour and the damage. This provision does not give a right to compensation to any person who merely claims that any act of corruption has affected, in one way or another, his rights or interests or might do so in the future. As far as the elements of claims for damages are concerned, the following should be indicated: **1.** Unlawful and culpable behaviour on the part of the defendant, **2.** Damages and **3.** Causal link (Council of Europe, 1999, Strasbourg, p. 6). If those prerequisites of a claim for damages are met, such compensation may cover: **1.** Material damage, **2.** Loss of profits and **3.** Non-pecuniary loss (Council of Europe, 1999, Strasbourg, p. art. 3 par. 2).

Worth noting is that CLCC provides accurate provisions on measures to be taken at national level from contracting state parties. For instance, the ***contributory negligence*** of the plaintiff to the damage or aggravation is foreseen through article 6 of CLCC. The ***limitation period*** less than three years to claim the recovery of the damage is foreseen through article 7 of CLCC. The ***acquisition of evidence*** in civil proceedings arising from an act of corruption is foreseen through article 11 of CLCC, etc. The provisions of CLCC are not only precisely but also essential and compatible with the currently needed reflections on the combat against corruption. CLCC has been open for signature on 4th November 1999 to enter into force on 1st November 2003. There are thirty-five (35) ratifications/accessions and seven (7) signatures not followed from ratifications. Interesting to note is that among ratification countries are also all the neighbour countries of the Republic of Kosovo (Council of Europe, Treaty Office). Republic of Kosovo has not been able to sign and ratify this convention yet! Nor has the Parliament of Kosovo approved yet any law compatible with the Civil Law Convention on Corruption.

3. THE RELATION OF THE CIVIL LAW CONVENTION ON CORRUPTION TO OTHER INTERNATIONAL INSTRUMENTS

Art. 19 par. 1 of CLCC regulates the relationship with other instruments or agreements dealing with same matters. CLCC does not affect the rights and undertakings derived from international multilateral instruments concerning special matters. However, state parties may not conclude agreements, which derogate from the Convention (Council of Europe, 1999, Strasbourg, p. 13).

Tab. 1 – *International legal instruments dealing with similar matters as CLCC*

Title	Article	Reference	Depositary	Entry in force	Ratification
UN Convention against Corruption	35 53 (b) 57 (3c)	Res. 58/4	UN	14/12/2005	187
Universal Declaration of Human Rights	8	Res. 217 A	UN	10/12/1948	-
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	par. 19	Res. 40/34	UN	29/11/1985	-
Charter of Fundamental Rights of the European Union	47	2012/C 326/02	EU	26/10/2012	-
Council Framework Decision on the standing of victims in criminal proceedings	9 pars. 1 & 2	2001/220/JHA	EU	22/03/2001	-
Council Directive relating to compensation to crime victims	1, 2, 3, et. al	2004/80/EC	EU	29/04/2004	-
Convention on preventing and combating violence against women and domestic violence	30	CETS No. 210	CoE	01/08/2014	34
European Convention on the Compensation of Victims of Violent Crimes	1, 2, 3, et. al.	ETS No. 116	CoE	24/11/1983	26
Resolution on the Twenty Guiding Principles for the fight against Corruption	par. 17	Res. (97) 24	CoE	06/11/1997	-
Convention for the Protection of Human Rights and Fundamental Freedoms	13	ETS No. 005	CoE	03/09/1953	47

There are a few important international legal instruments dealing with corruption. Some of them provide provisions related to similar matters as CLCC. Nevertheless, these instruments refer to the right of victims on effective remedies within the right on compensation for damages caused from criminal offences in general without distinguishing corruption. Only the

UN Convention against Corruption does acknowledge the fight against corruption also from the civil point of view. For instance, the **UN Convention against Corruption** (hereinafter "UNCAC") through article 35 refers that each state party shall "*ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation*" (UN Office on Drugs and Crime, 2004). As a conclusion, CLCC is in accordance with all instruments listed on tab. 1 and has no contradiction but rather is in lieu with them and especially with UNCAC.

The right on effective remedies for damages from criminal offences is listed as a fundamental human right since 1950 thanks to article 13 of the **European Convention on Human Rights** - "e*veryone whose rights and freedoms as set forth in the European Convention on Human Rights are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*" (Council of Europe, 1950, Rome). Actually, the right on effective remedies has been set since 1948 in article 8 of the **Universal Declaration of Human Right** "*everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*" (United Nations, 1948, Paris).

However, corruption today is a very specific and complex concern with global dimensions! The victims of corruption are also exceptional in sense of the challenges that need to be overcome for the identification of them as well as prerequisites to be confirmed in order to claim compensation. This is why today particular regulations are necessary not only for effective counter of corruption but also protection of corruption victims. The UN Convention against Corruption as well as the Universal Declaration of Human Rights rather encourage for international mobility on this issue. Such explication may be supported also from other international instruments as listed above on tab. 1. Still, CLCC remains the crucial legal instrument on international level which is specifically focused on effective remedies within the right of compensation for persons who have suffered damage from corruption acts.

4. THE RELATION OF THE CIVIL LAW CONVENTION ON CORRUPTION TO THE LEGAL FRAMEWORK IN THE REPUBLIC OF KOSOVO

Kosovo is not a party to the CLCC. Therefore, this convention is not legally binding for Kosovo. On the other hand the Kosovo constitution through art. 16 par. 3 demands that, "*Republic of Kosovo shall respect international law*" (Official Gazette of Republic of Kosovo, 2008). This means that legal framework in Kosovo shall be in accordance also with CLCC. Of course, eventual collision between CLCC and the constitution cannot be interpreted as constitutional violations. Nevertheless, constitution as well as the laws and other legal acts of Republic of Kosovo shall respect international law within the CLCC.

Corruption in Kosovo is incriminated through art. 414, 415 *et. al* of the Criminal Code of Republic of Kosovo (hereinafter "CCRK") meanwhile the procedural provisions can be found in the Criminal Procedural Code of Republic of Kosovo (hereinafter "CPCRK"). Based on art. 62 of the CPCRK "*the injured party has the right to a reasonable, court-ordered restitution from a defendant or defendants who have admitted to or been adjudged to be guilty for the financial, physical and emotional harm caused by the commission of a criminal offence*" (Official Gazette of Republic of Kosovo no 37/2012, 2012). The right of the injured party can be claimed through the property claim no later than the end of the main trial before the Basic Court (first instance Court of Republic of Kosovo). The claim shall be settled in the criminal proceeding if this would not considerably prolong this proceeding. Otherwise, the party will be instructed to initiate a civil dispute.

Compensation for corruption victims is not explicitly regulated through the CPCRK. In fact, the CPCRK provides only that **each victim of crime has right to claim compensation for the damage occurred from any criminal offence** within corruption acts. The procedure and conditions for these forms of compensation should be (but are not) in the Law on Crime Victim Compensation (hereinafter "CVCK") of Republic of Kosovo (Official Gazette of Republic of Kosovo no 17/2015, 2015, p. art. 2).

Compensation for the victims of corruption is a very specific matter and requires a specific legal treatment. Indeed, such general provisions of the CPCRK and the CVCK may not restrict claims for compensation from corruption victims but definitely do not encourage them to do so

and even less ensure these rights of them. As it will be further enlighten on this paper, this regulation of the CPCRK and the CVCK without specifying compensation for corruption victims, do not even nearly concur the provisions of the CLCC or the UNCAC.

Compensation as a legal institute remains a civil matter even when it may be subject of court orders in criminal proceedings related to property claims of injured parties through so-called *procedure of adhesion*. This way material norms regarding compensation of corruption victims shall be of civil nature! In Kosovo this aspect is only partly regulated through the Law on Obligational Relationships of the RKS (hereinafter "LOR"). According to article 359 of LOR, "*if the damage was inflicted by an act of corruption, the claim shall become statute-barred five (5) years after the injured party learnt of the damage and of the person that inflicted it. In any case it shall become statute-barred fifteen (15) years after the act was committed*" (Official Gazette of Republic of Kosovo No. 16/2012, 2012).

Even though article 359 of the LOR is titled "*Compensation claims for reason of corruption*", it regulates only the limitation period for the recovery of damages through the relative and absolute barred status. If we consider the provisions of the CLCC, then article 359 of the LOR is deficient since it is lacking on providing very important regulations such as:

1. Compensation for damage (what compensation is to be claimed);
2. What prerequisites are to be proven for compensation;
3. Liability (including State liability for acts of corruption committed by public officials);
4. Contributory negligence (reduction or disallowance of compensation, depending on the circumstances);
5. Validity of contracts;
6. Protection of employees who report corruption;
7. Clarity and accuracy of accounts and audits;
8. Acquisition of evidence, and
9. Court orders (to preserve the assets necessary for the execution of the final judgment and for the maintenance of the *status quo* pending resolution of the points at issue).

We have to bear in mind that corruption remains a concerning issue for the Republic of Kosovo. Yet, the current legal framework does not

include a proper law, which would be compatible to the CLCC with the purpose to ensure effective remedies for persons who have suffered damage because of corruption acts. LOR within article 359 is definitely deficient from this point of view and attempting to implement this article from relevant stakeholders could easily lead to complications and even unjust or irreparable damages! The CPCRK and the CVCK do not fill this legal gap because they provide the opportunity to claim compensation from victims of crimes in general but do not pay proper attention on compensation for victims of corruption. In fact, the words corruption or corruption victims or similar words are not even mentioned in the CVCK!

It is a long way to go in order to establish a proper legal framework with purpose to ensure effective remedies for corruption victims within the possibility for obtaining compensation! This shall not be just another responsibility of relevant institutions in Kosovo but an issue to focus truly on!

5. COMPENSATING AGAINST CORRUPTION: WHY DOES IT MATTER?

Corruption is one form of abusing public power for private gain (Transparency International, What is corruption?). Referring to Transparency International, the costs of corruption can be divided into four main categories: *political*, *economic*, *social* and *environmental*. On the political front, corruption is a major obstacle to democracy and the rule of law. Economically, corruption depletes national wealth. It corrodes also the social fabric of society through undermining peoples trust into the system. Least but not less important, environmental degradation is another consequence of corrupt systems since companies around the globe continue to pay bribes in return for unrestricted destruction (Transparency International, What is corruption?). However, it is one thing to identify the costs of corruption or even divide them into particular categories! The main question remains the burden of who are these consequences and does anyone really care about those damages of corruption?! Unfortunately, the answer is to be found by the poorest stratum of society, unveiled from the hand of their government and ignored from the hammer of justice!

"*Corruption is not a victimless crime*" - this mantra is used frequently by anti-corruption NGOs, government officials and even judges from around

the world. Yet victims of corruption are rarely represented in court proceedings, rarely consulted about corruption investigations, and even more rarely compensated (Hawley, 2016). Indeed, corruption cannot be rooted out in one big sweep. Rather fighting it is a step-by-step process, especially in countries where corruption is percept as endemic such as Kosovo. This way, ensuring effective remedies within the right on compensation for corruption victims may reveal advantages such as but not limited to:

Decrease the corruption dark figure through increasing the willingness of victims to report corruption;

1. Establishing financial penalties that are commensurate with corruption;
2. Circumvention of the possibility for reusing benefits from corruption, and
3. Increasing the responsibility of the state on corruption issues.

Throughout this research, it shall be enlightening that justly attention on the victims of corruption is equal with "striking corruption by its roots".

6. FACES OF CORRUPTION VICTIMS: HOW TO IDENTIFY THEM?

There is still no globally accepted definition of the victims of corruption or corruption itself. Probably because both definitions are commensurate with complex phenomena available in different forms and shapes in different places and times! Consequently, compensation of corruption victims implies the need to explore various dimensions of the issue in order to focus on the right approach of the state of how victims of corruption are defined and identified. The available legal avenues for victims of corruption, shall also determine the compensation terms as well as the parameters for assessing the suffered damage.

State parties of the UN Convention against Corruption have been able to develop some good practices in identifying the victims of corruption and parameters for their compensation. This way, they have been able to categorize the victims of corruption as following (State Parties to the UNCAC, 2017, p. 6):

1. A company as a victim
2. A shareholder as a victim

3. An unsuccessful bidder as a victim
4. A foreign state as a victim
5. Society as a victim

Corruption may have a direct or an indirect negative effect on people and it may also negatively affect a whole society. Consequently, some groups of persons may not be readily considered victims and their legal standing may be denied when they do not have a direct and specific interest. In that context, the concept of ***social damage*** should be mentioned, which exists in some jurisdictions and allows for compensation for damages to the public interest. It could include damage to the environment, to the credibility of institutions or to collective rights such as health, security, peace, education or good governance (State Parties to the UNCAC, 2017, p. 5).

Each victim of corruption is unique and has its own story to tell! It may be a natural person or a legal person, a state or even a whole society! Important is to recognize all of them as victims of corruption if they have suffered damage from a corruption act and if there is a causal link between this act and the damage. The basic principle is to place the victim as closely as possible in the position that he or she or it would have been in if the corruption act had not taken place (State Parties to the UNCAC, 2017, p. 10). However, identifying the victims of corruption will be even more challenging if we consider it as an independent procedure from common efforts against the corruption phenomena! It will be much easier to identify corruption victims if we previously specify the causes of corruption, the forms of corruption, the possible consequences as well as the legal avenues to overcome successfully this concern. Deciding on the parameters of compensation for corruption victims would be also much easier this way.

7. FRENCH REPUBLIC - COMPARATIVE ASPECTS

Compensating the victims of corruption is a civil law matter although within the criminal suit because only through criminal procedure can be enlighten if the defendant is guilty for corruption or not! Compensation on other hand remains a civil law matter, which has to comply with civil law rules. In order to address this complex situation properly and in compliance with CLCC, various legal systems have adapted various solutions. French civil law does not address *per se* (as such) com-

pensation for victims of corruption, since the civil law remedy depends on the decision arrived at under criminal law. Pursuant to art. 2 Code de Procédure Pénale (Criminal Procedure Code of France, hereinafter "CPCF"), a victim can obtain civil compensation from a criminal law court under certain conditions (Criminal Procedure Code of the French Republic, 2006, p. art. 2). This is called the "*action publique*" which is subordinate to the criminal law decision: only once a criminal offence is acknowledged, civil damages can be awarded (Jaluzot & Michaela, 2017, pp. 227-228). Of course, such civil claims can only succeed when the plaintiff is able to prove "personal and direct" damage resulting from the corruption act. Consequently, secondary victims are excluded from the scope of this rule (Jaluzot & Michaela, 2017, p. 233).

France ratified the CLCC in 2008. Therefore, it can be supposed that legal avenues in France for addressing compensation for corruption victims are compatible with the provisions of the CLCC. Probably this compliance has existed even before the ratification of the CLCC since no significant adaptions have been noticed after the ratification. Moreover, there have been at least three debates among French professionals related to significant matters of this topic. **The first issue debated on is whether a person involved in corruption could be eligible to sue for damages!** In a case handled in 1978, both parties had been involved in active and passive corruption, before a conflict arose between them. One party (who allegedly committed active corruption), first sued for payment of the agreed commissions and then claimed for compensation in relation to his loss. The Court did reject the claim while insisting that civil compensation required a personal loss (Jaluzot & Michaela, 2017, p. 234). Relying on this case, in 1992 the French criminal court ruled that even though the offence of passive corruption had been enacted mainly in order to protect the general interest, it also served to protect private persons, who may have suffered a loss as a result of having been induced to offer gifts and presents, exception in the event when the claimant has provoked the offence himself. This way the Court implied that a person involved in corruption even one who had committed some reprehensible acts, could sue for damages. Yet it did not really clarify the *locus standi*! As a result, this debate is continuing since it is still unclear who's eligible to claim compensation for a loss in France (Jaluzot & Michaela, 2017, p. 234)!

The second debate relates to vicarious liability such as employer's liability. In 2003 a bribed banker had made payments through two promissory notes when the bank should have frozen the assets of the

bankrupt. The trustee in bankruptcy sued the bank for damages, on the basis of employer's liability. The *Cour d'appel* (French Court of Appeals) held that as the agent who had received a bribe, was aware of the illegality of his act, this act had been performed outside the course of his employment, without any authorization and without him carrying out any of his legal duties as an employee of the bank. This decision was subsequently approved by the *Cour de cassation* (Court of Cassation of France) as conforming to case law on employer's liability (Jaluzot & Michaela, 2017, p. 235).

The third debate relates to the nature of injuries that qualify as damage resulting from corruption. In 2007 the town of Cannes (France) sued for damages after their mayor had been convicted of corruption. The facts of this case are as follows: the mayor had allocated a gambling license to a company without complying with legal requirements, after receiving a bribe. Consequently, the Minister of Interior revoked the authorization and refused to allocate it to any company until the legal proceedings, involving the public service delegation, had concluded. As a result, the town of Cannes could not benefit from taxes, such as the tax levied to pay an annual contribution supporting artistic effort and those taxes imposed on gambling, for the period of two years. In this case, the town acting in the capacity of a legal person, sued the bribers. The judges held that this damage was not direct damage, consequent to the corruption, but was instead the consequence of the Minister's decision to revoke and refuse a license before the legal proceedings were finalized. Therefore, this could not be considered a loss directly resulting from the infringement. On the other hand, the judges did recognize that loss of reputation qualifies as damage. This is interesting in so far as the party suffering the said loss of reputation is in fact a legal person (in this case, the town of Cannes). The town alleged that they had suffered a loss of reputation worldwide, in the context of their role as host of the prestigious film festival. The mayor of the town was the main person involved but corruption resulted from the behaviour of the defendant who had paid the bribe. In this case, damages were quantified at 100.000 Euro (Jaluzot & Michaela, 2017, p. 235). In order to ensure effective remedies for victims of corruption within the possibility on compensation for damages, it is imperative for Republic of Kosovo, among others to address properly: a) *eligibility to sue for damages from corruption*; b) *vicarious (imputed) liability* and c) *qualification of the damages resulting from corruption*. Despite the sustainable legal system, these three topics remain challenging even for

France! Republic of Kosovo shall reflect high responsibility in addressing these issues accurately.

8. UNITED KINGDOM - COMPARATIVE ASPECTS

United Kingdom has signed the CLCC on 8 June 2000 but not ratified it yet. Nevertheless, UK is one of the state parties to the UN Convention against Corruption (ratified in 2006). Moreover, UK has taken a proactive role in pushing further the issue of compensation as a mean for helping victims of corruption, in lieu with arts. 35, 53 (b) and 57 (3c) of UNCAC. On 1st June 2018, the UK's Serious Fraud Office (SFO), Crown Prosecution Service (CPS) and National Crime Agency (NCA), hereinafter as the agencies, published the "**General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases**" (Serious Fraud Office, United Kingdom, 2018). Through these general principles, UK's SFO, CPS and NCA have established a common framework to identify cases where compensation is appropriate and act swiftly in those cases to return funds to the affected countries, companies or people (Serious Fraud Office, United Kingdom, 2018). These principles commit the agencies to:

Considering compensation in all relevant cases;

1. Using whatever legal means to achieve it;
2. Working cross-government to identify victims, assess the case and obtain evidence for compensation, and identifying a means by which compensation can be repaid in a transparent, accountable and fair way that avoids risk of further corruption;
3. Proactively engage where possible with law enforcement in affected states;
4. Publish information on concluded cases.

Beyond the UNCAC, these principles are available under two (2) crucial UK legal acts: **1)** The Proceeds of Crime Act 2002 for confiscation (UK Public General Acts c. 29, 2002) and **2)** The Powers of Criminal Courts (Sentencing) Act 2000 for compensation (UK Public General Acts c.6 Part VI, 2000). The *general principles* provide that the agencies will work with other government ministries including the Department for International Development, the Foreign Commonwealth Office, the Home Office and Her Majesty's Treasury to identify potential victims overseas, asses the

case for whether compensation is appropriate and, if so, create a transparent compensation plan (Latham & Watkins Llp, 2018).

Only in cases during 2014-2018, the UK's SFO and NCA, working with the CPS, have secured £49.2 million total compensation for overseas victims (Serious Fraud Office, United Kingdom, 2018):

1. **£28.7m** of assets have been recovered by the CPS following the conviction of Mr. Ao Man Long, former Secretary of Transport and Public Works in the Macao Special Administrative Region, for corruption offences. The CPS ensured that Mr. Ao's UK-based assets – part of the US$ 100m hidden in offshore companies and over 100 bank accounts – were successfully returned to the Region's authorities.
2. **£349,000** have been paid to the Government of Kenya following SFO prosecution of senior executives at printing firm Smith & Ouzman. The funds paid for 11 new ambulances to service hospitals across the country. On 22 December 2014 Smith and Ouzman Ltd, a company specializing in printing security documents, together with its chairman, Christopher Smith and its sales and marketing manager, Nicholas Smith, were convicted at Southwark Crown Court of corruptly agreeing to make payments totalling nearly half a million pounds. These payments were used to influence the award of business contracts in Kenya and Mauritania (Serious Fraud Office, Smith and Ouzman Ltd, 2018).
3. **£4.9m** (US$ 7m) compensation has been paid to the Government of Tanzania from the Standard Bank. Standard Bank (now known as ICBC Standard Bank PLC), was the subject of an indictment alleging failure to prevent bribery contrary to section 7 of the UK Bribery Act 2010 (Serious Fraud Office, Standard Bank PLC, 2019).
4. **£4.4m** have been recovered by the SFO from corrupt oil deals in Chad which has now been transferred to the UK Department for International Development to identify key projects for investment to benefit the poorest in that country. Securing exclusive contracts with corrupt deals, Griffiths Energy bribed Chadian diplomats in the United States and Canada with discounted shares deals and 'consultancy fees' using a front company 'Chad Oil' – which was set up just five days before agreements were signed. "Chad Oil" was a vehicle used by senior diplomats at the Chadian Embassy to the United States to facilitate a deal which saw the wife of the former Deputy Chief, Mrs. Ikram Saleh purchase 800,000 shares at less

than 0.001$CAD each, later selling them for significant profit (Serious Fraud Office, 'Chad Oil' share deal, 2018).

5. **£10.9m** have been paid in form of compensation in a fourth SFO case which currently is not published for legal reasons.

The picture that emerges is that compensation for corruption victims is not straightforward, even when UK government commits to pursuing whatever legal means to achieve it. In some corruption cases made public in UK (including one involving Rolls Royce), no compensation was provided for the victims, for two main related reasons: First, the cases were "too complex" involving bribes paid across multiple jurisdictions, and, second, it was not obvious who the victims were (Stephenson, 2018). This way it can be concluded that UK has established some good practices related to the compensation of the victims of corruption (countries, companies or people). Nevertheless, at least two challenges remain to be overcome:

1. Cases involving corruption activities across multiple jurisdictions (transnational corruption) and
2. Identification of the victims of corruption as well as qualification and quantification of the damage occurred.

The second challenge reveals issues on which every day better practices are being recorded from UN, CoE and even UK itself. The first challenge on other hand (transnational corruption), unleashes an everyday growing concern. This prototype of corruption is attached with globalization so it is an inevitable issue to deal with. Moreover, transnational corruption can happen in public or private sector, including countries, companies, people, civil society, international organizations and more! As about the Kosovo, it is indisputable that important lessons can be learned from the UK's commitment towards corruptions victims and the good practices during 2014-2018. However, just as many lessons shall be learned from the UK's current challenges on these matters such as transnational corruption.

CONCLUSIONS

Corruption is not a victimless crime! It can extend its hands in public and private sector. It can grab the throat of officials from the government, the parliament, the justice system, procurement system, social

society, media, universities or even representatives of the private sector. Corruption can damage the environment, the credibility of institutions and harm collective rights such health, security, peace, education or good governance. Consequently, the victims of corruption are one of the main issues to deal with! Ensuring effective remedies within the right on compensation for corruption victims can have advantages such: **a)** *Decrease the corruption dark figure through increasing the willingness of victims to report corruption*; **b)** *Establishing financial penalties that are commensurate with corruption*; **c)** *Circumvention of the possibility for reusing benefits from corruption*; and **d)** *Increasing the responsibility of the state on corruption issues*. Defining and identifying the victims of corruption is challenging as well. This because each victim of corruption is unique and has its own story to tell! It may be a natural person or a legal person, a state or even a whole society! Yet, it is important to recognize all of them as victims of corruption if they have suffered damage from a corruption act and if there is a causal link between this act and the damage. The basic principle is to place them as closely as possible in the position that they would have been in if the corruption act that caused the damage had not taken place. Just attention on the victims of corruption is equal with "striking corruption by its roots". The Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption. Its purpose is for state parties to provide in their internal law for effective remedies for persons who have suffered damage because of corruption acts, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. Kosovo is not a party to CLCC or UNCAC. Nevertheless, the spirit of the Constitution of Kosovo requires that Kosovo shall respect international law within the CLCC and the UNCAC. Unfortunately, the current legal framework in Kosovo does not include a proper law, which would be compatible to them. Compensation for victims of corruption is a complex procedure corresponding to the complexity of corruption itself. Hence, several issues need to be properly addressed including but not limited to the *eligibility to sue for damages from corruption*, *identification of the corruption victims*, *qualifying and quantifying damages of corruption*, *vicarious (imputed) liability* and *cases involving corruption activities across multiple jurisdictions (transnational corruption)*. Countries such France and United Kingdom have showed good practices while pushing further these matters regarding compensation of corruption victims. Indeed, these experiences could be of a great value for the Republic of Kosovo.

REFERENCES

1. Corruption Watch Annual Report 2019. (2020). *The writing is on the wall.* South Africa: Corruption Watch (member of Transparency International).
2. Council of Europe. (1950, Rome). *Convention for the Protection of Human Rights and Fundamental Freedoms.* Retrieved August 9, 2020, from Council of Europe: https://www.echr.coe.int/Documents/Convention_ENG.pdf
3. Council of Europe. (1997, November 6). *Council of Europe Committee of Ministers.* Retrieved August 8, 2020, from Resolution (97) 24 on the 20 Guiding Principles for the fight against Corruption (Principle no. 17): https://rm.coe.int/16806cc17c
4. Council of Europe. (1999, Strasbourg, November 1). *Civil Law Convention on Corruption .* Retrieved August 6, 2020, from Council of Europe European Treaty Series no. 174: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f3f6
5. Council of Europe. (1999, Strasbourg). *Explanatory Report to the Civil Law Convention on Corruption.* Strasbourg: Council of Europe.
6. Council of Europe, Treaty Office. (n.d.). *Details of Treaty no. 174*. Retrieved August 9, 2020, from Council of Europe - Treaty Office: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/174
7. Criminal Procedure Code of the French Republic. (2006). *Criminal Procedure Code of the French Republic, english version.* Retrieved August 9, 2020, from Legislationline: https://www.legislationline.org/documents/section/criminal-codes/country/30/France/show
8. European Commission. (2019). *Kosovo 2019 Report.* Brussels: European Commission.
9. Fazekas, M. &. (2017). *Corruption risk assessment of the public procurement in Kosovo.* Action against Crime Departament, Economic Crimeand Cooperation Division, Council of Europe. Strasbourg: Council of Europe.
10. Hawley, S. (2016). *Compensation for victims of corruption: Why does it matter?* . (Corruption Watch and UNCA Coalition Civil Society) Retrieved August 8, 2020, from Corruption Watch and UNCA Coalition Civil Society: https://uncaccoalition.org/compensation-for-victims-of-corruption-why-does-it-matter/
11. Insajderi. (2020, May). *Kush po e keqpërdor arkën e shtetit në kohë pandemie?* Retrieved August 8, 2020, from Insajderi: https://insajderi.com/kush-po-e-keqperdor-arken-e-shtetit-ne-kohe-pandemie/
12. Jaluzot , B., & Michaela, M. (2017). Civil Law Consequences of Corruption and Bribery in France. (N. V. O. Meyer (dir.), Ed.) *HAL archives-ouvertes.fr, The Civil Law Consequences of Corruption*.
13. Latham & Watkins Llp. (2018, June 18). *UK to Provide Compensation for Overseas Victims of Economic Crimes*. Retrieved August 9, 2020, from Latham & Watkins Llp,

Latham.London – Dispute Resolution: https://www.latham.london/2018/06/Uk-To-Provide-Compensation-For-Overseas-Victims-Of-Economic-Crimes/

14. Ministry of Health of the Republic of Kosovo. (2020, August 26). *kosovo.health*. Retrieved August 26, 2020, from Ministria e Shëndetësisë: https://kosova.health/

15. Official Gazette of Republic of Kosovo. (2008). *Constitution of the Republic of Kosovo.* Retrieved August 8, 2020, from Official Gazette of Republic of Kosovo, Act No. K-09042008: https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702

16. Official Gazette of Republic of Kosovo no 17/2015. (2015). *Law no. 05/L-036 on Crime Victim Compensation.* Retrieved August 8, 2020, from Official Gazette of Republic of Kosovo no 17/2015: https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936

17. Official Gazette of Republic of Kosovo no 37/2012. (2012). *Code no. 04/L-123 Criminal Procedure Code of Republic of Kosovo.* Retrieved August 8, 2020, from Official Gazette of Republic of Kosovo no 37/2012: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861

18. Official Gazette of Republic of Kosovo No. 16/2012. (2012). *Law no. 04/L-077 on Obligational Relationships.* Retrieved August 9, 2020, from Official Gazette of Republic of Kosovo No. 16/2012: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2828

19. Serious Fraud Office, 'Chad Oil' share deal. (2018, March 22). *SFO recovers £4.4m from corrupt diplomats in 'Chad Oil' share deal*. Retrieved August 7, 2020, from Serious Fraud Office (United Kingdom), Case Information: https://www.sfo.gov.uk/2018/03/22/sfo-recovers-4-4m-from-corrupt-diplomats-in-chad-oil-share-deal/

20. Serious Fraud Office, Smith and Ouzman Ltd. (2018, October 15). *Serious Fraud Office, Smith and Ouzman Ltd*. Retrieved August 9, 2020, from Serious Fraud Office (United Kingdom), Case Information, : https://www.sfo.gov.uk/cases/smith-ouzman-ltd/

21. Serious Fraud Office, Standard Bank PLC. (2019, September 3). *Serious Fraud Office (United Kingdom), Case Information*. Retrieved August 7, 2020, from Serious Fraud Office, United Kingdom: https://www.sfo.gov.uk/cases/standard-bank-plc/

22. Serious Fraud Office, United Kingdom. (2018, June 1). *General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.* Retrieved August 8, 2020, from Serious Fraud Office, United Kingdom,: https://www.sfo.gov.uk/download/general-principles-to-compensate-overseas-victims-including-affected-states-in-bribery-corruption-and-economic-crime-cases/

23. Serious Fraud Office, United Kingdom. (2018, June 1). *New joint principles published to compensate victims of economic crime overseas*. Retrieved August 9, 2020, from Serious Fraud Office (United Kingdom), News Releases: https://www.sfo.gov.uk/2018/06/01/new-joint-principles-published-to-compensate-victims-of-economic-crime-overseas/

24. State Parties to the UNCAC. (2017). Good practices in identifying the victims of corruption and parameters for their compensation https://www.unodc.org/. *Conference of the State Parties to the United Nations Convention against Corruption.* Vienna: United Nations.

25. Stephenson, M. (2018, June 5). *GAB – The Global Anticorruption Blog (Law, Social Science, and Policy)*. Retrieved August 9, 2020, from GAB – The Global Anticorruption Blog: https://globalanticorruptionblog.com/2018/07/05/guest-post-the-uks-compensation-principles-in-overseas-corruption-cases-a-new-standard-for-aiding-victims-of-corruption/

26. Transparency International. (2019). *Corruption Perceptions Index 2019 - Kosovo.* Transparency International - the global coalition against corruption.

27. Transparency International. (2020, March 31). *Corruption could costs lives in Latin America's response to the Coronavirus*. Retrieved August 7, 2020, from Transparency International - the global coalition against corruption: https://www.transparency.org/news/feature/corruption_could_cost_lives_in_latin_americas_response_to_the_coronavirus

28. Transparency International, What is corruption? (n.d.). *What is corruption?* Retrieved August 9, 2020, from Transparency International - the global coalition against corruption: https://www.transparency.org/what-is-corruption

29. UK Public General Acts c. 29. (2002). *The Proceeds of Crime Act for confiscation.* Retrieved August 8, 2020, from UK Public General Acts c. 29, Legilastion.gov.uk,: https://www.legislation.gov.uk/ukpga/2002/29/contents

30. UK Public General Acts c.6 Part VI. (2000). *The Powers of Criminal Courts (Sentencing) Act for compensation, section 130, .* Retrieved August 8, 2020, from UK Public General Acts c.6 Part VI, Legilastion.gov.uk, : http://www.legislation.gov.uk/ukpga/2000/6/part/VI/crossheading/compensation-orders

31. UN Office on Drugs and Crime. (2004). *UN Convention against Corruption.* Retrieved August 9, 2020, from UN Office on Drugs and Crime: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

32. United Nations. (1948, Paris). *The Universal Declaration of Human Rights.* Retrieved August 6, 2020, from United Nations General Assembly: https://www.un.org/en/universal-declaration-human-rights/

33. United Nations. (2019, December 9). *United against corruption for development, peace and security*. Retrieved August 7, 2020, from United Nations, International Anti-Corruption Day: https://www.un.org/en/observances/anti-corruption-day

MISDEMEANOR LIABILITY IN TERMS OF RESTRICTIONS ON FREEDOM OF MOVEMENT DURING THE STATE OF EMERGENCY

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Abstract

Pandemic of infectious disease "COVID-19" alias "corona virus" caused the proclamation of the State of Emergency in the Republic of Serbia, like in many other states worldwide. In this regard, various measures have been prescribed, which have derogated Human Rights and Freedoms guaranteed by the Constitution. Mostly, aforementioned measures have been related to the Freedom of Movement. Furthermore, ad hoc regime of Misdemeanor Liability had been introduced aiming to sanction the offenders of above-mentioned restrictions. However, it caused drastic and concrete repercussions on the legal system of the Republic of Serbia. Therefore, one should analyze relevant legal frameworks and practices in order to derive certain findings and lessons for the future.

Keywords: Human Rights, Freedom of Movement, State of Emergency, restriction, misdemeanor

1 INTRODUCTION

During 2020, State of Emergency (hereinafter: SE) had been proclaimed in Republic of Serbia (hereinafter: Serbia) by common Decision of President of the Republic, President of National Assembly and Prime Minister, while global pandemic of infectious disease "COVID-19" *alias* "corona virus" presented essential reason for its proclamation. In this regard, many measures have been introduced in order to protect

the population by derogating Guaranteed Human Rights and Freedoms (hereinafter: HR). *Inter alia*, the most interesting were restrictions related to the Freedom of Movement, as well as Misdemeanor Liability Regime (hereinafter: MLR) for offenders who did not respect aforementioned restrictions. Primarily, these were Order on Restriction and Prohibition of Movement on the territory of Republic of Serbia (hereinafter: Order) adopted by Minister of Internal Affairs and Regulation on Misdemeanor for Violation of the Order of Minister of Internal Affairs on Restriction and Prohibition of Movement on the territory of Republic of Serbia (hereinafter: First Regulation) as two interconnected legal documents. Meanwhile, both of them have been consolidated within unique Regulation on Measures during the State of Emergency (hereinafter: Final Regulation), which was, later, confirmed in form of Law on Effectiveness of Regulations adopted by Government with President of the Republic as co-signatory during State of Emergency and confirmed by National Assembly (hereinafter: LER).

Of course, proclamation of SE and accompanying restrictions of Freedom of Movement caused various reactions in public, both within layman and professionals. Therefore, the above mentioned regime must face criticism too, because it made drastic and concrete consequences in Serbian legal system. In this regard, one should analyze relevant legal framework and practice in order to derive certain findings, as well as lessons for the future.

2 SE AND HR - GENERAL REMARKS AND RELATION

Generally, SE is regulated by the Constitution, while the National Assembly (hereinafter: NA) is primarily competent for its proclamation. Concretely, it has been proclaimed by common Decision of President of the Republic, President of NA and Prime Minister that is allowed by Constitution too, but aforementioned mode caused a lot of controversies. Even before, so-called regular parliamentary elections had been called, which made additional confusion. In this regard, one may ask whether NA existed in that moment, as well as whether the above mentioned mode of SE`s proclamation was the only possible. Usually, so-called regular parliamentary elections are called 90 days before the end of the concrete term of office of the NA, but a new parliamentary term of office will be constituted by confirmation of two thirds of Representatives when, simultaneously, will end the previous session of NA. On the

other side, the Constitution is more specific in terms of NA`s dissolution, which does not, *per se*, result in termination of existing NA`s session,[1] because it could perform current and urgent tasks until the constitution of new one. Moreover, its full competence would be reestablished in case of SE`s proclamation and would last until the end of concrete SE. Thus, calling for regular parliamentary elections cannot cause the end of the existing NA`s term of office, while such a parliament would have, pretty much, undefined maneuver space for work and deciding.

On the other side, SE could be proclaimed when the survival of the state or its citizens is threatened by a public danger. Namely, these are circumstances that go beyond the capabilities of their regulation within an ordinary legal regime and require certain changes in the functioning of the entire legal system of concrete state (Jovičić 2015, 164-70). Some authors pointed out that aforementioned indeterminate terms contained in relevant constitutional provision create ground for various abuses.[2] In a concrete case, NA could proclaim SE, but characteristics of the above mentioned infectious disease had been a crucial reason for not convocation.[3] Briefly, it implies presence of majority of Representatives, because Decision of Proclamation of SE enact by means of majority votes of all Representatives, while employees of the NA`s Service should be present too in order to perform other, necessary, activities. Therefore, the health of aforementioned people could be very infringed, which probably presented the main reason for SE`s proclamation in subsidiary manner, more precisely by common Decision of President of the Republic, President of NA and Prime Minister.

For sure, a key challenge in SE is the suspension of certain HR. Serbia is based on HR, while the Constitution devotes particular attention to aforementioned categories too, regardless of certain opinions in literature according to which they are regulated in an unsystematic and blowzy manner in the supreme legal act.[4] Also, many multilateral international contracts related to the HR have been concluded, such as International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, etc. In this regard, there are numerous control mechanisms regarding meas-

1. Many authors support the aforementioned standpoint. More about: Marković 2006, 18; Petrov 2007, 169; Orlović 2011, 502.
2. More about: Marković 2006, 37-8; Jovičić 2015, 170.
3. Constitutional Court (hereinafter: CC) in its Decision confirmed that SE had been proclaimed according to the Constitution. More about: Decision of the Constitutional Court of the Republic of Serbia IUO No. 42/2020.
4. More about: Marković 2006, 11-3; Simović, and Stanković, and Petrov 2018, 285-6.

ures that suspend certain HR during SE. Primarily, aforementioned measures are time-limited, as well as in their scope, since they can be permitted, only, to the extent deemed necessary in both aspects. Moreover, HR that are exhaustively enumerated, *e.g*. Right to Life, Right to Fair Trial, Legal Certainty in Criminal Law, etc., cannot be derogated at all during SE. Furthermore, additional control exists in case of proclamation of SE on above mentioned subsidiary manner. Briefly, Regulation with certain measures that derogate HR can be valid, only if it contains the signature of the President of the Republic too (Pajvančić 2007, 27), which is an exception from ordinary Regulation`s regime.[5] Also, there is parliamentary control too, since the Government is obliged to submit the aforementioned type of Regulation to be verified by NA within prescribed deadlines or as soon as it is in position to convene. Anyhow, measures providing for derogation from HR would cease to be effective, *ex Constitutionae*, upon ending of the SE.

3 MISDEMEANOR LAW - BRIEF OVERVIEW

In Serbian legal system, misdemeanor presents one of punishable actions,[6] while officially it is defined as unlawful culpably committed act that is stipulated as misdemeanor by Law or other general legal acts with a misdemeanor sanction. Mostly, this is a complex category that is consist of two separated parts - substantive and penal according to which first one presents a description of the misdemeanor act and second one is consist of penalty, although there are examples in which substantive part is repeated within the penal part (Vuković 2016, 40). Competence for prescribing misdemeanors is divided between Central State (hereinafter: CS), Autonomous Provinces (hereinafter: AP) and Local Self Government Units (hereinafter: LSGU). Formally, they can be prescribed in Law or Regulation on CS level or by Decisions of other aforementioned decentralized territorial units. However, above mentioned classification have further implications, particularly in terms of spatial applicability of concrete misdemeanors and method of prescribing penalties. Namely, application of the first one is unique for the overall State, while others will apply in concrete AP or LSGU. Furthermore, prison sentence as the heaviest penalty may be prescribed, only, by Law that relates, just, on misdemeanors prescribed by CS, since NA

5. More about: Stevandić 2012, 413-5.
6. More about: Vuković 2016, 34-7.

as supreme Serbian representative body is competent for enacting of Laws. So, AP or LSGU cannot prescribe misdemeanors with prison sentences by their Decisions, which refers to CS in situations when prescribes misdemeanors by Regulation too.

Anyhow, above mentioned proceedings may be initiated by various legal entities, while Magistrates Courts (hereinafter: MC) in first instance and Magistrate Court of Appeal (hereinafter: MCA) in second instance are deciding.[7] Formally, it is initiated by Motion to Institute the Misdemeanor Proceeding (hereinafter: MIMP) or by disputing the Order for Misdemeanor (hereinafter: OM). Briefly, defendant may dispute issued OM within a certain deadline and, *per se*, initiate proceeding before relevant Magistrate Court regarding its misdemeanor liability in a concrete case,[8] while MIMP may be submitted by Authorities or Injured Party (hereinafter: IP). However, Authorities are in privileged position, since initiating of certain type of misdemeanor proceedings, *e.g.* Taxes, Traffic Safety or Customs, is under exclusive competence of relevant Authorities, while in some others there is no IP, because misdemeanor protection refers on some abstract values such are nature, environment, etc. Even more, IP`s position is limited additionally and it can initiate misdemeanor proceeding, only, if some of relevant Authorities, previously, failed to initiate aforementioned type of legal protection. On the other side, there is further classification and certain hierarchy among Authorities, since the Public Prosecutor`s Office (hereinafter: PPO) is on the top of "pyramid". *Per legem*, PPO prosecutes all perpetrators of punishable actions including misdemeanors too[9] and other Authorities are obliged to inform relevant PPO in case if they submit MIMP regarding misdemeanor with prescribed prison sentence in order to relevant PPO, definitely, decides on taking over of concrete misdemeanor prosecution. Pretty much, they have the same position in misdemeanor pro-

7. Recently, public procurements were outside of court`s jurisdiction in certain sense. Legislator opted for *sui generis* combined approach according to which Republic Commission for Protection of Rights in Public Procurement Procedures as independent institution performed and decided in first instance on misdemeanor proceedings within aforementioned legal area, while its decisions could be challenged by appeal before High Magistrate Court that was, later, renamed in Magistrate Court of Appeal. Meanwhile, full court`s jurisdiction has been established within above mentioned legal area, since Magistrate Courts became competent for deciding in first instance in cases related to public procurements.

8. Some authors emphasize its paradoxical legal nature. More about: Delić, and Bajović 2018, 235-6; Savić 2014, 26.

9. Misdemeanor proceeding can initiate every Public Prosecutor (hereinafter: PP) or Deputy of Public Prosecutor (hereinafter: Deputy) starting from Republic PP as the highest one until Deputy of Basic PP as the lowest one in public prosecutorial hierarchy, even regardless on territory for which they were established. More about: Delić, and Bajović 2018, 181.

ceeding, but there are certain exceptions that, exactly, emphasize PPO`s primacy. Also, participation of other Authorities would depend on the type of concrete misdemeanor proceeding. For instance, Ministry of Internal Affairs (hereinafter: MIA) is competent to initiate misdemeanor proceedings related to the Traffic Safety, while Tax Administration or Customs Administration initiate misdemeanor proceedings in aforementioned legal areas, etc., which means that incompetent Authority cannot initiate misdemeanor proceeding in legal area which is outside of its supervision (Vuković 2016, 152).

At last, offenders would face various misdemeanor sanctions. Initially, one has to distinguish minors from other offenders, because they are in specific positions regarding misdemeanor sanctions. Namely, minor presents a natural person who had between fourteen and eighteen years at time when he/she committed a concrete misdemeanor, while relevant law makes further distinction among young minors as persons between fourteen and sixteen years and older minors as persons between sixteen and eighteen years.[10] In this regard, re-education measures such as reprimand; special obligations and increased supervision are immanent for minors, although other misdemeanor sanctions may be imposed on them under certain restrictive conditions.[11] Oppositely, other natural persons, entrepreneurs and legal persons can be sanctioned with penalties and with other misdemeanor sanctions such as warning and etc., depending on type of concrete misdemeanor. Serbian legal system recognizes following misdemeanor penalties: prison sentence, community service and fine prescribing their limits too, but all of them can be mitigated to the general minimum and, even, replaced with some other milder penalty, also, to its general minimum. For instance, relevant courts may impose community service or fine instead of prison sentence, as well as opt to impose just one of them instead of both. Anyhow, fine is the most present penalty, since many misdemeanors predict only the aforementioned penalty or it is combined with other penalties in an alternative or cumulative manner. Of course, unpaid fine may be substituted, entirely or partially, by some other penalties, but it does not diminish its extraordinary status in Serbian misdemeanor law. Moreover, aforementioned substitution refers to natural persons and

10. Person under fourteen years is defined as a child and misdemeanor proceeding cannot be conducted against him/her. In such a kind of situation, some other persons would be liable such as parents, adopters or guardians due to failure to exercise supervision.

11. Concretely, young minors can be sanctioned, only, by re-education measures, but precautionary measures may be imposed on aforementioned types of offenders too. On the other side, penalties, precautionary measures and penalty points may be imposed on older minors, as well as re-education measures that are not obligatory for such kind of offender unlike for young minors.

entrepreneurs,[12] not to legal persons too, while generally it would not be carried out if a fine is paid in the meantime regardless of the type of concrete offender.

4 *AD HOC* MISDEMEANOR LIABILITY REGIME - CONTROVERSIES

Before proclaiming SE, Serbian legal system lacked an adequate misdemeanor within relevant general legal acts that could sanction breach of measures prescribed in order to protect the population from infectious diseases. *Inter alia*, it was one of the main reasons for introducing the MLR related to disrespect of restrictions related to the Freedom of Movement during SE. Initially, the aforementioned regime had been predicted within Order and First Regulation as two interconnected legal documents, since first one described the misdemeanor act, while second one consisted of a penalty. Meanwhile, both of them have been consolidated within a unique legal document-Final Regulation. In essence, these were legal and legitimate measures, but confirmation in form of LER was very disputable in terms of constitutionality. Namely, legislators opted for an ultra-active approach[13] according to which natural persons as offenders could be prosecuted until the end of the prescribed period for statute of limitation regardless of the ending of SE. Presumably, crucial reason for its implementation was circumstance that prescribed deadlines for appeals against MC`s decisions had been stopped until the ending of SE according to the Regulation on Deadlines within Judicial Proceedings during the SE, which means that in regular situation concrete misdemeanor would not exist anymore in Serbian legal system upon ending of the SE and all offenders, *per se*, would not be sanctioned. However, was there a better and more consistent solution? For instance, NA could amend Law on Protection of Population from Infectious Diseases (hereinafter: LPPID) urgently by prescribing relevant misdemeanors that would present a consolidated version of

12. Entrepreneur is an officially registered natural person that performs certain economic activity with typical characteristics for all business entities, but it is responsible with its personal property for rights and obligations acquired within registered economic activity. Also, it is liable for misdemeanor committed in performing its registered economic activity if misdemeanor liability has been predicted for the aforementioned type of offender. Furthermore, cessation of entrepreneurship has no impact on misdemeanor proceeding, since it would be start or carry on against a natural person as a founder of a concrete entrepreneur. Stefanović 2017, 181-3; Delibašić 2008, 159.

13. More about: Jovičić 1977, 196-7.

all existing ones within MLR. Of course, all arguments that have been stated in terms of non-proclamation of SE in primary manner could refer in this case too, but on the other side it would be the most rational and effective solution that would eliminate many dilemmas and problems starting from ultra-activity and etc. Finally, a similar version of the above-mentioned misdemeanor has been prescribed within LPPID in the meantime, while the circumstance that it happened upon the ending of SE presents a crucial argument for its characterization as an *ad hoc* category.

Also, there were a lot of controversies related with publicity, although all above mentioned general legal acts, as well as their further changes had been published in relevant official gazette and followed up by publishing in various forms of public information. However, their frequency on a daily basis was very confusing for citizens. Certainly, it was necessary taking into account unknowns related to the concrete infectious disease and variable epidemical situation, but it could be problematic regarding some of fundamental legal principles such as legality, certainty, etc. Besides, one may note very controversial terminology too. Namely, the title of First Regulation is problematic, because it digresses from official methodology according to which title has to be short in order to summarize matters of regulation in the simplest manner. Oppositely, the aforementioned one within its title contained the full title of another legal document - Order, which is an unreasonable gesture. Even more, the presence of term "prohibition" within both by-laws was redundant and technically wrong, because the Constitution allows only restrictions on Freedom of Movement, not its prohibition. In essence, these were restrictions too, while the above-mentioned notion should not be understood literally or interpreted in some autonomous sense, since its role was to emphasize quantitative and qualitative character of concrete restrictions.

Furthermore, both by-laws derogated Legal Certainty in Criminal Law in a flagrant manner by prescribing that offenders could be prosecuted and sentenced both within misdemeanor and criminal proceedings before relevant courts to the same punishable act. Namely, this is one the most important HR and procedural (*ne bis in idem*) principle that is contained in national and many international legal documents, which cannot be derogated, even, during SE (Mrvić, Petrović 2014, 31). In practice, aforementioned situations are not unusual and they happen on an individual level within a concrete case, while they mostly present the consequence of the legal chaos, as well as carelessness of lawmak-

ers in order to raise efficiency of the legal system (Josipović, and Novak, Hrgović 2016, 486). Anyhow, the completion of one proceeding would result with dismiss of another, although Law on Misdemeanors (hereinafter: LM) predicts additional *ex ante* mechanism to strengthen the respect of *ne bis in idem* principle by prescribing the obligation to indicate, even, within MIMP whether against concrete offender has been initiated already any kind of proceeding before relevant courts to the same punishable act (Delić, and Bajović 2018, 248; Vuković 2016, 146). However, worldwide there was not such general, systematic and obvious violation of the above-mentioned HR by the lawmaker, which necessarily provoked CC`s intervention that confirmed its unlawfulness.[14] Meanwhile, one should trust that judges, parties and other relevant authorities did not apply the above-mentioned provision and allow more than evident violation of invulnerable HR.

At last, one cannot neglect certain logistic and procedural issues that could be rearranged in a better manner too. Mostly, the aforementioned misdemeanor proceedings had been initiated by the MIA, while some of them initiated PPO, but always by submitting MIMP against natural persons to the relevant MCs. Moreover, many offenders had been brought directly before the judge immediately after discovery in breaching the above-mentioned restrictions, as well as sanctioned by fine or warning as the mildest misdemeanor sanction for natural persons, except minors that had been sanctioned by adequate re-education measures. However, one should mention that main goal and purpose of the prescribed measures had been to limit human contact in order to protect the population from infectious diseases by closing people in their homes and moving them from the "street" within prescribed periods of time, while sanctioning of violators was just the most repressive instrument of their implementation. So, it cannot be said that the above-mentioned method could be characterized as effective and rational, because it implied a lot of human contact, at least, between offenders, police officers, judges, court staff, etc., as well as waste of time, energy and costs to carry out of needless procedure for more or less obvious misdemeanor that was very easy to discover. Therefore, issuing the MO presented the best possible solution regardless of minors that cannot be prosecuted and sanctioned on aforementioned manner at all. Namely, it is very efficient instrument of sanctioning of the simple misdemeanors (Savić 2014, 24), which can be further qualified as alternative and mutually agreeable mode of resolving misdemeanor matters between

14. More about: Decision of the Constitutional Court of the Republic of Serbia IUO No. 45/2020

relevant authorities and offenders without conducting of misdemeanor proceeding before MCs (Delić, and Bajović 2018, 226). Briefly, MO is issued in written form for easily provable and, more or less, obvious misdemeanors that are sanctioned only by fine in a fixed amount. In this regard, offender has option to accept responsibility by paying half of the prescribed fine or to initiate misdemeanor proceeding before the relevant MC in case of non-acceptance of responsibility within a prescribed period of time, which entails potentially payment of prescribed fine in total amount in case of determination of its responsibility regardless that the MC can mitigate aforementioned penalty to the general minimum or, even, replaced with some other milder misdemeanor sanction too. Also, offenders` inertia to react on issued MO within a deadline causes the paying of prescribed fines in total. Therefore, the aforementioned regime should be based on issuing MOs to the offenders who breached the above-mentioned restrictions during SE except on minors. First of all, human contact would be at a much lower level and, mostly, localized between employees in relevant authorities and offenders who would be carried out to its residence after completion of following procedure. Furthermore, offenders would have the opportunity to pay a prescribed fine in lower amounts in cases of acceptance of responsibility within the appropriate deadline or to initiate misdemeanor proceeding in opposite cases with all consequences. Finally, overall cost would be lower and MCs in a much more relieved position too.

CONCLUSION

Pandemic of infectious disease "COVID-19" presented a crucial reason for proclamation of SE in Serbia. In this regard, many measures have been introduced in order to protect the population, but they derogated many HR too. Especially the focus has been on Freedom of Movement that was exposed to various restrictions, while MLR was the most repressive instrument of their implementation in terms of natural persons. *Inter alia*, relevant authorities initiated misdemeanor proceedings before MCs by submitting MIMP against natural persons who did not respect concrete restrictions, but they could be prosecuted for the above mentioned misdemeanors, even, upon the ending of SE until the end of the prescribed period for statute of limitation. In most of the cases, offenders have been brought before a judge immediately after discovery of misdemeanor, as well as sentenced with a prescribed fine of

warning, except minors who had been imposed by adequate re-education measures. Definitely, the aforementioned approach implied a lot of human contact, carrying out needless procedures, waste of time, energy and costs. Also, one may note obvious unlawfulness related to the flagrant violation of Legal Certainty in Criminal Law that, even, cannot be derogated at all during SE. Furthermore, there were controversies regarding ultra-activity, publicity and terminology too. Therefore, better solution should be seeking in urgent amendments of LPPID by prescribing relevant misdemeanors that would be prosecuted by issuing of MO except on minors. Moreover, it would eliminate the above-mentioned unlawfulness and simplify procedure, since offenders would have the option to pay a prescribed fine in lower amounts or to initiate misdemeanor proceeding before relevant MC in case of non-acceptance of responsibility. Finally, human contact would be reduced to a minimum, while overall cost would be lower and MCs in a much more relieved position too.

REFERENCES

1. Delić, Nataša, and Bajović, Vanja. 2018. *Priručnik za prekršajno pravo*. Belgrade. Službeni glasnik;
2. Delibašić, Tomica. 2008. *Praktična primena Zakona o prekršajima - pravna shvatanja kaznenog prava sa komentarom*. Belgrade. Službeni glasnik;
3. Jovičić, Jelena. 2015. "Položaj parlamenta za vreme vanrednog i ratnog stanja u ustavnom sistemu Republike Srbije." *NBP. Nauka, bezbednost, policija No*. 1/2015;
4. Jovičić, Miodrag. 1977. *Zakon i zakonitost*. Belgrade. Radnička štampa;
5. Josipović, Ivo, and Novak, Hrgović Karmen. 2016. "Načelo *ne bis in idem* u kontekstu prekršajnog, kaznenog i upravnog prava." *Hrvatski ljetopis za kaznene znanosti i praksu No*. 2/2016.
6. Marković, Ratko. 2006. "Ustav Republike Srbije iz 2006. - kritički pogled." *Anali Pravnog fakulteta u Beogradu No*. 2/2006;
7. Mrvić, Petrović Nataša. 2014. "Poštovanje načela *ne bis in idem* pri suđenju za različite prekršaje i krivična dela." *NBP. Nauka, bezbednost, policija No*. 2/2014;
8. Orlović, Slobodan. 2011. "Narodna skupština Srbije i Evropski parlament - jedno ustavnopravno poređenje." *Zbornik radova Pravnog fakulteta u Novom Sadu No*. 3/2011;
9. Pajvančić, Marijana. 2007. "Dinamičke kompetencije državne vlasti - osvrt na novi Ustav Republike Srbije." *Zbornik radova Pravnog fakulteta u Novom Sadu No*. 1-2/2007;

10. Savić, Sunčica. 2014. "Prekršajni nalog." *Pravni informator No*. 3/2014;

11. Simović, Darko, and Stanković, Marko, and Petrov, Vladan. 2018. *Ljudska prava*. Belgrade. Faculty of Law at the University of Belgrade;

12. Stefanović, Zlatko. 2017. *Komentar Zakona o privrednim društvima*. Belgrade. Službeni glasnik;

13. Stevandić, Danilo. 2012. "Uredbe u pravnom poretku Republike Srbije." *Pravni zapisi No*. 2/2012;

14. Vuković, Igor. 2016. *Prekršajno pravo*. Belgrade. Faculty of Law at the University of Belgrade;

15. Constitution of the Republic of Serbia 2006;

16. Law on Effectiveness of Regulations adopted by Government with President of the Republic as co-signatory during State of Emergency and confirmed by National Assembly 2020;

17. Law on Misdemeanors 2013;

18. Law on Protection of Population from Infectious Diseases 2016;

19. Law on Ratification of European Convention for the Protection of Human Rights and Fundamental Freedoms 2003;

20. Law on Ratification of International Covenant on Civil and Political Rights 1971;

21. Regulation on Deadlines within Judicial Proceedings during the State of Emergency 2020;

22. Regulation on Measures during the State of Emergency 2020;

23. Regulation on Misdemeanor for Violation of the Order of Minister of Internal Affairs on Restriction and Prohibition of Movement on the territory of Republic of Serbia 2020;

24. Order on Restriction and Prohibition of Movement on the territory of Republic of Serbia 2020;

25. Decision of the Constitutional Court of the Republic of Serbia IUO No. 42/2020 from 22 May 2020;

26. Decision of the Constitutional Court of the Republic of Serbia IUO No. 45/2020 from 28 October 2020.

PROCEDURAL RIGHTS OF SUSPECTS AND ACCUSED PERSONS IN THE TIME OF THE COVID-19 PANDEMIC

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Abstract

With the COVID-19 outbreak, almost all countries in the world have prioritized health above all. In the criminal-justice context, a series of serious questions arise about how the state should prioritize the response to this global pandemic. The coronavirus outbreak has led to a global public health emergency that has affected on healthcare system, educational system, the economy and on criminal-justice systems in the states all over the world. This global pandemic has an immediate impact on judicial cooperation in criminal matters, but also this crisis has an impact on the exercise of procedural rights of suspects and accused persons. Many of these persons in this period of global pandemic have not been brought to court, the only place where can be decided about their rights and where can be sanctioned possible violation of the law. As a result of the coronavirus outbreak, national prison administrations are under serious pressure to limit the impact of the coronavirus on the closed and vulnerable prison environment. Measures to avoid spreading the virus include the temporary suspension of all family visits of accused persons and their contacts with outside world. Although we live in an era of global connectivity, thanks to modern information and communication technologies, however, in the judiciary things are not so simple. Direct communication with lawyers or with third persons, while the suspects or accused persons are deprived of liberty, is more difficult. The use of audio and video communication or other remote tools is encouraged in this situation. In times of pandemic, the procedural ri-

ghts of suspects and accused persons need to be respected to ensure fair proceedings and access to justice. Limited derogation's, if they are prescribed in the positive legislation, should be interpreted restrictively by the competent authorities, but should not become rules.

Keywords: procedural rights, criminal proceedings, suspects and accused persons, rule of law, pandemic.

1. DOES COVID-19 HAVE CHANGED CRIMINAL LAW AND CRIMINAL PROCEDURAL LAW?

The coronavirus pandemic is an extraordinary event. The undoubted fact is that the COVID-19 pandemic limited some of most important human rights and fundamental freedoms in democratic societies all around the world. Many countries have imposed strict restrictions to prevent the spread of the coronavirus. Limits on freedom of expression have been imposed in order, allegedly, to prevent information disorder. Different cases concerning human rights violations in times of the pandemic might arise in the future before the courts.

The coronavirus has brought forth a crisis, which does not stop at borders and affects all areas of our life. The justice sector is not an exception in this regard. Criminal justice and public prosecution offices are also impacted by the protective measures taken nationwide to prevent the spread of the new coronavirus SARS-CoV-2.

The COVID-19 outbreak also has an impact on the exercise of procedural rights of suspects and accused persons. Direct communication with lawyers, interpreters or with third persons (while the suspects or accused persons are deprived of liberty) is more difficult. The use of audio and video conferencing or other remote tools is encouraged. In addition, safety measures should be adopted, such as glass protections at police stations or in detention facilities, in order to enable the exercise of the right of access to lawyer or the right to an interpreter.

Also, in times of COVID-19 pandemic, the procedural rights of suspects and accused persons need to be respected in order to ensure fair proceedings. Limited derogations, which are provided for by the directives, if there are imperative requirements, should be interpreted restrictively by the competent authorities and not be employed on a large scale.

The COVID-19 pandemic has already had and will continue to have an impact on criminal procedure and criminal trials to an extent that is currently difficult to assess. One thing is certain: COVID-19 pandemic has changed criminal law and criminal procedural law.

2. WHAT WILL THE LONG-TERM IMPACT OF COVID-19 PANDEMIC BE ON THE CRIMINAL JUSTICE SYSTEM?

With the global pandemic, the world has prioritized health, and rightly so. But in the criminal-justice context, there are serious questions about how the state should prioritize the response. Criminal justice systems were in crisis long before this global pandemic caused by the new coronavirus SARS-CoV-2. The coronavirus has led to a global public-health emergency that has affected not only healthcare, education, social institutions and the economy, but also criminal-justice systems all over the world.

As the COVID-19 crisis continues, we are already seeing its direct impact on the criminal justice system. The question is: what will the long-term impact of this pandemic be on the criminal justice system?

Courts and the justice system generally, have ultimately become inaccessible. This kind of situation requires appropriate mechanisms that should enable access to justice in these specific times.

These kinds of situations can lead to despotism and abuse of human rights, because in such situations where self-restraint is expected with no oversight, there is a high possibility that those implementing the well-meaning guidelines will go overboard. This poses a real danger, as it enables the possibility of compromised judicial ethical behaviour. This pandemic calls for constant reflection on the internationally agreed upon judicial ethical standards that should be applied to suit the current challenges if, indeed, any high ethical standards are to be maintained. (J. H. P. Adonyo, 2020)

The urgent and unprecedented threat of coronavirus has required immediate action across the justice system. The COVID-19 pandemic has put also additional pressure on a prison system. The coronavirus pandemic has impacted probation and prison services, courts and the legal professions. Even before the outbreak, court systems around the world were frequently congested and under-funded, and coronavi-

rus-related postponements and fee waivers will undoubtedly contribute to these underlying problems, which have the potential to compromise basic legal rights. Courts face a quantity-versus-quality dilemma, where delayed justice may mean no justice. It seems that for courts around the world, every 'quick fix' creates new cracks in the system.

The COVID-19 pandemic has impacted crime and illicit economies such as organized crime, terrorism, street crime, online crime, illegal markets and smuggling, human and wildlife trafficking, slavery, robberies and burglaries. The pandemic created obstacles for certain organized-criminal activities, while simultaneously providing opportunities for others. These changes could have long-term consequences. More serious offences take advantage of the health crisis by creating new crimes or increasing old ones. While some crimes (such as traffic offences, burglaries and even some forms of organized crime) have dropped, others (such as fraud, cybercrime and assault) have been on the rise during the pandemic.

Now, governments are struggling to contain the virus in places of detention, putting the lives of both people in prison and the general population at risk.

Overcrowding in prisons makes social distancing practically impossible. Many incarcerated people are already medically vulnerable to infection, and prison hygiene is often insufficient to prevent transmission. Staff and visitors who come in and out of prisons may unknowingly introduce the virus to prisoners. In response, many countries are taking action to reduce prison populations, mainly through early release of some detainees, such as the elderly, the medically vulnerable, pre-trial detainees and those already nearing the end of their sentence. Some have also granted pardons on humanitarian grounds. (Adal, 2020)

The institutional response to the pandemic and the subsequent reshaping of socio-economic norms worldwide will affect not only how criminal networks operate, but also the nature of law-enforcement efforts to counter these networks. The interaction between public order, law-enforcement capacity, human rights, rehabilitation and punishment may need to be reconsidered – now and in the post - COVID-19 world.

3. IMPACT OF COVID-19 PANDEMIC ON THE PROCEDURAL RIGHTS OF SUSPECTS AND ACCUSED PERSONS

The Coronavirus outbreak has necessitated a significant increase in the role of technology in the justice system. As a result of the COVID-19 pandemic, physical access to police stations, courts and prisons was severely restricted, non-urgent court hearings postponed and states increased the use of video-link and telephone hearings. In practice, resorting to remote justice and additional changes in policy during the COVID-19 pandemic seriously limited access to justice and defence rights, including people's ability to exercise their right to legal assistance, to obtain access to the materials in the criminal case file and interpretation services. (Fair Trials 2020)

Court closures and limited access to police stations caused delays in gaining access to case files. In many states, criminal case files are kept on paper. During the pandemic, states did not always maintain access to these files for lawyers and the suspects or accused persons. (Ibid.)

States in Europe were uneven in whether they adjusted practice to allow for submissions to the court by mail or electronically, rather than in person. Physical access to courts and police stations in many countries was either restricted or not possible at all. Many states accepted court submissions electronically or by post. (Ibid.)

But we have heard evidence that remote hearings are less satisfactory for some lay participants – for example witnesses and defendants – and vulnerable court users, especially young people or people with cognitive difficulties.

As a result of the COVID-19 pandemic and the increased risk of infection posed by direct contact, some states provided interpretation services via phone calls and video conferencing. The use of new technologies in prisons and by the probation services is a positive trend, which needs to be further evaluated. Their use allows inter alia for maintaining an acceptable level of contacts and activities in times of crisis. Also, under normal circumstances, practices like the holding of remote meetings, of educational and training activities, as well as of remote visits and contacts with families, lawyers and others should be used as a complement to normal face-to-face contacts, treatment interventions and interactions. Arguments like security, cost-effectiveness, saving time or other staff resources, in the use of such tools should be weighed against the importance of

preserving direct positive human contact and interaction between staff and offenders for helping achieve desistence from crime.

The Council for Penological Co-operation Working Group (PC-CP WG), at its 25th meeting held on 8-10 September 2020, which was attended also by representatives of the European Organisation of Prison and Correctional Services (EuroPris) and the Confederation of European Probation (CEP), points out some conclusions, key principles and recommendations in order to assist in dealing with the longer-term impact of this and similar situations in the future. Namely, in the Follow-up COVID-19 related statement by the Council for Penological co-operation working group (PC-CP WG), it is pointed out that: "Many countries have reported that pre-sentence reports were no longer prepared, the use of alternative sanctions and measures was significantly reduced or even stopped. Educational and treatment programmes have also severely suffered during this period."

The right to a lawyer in criminal proceedings is a key component of the right to a fair trial. It is enshrined in Article 47(2) of the Charter of Fundamental Rights of the European Union (the Charter), in Article 6(3)(c) of the European Convention on Human Rights (ECHR), and in Article 14(3)(b) of the International Covenant on Civil and Political Rights (ICCPR).

Direct physical presence of a lawyer is also crucial for the prevention of ill-treatment or coercion by the police.

The European Court of Human Rights (ECtHR) established that suspects have the right for their lawyer to be physically present during their initial police interviews and whenever they are questioned in the subsequent pre-trial proceedings. Such physical presence must enable the lawyer to provide assistance that is effective and practical rather than merely abstract, and in particular to ensure that the defence rights of the interviewed suspect are not prejudiced. (ECtHR, *Beuze v. Belgium*, 2018)

Article 6(3) of the European Convention on Human Rights also guarantees the right to have adequate time and facilities for the preparation of the defence. According to case law, the "facilities" provided to a person to enable them to prepare their defence include consultation with their lawyer. (ECtHR, *Campbell and Fell v. the United Kingdom*, 1984)

The right of access to a lawyer also requires that people are able to communicate confidentially with their lawyer. This right of communication also applies to people who are detained.

The opportunity for an accused to confer with their defence counsel is key to ensuring the effective exercise of the rights of the defence, and fundamental to the preparation of the defence. (ECtHR, *Bonzi v. Switzerland*, 1978)

Gaining access to case files and the ability to file submissions to the court are closely connected with many aspects of the right to a fair trial. Access to justice also means being able to file submissions to the court.

The European Court of Human Rights has found that the right to an adversarial hearing means that the defence must be given the opportunity to have knowledge of, and comment on, the observations filed and the evidence adduced by the prosecution. (ECtHR, *Brandstetter v. Austria*, 1991)

The right to have "adequate facilities" to prepare a defence must also include access to documents and other evidence, and this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. (UN Human Rights Committee, Article 14, 2017)

In order to facilitate the conduct of the defence, the accused must also be able to get copies of relevant documents from the case file and compile and use any notes taken. (ECtHR, *Rasmussen v. Poland*, 2009)

While the option of filing a paper copy of written submissions is essential for those who may not have access to internet or an electronic signature, the alternative of filing written submissions electronically is an effective and time and cost-efficient way to ensure access to justice. (Fair Trials 2020)

The COVID-19 pandemic, by allowing for more use of new technologies in the treatment and educational programmes, has granted easier access for offenders with limited resources or those living in remote areas to treatment and education interventions at little cost.

Fairness of proceedings demands that those persons who need them have access to interpretation services. Access to interpretation services enables suspects or accused persons who do not speak the language of the proceedings to understand the most fundamental aspects of the proceedings. Without the assistance of interpreter, a suspect or accused person who does not understand the language of the proceedings will not be able to receive any information, including information about their rights, reasons for their arrest, or information about the charges against them. (Ibid.)

The right to a defence encompasses the right to understand and answer questions during police questioning in custody in a manner which fully puts the accused person's version of events before the investigative authorities, so that decision-makers may consider the accused person's account prior to deciding whether to pursue proceedings or charge the person. This right is guaranteed by Article 2(1) of the Interpretation Directive, which requires that interpretation is made available without delay in all stages of criminal proceedings, including police questioning.

The ultimate goal of interpretation is not to enable the accused simply to partially understand the proceedings but to "actively participate" in them. (ECtHR, *Vizgirda v. Slovenia*, 2018)

The Council for Penological Co-operation Working Group (PC-CP WG) considers that: "There needs to be developed a strategy for dealing with the media, including appointing and training staff members responsible for public relations and for providing transparent and regularly updated information to offenders and their families on the crisis situation, including explaining what steps are being taken and the reasons behind them." (Council for Penological co-operation working group 2020)

CONCLUSIONS

The COVID-19 pandemic has affected the lives of individuals all around the globe. Every point of the system has been touched by this virus and states have taken a variety of actions to address the risks. These changes have been undertaken to protect everyone who touches the justice system, whether they are justice-involved individuals or those who work in the justice system. In these challenging times of the COVID-19 pandemic, we should all continue to focus on delivering vital judicial services to those in conflict with the law or those who would require judicial services.

In particular, states have tried to reduce involvement with the justice system and limit person-to-person interactions, whether with law enforcement, in courts, in jails and prisons, or with community supervision officers. Many of the actions highlighted in this brief were made possible because the statutory framework is already in place to support the changes.

In many countries, short-term sentences for petty crimes related to probation supervision were not executed and the files were closed due

to the pandemic. Another noticeable impact of the pandemic was the reduction of prison numbers in many countries by the use of different early release schemes or by postponing the execution of prison sentences or by replacing them with community sanctions or measures.

The greater and better use of technology in the administration of justice is an inevitable trend, and the current pandemic may have significantly pushed the digitalization process much forward, leading to more e-mediation, e-arbitration, online courts etc.

It is vital that all changes which were made in legislation as a result of the COVID-19 pandemic, whether technological, procedural or more fundamental, to be subject to rigorous evaluation in the period after stabilization or after the final end of the corona pandemic. Also, it is important that the legal professions are in good shape to deal with the increase in demand for legal advice and representation that is on the horizon.

Arbitrators, judges, counsels, parties, arbitration institutions and courts should prepare themselves to such evolution and make best efforts to facilitate the just resolution of disputes as quickly, inexpensively, and efficiently as possible.

REFERENCES

1. Adal Laura. 2020. 'Pandemic and punishment'. Available at: https://globalinitiative.net/analysis/pandemic-and-punishment/
2. Council of Europe. 2020. Follow-up COVID-19 related statement by the Council for Penological
3. co-operation working group (PC-CP WG). Available at: https://rm.coe.int/pc-cp-2020-10-e-follow-up-to-pc-cp-wg-statement-covid-19/16809fba60
4. ECtHR, *Beuze v. Belgium*, App. No. 71409, Judgment of 9 November 2018, para. 134.
5. ECtHR, *Campbell and Fell v. the United Kingdom*, App. Nos. 7819/77 7878/77, Judgment of 18 June 1984, para. 99.
6. ECtHR, *Bonzi v. Switzerland*, App. No. 7854/77, Commission Decision of 12 July 1978.
7. ECtHR, *Brandstetter v. Austria*, App. Nos. 11170/84 12876/87 13468/87, Judgment of 28 September 1991, para. 67.

8. ECtHR, *Rasmussen v. Poland*, App. No. 38886/05, Judgment of 28 April 2009, paras. 48-49.
9. ECtHR, *Vizgirda v. Slovenia*, App. no. 59868/08, Judgment of 28 August 2018, para. 102.
10. Fair Trials. June 2020. 'Beyond the Emergency of the COVID-19 Pandemic: Lessons for Defence Rights in Europe', p. 24. Available at:
11. https://www.fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf
12. Justice Henry Peter Adonyo. 2020. 'COVID-19 and the Administration of Justice: A Reflection on
13. Ethical Judicial Conduct'. Available at: https://www.unodc.org/dohadeclaration/en/news/2020/04/covid-19-and-the-administration-of-justice_-a-reflection-on-ethical-judicial-conduct.html
14. UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2017, para. 33.

PARLIAMENTARY DEMOCRACY AND RULE OF LAW IN KOSOVO DURING THE PANDEMIC TIME: TENSION BETWEEN POWERS AND INSTITUTIONAL STABILITY

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Abstract

Covid-19, which has become a global pandemic, has had major consequences for public health, economic development and the rule of law. To deal with its consequences, various countries adopted immediate measures declaring a state of sanitary crisis or state emergency. These measures approved mainly by the executive had a great impact on the lives and freedom of the people. To ensure the rule of law and democratic governance, it is essential that these measures be under the democratic control of parliament and the courts, and in strict accordance with international standards for the protection of human rights and freedoms. Therefore, parliamentary oversight and democratic accountability become even more essential in situations of crises, including this pandemic. In Kosovo also, the pandemic situation imposed the taking of preventive measures that, among other things, had an impact on the restriction of fundamental human rights and freedoms. Some of these executive measures were declared unconstitutional by the Constitutional Court. But the management of the situation also had an impact on the functioning of the institutions, as during the time of the pandemic, the Assembly of Kosovo passed a no-confidence motion against the government, taking its mandate. The waiting period for the formation of the new government was very tense and took epilogue only after the decision of the Constitutional Court. This paper aims to address some aspects of parliamentary democracy and the rule of law in Kosovo during the pandemic.

Legal guarantees for human rights, parliamentary effectiveness and constitutional control are the main parts of this paper.

Keywords: human rights, separation of powers, accountability, parliamentary democracy constitutional justice, rule of law, pandemic situation.

1. COVID-19: DEMOCRACY AND RULE OF LAW IN THE QUARANTINE

In early 2020, the COVID-19 pandemic eclipsed almost the entire world and despite scientific and technological advancement, the battle has not yet been won. To protect themselves from the continuing threats to public health, states indiscriminately authorized the application of emergency measures, with some declaring a state of emergency and others a state of sanitary crisis (DW: 2020). In addition to the necessity of taking adequate measures, a debate about their legitimacy was started. Along with it came the need to strictly respect the legal framework for the promulgation and implementation of these measures taken by governmental institutions. The effect of these measures affected, among other things, the restriction of fundamental human rights and freedoms, and the imbalance between branches of government.

The tension between the branches of power, which is not so obvious in everyday life, can culminate in cases of emergency situations. This tension is characterized in terms of whether the legislature should decide on the measures taken and their financing, or the executive should act quickly to avoid serious consequences. On the other hand, the judiciary examines issues of legality because impartial administration of justice is necessary even in situations of state of emergency. It is a well-known fact that in emergency situations, balancing justice and security as two fundamental values of the rule of law is difficult to achieve.

And often, there may be a degree of tension between these two important components because the security of the state requires restriction, whereas justice requires an affirmative approach to human rights and freedoms. But even in emergency situations, the rule of law must prevail and in this context the law includes not only the acts of the parlia-

ment, but also the executive decrees for the emergency, provided that they are based on the constitution (Council of Europe, 2020).

Regarding governance and the rule of law, the main issues that were affected by Covid-19 are: (1) rules governing and cheek and balances; (2) freedom of movement; (3) freedom of expression; (4) freedom of assembly; (5) privacy and data protection, 6) borders and (7) discrimination. In order to avoid the transformation of a democracy into an authoritarian, emergency measures are approved with the involvement of parliament, are temporary in duration and need to be re-approved by Parliament shall they stay into force longer, the judiciary continues its scrutiny in the way these exceptional powers are managed. As Chaplin argues "the demands of the public for quick and decisive action by governments has put democratic institutions, particularly democratically elected Parliaments, at risk of being sidelined from carrying out their constitutional functions of holding governments to account, authorizing and overseeing the expenditures of unprecedented peacetime spending, and seeing that the necessary legislative framework to provide services is in place, and ensuring that basic rights are not unnecessarily jeopardized" (Chaplin: 2020,110).

Furthermore, the Council of Europe in its information document (2020) stressed out that the government's competencies for emergency decisions should not lead to a *carte blanche* given to the executive by the legislature. Unlimited power is not the panacea but need strong rule of law safeguards and proportional and necessary emergency measures, not unlimited government rule by decree that can last beyond the actual epidemic crisis (Hungarian Helsinki Committee: 2020). According to Dame Cheryl Gillan "Parliamentary scrutiny and democratic accountability become even more important in times of crisis as the executive has to enact, under time constraints, immediate measures which can have a huge impact on people's lives and freedoms. This requires the continuation of governance, even under the conditions of a state of emergency, but always under the democratic control of parliament and of the courts, and in strict compliance with the requirements of the European Convention of Human Rights". Emergency measures should be limited to what is strictly necessary, should be proportionate and temporary in nature, subject to regular scrutiny, and respect the aforementioned principles and international law obligations.

2. GOVERNMENT ARCHITECTURE AND PARLIAMENTARY DEMOCRACY IN KOSOVO

Representative democracy is a form of governance where decisions are rendered by the representatives elected by the people and implemented by appointed officials to whom the representatives have delegated certain governmental tasks. The form of governance is determined on the basis of rules which define the organization and functioning of the branches of government, which in an integrated manner construct the architecture of this power. One of the main forms of governance is parliamentary governance, part of which is Kosovo. The parliamentary system of governance is a form of governance based on the principle of separation of powers. Parliament in systems with parliamentary democracy is more influential than in countries with a system based on the rigorous principle of separation of powers and checks and balances among them (Bajrami 2010, 80). Even though the separation between the legislative and executive branch is fixed on, however their decision-making is controlled by the same elite in power. In parliamentary systems, the executive and legislative branches are controlled by the same party or coalition of parties, and the highest levels of executive officers of the government, there are may be interlocking membership with the legislature (Jackson & Tushnet 2014, 8430).

The Constitution of the Republic of Kosovo (hereinafter: the Constitution), defines the separation of powers as one of the fundamental principles. Article 4 stipulates that "Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution". The principle of separation of powers and the checks and balances among them was dealt with and reaffirmed by Constitutional Courts' Jurisprudence, which found that "the institutional organization in the Republic of Kosovo is based on the form of democratic governance, separation and control of power, and rule of law." determining (Case No. KO 43/19).

As for the separation of powers, the Constitution designed a different kind of separation of powers from the traditional threefold separation devised under the influence of Baron Montesquieu's famous theory. The architecture of organization of powers in Kosovo, one might say, breaks down to five branches of government such as: (1) legislative; (2) executive; (3) judicial; (4) constitutional court and (5) independent institutions. Meanwhile, the institution of the President as a neutral authority

as the head of state, the President of the Republic plays a neutral role and upholds decisions under the concept of a position above the parties and simply in the general interests of the state (Hasani, 2013, 380). Within this architecture, the Assembly represents a fundamental pillar of parliamentary democracy and democratic order.

The role of legislative power is essential in promoting accountability according to the horizontal separation of powers and represents the voice of citizens through mechanisms such as constituencies, public hearings and parliamentary committees (Stapenhurst *et al.* 2006, 104). The Constitution stipulates that the Assembly is the highest state authority vested with a variety of competencies (Constitutional Court: Case. No. KO 43/19).

In the comparative constitutional theory, all parliamentary functions are divided into three groups: the legislative function, the electoral function and the oversight function (Bajrami, 2010, 104). According to the Constitution, the competencies of the Assembly of Kosovo (Article 65) are also listed within the above functions. The legislative function of the Assembly includes the adoption of laws, constitutional amendments, ratification of international treaties, consent to the Presidential Decree on the State of Emergency and the Rules of Procedure of the Assembly. As for the oversight function, the Assembly of Kosovo also has a wide scope of duties and responsibilities. Article 4.4 of the Constitution stipules that the Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control. Mechanisms and procedures of parliamentary control are provided for in the Rules of Procedure of the Assembly (Rules of Procedure, Articles 44-46). The instruments of control over the work of the executive branch are put to effect during the sessions in the Assembly and the parliamentary committees. During the plenary sessions the parliamentary control is exercised by means of: parliamentary questions, interpellations, parliamentary debates and the motion of no confidence. Whereas, the parliamentary committees implement the following instruments of control: reporting of a line minister, hearing sessions, budget expenditures oversight and field work visits.

Parliamentary investigations, conducted by special investigative committees, represent an affirmative instrument of parliamentary control available to the Assembly (Law No. 03/L-176). Whereas, in the scope of its electoral functions, the Assembly has constitutional jurisdiction *inter alia* to elect the Government, the President, the Ombudsperson,

the Governor of the Central Bank, the Members of the Independent Media Commission; the Auditor General, the Members of the Judicial and Prosecutorial Council and propose judges of the Constitutional Court. Moreover, under special legislation, the Assembly is empowered to elect other heads of state agencies. But on the other hand, although with great powers, the performance of the Assembly is estimated to be limited to its three basic functions (EU: Progress Reports 2013-2020).

3. EMERGENCY MEASURES AND TENSIONS BETWEEN INSTITUTIONS

In Kosovo, state institutions were forced to take restrictive measures to manage the sanitary crisis. The government took preventive measures by declaring a state of health emergency according to Law no. 02 / L-109 on Prevention and Control of Infectious Diseases and Law no. 04 / L-125 on Health. Also, for the first time ever, the National Response Plan which provides a comprehensive national approach to incident management to all risks in the full spectrum of prevention, preparedness, response and recovery activities was activated. But things suddenly got complicated when the idea of declaring a state of emergency to overcome the situation came up. The responsible authorities came out with dissenting positions in this aspect, while the President of the country proposed the declaration of the state of emergency, the Prime Minister persistently held the opposite position.

Although at first it seemed that the President would issue the decree and send it to the Assembly for approval, this did not happen. According to the Constitution (Article 131), to declare a state of emergency, the President must consult with the Prime Minister and his decree to obtain the consent of the parliamentary majority. After the Prime Minister was against declaring a state of emergency and the Assembly seemed unwilling to pass the decree declaring a state of emergency, the president withdrew his proposed decree. But at the same time, there was tension between the partners in the coalition government over the state of emergency.

Under parliamentary democracy, the coalition government requires multiple parties with opposing political goals that govern mutually. The need for a compromise, accompanied by their particular electoral accountability, present tensions in multiparty cabinets (Martin *et al.*

2014, 12). Due to the proportional electoral system, the Government of Kosovo is formed and functions as a coalition government between several political parties. This has been perceived as a perpetual challenge in both forming the government and its functionality.

The Minister of Interior, who was not on the Prime Minister's party, supported the idea of declaring a state of emergency and was consequently fired by the prime minister. After this action, the fall of the government was a matter of days. Based on the no-confidence motion initiated by the government partner, with 82 votes for, the Assembly he dismissed the government. Kosovo is the best example of how a pandemic can create a perfect storm to oust a newly appointed government (Bieber et.al.2020.9).

The discussion about the legitimacy of decisions of the government or other institutions, eclipsed the public discourse in Kosovo. The dismissal of the government created a controversial environment, because the incumbent government had a truncated scope as it could not propose measures or actions that required the approval of the Assembly. Meanwhile, the political crisis deepened further around the constitutional procedure for the formation of the new government, and this affected the weakening of public confidence in the work of institutions. In this controversial environment, the Assembly, although it did not interrupt its work, had limited activity. Due to the polarized political environment, the lack of a majority of the former ruling coalition, frequent boycotts by opposition parties, the lack of members of the ruling coalition, the Assembly was often unable to reach a quorum to pass laws and make decisions (EU: Country Report: 2020). Although belatedly, the Assembly managed to pass two important laws related to preventing and combating the pandemic and the law on economic recovery.

4. RESTRICTION OF HUMAN RIGHTS AND FREEDOMS

The development of constitutionalism is related precisely to the protection of the fundamental rights and freedoms of the individual by state bodies. Most constitutions in the world have in their content the catalogue of fundamental human rights and freedoms. These rights are also protected by legal instruments and international institutional structures. But the ambiguities brought by Covid-19, marked a time when fundamental rights and freedoms could be violated and abused. International instruments for the protection of human rights and freedoms

stipulate that in emergency situations, state authorities may suspend certain civil liberties for the function of restoring order, but that states can in no circumstances evade fundamental obligations, such as: guaranteeing the right to life for all citizens, prohibition of torture, freedom from slavery and freedom of thought, conscience and religion or unlawful punishments (ICCPR, EHCHR, ACHR).

Fundamental human rights and freedoms (Chapters II) and rights of communities and their members (Chapters III) are in the hart of the Constitution. The Constitution (in Article 22) lists the main international agreements for human rights which are directly applicable in the Republic of Kosovo and stipulates that they have priority over the provisions, laws and other acts of public institutions, in case of conflict. Among these key instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as well as the International Convention on Civil and Political Rights and its Protocols, which are essential to protection of human rights. cases of state of emergency.

The Constitution stipulates that the restriction of fundamental rights and freedoms in Kosovo which are guaranteed by the constitution, can only be done according to the restrictions provided by law and applying the principle of proportionality (Article 55). The principle of proportionality states that actions taken by state authorities must be proportionate to the purpose for which the restriction is allowed. A restriction of a constitutional right by law, will be constitutional and permissible if, and only if, it is proportional (Aron, 2012, 3.). This principle has been formulated in different ways in domestic and international case law. A proportionate action requires: (a) rational relation to the objective; (b) minimal infringement of rights; and (c) proportionality between the effects of the violation and the significance of the objective (Charkaoui v. Canada, 2007).

The Government of Kosovo, in the framework of preventive measures against COVID -19, issued a decision at the national level that restricted the movement of citizens, except for essential services (Decision: 01/15, 23.03 2020). This decision of the government was challenged by the president in the Constitutional Court to assess its constitutionality. Following the Court's assessment, this government decision was declared unconstitutional and invalid. The Court in its decision (Case no. KO54 / 20) emphasized that the term 'restriction', used in Article 55 of the Constitution, implies that the Assembly has the right to determine restrictions on fundamental rights and freedoms, through law.

The Court, *inter alia,* emphasized that the word "law" means a law issued by the Assembly, according to the relevant legislative procedures, and no restriction of freedoms and rights can be made if such restriction is not defined by law of the Assembly. Second, the authorities which implement a law of the Assembly where restrictions may apply, these restrictions can be applied only to the extent that it is "prescribed by the law" of the Assembly (Constitutional Court, Case no KO54/20).

5. THE CONSTITUTIONAL COURT AS A KEY PLAYER

The rule of law is one of the fundamental values on which the constitutional order of Kosovo is built (the Constitution, Article 7). Control of the Constitution is an essential element of the rule of law. The Constitutional Court (hereinafter: Court) is the final authority for the interpretation of the constitution and is independent in relation to other branches or institutions of government. This classification is applied only in countries that have a centralized system of constitutional control.

It is worth mentioning that the Constitutional Court is not a court of appeal or a court of fourth instance. In this regard, the Constitution guarantees two fundamental rights: (a) judicial protection of Constitutional rights and (b) the right to an effective remedy to redress any violations of these Constitutional rights (Çeku & Xhemajli 2020, 1091). The Constitutional Court exercises *ex post* control in the case of constitutional review of laws, governmental and presidential decrees, decisions of institutions and the statute of the municipality; while exercises *ex-ante* control over the draft constitutional amendments, and restricts or reduces the human rights guaranteed by Chapters II and III of the Constitution. The court shall be set in motion only on the request of authorized parties (Article 113). As for the effect of its decisions, they are binding on the judiciary, all persons and institutions. Through its decisions, the Constitutional Court shall not be spared of constitutional discipline of state institutions, by protecting the constitutional rights and freedoms when their exercise has been violated by public authorities (Morina, 2013, 8).

The role of the constitutional court during the pandemic has been crucial not only to the protection of human rights and freedoms, but also to the functioning of the constitutional order in general. Constitutional order means not only the respect of the constitutional norm, but also the organization and institutional structures which exercise their pow-

ers according to the given constitutional and legal mandate, Thus in Case no/KO 61/20, the Constitutional Court affirmed once again the position that: "Respect of basic constitutional values, related to the separation of powers, independence of the judiciary, independence and authority of the Constitutional Court and protection of the rule of law, is a constitutional obligation of all branches of government of the Republic of Kosovo and despite the situation created by the COVID-19 pandemic, which has affected the whole world, the rule of law and the rule of law must prevail."

Parliamentary groups and various institutions have continued to address the court as a last resort during this period. and its decisions have even been challenged by opposing parties. The two fundamental issues in which the jurisprudence of the Court had an impact during this period concerned the protection of rights and freedoms and the constitutional procedures for the formation of government. Regarding the protection of human rights and freedoms, the Constitutional Court formed the constitutional standard that "The Assembly is the only body in the Republic of Kosovo which has the constitutional competence to restrict, in accordance with Article 55 of the Constitution, the rights and fundamental freedoms. But even the Assembly is not completely free to restrict rights and freedoms because Article 55 provides clear conditions which instruct how and to what extent the restriction of fundamental rights and freedoms can be done. While the Government, as one of the three main powers in the legal system of the Republic of Kosovo, cannot restrict rights without having any legal authority given through a law of the Assembly" (Constitutional Court, Case no KO54/20).

The Constitutional Court has played a key role in undertaking actions by the relevant institutions, because it had, among other things, concluded that "the responsible institutions of the Republic of Kosovo, in the first place the Assembly, must take actions in accordance with the Constitution and this Judgment, which consider them appropriate and adequate to continue preventing and combating the COVID-19 pandemic - which in itself constitutes a high public health interest for all citizens and persons living in the Republic of Kosovo."

On the other hand, the Constitutional Court played a key role in the constitutional crisis over the formation of the new government after the ouster of the previous one. The country's president, in accordance with constitutional procedures, repeatedly asked the leader of the party that won the election, who was also the incumbent prime minister, to send a name of a candidate to be decreed to form the new government.

But the leader of the winning party did not send a name on the grounds that after the vote of confidence of the government by the Assembly, the president should decree the dissolution of the Assembly and set the date for the extraordinary parliamentary elections. Meanwhile, the President asked the second party to send the name of a candidate for Prime Minister, whom he later decreed. The winning party's parliamentary group challenged the president's decree for evaluation in the Constitutional Court.

The court in its decision (Case no KO72/ 20) stated that the presidential decree for the candidate for prime minister is in accordance with the constitution with the reasoning that "The structure of constitutional norms related to the establishment of state institutions arising from the people's vote, are interpreted in such a way as to bring to life and not to block the establishment and effective exercise of the respective functions." No constitutional norm can be interpreted in such a way as to block the establishment and the effective functioning of the legislative and executive branches of government, nor the way in which they balance each other in terms of the separation of powers." Following the publication of the Court's decision, the Assembly subsequently voted on the creation of the new government, but the vote of an MP previously convicted turned out to be the "Achilles' heel" for the new government.

According to the Constitution (Article: 95.3), the Government is considered elected when it receives the majority vote of all members of the Assembly of Kosovo. From the total number of 120 deputies of the Assembly, at least 61 votes are needed to elect a government. The new government received exactly 61 votes. One of these votes also from the MP which was previously sentenced to imprisonment for a criminal offense. Based on, the parliamentary group of the winning party in the elections now in opposition, challenged the legitimacy of the election of the government in the Constitutional Court. In its decision the Constitutional Court (Case no. KO95 / 20) found that the mandate of the convicted MP had been invalid before the vote of the government which had received only sixty (60) valid votes. Consequently, it stated that its election is not in accordance with the constitution because the government did not get the required majority of votes.

This is due to the fact that "a person convicted of a criminal offense by a final court decision in the last three (3) years, cannot be a candidate for deputy or win a valid mandate in the Assembly of the Republic of Kosovo." According to the Court, the mandate of the Assembly had

been exhausted and the President should issue a decree to call for new elections. According to the Court, Article 95 of the Constitution provides for two attempts for the Assembly to elect a government. If the Government is not elected even after the second attempt, Article 95.4 of the Constitution provides for the announcement of elections by the President of the Republic of Kosovo. This decision of the Constitutional Court was highly contested, especially due to the fact that the right to vote was restricted, but the parliamentary elections on February 14 were held in the light of the standards set by this judgment.

6. CONCLUSIONS AND RECOMMENDATIONS

The global pandemic Covid-19, has seriously challenged not only public health but also economic development and the functioning of institutions. Democracy, human rights and the rule of law, in all states underwent some type of restriction. Parliaments, on the other hand, switched to virtual functioning, which made it difficult for them to carry out their mandate. There is no doubt that the need for emergency measures increased the powers of the executive and there was no doubt that there was tension between the various branches of government.

COVID-19, like other countries, challenged Kosovo as well. Some of the measures taken during the institutional management of the pandemic turned out to be contrary to constitutional norms. Moreover, in addition to the violation of the Constitution through bylaws, the constitutional principle which recognizes the supremacy of the Constitution as a supreme act in the hierarchy of legal acts within the domestic legal system was also violated.

Kosovo's functioning of institutions was also challenged in this period. For the most part, the country was ruled by an interim government with legitimacy issues and a limited mandate, and this also had a stake in managing the pandemic. In this conflicting environment, there is no question that this role in guaranteeing the constitutional order was played by the Constitutional Court. Its decisions, although debated and contested by the public, were implemented and institutional actions were made in the light of the standards of these decisions.

The restriction of human rights and freedoms must be done only through a thorough implementation of the constitutional provisions-through the law of the Assembly. Acting otherwise will only violate the

constitutional and the democratic order in Kosovo. Any deviation from these rules is a violation of the basic principles which form the basis of the constitutional order in any democratic society. The implementation of emergency measures requires strict application of the rules set by the constitutional provisions. Therefore, there is a need for institutional interaction of all relevant authorities to deal with such situations. The state of emergency may require emergency measures, but the state of emergency cannot increase the powers of institutions or undermine the principle of checks and balances.

REFERENCES:

Books:

1. "*The Oxford Handbook of Legislative Studies*". Edited by Shane Martin, Thomas Saalfeld, and Kaare W. Strøm, 2014. Oxford.
2. Bajrami, A.2010. "*Parlamentarizmi, aspekte krahasuese*" Prishtinë.
3. Bark, A. 2012. *Proportionality, Constitutional Rights and their Limitations, Cambridge University Press, Cambridge,* New York.
4. Hasani, E. 2013, në *"Komentar i Kushtetutes se Republikes se Kosovës,* GIZ, Prishtinë.
5. Jackson, V & Tushnet, M. 2014. *" The Comperative Consititutional Law"* Third Editon, USA.
6. *The Role of Parliament in Curbing Corruption*", Edited by Rick Stapenhurst, Naill Johnston & Riccardo Pellizo, 2006. The World Bank, Washington, DC.
7. Morina, V. 2013. *"Gjyqësia Kushtetuese",* (Shqyrtime teorike dhe krahasimore), Prishtinë,

Papers/ reports

1. Chaplin, S.2020.*"Protecting parliamentary democracy in "plague"* times: Accountability and democratic institutions during the pandemic", Commonwealth Law Bulletin, 46:1, 110-123, www.tandfonline.com/doi/full/10.1080/03050718.2020.1762235.
2. Bieber, F., Prelec, T., Djolai, M., Emini, D., Marović, J., Majstorović, S., Džihić, V., Vračić, A., Tzifakis, N.,Wunsch, N., Bartlett, W., Grieveson, R., & Holzner, M. 2020." *The Western Balkans in times of the global pandemic",* The Balkans in Europe Policy Advisory Group (BiEPAG), www.balkanfund.org.
3. Consul of Europe. 2020. *"Information Documents: Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis. A toolkit for member states*". https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-,rights-in- th/16809e1f40.

4. Çeku, N. & Xhemajli, H. 2020. *"Constitutional principles and their impact on the establishing of the constitutional order and rule of law in Kosovo".* Zbornik radova Pravnog fakulteta u Splitu, god. 57, 4/2020, str. 1079-1096. https://hrcak.srce.hr/file/356940.

5. DW.2020. *"Coonavirus: What are the lockdown measures across Europe"?* www.dw.com/en/coronavirus-what-are-the-lockdown-measures-across-europe/a-52905137

6. Gillan, D. 2020. "*In times of crisis, parliamentary democracy cannot be put 'on hold'*. https://pace.coe.int/en/news/7828/in-times-of-crisis-parliamentary-democracy-cannot-be-put-on-hold-

7. Hungarian Helsinki Committee.2020.*"Unlimited Power is not the pancea".* Assessment of the proposed law to extend the state of emergency and its constitutional preconditions. https://www.helsinki.hu/wpcontent/uploads/Unlimited-power-is-not-the-panacea-20200322.pdf.

8. European Commission, Kosovo Report 2020. https://www.mei-ks.net/repository/docs/kosovo_report_2020.pdf

Legal acts:

1. Constitution of the Republic of Kosovo,2008. http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf.

2. Rules of Procedure of the Assembly of the Republic of Kosovo, Pristina, 29 April 2010. www.kuvendikosoves.org/Uploads/Data/Files/6/Rr_KRK_29_04_2010_1Dbu8aqXYd.pdf.

3. Constitutional Court, Judgment in Case No. KO43/19, dt. 27 June 2019 Constitutional review of Law No. o6/L-145 on the Duties, Responsibilities and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia. https://gjk-ks.org/wcontent/uploads/2019/06/ko_43_19_agj_ang.pdf.

4. Judgment in Case No. KO72/20 i Constitutional review of Decree No. 24/2020 of the President of the Republic of Kosovo, of 30 April 2020. https://gjk-ks.org/wp-content/uploads/2020/06/ko_72_20_agj_ang.pdf.

5. Judgment in Case No. KO61/20 Constitutional review of Decision [No.214/IV/2020] of 12 April 2020 of the Ministry of Health, on declaration of the Municipality of Prizren "quarantine zone"; and Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No.239/IV/2020] of 14 April 2020 of the Ministry of Health, on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipalities of Prizren, Dragash and Istog. https://gjk-ks.org/wp-content/uploads/2020/05/ko_61_20_agj_ang.pdf.

6. Judgment in Case No. KO54/20, Constitutional review of Decision No. 01/15 of the Government of the Republic of Kosovo, of 23 March 2020. https://gjk-ks.org/wp-content/uploads/2020/04/ko_54_20_agj_ang.pdf.

7. Supreme Court of Canada: Charkaoui v. Canada, Citizenship and Immigration [2007] 1 SCR 350 www.canlii.org/en/ca/scc/doc/2007/2007scc9/2007scc9.html

THE IMPACT OF THE COVID-19 PANDEMIC ON CONSTITUTIONALISM AND THE STATE OF EMERGENCY

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Abstract:

The emanation of the COVID-19 global pandemic has managed to influence specific legal, political and socio-economic aspects. Public health, public institutions, as well as concepts such as: the rule of law, restriction of certain human rights and socio-economic wellbeing became characteristics of the global pandemic and as such triggered a state of emergency. The pandemic cannot be a justified pretext for an unlimited suspension of democracy. Indeed, restrictions on civil rights and liberties ought to be interim, proportional and transparent. Although the emergency measures taken by governments against COVID-19 should be provisional, time-bound and in congruence with democracy as any contemporary political regime or state governed by the rule of law. This situation once again revealed to us the importance of a constitutional state of emergency guided by public law in its forms and examples of comparative constitutional law regarding events which in 2020 demanded the emergence and function of public institutions in an effort to protect society. The state of emergency is regulated by the Constitution of the Republic of North Macedonia of 1991 in general which gives the government expansive power, such as bypassing the parliament's power, through issuing acts by force of law. It is worth mentioning that in North Macedonia there is no lex specialis or special legislative act that regulates a state of emergency.

Key words: *constitution, state of emergency, COVID-19, democracy, rule of law, human rights*

1. SOME GENERAL CONSIDERATIONS IN RELATION TO CONSTITUTIONALISM UNDER EXTREME CONDITIONS

Constitutions are often made, broken, or changed under extreme conditions such as war, secession, emergency or some other extraordinary circumstance. Over the past 40 years alone more than 200 constitutions have been introduced in this way. As Peter Russell notes, "No liberal democratic state has accomplished comprehensive constitutional change outside the context of some cataclysmic situation such as revolution, world war, the withdrawal of empire, civil war, or the threat of imminent breakup".[1] Constitutionalism under extreme conditions raises a bundle of fascinating and important issues. Constitutionalism is nowadays commonly identified by a certain conditions such as the recognition of the people as the source of all governmental authority, the normative supremacy of the constitution, the ways the constitution regulates and limits governmental power, adherence to the rule of law, and respect for fundamental rights. Constitutions are intended to be stable and to survive during times of crisis. They are therefore sometimes designed expressly to accommodate unforeseen circumstances and to authorize resort to emergency powers. These unforeseen circumstances – for instance belligerency, war, terror and alike; natural and manmade disasters; political and economic meltdowns, and the emergency regimes created to manage these situations – pose a serious challenge to each of the components of constitutionalism. In a constitutional regime, there is a normative supremacy of the constitution, the source of which is "the people". However, states ox exception and emergency powers go to the very root of the constitutional order, to the question of sovereignty and its exercise. As Carl Schmitt famously stated in his book *Political Theology* the sovereign is, "He who decides on the state of exception". According to the classical institution of the Roman dictatorship in times of crisis an eminent citizen was called by the ordinary officials and temporarily granted absolute powers and in some cases to create a temporary "constitutional dictatorship" as the regime seeks to restore the *status quo ante* emergency. These regimes undermine limits to governmental powers as they give enhanced powers, usually to the executive, allowing it to overcome legal restrictions in order to efficiently face the crisis. Emergency regimes have implications for the rule of law. The rule of law comprises two layers: formal and substantive. Briefly put, the formal aspect of the rule of law requires prohibitions and delegations

1. Peter Russell, *Constitutional Odyssey*, Toronto, 2004, p. 106.

to be explicitly anchored in the law, which is promulgated, prospective, general, stable, clear, and enforced equally. The substantive aspect of the rule of law requires prohibitions and delegations to respect various content-based values, such as individual rights or the separation of powers. In times of crisis both values are at risk.[2]

Needless to say, emergencies are not an everyday issue. Otherwise, they would become normal which alludes to periods where the everyday functioning of institutions is deemed sufficient for solving pressing problems. Therefore, "emergencies" is a broader term than those of "state of emergency" or "state of exception", which invokes a situation in which the very existence of a state is at stake. Nevertheless, "emergency" can be defined as an extraordinary situation requiring prompt and firm action; therefore, emergency powers are conferred to the executive, while the role of parliament as well as the protection of some key fundamental rights and freedoms are compressed; the emergency finished, the normal functioning of the form of government is restored". In addition, "The key elements of traditional emergencies are mainly two: a temporary prominent role of the executive power over the legislative and measures that temporary infringe or suspend rights and freedoms; therefore, temporariness is the core word, since the emergency character of the situation requires a deviation from the constitutional legal order; moreover, since the ultimate aim is the restoration of the constitutional legal order, the deviation cannot be temporary."[3]

As to the constitutional emergency powers undertaken by the executive under such extreme conditions the following three main models-archetypes for constitutional emergencies are identified as:

- The "rule of law", or "business as usual" archetype model, according to which responses to emergencies can be framed within the existing, ordinary legal framework. Here, no extraordinary measures in the strongest sense of the term are adopted, since they are provided for in a predetermined framework also available during times of normalcy. In this archetype model the label "emergency" is more of a discursive or communicative tool as it does not lead to an upheaval of existing legal structures.

- The "constitutional dictatorship" archetype model in which emergencies lead to exceptional and temporary regimes wherein ordinary

2. Richard Albert, Yaniv Roznai, *Constitutionalism Under Extreme Conditions*, Springer-Switzerland, 2020, p. 2.
3. Richard Albert, Yaniv Roznai, *Constitutionalism Under Extreme Conditions*, Springer-Switzerland, 2020, p. 168, 219.

norms no longer apply. Emergency measures also take place within a predetermined normative space, albeit one of a temporary nature and which is not available in periods of normalcy. Moreover, there are substantive and procedural requirements in place, since they are seen as reducing the likeliness of abuse.

- The "extralegal archetype model" in which responses to emergencies are to be found outside of established norms, perhaps best illustrated by the adage "necessity knows no law". Accordingly, emergencies are mostly or completely unregulated in light of the impossibility by lawmakers to foresee all possible extraordinary scenarios. It should be noted that the three archetypes models mentioned above are not always apt at accurately describing the constitutional regimes in specific legal systems. Thus, they should not be applied in an either/or fashion to label every particular instance. In some cases emergencies may lead to a combination of elements from more than one of the archetypes models.[4] In fact, two types of emergency powers exist: constitutional and extra-constitutional. In the first case emergency powers are based upon the (written) constitution or on an organic or ordinary law enacted with accordance with the constitution; the state officially proclaims a state of emergency (in one of the forms foreseen by national law) and, usually, enacts emergency measures. In the latter case, executive authorities act – and are considered to be entitled to act – in an emergency on the basis of unwritten (constitutional) principles in order to overcome the emergency; the state enacts emergency measures without officially proclaiming a state of emergency. The first form of state of emergency may be considered a *de iure* one, the second a *de facto* one. The latter form does not necessarily constitute a violation of international law. The absence of a formal declaration may however preclude states from resorting to certain measures (e.g. under the ICCPR (International Covenant on Civil and Political Rights), a derogation from human rights can only take place "in time of public emergency the existence of which is officially proclaimed", Article 4(1)). A system of *de iure* constitutional emergency powers can provide better guarantees for fundamental rights, democracy and the rule of law, and better serve the principle of legal certainty, deriving therefrom. In its 1995 Report on Emergency Powers, the Venice Commission expressed a preference for the *de iure* form, recommending that "*de facto* state of emergency should be avoided, and emergency rule should be officially declared". The declaration of state of emergency is subject to the rules enshrined in the domestic

4. Richard Albert, Yaniv Roznai, *Constitutionalism under Extreme Conditions*, Springer-Switzerland, 2020, p. 220-221.

legal order.[5] The rules must be clear, accessible and prospective (available in advance). Within the system of written emergency powers, the basic provisions on the state of emergency and on emergency powers should be included in the constitution, including a clear indication of which rights can be suspended and which rights do not permit derogation and should be respected in all circumstances. The Venice Commission has previously indicated that, "The emergency situations capable of giving rise to the declaration of states of emergency should clearly be defined and delimited by the constitution". This is necessary because emergency powers usually restrict basic constitutional principles, such as fundamental rights, democracy and the rule of law. It is up to each state to decide whether one or several emergency regimes will be recognized. If several emergency regimes exist, the differences between them (causes, levels of parliamentary oversight, levels of powers to the government, available emergency measures) should be clearly set in the legal rule. The state should always opt for the least radical regime available in the given circumstances.[6]

2. CONSTITUTIONAL ASPECTS OF A STATE OF EMERGENCY IN THE REPUBLIC OF NORTH MACEDONIA

According to its Constitution of 1991, the Republic of North Macedonia is a parliamentary democracy governing political system with a explicitly determined principle of division of state powers into legislative, executive and judicial,[7] a system of checks and balances (relation between three branches of state power based on forms of mutual cooperation and reciprocal control and balances), and a comprehensive, modern catalog of rights and freedoms designed on the basis of the European Convention of Human Rights.

The first case of COVID-19 was reported on December 31, 2020 and the source of the outbreak has been linked to a wet market in Wuhan in Hubei province, China. Cases of the virus have been confirmed in numerous countries and territories worldwide. On March 11, 2021 the

5. Nicos Alivizatos *et alia*, European Commission for Democracy through Law (Venice Commission) – *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency-Reflections*, Strasbourg, 2020, p. 6-7.
6. Nicos Alivizatos *et alia*, European Commission for Democracy through Law (Venice Commission) – *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency-Reflections*, Strasbourg, 2020, p. 6-7.
7. Article 8 paragraph 1 line 4 of the Constitution of the Republic of North Macedonia.

World Health Organization (WHO) declared the global outbreak a pandemic. Since then it has spread to most corners of the globe. While the health threat it poses and the challenge it represents for human health is paramount, no less important is the strain it puts on the legal order. For most of the affected countries, this outbreak is posing unprecedented institutional challenges and has obliged public institutions and governments to adopt strict measures affecting citizens' rights in a way unparalleled since the Second World War.[8] Indeed, the world was dramatically marked in 2020 by a pandemic due to the spread of a new, hitherto unknown and deadly coronavirus that causes the infectious disease COVID-19 (*coronavirus disease*).[9] In a lightning and aggressive expansionist campaign the virus has forced the public authorities of a large number of states to declare, organize and implement a series of new, differentiated, in a row strict measure to protect society and its members. This is, of course, a situation that is still ongoing and whose consequences have not yet been definitively summarized. She is shocked and traumatized by the national, European and revealed to the international public the existence of an "emergency constitution", and with it a series of controversies regarding its *de iure* respectively *de facto* character and consequences. These are the most serious possible issues facing society, and this clearly shows us the current state of comparative state law theory and practice around the world marked by a pandemic. Furthermore, the plague of coronavirus seemed to open a Pandora's Box, from which all sorts of questions arose from the immediate medical and health ones about the nature of the virus, its sources and weaknesses, vaccine production and the organization of mass vaccination of the population, to other broad and general socio-political issues, such as whether invoking a *de facto* or *de iure* state of emergency due to a pandemic will once again test the ability of the democratic order to cope with the challenges of the crisis of important segments of state and social organization.[10]

Today, some 90 per cent of all constitutions worldwide contain unequivocal provisions for how to deal with states of emergency.[11] The emergency constitution may be defined as the set of formal legal provisions encoded in the constitution that specify who can declare an emergency,

8. See: Krisztina Binder, Maria Diaz Crego *et alia*, *States of emergency in response to the corona virus crisis: Situation in certain Member States*, European Parliamentary Research Service, 2020, p. 1.
9. A global pandemic of corona virus COVID-19 was declared on March 11, 2020 by the World Health Organization (WHO).
10. Petar Bačić, *Corona Ante Portas i "Ustav Izvanrednog Stanja" u Aktualnoj Politici i Pravu Sporta*, Zbornik Radova Pravnog Fakulteta u Splitu, god. 58, 1/2021, p. 105-106.
11. See: Zachary Elkins *et alia*, *The Endurance of National Constitutions*, Cambridge, 2009.

under which conditions an emergency can be declared, who needs to approve the declaration, and which actors have which special powers once it has been declared that the constitution does not assign to them outside emergencies.[12]

A state of emergency in the legal order of the Republic of North Macedonia is regulated by its Constitution. It could be declared only in cases within the bounds provided for by the Constitution, and only in a manner prescribed by the Constitution. In fact a state of emergency is regulated by several articles of the Constitution of the Republic of North Macedonia. The provisions are distributed in several places in the normative text of the Constitution and when talking about the state of emergency, everyone should be taken into account as a systematic coherent normative whole. The Constitution in articles 54, 125, 126 and 128[13] stipulates when a state of emergency is introduced, who proposes to introduce it, who decides on its proclamation, how long it lasts, how it continues, who controls its legal effects, which rights of citizens cannot to be restricted and which organs continue their work in emergency conditions.[14]

The normative definition of the emergency state is provided by article 125 of the North Macedonia Constitution: "*A state of emergency exists when major natural disasters or epidemics take place. A state of emergency on the territory of the Republic of North Macedonia or on part thereof is determined by the Assembly on a proposal by the President of the Republic, the Government or by at least 30 Representatives. 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*". Subsequently, one of the stated conditions, realistically and practically, was met. That is the outbreak of the COVID-19 epidemic on the territory of the Republic of North Macedonia, which has been confirmed a pandemic by the World Health Organization. In the proposal of the Government of the Republic of North Macedonia for introducing a state of emergency from March 18, 2020 states that the epidemic, "Has

12. Christian Bjornskov, Stefan Voigt, *The Architecture of Emergency Constitutions*, International Journal of Constitutional Law, Volume 16/Issue 1, Oxford, 2018, p. 103.
13. The mandate of the judges of the Constitutional Court of Macedonia, as well as members of the Republican Judicial Council is extended for the duration of the state of war or emergency (Article 128 of the Constitution of the Republic of North Macedonia).
14. Светомир Шкарић, Правната битка за вонредната состојба-respublica, 17 Април 2020.

affected the territory of the Republic of North Macedonia". It cited the first case was in February 26, 2020 and 35 more cases to March 17, 2020. The Government of the Republic of North Macedonia had submitted this proposal to the Assembly of the Republic of North Macedonia and not to the President of the Republic of North Macedonia assuring that the mandate of the members of parliament is in force and that the Assembly should make the decision on the state of emergency. However, according to the Decision on Self-Dissolution of February 16, 2020, "The Assembly has restored the sovereignty of its citizens". Thus from that moment it had ceased to exist from a constitutional standpoint.[15] It is worth mentioning that the Assembly of the Republic of North Macedonia had been dissolved prior to the coronavirus crisis on February 16, 2020 for the purpose of convening early parliamentary elections on April 12, 2020. In the absence of a special law regulating the state of emergency and in conditions of a dissolved Assembly, in harmony with the Constitution, the President on March 18, 2020 proclaimed a state of emergency that lasted a total of three months or 95 days.[16] This is the first time in the contemporary constitutional history of the Republic of North Macedonia that a state of emergency had been confirmed. With the proclamation of the state of emergency, Article 126 of the Constitution and Article 10 of the Law of the Government of the Republic of North Macedonia[17] were activated, these stipulate that in case of any state of war (state of martial law) or a state of emergency, if the assembly cannot meet, the Government, in accordance with the Constitution, may adopt decrees with the force of law on issues within the jurisdiction of the Assembly.[18] Before the expiration of the 30 days the Government is obliged to submit to the President a detailed report for the effects of the measures that had been taken and a reasoned proposal for the need of potentially extending the state of emergency for additional 30 days. In such circumstances the alternative subsidiary normative-constitutional solution had to be activated (applied) the decision for a state of emergency to be made by the President of the Republic of North Macedonia. Meanwhile, the President of the Republic of North Macedonia in conformity with Article 125 of the Constitution of the Republic of North

15. Ibidem.
16. Жарко Хаџи-Зафиров *et alia*, Анализа на донесените уредби со законска сила за време на вонредната состојба во 2020, Скопје, 2020, p. 9.
17. Закон за Влада на Република Северна Македонија, Службен Весник на Република Северна Македонија, бр. 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, 98/19.
18. Жарко Хаџи-Зафиров *et alia*, Анализа на донесените уредби со законска сила за време на вонредната состојба во 2020, Скопје, 2020, p. 9.

Macedonia has adopted a Decision to establish the existence of a state of emergency on the entire territory of the Republic of North Macedonia.[19] The state of emergency, its duration is limited *ex constitutione*, i.e. the Constitution of the Republic of North Macedonia limits the duration of the state of emergency to a maximum of 30 days. As a result, the state of emergency has been instituted for a maximum of 30 days at a time with a view to preventing the spread and coping with the consequence of the COVID-19 coronavirus.[20] The decision which is subject to parliamentary approval shall be submitted to the Assembly of the Republic of North Macedonia to be verified as soon as the assembly is able to meet. The state of emergency was determined, that is, declared by a Decision of the President of the Republic on March 18, 2020 because the President of the Assembly notified the Head of State that the Assembly is not able to hold a session and decide on the proposal of the Government due to the previously adopted decision of dissolution of the assembly. Besides that, the decision to proclaim a state of emergency was made by the President of the Republic of North Macedonia after the previously held session of the Security Council of the Republic of North Macedonia, which clarified two key issues: *firstly*, to be introduced a state of emergency instead of a state of crisis and, *secondly*, the Government to postpone the parliamentary elections scheduled for April 12, 2020 by a decree with the force of law.[21]

In view of the above, it can be concluded that the decision of the President of the republic to establish the existence of a state of emergency has no declarative, but a constitutive legal effect: it activates the special provisions of the constitution relating to the state of emergency and, through the special authorities of the Government by decrees with the force of law, to manage the overcoming of the crisis and of its consequences to assume a legislative function, to intervene with economic measures in the economy, to restrict human freedoms and rights, etc.[22] Additionally, the state of emergency in North Macedonia was declared

19. Одлука за утврдување на постоење на вонредна состојба, Службен Весник на Република Северна Македонија бр. 68/2020.

20. Decision on determining the existence of a state of emergency no. 08-526 / 2 dated 18 March 2020, for the period of 30 days, published in the Official Gazette of the Republic of North Macedonia no. 68/20; http://www.slvesnik.com.mk/Issues/4049500a3fc544da-898402bee6a65758.pdf.

21. Светомир Шкариќ, Правната битка за вонредната состојба-respublica, 17 Април 2020; Анализа на искуствата на институциите за време на вонредната состојба и уредбите со законска сила, Министерство за Правда на Република Северна Македонија, Скопје, 2021, p. 10-12.

22. Владо Камбовски, Правни аспекти на вонредната состојба – МАНУ, Скопје, 2020, p. 6.

after a broad consensus was reached among all relevant political parties because the country found itself in a parliamentary pre-election time period,[23] that is, the constitutionally envisaged 60 days as a time limit for organizing parliamentary democratic elections in the Assembly of the Republic of North Macedonia after the decision to dissolve the assembly (Article 63, paragraph 3).[24] This caused objectively the act of postponing the parliamentary democratic elections through a special decree with the force of law, which happened immediately after the first decision to establish the existence of a state of emergency.[25] The state of emergency is not a health-related, but a special constitutional-legal, that is, legal category which, based on the decision to declare an epidemic as a serious danger to the health of the population, consists in putting into temporary force special constitutional-legal competencies and legal instruments for health protection, but also for regulating social relations and activities in various spheres (economy, education, etc.).[26] In this context, it is worth withdrawing the demarcation line, i.e. to make the distinction between *a state of crisis* and *a state of emergency* as separate and particular legal concepts in their connotation (semantic) aspects. During a state of crisis, the government acts and undertakes activities in compliance with the existing Law on Crisis Management and other laws (above all, the Law on the Protection of the Population from Infectious Diseases, the Law on Protection and Rescue, etc.), and its activities and competencies are legally defined and limited. In a state of crisis, the existing laws do not give the government the right to issue decrees with the force of law, which in conditions of emergency, according to the Constitution, it has the right to pass. Thus, in accordance with Article 126, paragraph 2 of the Constitution of the Republic of North Macedonia, in a state of emergency, the authorizations of the government to adopt decrees with the force of law last until its completion, for which the assembly decides. By authorizing the government to pass decrees with the force of law, it practically takes over the legislative competence of the assembly, although the decrees are not, nor can they be considered, classical laws, but it is a special type of general normative legal acts that, according to the Constitution, are adopted in conditions when the country is in a state of emergency or in a state of war. In fact, the decrees with the force of law as a combination

23. Florian Bieber, *The Western Balkans in Times of the Global Pandemic*, Graz, p. 9
24. Устав на Република Северна Македонија, Службен Весник на Република Северна Македонија бр. 52/1991.
25. http://www.slvesnik.com.mk/Issues/efd6cd84b37e40a19e3f75515b759d06.pdf; Official Gazette of the Republic of North Macedonia no. 72/2020.
26. Владо Камбовски, Правни аспекти на вонредната состојба – МАНУ, Скопје, 2020, p. 6.

of legislative and executive power are an opportunity for the executive power to participate in the exercise of the legislative function and the decrees with the force of law are in fact acts of delegated legislation, whereby the principle of necessity - namely, the legislative competencies of the government are limited to the purposes for which the state of emergency has been declared and the measures must not exceed those objectives.[27] Therefore, the decrees with the force of law can amend and supplement provisions of existing laws, but must be within the framework of the Constitution. With the state of emergency declared by the head of state, the government was empowered to restrict human rights in accordance with the Constitution and international human rights treaties, although even in times of crisis the government may impose certain human rights restrictions in compliance with the Constitution, laws and international human rights instruments. The difference is that in a state of emergency the restrictions on human rights are made through the direct application of the decrees with the force of law, while in a state of crisis by the application of the existing current law.[28] The similarity between the two situations is that the government is obliged to respect the Constitution, laws and international treaties for the protection of human rights and freedoms in such restrictions. It is a fact that the state of emergency temporarily suspends the constitutionally guaranteed principle of separation of powers, but at the same time leads to the concentration of political power in the hands of the government due to the transfer of legislative power from the assembly to the government. The justification of this suspension of the principle of separation of powers is most often sought in the need to accelerate all activities of state bodies, while the restriction of human and civil rights and freedoms is done in accordance with the need to eliminate the threat posed by the state of emergency. In a state of prolonged dura-

27. The principle of necessity requires that emergency measures must be capable of achieving their purpose with minimal alteration of normal rules and procedures of democratic decision-making. Moreover, the principle of necessity is not referred directly in the context of the institutional emergency measures, but may be derived from the requirement of proportionality and necessity of the emergency measures in the field of human rights. Therefore, the power of the government to issue emergency decrees should not result in a *carte blanche* given by the legislator to the executive. Given the rapid and unpredictable development of the crisis, relatively broad legislative delegations may be needed, but should be formulated as narrowly as possible in the circumstances, in order to reduce any potential for abuse. As a general rule, fundamental legal reforms should be put on hold during the state of emergency. – Council of Europe, *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis-A toolkit for member states*, Strasbourg, 2020, p. 4.

28. Зборник на трудови правно-политички и економски дискурс во време на COVID-19, Универзитет Св. Кирил и Методиј, Правен Факултет Јустиниан Први, Скопје, 2020, p. 28-29.

tion of the health crisis, and thus the factual basis for the existence of the state of emergency, after the expiration of 30 days the question arose how to "extend" the state of emergency in conditions when its extension was requested by the medical profession, but it was also the only way for a somewhat normal functioning of the legal order and the political system within the described circumstances. As there was no constitutional basis for a decision to extend the state of emergency, the President of the Republic of North Macedonia, deciding on a new proposal of the Government of the Republic of North Macedonia, made a new decision to establish a state of emergency for a time period of 30 days. This decision was challenged by a certain political party before the Constitutional Court of the Republic of North Macedonia, claiming that, "The President has the right to declare a state of emergency with a maximum period of time of 30 days for the same legal and factual situation".[29] On the other hand, the Constitutional Court of the Republic of North Macedonia rejected the initiative for assessment of constitutionality with the explanation that the Constitution of the Republic of North Macedonia does not limit from a quantitative (numerical) point of view, nor is it possible, how many times a state of emergency will be declared, if the competent state bodies like the Assembly of the Republic of North Macedonia or the President of the Republic of North Macedonia assess that the conditions and the need for its proclamation are met. This means that the Constitution of the Republic of North Macedonia stipulates that after the expiration of the time period of 30 days, the state of emergency ceases. If the factual conditions for the existence of a state of emergency remain, which is a constitutional basis and condition, a new additional decision for declaring a state of emergency is made. It is a guarantee that the state of emergency cannot be automatically extended, but there is a need for a new assessment of whether there are conditions and a need for the existence of a state of emergency, and if it is deemed necessary and justified, a new decision is made establishing the existence of a state of emergency for a certain period of time, which again may not be more than 30 days. This is because the state of emergency implies limitation (restriction) of certain freedoms and rights of man and citizen recognized in international law and determined by the Constitution of the Republic of North Macedonia, which must be an exception, due to which its time limit is necessary and subject to mandatory review. Following the spirit and the stated legal logic of the Constitutional Court of the Republic of North Macedonia, in conditions of the existence of the reasons for determining the state of emergency

29. Ibidem, p. 29, 62.

stated in the constitution of the Republic of North Macedonia, the President of the Republic of North Macedonia made 4 (four) consecutive decisions as follows: April 18, 2020 for a duration of 30 days, May 18, 2020 for a duration of 14 days and May 30, 2020 for a duration of 14 days. After these multiple extensions the state of emergency ceased on June 13, 2020. Nevertheless two days later the President made a new decision to re-declare a state of emergency for 8 days starting on June 15, 2020. Pursuant to Article 1 of the new Decision the state of emergency was declared throughout the country for the preparation and conduct of early elections for members of the parliament of the Republic of North Macedonia, with measures aimed towards public health protection during the COVID-19 pandemic conditions. The state of emergency officially ended on June 23, 2020.[3031]

3. THE IMPACT OF COVID-19 EMERGENCY MEASURES ON THE FIELD OF HUMAN RIGHTS

The freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution of the Republic of North Macedonia. 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 (Article 54). This allows the possibility to understand that the Constitution of the Republic of North Macedonia rigorously requires the basic rights and liberties to be limited only by

30. Жарко Хаџи-Зафиров *et alia*, Анализа на донесените уредби со законска сила за време на вонредната состојба во 2020, Скопје, 2020, p. 16.

31. Анализа на искуствата на институциите за време на вонредната состојба и уредбите со законска сила, Министерство за Правда на Република Северна Македонија, Скопје, 2021, p. 11-13.

- Decision on determining the state of emergency no. 08-607 / 2 of 16 April 2020, for the period of 30 days published in the Official Gazette of the Republic of North Macedonia no. 104/20; http://www.slvesnik.com.mk/Issues/9e1c06c7e2474dd9bc49f8dd46e0f793.pdf;
- Decision for determining the state of emergency no. 08-682 / 2 dated 16 May 2020, for the period of 14 days, published in the Official Gazette of the Republic of North Macedonia no. 127/20; http://www.slvesnik.com.mk/Issues/d6c92844ad5a4fe2bc47874b138e97fa.pdf
- Decision on determining the existence of a state of emergency no. 08-729 / 2 from 30 May 2020, for a period of 14 days, published in the Official Gazette of the Republic of North Macedonia no. 142/20;
- Decision on determining the existence of a state of emergency no. 08-777 / 3 from 15 June 2020, for a time period of 8 days, published in the Official Gazette of the Republic of North Macedonia no. 159/20, adopted for the preparation and conduct of early elections for Members of the Parliament of the Republic of Northern Macedonia, with measures for protection of public health in conditions of coronavirus pandemic COVID-19.

Constitution and in conformity with the reasons mentioned in the related articles of the Constitution without breaching upon their essence. Moreover, human rights may be temporarily suspended or limited for the duration of state of emergency, but only to the extent required by such circumstances and as much as the measures adopted do not create any discrimination on the basis of race, sex, ethnic origin, language, religion, political or other conviction, social status, education and other personal circumstances. Such limitations are foreseen under Article 54 of the Constitution of the Republic of North Macedonia of 1991 as the supreme legal act and simultaneously in the human rights international treaties - Article 15 of the European Convention on Human Rights of the Council of Europe as well as Article 4 of the International Covenant on Civil and Political Rights of the United Nations Organization, which the Republic of North Macedonia has ratified by law, and as such, are an integral applicative part of the internal legal order (Article 118).

Limitations are restrictions imposed on non-absolute human rights, such as the right to freedom of expression, the right to freedom of association or the right to private and family life. Effective enjoyment of all these rights and freedoms guaranteed by Articles 8, 9, 10 and 11 of the European Convention on Human Rights is a benchmark of modern democratic societies. Restrictions on them are only permissible if they are established by law and proportionate to the legitimate aim pursued, including the protection of public health. The legitimate aim of protection of health is contained in Article 5 paragraph 1e, paragraph 2 of Articles 8 to 11 and Article 2 paragraph 3 of Protocol No 4 to the European Convention on Human Rights. These limitations are subject to a triple test of legality (are prescribed by law), legitimacy (pursue a legitimate aim) and necessity (are needed to reach the aim and proportionate to it). Certain convention rights do not allow for any derogation, i.e., considered non-derogable human rights: the right to life, except in the context of lawful acts of war (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), the prohibition of slavery and servitude (Article 4 paragraph 1) and the rule of "no punishment without law" (Article 7). There can be no derogation from abolishment of a death penalty or the right not to be tried or punished twice (Protocols No 6 and 13 as well as Article 4 of Protocol No 7).[32]

32. Nicos Alivizatos *et alia*, European Commission for Democracy through Law (Venice Commission) – Respect for Democracy, Human Rights and the Rule of Law During States of Emergency-Reflections, Strasbourg, 2020, p. 9; Council of Europe, *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis-A toolkit for member states*,

It is recognized at the outset that governments are facing formidable challenges in seeking to protect their populations from the threat of COVID-19. It is also understood that the regular functioning of society cannot be maintained, particularly in the light of the main protective measure required to combat the virus, namely confinement. It is moreover accepted that the measures undertaken will inevitably encroach on rights and freedoms which are an integral and necessary part of a democratic society governed by the rule of law. The Republic of North Macedonia pursuant to Article 15 of the European Convention on Human Rights used the possibility to restrict several rights on account of protection of health (Article 5e provides for an explicit ground to detain people due to infectious diseases) subsequently depositing notifications to the Council of Europe that the Republic of North Macedonia shall exercise the right to derogate from its obligations under the European Convention on Human Rights on the entire territory of North Macedonia. Since the first case of COVID-19 was detected on the territory of the Republic of North Macedonia on February 24, 2020 the Government of the Republic of North Macedonia gradually has adopted a set of decisions, conclusions and has been taking concrete preventive measures to combat COVID-19 and to protect the public health. The measures introduced by the Government of the Republic of North Macedonia, among others include: suspension of regular classroom instruction in primary, secondary and vocational schools and universities, to be replaced with distance home learning, restriction of public assemblies, cancelling all public events, meetings and gatherings, closing of museums, theatres and cinemas for visitors, cancellation of performances and conferences, suspension of international passenger air traffic, establishing special rules of isolation and state-organized quarantine for citizens entering the territory, ban on and special regime of movement in parts and on the entire territory of the country, as well as additional movement restrictions. The application of these measures may influence the exercise of certain rights and freedoms under the convention and in some instances give reason for the necessity to derogate from certain obligations of the Republic of North Macedonia under Article 8 and Article 11 of the European Convention on Human Rights, Article 2 of First Protocol and Article 2 of Protocol No. 4 to the convention. The measures adopted by the government are proportionate and targeted, required by the exigencies of the situation and are not inconsistent with other obligations under international law.[33]

Strasbourg, 2020, p. 2-6.

33. Council of Europe - Directorate of Legal Advice and Public International Law, *Note Verbale*

4. THE DECREES WITH FORCE OF LAW

The authorization of the government to adopt decrees with the force of law lasts until the end of the state of war or the state of emergency. During state of emergency conditions, the system of check and balance, i.e. the separation of powers into legislative, executive and judiciary is temporarily replaced by a concentration of legislative and executive power in one body - the government, which was put in a position to take measures to address the challenges of protecting the population from the effects of the pandemic, such as those of health-related nature, as well as no less important economic and social consequences.[34] As stated in the Decision of the Constitutional Court of the Republic of North Macedonia, "The decrees with the force of law, in accordance with Article 126, paragraph 1 of the Constitution of the Republic of North Macedonia, must be adopted on the basis and within the bounds of the Constitution and legislation, i.e. in the compliance with the law".[35] By decree with the force of law the government regulates issues within the competence of the assembly in case of a state of war or a state of emergency if there is no possibility for convening the assembly (Article 36 paragraph 1 of the Law on Government). This means that the decrees with the force of law of the government regulate issues that are within the competence of the assembly and which are legal matters (*materia legis*). It should be emphasized that neither in the Constitution, nor in the Law on Government,[36] nor in the Rules of Procedure of the Government of the Republic of North Macedonia[37] there are no provisions that regulate a special legal procedure for adopting decrees with the force of law in the government. Hence, this represents a legal gap (*lacuna legis*) because a regulation that by its legal force possesses

from the Permanent Representation of the Republic of North Macedonia to the Council of Europe, JJ9021C Tr./005-232, (02 April 2020), Strasbourg, p. 4; Владо Камбовски, Правни аспекти на вонредната состојба – МАНУ, Скопје, 2020, p. 20-21.

34. Жарко Хаџи-Зафиров, Анализа на донесените уредби со законска сила за време на вонредната состојба во 2020, Скопје, 2020, p. 9.

35. Одлука на Уставниот Суд на Република Северна Македонија У.бр. 49/2019, Службен Весник на Република Северна Македонија бр. 135/2020.

36. The Law on Government of the RNM has only one article dedicated to the decrees of force of law. That is Article 36, paragraph 1 of the Law on Government which is relatively brief. It prescribes only the possibility and the general right to issue a decree of force of law by the government during a state of war or state of emergency. However, it does not provide any further details!

37. Деловник на Владата на Република Северна Македонија, Службен Весник на Република Северна Македонија бр. 38/01, 98/02, 9/03, 47/03, 64/03, 67/03, 51/06, 5/07, 15/07, 26/07, 30/07, 58/07, 105/07, 116/07, 129/07, 157/07, 29/08, 51/08, 86/08, 114/08, 42/09, 62/09, 141/09, 162/09, 40/10, 83/10, 166/10, 172/10, 95/11, 151/11, 170/11, 67/13, 145/14, 62/15, 41/16, 153/16, 113/17, 228/19, 72/20, 215/20, 309/20, 41/21 и 56/21.

the character of a law in substantial (material) connotation/sense and with which derogation of specific legal issues is accomplished, as well as changing the legal situations previously regulated by laws adopted by the legislature, should not be carried out by the executive power in the same manner and procedure as bylaws are adopted outside the frameworks of a state of emergency.[38]

In the period of time from March 18, 2020 to June 22, 2020 a total of 250 decrees with the force of law were adopted. According to the type, 101 of the total number of adopted decrees are decrees with the force of law for application of a specific laws, 41 are original decrees with the force of law, while 107 are decrees with the force of law for amendments to existing decrees. Only one decree was adopted to terminate an existing decree with the force of law.[39]

Review of adopted decrees with force of law by month[40]

Month	March, 2020	April, 2020	May, 2020	June, 2020
The number of decrees with force of law	43	97	58	52

The decrees regulate a total of 33 areas with the force of law. According to the field of regulation, most of the decrees with the force of law refer to finance (54), health protection (22), education (19), transport and communications (16), as well as labour relations (14).[41] Based on the analysis of the already adopted decrees with the force of law, it can be concluded that the principle of proportionality is not always respected when adopting such decrees that derogate the existing laws for the protection of public health. In certain situations, there are provisions in which it can be foreseen that they will produce legal consequences even after the end of the state of emergency. Also, the constitutionality of certain provisions of some decrees has been questioned (e.g. the reduction of judges' salaries). Certain decrees that cause particular public attention are changed too often, are passed in a non-transparent manner and in an extremely short period of time without consultation with interested parties, experts and the civil society.[42]

38. Зборник на трудови правно-политички и економски дискурс во време на COVID-19, Универзитет Св. Кирил и Методиј, Правен Факултет Јустиниан Први, Скопје, 2020, p. 39-40.
39. Бојан Трпевски, Владеењето на правото и човековите права во услови на вонредна состојба во Република Северна Македонија 2020, Скопје, 2020, p. 16.
40. Ibidem, p. 16.
41. Ibidem.
42. Владо Камбовски, Правни аспекти на вонредната состојба – МАНУ, Скопје, 2020, p. 15.

5. THE ACTIVITY OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF NORTH MACEDONIA DURING THE STATES OF EMERGENCY

Although the decrees with the force of law, as a rule, should be adopted in order to deal with the causes and consequences of the pandemic, in the absence of any oversight by the Assembly over the executive power, the need for oversight of the observance and safeguarding of the universal European fundamental values of democracy, the rule of law and human rights by other relevant state bodies is emphasized. Without any doubt, it should be emphasized that the importance of the Constitutional Court as the sole domestic controller whose constitutional competence is to protect the constitutionality and legality of the adopted decrees with the force of law. In that regard, in addition to several initiatives, the Constitutional Court of the RNM for the first time acted on its own initiative (*proprio motu*) assessing the constitutionality and legality of 5 (five) of the decrees with force of law and decided to initiate a procedure for assessing the constitutionality and legality for 3 (three) of the disputed decrees.[43][44]

In compliance with Article 108 of the Constitution of the RNM, "The Constitutional Court of the Republic of North Macedonia is a body of the Republic protecting constitutionality and legality." For this reason, the core jurisdiction to the Constitutional Court of the Republic of North Macedonia is the constitutional-judicial review of constitutionality and legality over general normative legal acts. Constitutional judicial review is, in short, a procedure for examining the conformity of legislation with the constitution and its provisions, and the judicial determination that legislation that is inconsistent with the provisions of the constitution is un-constitutional and null and void. That is, constitutional-judicial review is an instrument that limits the discretion and scope of action of political decision-makers, especially with regard to the fundamental rights and freedoms protected by the constitution. Constitutional judicial review extends the idea of constitutionality according to which the supremacy of the constitution limits government beyond the realms of public law towards the realms of criminal, civil and administrative law,

43. Жарко Хаџи-Зафиров, Анализа на донесените уредби со законска сила за време на вонредната состојба во 2020, Скопје, 2020, p. 18.
44. http://ustavensud.mk/?p=19701; http://ustavensud.mk/?p=19683

and in these senses constitutional judicial review is central to the idea of neo-constitutionalism.[45]

Having in mind that during the state of emergency the legislative function of the assembly passes to the government and especially due to the fact that the state did not have a functional assembly, the role of the Constitutional Court of the Republic of North Macedonia becomes more significant in order to control the constitutionality of the decrees. Deciding on the submitted initiatives for constitutional control of the decrees with the force of law, the decisions on measures for dealing with COVID-19 adopted by the government, as well as the decisions on determining the existence of a state of emergency, the Constitutional Court adopted a total of 148 decisions and resolutions with which control and assessment of the constitutionality and legality of a total of 172 regulations was performed.[46]

Statistical review of decisions and resolutions by the constitutional court on submitted initiatives[47]

	DECISIONS		RULINGS			
	An annulment of regulation	An abrogation of regulation	The initiative is rejected	The procedure is initiated	The procedure is not initiated	The procedure is terminated
The decrees with force of law	10	0	25	92	11	2
The Government's decisions on measures for COVID-19	0	0	3	0	1	1
The decisions of state of emergency	0	0	6	1	0	0
The total by manner of Proceedings	10	0	34	93	12	3
The total by type	10		142			

45. Yaniv Roznai, *Constitutional Courts in a 100-Years Perspective and a Proposal for a Hybrid Model of Judicial Review*, The Vienna Journal on International Constitutional Law, volume 14/ issue 4, 2020, p. 355.
46. Бојан Трпевски, Владеењето на правото и човековите права во услови на вонредна состојба во Република Северна Македонија 2020, Скопје, 2020, p. 23.
47. Ibidem.

6. CONCLUSION

On March 18, 2020 for the first time in its history, in the Republic of North Macedonia, by decision of the president of the country, a state of emergency was declared due to a declared pandemic of the COVID-19 virus. The state of emergency was declared by the president of the country in accordance with the dissolved Assembly of the Republic of North Macedonia as a result of the then-announced early parliamentary elections. In addition to the intensified measures for the protection of the health of the population, the state of emergency caused the need to introduce new practices and adapt the existing work procedures in various social processes in the country. The health crisis and the state of emergency undoubtedly affected the functionality and efficiency of the entire state apparatus in acting and exercising its functions in practice; the need to declare a state of emergency due to the COVID-19 pandemic arose at a time when the assembly was dissolved. On February 17, 2020 the members of parliament in the assembly passed a decision to dissolve in order to start the mandatory 60-day deadline for holding early parliamentary elections. Therefore, at the instigation of the government a state of emergency was declared by the President of the Republic of North Macedonia;

The Assembly of the RNM has not acted concerning the formal approval of the decrees with the force of law of the Government of the RNM. Such acts should address issues related to the exceptional situation and should not remain in force after the end of the state of emergency, unless they have been confirmed and extended by the legislative state power through a special law;

The state of emergency in the RNM has shown that it is necessary to adopt a special *Law on Legal regime of state of emergency* where all issues related to the state of emergency will be regulated in a clear, precise and detailed manner from a normative legal point of view, especially the issue of the procedure for enacting decrees with the force of law, the scope and content of the questions, i.e. the question whether the decrees with the force of law can regulate only questions related to the reason for determining the state of emergency and dealing with the consequences of the factual situation due to which the state of emergency was determined and, finally, their legal effect, i.e. validation after the end of the state of emergency;

Instead of the parliamentary democratic elections for members of parliament to be announced by the President of the Assembly of the Republic of North Macedonia, as prescribed *de lege lata* and provided in Article 67, paragraph 4 of the Constitution of the Republic of North Macedonia, they should be announced by the President of the Republic of North Macedonia as head of state which is in fact the standard legal solution in the comparative constitutional law, which eliminates (avoid) the deficiency by announcing parliamentary elections in conditions and circumstances of a self-dissolved assembly;

By decree with the force of law the government regulates issues within the competence of the assembly in case of a state of war or a state of emergency if there is no possibility for convening the assembly. During the state of emergency in North Macedonia in the period of time from March 18, 2020 to June 22, 2020 the Government of the Republic of North Macedonia adopted a total of 250 decrees with the force of law, including original decrees, decrees aimed at applying a certain law, as well as decrees amending and supplement previously adopted decrees;

The constitutional judiciary plays a crucial role in the exercising control and assess of the executive's prerogatives during states of emergencies, taking decisions on the constitutionality of a declaration of a state of emergency as well as reviewing the constitutionality and legality of specific emergency measures - legislative decrees which have the force of law.

BIBLIOGRAPHY

1. Albert, Richard, Roznai, Yaniv, Constitutionalism under extreme conditions, Switzerland, 2020;
2. Alivizatos, Nicos, et al., Respect for democracy, human rights and the rule of law during states of emergency-reflections, Strasbourg, 2020;
3. Binder, Krisztina et al., States of emergency in response to the corona virus crisis: situation in certain member states, Strasbourg, 2020;
4. Bačić, Petar, Corona Ante Portas i Ustav Izvanrednog Stanja u Aktualnoj Politici i Pravu Sporta, Zbornik Radova Pravnog Fakulteta Sveučilišta u Splitu 58, br. 1/2021;
5. Bieber, Florian, The Western Balkans in Times of the Global Pandemic, Graz, 2020;

6. Bjornskov, Christian, Voigt, Stefan, The Architecture of Emergency Constitutions, International Journal of Constitutional Law of the Oxford University, no. 16/1, 2018;

7. Камбовски, Владо, et al., Правни аспекти на вонредната состојба, Скопје, 2020;

8. Elkins, Zachary et al., The Endurance of National Constitutions, Cambridge, 2009;

9. Russell, Peter, Constitutional Odyssey, Toronto, 2004;

10. Roznai, Yaniv, Constitutional Courts in a 100-Years Perspective and a Proposal for a Hybrid Model of Judicial Review, The Vienna Journal on International Constitutional Law, no. 14/4, 2020.

11. Трпевски, Бојан, Владеењето на правото и човековите права во услови на вонредна состојба во Република Северна Македонија 2020, Скопје, 2020;

12. Хаџи-Зафиров, Жарко et al., Анализа на донесените уредби со законска сила за време на вонредната состојба во 2020, Скопје, 2020;

13. Шкарић, Светомир, Правната битка за вонредната состојба, ResPublica, 17 April 2020;

14. Жерајић, Славица, Анализа на искуствата на институциите за време на вонредната состојба и уредбите со законска сила, Скопје, 2021;

15. Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis-A toolkit for member states, Strasbourg, 2020;

16. Зборник на трудови правно-политички и економски дискурс во време на COVID-19, Универзитет Св. Кирил и Методиј, Правен Факултет Јустиниан Први, Скопје, 2020;

17. Decisions of the Constitutional Court of the Republic of North Macedonia;

18. Decisions on determining the existence of a state of emergency, Official gazette of the Republic of North Macedonia;

19. Деловник на Владата на Република Северна Македонија, Службен весник на Република Северна Македонија бр. 38/01, 98/02, 9/03, 47/03, 64/03, 67/03, 51/06, 5/07, 15/07, 26/07, 30/07, 58/07, 105/07, 116/07, 129/07, 157/07, 29/08, 51/08, 86/08, 114/08, 42/09, 62/09, 141/09, 162/09, 40/10, 83/10, 166/10, 172/10, 95/11, 151/11, 170/11, 67/13, 145/14, 62/15, 41/16, 153/16, 113/17, 228/19, 72/20, 215/20, 309/20, 41/21, 56/21;

20. Закон за Влада на Република Северна Македонија, Службен весник на Република Северна Македонија, бр. 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, 98/19;

21. Устав на Република Северна Македонија, Службен весник на Република Северна Македонија бр. 52/1991.

CHAPTER TWO:

Challenges and Opportunities in Governance in Pandemic Era

COVID-19 AND THE IMPACT ON GENDER EQUALITY POLICIES AT LOCAL LEVEL: THE CASE OF THE REPUBLIC OF NORTH MACEDONIA

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Abstract

The COVID-19 pandemic is considered as the greatest global health crisis of the century, causing major disruptions in the local communities. Local governments are not only at the forefront of the COVID-19 pandemic, but they are also likely to see its lasting effects on the quality of life. Thus, the financial impact of the COVID-19 outbreak on municipalities is expected to be long-lasting and significant. It is clear that municipalities will face increased spending and declining of revenues (due to closure of businesses, lower tax collection etc.).

For the majority of the municipalities additional problem is the lack of the remittances from the diaspora, which in the past years were important source of revenue and served as financial safety net for the local communities. According to the World Bank, the remittances are projected to decline, as diaspora workers lose their jobs in destination countries or are left with lower income.

This paper focuses on the impact of COVID-19 on the socio-economic situation of women and men at local level. It identifies the rapid response interventions of the Local Self Government Units (LSGUs) to address COVID-19, the gender impact of this response at specific municipalities.

Keywords: COVID 19, gender machinery, municipalities, incentives, gender responsive budgeting

INTRODUCTION

The COVID-19 pandemic is considered as the greatest global health crisis of the century, causing major disruptions in the global economy. North Macedonia, as all countries, has been taking serious steps in suppressing the transmission of the virus and mitigating the degree of impact which the virus can have on the country's health, social and economic system. According to ILO (2020)[1], the crisis can cause bankruptcy and closure of micro-and small enterprises, loss of jobs and income that seriously affects the livelihoods of households and individuals throughout the world. Furthermore, according to (UN) "*across every sphere, from health to the economy, security to social protection, the impacts of COVID-19 are exacerbated for women and girls*". [2] The first infected cases in North Macedonia were registered on February 2020. Due to the rapid increase of confirmed cases, North Macedonia declared nationwide state of emergency and implemented numerous containment and lockdown measures to mitigate the COVID-19 spread. As of 30th May, the country has reported 2,226 confirmed cases of COVID-19 and 133 deaths. Out of the total confirmed cases 1,144 are women while 1,082 are men. Though the incidence of virus infection is higher in women, deaths are more evident in men. From the 133 reported deaths due to COVID-19, 91 men lost their lives compared to 42 women.[3] The study aims to address the role and the impact of the municipalities and the gender machinery in design and the implementation of the interventions during COVID 19. In parallel, it strives to explore the impact of the interventions to women and men in the local communities.

METHODOLOGY

The findings of the study are part of the project in which author of the paper was engaged as research investigator. The study is providing an overview on the situation in 20 LSGUs, which represent one fourth of the municipalities in the country. The study focuses on identifying the role of the Coordinators of Equal Opportunities (coordinators) in the

1. ILO Policy Brief: Policy framework for tackling the economic and social impact of the COVID-19 crisis, https://bit.ly/3hwUMZq
2. United Nations policy brief (website), The impact of COVID-19 on Women, April 2020, https://cutt.ly/Jy1dKO5
3. Institute for public health (website), *Daily report on COVID-19 outbreak,* published on 30th May 2020

process of responding to the crisis, the gender impact of COVID-19 on the life and the economy in the targeted municipalities and detecting possible interventions to support the municipalities in closing the gender gaps during and after the emergency period. The study looks through the perspective of coordinatorss in the 20 municipalities.

The primary research was conducted in April 2020. The method used included a quantitative analysis and as data collection instrument a questionnaire was introduced consisting of three groups of questions: (i) mapping of the socio-economic impact of the crisis on the municipalities, with focus on identifying the groups at highest risk; (ii) Identifying the immediate actions taken by the municipalities in response to the crisis; and (iii) assessing the possible consequences and future needs of the municipalities.

The mapping questionnaire was answered by 26 respondents from the following municipalities: Aerodrom, Bitola, Bogdanci, Bogovinje, Centar, City of Skopje, Gazi Baba, Gostivar, Kisela Voda, Kumanovo, Mavrovo and Rostushe, Novaci, Ohrid, Shtip, Strumica, Tetovo, Veles, Sveti Nikole, Kochani and Kriva Palanka.

The respondents were the Equal Opportunity Coordinators in the 21 Municipalities covered by the project and a few councilors from the local Commissions for Equal Opportunities. Both are encompassing the gender equality machinery on local level. In accordance with the Law on equal opportunities of women and men, Article 14, p.6[4] the Commission on equal opportunities provides opinion and contributes to the development of policies, programs and budgets and proposes how the gender equality principle can be incorporated and formalized in the work of the municipality, as well as it is responsible for monitoring of the implementation and results achieved in promoting gender equality at local level. The same article 14, paragraph 7 entitles the Equal Opportunity Coordinators with the right to give proposals and opinions on the advancement of gender equality in the municipality. Taking in consideration their authority, the gender machinery can have an important role in mainstreaming gender perspective in the COVID-19 response on local level, during the crisis, but especially in the post-recovery period. For the analysis, it is of outmost importance to assess the involvement of coordinators in development of municipal interventions in response to COVID-19, i.e. to assess whether local governments` commitments to GE were taken in consideration with their response to COVID-19.

4. Ministry of Labour and Social Policy (website), *Law on Equal opportunities of Women and Men,* http://www.mtsp.gov.mk/WBStorage/Files/ZEM%205%2009%202011%20L.pdf

LIMITATIONS TO THE MAPPING STUDY

It is important to underline that the study faces few limitations that need to be taken into consideration. Firstly, the study was developed with the purpose to assess the situation on local level from the perspective of the Coordinators for Equal Opportunities and Municipal Councilors. Secondly, the study was conducted on a small sample size where a total of 26 respondents from 20 municipalities answered the questionnaire, out of which 4 respondents were municipal councilors. Finally, the survey analysis found cases of discrepancy between the responses of the coordinators and the councilors from the same municipality. This could be result of lack of information sharing in the municipality or the fact that councilors are involved in decision making and hence they are more informed on the interventions, whereas coordinators are less informed due to part-time working hours or absence from work. Despite these inconsistencies, the mapping study provides an overview of the socio-economic impact of COVID-19 to women in the targeted municipalities and is a good basis for designing gender responsive interventions to support municipalities during and after the emergency period.

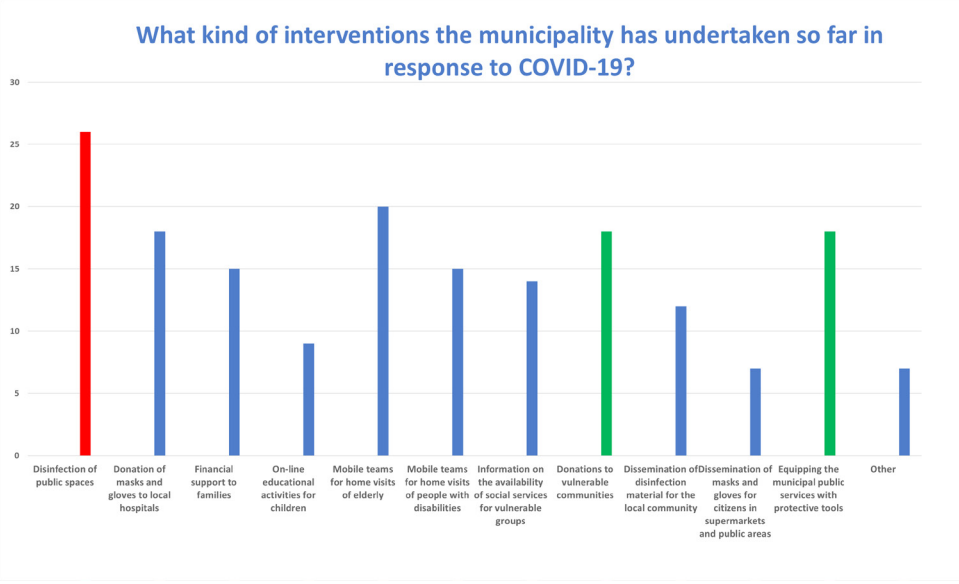
FINDINGS

The analysis strives to identify the rapid response interventions of the LSGUs to address COVID-19. It is evident that all municipalities are undertaking activities to disinfect public spaces. 16 respondents claimed that their municipality donated masks and gloves to the local hospitals whereas 15 respondents claimed that support was provided to families in need. Only 9 municipalities initiated online activities for children, 15 organized mobile teams for home visits of the elderly and 13 organized mobile teams for home visits of people with disabilities. It is important to highlight that 13 municipalities disseminated information on the availability of social services for vulnerable groups. At the time of the survey, only 6 municipalities have not yet equipped the municipal public services with protective gear (gloves, face shields and mask etc.) whereas 8 municipalities had disseminated masks and gloves for citizens in supermarkets and in public areas.

Furthermore, the respondents shared additional information on interventions undertaken in response to COVID-19, such as:

- Using different programs from international donors for providing support to the elderly people and people with disabilities;
- Handing over three official vehicles to the Ministry of interior and realization of an online meeting of the Council of the Municipality;
- Providing of space for constructing a field hospital in the backyard of the Clinical Center;
- Designated disinfection area at the entrance of the Municipality;
- Disinfection of residential buildings;
- Disinfection of streets;
- Dissemination of masks for the citizens working in the municipality`s markets
- Donation of funds to the Red Cross for distribution of food/hygienic products.

Chart 1



The second issue explored in this study was the perception of coordinators regarding the gender responsiveness of the municipal interventions to respond to COVID-19. Accordingly, 14 respondents believe that the measures undertaken by the municipalities are taking into consid-

eration the needs of women whereas 6 coordinators have a perception that women's specific needs are not incorporated in the measures.

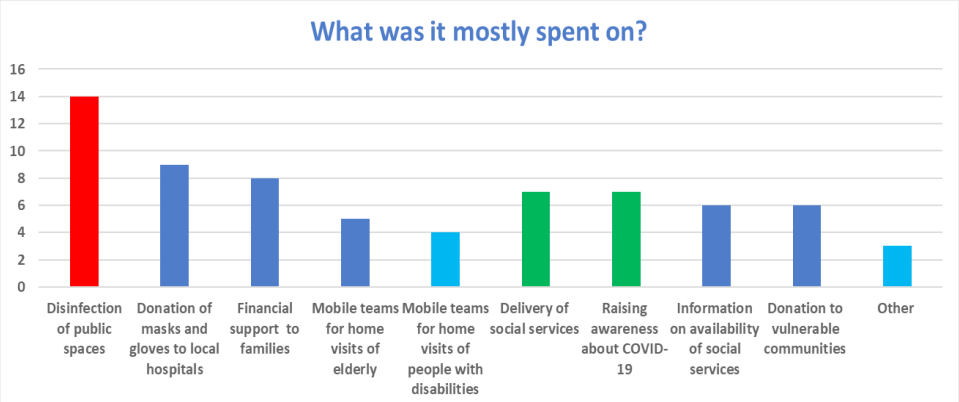
In order to identify the types of interventions that take into consideration women's needs, the respondents who answered YES were asked to elaborate on the type of the measures. The following measures were introduced to address to the specific needs of women:

- Mobile teams for home visits and assistance to the elderly, people with disabilities and information on the availability of social services for vulnerable groups;
- Donation of medical masks and other protective gear for the medical staff among whom the most are women;
- Logistic and psychological support for the cultural workers among whom the most are women (for example opera singers, ballet artists, and others);
- Monetary support for single mothers;
- Assistance in providing groceries for the elderly, including women.
- Disinfection of bus stations where female textile workers are waiting for buses to get to their factories.

Interestingly, it could be noted that the coordinators recognize two measures that were adopted on national level as gender specific: **continuation of the maternity leave and release from work for one of the parents of children younger than 10.** Hence, the coordinators also pointed out that these measures, as a result of the dominant gender roles, forced more women than men to stay home with their children.

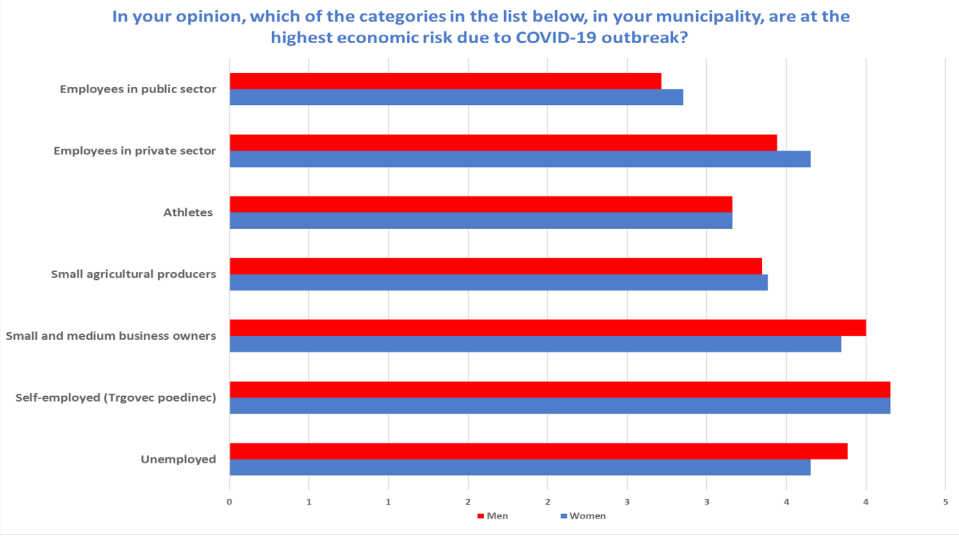
Out of 20 municipalities, 17 have allocated a separate budget to respond to COVID-19 emergency. The municipalities are mainly using funds from the following budget lines: current reserves, budget lines from the annual programs, social transfers, other communal services, funds for municipal administration, funds for hygiene and disinfection.

The reallocated funds from the municipal budgets were mostly spent on the following: disinfection of public spaces, donation of masks and gloves to local hospitals, monetary support to families, delivery of social services, raising awareness concerning COVID-19, information on availability of social services, donations to vulnerable communities. It can be also observed that in some municipalities funds were reallocated to support the elderly and persons with disabilities.



The coordinators and the counselors consider men to be at greater economic risk than women as small and medium business owners and as unemployed persons. According to the latest Labour Force Survey[5], men are more represented among the active population and thus the percentage of men registered as unemployed or as business owners is higher than with the women. This indicates that men are more active participants in the economy and therefore it can be expected that the crisis will have higher impact on men in these categories. That is why respondents expect that these will have higher impact on men.

Generally, all respondents note that large negative economic effects will be felt by small and medium business owners and by the self-employed.

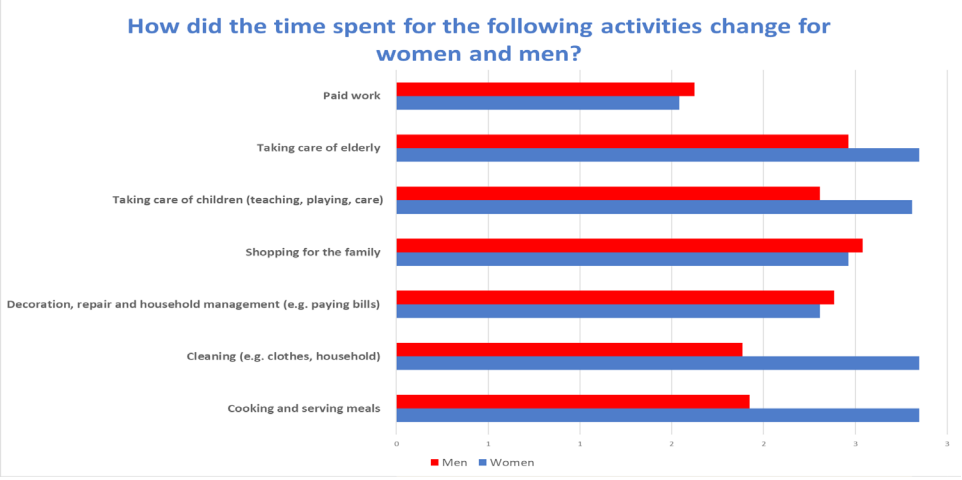


5. State Statistical Office of North Macedonia (website), Жените и мажите во Северна Македонија, http://www.stat.gov.mk/Publikacii/Gender2019.pdf

The analysis shows that for women all listed measures have high rate of impact, except closing of restaurants and cafes, whereas for men the highest rate of impact is noticed with the closure of the sports centers, the imposed curfew, and the closure of the restaurants and cafes On average, coordinators share the view that all measures have equally high level of impact on women and men. However, the effects from closing schools and day-care centers as well as the work from home tend to slightly skew towards women as the burden of unpaid care passed mainly to women given that usually they are the ones who stay at home with children under 10 years of age.

The amount of unpaid care work increased for women and there is substantive difference in the amount of time women and men spend on the following activities: cooking and serving meals, cleaning, decoration, repair and household management, shopping for the family, taking care of children, taking care of the elderly andpaid work.

It can be concluded that, for women, the time spent on cooking and serving meals, cleaning, taking care of children and taking care of the elderly has increased, whereas for men there has been an increase in time spent on shopping for the family and taking care of the elderly. Moreover, for both, men and women, the time spent on decoration, repair and household management has stayed on the same level as before COVID-19.



Apparently, according to the perceptions of the coordinators and the councilors the increased presence of men at home did not lead to their taking on an increased share of the unpaid work. The lockdown was a

unique opportunity for redistribution and sharing the burden of unpaid domestic and care work. The municipality can have a role in promoting this equal share of unpaid care work since a lot of work in the monetary economy is now being taken over by the unpaid care economy.

CONCLUSIONS AND RECOMMENDATIONS

Even though the central government has the leading role in responding to the pandemic, municipalities play an important role in appointment and leading the local coordination bodies for pandemic preparedness and response, including implementing the legislation and policies adopted on central level.

Considering that local government is closest to the citizens, it can identify, prioritize and guide the allocation of resources according to the needs of the local population. The local government have their own budgets and emergency institutional set ups through which they can provide additional resources for national pandemic preparedness, capacity development, and response measures.

This study showed that most of the municipalities (14 of 20 taking part in the survey) have developed measures to respond to the virus that are gender responsive. These measures should be further promoted in the 6 LSGUs, that from the perspective of the coordinators, haven't yet introduced gender responsive measures.

Regarding the municipalities` budgets, many have dedicated a separate budget for the COVID-19 emergency. Most of the funds from the budgets are spent on the disinfection of public spaces and the donation of masks and gloves. However, all of them do need additional funds to be able to address emerging needs stemming from the crisis.

Considering that not all coordinators are working regularly due to different approaches taken by the municipalities, but also due to personal and family reasons, in the further stages of the project it is important to assess the specific approach of the LSGUs in terms their engagement and influence on mainstreaming gender in local policies and budgets.

In only 4 municipalities the coordinators were involved in the development of the measures to respond to COVID-19. Hence, the coordinators in the municipalities covered by the UN Women project need to be empowered to provide opinion and advice on mainstreaming gender

within the measures for COVID-19 response and especially in the development of policy and budgets in the forthcoming recovery period. In order to address inequalities stemming from the COVID-19 crisis, it is important to mainstream gender in the overall policy response. This is in the interests of both women and men, as well as the entire community. Women are the hardest hit by this pandemic but they will also be the backbone of recovery in communities[6]. **Evidence show that emergency response policies that do not include gender perspective and that do not consult women or include them in decision-making are simply less effective, and can even do harm. Consequently, it is crucial to ensure gender perspective and equal representation in all COVID-19 response planning and decision-making.**

General conclusions are that all respondents share their deep concerns regarding the situation with COVID-19. It is notable that the perception is that most of the citizens are informed about the situation, the implications and the possible post-crisis issues. Half of coordinators believe that women are more affected than men by the COVID-19 pandemic whereas the rest believe that there are no major differences based on gender regarding the expected implications from health, social and economic aspects. Further awareness raising, capacity development and research at local level is necessary to show that COVID-19 affects women and men differently. These observations can steer the upcoming technical and expert support to the municipalities and inform future policy development and budgeting.

In coordinators` view, both self-employed women and men are at highest economic risk due to COVID-19 outbreak, whereas public servants are in the lowest economic risk. Women employed in the private sector, especially those working in tourism, hotel and catering services are at highest economic risk due to COVID-19 outbreak, while employees in IT, telecommunications and energy sector are at lowest economic risk within the private sector. Also, women owners of small businesses are considered in economic risk along with men owning small businesses. This is understandable since those businesses could not survive longer periods of time if companies are being closed. Interestingly, the youth and people who are living in rural areas are considered to be at the lowest social risk. There is a is dominant perception that these categories can survive in any crises through subsistence farming. This is not the case for single parents and homeless people which according to

6. United Nations policy brief (website), *The impact of COVID-19 on Women*, April 2020, https://cutt.ly/Jy1dKO5

the Equal opportunity coordinators are at the higher social risk due to COVID-19 outbreak.

Closing schools and day-care centers and compensation of salaries for one of the parents of children under the age of 10 are measures with the biggest impact on women; these two measures combined have increased the volume of women`s unpaid care work at home. The coordinators` perception is that the curfew and the closing of restaurants and cafes are measures with the biggest impact on men. In terms of activities, cooking and serving meals, cleaning and taking care for elderly have been intensified for women due to the pandemic, whereas the perception is that for men taking care for the elderly and shopping for the family are the activities that have intensified in the period since the outbreak.

Civil society organizations, families, individuals, and traditional leaders all have to play essential roles in mitigating the effects of the crisis. The *'Whole-of-society pandemic readiness'* approach should be explored. Non-governmental groups should be involved in preparedness efforts and their expertise and capabilities harnessed to help communities prepare for recovery after the pandemic.

The study shows that supplies are the biggest necessity for the municipalities and that financial resources are lacking. Therefore, donations are welcome during the emergency period. Partnerships with civil society and grassroots organizations that have a close and direct relationship with communities are often well placed to raise awareness, communicate accurate information, counter rumours, provide needed services, and liaise with the local government during an emergency.

During a pandemic, it is important that households have access to accurate information, food, water, and medicines. Municipalities should provide immediate alleviation response such as free masks, gloves and food/hygiene packages to citizens, especially to most vulnerable groups. As expected by the coordinators who responded to this questionnaire, the COVID-19 outbreak will mostly affect single parents and homeless people. Majority of single households in North Macedonia are run by women.

Finally, most of the respondents` recommendations are in line with the idea that the municipalities should provide financial, health and social support to the citizens and prepare the municipalities for possible emergency situations in the future.

RECOMMENDATIONS

The COVID-19 crisis is a wake-up call for all of us. It's time for a change. Change on how we develop policies, redistribute money and govern municipalities. A post recovery plan must be prepared that will be shaped by the crisis' impact and the lessons learnt. This plan should put priority on education, health and economy of care as these sectors showed to be most important, being a backbone of the society struggling with the virus. A plan that will differently address the needs of women and men as they are affected differently by the virus and what is more by the response to the virus, and a plan that will target specifically vulnerable groups. In addition to this, the municipality must learn the lesson from this situation in terms of preparedness for an emergency reaction. Among the respondents there were several comments that municipalities must find ways to predict and maintain emergency budgets in future in order to be prepared for such crisis.

Continued information sharing: In the future, municipalities will need to develop information system and materials for people to continue respecting physical distancing and safety protocols. The information should be disseminated and adapted to the needs of different target groups. The media and the government should report on fake news related to the virus and therefore it will be essential for the municipalities in partnership with civil society organizations and citizens to control the narrative on local level. With regard to the communication, the municipalities should invest in using gender sensitive language. This is expected to make women identify themselves in the information spread and thus make the communication more effective.

Support care economy: What we observe in the COVID-19 crisis is people caring for each other. The mapping study shows that some municipalities have started providing an unconditional basic income to the vulnerable groups such as single parents, homeless, (cultural) freelancers, informal workers and unpaid care workers, that are currently (IPH, 2020)excluded from the traditional social security system. It is therefore very important to include the unpaid care economy in macroeconomic policy and calculate the impact of specific economic policies on the volume of paid and unpaid work of women and men.

Support work-life balance: Municipalities must support small business adaptation to the new circumstances, by investing in their digitalization and supporting tele-working which will reduce commuter

traffic and create an enabling environment for flexible working hours that allows men and women to easily combine a job and family responsibilities. Provision of information and advice, including providing psychological support for life-work balance is what municipalities can add to their post-recovery plan. Also promoting more engaged role of men at home, balancing the burden of unpaid care work is very much needed on municipal level.

Monitor the incidence of domestic violence and gender-based violence: As UN Women reports, if not tackled, domestic violence will become a shadow pandemic that will also add to the economic impact of COVID-19[7]. The increase in violence against women must be dealt urgently with measures embedded in economic support and stimulus packages that meet the gravity and scale of the challenge and reflect the needs of women who face multiple forms of discrimination. Municipalities must provide support to specialized services and uphold the standards set by the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention, 2011).

The mapping study shows that women are maxing out and burning out. Therefore, municipalities need to help women to get through the crisis.

BIBLIOGRAPHY

1. Alston, M., 2006, 'Gender mainstreaming in practice: A view from rural Australia', *National Women's Studies Association Journal* 18(2), 123–129. https://doi.org/10.2979/NWS.2006.18.2.123
2. Bacchi, C. & Eveline, J., 2005, *Mainstreaming politics: Gendering practices and feminist theory*, University of Adelaide Press, Britton.
3. De Waal, M., 2006, 'Evaluating gender mainstreaming in development projects', *Development in Practice* 16(2), 209–214.
4. Goetz, A. (ed.), 1997, *Getting institutions right for women in development*, Zed Books, London.
5. Gouws, A., 1996, 'The rise of the Femocrat?', *Agenda* 12(30). https://doi.org/10.2307/4065780
6. Gouws, A., 2005, *The state of the national gender machinery, structural problems and personal politics*

7. UN Women (website), *Press release: UN Women raises awareness of the shadow pandemic of violence against women during COVID-19,* May 2020, https://cutt.ly/Xy1Jr1bh

7. Hannan, C., 2000, 'From concept to action: Gender mainstreaming in operational activities', Paper delivered at the Technical Review Meeting: Assessment of Gender Mainstreaming and Empowerment of Women in Sub-Saharan Africa, UN Headquarters, New York, 20–21 March 2000.
8. Law on equal opportunities between women and men (2012)
9. Leyenaar, M., 2004, *Political empowerment of women: The Netherlands and other countries*, Martinues Nijhoff Publishers, Leiden.
10. Lyons, T., Curnow, J. & Mather, G., 2004, 'Developing gender mainstreaming and 'gender respect', *Development Bulletin* 64, 37–41.
11. Mehra, R. & Gupta, G.T., 2006, *Gender mainstreaming: Making it happen*, International Center for Research on Women, 30th Anniversary, May 2006.
12. Moser, A., 2007, *Gender indicators: Overview report, IDS/UNDP: Sussex*, viewed 18 May 2017, from http://www.bridge.ids.ac.uk.
13. Moser, C. & Moser, A., 2005, 'Gender mainstreaming since Beijing, a review of limitations of international institutions', *Gender and Development* 13(2), 11–22. https://doi.org/10.1080/13552070512331332283
14. Moser, C.O.N., 1993, *Gender planning and development. Theory,*
15. Rees, T., 2005, 'Reflections on the uneven development of gender mainstreaming in Europe', *International Feminist Journal of Politics* 4(7), 555–574. https://doi.org/10.1080/14616740500284532
16. ILO. (2020). *Policy Framework for tackling the economic and social impact of the COVID 19 crises.*
17. IPH. (2020). *Daily report on COVID-19 outbreak published on 30th May 2020.*
18. UN. (2020). *The impact of COVID 19 on Women.*
19. UN. (2020). Press release: UN Women raises awareness of the shadow pandemic of violence against women during COVID 19

GENDER (DIS)PARITY IN STEM, POLICY IMPLICATIONS, THE WAY FORWARD: CASE OF THE REPUBLIC OF NORTH MACEDONIA

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Abstract

The low representation of women in science, technology, engineering, and mathematics (STEM) is a long-standing and global phenomenon that has devastating ramifications on societal and economic development.

Despite the increasing participation of women in tertiary education - to the extent that most university students in nearly every developed country are female - the so-called "gender pay gap" has not declined. In part, this is due to the underrepresentation of women in the STEM (science, technology, engineering, and mathematics) subjects, which are the pathway for relatively higher-paying careers.

This paper aims to identify and assess national policies and the impact on gender (dis)parity in STEM at the level of the North Macedonian society and the existing mechanisms and initiatives, thus providing recommendations for national and local stories in the field of STEM. The methodology used mixed research methods, such as desktop data gathering, statistical data on the representation of women and men in STEM fields, policy analysis of all national documents, action plans

and frameworks relevant to women in STEM, and interviewing and surveying for primary data gathering.

Keywords: STEM, gender equality, gender gap, underrepresentation, incentives, positive discrimination.

1. BACKGROUND

In many developed countries, improving the gender balance in STEM (science, technology, engineering, and mathematics) is essential. With the rising of technology's use in everyday life, it is evident that gender equality in STEM fields leads to economic growth. In the Republic of North Macedonia, the demand for STEM associate professors and experts is growing, and women's involvement in STEM studies remains low, particularly in engineering. As the sex-disaggregated data per field of study is not available, women's STEM status is difficult to assess. Gender stereotypes in the job market are dominant. The women's activity rate is low. There is a gender gap in the choice of jobs that leads to differences in earnings and income in particular and economic vulnerability in general. Jobs in STEM areas are growing and directly impact the economy's performance in the area of money. It offers a decrease in the pay gap and provides economic resilience in the future of work. Focusing efforts in the STEM sector to respond to the global market trends and women's empowerment in the labour market is one of the imperatives for greater equality between men and women. Promoting and empowering women in STEM will contribute to the state's economic development and greater equality between men and women. Even though in the Global Gender Gap Index, the Republic of North Macedonia ranked reasonably well, the World Economic Forum in the Gender Gap 2020 report establishes that it will not attain gender parity for 99.5 years because the gender gap is still huge. North Macedonia has produced the Gender equality index in 2019, showing 5.4 points behind the European average[1].

1. EIGE Gender equality index – North Macedonia GEI is 62 points, the European average is 67.4

Table 1: *Western Balkan's economies ranking in Gender Gap Report*

Western Balkans Economy	Rank and score
Albania	Ranked 20; score 0.769
Bosnia and Herzegovina	Ranked 69; score 0.712
North Macedonia	Ranked 70; score 0.711
Kosovo*[1]*	Does not appear on the rank list of WEF in 2020
Montenegro	Ranked 71; score 0.710
Serbia	Ranked 39; score 0.736

Source: *World Economic Forum, Gender Gap Report 2020, available online: http://www3.weforum.org/docs/WEF_GGGR_2020.pdf*

Reports show that women in the Republic of Macedonia still face gender-based violence, gender stereotyping, and discrimination in the labor market[2], political participation, and decision-making at all levels[3]. In times of pandemic in a great deal suffer especially women and girls who generally earn less, hold insecure jobs, save less, and live closer to poverty[4]. On the other hand, the Covid-19 crisis can bankrupt micro- and small enterprises, according to ILO (2020)[5],which means loss of jobs and income that affects the livelihoods of households and individuals seriously. Moreover, "across every sphere, from health to economy, security to social protection, the impacts of COVID-19 are exacerbated for women and girls", according to UN (2020)[6]. Furthermore, during times of crisis, women face increased risks of violence, abuse, harassment, and exploitation[7]; the response measures to concerns in North Macedonia have been reported to have a different impact on women and men[8].

2. European Fund for the Balkans and European Policy Centre – CEP. 2018. Gender Issues in the Western Balkans, CSF Policy Brief No. 04.
3. https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608852/IPOL_STU(2019)608852_EN.pdf
4. UNWOMEN (2020) The impact of COVID 19 on Women
5. ILO Policy Brief: A policy framework for tackling the economic and social impact of the COVID-19 crisis, https://bit.ly/3hwUMZq
6. United Nations policy brief (website), The impact of COVID-19 on Women, April 2020, https://cutt.ly/Jy1dKO5
7. https://read.oecd-ilibrary.org/view/?ref=127_127000-awfnqj80me&title=Women-at-the-core-of-the-fight-against-COVID-19-crisis
8. http://www.crpm.org.mk/wp-content/uploads/2020/04/2.0-Covid-19-%D0%B8-%D1%80%D0%BE%D0%B4%D0%BE%D1%82-%D0%B-D%D0%B0%D1%98%D1%84%D0%B8%D0%BD%D0%B0%D0%BB%D0%B5%D0%BD.pdf

2. STUDY APPROACH AND METHODOLOGY

Methods of research used for this paper's methodology: gathering desktop and statistical data[9] concerning women and men's representation in STEM fields in the Republic of North Macedonia. Policy analysis for all action plans, frameworks, and national documents relevant to Women in STEM. For identifying the existent initiatives, mechanisms, and programs at the regional level, we conducted surveyed primary data gathering, taking into account different stakeholders who promote women in STEM, such as regional and international organisations, women's and business associations, and women's rights groups.

3. ENGAGEMENT OF WOMEN IN STEM IN NORTH MACEDONIA

A concerning issue is that only 15.69% of female students choose STEM faculties in the Republic of North Macedonia while 25.72% of male students. Even more concerning is the statistics that 70% of women, due to prejudice, unequal distribution of family responsibilities, income inequality, family care, and discrimination, drop out during their studies, those who manage to graduate leave later in their careers. Compared with the more complex engineering field, which developed less and even if there are graduates jobs offered are very few, the ICT has steadily grown in the last decades. This growth is due to several factors related to different encouraging programs for girls and women to get into ICT. The positive, nurturing programs and measures taken are: positive promotion of ICT industry as stable, sound and 'good standing employers; ICT workers are applicable everywhere in the world; etc."

In the last ten years, there have been critical foreign investments in the RNM; the opening of the technological, industrial zones helped women with unemployed engineering backgrounds (or who did not work in engineering) became more interested in production and got employed. This international companies' system offers career development, constant learning and growing professionally, safety nets that fit women's interests and character.

9. Data on education (tertiary education and scientific research & development), labour market (public/private entities) and pay gap, leadership (representation of women in companies' board).

Table 2: *Participation of women and men in tertiary STEM studies*

Tertiary STEM education[2]	Science	W	M	Technology	W	M	Engineering	W	M	Math	W	M
Enrolled in academic 2019/2020	11665	7849	3816	9147	3735	5412	3467	1502	1965	1833	1211	622
Graduated in academic 2018/2019	1274	835	439	956	444	512	499	201	298	302	197	105

Table 2 shows that women's enrollment and graduation in engineering are almost at par. As the employment data will confirm, women's double participation in math is since they get employed as math teachers. The teacher factor can be noticed in the high number of females in the science fields as well, while in technology, the gap is the biggest and less favourable for women.

From the below data (Table3), the most concerning is that the economy has the highest unemployment rates for tertiary-educated women (18.5 %) in the reproductive age group, suggesting a somewhat discriminatory labour market to women or predominant gender roles that affect employers' decisions. It is also apparent that the gender gap in employment is profound since women, as a result of the patriarchal family model where they are not expected to work, tend to find jobs in the public sector that are considered 'secure' jobs but, at the same time, less paid jobs. This is why the pay gap is so evident, amounting to 18%, but the per sector is 32% in industry, as men outnumber women in this sector; and 6,90 % in the public sector, is in men's favour.

Table 3: *Labour market, sex-disaggregated data*

Labour market [3]	Women		Men	
Activity rate	44,3%		69,3%	
Employed	Private	Public	Private	Public
	74,2%	25,8%	85,8%	14,2%
Unemployed	21,8%		22,7%	
Pay gap	Industry		Public	
18%	32%		6.9%	

The STEM sector jobs, especially in production in the local companies, are not attractive for women, as they are not tailored for women, resulting in women in this sector occupying administrative jobs and

not working in production. Nevertheless, recently we see a reverse trend, primarily of the inclusion of more women in production jobs in the companies in industrial, technological zones. In some sectors like electro-industry and ICT, thorough training in some sectors was due to lack of labour force or high mobility of male trained personnel. The companies decided to prequalify women (in Rade Končar, women from the textile industry and trained them for machine operators). Another problem facing women in this sector is the "glass ceiling where women are in operational positions, and men are directing the companies." The overall male domination is evident in the business sector, where women are hardly 30% in the leadership as company boards. Women are two times less represented in entrepreneurship. As the table below shows, the TEA indicator on gender equality depicts a trend of increasing gender gap in the last five years of available data.

Table 4: *Leadership in business, sex disaggregated*

Leadership	Women	Men
Representation in private companies' board[4]	33%	67%
Representation in public companies' board[5]	29%	71%

Table 5: *TEA indicator on women/men entrepreneurship10*

Year	2012	2013	2014	2015	2016	2017
TEA indicator	2,36	2,93	2,06	2,45	2,46	2,51

Although North Macedonia is with the most significant number of female researchers (89% of all researchers are women), there is blatant gender segregation in R&D. When we look at the research and development figures, at which point engineering and technology has twice as many male researchers. In contrast, in agricultural and medical sciences, we have twice as many female researchers as male researchers, and in natural sciences, three times more women than men.

Table 6: *Participation of women and men in research and development*

STEM Research and Development [6]	NS	W	M	ET	W	M	MS	W	M	AS	W	M
Research and Development	510	370	140	246	90	152	96	72	24	104	70	34
%		73%	38%		37%	62%		75%	25%		67%	33%

Legend: NS- natural sciences; ET- Engineering and Tech; MS- Medical Science; AS-Agriculture Science; W-women; M-men

10. Strategy on women entrepreneurship, https://rb.gy/zsld5f

4. EFFECTIVE POLICIES, ENFORCEABLE LEGISLATION IN STEM

In North Macedonia, several laws ban discrimination based on sex[11]. Article 9 of the Republic of North Macedonia's Constitution guarantees equal opportunities to all citizens regardless of gender. Adopting the Law on Equal Opportunities for Men and Women in 2006 and the new Law on Equal Opportunities in 2012[12] defined certain entities' responsibilities to ensure gender equality by other affirmative measures that guarantee equal treatment of both sexes in many social life segments. Legal mechanisms were established against discrimination on various grounds, with the Anti-Discrimination Law's[13] adoption as an essential tool against the double discrimination that women often face[14]. The Labour Law also plays a vital role in achieving greater equality between men and women[15] by guaranteeing equal access to the Labour market and the workplace. Additionally, this law prohibits discrimination in employment and direct and indirect discrimination in the workplace[16].

Most of the STEM jobs are in the gig economy[17], requiring new forms of work[18] to be regulated by Labour relations. However, the legal frame in North Macedonia does not recognise the new forms of employment and their application to the Labour market[19]. Even though the current

11. The Criminal Code; Law on Execution of Sanctions; Law on Secondary Education; Law on Higher Education; Law on Citizens' Associations and Foundations; Law on Political Parties; Law on Internal Affairs; Law on Local Elections; Inheritance Law, Family Law; Law on Culture, Law on Broadcasting Activity - listed in the Strategy for Gender Equality 2013 - 2020
12. Official Gazette of RM no . 20/2015. Consolidated text http://www.slvesnik.com.mk/Issues/66a918f670d84cab9a2ae3a0c2d02b61.pdf
13. Official Gazette of the Republic of North Macedonia No.50 / 2010
14. Gender Equality Strategy 2013-2020
15. Labor Law, Official Gazette of RM no. 74/2015
16. ibid
17. The European Commission defines this economy in which digital technologies enable their grouping around several projects, open cross borders, while the platforms are linking buyers to suppliers. The Commission notes that it refers also to the colLaborative economy which offers possibilities not only to persons seeking flexibility in their work, but also to those who often have fewer chances on the labour market to find a steady job. Certain researchers apply a more limited definition of gig economy in which they only indicate tasks ordered via online platforms, but often executed in a local/physical setting (delivery, other distribution services and domestic services).
18. The European Commission through the Eurofound foundation has defined 9 new forms of employment: employee sharing, job sharing, voucher-based work, interim management, casual work, ICT-based mobile work, portfolio work, crowd employment (platform work) and colLaborative self employment.
19. http://www.crpm.org.mk/wp-content/uploads/2019/07/MK-Prilagoduvanje-na-industriskite-odnosi-kon-novite-oblici-na-vrabotuvanje-5-FINAL-%D0%9E%D0%9A.pdf

Education Strategy[20] has established a good strategy for 2018-2025 educational goals, particularly for women in STEM, it does not consider the needs and interests of overcoming the educational gender gap. Gender parity is only mentioned in one of the aims of the strategy in implementing the concept of inclusive and multicultural education, hence not adding policies, mechanisms and tools for its fulfilment as a separate strategic goal. As a mechanism for closing the gender gap, this document foresees the textbooks' revision by making them gender-sensitive. This strategy's weakness is that not having analysed the women's status in STEM has no specific goals for increasing women's participation in their academic areas.

To narrow the gap between the Labour market and unemployment through strengthening the skills, the Employment Agency Service (EAS) of NM launched calls for IT courses for unemployed young people. Nevertheless, this initiative is not gender-sensitive since it does not consider men and women's different needs.

The Law on Scientific Research is crucial for increasing women's participation in scientific research[21]„ where women's equality in science is one of the law's[22] aims. Although growing in the period 2005-2016 (proportion of women inventors in the economy increased by 12.7 %), the gender differences in patent inventions reveal that women are heavily under-represented as inventors and outputs are, therefore, more severe in 'innovation' (patent inventions) than in 'research' (scientific publications)[23]. This is related to the fact that technological development parks are non-existent. Without enabling the environment and creating challenges for ambitious women, this field's economy leaves them to emigrate. Consequently, it is encouraging that the financial resources for innovation through the Fund for innovation and technological development have been directed towards companies owned and managed by women. "We work on gender equality and are proud that 30% of the fund beneficiaries are women who own or manage the companies that are recipients of FITR finances[24]". The latest call for applications for recovery of the COVID-19 health and economic crisis is primarily targeting women. In the criteria, additional points are given to women-owned or man-

20. http://mrk.mk/wp-content/uploads/2018/10/Strategija-za-obrazovanie-MAK-WEB.pdf
21. Law on Scientific Research Activity, Official Gazette of RM no. 46/2008
22. Law on Scientific Research Activity, Art. 4 Official Gazette of RM no. 46/2008
23. Directorate-General for Research and Innovation (2019) "*She figures 2018 report*" Horizon 2020 Science with and for Society
24. https://www.mkd.mk/makedonija/ekonomija/edna-tretina-od-vkupniot-broj-pod-drzhani-kompanii-od-fitr-se-vo-sopstvenost-na

aged enterprises and those registered in less developed regions[25], and 56% of accepted applications are from women entrepreneurs[26].

5. SOUND PRACTICES IN THE PROMOTION OF WOMEN IN STEM

The programs for promoting women in STEM in North Macedonia are mainly financed by international donors, foreign embassies and the EU. The focus similarly is given to IT more than the other STEM fields. In ICT[27], the most impactful is the "Digi Girls" program organized across the world as part of the Microsoft Initiative "YourSpark", organized in 2018 in North Macedonia in Skopje Tetovo. The Program aims to encourage girls to code, program, and develop innovative ideas in the IT world[28]. To attract the high school pupil to like coding and a career in ICT, the City of Skopje, together with CRPM since 2014, organized the 'Hour of code'. In 2019, 15 high-school girls from North Macedonia joined the Women in Science (WiSci) Girls STEAM Camp in Pristina, Kosovo*this year. The WiSci Camps are a partnership between the US Department, Girl Up, Intel, Google and many others who work to close the gender gap in STEAM – Science, Technology, Engineering, Arts & Design and Mathematics. The camp brought together 100 teen girls from Kosovo*, Albania, Serbia, North Macedonia, Montenegro and the United States to live and learn together for two weeks[29].

It must be noted that nowadays, many IT academies are making IT education more available. However, they lack a gendered approach and disproportionately more significant numbers of boys enrolling than girls. Similarly, some companies offer STEM extracurricular programs to children contributing to the STEM fields' popularisation, but less so among girls. "The interest of girls in STEM education is meagre; we have 10% of pupils that are female. The peer pressure among girls to meagre dancing classes like their friends and parent's gender insensi-

25. https://fitr.mk/otvoren-javen-povik-za-kompanii-nositeli-na-brzo-ekonomsko-zazdravuvane/
26. https://rb.gy/l0u4sy Tanja Ilijevska, head of sector for analysis, international cooperation and private sector support programs at FITR presented an analysis of the sectors where the funded projects are implemented, through which we can see that IT sector is dominant, followed by engineering, food processing, energy and resources, education, electronics, civil engineering, textile and leather industry, creative industry and etc.
27. Ana Mickovska Raleva, education policy analyst, personal interview, July 2020
28. https://www.smartportal.mk/novosti/nastani/digigirlz-skopje/
29. https://www.facebook.com/USEmbassySkopje/posts/15-high-school-girls-from-north-North Macedonia-joined-the-women-in-science-wisci-girl/10156492629397157/

tivity affects this situation"[30]. A more promising approach is the 'math' schools such as Brain-to-brain and Little Genius who reach out to girls more than the IT and robotic schools.

Many initiatives support and educate young girls and women in STEM, and we see more and more women pursuing a STEM career[31]. Still, the promotion of women in STEM by local groups is in its infancy.

6. A MANNER FOR DECREASING GENDER DISPARITIES IN STEM

Gender equality is a human right, and in the context of the 2030 Agenda for Sustainable Development, it has been observed that there is a nexus between gender equality and development. What is more, development trends show that science, technology and engineering are at the heart of sustainable development. The 2030 Agenda encompasses a strong commitment "to leave no one behind". This promise, which has gender equality centrally, requires national statistical systems to shine a light on intersecting inequalities by collecting and analysing data minutely disaggregated by sex, age, income, location, disability, race, ethnicity, and other relevant factors. The EU requires the RNM to adapt its science, technology and innovation policies for the future. However, to achieve gender equality in STEM, we need change-makers to influence policy development and actively implement gendered policy measures.

In order to identify the community of change agents and their possible connection and joint work on the strengthened capacity of individuals, organizations, and corporations to influence policies in STEM in the RNM, we have researched the perceptions of activists, professionals in STEM in order to develop a model that the region can apply to decrease the prevailing gender gaps as a result of the obstacles mentioned above. The dominant perception among the surveyed was that STEM fields are at a disadvantage because of the limited involvement of women, which puts women further in a more disadvantaged position because STEM fields are considered jobs of the future, meaning that the demand for such jobs will increase providing better salaries and better working conditions for which women are not trained. If the situation is the opposite, this will inevitably contribute to more women's empowerment in general, helping narrow the gender pay gap.

30. Anica Pehchevska, STEM academy instructor, personal interview, july 2020
31. Teodora Nikolovska, Vrootok executive director, personal interview, July 2020

Therefore, to encourage the education, recruitment, retention, support, and advancement of professional women and students, this research proposes a regional initiative, a network to be established to amplify promoting women in STEM fields. According to this study's findings, establishing a network is one vehicle for promoting women in STEM. Namely, 83% of the surveyed in the region have expressed interest in joining a regional network that decreases the gender gap in STEM fields. The following questions the analysis tried to delineate such a network's contours, asking the respondents what they think the focus, vision, objectives, and initiatives should be on the network.

The majority of the respondents think that the focus of the regional network should be on

a) campaigns that provide visibility to female role models in STEM (75.6%)

b) to provide networking opportunities linking together policymakers, female STEM professionals, as well as educators, researchers to exchange experiences and decrease the gender gap in STEM(78.3%) and

c) develop mentoring initiatives, promote role models and encourage girls/women to enter IT/industry/technology careers (79,1%).

A network offers an effective means of empowering women in STEM, boosting their confidence and self-esteem and providing assistance in their career development. As reported by the research findings for this study, regional initiatives that should be given priority within the Network are the Scholarship scheme for young girls in the STEM and Regional Mentorship and internship placement program, considered the most effective initiatives to undertake the Network.

7. CONCLUSION AND RECOMMENDATIONS

In this regard, greater engagement is undoubtedly needed from all relevant stakeholders in the economy, both public and private, to improve women's participation in STEM areas of study and consequently work and create an enabling environment for women to remain that career path.

Uniforming the data gathering in education, science and technology field, making sex-disaggregated data available, will enable comparison and development of regional policies, measures and financial support for STEM women.

Promote Women in STEM education with affirmative measures until parity is achieved. This can be achieved by introducing a scholarship scheme for girls in STEM financed by the education authorities to support and encourage girls to pursue careers in science, technology, engineering, and math.

Supporting the establishment of the Network of Women in STEM as regional cooperation will implement campaigns that provide perspective to female role models in STEM, female STEM professionals, and educators, researchers to exchange experiences, decrease the gender gap in STEM; and develop mentoring initiatives and encourage girls/women to enter IT/industry/technology careers.

Supporting campaigns directed to breaking the stereotypes in society and promoting the benefits of pursuing STEM education for girls as for boys. Supporting career guidance free of gender stereotypes from high school through providing gender equality training to career counsellors would be a sustainable strategy.

In order to make a tailor-made response to the situation where analysis is developed, it would be to support policy reform having specifically targeted and analysed STEM.

Considering the importance of ensuring mainstreaming of gender is done in all policies (education, science and technology, research and innovation) and that policymakers are aware that they are complying with European accession commitments as gender equality is a European union prerequisite.

There is a need to introduce continuous monitoring and evaluation from a gender perspective to address the disparity among women and men in STEM.

Supporting gender mainstreaming for STEM education as well as raising the gender awareness of the business and academia working in STEM so that their capacity for gender mainstreaming will contribute to the sustainability of efforts for enhanced gender equality in STEM

As the most valuable asset for promoting gender parity in STEM, CSOs working on gender equality can be agents of change by engaging in promoting women in STEM education and opportunities for better-paid jobs in the labour market.

Promote regional initiatives by using financial instruments and capacity building wise towards responding to the prevailing gender gap in STEM.

support regional cooperation in STEM fields through systematic policy initiatives and funding schemes

Provide mentorship programs with successful women role-models in STEM fields. This could be organised in high schools, whereby girls would have the opportunity to meet and learn about the women mentors' successes and achievements. The same can also be delivered in the fashion of e-mentoring or online mentorship opportunities.

Provide internship programs in companies from the region to encourage exchange and cooperation. The Erasmus program model should be taken as an example as it brought the EU broader and deeper integration.

BIBLIOGRAPHY

1. Lambrecht, A. and Tucker, C. E. Algorithmic bias? An empirical study into apparent gender-based discrimination in the display of STEM career ads, Management Science, Vol. 65, No 7, 2019
2. European Parliament, Committee on Women's Rights and Gender Equality, 2019-2024, https://www.europarl.europa.eu/doceo/document/FEMM-PR-661980_EN.pdf
3. Sax, L.J., Kanny, M. A., Jacobs, J. A. et al., Understanding the Changing Dynamics of the Gender Gap in Undergraduate Engineering Majors: 1971-2011, Research in Higher Education, Vol. 57, No 5, 2016
4. Shade, L. R., Missing in action: Gender in Canada's digital economy agenda, Signs: Journal of Women in Culture and Society, Vol. 39, No 4, 2014
5. Ana Mickovska Raleva; Kristijan Trajkovski (2017) Women Engineers, programmers, ICT experts: how to overcome gender stereotypes for technical and informatics? , CRPM (available online: http://www.crpm.org.mk/wp-content/uploads/2017/12/Devojki-vo-tehnologija-FINAL.pdf)
6. O'Dea, R.E., Lagisz, M., Jennions, M.D. et al., Gender differences in individual variation in academic grades fail to fit expected patterns for STEM, Nature Communications 9, 3777, 2018
7. EIGE, Gender Equality in Academia and Research - GEAR tool, (2020) http://eige.europa.eu/gender-mainstreaming/tools-methods/GEAR
8. European Institute for Gender Equality briefing paper, How gender equality in STEM education leads to economic growth, 2018
9. Equinet, A Comparative Analysis of Gender Equality Laws in Europe 2015. European Commission. (2015) Available at: http://www.equineteurope.org/A-comparativeanalysis-of-gender-equality-law-in-Europe-2015
10. EuroGender, Equality Index, (2016) https://eurogender.eige.europa.eu/posts/launch-serbian-gender-equality-index
11. Report of the Expert Group 'Innovation through Gender', Gendered Innovations: How Gender Analysis Contributes to Research, Directorate-General for Research and Innovation, European Commission, 2013.

12. European Commission, She Figures (2018) https://ec.europa.eu/info/publications/she-figures-2018_en
13. European Commission, Gender, (2020) https://ec.europa.eu/research/swafs/index.cfm?pg=policy&lib=gender
14. European Fund for the Balkans and European Policy Centre – CEP, (2018)
15. European Parliament Women's right in Western Balkans, (2019) https://arsbih.gov.ba/project/gender-action-plan-of-bosnia-and-herzegovina-2018-2022/
16. Gender Equality Strategy 2013-2020, http://morm.gov.mk/wpcontent/uploads/2018/03/Strategija-2013-2020.pdf
17. Gender GAP Assessment, Assessment of Critical Gender Gaps in the Training of Albanian Public Sector Employees, UNDP & UN Women.
18. Gender Issues in the Western Balkans, CSF Policy Brief No. 04. https://wb-csf.eu/docs/Gender_Issues.pdf.pdf
19. ILO Policy Brief: Policy framework for tackling the economic and social impact of the COVID-19 crisis,(2020) https://bit.ly/3hwUMZq
20. Law on protection from Discrimination, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_178702.pdf
21. Metamorphosis Foundation, Gender and IT Assessment https://metamorphosis.org.mk/wp-content/uploads/2019/05/Gender-and-IT-Assesement-MK-01.pdf
22. National Development Strategy, http://www.kryeministri-ks.net/repository/docs/National_Development_Strategy_2016-2021_ENG.pdf
23. National Strategy and Action Plan on Gender Equality 2016-2020 p.6 http://awe-network.org/wp-content/uploads/2017/01/SKGJB-EN-web.pdf
24. OECD et al. (2019), SME Policy Index: Western Balkans and Turkey 2019: https://www.oecd-ilibrary.org/development/sme-policy-index-western-balkans-and-turkey-2019_g2g9fa9a-en
25. OECD Publishing, Assessing the Implementation of the Small Business Act for Europe, SME Policy Index, Paris, https://doi.org/10.1787/g2g9fa9a-en
26. OECD, Women at the core of the fight against COVID-19crisis, (2020) https://read.oecd-ilibrary.org/view/?ref=127_127000-awfnqj80me&title=Women-at-the-core-of-the-fight-against-COVID-19-crisis
27. Official Gazette of the Republic of North Macedonia No.50 / 2010
28. Official Gazette of RM no. 74/2015
29. Risteska, M. Sikoska, T., Memeti, M. (2017) Gender and public administration reform in Western Balkans, DG Near
30. UN Women, Gender Equality Index, 2019 https://eurogender.eige.europa.eu/system/files/events-files/gender_equality_index_North Macedonia_mk.pdf\h
31. United Nations policy brief (website), The impact of COVID-19 on Women, April 2020, https://cutt.ly/Jy1dKO5
32. Women in Tech - https://womenintech.mk/
33. CRPM – www.crpm.org.mk

RULE OF LAW AND ABUSES OF ANTI-COVID GOVERNMENT MEASURES DURING THE PANDEMIC: THE CASE OF NORTHERN MACEDONIA

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Abstract

As a result of the declaration of "a state of emergency", the Republic of North Macedonia (RNM) government adopted a series of measures regarding the pandemic caused by COVID 19. Thus, the free movement of citizens and their rights in many spheres of social and private life were restricted. The austerity measures had an indirect effect on workers and businesses, increased unemployment; reduced wages; closed businesses; disabled social life; sports, religious and cultural activities, etc. The paper aims to analyze whether government measures of the RNM to deal with the pandemic during the state of emergency have been misused (from economic support to the business sector, tolerance of religious communities, etc.). Exactly how did these measures mitigate the negative effect on the country's economy, how effective and appropriate were the measures, and did they serve to better manage the protection of public health and alleviate the situation or for any other political purposes? The paper has its own time constraints and focuses on government measures as long as the state

of emergency lasts, which may still continue depending on the circumstances with the spread of the virus to the population. This paper will use descriptive, historical, analytical, comparative and citizen survey methods. The paper also draws conclusions, which represent a recapitulation of the effectiveness of antiCovid19 measures in practice and suggests improvements.

Keywords: citizens, worker, business, government measures

1. INTRODUCTION

Considering that the World Health Organization (WHO) on March 11, 2020 had confirmed the coronavirus pandemic COVID-19, the President of the RMV had issued the Decree on State of Emergency (Decision, 2020), which was extended for 5 times from its commencement date until 22 June 2020.

In this regard, the Permanent Representation of the RNM to the Council of Europe had announced on 2 April 2020 the Secretary General of the Council of Europe that the RNM would be temporarily withdrawn from its obligations regarding the implementation of the ECHR throughout the country (Note Verbale, 2020).

Thus, the government began to adopt ordinances with legal force for the temporary suspension or restriction of certain fundamental human rights and freedoms as long as the state of emergency lasts, but with a focus on protecting the public health of the population. The measures adopted by the Government of the RMV were related to: replacing regular education with distance learning; restricting public gatherings and events; closing museums, theaters and cinemas to visitors; cancellation of performances and conferences, establishment of special rules of isolation and quarantine organized by the state for citizens entering the territory of RMV; special regime for the movement of citizens, etc. (Government Decrees, 2020).

The implementation of these government measures significantly affected the suspension of rights and freedoms. However, their suspension had to be proportionate and deliberate, imposed by the state of emergency and in accordance with international law. All this because the Court of Human Rights and Freedoms in Strasbourg, when it will con-

sider cases related to the (un) measures taken by states during the COVID-19 crisis, will deal with the possible consequences of the derogation from the moment of notification of mentioned above including all further steps that the RNM will take until the day the derogation ceases (CoE Note Verbale, 2020). Also, the EU Agency for Fundamental Rights (FRA) claims that this crisis will present a new challenge for domestic courts, which will have to assess the necessity and proportionality of the measures (Coronavirus Pandemic, FRA 2020).

Measures to stop the spread of the pandemic, significantly affected the quality of life and affected basic human rights, such as: the right to inclusive education (not all children had access to the Internet and possessed electronic devices such as smartphones, tablets or laptops); reduction of workers' wages or dismissals; lack of access to social rights, services and goods; increasing domestic violence. These measures affect special groups such as: children, poor people, the homeless, people with disabilities, the elderly, prisoners, Roma, women at risk of domestic violence, etc.

Also, the courts were not fully operational because they conducted remote work (conducting video conferencing proceedings) in a situation where the judicial system was not adapted to the use of such technology. Since the courts ruled on cases behind closed doors, this led to numerous violations of court proceedings, which also means a violation of Article 6 of the ECHR for a fair trial.

At the beginning of the state of emergency there was a great deal of civic support for the measures adopted by the government regarding the restriction of freedom of movement, but over time this support began to fade as a result of the consequences which arose from the implementation of preventive measures and failure to achieve the expected results. There was also a lack of fulfilment of state obligations to citizens, while in certain cases government measures were not proportionate and necessary. The problem here was also the lack of detailed monitoring and transparency regarding ECHR derogations. Reporting of the derogations did not take place, although the information was discussed at government hearings, but no further action was taken to inform the public that the state was reporting to the Strasbourg Court that during this period it could not guarantee private and family life, the right to education, freedom of assembly and association and freedom of movement (Kotevska, 2020: 13).

2. TO WHAT EXTENT CAN THE GOVERNMENT RESTRICT HUMAN RIGHTS IN TIMES OF PANDEMICS?

Although the ECHR allows derogation from the obligations of states in a state of emergency relating to the protection of health (Article 5, paragraph 1, Articles 8-11, Article 2, point 3 of Protocol No. 4), Article 15 of the ECHR provides for compliance of certain material and procedural conditions to consider that deviation from the application of the ECHR is permissible. *Material conditions* are related to:

- the real existence of an emergency, which threatens the life of the nation, and is not an act of malicious intent by the state;
- the absolute need for measures that must be justified for an emergency situation; assessment according to the specifics of the situation and should not be abused in any way;
- The measures must be in accordance with the international obligations of the state.

The *procedural condition* implies the existence of a legal norm for derogation from the application of the ECHR, the notification to the Secretary General of the Council of Europe that the state withdraws from Article 15 of the Convention, announcing the reasons, the measures taken and the notification of the termination.

However, the state of emergency bears the responsibility for possible human rights violations by the government, which will be the subject of treatment by the Strasbourg Court immediately after the end of the state of emergency, when citizens will to be able to present cases of eventual violations. Even in emergency situations, the rule of law should prevail where government actions should be in accordance with the law (Venice Commission, 2006), while decrees with legal force should be based on the Constitution. However, Parliament should continue to retain power to control the actions of the executive (PACE recommendation, 2005: 38), with the possibility of modifying or overturning unjustifiable decisions (Venice Commission, 2016).

The main challenge facing the state will be the ability to respond effectively to this crisis, while ensuring that the measures taken do not violate the values of democracy, the rule of law and human rights (CoE Informative document, 2020: 2).

3. ANALYSIS OF GOVERNMENT ACTIONS DURING THE IMPLEMENTATION OF MEASURES: ALLEGED VIOLATIONS

The Government of the Republic of Macedonia had notified the Secretary General of the Council of Europe of the need to relinquish its ECHR obligations under Article 8-the right to respect for private and family life, Article 11-freedom of assembly and association, Article 2 of Protocol No. 1-right to education and Article 2 of Protocol No. 4-freedom of movement (Verbal Note, 2020).

Furthermore, we will analyse Articles 9 and 11 of the ECHR, respectively the possible discrimination in the action of the institutions, if they have reacted according to the authorizations defined by the government measures.

Articles 9 (Freedom of religion) and 11 (freedom of association) may be restricted and justifiable if they are used to prevent the spread of the virus. If these measures are not necessary and the virus is used as a pretext to silence a religious group, then the Strasbourg Court may find a violation of the ECHR. Prohibition of gatherings in churches and mosques, sports halls, scientific events, etc. must be justified by a considerable threat from the pandemic. In the case of the RNM, violations were tolerated by the police during the opening of the Orthodox Church in Skopje in celebration of the Easter holiday in circumstances when, according to government norms, the gathering of more than 2 people was prohibited. Another action, which took place just days after the government banned rallies and prayers in mosques, was considered a discriminatory approach by the government to the Muslim community. "The Macedonian Autocephalous Church did not close the churches for the religious holiday" Easter "on the night between 19 and 20 April 2020 and invited its believers, while the Government did not intervene to stop the gathering." This happened in circumstances when the freedom of movement of every citizen a month earlier was restricted by Government Instruction with legal force due to the pandemic and curfews were imposed. Measures to prevent the spread of coronavirus impose a ban on grouping of more than two people in the same place, and recommend a social distance of 2 meters even in cases where citizens can move to perform their daily duties.

Earlier, the Macedonian Orthodox Church announced that the churches would be open for liturgy for the upcoming holidays, but that 5 believers would be admitted at the same time, wearing masks or scarves. In

this case, the rules had been broken, and unfortunately no good international example had been followed of a similar solemnity marked by the Catholic faithful, when the Pope at the Vatican was alone serving an Easter liturgy a week earlier. , when all churches were closed (SDK, 2020). The violations continued when the Macedonian Orthodox Church held a solemnity for the spring religious holiday "Gjurgjovden". Several thousand Orthodox believers did not observe the distance of 2 meters nor did they wear protective masks in the liturgy of May 7, 2020, which was held at the "Bigorski" Monastery in Struga. From the images recorded by the media, citizens were noticed who had gathered for the liturgy, while recordings and photos from the event were published on several web portals (SHENJA & ALSAT, 2020). After this event, the Albanian political opposition had reacted, namely the Alliance for Albanians, accusing the government of double standards for the second time in a row against citizens and religious communities (ALEANCA, 2020). Then came the reaction of the Minister of Health-Venko Filipce who emphasized that he will seek responsibility and stated that the case should be investigated. However, this remained only as communication through Facebook to animate the public, and in fact there was no procedure for breaking the rules nor responsibility for organized breaking the rules regarding restricting movement during the pandemic. The Alliance for Albanians alluded to the case of April 13, 2020, when 3 Albanian citizens were arrested in the Hasanbeg neighborhood of Skopje for violating the curfew in front of their houses in the alley of the street where they live, and then followed the protest of the residents of neighborhood to release persons detained by police. In further proceedings, after two days, the Prosecution requested a fine of 5 thousand euros for each person for non-compliance with health recommendations during the pandemic (ALSAT, 2020).

In a ceremony organized by Artan Grubi in the offices of the Ministry of Political System, to celebrate the birthday of the leader of his party DUI-Ali Ahmeti on January 4, 2021, had attended more than 15 people (ministers, MPs and officials other party members) without protective masks who were photographed in that solemnity while a photo was circulating on social networks. Then there was a reaction from the public for violation of antiCovid-19 measures, while the Ministry of Interior had stated that all those persons will be fined 20 euros, respectively 10 euros if they make the payment within a week.[1]

1. Source: https://vecer.mk/node/549012 Retrieved at 7 January 2021

A few days later, on the night of January 7, 2021, at the central Christmas manifestation in the church "St. Clement of Ohrid" in Skopje, the Orthodox believers did not wear protective masks or social distance and the ban on grouping indoors.[2] The Bishop of Ohrid-Stefani during the liturgy in the church has violated all the protocols for protection. Believers used the same spoon and kissed religious icons[3], while the clergy hold the position that "Communion heals and does not lead you to get sick. God does not transmit disease, God heals. With communion we have been healing for 2 thousand years now", said the clergyman Sasho Nikolovski.

From the recordings and photos that circulated in the media, it was once again proved that when it comes to the pandemic, it is said differently and acted differently during religious liturgies, said journalist Aco Kabranov.[4] When it comes to health protocols they are not respected at all, the masks were kept in pockets and only at the beginning to be removed during the religious ceremony where according to tradition one priest communicates with the believers with the same spoon, the other gives them a cross and they line up. Above all, the cathedral priest replied that "there was no danger for the believers to swallow wine from the same spoon because this was the best and safest medicine because it was from God." The journalist writes about this "Well, if he is a priest like that, then go and help the Minister of Health-Filipçe, because he has fought with all the medical staff for a whole year, but again people are dying". However, as if until now the clergy remain inviolable by law, neither one of the believers has been summoned or punished for violating the anti-Covid-19 measures. Despite this, thousands of civilians were fined for not wearing masks, for groupings, and attending parties, birthdays or weddings. This proves once again that the laws do not apply equally to all, while the institutions are silent and have no answer for their discriminatory actions.

Again on January 19, 2021, on the feast of the "Blessed Water-Vodici", the Orthodox believers didn't observe the measures during the ceremony of throwing the cross in the waters of the river Vardar and Lake Ohrid.[5]

From the above cases we are concluding that violations of the provisions of the ECHR during the time of the pandemic are obvious and

2. Source: http://derveni.info Rertieved at 8 January 2021
3. Source: https://telegrafi.com Retrieved at 07.01.2021
4. Source: https://libertas.mk Retrieved at 7 January 2021
5. Source: https://kanal5.com.mk/vodici-se-proslavuvaat-vo-pandemiski-uslovi-bez-masovno-polaganje-na-svetiot-krst/a457174 Retrieved at 19 January 2021

premeditated. Thus, the government has not taken care to avoid discrimination in the implementation of protection measures for public health through the actions of institutions. It is especially important that even in cases of emergency, the protection of human rights and the holding of accountability of the authorities within certain limits is realized, because government measures can have disproportionate effects in dealing with the crisis and they can cause violations. unnecessary in the rights and freedoms of citizens.

4. SURVEY

The questionnaire used in this research is composed of 10 questions. It is designed to include data on the demographic and socio-economic status of respondents, as well as responses to their perceptions. Field research was conducted on the basis of a questionnaire consisting of general questions about the situation regarding citizens' attitudes. In this survey, 1113 citizens over the age of 18 were included.

Question	Yes	No	I don't know
Are anti-Covid-19 government measures reasonable?	43%	39%	18%
Do you think that the government with anti-Covid-19 measures is exceeding its constitutional competencies and international obligations?	23%	61%	16%
Have you encountered obstacles in meeting your needs as a result of anti-Covid-19 restrictions? Reasoning: Crowds were observed in supermarkets for the supply of food products, congestion in commercial banks by the elderly to receive pensions and by persons involved in government support measures, etc.)	48%	23%	29%
Have restrictive measures affected your family life, such as social, emotional, economic, sports, professional, tourism, health, etc.?	85%	8%	7%
Were the measures justifiable taking into account the result achieved?	40%	37%	23%
Do you think that the competent institutions (police and labor inspectorate) have been able to accurately monitor the implementation of restrictions in practice?	45%	41%	14%
Do you think that the restrictions should have been foreseen differently, providing for a more efficient control for their implementation?	39%	30%	31%
Do you think the government managed the protection of public health well considering tolerance towards religious subjects for religious prayers in churches and mosques?	29%	70%	1%
Do you think that your fundamental rights have been violated during the state of emergency?	58%	29%	13%
Do you think the lack of results is due to inadequate government measures?	15%	36%	59%

In a weekly interview with Radio Free Europe, President Stevo Pendarovski stated that part of society had failed to implement preventive measures against the virus. According to him, the responsibility falls partly on the Government, on the religious communities and on those citizens who refused to implement the measures (Slobodna Evropa, 2020).

5. CONCLUSION

During the pandemic, there were cases where citizens were unjustified by state authorities in various ways. Government protection measures had to respond to threats to the health of citizens.

Was continuous monitoring of government measures necessary to draw conclusions as to whether they yield the expected result, or should it be changed?

What sparked public debate was the double standard for violators of these measures, based on ethnicity and religion, sometimes even in positions of power or opposition.

Now the protection of public health is limited only to the instructions of the Ministry of Health for maintaining physical distance and the use of masks in public places. This raises dilemmas in the sincerity of the government for the protection of the public health of citizens, as well as calls into question the management of antiCOVID19 measures, when citizens remain under strict measures of restriction of their freedom and rights, but unfortunately without any results in the protection of their health. It will not come as a surprise if in the near future, cases arise where citizens of the RNM will sue their state before the European Court of Fundamental Rights and Freedoms in Strasbourg.

REFERENCES

1. Bakreski O. (2020), Institute for Security, Defense and Peace at the Faculty of Philosophy, 20.03.2020
2. Coronavirus Pandemic in the EU: Fundamental Rights Implications from 01 February to 20 March, FRA, Publications Office of the EU, Bulletin No1, April 2020, Luxembourg

3. Directorate of Legal Advice and Public International Law, Note Verbale JJ9021C Tr./005232, Council of Europe, 02.04.2020
4. Human Rights Committee, General comment No.36 (2018) para 26, on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018
5. Informative Document SG / Inf.2020 / 11. Respect for democracy, the rule of law and human rights in the context of the COVID-19 sanitary crisis. Package for member states, Council of Europe, 7 April 2020
6. Kotevska B. (2020, After the shaky steps: On human rights and COVID-19 in RNM after the derogation of the ECHR, April 2020, EPI-Skopje
7. Mavronicola N. (2020), "Positive Obligations in Crisis", Strasbourg Observers, 7 April 2020
8. Note Verbale of the Permanent Representation of the RNM to the Council of Europe, No. 35-01-155/2, 2 April 2020, Strasbourg
9. Opinion of the Venice Commission for the Protection of Human Rights in Emergency Situations, CDL-AD 2006/015, item 13. Adopted by the Venice Commission at its 66th Plenary Session Venice 17-18 March 2006.
10. PACE Recommendation of 1713 (2005), Democratic oversight of the security sector in the Member States
11. The Decision No. 08-526/2 of 18 March 2020, signed by the President of the RNM, Official Gazette of the RNM No.68, 18 March 2020
12. Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD 2016/007-e, item 51
13. Law on prevention and protection against discrimination, Official Gazette of RNM, No.101 from 22.5.2019
14. Law on Protection of Patients' Rights "Official Gazette of RNM", No.82/2008, 12/2009, 53/2011.

Electronic resources

1. http://analytics.dkv.global/covid-regional-assessment-200-regions/full-report.pdf
2. http://ennhri.org/statement-on-covid-19
3. http://shenja.tv/filipce-kerkon-hetim-te-shkeljeve-qe-u-bene-ne-manastirin-bigorski-ne-struge
4. http://shenja.tv/kisha-ortodokse-maqedonase-vazhdon-me-mosrespektimin-e-masave-kunder-koronavirusit;https://alsat-m.tv/liturgjia-fetare-ne-struge-shkelen-te-gjitha-masat-kunder-perhapjes-se-koronavirusit.
5. https://alsat-m.tv/ggjoba-prej-5000-eurosh-per-te-arrestuarit-ne-hasanbeg

6. https://religija.mk/struga-se-podgotvuva-za-najmasovnata-litija-za-gjurgjovden
7. https://sdk.mk/index.php/mk
8. https://vesnik-ilinden.com/vo-struga-se-odrzha-najmasovnata-litija-za-gurgovden
9. https://vlada.mk/uredbi-covid19
10. https://www.aleanca.eu/qeveria-te-ndaloje-me-standardet-e-dyfishta
11. https://www.almakos.com/kisha-ortodokse-maqedonase-vazhdon
12. https://www.fakulteti.mk/news/20032020/shto-tochno-znachi-vonredna-sostojba-objasnuva-prof-oliver-bakreski
13. https://www.slobodnaevropa.mk

IRREGULAR MIGRATION AND SMUGGLING OF MIGRANTS ALONG NORTH MACEDONIA

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Abstract

During 2015 and 2016 North Macedonia was faced with an unprecedented influx of refugees and migrants evolving a number of challenges linked to ensuring assistance and protection to these people on the move. The business of migrant smuggling is highly profitable reaching multiple billion Euros in which criminals enjoy low risk of detection and punishment. State Institutions are the primary actors that should provide access to rights, protection, safety and security of the refugee/migrant population. The refugee crisis contributed to strengthening the mechanism of cooperation of national institutions and international organizations whose function is to implement the guidelines and directives of the United Nations. Given that the migrant crisis is still current, cooperation and coordination of governmental bodies and international organizations should be further promoted and intensified, in order to share responsibility and ensure international protection of people at risk. This paper identifies the

main challenges faced by people on the move when crossing North Macedonia and proposes measures to address those challenges.

Keywords*:* irregular migration, smuggling, rule of law

INTRODUCTION

From September 2015 North Macedonia jointly with Serbia, Croatia and Slovenia became the Western Balkan route struggling to organise the increased influx of refugees and migrants, which caused problems of the security and humanitarian character. Refugees and migrants use North Macedonia mainly as a transit country with the aim to reach Western Europe. The migratory flows continue to be largely transitory, with most migrants arriving from the main source country Greece and leaving North Macedonia after a couple of days. Greece is considered one of the transit countries of thousands of refugees and migrants who aim to reach Europe in search of security and better economic opportunities. According to Dragostinova (2016) most of refugees attempt to leave Greece soon after arrival because of high unemployment rates (25%), scarce economic resources and restrictive citizenship and residence laws. On the other hand, thousands of migrants were crossing into Slovenia after Hungary's anti-refugee position. Hence, Greece, Slovenia and Hungary mainly served as transit routes for refugees and migrants attempting to reach Austria, Germany, and Sweden. Smugglers often assist entry into the country, transit through and exit from North Macedonia. However, in the period from 2011 to 2017 government authorities of North Macedonia actively assisted irregular migrants on their journey, which destroyed the demand for smugglers in this period (Schloenhardt, 2019).

Migrants and refugees after accepted in North Macedonia at the camp in Gevgelija travelled north to Tabanovce with the aim to cross into the Serbian border town, Miratovac. Refugees and migrants entered at the Vinojug camp in Gevgelija. On 1 July 2015 778,768 refugees and migrants have departed from Gevgelija. The Ministry of Interior's statistics of North Macedonia reported that 477,856 refugees and migrants declared their intention to apply for asylum including 148,245 (31%) children, of whom 18,349 (4% of children) were registered as unaccompanied since 19 June 2015 until 7 March 2016. Of these 260,897 (55%)

of the arrivals were Syrians, 122,289 (26%) Afghans, 73,329 (15%) Iraqis, and the remaining 21,441 (4%) represented other nationalities such as Iranians, Palestinians, Pakistanis, Somalis, Congolese and Bangladeshi. Women and children registered made up 49% of the refugee flow. The UN Resident Coordinator's office reported an estimated 750,000 migrants who entered the country in 2015. Approximate daily arrivals ranged between 10,000 in October and 5,000 in November (Šelo Šabić and Borić, 2016). The number of refugees and migrants from 2016 considerable decreased due to border restrictions imposed. From 4 to 31 March 2016 the number of refugees and migrants in the transit centres was 1,223 and only 36 applications for asylum. According to the NGO Legis in August 2019 in Transit centre Vinojug were accommodated approximately 29 refugees, in Transit centre Tabanovce are approximately 16 refugees and in Vizbegovo asylum center approximately 33 refugees. An increase in the attempts of irregular border crossing was observed in the period between January and June in 2019 (19 cases involving 276 migrants and 30 smugglers arrested) as compared to the same period in 2018 (13 cases involving 135 migrants and 12 arrested smugglers).

THE BUSINESS OF MIGRANT SMUGGLING

The business of migrant smuggling is shown as highly profitable in which criminals enjoy low risk of detection and punishment. As a result, this business is becoming increasingly attractive to migrant smugglers and they are becoming more organized, establishing professional networks that exceed borders and regions (United Nations, n.d.). Migrant smuggling is a business worth as much as USD 10 billion or more per year, given the routes from West, East and North Africa to Europe (Migration Data Portal, 2020). However, data on smuggling are scarce, and there is no annual global report on migrant smuggling trends (Migration Data Portal, 2020). Smugglers through land, sea and air routes facilitate illegal migration into EU and abuse the legal migration system to promote their illegal business practices (European Commission, n.d.). Migrant smuggling networks are linked to other forms of organised crime such as terrorism, human trafficking and money laundering, increasing the need to tackle migrant smuggling.

The route from North Macedonia to Serbia and onwards to Bosnia and Herzegovina, Croatia, Hungary or Romania is one of the routes of irregu-

lar migrants who try to cross borders on their own or ask for facilitation services since they need to move across unknown and difficult terrain (EUROPOL, 2020). In this case, smugglers and Organised Crime Groups are active in the Western Balkans region, concentrating their criminal business on areas with a high concentration of irregular migrants (EUROPOL, 2020). Smugglers and criminals were taking advantage of migrants particularly when borders where closed (Brankovic et al., 2017). Transportation through North Macedonia is concealment in vehicles, such as cars, mini-vans and trucks. Migrants reported abuses by smugglers who tortured, used physical and sexual violence and detained migrants against their will for several days in order to acquire additional fees above those previously agreed (UNHCR, 2017). In the Western Balkan region irregular migrants not only are transported in life theatening and overcrowded conditions, but then migrant smugglers, who in most cases are citizens of Western Balkan countries, are engaged in aggressive, dangerous and reckless behaviour (EUROPOL, 2020). The drivers of the vehicle transporting irregular migrants face most apprehensions, whereas the main organisers remain out of reach of law enforcment authorities. There have been many cases of traffic accidents caused by migrant smugglers whlie trying to avoid law enforcement officers when they tried to stop them, resulting in injuries and even deaths of migrants. Hence, facilitation of irregular migration remains a deadly business (EUROPOL, 2020). The price for smuggling across North Macedonia was between EUR 150 and EUR 300 per person in 2019. Most of the smuggled migrants were nationals of Afghanistan, Bangladesh, Iraq and Pakistan (EUROPOL, 2020).

WHO IS RESPONSIBLE FOR WHAT?

The Crisis Management Centre in North Macedonia indicates that the refugee crisis contributed to strengthening the mechanism of cooperation of national institutions and international organizations whose function is to implement the guidelines and directives of the United Nations. Given that the migrant crisis is still current, not only in North Macedonia but also in the rest of the world, cooperation and coordination of governmental bodies and international organizations should be further promoted and intensified, in order to obtain the best possible answer for care or transit of refugees and migrants and a shared responsibility to ensure humane and dignified treatment and interna-

tional protection of people at risk. The centre aims to tackle the challenges posed by mixed migration flows, and support of migrant reception centres, the medical sector and in terms of the identification and management of vulnerable migrants. In addition, IOM has contributed to adjust the legislation with the European Union and for longer-term capacity building in the area of managing migration.

The U.S. State Department Country Report on Human Rights Practices in North Macedonia (2018) indicated that migrants detained in the Transit Centre for Foreigners were impeded from accessing asylum. An asylum application by a person held in the closed reception centre in Gazi Baba would only be possible after the person gave a statement before the court, in criminal proceedings, against their smugglers (FRA, 2019). According to the NGO 'Legis', the reason for rejecting asylum claims was on many occasions "danger to the national security" and "protection of public order and national security". The only evidence for such grounds is a confidential official note issued by the Security and Counter Intelligence Directorate, which is, due to its unknown content, difficult to appeal (FRA, 2019). The Reception Centre for Foreigners does not meet international standards and the decisions imposing detention, issued by the Ministry of Interior, do not contain clear and elaborated information on the legal grounds for detention. The right to spend time outside was not respected, and there is no complaint system. In the first half of 2018, UNHCR recorded 71 persons held in immigration detention. With the exception of one unaccompanied child and three women, all detainees were adult men (FRA, 2019).

As assessed by European Commission (2020), North Macedonia continues to play an important role in the management of mixed migration flows. It cooperates effectively with EU Member States and neighbouring countries. The country continued its efforts to ensure basic living conditions and services for all migrants staying in the country. There are still uncertainties on the scope and structure of migration flows. The inconsistent registration of migrants apprehended in irregular movements prevents regular and adequate protection-sensitive profiling, as well as referral to national protection mechanisms. Effective control at the southern border was ensured with the deployment of guest officers from EU Member States at the border. However, the problem of frequent smuggling activities at the northern border needs to be further addressed. The country continues to be under severe pressure due to its geographic location (European Commission, 2020).

State Institutions are the primary actors that should provide access to rights, protection, safety and security of the refugee/migrant population:

- Ministry of Internal (MoI) - Border police + Police stations: responsible for receiving Asylum Claims; MoI Section of Asylum: processing Asylum Claims and deciding on type of international protection; High Inspector for Illegal Migration;
- Crisis Management Center (CMC) – Responsible for managing crisis situations upon proclamation (Refugee crisis was proclaimed in August 2015);
- Ministry of Labor and Social Policy (MLSP) – responsible for social protection and integration support of Asylum Seekers; Food; Wash; Infrastructural support; Structures/Shelter;
- Other relevant institutions: Ministry of Justice, Ministry of Health, Public Health Center; Ombudsman (National Protection Mechanism Against Torture); National Commission for Combatting Trafficking in Human Beings and Illegal Migration; Public Prosecution Office; Centre of Social Welfare (MLSP); National Security Agency; Administrative Court; Municipality Hygiene Enterprise.

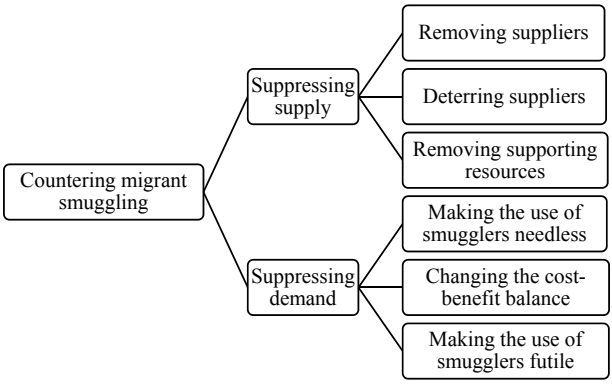
UN Agencies, NGOs, Civil Society, Volunteers:

- UNHRC – Protection; Communicating with communities;
- IOM – Voluntary Returns; Health; Structures/Shelter; Wash; NFI; Infrastructural support; Communicating with communities;
- RedCross – Emergency Health Care; Food & NFI Distribution in camps; Irregular migration; Family Reunification Service; Communicating with communities;
- Open Gate-La Strada – Psycho social support to vulnerable categories;
- LEGIS – Protection, Food and NFIs, Psychosocial support;
- MYLA – Legal representation and support;
- JRS – Communicating with communities.

STRATEGIES FOR COUNTERING MIGRANT SMUGGLING

A strategic perspective developed by Carling (2017) suggests holistic assessments of the costs and benefits of different courses of action. It includes also those that may provide more sustainable solutions but are difficult to implement in the near future. Figure 1 illustrates an analytical taxonomy of strategies. As shown in the figure, the two main branches are supressing supply and demand of the smuggling service. Suppression of supply can be realised following three strategies. The first strategy implies removing suppliers from the market through the disclosure of smuggling networks and arresting smugglers. Second, through raising penalties authorities can pursue to prevent suppliers from entering or staying in the market. The third strategy is suppressing supply by removing the supporting resources such as smuggling vessels, marketing resources (web sites and social media accounts), and corrupt officials. However, the supply of smuggling services is impossible to be eliminated if there is demand for migrant smuggling. Strategies for suppressing demand can also be pursued in three ways. The first strategy suggests making the use of the smuggling services needless by giving opportunities to potential clients to reach their objectives in other ways such as offering protection to migrants who seek protection from persecution or conflict, issuing humanitarian visas to asylum seekers etc. The second strategy implies changing the cost-benefit balance for prospective clients of migrant smugglers. In this strategy the perception is important, since decisions are taken based on perceptions on the outcome of being smuggled less attractive and the cost of being smuggled higher, or making the alternatives to being smuggled more appealing. The third strategy is making the use of smugglers futile. For example, illegal labour migration could be decreased by suppressing illegal employment in the country of destination or/and ensuring rapid return of illegal migrants in the home country, which can decrease the demand for being smuggled. Nevertheless, in the case of asylum seekers this strategy is explained to be difficult without compromising responsibilities towards refugees. All these six strategies as indicated by Carling (2017) have shortcomings and raise real dilemmas, hence assessing their advantages requires analysing "motivations for countering smuggling and re-examining the connections between measures and consequences" (p.5).

Figure 1. *A taxonomy of strategies for countering migrant smuggling*



Source: Carling (2017)

CONCLUSION

The migration crisis in North Macedonia which escalated in the spring of 2015 found the country unprepared to accommodate people for longer periods. The number of officially reported illegal crossings continues to increase and the country continues to be under severe pressure due to its geographic location. Hence, the problem of frequent smuggling activities at the northern border needs to be further addressed. The smugglers and criminals were taking advantage of migrants particularly when borders were closed. Migrants reported abuses by smugglers who tortured, used physical and sexual violence, and detained migrants against their will. The reasons for irregular migration are not only of economic character but also as a result of life-threatening situations, security risks and violence caused by political crisis and conflicts in the countries of origins. One of the challenges that North Macedonia and the other countries of Balkan route face in preventing migrant smuggling is the efficient border security and management. The migrant smuggling business in Western Balkan region continues to evolve rising challenges for law enforcement authorities and asylum agencies. The fight against migrant smuggling is motivated by the governments desire to minimise their humanitarian protection obligations. Policy measures towards reducing migrant smuggling should focus on undesirable consequences of smuggling. As smuggling occurs transnationally, national frameworks need to take into account the interests, policies and responses of other countries involved in this process.

REFERENCES

1. Brankovic, N., Zulfiu Alili, M., Kaleshi , E., & Djordjevic, B. (2017). Migration Crisis and Western Balkan Response: A crave for functional approach! *MIND THE GAP: Improving the Policy Impact of OSF Alumni Network in the Western Balkans. COLLECTION OF POLICY BRIEFS. OSF Alumni Conference* (pp. 36-43). Belgrade: BOS.
2. Carling, J. (2017). *How Should Migrant Smuggling be Confronted?* Geneva : McAuliffe, M. and M. Klein Solomon (Conveners) (2017) Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration, IOM.
3. Dragostinova , T. (2016). Refugees or Immigrants? The Migration Crisis in Europe in Historical Perspective. *Origins, 9*(4).
4. European Commission. (2020). *Key findings of the 2020 Report on North Macedonia.* Brussels: European Commission.
5. European Commission. (n.d.). *Migrant Smuggling*. Retrieved February 23, 2021, from Migration and Home Affairs: https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/facilitation-irregular-migration_en
6. EUROPOL. (2020). *Tackling Migrant Smuggling in the Western Balkans.* EUROPOL, FRONTEX AND EASO JOINT REPORT.
7. FRA. (2019). *Migration: Key fundamental rights concerns - Quarterly bulletin.* Vienna: European Union Agency for Fundamental Rights.
8. LEGIS, N. (2019, August 19). Irregular Migration through North Macedonia. (M. Z. Alili, Interviewer)
9. Migration Data Portal. (2020, June 9). *Smuggling of migrants*. Retrieved from Migration Data Portal: https://migrationdataportal.org/themes/smuggling-migrants
10. Ministry of Internal Affairs . (2017). Statistics on Irregular Migration in North Macedonia. Skopje, North Macedonia.
11. Schloenhardt, A. (2019). *Irregular migration and smuggling of migrants along the Balkan route, 2011-2017.* Budapest: Friedrich Ebert Stiftung.
12. Šelo Šabić, S., & Borić, S. (2016). *At the Gate of Europe: A Report on Refugees on the Western Balkan Route.* Zagreb: Friedrich Ebert Stiftung and SOE.
13. UNHCR. (2017). *Desperate Journey. Refugees and migrants entering and crossing Europe via the Mediterranean and Western Balkans routes. .* The UN Refugee Agency. Bureau for Europe.
14. United Nations. (n.d.). *Migrant smuggling - a deadly business*. Retrieved February 23, 2021, from United Nations. Office on Drugs and Crime: https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling-a-deadly-business.html

PRESIDENTIAL SUSPENSIVE VETO

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Abstract

In presidential and parliamentary democracies, the presidential veto is a constitutional right guaranteed to the President. The presidential veto is one of the most important competencies of the head of state, through which he has the opportunity to directly influence the legislative activity and participate in the exercise of legislative power. Specifically, the Constitution of the Republic of Kosovo sanctions within the president's powers, such as the right to return for reconsideration of adopted laws if they are considered to be harmful to the legitimate interests of the Republic of Kosovo or one or more communities. The power to return the law for review is a power where the President of the Republic has full discretion to assess its use. Therefore, through this paper we have made efforts to identify the features that accompany the exercise of a presidential veto in parliamentary democracies specifically in the Republic of Kosovo compared to some other states, then we have clarified the situation when this competence can be exercised, continuing further and concertizing that how much this competence was exercised in practice by the Presidents of the Republic of Kosovo and how much the objections of the presidents in our country were taken into account to approve the returned draft laws, and also which of the presidents until now in the Republic of Kosovo was distinguished in the exercise of this competence. The research methodology that we have practiced in this study is based on historical, qualitative, analytical, and comparative methods. Based on the research conducted, we have formulated the research question in this regard: Does the right of the president in the Republic of Kosovo to return for reconsideration of the law present the balance of control of state powers? The research study shows that the President can return the law for reconsideration by giving his objections, howe-

ver, he can not stop his entry into force. In conclusion, we understand that the presidential veto is by nature an active instrument, which enables in principle the president to defend the constitution, to support the balance and separation of powers, to prevent the adoption of deficiencies, and to prevent the adoption of legislation that serves to special interests.

Keywords*:* presidential veto, president, legislature, law.

1. THE SIGNIFICANCE AND THE HISTORY OF THE PRESIDENTIAL VETO

The term "veto" refers to the unilateral refusal of the President to approve a law voted by the people's representatives, by a collective organ respectively.

In the constitutional aspect, there is a distinction between the suspensive veto having a suspensive effect and the absolute veto that conclusively prohibits the decision-making (Eva 2017, 116). Nevertheless, while the absolute vetoes can be rare in most of the political systems (McCarty 2000, 509), the suspensive vetoes that postpone or prohibit a specific decision until the change of the constitutional conditions, are also a powerful, predominant, and potentially disruptive means in the decision-making context (Eva 2017, 116). It should be pointed out that the absolute legislative veto was characteristic of those constitutional systems in which the legislative power was shared between the Assembly and the head of the state so that contemporary constitutionalism does not recognize this type of a veto, even though the legislative power is entirely entrusted to the Assembly as the highest representative power (Enver & Ivan 2013, 365). It is characteristic of the contemporary constitutional systems that they recognize the suspensive legislative veto that represents the right of the head of the state to review a law voted by the Assembly (Enver & Ivan 2013, 365).

Historically the presidential veto was treated as a passive instrument to protect the constitutional principle of separation of powers and the rights of citizens as part of the balance system control of state powers (KDI 2015, 3).

According to the early constitutional norms, the veto was considered a legislative power of the President. On the contrary, the strict doctrine of power separation determined that the veto was to be mainly an executive or judicial instrument. The executive role was twofold since firstly it protected the President from the violation of the legislature and secondly it gave the president the possibility of rejecting poorly or hastily drafted laws that could not be executed effectively. Otherwise, the veto in judicial dimensions offered the president a possibility to prevent the adoption of unconstitutional laws. According to these viewpoints, the veto could be applied only for the unconstitutional legislation violated by the executive power, or it was badly drafted (McCarty 2000, 2).

From these characteristics of the veto evolution, we can define the veto as the president's competence to modify or annul certain legislation.

2. DEFINITION OF THE STATE OF KOSOVO AND THE SEPARATION OF STATE POWERS

"Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them" (Article 4, paragraph 1), in this way the governance and the separation of powers are determined based on the Constitution of the Republic of Kosovo. Furthermore, based on Article 4, paragraphs 3 and 4 of the Constitution of the Republic of Kosovo, the state organs exercising the state power are constitutionalized. The state power based on Constitution is manifested in three basic forms, constitutional and legislative power, executive – administrative and judicial. Such a separation is performed in a balanced manner meaning that their balance and counterbalance exist, they interweave between them and there is no absolute superiority of one power over the other (Kadri 2017, 124), knowing that a parliamentary system is a form of state governance based on the principle of the separation of the state power in which a separation of three powers and their reciprocal control exists (Arsim 2007, 84). Constitutional institutions are sanctioned commencing from the Assembly, the President, the Government as the executive organ, the judiciary, and the Constitutional Court.

This form of separation of powers has excluded the President of the Republic of Kosovo and the Constitutional Court that are not part of the separation of powers, but they are more balance mechanisms between

these state powers (Arsim 2011, 154-155). So, since the flexible form of control is applied, this means that the President and the Constitutional Court are external control mechanisms of state powers, except for the parliamentary control exercised related to the Government. As part of the separation of powers according to the Constitution, the President of the Republic of Kosovo is attributed with the representation of the people's unity, representation of the country internally and externally, as well as guaranteeing the democratic functioning of the institutions of the Republic of Kosovo (Constitution of the Republic of Kosovo, Article 4, paragraph 2).

The President of the Republic of Kosovo is considered an institution outside three traditional powers, but having some competencies based on which he/she undertakes actions that convolve with the activity of these three powers (Luan 2011, 117), this is observed with the President of the Republic of Kosovo.

3. THE RELATION OF THE PRESIDENT OF THE REPUBLIC OF KOSOVO WITH THE ASSEMBLY

The President of the Republic of Kosovo is not part of any of the powers but the competencies he exercises relate him to all the state powers. The very fact that he is not part of any of the powers conditioned careful determination of the competencies of the President of the Republic based on the Constitution of the Republic of Kosovo. Among the constitutional competencies of the President of the Republic of Kosovo is the competence of *guaranteeing the constitutional functioning of the institutions stipulated by the Constitution*. By this competence, the President of the Republic of Kosovo has the constitutional power of only the role of a constitutional counterbalance of the other state institutions meaning that the materialization of this function by the President to the Republic cannot touch the boundaries of the independence of separate powers.

The functions of the President of the Republic, by which he/she guarantees the *constitutional and lawful functioning of the state institutions*, are mainly the competencies related to the constitutional and lawful functioning of the highest legislative, executive, and judiciary institutions (Hazer 2017, 371). The legislative bodies are the most important bodies of every country; therefore they exercise the most significant activities in the country (Osman 2014, 97). The constitution of the

Republic of Kosovo, the President with regards to the Assembly, has stipulated his/her following competencies: to announce the elections of the Kosovo Assembly and to convene the first Assembly meeting; to enact the laws adopted by the Assembly; he has the right to remand the adopted laws for review if he/she considers them harmful for the legitimate interest of the Republic of Kosovo or one or more of its communities and he can exercise this right only once (Article 79); he/she proposes amendments to the constitution in force; appoints judges to the Constitutional Court by the proposal of the Assembly; at least once a year he/she addresses the Assembly of Kosovo regarding his field of activity (Articles 84, paragraphs 1, 19, 30).

4. PRESIDENTIAL SUSPENSIVE VETO IN THE REPUBLIC OF KOSOVO

In the parliamentary democracy, as is the case with the Republic of Kosovo, the presidential veto is a guaranteed constitutional right of the President. The presidential veto by nature is a reactive instrument that in principle enables the President to protect the constitution, to support the balance and the separation of powers, to prevent the adoption of legislation drafted with gaps, and to prevent the adoption of the legislation serving special interests and not the common good (KDI 2015, 2).

In the country of Kosovo to the presidential veto represents one of the most important competencies of the head of the state through which he can directly influence the legislative activity and partake in exercising the legislative power. Concretely, the Constitution of the Republic of Kosovo the right to return for reconsideration the adopted laws that can be exercised only in two situations (article 84, paragraph 6):

1. if he considers them to be harmful to the legitimate interests of the Republic of Kosovo, or

2. if they are harmful to the interests of one or more of its communities.

Return for reconsideration of law is competence in the full discretion of the President of the Republic regarding the evaluation of its use. In materializing of this competence the President of the Republic enjoys not simply the right of controlling the pursued procedure but also the substance of the law itself (Enver & Ivan 2013, 397). If the President returns the law to the Assembly for reconsideration then the Presi-

dency of the Assembly submits it to the functional reporting commission for review and the latter reviews only the issues contained in the decision of the President and then submits the report to him/her with the recommendations of the Assembly (Rulebook of the Assembly of the Republic of Kosovo, Article 61 paragraph 3, 4). Then the Assembly with the recommendations of the commission regarding the objections of the President for the amendment of the law should approve this report with the majority of votes of all the members and only if this absolute majority is obtained the law is considered passed. Otherwise, if the recommendation of the commissions about the President's objections is not approved, then the law remains as it was adopted in the first version by the Assembly and it is considered enacted (Rulebook of the Assembly of the Republic of Kosovo, Article 61 paragraph 5). Furthermore, the President of the Republic can exercise the right of returning the law only once within the constitutional time limit of eight (8) days (Constitution of the Republic of Kosovo 2008, Article 80 paragraph 3). In this situation since for the approval of the returned law to the Assembly, the majority of votes of all the members is needed, this strengthens the position of the President related to the Assembly, and even in these case when for the returned laws the majority of votes of all the members are obtained, this creates the opinion that the President was right in his evaluation that these laws harm the legitimate interests of the state or harm the interests of one or more communities that live in Kosovo and in this case they can regard the presidential vote as an instrument against the majority. But the practice has proven that to obtain the majority in most cases is usually a problem, therefore if the majority of the votes of all the members is not obtained then the law remains in the first version as adopted by the Assembly and is considered enacted, regardless of the President's objections since the latter is limited to use his right to return the law for reconsideration only once. This obstacle of obtaining the absolute majority of the votes of all the members is argued by the fact that as regards the Assembly election system Kosovo is considered an election zone with many candidates (Law no. 03/L-073 on general elections in the Republic of Kosovo, Article 110 paragraph 1), respectively every certified political subject participated in elections with "an open list" (Article 110, paragraph 3), i.e. by a proportional system. As a result of this election system, the parliamentary majority is impossible to be obtained by a single political party; therefore the election of some state institutions constantly was conditioned by political coalitions. Based on this we can conclude that when the parliamentary majority is unique then the presidential veto

has a formal effect since in this situation the President has no power to stop the entrance into force of the returned law. While if the parliamentary majority is not unique then the presidential vote has no formal role but can be decisive since the adoption of the law can be prevented that otherwise could be adopted. In conclusion, we would like to point out that the president can delay the implementation of the law but cannot prevent its entrance into force.

Another specific of the President's right to return the law is that the president cannot propose the incorporation of an amendment in that law since the proposal of the amendments is considered as another kind of constitutional competence that the President has, this standard was also concluded by the Constitutional Court of the Republic of Kosovo (Judgment in the case no. KO 57/12). Also, the constitutional fact of eight (8) days is a standard time limit within which the President should exercise the right of returning of all laws for reconsideration and in this case, for the laws of the urgent character, this time lime should be shorter, for example, four (4) days. After elaborating the characteristics of the right to return the law for reconsideration, we conclude that the President of the Republic of Kosovo has the right to exercise the so-called "suspensive veto" to suspend the law.

Following the failure of the President's veto and the entrance into force of the law, if the latter has any doubts about that law he/she can contest it only by referring it to the Constitutional Court, by the abstract control respectively, since the Constitution of the Republic of Kosovo, the President as a non-political institution recognizes his/her right to refer the case of consistency of the law with the Constitution (Article 113, paragraph 2). And only by this referral the President can be convinced if his/her vote was right or not, because the Constitutional Court is considered the final power in the Republic of Kosovo that interprets the Constitution and the consistency of the laws with the Constitution, moreover it is considered as independent in performing its responsibilities in a professional manner (Article 112). Such a situation is argued during the constitutional mandate of the former president Atifete Jahjaga who regarding the Law 04/L-084 on pensions of members of the Kosovo Security Force, despite her exercising the right of the veto, didn't succeed since the version of the law was adopted without considering the proposal of the President for the incorporation of the amendment. The non-approval of this proposed amendment to the Law 04/L-084 on pensions of members of the Kosovo Security Force had compelled the President to address the Constitutional Court to contest the voting on the adoption of the afore-

mentioned law, and she also demanded to determine if the constitutional right of veto was violated in this case. But the Court decided that the Constitution of Kosovo recognizes the right of the president to the legislative initiative within the realization of his/her competencies as the chief of state, but it doesn't specify that he/she has the right to submit amendments and addendums to the law returned for review (Judgment no. KO 57/12, 8), and consequently found that the competence of the President to return the laws for reconsideration was not violated.

From this decision, it is connoted that the President should not have proposed amendments of the law when it was returned for review because this right is not guaranteed to the president within the competencies of returning the law for reconsideration, but it consists of another competence of the President according to which he/she has the right to propose entirely new laws but no way can he/she do that regarding the law on which the suspensive veto has been exercised.

Except for the presidential veto related to the law adopted at the Assembly, the President also has the right to silence if within eight (8) days following the receipt of the law he/she doesn't make any decision for enacting or returning of the said law (Article 80, paragraph 5). Thus the law is considered adopted even without the President's signature and as such is published in the Official Gazette.

Furthermore, regarding the presidential veto in the parliamentary republics such as Albania or Bulgaria, we notice that almost similar to the Republic of Kosovo they have regulated the presidential veto. The President of the Republic of Albania has the right from the moment of receipt within twenty days (20) to return the law for reconsideration only once. The Decree of the President for returning a law loses power when the majority of the Assembly members vote against it (Constitution of the Republic of Albanian 1998, Articles 84 and 85). While in Bulgaria the presidential veto is exercised within the time limit of fifteen (15) days from the moment the law is received, when the President is free to return a law together with his motives, to the National Assembly for further discussion. This new adoption of such a law requires the majority of the votes of more than half of all the National Assembly members. Following the new adoption of the law by the National Assembly, the President will enact it within seven days following its delivery (Constitution of the Republic of Bulgaria 1991: articles 88 and 101).

Distinctions of the presidential suspensive veto between the Republic of Kosovo and Albania and Bulgaria appear in the time limit within

which this conditional competence can be exercised, which in Kosovo was eight (8) days.

5. EXERCISING THE RIGHT OF RETURNING LAWS FOR RECONSIDERATION BY THE PRESIDENT OF THE REPUBLIC OF KOSOVO

From the declaration of Independence in 2008 until 2020, the function of the President in the Republic of Kosovo was exercised by four (4) personalities. We will elaborate on the materialization of the right of return of the laws for reconsideration by the President of the Republic of Kosovo during their mandate.

During the mandate 2008-2010 while the former President Fatmir Sejdiu was in power, the Assembly of the Republic of Kosovo has adopted in total one hundred seventy (170) laws (DLPS, 2021), of which four of them were returned for reconsideration. This four laws are listed below:

1. Law no. 03/L-110 on Termination of Pregnancy, adopted on 06.11.2008, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 03-V081, dated January 22, 2009 (Burim Etemaj, email message, October 26, 2020). This law was adopted following corrections in accordance with the objections proposed by the President after returning the law for reconsideration (Minutes of the plenary session of the Assembly of the Republic of Kosovo dated January 22, 2009, 7).

2. Law no. 03/L-117 on The Bar, adopted on 20.11.2008, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 03-V-085, dated February 12, 2009 (Burim Etemaj, email message, October 26, 2020). The objections of the President regarding this law were not approved after being returned for reconsideration by him (Minutes of the plenary session of the Assembly of the Republic of Kosovo dated February 12. 2009, 5&6).

3. Law no. 03/L-118 on Public Gatherings, adopted on 04.12.2008, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 03-V-101, dated March 26, 2009 (Burim Etemaj, email message, October 26, 2020). The Assembly did not approve the proposal of the Commission for Internal Affairs and Security regarding the objections of the President of the Republic of Kosovo

(Minutes of the plenary session of the Assembly of the Republic of Kosovo dated March 26, 2009, 8).

4. Law no. 03/L-209 on Central Bank of the Republic of Kosovo, adopted on 12.07.2010, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 03-V392, dated July 27, 2010 (Burim Etemaj, email message, October 26, 2020). The objection of the President of the Republic of Kosovo was approved regarding this law related to the modification of Article 41 paragraph 3 of this law. (Minutes of the plenary session of the Assembly of the Republic of Kosovo, dated July 27, 2010, 4).

From these laws in which the former president exercised the suspensive veto, it results that in only three laws he had successfully exercised the suspensive veto.

***While regarding the former President Atifete Jahjaga*,** during her mandate 2011-2016, the Assembly of the Republic of Kosovo has adopted in total two hundred and sixty-six (266) laws (DLPS, 2021). From all these approved laws she exercised her right to return four (4) following laws for reconsideration:

1. Law no. 04/L-076 on Police, adopted on 23.01.2012, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 04-V-310, dated March 2, 2012 (Burim Etemaj, email message, October 26, 2020). The amendments in this law pursuant to the objections of the President of the Republic of Kosovo were approved (Minutes of the plenary session of the Assembly of the Republic of Kosovo dated March 1 and 2, 2012, 7).

2. Law no. 04/L-084 on pensions of members of the Kosovo Security Force, adopted on 15.03.2012, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 04-V-350, dated May 3, 2012 (Burim Etemaj, email message, October 26, 2020). Assembly did not approve the objections of the President of the Republic of Kosovo, therefore this law remained as adopted by the Assembly of Kosovo on March 15, 2012 (Minutes of the plenary session of the Assembly of the Republic of Kosovo dated May 3, 2012, 8).

3. Criminal Code no. 04/L-082 of the Republic of Kosovo, approved on 20.04.2012, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 04-V-399, dated June 22, 2012 (Burim Etemaj, email message, October 26, 2020). The Assembly did not approve the amendments in accordance with the objections of the President of the Republic of Kosovo to return the Criminal Code of the Republic of Kosovo for consideration and thus it was considered enacted as adopted by

the Assembly at the plenary session of the Assembly of the Republic of Kosovo dated April 20, 2012 (Minutes of the plenary session of the Assembly of the Republic of Kosovo dated June 22, 2012, 5).

4. Law no. 04/L-163 On Goods Exempt From Custom Tax And Goods With Zero Rate Of The Custom Tax, adopted on 26.12.2013, enacted pursuant to article 80.4 of the Constitution of the Republic of Kosovo, dated 26.12.2013 (Burim Etemaj, email message, October 26, 2020). The amendments of this law proposed following the objections of the President following the return for reconsideration were approved (Minutes of the plenary session of the Assembly of the Republic of Kosovo dated December 26, 2013, 6).

From these laws in which the former president Atifete Jahjaga has exercised the suspensive veto, it results that only in three laws her remarks were taken into account, which means that the suspensive veto was successfully materialized.

The former President Hashim Thaçi, has exercised his mandate from 2016-2020. During this period the Assembly of the Republic of Kosovo has approved in total one hundred and eighty-nine (189) laws (DLPS, 2021). So the former President in that time has exercised the right to return for reconsideration of the following two (2) laws:

1.Law no. 06/L-016 on Business Organizations, adopted on 15.03.2018, enacted by the decision of the Assembly of the Republic of Kosovo no. 06-V-128, dated 17.05.2018 (Burim Etemaj, email message, October 26, 2020). Regarding this law, the President submitted his objections proposing to delete one article but the Assembly members did not approve his proposal so the law entered into force as it was adopted for the first time (Minutes of the plenary session of the Assembly of the Republic of Kosovo dated May 13 and June 1, 4 and 5, 2018).

2. Law no. 06/L-043 on Freedom of Association in NGOs, adopted on 07.11.2018, enacted by the Decision of the Assembly of the Republic of Kosovo, no. 06-V-346, dated 15.04.2019 (Burim Etemaj, email message, October 26, 2020). Regarding this law the decision of the president concerning the amendment of the law returned or reconsideration was approved. (Transcript of the plenary session of the Assembly of the Republic of Kosovo dated April 15 and 17, 2019, 26).

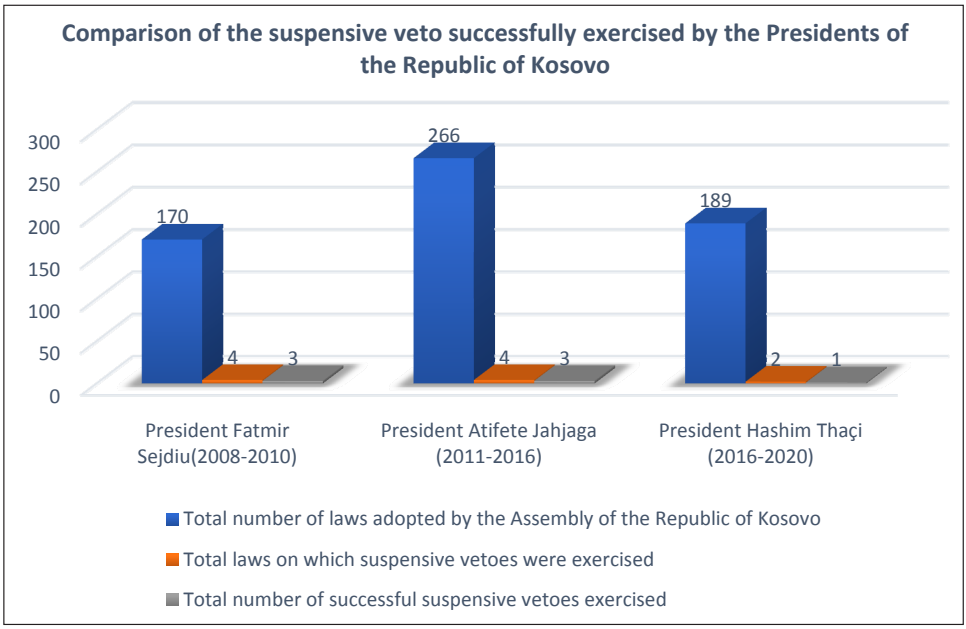
During the period while President Hashim Thaçi was in power, he exercised his right to return for reconsideration only two laws and only one successfully by applying the presidential suspensive veto.

Table 1. *Suspensive veto exercised from Presidents of Republic of Kosovo from 2008-2020*

President	Fatmir Sejdiu	Behgjet Pacolli	Atifete Jahjaga	Hashim Thaqi
Mandate	09.01.2008-27.09.2010	22.02.2011-30.03.2011	07.04.2011-07.04.2016	07.04.2016-05.11.2020
Total numer of laws adopted by the Assembly of the Republic of Kosovo:	170	/	266	189
Total laws on which suspensive vetoes were exercised:	4	/	4	2
Total number of successful suspensive vetoes exercised:	3	/	3	1

In general, if we analyse this constitutional competence exercised by the Presidents of the Republic of Kosovo from 2008-2020, we notice that despite the fact that their constitutional mandate has lasted, they have successfully managed to exercise the right to return to review the law or suspensive veto on certain laws during the constitutional mandate.

Fig.1. *Comparison of the total number of: laws adopted by Assembly, suspensive vetos exercised on laws and succesful suspensive vetos exercised by the Presidents of the Republic of Kosovo*



From the above figure we observe that despite the large number of laws that were adopted during the mandates of the Presidents of the Republic of Kosovo, however, we emphasize that the maximum number of suspensive vetoes exercised during the constitutional mandate of a president in our country was four (4) laws.

This proves that there is legislative power professionalism during the exercise of the legislative function where specifically great attention is paid to the drafting and adoption of the laws protecting the legitimate interests of the Republic of Kosovo as well as the interest of one or more communities due to the fact that our country is considered a multi-ethnic society.

CONCLUSION

The presidential suspensive veto can be considered as an instrument against the parliamentary majority. It represents great power but at the same time, a responsibility concentrated on one individual as well, concretely the President. If the suspensive veto is misused then it produces consequences in the direction of the legislative and executive power imbalance. The veto in the Republic of Kosovo has the effect of only preventing the implementation of the law for a period of time. The period of time regarding the exercise of the right to return the adopted laws for reconsideration in urgent situations should be determined and it should be shorter than the usual period applied for the other laws. The Presidents of the Republic of Kosovo have successfully exercised the suspensive veto on certain laws during their constitutional mandate. The maximum number of suspensive vetoes exercised during the constitutional mandate of a president in our country was four (4) laws. This proves that the professionalism of the legislative power exists during the exercise of the legislative function. In conclusion, the essence of the presidential suspensive veto in republic of Kosovo is to defend the constitution, to support the balance and separation of powers, to prevent the adoption of deficiencies, and to prevent the adoption of legislation that serves the special interests and the common adverseness.

REFERENCES

1. Arsim, B. 2007. "Drafting the Constitution". (Manual for drafters of the constitution). Prishtina.
2. Arsim, B. 2011. "The Constitutional System of the Republic of Kosovo". Prishtina.
3. Assembly of the Republic of Kosovo. 2010. Rulebook of the Assembly of the Republic of Kosovo. Retrieved from: https://www.kuvendikosoves.org/Uploads/Data/Files/6/Rr_K_RK_29_04_2010_1_EDbu8aqXYd.pdf.
4. Constitution of the Republic of Kosovo. 2008.
5. Constitution of the Republic of Albanian. 1998.
6. Constitution of the Republic of Bulgaria. 1991.
7. Department for Legal and Procedural Support. Assembly of the Republic of Kosovo. 2021. Evidence of laws. Prishtina. Retrieved from: Evidencaeligjeve_bXduwS-3Md9.pdf.
8. Enver, H. & Ivan, C. 2013. "Constitution of the Republic of Kosovo-Commentary". Prishtina.
9. Eva, K. 2017. "The myth of effective veto power under the rule of consensus. Dynamics and democratic legitimacy of collective decision-making by "Tacit Consent". De Boeck Supérieur, Négociations, 2017/1 n° 27, p. 109-128.
10. Hazer, S. 2017. "Constitutional Law ". First Edition. Prishtina.
11. Ismaili, O. 2014. "Introduction to Law". Prishtina.
12. Kadri, K. 2017. "Comparative constitutional law". Prizren.
13. Kosova Democratic Institute. 2015. "The election of the President by the people: a need of the time or ordinary rhetoric?". Discussion paper. Prishtina.
14. Law no. 03/L-073 on general elections in the Republic of Kosovo. Official Gazette 31/2008 of the Republic of Kosova. 15 June 2008.
15. Luan, O. 2011. "Separation of powers and independence of constitutional institutions". Tirana.
16. McCarty, N. 2000. "Proposal Rights, Veto Rights, and Political Bargaining." American Journal of Political Science 44(3): 506-522.
17. The Constitutional Court of the Republic of Kosovo. 2012. JUDGMENT in Case No. KO 57/12 The Referral of the President of the Republic of Kosovo, Her Excellency, Atifete Jahjaga, Contesting the Voting for the Approval of the Law no. 04/1-084 "On Pensions of Kosovo Security Forces Members". Retrieved from: https://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_57_12_ang.pdf.
18. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated January 22, 2009. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2009_01_22_10_al.pdf.

19. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated February 12, 2009. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2009_02_12_10_al.pdf.

20. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated March 26, 2009. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2009_03_26_10_al.pdf.

21. Minutes of the plenary session of the Assembly of the Republic of Kosovo, dated July 27, 2010. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2010_07_27_10_al.pdf.

22. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated March 1 and 2, 2012. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2012_03_02_10_4051_al.pdf.

23. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated May 3, 2012. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2012_05_03_10_4196_al.pdf.

24. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated June 22, 2012. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2012_06_22_10_4309_al.pdf.

25. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated December 26, 2013. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2013_12_26_10_5306_al.pdf.

26. Minutes of the plenary session of the Assembly of the Republic of Kosovo dated May 13 and June 1, 4 and 5, 2018. Retrieved from: http://old.kuvendikosoves.org/common/docs/proc/proc_s_2018_05_17_10_7431_al.pdf.

27. Transcript of the plenary session of the Assembly of the Republic of Kosovo dated April 15 and 17, 2019. Retrived from: http://old.kuvendikosoves.org/common/docs/proc/trans_s_2019_04_15_10_7962_al.pdf.

INTER-MUNICIPAL COOPERATION, NEGLECTED SOLUTION FOR THE DEFICIENCIES OF ASYMMETRIC DECENTRALIZATION IN THE RNM

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Abstract

Comparative analysis shows that in the local systems worldwide inter-municipal cooperation (IMC) is seen as one of the cures to address the disparities between municipalities in terms of provision of local services and efficiency improvement. In this manner, in the Republic of North Macedonia the instrument of inter-municipal cooperation was introduced in the Law on local self-government and in 2009 this instrument was regulated in separate law. The paper seeks to provide an overview of the implementation of IMC and the types of IMC that have been introduced in the period 2009-2019 by LSGU. In parallel, the paper investigates institutional architectures at central level designed to support the municipalities in this endeavor. The data from the empirical analysis shows that in the 15 years of decentralization municipalities have not been enthusiast on introducing this instrument in one hand, and the central government did not undertake any comprehensive policy initiative to encourage the municipalities to introduce this instrument. The paper explains the impact of the size, composition of population and party politics on IMC and provides recommendations in terms of legislative framework and policy initiatives in the area of IMC.

Keywords: Inter-municipal cooperation, LSGU, municipalities, efficiency, local services, economy of scale.

1. BACKGROUND

In the Republic of North Macedonia, all units of local self-government enjoy the same spectrum of local competences, however, no all of them possess the necessary resources and capacities for implementation of the competencies transferred through symmetric decentralization of the central government, process this started in 2005. Since the first years of implementation of decentralization it became obvious that as currently organized not all municipalities will be able to benefit from decentralization and at the same time to create preconditions for better livelihood of their citizens by ensuring sustainable local development. Since 2006 onwards, evident are central government efforts for putting into service of local self-government unit's alternative mechanisms for implementation of competencies and delivery of local services that traditionally have not been applicable in our country. For some of them (concession and public-private partnership, inter-municipal cooperation, etc.) the relevant legislation has been adopted.

Very much so, inter-municipal cooperation as one of known mechanisms for alternative delivery of public services at the local level is subject of this paper. Since independence of the Republic of Macedonia, municipalities have enjoyed the right of voluntary inter-municipal cooperation; however, this mechanism has never found a wider application as happened after 2005 with starting of decentralization, and particularly after 2009 when Parliament of the RM approved special law on inter-municipal cooperation[1].

Researching the applicability of the main elements of IMC concept as well as presentation of the views of relevant stockholders in this area represents the basis for providing recommendations which will contribute to improve the overall IMC environment. Exactly in providing conclusions and recommendations which provide modest contribution to the advancement of IMC in Macedonia lies the importance of this paper.

1. https://mls.gov.mk/images/laws/Ligji%20per%20bashkepunim%20nderkomunal.pdf

2. METHODOLOGICAL APPROACH & STUDY LIMITATIONS

During the preparation of this paper, the following research methods and techniques were used: Analysis, Comparison, Interview, Survey with questionnaire, and Case study.

At the same time, we have faced following limitations: lack of previous research studies on the topic, lack of data and limited access to data, and time constraints.

3. LOCAL SELF-GOVERNMENT IN THE REPUBLIC OF NORTH MACEDONIA

Since the independence from the former SFR Yugoslavia's in 1991, changes have taken place in the Republic of North Macedonia which have contributed to the fact that today's municipalities are characterized by a wider range of their competencies as well as a greater financial independence from the central government. It should be noted that all these changes have occurred more thanks to the processes that stem from the country's Euro-Atlantic aspirations and as a result of the armed conflict of 2001 than as a "consequence" of political and methodological assessments of policymakers on the need for decentralization of central government.

With the adoption of the current law on territorial organization (as well as legal changes and amendments), since 2004, North Macedonia counts 81 units of local self-government, of which 10 municipalities are within the City of Skopje, which has the status of a separate unit of local self-government and which is regulated by a special law.

MAP Nr. 1 - *Territorial organization of local self-government in the RNM according to the law of 2004, currently in force*

In addition to the territorial-administrative organization of local self-government units, since September 2009, North Macedonia is also organized at the level of planning regions. "Officially, North Macedonia is divided into eight planning regions which serve statistical, economic and administrative purposes". Such regional organization represents the third level (except municipalities and settlements) within the nomenclature of territorial statistical units (NUTS).

MAP Nr. 2 - *Organization of planning regions in the Republic of North Macedonia according to the law of 2009, currently in force*

The Law on Local Self-Government regulates three important principles which are related to municipal competencies:

- municipalities, within the legal framework, shall independently regulate and perform activities of local importance, determined by this or other law and shall be responsible for their performance.
- the law that determines new competencies of the municipality shall also determine the financial sources for the performance of those competencies.
- the competencies are as a rule comprehensive and exclusive and shall not be taken away or limited, except in cases determined by law.

The current competencies of the municipalities are in the following areas:

- Urban and rural planning;
- Protection of the environment and nature;
- Local economic development;
- Communal activities;

- Culture;
- Sport and recreation;
- Healthcare;
- Execution of preparations and undertaking of activities for protection and rescuing of citizens and goods against war destructions, natural and other disasters as well as against the consequences caused by them;
- Firefighting activities;
- Supervision over the performance of activities from under municipal competency; and
- Other activities determined by law.

Currently, the financing of municipalities is regulated by the Constitution of the Republic of North Macedonia, the Law on Local Self-Government of 2002 and the Law on Financing of Local Self-Government Units of 2004.

It can be argued that the decentralization process has significantly improved the overall status of local self-government units in many respects. Decentralization in the country has contributed to the citizens (some in a larger volume and some in a smaller volume) to "enjoy" the benefits provided by empowered municipalities with competencies, resources and capacities. The results achieved during this time period are not sufficient. Therefore, in the period ahead of us, serious efforts should be made in order to successfully round off decentralization in North Macedonia as well as its further advancement. A coordinated and comprehensive approach should be committed to the implementation of the new Program for Sustainable Development and Decentralization 2021-2026, for the implementation of which adequate financial resources should be allocated.

The obvious lack of human, financial and professional capacities of the municipalities presents the inevitable need to establish and promote alternative mechanisms for the provision of local services which will enable all citizens of North Macedonia in the same volume and way to benefit from decentralization of central government.

4. ALTERNATIVE SERVICE DELIVERY

Alternative service delivery (ASD) is presented as a new concept not only in our country but also beyond. ASD is a novelty especially in the countries of the former socialist-communist bloc where for a long time

it was unimaginable for the non-public sectors to perform public works which were in the competence of central and local level institutions.

In their paper from 2003, Good and Carin[2] state that: "Alternative service delivery involves the search for new and appropriate organizational forms and measures, including partnerships with other levels of government and the non-governmental sector, in order to improve the delivery of programs and services ".

The potential benefits generated by the functioning of inter-municipal cooperation are the main motivation for all stakeholders to participate in such an engagement. There are three main groups of benefits from IMC:

- Economic benefits;
- Benefits from the implementation of local competencies and improving the quality of services provided locally, as well as
- Benefits from the coherent and transparent functioning of local self-government units.

Regarding the effect that ASD has on transparency in the provision of public services, Peteri[3] emphasizes *"The separation of service providers and buyers, tendering regulations make public decisions more transparent. Public money should be spent for clearly defined purposes, so there is a greater chance of public scrutiny. "It will also increase the accountability of elected bodies."*

4.1 Inter-municipal cooperation in the Republic of North Macedonia

The importance of inter-municipal cooperation in the North Macedonia increased with the start of the implementation of the decentralization process. Although the law on local self-government under which decentralization was initiated and implemented recognizes and allows cooperation between municipalities in certain forms, in the past, this opportunity did not find wider formal application. In most cases, informal partnerships were realized in areas such as urban planning, tax administration, etc.

The Republic of North Macedonia is one of the few countries in the region and beyond which has adopted a special law which regulates

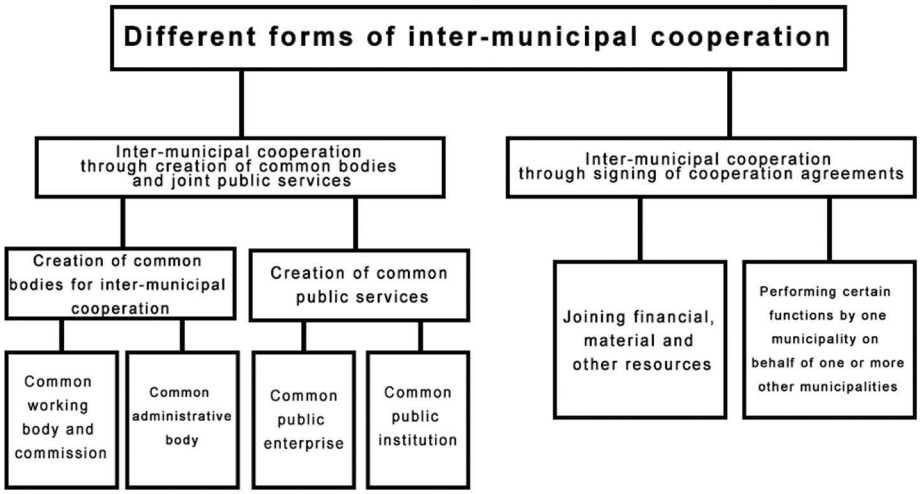
2. Good A., D and Carin, B. Alternative Service Delivery, (2003). page 4
3. Peteri, G. "Alternative Service Delivery" in Nemec,J.-Wright, G.(Eds): Public Finance. Theory and Practice in Central European Transition, (1997). NISPAcee, Bratislava. page 19

the substance of inter-municipal cooperation. Within itself, the law regulates: the manner, conditions and procedure for the establishment of IMC and the forms through which it is realized, financing, evidence and supervision of inter-municipal cooperation as well as other issues of importance for inter-municipal cooperation. However, the process of implementation of the relevant legislation has not passed without problems of various natures which have affected the failure to use even greater IMC in the implementation of the competencies of local self-government units.

Positive legal provisions define inter-municipal cooperation as: *"cooperation that is established between two or more municipalities to perform more efficiently and economically the competencies of municipalities verified by law and to achieve their common interests and goals*[4]*"*.

Also, in the sense of the law on IMC, *"inter-municipal cooperation means the performance of tasks determined by the competence of municipalities by a municipality on behalf of one or more municipalities based on the agreement concluded between municipalities"*[5] .

In the Republic of North Macedonia, there are six forms of inter-municipal cooperation that municipalities have available for joint performance of tasks within their competence.



GRAPHS No. 1 - *Forms of inter-municipal cooperation in the RNM according to the IMC law of 2009, currently in force*

4. Law on inter-municipal cooperation ("Official Gazette of RM" no. 79/2009); Article 2 (1)
5. Law on inter-municipal cooperation ("Official Gazette of RM" no. 79/2009); Article 2 (2)

Characteristic of the first group of forms of IMC is the formation / establishment of a "third" body in addition to the municipalities involved in cooperation, in this case, the "third" body is the working body, commission, public enterprise or public institution . Whereas, in the second group of possible forms, the inter-municipal cooperation is realized without the establishment of the "third" body and within the capacities and resources of the municipalities involved in the cooperation.

The stimulation of inter-municipal cooperation is sanctioned by positive legal provisions and the same is done through the following instruments: non-refundable grants, financing and co-financing for the preparation of analyzes and studies in areas that are important and in the greatest interest for carrying out activity in those spheres, and other instruments in accordance with the law[6].

The positive law of the Republic of North Macedonia envisages the establishment of the Government Commission for the Promotion and Monitoring of Inter-Municipal Cooperation (IMC Commission)[7]. Within its legal powers, the IMC Commission performs the following tasks:

- follows the established forms of inter-municipal cooperation;

- reviews and gives opinions on the annual report on the implementation of inter-municipal cooperation;

- initiates changes and amendments to the legal norm which affects the inter-municipal cooperation;

- provides an opinion on the draft-acts from article 32 paragraph (2) and paragraph (4) of this article;

- publishes the best examples of inter - municipal cooperation, and

- examines other issues important for inter-municipal cooperation

4.2 Findings

From the analysis of positive legislation, documents and research in the field of inter-municipal cooperation, as well as from interviews conducted with representatives of central and local government institutions, as the main findings on the current status and use of inter-municipal cooperation in the Republic of North Macedonia are :

6. Law on inter-municipal cooperation ("Official Gazette of RM" no. 79/2009); Article 31
7. Law on inter-municipal cooperation ("Official Gazette of RM" no. 79/2009); Article 33

- Out of total 80 municipalities in the country, 62 have established at least one form of IMC.
- Out of a total of 62 municipalities which have established IMC, 8 municipalities have established only one partnership, 22 municipalities have established two instances of IMC, 14 municipalities have established 3 instances of IMC, while 8 municipalities have established 4 or more instances of IMC.
- From the aspect of the number of involved municipalities in the IMC, 48 are between two municipalities, 8 are between three municipalities and 5 involve four or more municipalities;
- Contractual IMC remains among most preferred form of IMC in the country while more institutionalized forms are not yet utilized at their potentials;
- The IMC is mainly established in areas of social protection, environmental protection, inspection, fire protection, urban planning, internal audit, etc.
- Lately, IMC at the regional level is more often reported.
- Municipalities are still entering into informal inter-municipal cooperation.
- The Government of the RNM is not stimulating financially municipalities entering IMC.
- Commission for stimulation and monitoring of the inter-municipal cooperation is not functional.
- Since 2017, the Government of the RNM has not adopted the act which determines the functions of broader importance and interest for which it may allocate funds to stimulate IMC.
- The Ministry of local self-government lacks accurate data on established IMC's in the country.
- Majority of municipalities consider that institutional support for capacity building in area of IMC is lacking.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

All parties involved in the promotion, establishment and functioning of inter-municipal cooperation (MLSG and other line ministries, municipalities, experts, international organizations), unanimously consider that IMC is a very important mechanism for the implementation of decentralized competencies and for the provision of quality services at the local level, a mechanism which generates many benefits. for municipalities, especially for rural and smaller urban municipalities.

5.2 Recommendations

Although the results of IMC in the North Macedonia are undeniable, the existing IMC concept needs ongoing interventions which will further improve it through which an affirmative environment will be created that will enable municipalities to use this instrument without any hesitation and which will provide them with benefits of various natures. To achieve satisfactory results, the existing dialogue between relevant factors needs to be continued and further strengthened. Based on the review of the inter-municipal cooperation environment in the country and to improve the current status of the IMC system, the Republic of North Macedonia proposes the following recommendations:

- Institutionalization of all IMC as per the Law on IMC;
- Provision of financial stimulation by the line ministries for establishing of IMC in different areas;
- The Commission for stimulation and monitoring of the IMC to be formed which will follow the established partnerships, analyze them and provide recommendations for improvement of the IMC environment.
- Conduction of capacity building activities intended for municipal elected officials and administration;
- Design and implementation of wider campaign for promotion of benefits for municipalities entering IMC;
- Further support of the IMC concept by the international organization (financial, experiences and lessons learned).

REFERENCES

1. Anderson, D. Capacity Development for Quality Public Service Delivery at the Local Level in the Western Balkans, (2009). UNDP, Zagreb
2. Bouckaert, G. & Van de Walle, S. Quality of Public Service Delivery and Trust in Government. In: Governing Networks: EGPA Yearbook, Ed. Ari Salminen. (2003). Amsterdam: IOS Press. pp. 299-318
3. Dauti, I. Co-author, Strengthening Inter-municipal Cooperation in Montenegro, (2010). UNDP, Podgorica
4. Good A., D and Carin, B. Alternative Service Delivery, (2003)
5. Hertzog, R. "Intermunicipal cooperation: A Viable Alternative to Territorial Amalgamation" in: Swianiewicz (ed.) Territorial Consolidation Reforms in Europe, (2010). Local Government and Public Service Reform Initiative – OSI, Budapest, fq. 285 – 307
6. Handbook on inter-municipal cooperation, (2009). UNDP, Skopje

Legal framework:

1. Constitution of the Republic of North Macedonia with amendments;
2. Law on local self-government ("Official Gazette of RM" no. 05/2002);
3. Law on the City of Skopje ("Official Gazette of RM" no. 55/2004);
4. Law on financing of the units of local self-government ("Official Gazette of RM" no. 61/2004);
5. Law on inter-municipal cooperation ("Official Gazette of RM" no. 79/2009);
6. Law on concession and public-private partnership ("Official Gazette of RM" no. 06/2012);
7. Law on Balanced Regional Development ("Official Gazette of RM" no. 63/2007);
8. Law on territorial organization of the local self-government in the Republic of Macedonia ("Official Gazette of RM" no. 55/2004);

CAN SOCIAL ENTREPRENEURSHIP BE A POST-PANDEMIC RECOVERY DRIVER OF YOUTH UNEMPLOYMENT? FROM JOB SEEKERS TO JOB CREATORS. COMPARATIVE STUDY OF SLOVAKIA AND NORTH MACEDONIA

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Abstract

This desk study provides an analysis of ecosystems in two countries: Slovakia and North Macedonia in relation of their support towards the social entrepreneurship. Both countries have one of the highest youth employment rates in their perspective region (Visegrád and Western Balkans). The main research question is then about to find out what are the states´ and structural mechanisms of supporting social entrepreneurship in the COVID-19 pandemics in order to tackle youth unemployment. The research paper includes an assessment of the state of social entrepreneurship in these countries, including development, discourse, and examples of existing social enterprises. The methodological approach used in the study included a collection of secondary data based on available documents, reports, studies, strategies, etc. available in each of the countries. Identification and analysis of relevant laws, policies, support mechanisms, measures and financial instruments provide information on the legal, institutional and financial framework for the state of social economy. The research includes a comparative overview of the regulatory framework, the institutional support, the financing options and the available support structures and networks in both countries. This comparative study is

also partially showing the limits, obstacles, and challenges in relation to social entrepreneurship support, considering the context of COVID-19 crisis. Additionally, it identifies potentials of cooperation, development, and further effectivity of funding options on the European, regional and national level. Findings are summarized into the policy recommendations formulated at the end of the paper.

Key words: social entrepreneurship, social enterprise, social economy, Slovakia, Visegrád group (V4), North Macedonia, the Western Balkans (WB), COVID-19 pandemics, youth unemployment, policy recommendations

INTRODUCTION: UNDERSTANDING OF SOCIAL ENTREPRENEURSHIP

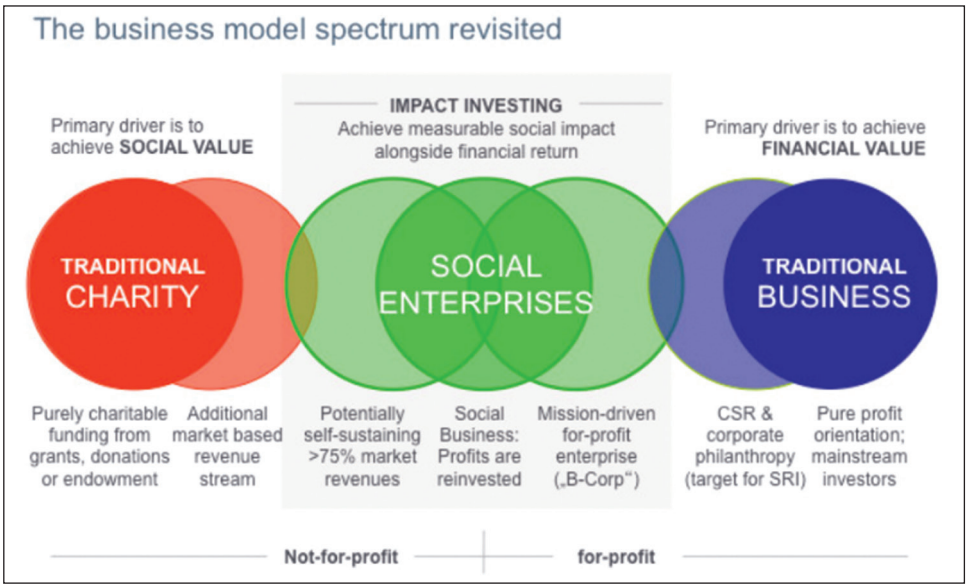
''*Social entrepreneurship''* applies more in practice than in academic research. The concept lacks a widely accepted framing definition. One of the reasons, is an underdeveloped theoretical base and second is "confusing practice", meaning high variability in forms and nature of social entrepreneurship activities.[1]

The simplest view of social entrepreneurship lies in its core element defining social entrepreneurship aiming to achieve a social change or create a social value rather than creation of wealth[2]. Social enterprises as "performers" of social entrepreneurship are having various legal forms such as social cooperatives, private companies, mutual organizations, non-profit-associations, voluntary organizations, charities, foundations[3]. It remains therefore challenging to measure them both at national and international levels. The existing research and evidence suggest that social enterprises are vibrant agents for local and national economic development. They are contributing to inclusive growth and

1. United Nations World Youth Report (2020): Youth Social Entrepreneurship and the 2030 Agenda. Chapter 1. Available at: https://www.un.org/development/desa/youth/world-youth-report/wyr2020.html
2. Dees, J., G. (1998). *The Meaning of Social Entrepreneurship*. The Palgrave Encyclopaedia of Strategic Management
3. Gordon, M. (2015). *A Typology of Social Enterprise: 'Traditions'*. ICSEM Working Papers, No. 18, Liege: The International Comparative Social Enterprise Models (ICSEM) Project.

shared prosperity through job creation, re-integration of vulnerable individuals into society and the labour market.[4]

Figure 1: *Profit and non-profit spectrum model*



Source: Chidwala, J. (2017): *The proliferation of sustainable social enterprises in Sub-Saharan Africa.* Available at: https://www.linkedin.com/pulse/proliferation-sustainable-social-enterprises-africa-jo-chidwala/

Figure 1 illustrates some kind of "traditional understanding" of distinction between the charity or non-profit organisation, social enterprises and traditional businesses. Charities and non-profits rely almost exclusively on donations, subsidies or grants to support their operations. Social enterprises are also focused on social impact, same as charities and non-profits, although they combine it with the use of market mechanisms to achieve financial self-sustainability.

The times such as the COVID-19 crisis have been favourable for the development of social entrepreneurship, as many grassroot initiatives may emerge in response to unfavourable contingencies to compensate for the reduced availability of resources[5]. The COVID-19 crises deepened the unfair situ-

4. Buckingham, H. & Teasdale, S. et al (2013). *Job Creation through the Social Economy and Social Entrepreneurship*. OECD. Available at: https://www.oecd.org/cfe/leed/130228_Job%20Creation%20throught%20the%20Social%20Economy%20and%20Social%20Entrepreneurship_RC_FINALBIS.pdf

5. United Nations World Youth Report (2020): Youth Social Entrepreneurship and the 2030 Agenda. Chapter 1. Available at: https://www.un.org/development/desa/youth/world-youth-report/wyr2020.html

ations, exclusion, marginalization of different groups in the society. Social entrepreneurship in the essence is addressing such social challenges.

On the top of that, on the European level there is developing infrastructure for support of social entrepreneurship, especially among the youth. The European Action Plan for the social economy, with a proposed duration of 5 years (2020-2025), shall be a key tool to systematically incorporate the social economy into the different socio-economic policies of the European Union, as well as into its actions to achieve the Sustainable Development Goals. In other words, their key aim is to effect social and economic transformation that contributes to the objectives of the Europe 2020 Strategy. Maximizing the social economy's contribution to the Sustainable Development Goals (SDGs) leads to a better balance between prosperity and equity and should contribute to moving towards an "economy that works for the people."[6] Recent data show that the Social economy in Europe engages:[7]

- more than 14.5 million paid employees equivalent to about 6.5% of the total working population of the EU-28;
- employment of a workforce of over 19.1 million, including paid and non-paid workers;
- with an additional 82.8 million people volunteering; and
- 232 million that are members of cooperatives, mutual societies, and similar entities.

SOCIAL ENTREPRENEURSHIP IN COVID-19 PANDEMIC

By now, we know very well that the COVID-19 pandemic is far more than a health crisis. It effects the societies´ weakest points at their core. Sustainable Development Goals´ (SDGs) achievement is becoming more urgent as well.[8] Already before crisis there has been recorded the growing importance of social capital. Partially linked to low and still declining level of trust in public and political institutions. In parallel to this,

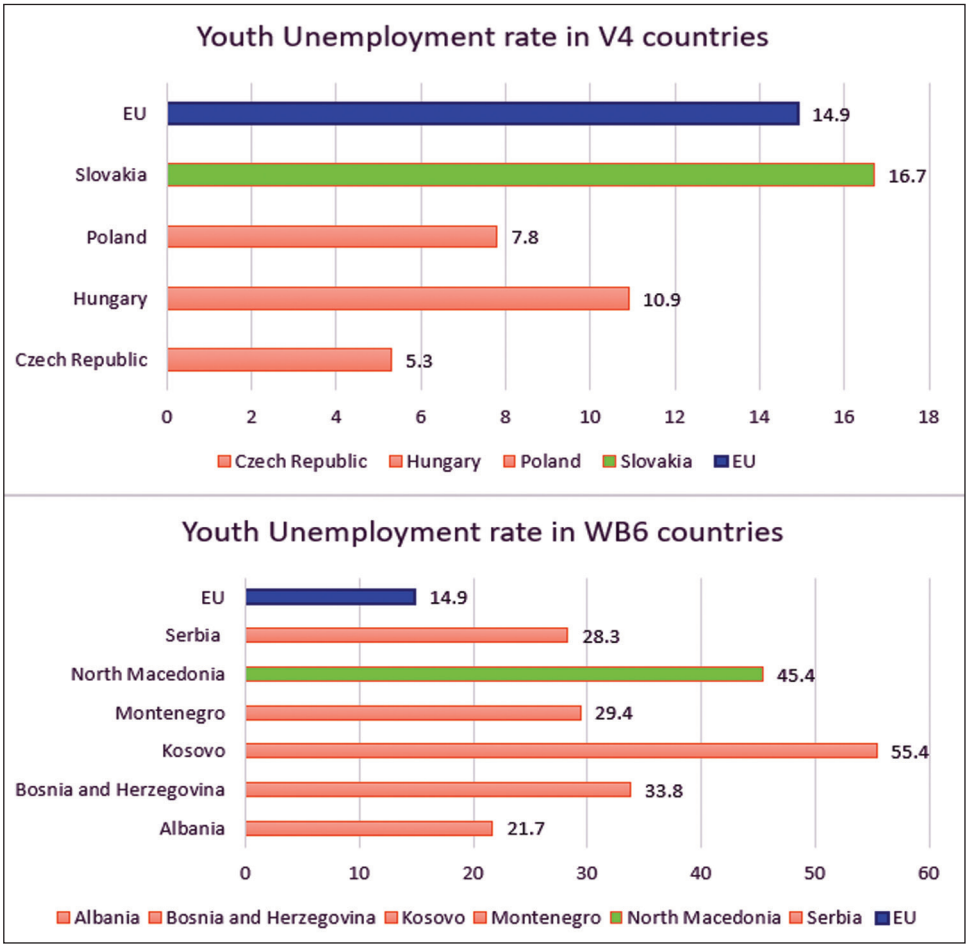
6. Social Economy Europe (2018). *The Future of EU policies for the Social Economy: Towards a European Action Plan*. Brussels. The Future of EU policies for the Social Economy: Towards a European Action Plan

7. European Commission (2013). *Social economy and social entrepreneurship* - Social Europe guide - Volume 4, Luxembourg: EC, Directorate-General for Employment, Social Affairs and Inclusion.

8. United Nations Industrial Development Organization (UNIDO). (2020). *Coronavirus: the economic impact* – 10 July 2020. Policy, Research and Statistics Department. Available at: https://www.unido.org/stories/coronavirus-economic-impact-10-july-2020

increasing number of young people are questioning traditional private sector[9]. The paradigm shift among young people can generate a whole new set of opportunities for the whole society. Young people playing a key role in the management of COVID-19 pandemic outbreak. As showed in the Figure 2 below, the youth unemployment was already quite high from the regional perspective in both countries we are comparing Slovakia (highest among the Visegrad countries, 16,7% compared to 14,9% EU average) and North Macedonia (second highest among Western Balkan countries, 45,4% compared to 14,9% EU average).

Figure 2: *Youth Unemployment in V4 and WB6 countries*



Source: European Union Unemployment Rate (2020)

9. United Nations World Youth Report (2020): *Youth Social Entrepreneurship and the 2030 Agenda.* Chapter 1. Available at: https://www.un.org/development/desa/youth/world-youth-report/wyr2020.html

Young people are disproportionately affected by unemployment, the COVID-19 pandemic will likely drastically increase unemployed youth. Young people, especially young women are at the high risk, underserved or unserved at all.[10] Young innovators are already responding to the pandemics through social impact innovation. Most of these initiatives are on a voluntary basis, but they can also take the shape of social enterprises. Sustainability is however questionable for them. Mainly due to the fact, that the state support cannot be addressed to such grassroot initiatives, as it cannot serve and identify properly even already registered ones. Many youth-driven technology innovation hubs are supporting start-ups to develop effective solutions to address COVID-19. Employment is interlinked with the skills needed for the job market. The COVID-19 crisis calls for new skills. Most of the activities have been moved to online space, where young people are comfortable and skilled. Additionally, young people are turning the crisis into an opportunity for collective action, by supporting their communities by volunteering and giving.[11]

STATE SUPPORT OF SOCIAL ENTREPRENEURSHIP IN SLOVAKIA AND NORTH MACEDONIA

Slovakia

Slovakia is part of so called Visegrád group (also known as V4), formed by Poland, Czechia, Slovakia, and Hungary.[12] There is a common phenomenon that comprises them all: the countries have been under a system of centrally planned economy connected to the Soviet Union, and so the idea of co-operatives is strongly associated with the former political regime. Due such development, there has been a delay in investing and providing a comprehensive analysis and legal framework in which the upcoming social enterprises are able to work within.[13]

10. Department of Economic and Social Affairs (DESA), (2020). United Nations. Special issue on COVID-19 and Youth. Available at: https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/04/YOUTH-FLASH-Special-issue-on-COVID-19-1.pdf
11. ILO. (2020b). Youth & COVID-19: Impacts on jobs, education, rights and mental well-being https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_753026.pdf
12. About the Visegrad Group: http://www.visegradgroup.eu/about
13. Sacio-Szymańska, A. et al. (2016). *The Future Of Business In Visegrad Region*. Eur J Futures Res (2016) 4: 26. Doi 10.1007/S40309-016-0103-3

The perception of social enterprises by the public in Slovakia has been negatively affected by pilot social enterprises created between the years 2008-2009 with government support. The results of the "testing" was a media scandal and accusation of inefficient use of allocated finances. The idea of social entrepreneurship was hugely discredited.[14] Counting with several initiatives and different types of co-operatives, in Slovakia there is a lack of joint vision as a result of the limited, missing and insufficient discourse in the public sphere.[15] In general, the social enterprise sector in the region lacks the awareness of people and it is not yet popular, despite that, there has been some growth of a network, which is slowly developing. As an example, Impact Hub, as an international network has offices in Prague, Bratislava and Budapest, offering mentoring and funding to social start-ups.[16]

Figure 3: *Development of legislative regulation of SE in Slovakia*

Source: Poláčková, Z. (2019) *Social Entrepreneurship: A Placebo or A Genuine Solution?*

From the legislative point of view, in Slovakia social enterprises were defined in legislation by the amendment of Act No. 5/2004, on employment services from 2008. However, since 2018 social entrepreneurship is regulated by a new law, Act no. 112/2018 Coll. on the social economy and social enterprises and on the amendment of certain laws as amended[17]. This act means a radical change in understanding of a social enterprise which was previously only understood to be an instrument of support for employment where at least 30% of the workforce were

14. Strečanský, B. & Stoláriková, K. (2012*). Social Economy and Social Enterprises In Slovakia*. CIVIL SZEMLE. 2012/4. Available at: https://www.researchgate.net/publication/297277851
15. Strečanský, B. & Stoláriková, K. (2012). *Social Economy and Social Enterprises In Slovakia*. CIVIL SZEMLE. 2012/4
16. Financial Times: Social enterprises find first foothold in central and eastern Europe.
17. Act no. 112/2018 Coll. on the social economy and social enterprises: https://www.noveaspi.sk/products/lawText/1/90081/1/2/zakon-c-112-2018-zz-o-socialnej-ekonomike-a-socialnych-podnikoch-a-o-zmene-a-doplneni-niektorych-zakonov

disadvantaged job seekers (including Roma minority, homeless, people with special needs).

North Macedonia

Like understanding of Slovakia, the concept of social entrepreneurship in North Macedonia was initially predominantly understood as work engagement for disadvantaged people (Roma minority, addicts, people with disabilities and similar disadvantaged groups), introduced by non-profit organisations [18].

Missing common understanding of the concepts makes is difficult for the existing legislation in the Republic of North Macedonia to recognize and regulate social enterprises. The concept of social enterprise has been introduced for the first time in broader strategies for cooperation with the civil society sector (2012-2017). National Strategy for SEs development (2018-2020) sees social enterprises only as a mechanism for ensuring financial sustainability for the civil society sector.[19] A favourable trend is the new Act on Social Protection, which introduces the possibility for social agreements that will be reserved for existing social enterprises. Social Enterprises Network (SEN) was established (including 20 SEs and 25 supporters from CSO's and business sector) as a platform for communication and cooperation between different social enterprises, promotes the public image of the sector, provides cooperation and multisectoral partnerships with other essential factors at national and regional level and at EU level.

Social entrepreneurship remains without the country's recognition and support (institutional, legal, or financial) despite being named as one of the priorities of the government and disregarding the rapid growth of social enterprises and their needs and challenges.

Figure 3 and 4 below are providing the summarized comparison of policy, legal and regulatory frameworks as well as of financial incentives and support mechanisms in Slovakia and North Macedonia. Findings suggest the funds and loans are very scarce in normal situations, so in a

18. Ilijevski K.& Iloska,A. (2018). SOCIAL ENTERPRISES AND THEIR ECOSYSTEMS IN EUROPE Country fiche FORMER YUGOSLAV REPUBLIC OF MACEDONIA. Available at: https://www.researchgate.net/publication/329935660_SOCIAL_ENTERPRISES_AND_THEIR_ECOSYSTEMS_IN_EUROPE_Country_fiche_FORMER_YUGOSLAV_REPUBLIC_OF_MACEDONIA

19. Ilijevski K.& Iloska,A. (2018). SOCIAL ENTERPRISES AND THEIR ECOSYSTEMS IN EUROPE Country fiche FORMER YUGOSLAV REPUBLIC OF MACEDONIA. Available at: https://www.researchgate.net/publication/329935660_SOCIAL_ENTERPRISES_AND_THEIR_ECOSYSTEMS_IN_EUROPE_Country_fiche_FORMER_YUGOSLAV_REPUBLIC_OF_MACEDONIA

situation of crises this challenge is multiplied. There was no additional supporting system developed as a response to COVID-19 crisis tackling especially youth unemployment. Neither did the existing social enterprises have not received any state support to recover from the crisis.

Figure 3: *Comparison of policy, legal and regulatory frameworks for Social Enterprises*

SLOVAKIA	NORTH MACEDONIA
• Since 2018 social entrepreneurship is regulated by a new law, Act no. 112/2018 Coll. on the social economy and social enterprises. • Focus mostly on integration of disadvantaged job seekers. • A lack of joint vision. • A limited, missing, and insufficient discourse in the public sphere. • Limited to theoretical level mostly due to relative lack of active actors in this sector.	• Draft Law on SE from 2012, but not yet approved. • Social economy is seen as a market inclusion model for vulnerable groups. • The existing legislation allows functioning various forms of SEs. • A lack of joint vision. • Social Inclusion and Poverty Reduction model.

Figure 4: *Comparison of financial incentives and support mechanisms f or Social Enterprises*

SLOVAKIA	NORTH MACEDONIA
• Mainly obtaining subsidies from EU funds. • Social entrepreneurs coordinated by the Ministry of Employment, Family and Social Affairs of The Slovak Republic. • A lack of funding opportunities. • Bank loans (e.g.: "social bank concept" by Slovenská Sporiteľňa (Erste group). • Small steps taken within national programmes of structural funds – namely Operational Programme Human Resources.	1. SEs in the early stage of development prefer grant funding as start-up capital. 2. Lack of tailored start-up and growth funding for SEs. 3. Public grant-schemes do not exist. 4. Current support measures to SMEs are not open to SEs registered as CSOs and cooperatives. 5. Commercial and microfinance financing are not suitable for SEs.

The social economy can reshape the post-crisis economic and social systems by inspiring socially and environmentally responsible practices among economic actors and by scaling social economy business models if the state supports it already at the early stage. In both countries there is a lack of tailored start-up and growth funding for SEs.

POLICY RECOMMENDATIONS

The conclusions and recommendations that follow reflect a synthesis of findings, including specific needs identified in this analysis in both countries.

- Public dialogue among the various stakeholders is needed to harmonize understanding of the social economy model.
- Development of financial incentives and support mechanisms are needed to provide sustainable funding opportunities for social enterprises and grassroot initiatives especially in times of crisis, such as COVID-19, in order ensure their sustainability and survival in a long-run (e.g., start-up grants, soft loan schemes).
- Education system should reflect the need to develop new skills (including trainings, seminars, and mentoring programs on social entrepreneurship).
- There is the need for decentralization of the capacity building support, covering rural areas or smaller towns, should be imperative for further strategic documents and capacity support to be developed.
- Recognise the potential of social entrepreneurship to be one of the main tools of economic recovery after COVID-19 crisis.

CONCLUDING REMARKS

The research paper analysed two countries, Slovakia and North Macedonia bringing into perspective similarities, challenges, and perspectives on the social entrepreneurship as potential tool to lower the negative impact of COVID-19 crisis on increasing youth unemployment. The heritage of socialism and similarity in the issues they are dealing with especially in terms of (youth) unemployment and social inclusion are in the centre of approaching and understanding of social entrepreneurship as well. In both countries, the priority of social economy is understood as supporting employment of disadvantaged groups (Roma minority, addicts, people with disabilities) and not yet seen as more progressive tool.

Social entrepreneurship can offer a path towards a different model of economic growth. As a model, is contributing to the shift in consumption pattern towards a greater demand for personal and community services proven also in the ongoing COVID-19 crisis. There is a great need to build capacities for evidence-based policymaking and effective governance in the social sphere. Young people playing a key role in the management of COVID-19 pandemic outbreak. The paradigm shift among young people can generate a whole new set of opportunities for the whole society. Mechanisms of policy transfer and learning, need to be reflected in the policies and action plans through the exchange of ideas and practices, that could facilitate a deeper social transformation and also increase the financial support from the governance systems.

REFERENCES

1. Act no. 112/2018 Coll. on the social economy and social enterprises: https://www.noveaspi.sk/products/lawText/1/90081/1/2/zakon-c-112-2018-zz-o-socialnej-ekonomike-a-socialnych-podnikoch-a-o-zmene-a-doplneni-niektorych-zakonov
2. Buckingham, H. & Teasdale, S. et al (2013). *Job Creation through the Social Economy and Social Entrepreneurship*. OECD. Available at: https://www.oecd.org/cfe/leed/130228_Job%20Creation%20throught%20the%20Social%20Economy%20and%20Social%20Entrepreneurship_RC_FINALBIS.pdf
3. Dees, J., G. (1998). *The Meaning of Social Entrepreneurship*. The Palgrave Encyclopaedia of Strategic Management
4. Department of Economic and Social Affairs (DESA), (2020). United Nations. *Special issue on COVID-19 and Youth*. Available at: https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/04/YOUTH-FLASH-Special-issue-on-COVID-19-1.pdf
5. European Commission (2013). *Social economy and social entrepreneurship* - Social Europe guide - Volume 4, Luxembourg: EC, Directorate-General for Employment, Social Affairs and Inclusion.
6. Chidwala, J. (2017): *The proliferation of sustainable social enterprises in Sub-Saharan Africa.* Available at: https://www.linkedin.com/pulse/proliferation-sustainable-social-enterprises-africa-jo-chidwala/
7. Gordon, M. (2015). *A Typology of Social Enterprise:* '*Traditions*'. ICSEM Working Papers, No. 18, Liege: The International Comparative Social Enterprise Models (ICSEM) Project.
8. Ilijevski K.& Iloska,A. (2018). *Social enterprises and their ecosystems in Europe country fiche Former Yugoslav republic of Macedonia*. Available at: https://www.

researchgate.net/publication/329935660_SOCIAL_ENTERPRISES_AND_THEIR_ECOSYSTEMS_IN_EUROPE_Country_fiche_FORMER_YUGOSLAV_REPUBLIC_OF_MACEDONIA

9. ILO. (2020b). Youth & COVID-19: *Impacts on jobs, education, rights and mental well-being* Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_753026.pdf
10. Sacio-Szymańska, A. et al. (2016). *The Future Of Business In Visegrad Region*. Eur J Futures Res (2016) 4: 26. Doi 10.1007/S40309-016-0103-3
11. Social Economy Europe (2018). *The Future of EU policies for the Social Economy: Towards a European Action Plan*. Brussels. The Future of EU policies for the Social Economy: Towards a European Action Plan
12. Strečanský, B. & Stoláriková, K. (2012*). Social Economy and Social Enterprises In Slovakia*. CIVIL SZEMLE. 2012/4. Available at: https://www.researchgate.net/publication/297277851
13. United Nations World Youth Report (2020): *Youth Social Entrepreneurship and the 2030 Agenda*. Chapter 1. Available at: https://www.un.org/development/desa/youth/world-youth-report/wyr2020.html
14. United Nations Industrial Development Organization (UNIDO). (2020). *Coronavirus: the economic impact* – 10 July 2020. Policy, Research and Statistics Department. Available at: https://www.unido.org/stories/coronavirus-economic-impact-10-july-2020

CHAPTER THREE:
New Social Normality

DEVELOPING STRATEGIES TO FIGHT CORRUPTION IN EDUCATION

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Abstract

This research tries to explore the connection between corruption in general and its reflection in various spheres of social life, especially education. The research analyses the correlation of this phenomenon with measures that stimulate the same, especially as a result of the lack of mechanisms, good policies for the fight against corruption. The other reason why the challenges of the higher education institution are chosen as the central point of this research is because the regional and wider challenges of these institutions in Macedonia have a great impact on the quality of education that students receive during their studies

By working to combat these phenomena documented in reports from relevant institutions as well as the media, higher education institutions can improve the overall quality of the services they provide. This will enable achieving the required standards for quality higher education and thus become competitive with European universities and strive to become the leading institution.

Other purposes of this research are: Raise awareness of the importance of how higher education institutions are perceived in the public and encourage public debate about the negative consequences of such deviant phenomena in the education sector in a country; Finding effective mechanisms to fight corruption at all levels; Avoiding the earliest problems of law enforcement Encourage efforts for a more inclusive debate between government, non-governmental organizations, actors and the student body, i.e. those who are most at risk from negative practices participating in higher education This paper aims

to provide detailed analysis and to propose basic frameworks on which the ultimate goal will be to improve quality in higher education.

Keywords: anti-corruption, higher education.

1 INTRODUCTION

Since its independence, the Republic of North Macedonia has undergone dramatic changes in the last 30 years. These changes have included and still include politics, legislation and especially education, and in particular the higher education sector. The challenge and the big change that is symptomatic for all the countries of the Southeast European region is the fact that these societies have to overcome the transition from a state-controlled economy to a market-controlled economy. However, this transition is not limited to economic circumstances only. This transition not only covers education on a small scale, in some cases it completely changes the education system of these countries. According to the International Monetary Fund since 2009, "Macedonia belongs to the group of countries considered to be developing" and "about half of higher education students today live in the developing world" therefore this research is crucial for further economic development, education and social development of these countries. The Higher Education Task Force reports that "Without more higher education, developing countries will find it increasingly difficult to benefit from the global knowledge-based society" (World Bank, 2000). A common challenge for all countries in transition is the fact that these countries have difficulties in the level of corruption.

Corruption is usually perceived among the main reasons for lack of development or progress in the development of social spheres. This is the moment when corruption comes to light. In terms of corruption, since 2002, the R. of North Macedonia has managed to overcome major challenges such as:

1) establishing a legal framework for an independent fight against corruption;
2) strengthening anti-corruption mechanisms; and
3) approval of the National Corruption Prevention Program.

Despite all of these measures applied, the R. of North Macedonia still faces a major problem with corruption, mainly because it presents a low-risk, high-profit activity (Nikolov, 2008). Recent higher education surveys in North Macedonia report up to 60% corruption. In addition, most news agencies report that students are afraid to talk about corruption in their institutions, as a result of the politicization of student bodies and academics, professors and administration, especially with regard to public universities where the appointment of a new rector is controversial due to the politicization of the institution.

In addition, the minister of interior informed the Macedonian media about corruption cost of up to 60m euros. (Kanal 5, 2010) In this context, it is worth noting that other, less obvious and less monetary effects of corruption in education and harm to generations is much greater than the number presented above.

2 OBJECTIVE

This research tries to explore the connection between corruption in general and its reflection in various spheres of social life, with a particular emphasis on education. Moreover, this research tries to explore the connection of this phenomenon with stimulation, especially as a result of the lack of mechanisms, good policies for the fight against corruption. The other reason why the challenges of the higher education institution are chosen as the central point of this research is because the challenges of these institutions in N. Macedonia have a great impact on the quality of education that students receive during their studies. By working on these barriers reported by the various relevant international governmental and non-governmental reports, higher education institutions can improve the overall quality of services of these institutions. This will achieve the required standards for higher quality education and thus become competitive with European universities and strive to become the leading regional institution and beyond. Moreover, to increase the level of awareness of the importance of how higher education institutions are perceived in the public and promote public debate on the negative consequences of such deviant phenomena in the education sector in a country.

To find effective mechanisms for the fight against corruption at all levels.

To avoid the earliest problems for law enforcement

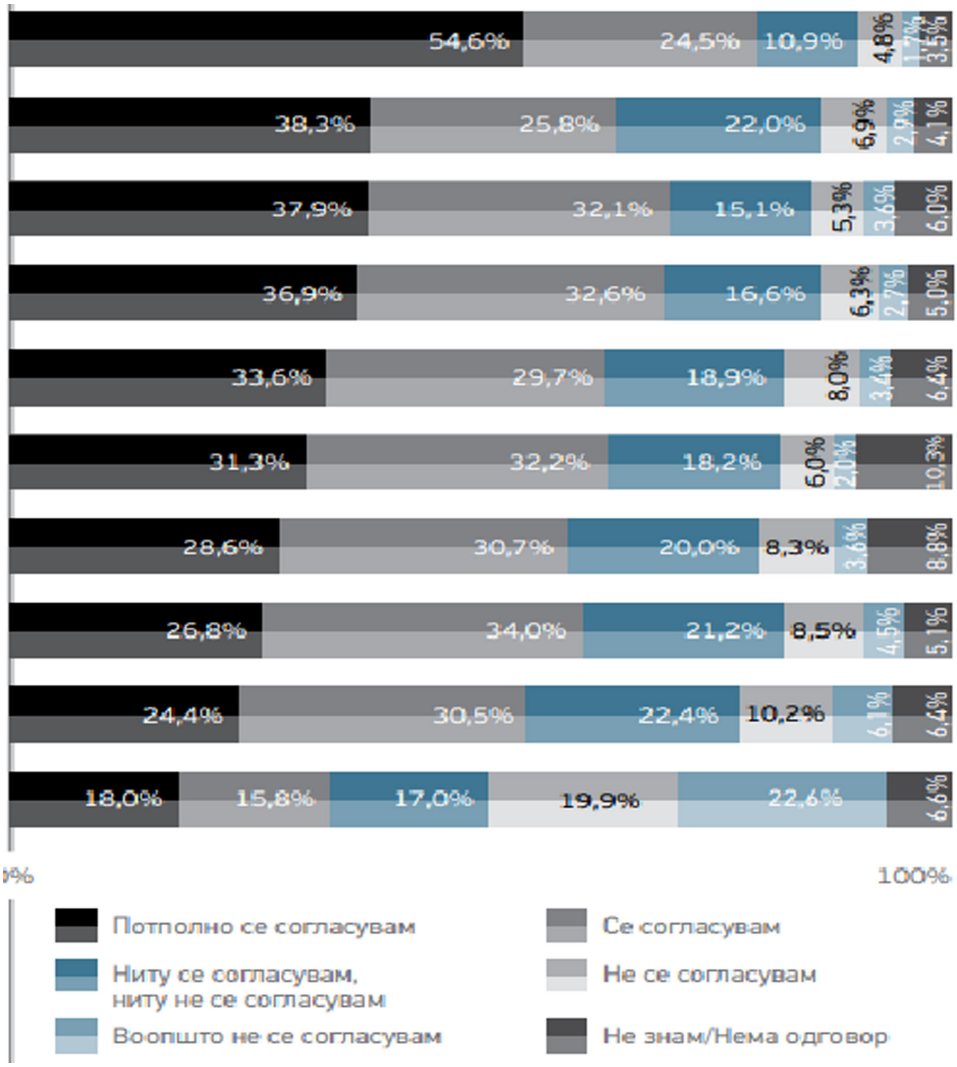
To promote efforts for a more comprehensive debate between government, non-governmental organizations, actors and the student body, i.e. those who are most at risk from negative practices participating in higher education Finally, to increase the level of quality in higher education, to provide equal opportunities for all, to increase the quality of services received by students and to improve the overall quality of skills that students must acquire during the process of teaching and learning.

2.1 Other indicators on corruption

On December 9, on the occasion of the International Anti-Corruption Day, US Ambassador Jess Bailey and Louisa Vinton, Head of the United Nations Mission in the Republic of Macedonia, in their speeches stressed that there are disturbing indications of the presence of corruption in in recent years, which has a devastating effect on human rights and freedoms. They both stressed the need to take serious measures to prevent corruption and the need for a more determined political will to deal with this negative phenomenon (Akademik.mk. 2017). Also, the EU Ambassador Samuel Zbogar called for the Commission for Prevention of Corruption to start working after months of inactivity. (Telma, 2018). Currently the Commission for Prevention of Corruption is in full format and actively working and producing reports. However, it is symptomatic that the same commission was incapable of working properly due to external pressure not to process cases related to high crimes.

Respondents in public polls believe that one of the most important causes of corruption in general is the low salaries of public sector officials but the lack of strict administrative control is thought to be the main reason for corruption in educational institutions. That is not all, Figure 1 below highlights the main causes of corruption in Macedonia. See Figure 1.

Figure 1. *Main reason for corruption in North Macedonia (MCMS, 2014).*



3 STRUCTURE OF THE PROPOSED POLICY

1. Normative
2. Focus on reports and their application. It mainly refers to the reports of the European Union and the Council of Europe, more precisely, GRECO and ETINED.
3. Impressions

3.1 Normative structure of the policy

1. Normative / legal problems arise from the absence or implementation of the law. In the normative aspect, the Republic of North Macedonia in its legislature has defined laws that guide the implementation of the law at the state level. However, the implementation of good practices in the fight against corruption is stalled as they are applied selectively and inadequately due to the high level of corruption that makes it impossible to implement the law at all state levels equally.

2. The law on higher education does not reflect, include and does not mention some of the corruptive phenomena that are part of the lives of students and professors and thus makes it difficult to further prosecute suspects.

3. The implementation of the criminal code for the persecution and punishment of suspects is much lower and does not correspond to the perceptions of citizens in terms of surveys on corruption in higher education.

4. Formation of working groups by the relevant ministries for drafting and proposing draft laws that will address, define and sanction corruption in higher education are non-existent.

5. Also in cooperation with the ministries of education and justice as well as NGOs, working groups, to review the measures for abuse of position and violation of the law.

6. Promulgation of the new law in the Official Gazette of the Republic of Macedonia and its implementation six months after its entry into force.

Anti-corruption measures

7. High standards in the selection of commission members, the full functioning of the anti-corruption agency with members independent of politics and with high professional credibility and integrity in a consistent and uninterrupted manner remains to be a challenge for the anti-corruption measures

8. Consultation and coordination of institutions implementing anti-corruption measures. This includes the work of the institutions that deal with auditing, i.e., the state audit agency, the financial police that investigates and collects data on corrupt phenomena and the public prosecution punishes or releases abusers and how many have appeared and ended up with concrete sentences.

9. Compilation and full implementation of the state strategy for the fight against corruption as well as the compilation and full implementation of the state strategy for the fight against corruption in education

Figure 2: *Adequate Representation and involvement of community monitoring in all legal and normative instances whose recommendations will be implemented in order to improve accountability. (MCMS. 2014)*

	2011 year	2012 year	2013 year
Number of resolved cases	128	123	196
Number of cases where a conflict of interest has been established	37	29	132
Number of cases where a public warning was issued	8	5	15

3.2 Implementation of corruption reports

There are international reports that set the standards and through these concrete parameters fight against corruption. All conclude that corruption in the Republic of North Macedonia is booming. The following are the most important findings from the international reports on corruption in the Republic of Macedonia:

1. GRECO (Council of Europe Group of States against Corruption) - the latest report concludes that: Despite this good legal framework, effective implementation and enforcement of legislation remains a matter of concern and should be treated as a priority. (GRECO, 2014)
2. GRECO report for 2018: Of all the recommendations provided, 5 are implemented, 1 implemented at a satisfactory level and 13 partially or not implemented at all. (GRECO, 2018)

3. Other indicators of corruption in North Macedonia

The Transparency International Index ranks Northern Macedonia with 35 points, in 107th place. By comparison, the region with the best performance is Western Europe with an average score of 66. The worst regions are Sub-Saharan Africa (average score 32). The Amnesty International report for 2017/2018 presents a problem in the basic parameters of a state, such as Freedom of Expression, which states: "122 NGOs

have issued a statement protesting against the government's apparent campaign to undermine their work. Impunity: Impunity for war crimes, including its implementation, disappearances and abductions, continues. The court: The retrial was called on the grounds that the 2014 trial did not meet international standards for a fair trial." (Amnesty International, 2017)

World Bank: The first priority from their latest recommendations: Ensuring the rule of law and building public institutions capable of responding to citizens. As for the government, it says: "the country pursues states in categories such as political stability, voice and accountability, rule of law, and control of corruption - the political crisis 2015-17 is a reminder of the harmful effects of politics, instability on growth economic and job creation, and the need to ensure the rule of law effectively and transparently. (World Bank, 2018)

Recommendations of the Helsinki Committee on the Republic of North Macedonia on the fight against corruption is as follows: Consistent application of the provisions of the Law on Prevention of Corruption by the State Commission for Prevention of Corruption. Development of close cooperation between competent institutions for prevention of corruption and civil society organizations. Increase the transparency of the State Commission for Prevention of Corruption through regular publication of their decisions. (Helsinki Committee, 2018)

As far as concerned European Union reports, the following findings have been collected on yearly bases.

European Union 2019 country report: In terms of the fight against corruption, R. of North Macedonia has some level of preparation. However, corruption is widespread in many areas and remains a matter of concern. (European Western Balkans, 2019)

European Union: 2018 report for the respective country: The country has a level of preparation but has had a weakness in the investigation, prosecution or convictions for high-level and political corruption. (Sobranie, 2018) '

European Union: 2016 country report: No progress made last year on Recommendations or unresolved issues from last year. Corruption remains widespread and continues to be a serious problem. (Sobranie, 2016)

European Union: 2015 report for the respective country. No progress has been made in the previous year regarding the identified unresolved

issues. Corruption remains widespread. (Sobranie, 2015) **European Union: 2014** report for the respective country. The implementation of anti-corruption legislation and the results remain largely invisible to the public. (Sobranie, 2014)

European Union: 2013 report for the respective country. "Corruption continues to prevail in many areas and remains a serious problem." (Sobranie, 2013)

Reviews and interviews from experts Reinhard Priebe Report on Macedonia / Rule of Law Senior Experts "Recent revelations reveal serious incidents of political corruption at various levels and in many ways. Fighting this form of corruption will definitely have to become a priority for the country. Jess Baily (US Ambassador) and Louise Winton (United Nations) in a joint statement on International Anti-Corruption Day "highlighted the worrying indicators of the presence of corruption in recent years, which has a devastating effect on it human rights and freedoms." Renata Deskoska-This fight does not end with the fight against corruption from the past, but must continue to fight against possible corruption today and in the future - as promised to the citizens. (TV 21, 2018)

Implementation of anti-corruption policies in education and ETINED

On the ETINED website it is stated that ETINED (The Council of Europe Platform on Ethics, Transparency and Integrity) is a platform of the Council of Europe, which is related to the work of the Department of Education which is located in the Directorate General of Directorate for Democratic Participation within the Council of Europe Directorate-General for Democracy. The ETINED website (2021) states: "There is now widespread worldwide concern about corruption in education. This concern affects all Member States and all levels of education. "ETINED's work was made possible in April 2013, when the Ministers of Education of the 50 States Parties to the European Cultural Convention agreed through the Helsinki Ministerial Declaration to work together on ethics, transparency and integrity in education so that all European children to take advantage of this as well as the establishment of a platform (ETINED) to enable such a thing. The main goal of the ETINED platform is to change the current practice and culture and to contribute to the development of a new future culture where democracy and participation, based on ethics, transparency and integrity will be the focus of attention in the field of education.

ETINED stands and promotes the principle that quality in education is not something abstract, but, on the contrary, can be achieved if corruption is fought with appropriate measures. These measures to fight corruption in education are effective measures that all sectors, and all levels ought to be implementing equally. Inclusion more precisely means the design, commitment and implementation based on ethical principles in public and professional life. As mentioned earlier in the paper, it is indisputable that laws, law enforcement agencies as well as law enforcement in praxis play an important role in promoting ethical values in education, but it should be noted that it is unrealistic to expect only a top-down decisions to work impeccably. The ethical principles on which ETINED is based, the principles of which are set out by the Council of Europe Platform on Ethics, Transparency and Integrity in Education (ETINED), and the recommendations are set for governments that are member states and which should be are in line with all responsibilities, regulations and practices at the national level.

Recommendation CM / Rec (2019) 9 of the Committee of Ministers to member states on the promotion of a culture of ethics in the teaching profession approved by the Committee of Ministers on 16 October 2019 at the 1357th meeting of the Deputies of Ministers recommends:

1. fostering a culture of ethics and integrity in the teaching profession through the effective implementation of codes of ethics in their education systems;
2. taking the necessary measures to facilitate the drafting, implementation and impact of codes of ethics in accordance with the guiding principles contained in the annex to this recommendation;
3. promoting the implementation of these provisions by educational institutions and education stakeholders at all levels and in all sectors of education and training;
4. ensuring the dissemination of this recommendation as widely as possible;
5. facilitating international cooperation and enable peer learning in the field through the Council of Europe Platform for Ethics, Transparency and Integrity in Education (ETINED);

Today, ETINED has a total number of 50 member states, the Republic of Northern Macedonia, even though it has been a member of the Council of Europe since 1995, it is not a member state of the ETINED platform. Together with Bosnia and Herzegovina, the Republic of Northern Mac-

edonia is among the only non-member states on this Council of Europe platform in South East Europe. All other surrounding countries such as Albania, Serbia and Kosovo are members of this platform.

Since the representation in ETINED is made by the Ministry of Education, it means that the Ministry of Education of the Republic of Northern Macedonia is not obliged to respect any of the recommendations made. In this way, the ministry communicates their lack of interest in the implementation of ethics, transparency and integrity in education. This lack of interest, costs, and will cost education a great price, as the damage done in the absence of ethics, transparency and integrity in education directly affects the determination of the level of quality of services received by all citizens of the respective state. It is no coincidence that the Republic of Northern Macedonia in the standardized PISA tests aimed at evaluating education systems by measuring and comparing the knowledge of 15-year-old students in mathematics, science and reading is rated below average in all areas of assessment in the report with other member states of the Organization for Economic Co-operation and Development (OECD).

Taking into account the geo-political situation of the R. of North Macedonia, which aims to become a full member of the European Union, it is necessary that it implements all the criteria that are provided for full members of the European Union. The above mentioned examples of EU reports on Northern Macedonia emphasize that the high level of corruption in the country is very high and that the Republic of Northern Macedonia should take concrete measures to combat this phenomenon. Therefore, the participation of the Ministry of Education of the Republic of Northern Macedonia will not only demonstrate the determination to fight corruption, but by participating in ETINED, the ministry will demonstrate the determination to fight this phenomenon in the field of education, which would have led to a reduction in the level of corruption in education.

4. WHO WILL BE INVOLVED IN THIS PROCESS?

No public policy aimed at achieving radical change such as eradicating corruption on national level has achieved its goal without the support of the government. Any mass policy like this requires the full commitment of all actors such as the assembly, MPs, all political parties, civil servants,

ministries, academia, NGOs, international organizations and citizens. The application process and the success of this public policy requires extensive political and administrative consensus and coordination.

The main pillars for the implementation of the strategy for fighting corruption in education are:

Government (Position and opposition)

Assembly (MPs, laws Law on Higher Education, sub- Legal regulation on corruption in education where it is provided to be sanctioned as a criminal offense in the criminal code including all phenomena provided in international reports on corruption in higher education, committees, working groups, draft laws)

Ministry of Education (inspectorate for education, bureau for development of education, sector for higher education, civil servants, Board for Accreditation and Evaluation in Higher Education)

Ministry of Justice (public prosecutor's office, court, state commission for prevention of corruption,) Ministry of Finance (support of the draft budget for allocation of funds for support and increase of the capacities of the prosecution and the state commission for prevention of corruption)

Universities (Trust and Public Cooperation Boards, academia, students, university administrations) in order to ensure quality by reviewing the opinions and recommendations of all key stakeholders in the development of the institution.

Partner and donors EU Funds (National Agency for European Educational Programs and Mobility. Erasmus +, IPA Funds) OSCE World Bank, UNDP.

4.1.Budget:

The budget of the State Commission for Prevention of Corruption for 2019, according to preliminary announcements, was 450,000 euros. This is an increase of about 100,000 euros compared to previous years. They include about 60,000 euros for the maintenance of the electronic system (one donated by the EU, still out of use). For comparison, the budget of the Republic of Montenegro to fight corruption is 1.5 million euros and the budget of the Republic of Slovenia is 1.7 million euros. So, in order to increase the capacity of the main anti-corruption agency, it needs to be increased by at least 50% in order to have visible anti-corruption effects. (Sloboden Pecat, 2018)

The annual budget for the Public Prosecutor's Office of the Republic of North Macedonia based on the documents published on the website of the prosecution is: 680,721 and has 639 employees. In other words, the Public Prosecutor's Office, as the only autonomous state body that prosecutes perpetrators of criminal offenses and other criminal offenses defined by law, has a relatively low budget. So, we anticipate that the Ministry of Finance will allocate higher funds to the Public Prosecutor's Office in order to increase efficiency through human capacity, infrastructure, digital and so on. (Public Prosecution, 2018).

As an illustration, the Special Prosecution, which was born as a result of illegal wiretapping and which deals with the investigation of suspects, has only 10 prosecutors and has a budget of 3.7 million euros, of which 1.2 goes for the salaries of 10 prosecutors, and The Public Prosecutor's Office has a budget of 4.65 million euros and has 3.2 salaries for 175 prosecutors. As a result, the Public Prosecutor's Office complains about the lack of resources, financial and human, infrastructural and digital capacity. (Alfa TV, 2018).

Table 1. *The budget of the Special Prosecution Office in comparison to the budget of the General Prosecution Office*

Prosecution	Budget + employees
Special Prosecution	3.7 million + 10 prosecutors
General Prosecution	4.65 million= 175 prosecutors

Here, too, a gradual increase of 15 percent per year is foreseen from the budget of the Republic of North Macedonia for the improvement of the conditions and the increase of the capacities of the Public Prosecutor's Office.

4.2. Expectations from the implemented policy

Overall, the R. of North Macedonia has a fairly developed and detailed legal framework to fight corruption. Much of the domestic legislation is covered by recommended international standards and best practices on anti-corruption and prevention of conflict of interest. In addition, the institutions, and above all the State Commission for the Prevention of Corruption have more than ten years of experience in approving and implementing more state programs for prevention and reduction of corruption and conflict of interest. For this reason, the proposed policy based on international experiences envisages the drafting of laws to prevent corruption in higher education and their full implementation

in practice. Also, this policy will highlight the political will to implement the law that is necessary for the success of this policy.

Another result of this policy is expected to increase the budget line from the Ministry of Finance to the Public Prosecutor's Office. With this, the Prosecution will be able to process more cases, with greater efficiency and greater involvement of cases.

With the implementation of this policy, expectations are that it will grow together among NGOs as well as academia, students and state bodies and institutions. In this way, this policy will directly contribute to raising public awareness about this phenomenon as well as corrupt practices in higher education, and also where to address them, respectively in which institutions and what are the measures taken in practice.

4.3. Challenges

Although in these programs the problems in most cases are well documented and well known, they are usually not fully realized, and the proposed measures are not always the right solution to deal with the risks. Insufficient implementation in practice remains a key challenge for national anti-corruption policies and the overall regulatory environment.

Another challenge that makes it difficult to accomplish is the speed with which legal provisions are changing that are often known to be used as an argument by the judiciary and public administration that "more time is needed" for achieving results.

Future anti-corruption efforts need to be defined in the first place such as comprehensive policies and action plans with measurable indicators and regular monitoring and evaluation, and not just changes in legislation that are easily portrayed as achievements, and in fact they are difficult to can be realized in practice.

5. CONCLUSIONS

It is necessary for the institutions in which the measures from the state programs for prevention of corruption are implemented to make special short-term and long-term plans for the implementation of these measures, for which funds will be allocated from the national budget.

In this way, avoiding the criticism of anti-corruption policies that show no actual results on improving the fight against corruption.

Despite the existence of accurate indicators for monitoring the progress of the implementation of anti-corruption programs, however, they are not consistent and comprehensive in the mechanism for assessing the risks of corruption and the effectiveness of anti-corruption measures.

For that, it is necessary to create such a system which will mean:

1. Publication of accurate and regular statistics on anti-corruption efforts (investigations, initiated procedures, punitive measures, and results.);
2. Regular monitoring and analysis of the spread of forms of corruption in various public sectors by more independent bodies and through official forms for evaluation;
3. Number of proposed anti-corruption initiatives and anti-corruption initiatives against the number of laws passed (changes in laws) and policies;
4. The amount of funds allocated from the budget for the implementation of anti-corruption policies;
5. Number of investigations initiated, completed, suspended or suspended in connection with the same- for corruption, as well as the number of defendants, the number of charges and the number of accused. Of course, for this it will be necessary for the institution responsible for fighting corruption to have closer cooperation with the courts of the Republic of North Macedonia.
6. And finally, the effectiveness of anti-corruption policies can also be assessed through the number of trials and acquittals, and the types and severity of sentences and the number of persons convicted.

In relation to the fight against corruption in education, it is necessary to consider some recommendations. The Ministry of Education should develop a long-term strategy for fighting corruption in education. The Ministry of Education together with the support of the government to announce as a priority the membership of R of North Macedonia in ETINED. In addition to membership, the Ministry of Education should designate a task force, or working groups, to implement all ministerial recommendations arising from ETINED membership. The Ministry of Education should be actively involved in promoting values, ethics and

integrity in education even outside the framework of the Ministry of Education.

The Ministry of Education, together with universities and all educational institutions at all levels, primary, secondary and university, should compile a comprehensive instruction which will define the rules and good examples for ethical behaviour and integrity in educational institutions across the nation. Also focus more on the educational aspect of integrity, where educational goals will enable courses, content and subjects to select elective and compulsory courses at all levels.

BIBLIOGRAPHY:

1. The Task Force on Higher Education and Society. Higher education in developing countries. *The World Bank*.
2. Nikolov, Marjan. Corruption's economic and political implications in the Republic of Macedonia FOSIM-Skopje, 2004.
3. Kanal5. Makedonskata korupcija tezi 3.5 miliardi denari. 2010 October 15: http://www.time.mk/read/9eb81db096/41167667c2/index.html
4. Makedonski Centar za Megunarodna Sorabotka. Izvestaj za procenkata na korupcijata vo Makedonija. 2014.
5. Akademik mk. Декларација за борба против корупцијата. December 2017: https://www.akademik.mk/deklaratsija-za-borba-protiv-koruptsijata/
6. Telma. Антикорупциската комисија и ДИК да вршат истраги против корупција. 2018: https://telma.com.mk/antikoruptsiskata-komisija-i-dik-da-vrshat-istragi-protiv-koruptsija/
7. Tabela 2. Makedonski Centar za Megunarodna Sorabotka. Izvestaj za procenkata na korupcijata vo Makedonija. 2014.
8. GRECO (Group of countries against corruption) Forth Evaluation Round. 2014. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9ab5.
9. GRECO (Group of countries against corruption) Forth Evaluation Round. 2018. https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808cc85f.
10. Amnesty International. Amnesty International Report 2017/18. https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF
11. Banka Botërore. Seizing a better future. November, 2018.

12. Komiteti i Helsinkit. Raporti vjetor i Komitetit të Helsinkit. http://www.mhc.org.mk/system/uploads/redactor_assets/documents/3155/HKM_Annual_Report_ENG.pdf

13. Key findings of the 2019 European Commission Report on North Macedonia, 2019. European Western Balkans. https://europeanwesternbalkans.com/2019/05/29/key-findings-2019-european-commission-report-north-macedonia/

14. ЕВРОПСКА КОМИСИЈА, Извештај за Република Македонија за 2018 година.

15. ЕВРОПСКА КОМИСИЈА, Извештај за Република Македонија за 2016 година, 2016.: https://www.sobranie.mk/content/%D0%9D%D0%A1%D0%95%D0%98/izveshtaj_na_evropskata_komisija_za_republika_makedonija_2016_godina-mk2-raboten_prevod.pdf

16. ЕВРОПСКА КОМИСИЈА, Извештај за Република Македонија за 2015 година, 2015. https://www.sobranie.mk/content/%D0%9D%D0%A1%D0%95%D0%98/PR2015_All_CK_FF_MK_16.11.2015.pdf.

17. TV 21. Дескоска: Успешната борба против корупцијата е суштински услов за создавање пристоен живот во Македонија. December, 2018. https://tv21.tv/mk/deskoska-uspeshnata-borba-protiv-koruptsijata-e-sushtinski-uslov-za-sozdavane-pristoen-zhivot-vo-makedonija/

18. Слободен Печат. Антикорупцијата и животот. November, 2018: https://www.slobodenpecat.mk/kolumni/antikoruptsijata-i-zhivotot/

19. Prokuroria Publike. Buxheti. 2018. http://jorm.gov.mk/wp-content/uploads/2018/01/31010

20. Alfa TV. Обвинителите се жалат дека за нив нема доволно пари. 2018. https://alfa.mk.

COVID-19 AND "THE REDISCOVERY OF THE SACRED"

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Abstract

Sociological data show that modern society is in a deep crisis from which different profiles seek a way out. The pandemic we are facing today, Covid-19 has created powerful oscillations in the physical and mental world of man. In times of crisis, religion is one of the most important social agents that comes to the aid of man. It manifests itself as a moral prophylaxis, as a hopeful, comforting element. Thus, there is a fair correlation between the increase in the size of the crisis and the strengthening of spirituality or religiosity. In situations of crises, believers experience intense spiritual activity, a closer connection with the supernatural, and even more extreme cases are recorded when even agnostics, non-believers change their perception of "truth here and there." Especially when science, even the most advanced, the most sophisticated, is left speechless in front of a virus that shakes us all, that has plagued us and closed us planetarily. According to Gallup research conducted between March 28 and April 1, 2020, it was found that mental, dietary and exercise life has deteriorated, while religious life has advanced to 19% of respondents, a figure which Newport (2020) describes as a religious renaissance. In this context, the same analyst also mentions the ascending curve of religious persons and entities that perform positive, integrative, charitable tasks. Prof. Bentzen states that interest in information about prayer in Google increased sharply (in 95 countries) during March 2020 when Covid 19 became a global phenomenon. (Glatz, 2020). This paper utilizes

the historical and analytical methods and is also based on content analysis, interviews, and empirical data on this very sensitive issue of 21st century, focused on global and local dimensions. Findings from our field research conducted in March 2021 show an increasing religiosity in Covid-19 times: more than 2/3 of respondents feels themselves more religious in the period of Covid-19 and the most frequent words in the interviews were 'belief' and 'God'.

Keywords: *Covid 19, global crisis, religion, spiritual renewal, North Macedonia*

"The consumer society is a cancer; we have to restore its spirit."

Chaban-Delmas

1. INTRODUCTION: THE CRISOLOGY STATE

The above sentence is an excerpt from a special book whose Albanian translation we edited during the traumatic days of April 2020: Baudrillard, *Consumerism* (Logos-A), where, among other things, a brilliant analysis of modern society, revolution and civilization of abundance and consumerist culture has been made, which since the eighteenth century, through hedonistic, sensualist, empiricist, materialist philosophy "has strongly and systematically defeated the traditional spiritualist dogmas, has caused the historical fragmentation of this basic value called spirit", around which the whole individual rescue scheme and the whole process of social integration was previously organized." (Baudrillard, 2020) According to the French thinker in question, the course of permissive society and instant communications has caused a fundamental imbalance, informatic shock, anomaly, depression, in a word, has disrupted *social metabolism*. "Today, the large social community is sick, while consumer citizens are fragile, so that everywhere, with professionals, newspapers and analyst moralists, this "therapeutic discourse" is held," says Baudrillard. This society is constantly nourished by consumed violence, by "indirect" violence, by less important news, murders, rebellions, nuclear or *bacteriological* threat. (1970: 278) An interesting thing that Baudrillard tackled 50 years ago was the bacteriological or virological issue that has hit us hard as a human race for the last two years (2020-2021), which shows that the thinker in

question had a developed predictive sense of the future, that he has played the role of the "social prophet".

Sociological data show that modern society is in a deep crisis from which different profiles seek a way out. The pandemic we are facing today, Covid-19, has created powerful oscillations in the physical and mental world of man, has prompted man to seek refuge, to seek the ship of salvation from the wrong direction he has taken, from the materialist philosophy fully installed in our civilization. The documentary "Seaspiracy" by Ali Tabrizi (2021) reminds us of the disgusting and predatory degree we have achieved through "progressivism", how we are destroying our planet (Zimeri), reminds us, the harm that humans do to marine species - and uncovers alarming global corruption, tries "to rip the lid off the ethical and legal corruption of the commercial fishing industry". (Smith, 2021)

And in times of crisis, religion is one of the most important social agents that comes to the aid of man. It manifests itself as a moral prophylaxis, as a hopeful, comforting element. Thus, there is a fair correlation between the increase in the size of the crisis and the strengthening of religiosity. The crisis puts trust to the test, but also strengthens it. *Homo religiosus* is aware that the celestial or God puts people to the test in different ways, including natural disasters, diseases, collective cataclysms, planetary pandemics, and so on. In such situations, believers experience intense spiritual activity, a closer connection with the supernatural, and even more extreme cases are recorded when even agnostics, non-believers change their perception of "truth here and there." Especially when science, even the most advanced, the most sophisticated, is left speechless in front of a virus that shook us all, that plagued and closed us all.

Empirical facts show that in this crisis, collective religiosity has shaken a little, but there are individual relations with the Majestic, i.e., individual religiosity, because religion is not realized only within temples, especially in Islam which does not accept clericalism and the formula *extra eclessiam nulla sallus*. In fact, the quarantine has caused the phenomenon of crippled religiosity, but has strengthened another form of domestic or family religiosity. Anyone can pray, perform rituals even from their own home, from anywhere, because God is present everywhere, and expressed in the language of information technology, He is always 'online'. The sociology of religion marks a new kind of worship, that of 'virtual worship', preaching through media or social networks,

which is an unconventional version of the spread of spirituality, especially for the older generations, who are accustomed to the physical religiosity.

2. COVID 19 AND GLOBAL RELIGIOSITY

As we have mentioned, the sociology of religion informs us that crises create traumas, and great traumas push people to seek refuge, especially in the context of metaphysical, superhuman, and celestial realm. According to Meredith B. McGuire (2007), the experience of crisis can strengthen an individual's faith. Even these months of the infamous 'Corona', among other things, have brought some revitalization of religiosity, perhaps even more powerful than in the 1990s when communism fell, because now it is not an ideology that fell, but a myth of the culmination of human achievements, the "omnipotence of science," the religion-like phenomenon called scientism.

Here are some indications of the globally revived religiosity in 2020: prayers organized for those affected by Covid-19, for doctors, requests for public prayers by Italian mayors, RSL (Religion and Spiritual Life) Facebook and RSL Instagram of the students from the Harvard School of theology, offering inspirational posts in pandemic times to keep people spiritually awake, Qur'an recited open air by Turkish doctors in hospitals, call to prayer from minarets in German, Canadian cities, Trump's announcement of March 15 as the National Day of Prayer for those affected by Covid-19, and others.

Pew Research has found an increase in religiosity among Americans in general, which is comparable to that of September 2001, after the demolition of the Twin Towers. In the case of the 9/11 attacks, the American public became more religious because it faced a situation that showed its mortality and the fragile essence of life: "There are no atheists in foxholes." An MIT study, Baylor and Duke University shows that religious Americans have coped better with the 2008 planetary economic crisis, at least in terms of their well-being. According to Gallup research conducted between March 28 and April 1, 2020, it was found that mental, dietary and exercise life has deteriorated, while religious life has advanced in 19% of respondents, a figure which Newport (2020) describes as a religious renaissance. In this context, the same analyst

also mentions the ascending curve of religious persons and entities that perform positive, integrative, charitable tasks…

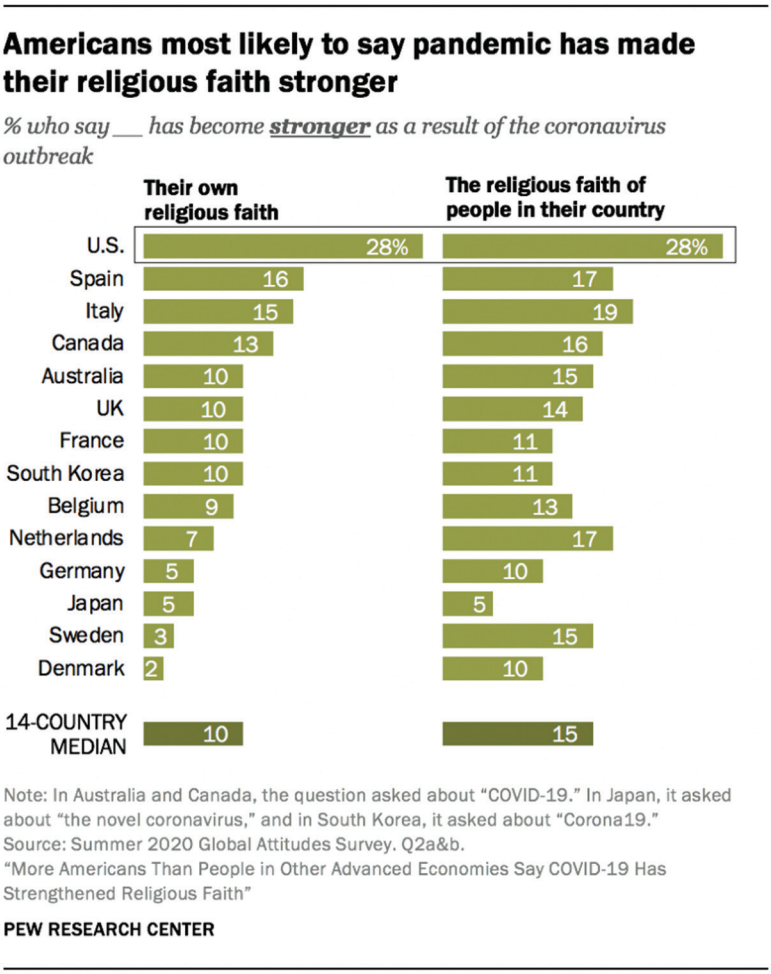

Illustration 1. *Perception of individual and social religiosity in 14 developed countries of the world (Source: https://www.pewforum.org/2021/01/27)*

This illustration shows that the citizens of 14 economically developed countries have seen a strengthening of religious feeling both in themselves and in others, i.e., religion in the social context, and even consider the latter as more powerful (only in the case of Japan the figures of the former are equal to those of the latter, 5% -5%).

A survey conducted between March 19-24, 2020 on worship behaviours shows that more than half of Americans (55%) have prayed for an end to the spread of the coronavirus (86% pray daily, 15% rarely but they now have begun to pray because of coronavirus - *CBN News*, April 1, 2020); in some groups this percentage is much higher (8 out of 10 Evangelical Protestants and black and about 2/3 of Catholics). Another study by Jeanet Sinding Bentzen of the University of Copenhagen notes that during March 2020, online searches for the word "prayer", God, Allah, Muhammad, Easter, Ramadan marked the culmination of the last five years in 75 states, even in Denmark as a country with poor religiosity. (Zuckerman, 2020; *Evangelical Focus*, 2020)

Coronavirus has sparked another kind of religiosity, i.e., the electronic or online one; George Mason University hosts a series of webinars on religious topics. Hind Makki, a Chicago-based interfaith teacher at the Institute for Social Policy and Understanding, told CNN she planned to attend some virtual *iftars*[1*] that would at least give her an opportunity to interact with others, when she breaks fast in the evening. (kumtesa.com)

Marx in the 1800s called religion opium; Freud in the 1900s described it as an illusion, but this social institution displayed a structural and effective function both in the 2000s and at the beginning of the third millennium. Robert Nicholson wrote in his March 26 article in the *Wall Street Journal* that "the plague of biblical proportions," the "evil virus", is pushing Americans to rediscover God. Not only them but much wider, because it offers hope, comforts through the message that after every difficulty comes relief, that divine mercy is infinite. The believer is always close to God, and potential believers find Him in moments of crises, of vital upheaval. According to Kissell (2020) morality, mortality, and metaphysics are part of every story about the Covid-19 pandemics as "the greatest religious narrative of our time" when people are again searching for the truth and meaning.

3. PANDEMICS AND RELIGION IN NORTH MACEDONIA

The world continues to swim in an unknown direction even in 2021, a source of a new kind of insecurity and fear. With it, North Macedonia too, where we are used to living with all kinds of transition fluctuations, from social, economic to political ones, now even healthcare challenges

1. * *Iftar:* An evening meal taken by Muslims at sundown to break the daily fast during Ramadan.

have added up. Even in our country, as a local author puts it, "The long-necked monster", Covid-19 continues to wreak havoc. It resembles the "Loch Ness", which has a large hump that falls down to the ground and a large neck that rises to the sky. The difference is that the Loch Ness monster is a mythological creature from folk tales in the Scottish Highlands, and this one from the graphs and charts is real, aggressive and deadly. (Вангели, 2020)

Responsible authorities have tried to reduce the consequences of the pandemic through expertise, mobilization and available means. According to the EU Commission, the authorities in RNM at the beginning of the outbreak of COVID-19 in March 2020, dealt well with the pandemic, with a sufficient number of tests, with restrictive measures such as curfew, quarantine, social distance, ban on public rallies, religious ceremonies, sporting, cultural events, with the transition to online learning, with the closure of restaurants and cafes gradually from the beginning of May 2020 onwards. In the summer, the state struggled with a second wave of infections, which raised the need to expand the capacity of the health system. (EC, 2020)

As in many other countries, here too there is a correlation between the virus and religion. International and domestic research shows that the population of North Macedonia is one of the most religious in the world. In the study we conducted in 1997, 78% of students said that they believed in God, the creator of the universe (in Albanian students this % turned out to be 98.4, while in Macedonian ones 58.9). (Pajaziti, 2003: 95, 98) A 2009 study conducted with 480 students (95% Macedonian Orthodox) of the University "St. Cyril and Methodius" found that 81.3% of respondents answered that they believed in God (39.5% religious according to the religion to which they belong; 10.2% non-religious, 2.3% opponents of religion). (Ацески, 2009: 70) Similar is the data from the study by Amel Kurtishi, conducted in 2010 with 333 young people from the city of Skopje, according to which for 93% of Muslims and 74.9% of Christians "practicing of religion is a very important thing" (for the 85.3% "God is the creator of everything that exists"). (Куртиши, 2020: 97-98) Mixhit Osmani's master's thesis, defended at the University of Bursa (Turkey), from 2014, which includes an empirical research, a survey of 940 pupils and students of the city of Tetova, brings new findings, even more pronounced religiosity: 98.6% have expressed that they believe in the oneness of God. (Osmani, 2014: 89).

Brima Gallup's end-of-2016 survey conducted in 68 countries with 66,541 people shows that Macedonia is the second country in Europe

in terms of religiosity: 84% of citizens are religious (10% non-religious and only 1% atheists; 88% believed in God). According to a survey conducted last year by ИПИС, Religija.mk and Konrad Adenauer Stiftung with 1110 respondents, 86% of citizens said they were religious or somewhat religious (% of people without religious sentiment among Christians was 16%, whereas among Muslims it was 4%). (Божиновски-Николовски, 2020a:9)

		December 2019	April 2020	July 2020
Are you religious?	Yes	50.9%	51.1%	54.5%
	Somehwat yes.	33.4%	32.7%	30.7%
	Somewhat no.	6.0%	7.3%	8.0%
	No.	5.3%	6.1%	6.0%
	I don't know. / No response	4.5%	2.8%	.7%

Illustration 2. *Religiosity in RNM between December 2019 and July 2020 (Божиновски-Николовски, 2020a: 9, 24)*

The state of terrible health crisis like others (e.g., in education, it has caused dizzying damage, it has affected 94% of pupils, 1.6 billion children; "has led to learning losses" [Li & Lalani, 2021]) has also affected the sphere of religion and religiosity. "Covid-19 has reflected on the believers as well as the current functioning of religious organizations in Northern Macedonia. (Bozinovski & Nikolovski / b, 2020: 5)

A website to illustrate the situation has featured the image of an Orthodox believer who, at times of coronavirus, lights prayer candles during the morning service at Saint Clement Church, the main Orthodox Christian temple in the city of Skopje. (directrelief.org) On social networks on March 20 last year, Friday, a believer from Macedonia posted the following: "Of. There has never been a more bitter experience for a believer than an empty *Jumu'ah adhân*" (Friday call to prayer). A column dated the 30th of the same month would also indicate this:

"March 20. Friday, traditionally, conservatively, religiously, in a Muslim way: Jumu'ah. Day of gathering, meeting, weekly assembly, in the temple, in the mosque. The best day of the week. Of religious culturalization, of socialization, of charging the batteries from the divine plugs. Weekly school, spiritual training. Moments of contact with metaphysics, with the celestial being on earth, in this world. Moments of transition

to another world, of ascent to the infinite vertical. The *homo religiosus* routine for each week. Friday noon destination. In extra-pandemic conditions, all roads lead to shrines. This is the general view of the believer, without excluding the attitude of the rest of the population, for whom Friday is a day like any other, preparation for the weekend. However, the "enigmatic virus" changed the religious life of us Muslim believers.

It emptied the Ka'bah surroundings, Medina, devastated the shrines around the world. Today, the Friday call to prayer shook me all over, it thrilled me." (Pajaziti, 2020)

A survey conducted last year (April) with 1127 RNM citizens on the impact of Covid-19 on people's religious sentiment shows that 40.7% think that religion will be empowered in this time of crisis. (see illustration 3)

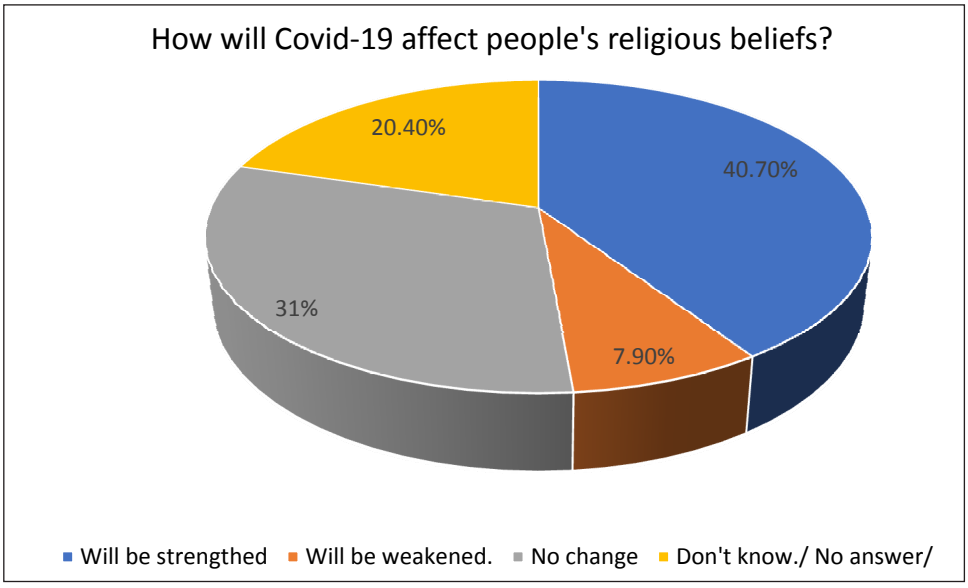

Illustration 3. *Religiosity during Covid-19 (Божиновски – Николовски, 2020b: 28)*

The same research found that Albanian believers are more optimistic about the future of religion in times of pandemics. 57% of Albanians and 35.6% of Macedonians said that religious belief will be strengthened.

While believers are confused about how to organize their religious life, religious communities have at times shown to be insensitive and rigid about this global danger. The approach of religious communities (MOC

and IRC) has been assessed by the public as unserious and irresponsible to the religious feelings of religious citizens. Calling for observance of religious holidays and rituals by religious authorities without respecting the necessary distance has proved harmful to the health of citizens. (Петковска, 2020: 150)

Illustration 4. *RNM believers at times of Covid-19*
(Source: Anadolu Agency, Foreign Policy)

Priest Timotey, spokesman of the MOC, when asked by the media if the priests would use the same spoon to commune people, replied "yes, with no doubt", adding that people who are afraid should not come, that they will not alter a centuries-old tradition. (Bosilkoski, 2020) On the other hand, the former IRC Raîs (Leader) put himself "in the role of a doctor, declaring the corona virus dead". "... and know that Covid-19 can be freely declared dead from today, given that we have beaten it and that is why we are here," he said. (*Fokus*, 24.05.2020)

And the pandemic situation is not over yet. In the fall we experienced the second peak of the Covid 19 crisis. Temporary measures adopted on December 16 (2020) included limiting indoor capacity to 30 percent of the total capacity, banning holiday and religious gatherings in public spaces and indoor locations, and restricting short-term rentals for large gatherings and religious services. (mk.usembassy.gov) In March and April 2021 we experienced the third wave of the pandemic also with official restrictive measures introduced.

Meanwhile religion is increasingly moving into the virtual realm. Muslim believers organize religious lectures from a distance, daily and on Friday, and even the debate on the issue of the imam from a distance or that from YouTube has become a discussion topic. Today the selection of religious content can be done on the spot, the lecture can be

heard instantly, the leader can be contacted via FB, Instagram, Viber, Watsapp, questions can be asked, comments can be made, clarifications can be requested, authentic transmission can be listened to, the "credible answer" can be obtained. (Pajaziti, 2020) Meanwhile there have been webinars related to the practice of religion in times of pandemic, as was the case with KAS and the chief of staff of the Archbishop of MOC (May 8, 2020), online panels, such as that of IRC with Heads of the Islamic communities of the Albanian diaspora (Switzerland, Austria, Germany, Italy, Sweden, Denmark and Belgium) held on April 28 this year and other events of this nature, lectures through Zoom in Ramadan, through TV channels (such as Myftinia.tv, Tv Koha - Tetovo) where the muftiate (Office of Mufti) disseminate the religious message to the believers. NGOs, individual theologians, etc., have also been active in this regard.

Finally, let us reveal some data from the latest research conducted in March 2021, an interview conducted with 32 Albanian intellectuals from North Macedonia. More than two-thirds of them claimed that the coronavirus had affected their religious beliefs, making them more religious. Here are some sequences from their confession: The university lecturer (38 years old) said that *"faith has been a strong foundation to get through the difficult moments of quarantine. Today there is an even deeper obedience to God, we hope for His help"* (# 2, historian). A musician responded as follows: *"I am more religious at this stage due to the loss of close persons but also due to the loss of inner peace. Religion brings you peace, optimism and opportunities for meditation and self-reflection that is very necessary during this period for all families"* (# 3, 43 years old). *"Certainly, the belief in the Great God has been strengthened, science has turned out to be unfaithful to us"* (# 4, professor of work and social policy, 66 years old). A 24-year-old microbiologist claims that *"Covid19 does not mean anything beyond the greatness of God, whose amazingness is manifested in almost every micro and macro situation of the Universe."* (#6)

CONCLUSIONS

Religion "always played a role of the balm for the soul, and the regular religious participation is associated with better emotional health outcomes." But in the period before Covid-19 "a man of body and emotions dominated over a man of spirit." (Kowalczyk et al., 2020) North Macedonia is known as a conservative and religious area, a fact that is observed

by various researches conducted during the period 1990-2020. During the one-year period of religious ban or pause (Штрак, 2020), of survivalism (struggle for survival), when Covid-19 is shaking our society and the globe, the religious spirit and culture, the way of vitalizing religion have changed a lot, a "religious renewal" is being experienced: even the category of unbelievers and passive believers have begun to express a secret or transparent spirituality. The majority of RNM citizens (71.7%) think that the status of religion will either remain steadfast or be empowered during this crisis. From the interviews conducted in March 2021 we have concluded that during the one-year period, the growth curve or the strengthening of religious feelings is evident in the Albanian scholars of RNM the growth curve, or strengthening of religious feelings is evident; individual religiosity is more pronounced in times of pandemic; the younger generation (20-49 years old) of the intelligence is more religious than the older one (50+).

REFERENCES

1. АЦЕСКИ, И. (2009). "Некои карактеристики на религиозност кај студенската популација", http://periodica.fzf.ukim.edu.mk/April 9, 2021.
2. BAUDRILLARD, J. (2020). *Konsumerizmi.* Shkup: Logos-A.
3. BOSILKOSKI, I. (2020). "North Macedonia's Orthodox Church Could Become a Coronavirus Super-Spreader", *Foreign Policy*, April 22.
4. БОЖИНОВСКИ, В. – НИКОЛОВСКИ, М. (2020a). *Употреба на религија*
5. *во политички кампањи.* Скопје: ИПИС, Религија.мк, КАС.
6. БОЖИНОВСКИ, В. – НИКОЛОВСКИ, М. (2020b). *Практикување на религија во услови на пандемија.* Скопје: ИПИС, Религија.мк, КАС.
7. CBN News, 1 prill 2020.
8. *Evangelical Focus*, 3 prill 2020.GLATZ, C. (2020). "Googling 'prayer' has skyrocketed with coronavirus spread", *Catholic Herald,* April, 3.
9. KOWALCZYK, O. et. al. (2020). "Religion and Faith Perception in a Pandemic of COVID-19", *Journal of Religion and Health*, Vol. 59, p. 2671–2677.
10. КУРТИШИ, А. (2020). *Општествените фактори и религиозноста на младите.* Скопје: Belig.
11. LI, C. & LALANI, F. (2021). "How COVID-19 has changed the way we educate children", World Economic Forum, February 25, 2021.
12. McGUIRE, M. (2007). *Religjioni: Konteksti social*. Skopje: Logos-A.

13. NEWPORT, F. (2020). "Religion and the COVID-19 Virus in the U.S.", https://news.gallup.com/opinion/polling-matters/307619/religion-covid-virus.aspx, accessed on May 20, 2020.
14. NICHOLSON, R. (2020). "A Coronavirus Great Awakening", *Wall Street Journal,* March 26.
15. OSMANI, M. (2014). *Makedonya'da Yaşayan Gençlerde Dini Şüphelerin Kaynaklari ve Etkileri (Kalkandelen Örneği)*. Bursa: Uludağ Üniversitesi.
16. PAJAZITI, A. (2020a). "Ditar n'kohë pandemie", Portalb.mk, March, 30.
17. PAJAZITI, A. (2020b). "E-religjioni", Portalb.mk, November 23.
18. PAJAZITI, A. (2003). *Rinia universitare dhe religjioni*. Skopje: Logos-A.
19. SMITH, E. (2021). "Review: Seaspiracy 2021 By Ali Tabrizi", https://brightshub.com/review-seaspiracy-2021-by-ali-tabrizi/April 9, 2021.
20. ШТРАК, К. (2020). "Религија во доба на коронавирус", https://www.dw.com/mkрелигијата-во-доба-на-коронавирус/a-53070889, April 9.
21. ПЕТКОВСКА, А. (2020). "Ковид-19 – цивилизациски континуитет на недоследности", *Предизвици*, 06/2020.
22. VANGELI, A. (2020). "Maqedonia dhe KOVID-19: Përbindëshi me qafën e gjatë", *Res Publica*, June 24.
23. ZUCKERMAN, Ph. (2020). "Will COVID-19 Make People More Religious?", *Psychology Today*, April 15.
24. mk.usembassy.gov, 2021/01/28
25. http://kumtesa.com, 2020/04/25
26. www.pewforum.org/2021/01/27

THE USAGE OF SOCIAL MEDIA BY INTERNATIONAL ACTORS DURING THE CORONAVIRUS PANDEMIC

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Abstract

Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus, which was named a pandemic on 11 March 2020 by the World Health Organization. This pandemic has become a global problem which changed our lives, and continues to influence the way we function on daily basis. Even world leaders and diplomats had to adapt to working from home and have been thrust into virtual meetings, and so diplomacy became truly digital. The main purpose of this paper is to explain the usage of social media by international actors, specifying the most used social media and the engagement of world leaders and diplomats with their followers for answers, advice and support during pandemic. For the realization of the research are used qualitative methods, based on recent bibliography and on the credible Internet sources, which contain valuable data about the coronavirus pandemic and the usage of social media by international actors. Results of the research emphasize that the coronavirus pandemic has been a key catalyst for the digitalisation of diplomacy, resulting with social media explosion as a result of the rise of communication between citizens with world leaders and diplomats on digital platforms. The conclusions of this paper aim to contribute to the increase of knowledge about the COVID-19 pandemic and for the importance of social media in the realization of the activities of international actors during this pandemic.

Keywords: Coronavirus, pandemic, international actors, social media

1. INTRODUCTION

The paper treats a very important and current topic, which is related to the coronavirus pandemic. In 2020 the usage of social media by international actors was extraordinary, so that 2020 will be known as the year of digital diplomacy. The main research purposes of this paper are these: *To give key information about the coronavirus disease*, *to describe the usage of social media by states and international organizations during the COVID-19 pandemic, and to emphasize the benefits and risks of social media for international actors.* The research question of the paper is: *What has characterized the usage of social media by international actors during the coronavirus pandemic?* While the hypothesis of this paper is: *Extraordinary usage of social media by states and international organizations during the COVID-19 pandemic has increased the importance of digital diplomacy, thus disfavouring traditional diplomacy.* Therefore, to give the research question the right answer and to verify the raised hypothesis, the paper is divided into five chapters. The second chapter offers information about the coronavirus disease, including its appearance, symptoms and prevention. The third chapter explains the reasons why 2020 will be known as the year of digital diplomacy. The fourth and fifth chapters describe the usage of social media by states and international organizations during the COVID-19 pandemic. While the sixth chapter highlights the main benefits and risks of social media for international actors during the COVID-19 pandemic. This paper has an *explanatory, descriptive* and *analytical* nature, and for its realization are used *qualitative methods*, relying in the latest *literature* and *the credible internet sources* that are related to the coronavirus pandemic and to the characteristics of digital diplomacy.

2. THE CORONAVIRUS DISEASE

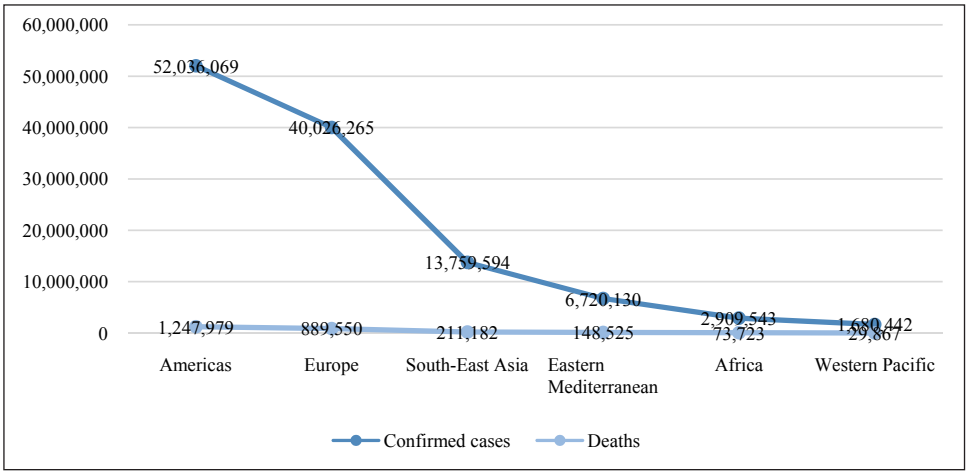
2.1 The appearance of coronavirus

Coronavirus disease (COVID-19) is an infectious disease caused by a coronavirus called SARS-CoV-2. The first cases of this disease were reported in China at the end of 2019 and according to the Wuhan Municipal Health the cases occurred between 12 to 29 December 2019. On 5 January 2020 China announced that the unknown pneumonia cas-

es in Wuhan were not SARS[1] or MERS[2]. The first death caused by the COVID-19 was reported by Chinese authorities on 11 January 2020, a 61-year-old man, exposed to the virus at the seafood market, who died after respiratory failure caused by severe pneumonia. On 20 January 2020, cases of the coronavirus were confirmed in Japan, South Korea and Thailand, whereas officials in Washington state confirmed the first case on the US soil (CNN News, "Coronavirus Outbreak Timeline Fast Facts"). From 16 to 24 February 2020, the WHO-China Joint mission, which included experts from Canada, Germany, Japan, Nigeria, Republic of Korea, Russia, Singapore and the US spent time in Beijing and also travelled to Wuhan and two other cities to investigate the coronavirus outbreak. Deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction, on March 11, 2020, the WHO made the assessment that COVID-19 can be characterized as a pandemic (World Health Organization, "Archived: WHO Timeline - COVID-19"). Obviously larger countries tend to have higher numbers of both infected cases and deaths. However, countries with ageing populations are hit harder because the disease is more dangerous to older people. Until 9 March 2020, the WHO reported that there have been 117,132,788 confirmed cases of the coronavirus, including 2,600,839 deaths (World Health Organization, "WHO Coronavirus Dashboard: Global Situation").

1. SARS (Severe Acute Respiratory Syndrome) coronavirus or SARS-CoV is a virus identified in 2003. SARS is thought to be an animal virus from an as-yet-uncertain animal reservoir, perhaps bats, that spread to other animals (civet cats) and first infected humans in the Guangdong province of southern China in 2002. Symptoms are influenza-like and include fever, malaise, myalgia, headache, diarrhoea, and shivering. No individual symptom or cluster of symptoms has proved to be specific for a diagnosis of SARS. An epidemic of SARS affected 26 countries and resulted in more than 8000 cases in 2003.
2. MERS (Middle East Respiratory Syndrome) or MERS-CoV is a viral respiratory disease caused by a novel coronavirus, that was first identified in Saudi Arabia in 2012. Symptoms include fever, cough, and shortness of breath. Other symptoms may include nausea, vomiting, and diarrhea. Since September 2012, 27 countries have reported cases, while WHO has been notified of 2494 laboratory-confirmed cases of infection with MERS-CoV and 858 deaths.

Figure 1: *The coronavirus situation in different regions of the world by the WHO*



Adopted from World Health Organization, "WHO Coronavirus (COVID-19) Dashboard: Situation by WHO Region".

2.2 The coronavirus symptoms

Most people infected with the coronavirus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness. The coronavirus symptoms are divided into three groups:

1. *Most common symptoms: fever, dry cough and tiredness;*
2. *Less common symptoms: aches and pains, sore throat, diarrhoea, conjunctivitis, headache, loss of taste or smell and a rash on skin, or discolouration of fingers or toes;*
3. *Serious symptoms: difficulty breathing or shortness of breath, chest pain or pressure and loss of speech or movement.*

People with mild symptoms who are otherwise healthy should manage their symptoms at home. On average it takes 5-6 days from when someone is infected with the virus for symptoms to show, however it can take up to 14 days (World Health Organization, "Coronavirus: Symptoms").

2.3 The coronavirus prevention

According to the WHO, to prevent infection and to slow transmission of COVID-19, must do the following:

Wash your hands regularly with soap and water, or clean them with alcohol-based hand rub;

- *Maintain at least 1 meter distance between you and people coughing or sneezing.*
- *Avoid touching your face;*
- *Cover your mouth and nose when coughing or sneezing;*
- *Stay home if you feel unwell;*
- *Refrain from smoking and other activities that weaken the lungs;*
- *Practice physical distancing by avoiding unnecessary travel and staying away from large groups of people* (World Health Organization, "Coronavirus: Prevention").

On 18 December 2020, CEPI[3] alongside Gavi[4] and the WHO, launched COVAX, the vaccines pillar of the ACT Accelerator[5], with the aim of ending the acute phase of the pandemic by the end of 2021. COVAX aims to produce 2 billion doses of vaccine and distribute them globally and fairly in 2021 (The Coalition for Epidemic Preparedness Innovations, "COVAX: CEPI's response to COVID-19").

3. YEAR 2020, THE YEAR OF DIGITAL DIPLOMACY

Digital diplomacy is a form of new public diplomacy, which uses new information and communication technologies (ICT), the Internet and social media as means for strengthening diplomatic relations between international actors (states and international organizations). Social networks represent the basis of digital diplomacy, which provide platforms for unconditional communication, by which world leaders can commu-

3. The Coalition for Epidemic Preparedness Innovations is a foundation that takes donations from public, private, philanthropic, and civil society organisations, to finance independent research projects to develop vaccines against emerging infectious diseases.
4. GAVI, officially Gavi, the Vaccine Alliance is a public–private global health partnership with the goal of increasing access to immunisation in poor countries.
5. The Access to COVID-19 Tools Accelerator, or the Global Collaboration to Accelerate the Development, Production and Equitable Access to New COVID-19 diagnostics, therapeutics and vaccines, is a G20 initiative announced by pro-tem Chair Mohammed al-Jadaan on 24 April 2020.

nicate with massive audiences around the world in unimaginable ways. There is an extremely large number of these platforms, but the most used ones by international actors are: *Twitter, Facebook, Instagram, YouTube, Periscope* and *Snapchat* (Twiplomacy, "The Social Media Platforms of World Leaders."). Social media has avoided the need for diplomatic mediators, in which case it looks like digital diplomacy disadvantages traditional diplomacy (Spies, 2019, 55). However, until 2020 it has always been thought that digital diplomacy is very useful for conducting diplomatic activities of international actors, but it never undermines or challenges the importance of traditional diplomacy (Berridge and Lloyd, 2012, 133). The coronavirus has been a key catalyst for the digitalization of diplomacy in 2020. The COVID-19 pandemic has thoroughly upended diplomacy, a profession which involves a fair amount of travel, physical meetings and in-person interactions. The traditional work of world leaders and diplomats has come to a sudden stop as travel restrictions, border closures and shelter-in-place orders have scuppered in-person diplomatic activity. However, the consequences caused by the coronavirus are very serious, for the resolving of which unilateral actions of states are not enough, therefore bilateral and multilateral cooperation is more than necessary. Hence, world leaders and diplomats had to adapt to working from home and have been thrust into virtual meetings. During the pandemic bilateral and multilateral meetings were held via telephone or videoconferencing apps and diplomacy became truly digital. Furthermore, the coronavirus pandemic has had a profoundly transformative impact on how world leaders use social media. As the virus spread around the world, leaders wasted no time to engage on social networks, updating their status and changing their profile picture on the platform, to convey the urgency of fighting the global pandemic (Twiplomacy, "World Leaders on Facebook 2020: Executive Summary").

4. THE USAGE OF SOCIAL MEDIA BY STATES DURING THE COVID-19 PANDEMIC

While governments are trying to reach their constituents on the main social channels to warn about the deadly virus and how to mitigate its spread, social media users are looking for guidance and leadership from their leaders online. Millions of people are flocking to social media for answers, advice and support; thus the pages of governments and world leaders have literally exploded. This social media explosion shows that

there is a need to connect with citizens on social media platforms and governments and world leaders are rising to the occasion, stepping up their communications with their followings. The pandemic has kept foreign ministries busy as they organized the repatriation of their citizens stranded abroad. Through social media many foreign offices and diplomatic missions shared pictures of their citizens about to board charter flights from around the world (Twiplomacy, "Twiplomacy Study 2020: Coronavirus Emergency Repatriation"). Moreover, during the coronavirus lockdown world leaders were able to show a more personal side on social media and several of them offered a glimpse into their private lives. As is already known, the social network Twitter has become a diplomatic barometer and a tool used to analyse and forecast international relations. According to the Twiplomacy Study 2020, the governments and leaders of 189 countries had an official presence on the social network, representing 98% of the 193 UN member states. Whereas the governments of only four countries do not have a Twitter presence, namely Laos, North Korea, Sao Tome and Principe, and Turkmenistan. It should also be emphasized that the heads of state and government of 163 countries and 132 foreign ministers maintain personal accounts on Twitter. During the pandemic world leaders were quick to use Twitter to communicate and explain lockdown rules, often using the Twitter covers to encourage their followers to stay home, stay alert and save lives. Many shared guidance on strict hygiene protocols and demonstrated correct handwashing and observing social distancing rules (Twiplomacy, "Twiplomacy Study 2020: Executive Summary"). The hashtags *#coronavirus* and *#COVID19* have dominated the Twitter feeds of world leaders since early March 2020 (Twiplomacy, "Twiplomacy Study 2020: Tweeting the Coronavirus").

Table 1: *The most followed and active accounts of world leaders and governments on Twitter*

The five most followed accounts	The five most active accounts
Prime Minister of India, Narendra Modi (@narendramodi)	Foreign Minister of Philippines, Teddy Locsin Jr (@teddyboylocsin)
Pope Francis (@Pontifex)	Foreign Ministry of Venezuela (@CancilleriaVE)
Prime Minister, Narendra Modi (@PMOIndia)	Government of El Salvador (@ComunicacionSV)
The US President, Joe Biden (@JoeBiden)	Presidency of Colombia (@infopresidencia)
President of Turkey, Recep Tayyip Erdoğan (@RTErdogan)	President of Venezuela, Nicolás Maduro (@NicolasMaduro)

Adopted from Twiplomacy, "Social Rankings."

For many governments, an active Facebook presence is the cornerstone of their digital strategy. According to the Twiplomacy Study 2020, the governments and leaders of 184 countries (two more than in 2019) had an official presence on the social network, representing 95% of the 193 UN member states. Furthermore, the heads of state and government of 153 countries and 90 foreign ministers maintain personal pages on Facebook. World leaders mainly tend to share posts with photos, but generally videos and especially live videos perform best on Facebook (Twiplomacy, "World Leaders on Facebook: How do World Leaders use Facebook?"). Groups are rarely used by world leaders and governments, despite their having obvious advantages over Facebook pages. However, Facebook groups might not be the biggest crowd puller but are a smart way to interact with one's most dedicated fans. Group administrators control who is part of a group and can easier connect with its members than on a page. However, the coronavirus outbreak prompted the foreign ministries to create Facebook fan groups to connect with their citizens worldwide and create a space to help themselves. Facebook groups also have several features such as unlimited poll options and the possibility to upload files and documents which pages lack (Twiplomacy, "World Leaders on Facebook: Facebook Groups"). Facebook is one of the best platforms to contact and start conversations with world leaders and their social media teams. Two thirds of all world leaders' Facebook pages allow fans to contact the page privately using Facebook Messenger. To make sure their messages get heard, even governments will accept to "pay to play" and promote their most important posts with Facebook ads. (Twiplomacy, "World Leaders on Facebook: Connecting with World Leaders on Facebook").

Table 2: *The most liked and active accounts of world leaders and governments on Facebook*

The five most liked accounts	The five most active accounts
Prime Minister of India, Narendra Modi (@narendramodi)	Foreign Ministry of Russia (@MIDRussia)
Queen of Jordan, Rania Al Abdullah (@QueenRania)	Presidency of Philippines (@pcoogov)
Prime Minister, Narendra Modi (@PMOIndia)	Government of Uzbekistan (@govuz)
Prime Minister of Cambodia, Hun Sen (@hunsencambodia)	Government of Botswana (@BotswanaGovernment)
President of Brazil, Jair Messias Bolsonaro (@jairmessias.bolsonaro)	Government of Malaysia, Jabatan Perdana Menteri (@Jab.PerdanaMenteri)

Adopted from Twiplomacy, "Social Rankings."

5. THE USAGE OF SOCIAL MEDIA BY INTERNATIONAL ORGANIZATIONS DURING THE COVID-19 PANDEMIC

Through accounts opened on various social networks, international organizations and their leaders inform audiences around the world about their activities. The World Health Organization has always been among the most followed international organizations on social media, but with the spread of the coronavirus, the WHO is on course to become the most followed one. The WHO has seen exponential growth on its social media channels as it fights the COVID-19 pandemic and the misinformation about the virus. The organisation has also set up chatbots on WhatsApp and Messenger messaging apps. Whereas, the *who.int* website, which has been widely promoted on major social media platforms such as YouTube and Facebook, is now among the top 200 websites worldwide, providing timely and accurate information in the six official UN languages. Moreover, the personal accounts on Twitter and Facebook of the Director-General of the WHO, Dr. Tedros Adhanom Ghebreyesus have recently passed the million-follower mark and he is now the most followed of all leaders of international organisations, even overtaking the UN Secretary General António Guterres. Dr. Tedros has stepped up his Twitter communication, averaging almost 20 tweets per day with the hashtags *#COVID19* and *#coronavirus* largely dominating his Twitter feed. Among his most popular posts are the recent one-word tweets including: «Courage», «Love», «Humanity», «Humility», «Perseverance», «Solidarity», and «Unity». Tedros shows leadership and comes across as personal and approachable on Twitter with a fifth of his tweets being replies to his followers. He consistently thanks his peers and influencers for their support of the WHO and its fight against the COVID-19 pandemic (Twiplomacy, "WHO You Gonna Call?!").

Table 3: *The four most followed accounts of international organizations on social media*

Account name	Twitter followers	Facebook likes	Instagram followers
United Nations	13,6 million	5,8 million	6,2 million
UNICEF	8,6 million	11,9 million	7,6 million
World Economic Forum	3,9 million	7.9 million	3,8 million
World Health Organization	9,1 million	12,6 million	9,5 million

Adopted from Twiplomacy Blog, "WHO You Gonna Call?!."

6. BENEFITS AND RISKS OF SOCIAL MEDIA FOR INTERNATIONAL ACTORS DURING THE COVID-19 PANDEMIC

6.1 Benefits of social media

An excellent opportunity to begin bridging the "change management" gap in diplomatic theory is offered by the recent spread of digital initiatives in diplomatic activities, which probably can be described as nothing less than a revolution in the practice of diplomacy (Bjola and Kornprobst, 2015, 201). Social networks are extremely useful for gathering and processing information regarding diplomatic activities, and also for fast communications in urgent situations as were those during the coronavirus pandemic. These platforms help world leaders and governments to be informed about the consequences of the COVID-19 in different parts of the world and for the way how they can affect their countries. Proximity of world leaders with audiences all around the world has been made possible by social media. The chance to pre-record statements offers new opportunities for the leaders' messages to be heard and seen beyond the meeting room by a global online audience. Also low financial cost of social media platforms has been one of the main benefits of their usage by international actors during the pandemic, based on the fact that the coronavirus has caused many economic consequences for all countries of the world.

6.2 Risks of social media

In the postmodern era of information dissemination, many journalists and academics claim that the end of secret diplomacy is near as a result of digitization (Bjola and Murray, 2016, 13). However, the optimism of the early days of the digital revolution has been replaced by growing public cynicism, social distrust and even technophobia as the rise of echo chambers, fake news, disinformation and the deliberate weaponisation of information by state and non-state actors has fuelled fears of digital technologies having unintended consequences that may actually undermine rather than strengthen the social fabric of Western societies (Bjola and Pamment, 2019, 2). As the coronavirus spread across the globe so did disinformation on social networks. In 2020 the social network Twitter stepped up the fight against state-sponsored disinformation and misinformation. Twitter's fight against misleading informa-

tion culminated with its decisive actions to delete some tweets and to suspend some accounts on its platform, which was a stark reminder to government officials and world leaders that they are not free to post incendiary tweets and that the health of the network is paramount. Another major risk of social media platforms is lack of knowledge about their usage, which can result with terrible consequences, severe conflicts, even with dismissals of politicians. Then, a global discussion on the issues of digital ethics is more than needed. Especially during the pandemic it was noticed how terribly weak is the level of communication culture on social media. Many world leaders and diplomats are facing with insults, as well as provocative and threatening messages on their accounts on social networks. A challenge coming from social networks that was quite present during the COVID-19 pandemic in 2020 is the culture of anonymity. Anyone can pretend to be someone else and cause damages to certain persons. Unfortunately, there are still many world leaders desperately waiting to be verified on social networks. Part of the severe cyber-attacks are the accounts of world leaders on social media. Therefore, hacking is considered as the main risk of digital diplomacy because many heads of states, governments, and diplomats around the world continue to be its victims, which has also risked their career.

CONCLUSIONS

The COVID-19 pandemic is continuing to be present in our lives, affecting all aspects of life and causing major and long-term consequences. The effects of the coronavirus vaccine are expected to be seen till the end of 2021, while according to the WHO by 10 March 2020, there have been more than 117 million confirmed cases with the coronavirus, including here 2.6 million deaths. Along with many radical changes that resulted from the COVID-19 in 2020, this virus has disfavored a lot traditional diplomacy, thus favoring the digital one. After some restrictions and closures made by states in order to prevent the spread of the coronavirus, bilateral and multilateral meetings were held through video conferencing apps. Then, social media platforms were very useful in gathering information, for fast communications in urgent situations, and for sharing the messages of world leaders to different audiences around the world. Although there is a large number of social networks, the main ones for states and international organizations during this

pandemic are Twitter and Facebook. World leaders and state institutions have increased the number of followers on their social media accounts, while the WHO is the most followed international organization on social networks. However, disinformation and cyberattacks continue to be the main risks of social media for international actors during the COVID-19 pandemic.

BIBLIOGRAPHY

1. Berridge, R. G., and Lloyd Lorna. *The Palgrave Macmillan Dictionary of Diplomacy*. 3rd ed. UK: Palgrave Macmillan, 2012.
2. Bjola, Corneliu. and Kornprobst Markus. *Understanding International Diplomacy: Theory, Practice and Ethics.* New York: Routledge, 2015.
3. Bjola, Corneliu and Murray Stuart, ed. *Secret Diplomacy: Concepts, contexts and cases*. New York: Routledge, 2016.
4. Bjola, Corneliu and Pamment James, ed. *The Dark Side of Digital Diplomacy*. New York: Routledge, 2019.
5. Spies, Kemp Yolanda. *Global South Perspectives on Diplomacy*. UK: Palgrave Macmillan, 2019.

The Internet Sources

1. CNN News. "Coronavirus Outbreak Timeline Fast Facts." Last modified January 26, 2020. https://edition.cnn.com/2020/02/06/health/wuhan-coronavirus-timeline-fast-facts/index.html.
2. The Coalition for Epidemic Preparedness Innovations. "COVAX: CEPI's response to COVID-19." Accessed February 21, 2021. https://cepi.net/covax/.
3. Twiplomacy. "Social Rankings". Accessed March 9, 2021. https://twiplomacy.com.
4. Twiplomacy. "Twiplomacy Study 2020: Coronavirus Emergency Repatriation." Last modified July 20, 2020. https://twiplomacy.com/blog/twiplomacy-study-2020/.
5. Twiplomacy. "Twiplomacy Study 2020: Executive Summary." Last modified July 20, 2020. https://twiplomacy.com/blog/twiplomacy-study-2020/.
6. Twiplomacy. "Twiplomacy Study 2018: The Social Media Platforms of World Leaders." Last modified July 10, 2018. https://twiplomacy.com/blog/twiplomacy-study-2018/.
7. Twiplomacy. "Twiplomacy Study 2020: Tweeting the Coronavirus." Last modified July 20, 2020. https://twiplomacy.com/blog/twiplomacy-study-2020/.

8. Twiplomacy. "WHO You Gonna Call?!." Last modified May 2, 2020. https://twiplomacy.com/blog/who-you-gonna-call/.
9. Twiplomacy. "World Leaders on Facebook 2020: Connecting with World Leaders on Facebook." Last modified April 23, 2020. https://twiplomacy.com/blog/world-leaders-on-facebook-2020/
10. Twiplomacy. "World Leaders on Facebook 2020: Executive Summary." Last modified April 23, 2020. https://twiplomacy.com/blog/world-leaders-on-facebook-2020/.
11. Twiplomacy. "World Leaders on Facebook 2020: Facebook Groups." Last modified April 23, 2020. https://twiplomacy.com/blog/world-leaders-on-facebook-2020/.
12. Twiplomacy. "World Leaders on Facebook 2020: How do World Leaders use Facebook?." Last modified April 23, 2020. https://twiplomacy.com/blog/world-leaders-on-facebook-2020/.
13. World Health Organization. "Archived: WHO Timeline - COVID-19." Last modified April 27, 2020. https://www.who.int/news/item/27-04-2020-who-timeline---covid-19.
14. World Health Organization. "Coronavirus: Prevention." Accessed February 21, 2021. https://www.who.int/health-topics/coronavirus#tab=tab_2.
15. World Health Organization. "Coronavirus: Symptoms." Accessed February 21, 2021. https://www.who.int/health-topics/coronavirus#tab=tab_3.
16. World Health Organization. "WHO Coronavirus (COVID-19) Dashboard: Global Situation." Last modified March 10, 2021. https://covid19.who.int.
17. World Health Organization. "WHO Coronavirus (COVID-19) Dashboard: Situation by WHO Region." Last modified March 10, 2021. https://covid19.who.int.

THE EVOLVING CONTEXT FOR REGIONAL DEVELOPMENT POLICY – FROM THEORETICAL SHIFTS TO NEW POLICY APPROACHES

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Abstract

In the context of globalization and dynamic economic processes regions seem to gain crucial importance in the course of development. The increasing emphasis being placed on the role of regions raised significant changes in the approaches used in defining regional economic development and in the ways, we can use to improve policies and strategies. The new regional policies and strategies have been transformed into more context sensitive policies which tend to stimulate local communities to be proactive toward sustainable development and their own economic, social and political future. Over the past thirteen years North Macedonia has made significant progress in the implementation of the policy on balanced regional development. The paper analyzes the achievements as well as the challenges faced by the regional policy in light of the global trends and the EU regional policy. The paper also investigates the latest amendments introduced with the new Law on Balanced Regional Development as well as the new Regional Development Strategy 2020-2030. Finally, the paper provides directions and recommendations for policy improvements and full usage of regional development potentials.

Keywords: regional development, regional policy, systems thinking, resilience.

BACKGROUND

The present paper aims to provide an overview of the new contemporary theoretical approaches in regional development and their influence in the process of policy creation. Starting from the conceptual evolution of the regional economic development leading to rethink the development process as a concept that embraces not only the economic but also the wider societal political, social and economic dimension, this paper dives into the theoretical concepts on socioeconomics, innovation, learning and knowledge, as well as sustainable development.

The paper analyzes the current trends in the regional development policy in the country to assess the potential use of the new multidimensional approaches in the country context, as well as to provide recommendations for policy improvements and full usage of the regional development potentials.

The new 2021-2027 EU cohesion policy puts greater visibility of the territorial dimension, and even though emphasizing the horizontal and cross-cutting nature of this dimension focuses on capitalizing the strengths of each territory so they can best contribute to sustainable and balanced development. In light of this reformed policy, the Macedonian regional development policy, that was initially inspired by the political idealism grounded on the principles of economic and social justice of the European Union, needs to be reassessed. Instead of being a simple redistributive mechanism directed mainly towards the less developed regions, the policy must focus on the growth and development of all regions relying on the local potentials and existing social capital.

This paper is structured in two thematic parts: the first one focusing on the theoretical and practical recommendations on territorial approaches in the development; and the second one focused on the current state of play in the balanced regional development policy in the country.

1. KEY ASPECTS OF THE NEW LOCAL AND REGIONAL DEVELOPMENT TRENDS

Some of the most important aspects in the contemporary conceptualization of local and regional development focus on the importance of institutions and endogenous regional growth and development; struc-

tural agglomerations; regional innovation systems; institutional density; organizational power and control; entrepreneurship and social capital.[1]

The new paradigm[2] on local and regional development emphasizes the importance of mobilization of the endogenous potentials and relying on own resources as key for sustainable development and well-being for all people. Furthermore, it is of essential importance to embrace wider consultations and involvement of variety of stakeholders and setting proper mechanisms for identifying the strengths of the local economy that would represent the basis in the preparation of the local and regional development documents aiming at resilient communities.

The new approaches emphasize the quantitative vs. the qualitative dimensions of regional development, that can be integrated but are not always coincidental. It's a matter of choosing high or low roads of development (high number of jobs vs. high quality jobs etc.). New forms of regional development consider the qualitative dimensions, such as creating greater social and financial equity, achieving sustainable development and improving the quality of life in regions as equally important as the quantitative ones (increasing/decreasing wealth and income levels, job creation or employment levels, the availability of goods and services and improving financial security).

New approaches put special emphasis on territories and places as well as the institutions and the dialogue among them and the other stakeholders functioning on different geographic level. The territory and the specific characteristics of the regions (areas, territories) condition their level of development throughout the time[3] and they compete among each other based on a wide spectrum and unique mixture of endogenous economic, social, natural, historical, cultural and human attributes[4].

The new contemporary trends in local and regional development outline the importance of continuous analysis of the "factors that contribute to competitiveness, as well as the possible ways in which territories can combine their resources, competencies, meanings, human capital and knowledge in order to create favorable environment for the new

1. Stimson, R.J., Stough, R.R., Roberts, B.H. Regional Economic Development, Analysis and Strategy, 2006: стр.34.
2. Terminology introduced by OECD in OECD, Regional Development Policies in OECD Countries, 2010
3. Sunley, P Urban and Regional Growth in Barnes T.J. and Sheppard E. (editors) A Companion to Economic Geography, Oxford: Blackwell, 2000.
4. Maillet 1995; Reich 1991; Kanter 1995; Plummer & Taylor 2001a, 2001b; Martin & Tyler 2003; Taylor 2003

economic development possibilities" [5]. In this regard, ***systems thinking*** that encompasses approaches to conceptualize problems and deal with complexity, uncertainty and risk has become particularly important in the era of constant shocks and unpredicted crises such as COVID-19.

2. CONTEMPORARY POLICIES AND STRATEGIES FOR REGIONAL DEVELOPMENT

The contemporary development trends have influenced the policy making processes contributing to the emergence of the so called "new generation" of development policies aimed at promoting the unused potential of *all regions* to support the regional competitiveness, instead of the traditional focus on the weaker regions. Furthermore, the intervention areas are not just the simple administrative, but the functional economic units, i.e. the territory as societal and institutional system with their characteristics. The contemporary development policies do not target only construction or renewal of physical infrastructure or business investments but also building skills and capabilities, improvement of human capital, environmental actions, support to innovations and technology transfer, networking and data exchange etc. these policies are implemented by different levels of government and constant dialogue is therefore considered "sine qua non".

There are few main elements that define the level of development of the regions:

- **Stable institutions as precondition of development** (institutions as activators of resources: shaping the biases of the offer, i.e. skills, education, innovation and communication; but also, facilitators of development in uncertain times and continuous internal and external shocks.
- **Socio-cultural factors as facilitators or inhibitors of development** (different local characteristics and economic capabilities of the regions, autochthonous and endogenous, treated as fundamental conditions for local and regional competitiveness. [6] The social

5. Stimson, Robert J.; Stough, Roger R.; Roberts, Brian H.; Regional Economic Development, Analysis and Strategy, Springer,2nd edition, 2006: стр. 388.
6. Maskell.P., Eskelinen H., Hannibalson I., Malmburg A., Vatne E. Competitiveness, Localized Learning and Regional Development 14 (3): 271-287, 2002.

capital ant the trust, as well as the role of the new forms of relations and networking are crucial for development.

- **Innovation, learning and knowledge as key factors for development** (knowledge economy, know-how and innovation are fundamental element in maintaining the competitiveness);

Therefore, the new **development** policies cover and refer to a wide range on **direct and indirect factors** that affect the performance of local firms;

- Sustain **competitive and collaborative advantages**, with emphasis on opportunity rather than on disadvantage or needed support;
- Generate stronger, **fairer and livable regional economies and knowledge economy;** and
- **Promote effective and innovative governance** at all levels of government through collective/negotiated governance approach involving all levels of government plus other stakeholders with the central government taking a less dominant role.

3. REGIONAL DEVELOPMENT POLICY IN NORTH MACEDONIA: IS THERE A SPACE FOR THE NEW DEVELOPMENT APPROACHES?

The balanced regional development policy in tis complexity has impact on almost every aspect of the society. The main goal of the policy is to support balanced regional development between and within the planning regions in the country. The policy represents a system of goals, instruments and measures aimed at diminishing the regional disparities and contributing to more equitable and balanced development throughout the country.

Over the past thirteen years of policy, a complex legal and institutional framework have been established, several planning documents adopted, and concrete projects implemented.

The policy that has been established as result of the country's effort to synchronize the development priorities with the European standards[7],

7. Cvetanovska, S.B., Angelova, V.B.; Establishment and organization of regional development in Macedonia. Challenges and perspective, Pecob's Papers Series, University of Bologna – Forli Campus, 2012.

today, in light of the new socio economic trends, prolonged health crisis, and ongoing debates for changes of the policies goals, is facing multiple challenges. How the policy responds to those challenges will define its trajectory i.e. will provide the answers to the following questions: will the policy remain a simple redistributive policy addressing mainly the less developed regions with financial support?; or, it will become more broad addressing the efficiency and the growth and competitiveness of all regions independently form their level of development; or perhaps a combination of both approaches.

Over the last two years the country adopted the **new Strategy on Regional Development 2020-2029 and the new Law on Balanced Regional development**[8] that have introduced several new aspects and concepts in how the balanced regional development policy is being implemented as well as its priorities and targeted areas.

First of all, the new balanced regional development policy has become more participatory and inclusive. The Regional Development Councils (consisting of the Mayors of the municipalities of each planning region) will include not only the Mayors but also representatives of the civil society and the business associations of each region. However, these two representatives will only participate in the discussions but without the right to vote. Participation is included as one of the basic principles of the Law for Balanced Regional Development - active citizens participation in the process of creation and improvement of regional policy and organizing regional forums for determining the list of regional priority projects that is being submitted for financing to the Bureau for regional development has become obligatory for the Centers for Regional Development.

Furthermore, these latest changes are introducing for the first time clearly the **competitiveness approaches and multi-stakeholder involvement** through a new Programme for decreasing the disparities between and within the planning regions and increase of regional competitiveness. The Programme will be implemented by the Ministry of Local Self-Government with the aim to increase the efficiency of the policy. Beneficiaries of the funds from the Programme would be: Development Centers, municipalities, the municipalities in the City of Skopje, the City of Skopje, but also (for the first time) *public enterprises and the public institutions established by the state, higher education and scientific institutions and civil organizations.*

8. https://mls.gov.mk/images/files/Zakon%20za%20ramnomeren%20regionalen%20razvoj-mk.pdf

Further efforts to improve the overall coordination of planning, implementation, monitoring and evaluation of the policy for balanced regional development policy can be identified. The new Law introduces an **Electronic System as a main tool for coordination in the process of planning, implementation, monitoring and evaluation of the regional policy**.

For the first time the balanced regional development policy identifies **urban areas** as separate beneficiaries of the policy. With the recently introduced changes, the planning regions will receive a portion of 55%, while the urban areas, villages and areas with specific development needs will receive 15% each. This can be recognized as a general effort to enhance well-being and living standards in all region types, from cities to rural areas, and improve their contribution to national performance and more inclusive, resilient societies.

One might expect that all of these policy shifts may contribute to increase the efficiency of the policy that was so far unable to reduce regional disparities significantly – nor have it has been able to help individual lagging regions catch up. Even though in a very modest way, **the changed balanced regional development policy goes beyond direct support for lagging regions**, to include:

- adapting to specific territorial assets
- investment strategies to increase competitiveness of all regions
- efficient multi-level governance systems
- stakeholder involvement

Very important aspect is that the new Strategy on Balanced Regional Development is providing the basis for relying on the **SDGs** as a tool for implementing the new local and regional development paradigm. The **2030 Agenda** is for the first time considered as framework to shape, improve and implement regional development policy.

The new balanced regional development policy takes into account also **gender issues** for the very first time and sets the basics on how to implement the cross-sectional matter of gender mainstreaming in regional development projects and decision making. These new approaches in the balanced regional development go well in line with the basic concepts of the European Union to promote gender mainstreaming in EU development policies.

4. CONCLUSIONS AND RECOMMENDATIONS

The main purpose of this paper was to analyze the approaches that can contribute to the transformation of the conceptual postulates of the development policies in the Republic of North Macedonia, i.e. the balanced regional development policy. In that regard, analyzing the current status of the policy and correlating it with the contemporary theoretical approaches, there are few general recommendations for the policy makers.

- The first recommendation would be to **re-examine the concept of the planning regions defined at the NUTS 3 level** as functional units established for the development planning needs. Even though, the introduction of these territorial units has resulted with positive shifts in the policy implementation, one should have in mind that these territorial units correspond with the statistical units and do not always reflect the actual natural, geographic characteristics of the regions. In order to transform the policy and make it more place-based, reshaping of the planning regions in order to increase their economic functionality is very much needed.
- Another recommendation would be to insist on **constant and reinforced dialogue between the different levels of government**. In this regard, the Regional Councils might discuss and decide on the investment programmes of other national institutions, and not only on the balanced regional development programmes. This can result with improved complementarity and increased efficiency of the existing investments policies and better targeted interventions.
- **Increased coordination of the national and local level institutions** and strengthening of the strategic development principles with clear setting vertical and horizontal relations is also needed.
- In order to transform the policy and make it capable of aiming more just development, **the regional development index must be revised and broadened with indicators that measure new vulnerabilities and gender aspects.** This is particularly important in the crisis response and tackling the negative effects of COVID-19. Many European governments and the EU are opting for regional development policy and the stimulation of investment in European regions and local communities as one of the instruments to overcome the crisis. This includes investment in transport, environmental and social infrastructure; education, science and research and

other areas under the new "European Green Deal", as the first strategic priority for the period until 2024. The negotiating framework for North Macedonia's EU membership has been presented in July 2020, and it is reasonable to expect that the available EU pre-accession assistance funds will also be directed towards the priorities mentioned above as well. However, this requires sound policies and administrative capacity for implementation on behalf of the recipients of such assistance, both governments and local authorities, which are currently not fully developed in North Macedonia. This was recognized in the last European Commission's North Macedonia 2020 Report[9], followed with a clear recommendation to *"strengthen significantly the regional development policy, improve the financial instruments put in place for its implementation and improve the administrative capacity at central and local level"*. When it comes to regional development policy, targeting financing is equally, if not more important as its swift delivery, and it requires adequate tools. A **composite development index that is based not only upon standard socio-economic data, but also has indicators to measure existing and new vulnerabilities that shows how gender is an intersecting factor would be a powerful tool in better targeting this policy.** Improving the scope and quality of data processed to calculate the developed Municipal Development Index could lead to future adjustment to also reflect the regional data, thus developing a policy instrument to be used for and beyond recovery.

- **The private sector** must be further motivated to actively participate in the regional development activities. The regional business centers established in the frames of the Regional Development Centers should be strengthened, and new business models for the RD Centers that would enable alternate sources of financing thorough public-private partnerships should be developed.
- Balanced regional development policy should support **partnership building activities and strengthening of the social capital**. Regional development funds should contribute to the activation of partnerships, networks, alliances for development as these are considered to be crucial for long-term and sustainable regional development.

9. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

BIBLIOGRAPHY

1. Amin, A, Thrift N. "Globalization, institutions and regional development in Europa", Oxford University Press, 1994.
2. Amin, A.; An Institutionalist Perspective on Regional Economic Development, Institutions and Governance, Economic Geograpgy Research Group Seminar, Department of Geograpgy, London 1998.
3. Bachtler, J., Méndez, C., Vironen, H.; Regional development and policy in Europe, Collection Studies n 2, Eurosocial Programme, Madrid 2014
4. Barca F. AN AGENDA FOR A REFORMED COHESION POLICY, A place based approach for meeting European Union challenges and expectations, 2009
5. Cooke P., Morgan K,; The network paradigm, New Departures in Corporate and Regional Development, Environment and Planning D, Wales, 1993.
6. Cvetanovska, S.B., Angelova, V.B.; Establishment and organization of regional development in Macedonia. Challenges and perspective, Pecob's Papers Series, University of Bologna – Forli Campus, 2012.
7. Cvetanovska-Gugoska, B., Goceva,V. Angelova, B.; Regional Development through the Use of the Potentials for Rural Tourism, Economic Development, Journal of the Institute of Economics-Skopje, No3/2013, pg.9-22, Skopje, 2013.
8. Etzkowitz, H. Leydesdorff L; The Dynamics of Innovation: From National System and Mode 2 to a Triple Helix of University-Industry-Government, Research Policy 29 2000 109–123, Elsevier, 2000.
9. Fukuyama, F; Trust: the social virtue and creation of prosperity, Free Press, New York, 1995.
10. OECD: Regional development policy in OECD countries, OECD publishing, 2010.
11. OECD A Territorial Approach to the Sustainable Development Goals, OECD publishing, 2020
12. Pike, A., Rodríguez-Pose, A. and Tomaney, J.; Local and Regional Development, Routledge, Oxon and New York, 2006
13. Putnam R.D., Leonardi R., Nanetti R.; Making Democracy Work: Civic Traditions in Modern Italy. Princeton: Princeton University Press; 1993.
14. Stimson R.R., Stough, R.J.; A New Model Incorporating Leadership and Institutional Factors as Mediating Variables in Regional Endogenous Growth, European Regional Science Association, Annual Conference, Porto, 2004.
15. Stimson, R.J., Stough R.R., Roberts B.H.; Regional Economic Development, Analysis and Strategy, Springer, 2006
16. Stough, Roger R. Engogenous Growth Theory and the Role of Institutions in Regional Economic Developnment in Johansson B., Karlsson Ch., Stough R.R.,Theory of Endogenous Regional Growth, editors Johansson B., Karlsson Ch., Stough R.R., Springer, Berlin, 2001.

17. Цветановска Б., Институционална поддршка за одржлив локален економски развој – Искуства и практики на италијанските региони, Економски развој, Списание на Економскиот институт, Скопје бр. 1-2/2010, стр.239-257 Скопје, 2010.

18. Цветановска-Гугоска Билјана, „Реафирмација на регионалниот економски развој: современи трендови за подобрување на ефикасноста на стратегиите и политиките“, докторска дисертација, Економски факултет, Скопје 2016

19. Министерство за локална самоуправа, Закон за рамномерен регионален развој, Службен весник на Република Македонија“ бр. 24, 2021 https://mls.gov.mk/images/files/Zakon%20za%20ramnomeren%20regionalen%20razvoj-mk.pdf

20. EU Progress Report 2020 https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/north_macedonia_report_2020.pdf

POLICY MAKING IN THE PANDEMIC: KOSOVO'S DOUBLE CHALLENGE

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Abstract

The response to Covid-19 has challenged almost every country around the globe. For a developing country like Kosovo, aspiring to Europeanize its policymaking system, the pandemic has exposed the fact that the lack of strong institutions that can deliver fast, evidence based, transparent and efficient is a serious shortcoming. This has contributed that policies that have been undertaken by Kosovo institutions to combat pandemic and mitigate its negative socio-economic impact be slow and not effective enough.

This paper examines the decision-making of Kosovo institutions regarding the implementation of measures to alleviate the socio-economic effects caused by the pandemic. It analyses, in qualitative and quantitative terms, the decisions of the Government of Kosovo regarding mitigation measures against the pandemic and the work of the Assembly of Kosovo in adopting the necessary legislation through which the legal basis for the implementation of measures aimed at responding to the pandemic is created. The paper brings two basic arguments: (i) that weak institutional capacity and quality has hampered the effective implementation of policies, and (ii) that fierce political polarization has resulted in very low efficiency of the work of Kosovo Assembly which has failed to approve in time the essential legislation directly related to pandemic management and mitigation

of its socio-economic effects. As a result of the two aforementioned factors, Kosovo has been slow in implementing more effective measures to alleviate the consequences of the pandemic.

Keywords: Covid-19, decision-making, Kosovo

INTRODUCTION

Kosovo is a new, developing country, aspiring to Europeanize its policymaking system. Coronavirus pandemic was an important test to see how much the country's democracy has advanced and its institutional quality improved as to be able to deal with serious crisis like Covid-19. This paper examines the decision-making process of Kosovo institutions regarding the implementation of measures to alleviate the socio-economic effects caused by the pandemic. It analyses in qualitative and quantitative terms the decisions of the Government of Kosovo regarding mitigation measures against the pandemic and the work of Kosovo Assembly in adopting the necessary legislation through which the legal basis for the implementation of measures aimed at responding to the pandemic is created. The paper brings two basic arguments: (i) that weak institutional capacity/quality has hampered the effective implementation of policies, and (ii) that fierce political polarization has resulted in very low efficiency of the work of Kosovo Assembly which has failed to approve in timely manner the essential legislation directly related to pandemic management and mitigation of its socio-economic effects. As a result of the two aforementioned factors, Kosovo has been slow in implementing more effective measures to alleviate the consequences caused by the pandemic. The paper suggests that in order to be more resilient to future socio-economic shocks and unforeseen crises like pandemics, Kosovo should work hard on building stronger institutions that can deliver quickly, effectively, evidence based, transparent, and leaving no one behind. The paper is organized as follows. The first section provides a literature review; the second section examines the Kosovo Government actions as well as Kosovo Assembly activity with regards to combating the adverse effects caused by COVID-19. The third part brings conclusions and recommendation.

1 LITERATURE REVIEW

Unlike another financial crisis, the coronavirus pandemic is even more complex. Due to safeguard measures to prevent the spread of the virus, the closure of economic activity is imposed. The effects are immediate and multidimensional. Besides a rapid increase number of patients into hospitals, there is a rapid downturn of economic activity, the loss of jobs, and the deterioration of the overall socio-economic situation. In this context, the questions raised by researchers, policy experts, international development organizations are how to adequately manage the pandemics. How should institutions act and what policy measures should be taken?

It must be said that coronavirus pandemic management was a new experience for all states. The world had not gone through a similar crisis for quite a long time. In this crisis, developments are fast, and the impact of actions is immediate. Of course, the magnitude of stroke caused by the pandemic depends also on how resilient the country is to such crises. The health sector is the one who faces the first pressure through enormous increase in patient numbers - which the available hospital capacities cannot handle. To avoid the collapse of the health system (which even in the most developed states proved to be limited to facing this COVID-19-like health emergency) then the lockdown is imposed. Immediate shutdown imposes disruption of economic activity of the size that outweighs previous global financial crises. Gourinchas (2020) brings to attention the fact that even at the peak of the 2008 financial crisis in the United States, despite the high rise in the unemployment rate, however, most of the population were employed and working. According to him: "the highest unemployment rate to reach the US was at 10%" (ibid. 33). On the other hand, he states that due to coronavirus "for a very short time – 50% or more of people are unable to work" (ibid.). For its part, the government must intervene to secure additional financing for the health sector, work on preserving macro-fiscal stability, financing enterprises to maintain their liquidity and to avoid (where possible) bankruptcy, providing support for social categories, provide additional funding for officials exposed by the direct risk from infection. The government's actions must be fast, efficient, balanced in order to cushion the downward shock as much as possible. In a word, it is a situation when the institutional 'machine' has to work at full capacity and at full speed. Gourinchas underlines that just as health specialists aim to 'flatten the curve' on SARS-Cov-2, gov-

ernments must as well work to prevent as much as possible the 'economic infection' (2020, 35). To him *"Fiscal and financial policies should then be designed to accompany the resulting shock to our economic system and prevent 'economic contagion'"* (ibid. 39). This is not the time to be cautious, he warns (ibid). **On the other hand, Gopinath highlights that the economic blow from the pandemic is more reflected in specific sectors of the economy or society. Therefore, according to her, targeted economic measures for the worst-hit segments are needed (2020, 46).** Goldberg (2020, 197) stresses that in terms of policy, "the immediate need is for health, not economic policy" adding also that "On the economic front, in the short term, governments need to provide calm, confident reassurance that they are there; and that economic policy will reinvigorate the world economy after the healthcare tsunami passes" (ibid.). **In his piece on 'Singapore's policy response to COVID-19',** Danny Quah highlights three important aspects: (i) the trust in political leadership, (ii) confidence in technical competence and (iii) scientific expertise. According to him, the well-functioning of these three components has proved that Singapore to be successful in managing the pandemic situation (2020, 111). Baldwin and di Mauro suggest employing the 'whatever it takes' moment for economic policy of Jason Furman. The 'whatever it takes' idea' comes at six points: (i) better to do too much rather than too little; (ii) use existing mechanisms as much as possible; (iii) invent new programs where necessary; (iv) diversify and do not fear duplication or unintended 'winners' in the response; (v) enlist the private sector as much as possible; and (vi) ensure the response is dynamic and persistent (Baldwin and di Mauro 2020, 15). As regard the management of the pandemic situation in the EU context, many researchers seek powerful role of the EU leadership. According to Bénassy-Quéré et al., (2020), European leaders have a historic moment through which they will be remembered for the manner of action taken in this difficult period. To Bénassy-Quéré et al., this crisis presents an opportunity for EU leaders "to build trust and to show unity, strength, consequence and solidarity" (2020, 121).

2 COVID-19 AND KOSOVO'S CHALLENGES

2.1 Political context

For Kosovo as a new state, which is in the process of strengthening its institutions; with limited capacity and resources, the coronavirus pandemic was a major challenge. Furthermore, Kosovo faced the pandemic crisis accompanied by a pronounced political crisis. After the resignation of former Prime Minister Ramush Haradinaj in July 2019, Kosovo went to early elections which were held on October 6, 2019. On February 3, 2020, the new government led by Prime Minister Albin Kurti took office, while on March 13, 2020, the first two cases of COVID-19 infections were registered. Two days later (March 15), Government declared a Public Health Emergency. Following bitter disagreements created between the two political parties of the ruling coalition, the Government led by Mr. Kurti was dismissed after a vote of no confidence in the Parliament. On 03 June 2020, another government led by Prime Minister Avdullah Hoti took office. Due to a decision of the Constitutional Court, dated 21 December 2020, where the illegality of the voting of Hoti Government by a member of the Assembly of Kosovo is ascertained, the Hoti Government also collapses. On 14 February 2021 snap elections were held with new Government led by Albin Kurti established on 22 March 2021.

2.2 Key government policy responses

Table 1: Covid-19 Timeline

March 13, 2020	The first two cases were reported
March 15, 2020	Government declared Public Health Emergency
March 23	Government declared a curfew
May 4	Government declared a relaxation measures with lifting of restrictions over three waves
July and November 2020	Containment measures (like nightly curfews) were reintroduced
As of March 25, 2021	- more than 84 172 cases with SARS-CoV-2 - with 1811 deaths

Adapted by authors.

Restrictive measures and decreased economic activity had significant effects to the state budget, with sharp fall on revenues, pressure on the expenditures, a significant increase of deficit and the need to finance

it. According to the Ministry of Finance the Kosovo economy shrunk by 6.7% during 2020, while according to IMF (2020), Kosovo is estimated to have contracted by about 6 percent of GDP in 2020. On 30 March 2020, the Kosovo Government approved Emergency Fiscal Measures (Decision Nr. 01/19) and as of April 3, 2020, the Operational Plan for implementing these measures was released by the Ministry of Finance. This package consisted of 15 measures which aimed to provide immediate support to businesses, citizens and social categories affected most. On 30 July, Kosovo Government approved an Economic Recovery Program along with operational plan for implementation (GoV Decision Nr. 01/23) which includes an additional EUR 185 million for the year 2020, thus increasing the amount of budget intervention to combat the pandemic in the amount of 365 million euros or 4.3 percent of GDP. In addition to direct financial support measures, the Government of Kosovo took other mitigating actions enabling businesses to defer the payment of taxes, remove penalties for late payment of taxes, etc. In order to create the necessary fiscal space to finance the additional needs caused by the pandemic crisis, Kosovo government took a series of actions. In July 2020, the budget for 2020 was reviewed. The revised budget had to reflect the changes occurred as a result of the decline in budgetary inputs and reprioritize the financial needs in line with situation created by the pandemic. In addition, the change in fiscal rules has been made, through which the expansion of fiscal space has been enabled, namely the fiscal deficit which is allowed to reach 6.5 percent of GDP, up from 2 percent of GDP as it was earlier. Also the bank balance has been allowed to reach 3 per cent of GDP, from 4.5 per cent that was previously. The review of the Medium-Term Expenditure Framework for the period 2021-2023 has also been done to reflect budgetary changes and also funding priorities imposed by the pandemic. It is worth noting that in the revised budget for 2020, funding for the health sector increased by 13 per cent compared to the 2019 budget. Over the medium term, the overall budget is expected to increase by an average of 3.1 per cent per year (ERP 2021-2023).

2.3 Planned recovery support for 2021

On 14.01.2021, Government of Kosovo approved new measures for implementing the Economic Recovery Program for 2021 (3.1 percent of GDP) (IMF 2020). Recovery measures for 2021 aim to support the Governing Program for the period 2020-2023, but also to be in line

with the National Development Strategy 2021-2039, the EU integration agenda, as well as the Sustainable Development Goals of Agenda 2030. The Law on Economic Recovery, approved on December 4th 2020, envisages several modes of support to the economy: Stimulate aggregate demand via enabling early access to Kosovo Pension Savings Trust funds; Facilitating access to finance by increasing coverage by Kosovo Credit Guaranty Fund, and covering credit risk and interest rates for businesses and farmers; Direct support to the business sector - operations and investment; Support to individuals losing employment due to the pandemic; Easing the tax burden, e.g. by applying the 8% reduced VAT rate for HORECA; Tax debt interest exemption for debt created in 2020 conditional on the payment of the accrued debt; VAT exemption for raw materials produced in Kosovo (used in the production process) and agricultural insurance products (Law Nr. 07/L-16).

As per the upcoming period, real economic growth is estimated at an average of about 4.5% during the period 2021-2023, fluctuating from 5.2% in 2021, 4.1% in 2022; and 4.2% in 2023 (ERP 2021-2023).

2.4 Implementation Challenges

The flow of implementation of government measures was accompanied by difficulties and delays. This is due to various decisions aimed at quick intervention in order to mitigate the economic consequences for businesses, increase the capacities of the health system and support families hit by pandemics. In this period, as stated above, Kosovo went through a process of government changes and political clashes. These circumstances, for a small country like Kosovo, affect that policies cannot be implemented quickly and effectively. Regarding institutional approach in pandemic circumstances, Jason Furman (2020) highlights the importance of three components to be taken into account. The first is 'uncertainty,' because as he points out, macroeconomic policy "*is operating under substantial uncertainty at the best of times, given the impossibility of definitive evidence from randomized control trials and the fact that the key structural parameters of the economy are likely fluctuating over time"* (Furman 2020, 192, 193); second, is 'time,' and the third is 'capacity' which, as he points out, is reduced significantly due to the fact that a number of staff must work from home, a number of them is sick or worried about their health and their families (ibid.). To meet these three important components outlined by Furman, it is to be said that a state first and foremost must have qualitative and efficient institutions

in place. As for Kosovo, one cannot say that it stands well in terms of the quality of institutions and the genuine functioning of democracy. In the index 'Freedom in the World, 2020' by Freedom House, Kosovo is rated as a 'partly free' country with 56 points out of 100.

Table 2: *Democracy indicators of the Freedom House 2020*[1]

	Political rights	Civil liberties	Total points (out of 100)
Kosovo	25	31	56

Source: Freedom House, 'Freedom in the World, 2020'.

In the 'Corruption Perception Index 2020' of 'Transparency International,' Kosovo also scores poorly - 36 points out of 100 - and ranks in 104th place out of 180 states surveyed (Transparency International 2020). In the Bertelsmann Stiftung's Transformation Index, which examines the quality of democracy, market economy and governance, Kosovo does not score well too. In the category of 'Political Transformation,' Kosovo is qualified as a 'Defective democracy'; in the 'Economic Transformation,' Kosovo's rating is 'limited,' while in the 'Governance Index' the qualification is 'moderate' (BTI 2020).

Table 3: *Bertelsmann Transformation Index 2020*

Kosovo		
Political Transformation	Defective democracy	6.55
Economic Transformation	Limited	5.86
Governance Index	Moderate	5.33

Source: BTI 2020.

Implementation process of the mitigating measures faced with many delays and difficulties. Emergency Fiscal Package measures approved by the government on 30 March 2020, failed to be fully implemented in the absence of the revised budget law for 2020. The revision of the budget was necessary because the revised budget appropriations had to be oriented on financing the government measures to combat the pandemic – measures that were unplanned in the early original version of the state budget. Only by the end of July 2020, the revised budget for 2020 was approved by Kosovo Parliament, thus paving the legal way to complete the execution of unfinished payments from the Emergency Fiscal Package that was approved in March 2020. On the other hand, difficulties associated with poor capacity in policy setting, policy

1. Note: For Political rights, the range is from 0 to 40, and for Civil liberties from 0 to 60.

shaping and implementation were evident, especially when it comes to developing certain policy-measures, defining criteria, lack of adequate capacities to assess the adverse impact on the specific sectors etc. In sum, lack of evidence-based policy making, lack of capacity to dealing with hundreds of thousands of applications, too many technical errors and long and time-consuming work of complaints commissions, were the most important shortcomings that made the process difficult to implement. This brought to the attention the fact that the process of digitalizing government services and data should be further advanced so that government decisions and its implementation are based on accurate and verifiable data since this would reduce the margin of errors, increase transparency and give the credibility to the policy process in front of Kosovo taxpayers. However, being aware that swift action is essential in reducing the effects of the pandemic, the Kosovo Government has managed to a certain degree carry out its activities far more than the Assembly during the pandemic time. There were more than 400 000 beneficiaries during 2020 from the measures taken by the Government (ZKM 2020). Even though there were no targeted support sectorial measures designed, as some international partners suggested (EU Report 2020), yet, taking into account the lack of reliable statistical data, Government opted to better go providing financial support to all private businesses as quickly as possible rather than struggle with its limited capacities to measure which economic sector has been hit harder, and that financial support to be proportionate with the level of the damages caused to business.

2.5 Assembly Activities

During the pandemic period, the Assembly of Kosovo was characterized with very low efficiency because of high political polarization and the lack of a majority of the governing coalition. At a time when the actions of legislative and executive powers in combating the adverse effects of the pandemic required great responsibility and high efficiency in actions, the Assembly was faced with a decision-making paralysis. A significant delay was caused as regard to approving essential legislation and other important decisions including the "issues of major importance related to the COVID-19 crisis, such as the ratification of international financing agreements" (EU Commission 2020, 9). Given that Kosovo Government had declared the Public Health Emergency on 15 march 2020, only by August 2020 the Assembly was able to adopt a Law on prevention and fight against the COVID-19 pandemic, through which law the legal basis

for the implementation of various measures for the preservation of public health in the period of COVID-19 is provided. Moreover, the closure of the spring session by the Assembly at a time when the country was facing a pandemic was also criticized by civil society (KDI 2020). In the absence of the necessary votes of 2/3 of the deputies, five important international agreements were ratified only after the third attempt (KDI 2020). In addition, one of the most important laws for mitigating the socio-economic effects of the pandemic, such as Law No. 07/L-016 on Economic Recovery COVID-19, failed to be approved until 4th of December 2020, facing a delay of five months from its submission to the Assembly. As per the low efficiency of the Assembly, it is to be noted that during 2020 only 17 laws were approved (out of 146) constituting a fulfillment of only 11.64% of the legislative agenda (Vota ime 2020). According to KDI (2020a) in terms of the number of laws adopted, 2020 is considered the weakest year of the Assembly since 2008. The 2020 Report on Kosovo of the European Commission states that the Assembly of Kosovo "did not improve its overall performance as a forum for constructive political dialogue and representation, as demonstrated notably by the frequent lack of quorum. (EU Commission 2020, 4).

CONCLUSIONS AND RECOMMENDATION

In crisis like this with COVID-19, when all institutional capacity must be put in place for effective management to mitigate the adverse effects of the health crisis and socio-economic deterioration, Kosovo faced with high political instability. Fierce political polarization has resulted in a very low efficiency of the Assembly. The latter has failed to approve in timely manner the essential legislation related to pandemic management and mitigation of its socio-economic effects. On the other side, the change of governments in the midst of the pandemic, the long tenure of governments in office, and weak institutional quality has hampered the effective implementation of policies. In times of health and economic uncertainty, the actions of institutions must be qualitative and transparent. In this regard communication with the public is crucial to building a mutual trust between institutions and citizens. However, in the case of Kosovo, high degree of political polarization and political instability throughout pandemic period has further increased the level of public dissatisfaction with the work of institutions. This is evidenced in the latest "Public Pulse XIX" which reflects the attitudes of the people of

Kosovo regarding the impact of COVID-19 on the economic well-being, physical health and mental health of the respondents, as well as their satisfaction with the measures taken by Kosovo institutions to prevent the spread of COVID-19. Survey findings – conducted in December 2020 – show "a significant decrease in citizens' satisfactions with the work of key executive and legislative institutions of Kosovo, compared to April 2020" (Public Pulse XIX 2020, 6). According to the survey, satisfaction with the work of the executive from 60.7% as it was in the survey conducted in April 2020, has decreased to 21.3% which is a drop of 39.43 percentage points. Whereas the level of satisfaction with the Assembly has dropped from 33.4% in April 2020 to 22.6% (ibid. 8).

To be resistant to socio-economic shocks and unforeseen crises like pandemics, Kosovo should work hard on building stronger institutions that can deliver quickly, effectively, evidence based, transparent, and leaving no one behind.

REFERENCES

1. Baldwin, R., and W. di Mauro. 2020. *Mitigating the COVID Economic Crisis: Act Fast and Do Whatever It Takes*. a VoxEU eBook, CEPR Press. Available at: file:///C:/Users/Administrator/Downloads/COVIDEconomicCrisis.pdf
2. Bénassy-Quéré et al., 2020. 'COVID-19: Europe needs a catastrophe relief plan.' In *Mitigating the COVID Economic Crisis: Act Fast and Do Whatever It Takes*, edited by Baldwin, R., and W. di Mauro, 121-123. London: CEPR Press.
3. BTI. 2020. *'BTI 2020 Country Report — Kosovo.'* Gütersloh: Bertelsmann Stiftung. Available at: https://www.bti-project.org/en/reports/country-dashboard-RKS.html
4. Quah, D., 2020. 'Singapore's policy response to COVID-19.' In *Mitigating the COVID Economic Crisis: Act Fast and Do Whatever It Takes*, edited by Baldwin, R., and W. di Mauro, 103-112. London: CEPR Press.
5. ERP 2021-2023. 'Economic Reform Programme 2021-2023.' Government of Kosovo. Available at: https://mf.rks-gov.net/desk/inc/media/06B63BCF-DEA0-4DE7-98D1-C99E0912272C.pdf
6. EU Commission 2020. 'Kosovo Report 2020.' European Commission. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf
7. Freedom House. 2020. 'Freedom in the World, 2020'. Freedom House. Available at: https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy

8. Furman, J., 2020. 'Protecting people now, helping the economy rebound later.' In *Mitigating the COVID Economic Crisis: Act Fast and Do Whatever It Takes*, edited by Baldwin, R., and W. di Mauro, 191-196. London: CEPR Press.

9. Goldberg. P., 2020. 'Policy in the time of coronavirus.' In *Mitigating the COVID Economic Crisis: Act Fast and Do Whatever It Takes*, edited by Baldwin, R., and W. di Mauro, 197-202. London: CEPR Press.

10. **Gopinath, G., 2020.** 'Limiting the economic fallout of the coronavirus with large targeted policies.' In *Mitigating the COVID Economic Crisis: Act Fast and Do Whatever It Takes*, edited by Baldwin, R., and W. di Mauro, 41-48. London: CEPR Press.

11. Gourinchas, P. O. 2020. 'Flattening the pandemic and recession curves.' In *Mitigating the COVID Economic Crisis: Act Fast and Do Whatever It Takes*, edited by Baldwin, R., and W. di Mauro, 31-40. London: CEPR Press.

12. Government Decision Nr. 01/19 on the Emergency Fiscal Measures. Government of Kosovo. Available at: https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-i-Qeveris%C3%AB-nga-Mbledhja-e-19.pdf

13. Government Decision Nr. 01/23. 'Economic Recovery Program.' Government of Kosovo. Available at: Vendim-nga-mbledhja-e-23-të-e-Qeverisë.pdf (kryeministri-ks.net)

14. IMF. 2020. 'Policy Responses to COVID-19.' Washington, D.C.: International Monetary Fund.

15. KDI. 2020. 'Puna e Kuvendit – peng i brishtësisë së shumicës parlamentare.' Prishtinë: Instituti Demokratik i Kosovës. Available at: www.kdi-kosova.org.

16. KDI. (2020a). 'Kuvendi i Kosovës me performancë të dobët në vitin 2020.' In Gazeta Express. https://www.gazetaexpress.com/kuvendi-i-kosoves-me-performance-te-dobet-ne-vitin-2020/

17. Law Nr. 07/L-16 on Economic Recovery – Covid-19. Official Gazette of the Republic of Kosova. Available at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=35478

18. Ministry of Finance. 2020. 'Operational Plan for Fiscal Emergency Package.' Ministry of Finance. Available at: https://mf.rks-gov.net/desk/inc/media/8053C963-0048-4F21-AF6A-383A396B7578.pdf

19. OPM. 2020. 'Raporti i punës i Qeverisë së Republikës së Kosovës (qershor-dhjetor 2020). Zyra e Kryeministrit. Available at: https://kryeministri-ks.net/wp-content/uploads/2021/01/RAPORTI-I-TE-ARRITURAVE_09012021_ZPS.pdf

20. Transparency International. 2020. 'Corruption Perception Index 2020.' Transparency International. Available at: https://www.transparency.org/en/cpi/2020/index/ksv

21. UNDP. 2021. 'Public Pulse XIX.' Prishtina: United Nations Development Programme. Available at: file:///C:/Users/Administrator/Downloads/PULSE_PUBLIC_ALB%20(1).pdf

22. Vota ime. 2020. Prishtinë: Instituti Demokratik i Kosovës. Available at: www.votaime.org

CHAPTER FOUR:

Administration of Justice in the time of Pandemic

DISCHARGE OF THE LEGAL OBLIGATIONS AGAINST PASSENGERS IN AIR TRANSPORTATION CONTRACTS UNDER PANDEMIC CIRCUMSTANCES

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Abstract

The study approaches the legal intricacies raised by the interpretation, in the pandemic context, of the provisions of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. The study also explores the incidence of the contractual liability rules in the hypotheses in which public authorities prohibited certain flights or banned the movement of persons in a manner that excluded the flight in question to be operated, in the context of the measures took in order to limit the pandemic extension, while legally approaching the cases in which the passengers' right to compensation ceases to exist, the air carrier being exonerated from payment due to extraordinary circumstances outside its aria of control. The study proposes the refinement of a conceptual and jurisprudential distinction between the passengers' right to compensation based on the air carrier culpability or professional negligence, on one hand and the passengers' right to opt for the termination of contract, followed by the admission of passengers' request for full reimbursement, especially in cases in which the alternative of re-routing was uncertain, due to flight restrictions under the pandemic context. The article portrays the legal reverberations of the fact that the acceptance of vouchers remains optional for the passengers, as underlined in the European Commission's Interpretative Guidance from March 18, 2020; this situation has to be distinguished from the situation where the carrier cancels the journey and offers only a voucher instead of the choice between reimbursement and re-routing. Should the air carrier propose a voucher, this offer cannot affect the passenger's ri-

ght to opt for reimbursement. In our opinion, forcing the consumer to accept a voucher instead of reimbursement may represent, in a court of law, an unfair, misleading or abusive business practice.

Keywords: passengers' rights, air transportation, compensation, flight delay, flight cancellation, extraordinary circumstances, Regulation (EC) 2004/261, COVID-19 pandemic

1. INTRODUCTORY NOTES

Air passengers' rights in the peculiar context of the persistent travelling restrictions under the current pandemic outbreak, including containment measures of national authorities, such as travel restrictions, lock-downs and quarantine zones, red-zone scenarios and yellow-zone scenarios, massive flight cancellations and enormous flight delays were severely affected, in terms of legal warranties applicable to adequate compensation.

Is the passengers' right to reimbursement[1] still exercisable under the new legal context, as an alternative to the re-routing, under comparable transport conditions, to their final destination at the earliest opportunity? Is the air carrier's liability for flight cancellation or flight delay removed, based on the incidence of *force majeure,* represented by the restrictive measures taken by the national authorities and are these measures (not) „foreseeable" in a legal sense which has been raised given the increased awareness of pandemics? Is the air passengers' right to compensation distinguishable from their right to reimbursement and which of these binomial rights is affected in the case of events that are unforeseeable, external to the air carrier's activity and irresistible, in terms of reasonable measures? These are three distinct, but interrelated issues pertaining to the interpretative interrogations raised on

1. For previous approaches of the subject of compensation, see R. Pazos, „El Derecho a Compensación Por Retraso En La Normativa Europea De Transporte Aéreo De Pasajeros", InDret, no. 2/2017; S. Truxal, „Air carrier liability and air passenger rights: a game of tug of war?", Journal of International and Comparative Law, 4(1)/2017, pp. 103-122; S. Truxal, "Consumer Protection and Limited Liability: Global Order for Air Transport?", Journal of International and Comparative Law 1(1)/2014, pp. 111–119; S. Truxal, „COVID-19 airport slot rules: what's changed and what's next for European airlines?" British Policy and Politics at LSE (06 Apr 2020), available at http://eprints.lse.ac.uk/104510/, accessed on February 28, 2021; W. Verheyen, B. Dikker, „10 years of 261/2004: any excuses left?", European Transport Law, 50(6)/2015.

the air passengers' rights in the context of flight cancellation and flight delays motivated by the restrictive measures took for the preventing of the dispersion of Covid-19.

The main scholarly interrogations[2] were related to the interpretation of the provisions of article 8, par. (1) of Regulation (EC) No 261/2004 on the passengers' right to reimbursement or re-routing[3], in accordance to which „1. Where reference is made to this Article, passengers shall be offered the choice between:

(a) — reimbursement within seven days, by the means provided for in Article 7, par. (3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, — a return flight to the first point of departure, at the earliest opportunity;

(b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats."

The European Commission's Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, published on March 18, 2020[4] postulated that consumers'

2. See S. J. Fox, L. Martín-Domingo, „EU Air Passengers' Rights Past, Present, And Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study)", Journal of Air Law and Commerce, 85(2)/2020, pp. 271-307.

3. See, for extended remarks, N. Balat, J. Jourdan-Marques, L. Siguoirt, „L'indemnisation et l'assistance des passagers du transport aérien. Regards civilistes sur le règlement N°261/2004", LexisNexis, Paris, 2019, p. 24-36; H. Gnutzmann, P. Spiewanowski, „Can Regulation Improve Service Quality? Evidence from European Air Passenger Rights", Robert Schuman Centre for Advanced Studies Research Paper RSCAS no. 44/2018; P. C. Haanappel, „Air Passenger Rights in the Electronic Age", Air and Space Law, Issue 1(43)/2018, pp. 3-20, available at https://kluwerlawonline.com/journalarticle/Air+and+Space+Law/43.1/AILA2018002, accessed on February 28, 2021; Ph. Monmousseau, A. Marzuoli, E. Feron, D. Delahaye, „Impact of Covid-19 on passengers and airlines from passenger measurements: Managing customer satisfaction while putting the US Air Transportation System to sleep", Transportation Research Interdisciplinary Perspectives 7(2020), available at https://www.sciencedirect.com/science/article/pii/S2590198220300907, accessed on February 28, 2021; M. Pavliha, „Enlightenment of the European Attitude Towards Passenger Rights: *In dubio pro consumatore*", European Transport Law, 48(3)/2013.

4. European Commission Notice - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, C/2020/1830, published in OJ C 89I,

choice to terminate the contract (in cases of flight cancelation) and to solicit the immediate reimbursement of costs cannot be denied on the premises of the financial difficulties faced by air transport operators, nor can the operators impose to consumers the acceptance of vouchers or future discounts as a form of reimbursement.

Previous scholars have differentiated between the passengers' right to supplementary compensation for flight cancellation or flight delay pending on the carrier's couplable behaviour or unjustified negligence (a) and, on the other hand, passengers' right to retroactively terminate the contract and to solicit full refund of the ticket costs (b), which does apply even in the cases in which the termination of the contracts occurs independently of the transport operator's fault, since the payment of the price no longer finds its immediate causation in the performance of the carrier's contractual duties[5].

In the case of a flight cancellation by the airlines (irrespective of the cancellation cause), Article 5 of Regulation 261/2004 obliges the operating air carrier to offer the passengers the choice among:

a) reimbursement (refund);

b) re-routing at the earliest opportunity, or

c) re-routing at a later date at the passenger's convenience.

Regarding refund of costs, in cases where the passenger books the outbound flight and the return flight separately and the outbound flight is cancelled, the passenger is only entitled to reimbursement of the cancelled flight. In our opinion, forcing the consumer to accept a voucher instead of reimbursement may represent, in a court of law, an unfair, misleading or abusive business practice[6].

18.03.2020, pp. 1–8.

5. See, for details, K. Cseres, A. Reyna, „EU State Aid Law and Consumer Protection: An Unsettled Relationship in Times of Crisis", Amsterdam Law School Research Paper No. 2020-32, Amsterdam Centre for European Law and Governance Research Paper No. 05/2020.

6. In terms of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, as modified by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, article 7, par. (1) and par. (2), „A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. (2). It shall also be

On the other versant, as resulting from the following sections of our study, the passengers' right to choose between reimbursement and rerouting may be seen as in-exercisable, due to flight restrictions imposed by national authorities in the pandemic context. In should thus be noted that the European Commission, in its Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, published on March 18, 2020 retained that „As regards re-routing, the circumstances of the Covid-19 outbreak may have an incidence on the right to choose rerouting at the 'earliest opportunity'. Carriers may find it impossible to re-route the passenger to the intended destination within a short period of time." As resulting from the EC' Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, „Moreover, it may not be clear for some time when re-routing will become possible. This situation may for example arise where a Member State suspends flights arriving from certain countries / regions. Depending on the case, the 'earliest opportunity' for re-routing may be considerably delayed or be subject to considerable uncertainty"; „reimbursement of the ticket price or a rerouting at a later stage 'at the passenger's convenience' might therefore be preferable for the passenger" (EC Interpretative Approaching[7]).

regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise."

7. European Commission Notice - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, C/2020/1830, *cit. supra.*

II. REMOVING THE LIABILITY OF AIR CARRIERS IN EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES

II.1. Air transport contractor's liability beyond *force majeure*[8] and non-couplable damages. Extraordinary / exceptional circumstances and exoneration of liability towards passengers represent a recurrent theme in specialised literature on the air passengers' right to adequate compensation[9]; according to the provisions of Regulation (EC) 261/2004, the air carrier is obliged to fulfil the obligation of care even when the cancellation of a flight is caused by extraordinary circumstances, implying circumstances that could not have been avoided even if all reasonable measures had been taken.

It is worth underlining, however, that, although it contains provisions concerning the exceptional circumstances as causing the exempt of liability, the Regulation encompasses no provisions recognising a separate category of „particularly extraordinary" events, beyond the extraordinary circumstances[10] referred to in Article 5, par. (3) of the Regulation

8. It should be noted that the concept of force majeure originated in French Civil law and currently represents an accepted standard in many jurisdictions that derive their legal systems from the Napoleonic Code, such as the Romanian Civil law system, both in the tort liability as well as in contractual liability; nevertheless, the *force majeure* as an exempt of liability cause often conflicts with the concept of *pacta sunt servanda* according to which contractual agreements must be kept and the parties must perform their contractual (interrelated) obligations, except in cases of exceptional, unforeseeable and irresistible events.

9. N. Balat, J. Jourdan-Marques, L. Siguoirt, *op. cit.*, p. 24-36; H. Gnutzmann, P. Spiewanowski, *loc. cit. supra*; P. C. Haanappel, *op. cit.,* pp. 3-20, A. Marzuoli, E. Feron, D. Delahaye, *cit. supra*, p. 3.

10. In Case C-37/21, a Request for a preliminary ruling was addressed to the Court of Justice of the European Union
under Article 267 TFEU by the Amtsgericht Hamburg (Local Court, Hamburg, Germany) the Local Court, Hamburg, on the is seized of legal disputes in the context of the application of the Air Passenger Rights Regulation (Regulation (EC) No 261/2004), in which the parties are in dispute as to whether the postponement of permission to take off by air traffic management establishes, in itself, an extraordinary circumstance within the meaning of Article 5(3), without it being relevant whether or not the reason for that postponement of authorisation to take off constitutes, for its part, an extraordinary circumstance. As it has been observed, „That question is also a point of contention, in particular, if the reason for the delay in the granting of authorisation to take off was the weather conditions prevailing at the airport, without those conditions actually being extraordinary for the region and time of year. In view of the disputes repeatedly arising in this regard at a location such as Hamburg, the referring court assumes that these legal questions are currently also of importance in numerous proceedings at other court locations with large airports, both in the Federal Republic of Germany and throughout Europe, such that the referring court considers that it would be appropriate for the Court of Justice of the European Union to take a position on this question of the interpretation of Article 5(3) in order to create legal clarity for the future throughout Europe". It has also been underlined that „The air carrier asserts, as justification for such an extraordinary circumstance, that the flight at is-

No. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding in the event of the cancellation or long delay of flights.

Lack of passengers' right to compensation in the context of extraordinary circumstances is therefore a recurrent theme in scholarly discourse on the compensatory system, both in the binomial tort liability - contractual liability approaches, according to the classic dichotomy between ordinary circumstances and extraordinary circumstances in which the contractual parties' liability is removed.

As the epitome of the compensatory damages is contoured, the Regulation (EC) no. 261/2004 also provides for fixed sum compensations in some circumstances, in favour of the air passengers. These provisions on compensatory retribution do not apply to flight cancellations made more than 14 days in advance or where the cancellation is caused by extraordinary circumstances that could not have been avoided despite all reasonable measures which had been taken by the diligent air carrier (in accordance to Article 5, par. (1) and Article 7 of the Regulation no. 261/2004).

sue landed in Krakow with a long delay because it had already departed from Hamburg with a long delay, which, in turn, was due to the fact that the previous flight from Krakow had arrived in Hamburg with a long delay. This, in turn, was due to the fact that take-off had been delayed by 4 hours and 52 minutes in Krakow due to bad weather [...]. The bad weather consisted of fog, which had led to poor visibility, endangering flight safety. The air carrier takes the view that an extraordinary circumstance exists because the weather conditions do not fall within the defendant's area of responsibility. The referring court does not consider the circumstances asserted by the air carrier to be sufficient to establish conclusively an extraordinary circumstance within the meaning of Article 5(3) of the regulation. In its interpretation of the concept of 'extraordinary circumstance' within the meaning of Article 5(3) of the regulation, the referring court proceeds on the basis of the following legal principles:

3.1.: The exception under Article 5(3) is to be interpreted narrowly, as is the case with all exceptions.

3.2.: Circumstances are extraordinary only if they are out of the ordinary (CJEU, NJW 2013, 921, paragraph 29).

3.3.: The list in recital 14 does not automatically give rise to grounds justifying extraordinary circumstances, but always requires a case-by-case assessment (CJEU, C-549/07).

3.4.: 'Outside the ordinary' or 'out of the ordinary' within the meaning of the Court of Justice's case-law is not to be equated with the terms unexpected, 'through no fault', unavoidable, unusual or 'beyond the control'.

3.5.: A circumstance is extraordinary within the meaning of Article 5(3) of the regulation only if it is not inherent in the normal exercise of the activity of air carriers and is beyond their actual control on account of its nature or origin (CJEU, C-549/07; CJEU, C-257/14).

3.6.: Not every event that is unavoidable for the air carrier is sufficient for the assumption of an extraordinary circumstance, but rather only those that go beyond the usual and expected processes of air travel [...]". The complete text of the Request for a preliminary ruling addressed in case C-37/21 is available at http://curia.europa.eu/juris/showPdf.jsf?text=air%2Bpassengers&docid=238542&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=245867, accessed in 09 March, 2021.

It is worth noting that the European Commission considers[11] that, where public authorities have taken measures intended to contain the Covid-19 pandemic, `such measures are by their nature and origin not inherent in the normal exercise of the activity of air carriers and are outside their actual control"[12]. Therefore, is would be an adequate assertion to consider that the provisions of Article 5, par. (3) of Regulation no. 261/2004 became applicable in these hypotheses from the perspective of the air carrier's contractual liability beyond independent torts, since according to the mentioned legal provisions, the passengers' right to compensation is waived on condition that the cancellation in question is caused by extraordinary circumstances, which could not have been avoided even if all reasonable measures had been taken by the air carrier, the vigilance duty of which must be also observed in terms of reasonableness and due diligence.

Lastly, compensation due to air passengers for flight unreasonable delay or flight cancelation also depends on the admission of the existence of extraordinary circumstances (in cases of exceptional, unforeseeable and irresistible events causing the flight cancellation or the flight delay). Should this condition be considered fulfilled, where public authorities either outright prohibit certain flights or ban the movement of persons in a manner that excludes, *de facto,* the flight in question to be operated as scheduled? The European Commission's response is an affirmative one[13], adding that this condition (on the exempt of liability based on exceptional circumstances confronting the air carriers flight schedule) may also be fulfilled, where the flight cancellation occurs in circumstances where the corresponding movement of persons „is not entirely prohibited, but limited to persons benefitting from derogations (for example, nationals or residents of the state concerned)".

II.2. A more flexible approach to the air passengers' right to assistance. Passengers' right to assistance deserves an adequate approach, since nor its existence, or its legal dimensions are substantially affected by the removal of the air carrier's liability for (non)couplable behaviour

11. European Commission Notice - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, C/2020/1830, published in OJ C 89I, 18.03.2020, pp. 1–8, *loc. cit. supra.*
12. In the cases in which the passenger is delayed, the air carrier is considered to be liable for damages unless it took all reasonable measures to avoid the damage or it was objectively impossible to take such reasonable measures.
13. European Commission Notice - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, C/2020/1830, cit. supra, p. 3.

related to flight cancelation. Thus, it is worth noticing that the intention underlying the provisions of Regulation (EC) no. 261/2004 on the right to care is that the needs of passengers waiting for their return flight or re-routing are adequately addressed. As it has been underlined by specialised literature[14], the extent of adequate care will have to be assessed on a case-by-case basis, taking into account, as specified in previous scholarly papers[15], the needs of passengers in the circumstances and the principle of proportionality. The cease of the passengers' right to beneficiate of assistance may represent a point of legal intricacies, since according to Article 9 of the Regulation no. 261/2004, passengers who are affected by a flight cancellation must also be offered care / assistance by the operating air carrier, in a non-onerous manner (free of supplementary charges); volumetrically, the performance of the air carrier's duty of care may encompass the offering of meals and refreshments in a reasonable relation to the waiting time, hotel accommodation for air passengers if necessary, and transport to the place of accommodation. Moreover, airports are to provide assistance to disabled passengers and passengers with reduced mobility in accordance with Regulation (EC) No. 1107/2006.[16]

The air carriers' duty to provide for assistance to passengers remains intact despite the removal of the air carriers' liability for flight cancellation; thus, even in the hypotheses in which all criteria set in Article 5, third paragraph of Regulation no. 261/2004 pertaining to the carrier's exempt of contractual liability are met, air carriers are still under an obligation to assist affected passengers in accordance with the provisions of article 8, corroborated with the provisions of article 9 of the Regulation no. 261/2004, which provide for a right to reimbursement or rerouting at a later date and a right to care in the form of meals, hotel accommodation (if necessary) and transport between airport and hotel. It should be noted that this direction of interpretation has also been previously confirmed by the European Commission in its Interpretive Guidelines[17]. This direction of interpretation deviates sharply

14. N. Balat, J. Jourdan-Marques, L. Siguoirt, *op. cit.*, p. 24-36; H. Gnutzmann, P. Spiewanowski, *loc. cit. supra.*

15. K. Cseres, A. Reyna, *op. cit.*, p. 4.

16. Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air was published in OJ L 204, 26.7.2006, p. 1–9.

17. European Commission Notice — Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of

and remarkably from the contractual regime of compensatory damages; obviously, the legal implications of the pandemic may entail limitations as to what types of compensatory damages are admissible for payment upon the passengers' request; hotel accommodation may be under restrictions or have limited availability, rerouting may be impossible and so on, but the obligation to do as much as reasonably possible remains.

It is worth recalling that cancellation of flights at least two weeks before departure marks a swich from the retaining of air carrier's contractual liability to the admissibility of compensatory claims made by passengers, except in cases in which the flight cancellation was due to exceptional circumstances, situated outside the air carrier's area of control. As it has been previously mentioned[18], air carriers will not be obligated to pay compensation to passengers should the latter be informed of the flight cancellation at least two weeks before departure, in accordance with the provisions of Article 5, let. c) of Regulation No 261/2004. The mentioned legal solution becomes applicable as a standard resolutory matrix of tort compensation in air transport contracts, regardless of whether COVID-19 preventing measures were regarded as extraordinary circumstances. This liability exemption, however, may prove to be of particular importance in the situation of the restrictive measures imposed by national authorities in almost all member-states, although different in certain aspects of form, dimensions and duration.

Nevertheless, when the passenger opts for reimbursement of the full cost of the ticket[19], the right to assistance ceases to exist, under positive law, as explained in specialised literature[20]. In this respect, it is worth noticing that the same solution is applicable when the passenger chooses re-routing at a later date at the passenger's convenience, as resulting from the provisions of Article 5, par. (1), (b) in conjunction with the provisions of Article 8, par. (1), (c) of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council, C/2016/3502, published in OJ C 214, 15.06.2016, pp. 5–21

18. Supra, section II.1.

19. As it has been noted, the EU's passenger rights regulations do not address situations where passengers cannot travel or want to cancel a trip on their own initiative. Therefore, whether or not a passenger is reimbursed in such cases depends on the type of ticket (reimbursable ticket, passengers' possibility to rebook).

20. See K. Cseres, A. Reyna, *op. cit.*, p. 5.

Based on the provisions of Regulation (EC) 261/2004, which is directly applicable to most flights to and from Romania, we must distinguish between the solutions providing passengers with a right to compensation in case a flight is cancelled or delayed for more than three hours and the solutions applicable in the hypotheses in which the cancellation or delay was caused by an extraordinary circumstance which could not have been avoided even if all reasonable measures had been taken, when the air carrier is exempted from the obligation to pay compensation, in accordance with the provisions of Article 5, third paragraph of Regulation no. 261/2004[21].

III. PANDEMIC PREVENTING RESTRICTIONS, AS EXTRAORDINARY CIRCUMSTANCES JUSTIFYING FLIGHT CANCELLATION

III.1. Stricter contractual standards or contractual assumption of responsibility? One of the salient questions in the field of the air carriers' contractual liability for non-performance of essential transportation duties refers to the legal nature of the pandemic circumstances in terms of tort liability and contractual liability. Does the COVID-19 outbreak qualify as an extraordinary circumstance, justifying the removal of air carriers' liability for compensatory damages due to passengers for flight cancelation and flight delay?

Two interpretative tendences seem to be contoured, one accentuating the out-of-order character of the restrictive measures took by national authorities, which do not fall under the air carriers' control, nor are these related to the air carrier's ordinary activity and the other insisting on the *pacta sunt servanda principle,* thus imposing the carriers to compensate the passengers for the loss suffered by the non-performance for the contractual duties, as emerges from the air transport contracts[22].

Regulation (EC) 261/2004, on the other hand, does not contain specific guidance on whether pandemics qualify as extraordinary circumstances and, therefore, if it should or not decisively contribute to the removal of air carriers' liability for (non-imputable) contractual non-per-

21. *Ibidem*.

22. See, for discussions, S. J. Fox, L. Martín-Domingo, „EU Air Passengers' Rights Past, Present, And Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study)", *cit. supra*, pp. 271-274.

formance. The closest guidance in the mentioned Regulation under positive European Transport Law is to be found in Recital 14, which mentions „political instability" and „security risks" among others as examples of extraordinary circumstances, although without offering an extensive or at least an accurate definition of these binary concepts and Recital 15, which mentions „air traffic management decisions" impacting the flight as liability removal causes. In our opinion, none of these terminological examples extracted from the text of Regulation no. 261/2004 (elaborated 17 years ago) come close to thoroughly and adequately encompassing the pandemic situation following the COVID-19 outbreak, which for obvious reasons, partly pertaining to its moment of adopting, goes far beyond the legal intricacies envisioned by the incidence of the provisions of Regulation no. 261/2004 under pandemic circumstances and massive flight cancelation.

As pointed out above, relevant guidance can be extracted from the European Commission' Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, published on March 18, 2020, as well as from European Union's Court of Justice interpretative framework as resulting from EUCJ's previous jurisprudence. For instance, as related to a previous event which affected the aviation sector, the eruption of the *Eyjafjallajökull* volcano in Iceland in 2010, in the EUCJ's decision in case C-12/11, it has been stated that the volcanic eruption did amount to an extraordinary circumstance under the Regulation no. 261/2004[23] and therefore potentially exempted air carriers from the obligation to pay compensation to passengers, in terms of *force majeure*, seen as an irrepressible, unforeseeable and irresistible event situated outside the air carriers' area of control[24].

23. As stated in Recital (12) of the Preamble to Regulation no. 261/2004, „12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken."

24. As resulting from the EUCJ's decision 31 January 2013 in case C-12/11, „Article 5 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that circumstances such as the closure of part of European airspace as a result of the eruption of the Eyjafjallajökull volcano constitute 'extraordinary circumstances' within the meaning of that regulation which do not release air carriers from their obligation laid down in Articles 5(1),(b) and 9 of the regulation to provide care. (2) Articles 5(1),(b) and 9 of Regulation No 261/2004 must be interpreted as meaning that, in the event of cancellation of a flight due to 'extraordinary circumstances' of a duration such as that

Another (partially) relevant[25] case for the interpretative decryption of the notion of „extraordinary circumstances" motivating the flight cancellation is C-549/07, in chich the EUCJ has ruled that extraordinary circumstances may be defined in corelation to their non-inherent origin in terms of air carriers' ordinary activity, thus being seen as circumstances which „stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control" (EUCJ judgement of the Court's Fourth Chamber of 22 December 2008 in reference for a preliminary ruling from the Handelsgericht Wien – Austria, in the procedure *Friederike Wallentin-Hermann vs. Alitalia* in case C-549/07[26]).

in the main proceedings, the obligation to provide care to air passengers laid down in those provisions must be complied with, and the validity of those provisions is not affected. However, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess"; the full text of this decision is available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=133245&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=297512, accessed on 09 March, 2021.

25. Although several preliminary questions have been addressed to the EUCJ in 2020 and at the beginning of 2021 on the interpretation of the concept of „extraordinary circumstances" in the field of air carriers' liability for flight cancellations, none of these cases have been finalised by a preliminary ruling at the time of the elaborating of this article (10 March 2021). Notable cases of preliminary questions are the following: Case C-37/21, Request for a preliminary ruling addressed to the Court of Justice of the European Union under Article 267 TFEU by the Amtsgericht Hamburg (Local Court, Hamburg, Germany), available at http://curia.europa.eu/juris/showPdf.jsf?text=air%2Btransport&docid=238542&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=306640; Case C-672/20 – Request for a Preliminary ruling, available at http://curia.europa.eu/juris/showPdf.jsf?text=air%2Btransport&docid=237121&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=306640; Case C-618/20 - Request for a preliminary ruling from 19 November 2020 - Referring court: *Juzgado de lo Mercantil de Córdoba* (Commercial Court, Cordoba, Spain) - Defendant: Ryanair Ltd, available at http://curia.europa.eu/juris/showPdf.jsf?text=air%2Btransport&docid=236582&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=306640 ; Case C-606/20 - Request for a preliminary ruling, Defendant and respondent: IBERIA *Lineas Aereas de Espana,* available at http://curia.europa.eu/juris/showPdf.jsf?text=air%2Btransport&docid=236062&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=306640 ; Case C-589/20 - Request for a preliminary ruling, Defendant and respondent: Austrian Airlines AG, available at http://curia.europa.eu/juris/showPdf.jsf?text=air%2Btransport&docid=235843&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=306640 .

26. The main preliminary question was raised as relating to the interpretation of article 5 of Regulation no. 261/2004 on compensation and assistance to passengers in the event of cancellation of flights and exemption from the obligation to pay compensation in the case of cancellation due to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. In this case, the EUCJ ruled that „Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing

Additionally, as ruled in case C-315/15[27] and as underlined by the EUCJ judges, the air carriers „must not be encouraged to refrain from taking the measures necessitated by such an incident by prioritising the maintaining and punctuality of their flights over the objective of safety", thus offering an objective reading of the third paragraph of Article 5 of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, read in the light of recital 14 of this Regulation.

In light of The European Commission's Interpretative Guidelines form 18 March, 2020, one should consider that, in all cases in which the public authorities took restrictive measures intended to contain the

common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of 'extraordinary circumstances' within the meaning of that provision, unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, is not decisive for the interpretation of the grounds of exemption under Article 5(3) of Regulation No 261/2004. The frequency of the technical problems experienced by an air carrier is not in itself a factor from which the presence or absence of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 can be concluded. The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' within the meaning of Article 5(3) of Regulation No 261/2004 and, therefore, to relieve that carrier of its obligation to pay compensation provided for by Articles 5(1)(c) and 7(1) of that regulation". The full text of the decision is available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=76556&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=301898, accessed on March 2nd, 2021.

27. According to the EUCJ judgement (Third Chamber) of 4 May 2017 (Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 5(3) — Compensation to passengers in the event of denied boarding and of cancellation or long delay of flights — Scope — Exemption from the obligation to pay compensation — Collision between an aircraft and a bird — Notion of 'extraordinary circumstances' — Notion of 'reasonable measures' to avoid extraordinary circumstances or the consequences thereof) in Case C-315/15, Request for a preliminary ruling under Article 267 TFEU from the Prague 6 District Court, Czech Republic, made by decision of 28 April 2015, „Article 5(3) of Regulation No 261/2004, read in the light of recital 14 thereof, must be interpreted as meaning that, in the event of a delay to a flight equal to or in excess of three hours in arrival caused not only by extraordinary circumstances, which could not have been avoided by measures appropriate to the situation and which were subject to all reasonable measures by the air carrier to avoid the consequences thereof, but also in other circumstances not in that category, the delay caused by the first event must be deducted from the total length of the delay in arrival of the flight concerned in order to assess whether compensation for the delay in arrival of that flight must be paid as provided for in Article 7 of that regulation". The full text of the decision is available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=190327&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=304629 , accessed on March 3rd, 2021.

Covid-19 pandemic, these measures fall under the legal category of extraordinary circumstances, since „such measures are by their nature and origin not inherent in the normal exercise of the activity of carriers and are outside their actual control. Article 5(3) waives the right to compensation on condition that the cancellation in question "is caused" by extraordinary circumstances, which could not have been avoided even if all reasonable measures had been taken". As expressly resulting from the cited Interpretative Guidelines issued by the European Commission, this condition of extraneity in terms of liability exempting should be considered fulfilled, „where public authorities either outright prohibit certain flights or ban the movement of persons in a manner that excludes, *de facto*, the flight in question to be operated", as well as in cases in which „the flight cancellation occurs in circumstances where the corresponding movement of persons is not entirely prohibited, but limited to persons benefitting from derogations (for example nationals or residents of the state concerned)"[28]. Therefore, it is adequate to argue that the COVID-19 outbreak does qualify as an extraordinary circumstance, in particular where the delay or cancellation represents *de facto* or *de jure* a direct consequence of a decision from the national authorities to restrict travels to or from certain countries or regions in order to minimize the potential further dissemination of SARS-COV infection, such was the last 12 months situation in Romania, as well as in other EU member-states.

III.2. Exclusion of contributory negligence and removal of air carriers' liability. As noted in the previous sections, on 18 March 2020, the European Commission sent out its Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with COVID-19, explaining its interpretation of the Regulation on ai passengers' rights in relation to COVID-19 restrictive measures, accentuating that this condition of assessing the impact of extraordinary circumstances on the contractual performance must be considered fulfilled, where public authorities either outright prohibit certain flights or ban the movement of persons in a manner that excludes, de facto, the flight in question to be operated. Furthermore, it has been observed that this condition on the intervention of extraordinary circumstances exempting the carriers from contractual liability

28. European Commission Notice - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, C/2020/1830, published on 18.03.2020, pp. 1–8, *loc. cit. supra.*

may also be fulfilled, „where the flight cancellation occurs in circumstances where the corresponding movement of persons is not entirely prohibited, but limited to persons benefitting from derogations (for example nationals or residents of the state concerned)"[29].

It has also been ultimately evidenced that, in the complex hypotheses in which the airline decided to cancel a flight and the probatory elements reveal that the respective decision was justified on grounds of protecting the health of the crew, such cancellation[30] should also be considered as "caused" by extraordinary circumstances.

In terms of considering the COVID-19 outbreak as an extraordinary circumstance permitting (and even legally justifying) the removal of the air carriers' liability for compensatory damages, one question which may be raised is that on the air carriers will or not still be placed the (procedural) burden to prove that the delay or cancellation could not have been avoided even if all reasonable measures had been taken, in order to emit a valid refuse of compensation. In our opinion, this peculiarity of the legal regime of the compensatory damages no longer subsists in the field of compensatory claims based on the non-performance of air travel services, in the light of the European Commission's Interpretative Guidelines of March 18, 2020, according to which „where public authorities either outright prohibit certain flights or ban the movement of persons in a manner that excludes, *de facto*, the flight in question to be operated", as well as in cases in which „the flight cancellation occurs in circumstances where the corresponding movement of persons is not entirely prohibited, but limited to persons benefitting from derogations (for example nationals or residents of the state concerned". Conclusively, given the global impact of the restrictive measures in the field of air transportation and almost immeasurable, massive impact on the air traffic cancellation, the air carriers can invoke the restrictive circumstances in order to be exempted from contractual liability, since the impact of the national authorities' restrictive measures did not fall under the air carriers' control, nor were these restrictive measures related to the air carrier's ordinary activity or manageable through the

29. *Ibidem.*

30. It is worth mentioning that, apart from the rules regarding information on the rights available, Regulation (EC) No 261/2004 does not contain specific provisions on information on travel disruptions. However, rights to compensation in case of cancellation „are linked to the carrier failing to give notice sufficiently in advance", as resulting from the European Commission's Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, published on March 18, 2020, *cit. supra*, p. 4.

means of the carriers' reasonable measures took as a consequence of the flight cancellations.

IV. CONCLUSIVE REMARKS

Massive flight cancellation and flight delays under the travelling restrictive measures under the pandemic context contributed to the raising of legal questioning related to the passengers' right to opt for the termination of contract, followed by the admission of passengers' request for full reimbursement, especially in cases in which the alternative of re-routing was uncertain, due to flight restrictions under the pandemic restrictive measures. In this direction, two interpretative trends emerged; one favouring a restrictive liability approach, allowing the passengers to address compensatory claims for the loss suffered by the non-performance for the contractual duties, as emerges from the air transport contracts and the other proposing the removal of carriers' liability in terms of compensatory damages, based on the unusual character of the restrictive measures took by national authorities, which do not fall under the air carriers' control, nor are these related to the air carrier's ordinary activity.

The following conclusive assertions may be drawn based on the observations made in the previous sections:

(a) in hypotheses in which public authorities prohibited certain flights or ban the movement of persons in a manner that excluded the flight in question to be operated, in the context of the measures took in order to limit the pandemic extension, passengers' right to compensation ceases to exist, the air carrier being exonerated from payment due to extraordinary circumstances outside its aria of control;

(b) nevertheless, in each of these cases, the passengers have, upon their option, the right to full reimbursement of the ticket price, especially in a context in which the alternative of re-routing might be uncertain;

(c) the acceptance of vouchers remains optional for the passengers, as underlined in the European Commission's Interpretative Guidance from March 18, 2020; this situation has to be distinguished from the situation where the carrier cancels the journey and offers only a voucher instead of the choice between reimbursement and re-routing. Should the air carrier propose a voucher, this offer cannot affect the passenger's right to opt for reimbursement, while forcing the consumer to

accept a voucher instead of reimbursement may represent, in a court of law, an unfair, misleading or abusive business practice, as it materially distorts or has the potentiality to materially distort the economic behaviour with regard to the air transport services of the average passenger whom it reaches or to whom it is addressed or of the average member of the group, when a commercial practice of this sort is directed to a particular group of passengers.

REFERENCES

1. Balat, N.; Jourdan-Marques, J.; Siguoirt, L. (2019), *L'indemnisation et l'assistance des passagers du transport aérien. Regards civilistes sur le règlement N°261/2004,* LexisNexis, Paris;
2. Cseres, K.; Reyna, A., (2020), „EU State Aid Law and Consumer Protection: An Unsettled Relationship in Times of Crisis", *Amsterdam Law School Research Paper No. 2020-32, Amsterdam Centre for European Law and Governance Research Paper No. 05;*
3. Fox, S. J.; Martín-Domingo, L. (2020), „EU Air Passengers' Rights Past, Present, And Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study)", *Journal of Air Law and Commerce,* 85(2), pp. 271-307;
4. Gnutzmann, H.; Spiewanowski, P. (2018), „Can Regulation Improve Service Quality? Evidence from European Air Passenger Rights", *Robert Schuman Centre for Advanced Studies Research Paper* RSCAS no. 44;
5. Haanappel, P. C. (2018), „Air Passenger Rights in the Electronic Age", *Air and Space Law,* Issue 1(43), pp. 3-20, available at https://kluwerlawonline.com/journalarticle/Air+and+Space+Law/43.1/AILA2018002, accessed on February 28, 2021;
6. Monmousseau, Ph.; Marzuoli, A.; Feron, E.; Delahaye, D. (2020), „Impact of Covid-19 on passengers and airlines from passenger measurements: Managing customer satisfaction while putting the US Air Transportation System to sleep", *Transportation Research Interdisciplinary Perspectives* 7(2020), available at https://www.sciencedirect.com/science/article/pii/S2590198220300907, accessed on February 28, 2021;
7. Pavliha, M. (2013), „Enlightenment of the European Attitude Towards Passenger Rights: *In dubio pro consumatore*", *European Transport Law*, 48(3);
8. Pazos, R. (2017), „El Derecho a Compensación Por Retraso En La Normativa Europea De Transporte Aéreo De Pasajeros", *InDret*, no. 2;
9. Truxal, S. (2017), „Air carrier liability and air passenger rights: a game of tug of war?", *Journal of International and Comparative Law*, 4(1), pp. 103-122;
10. Truxal, S. (2014), "Consumer Protection and Limited Liability: Global Order for Air Transport?", *Journal of International and Comparative Law* 1(1), pp. 111–119;

11. Truxal, S. (2020), „COVID-19 airport slot rules: what's changed and what's next for European airlines?" *British Policy and Politics* at LSE (06 Apr 2020), available at http://eprints.lse.ac.uk/104510/, accessed on February 28, 2021;

12. Verheyen, W.; Dikker, B. (2015), „10 years of 261/2004: any excuses left?", *European Transport Law*, 50(6);

13. Regulation of the European Parliament and of the Council (EC) No. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding in the event of the cancellation or long delay of flights, Brussels;

14. European Commission Notice — Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council, C/2016/3502, published in OJ C 214, 15.06.2016, pp. 5–21;

15. European Commission Notice - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, C/2020/1830, published in OJ C 89I, 18.03.2020, pp. 1–8;

16. European Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic, C/2020/3125, published in OJ L 151, 14.05.2020, pp. 10–16;

17. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, published in OJ L 328, 18.12.2019, p. 7–28;

18. http://curia.europa.eu/juris/showPdf.jsf?text=air%2Bpassengers&docid=238542&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=245867, accessed in 09 March, 2021.

FUNDAMENTAL CHANGE OF CIRCUMSTANCES IN INTERNATIONAL TREATY LAW

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Abstract

The doctrine of rebus sic stantibus is a principle in customary international law providing that where there has been a fundamental change of circumstances since an agreement was concluded, a party to that agreement may withdraw from or terminate it. It is justified by the fact that some treaties may remain in force for long periods of time, during which fundamental changes might have occurred. Such changes might encourage one of the parties to adopt drastic measures in the face of a general refusal to accept an alteration in the terms of the treaty. Because the concept was abused in the past, particularly between the two World Wars, Article 62 of Vienna Convention on the Law of Treaties was drawn in restrictive terms. Moreover, this doctrine has been criticized on the grounds that, having regard to the absence of any system for compulsory jurisdiction in the international order, it could operate as a disrupting influence upon the binding force of obligations undertaken by states. It might be used to justify withdrawal from treaties on rather tenuous grounds. The principle has been invoked many times, and is recognized by treaties, but it has not so far been applied by an international tribunal.

Key words: rebus sic stantibus, international treaty law, COVID-19, human rights, derogation

1. INTRODUCTION

Notions related to the dynamic world we live in are often reflected within various aspects of society, including the legal sphere in terms of international treaty law and practice. It would be consequently expected, particularly regarding circumstances which represent a serious threat to global peace and security, for current intellectuals and academics to analyze specific legal repercussions – a concept that has even been speculated by scholars in the past. Sir John Fischer Williams, for instance, in a little book entitled *International Peace and International Change* (London, 1932) suggests that perhaps the most difficult, and certainly the most important, problem for which a solution must be found if the world is to have anything approximating a condition of international peace, is the devising of a peaceful and orderly process by which international relationships as they are fixed by treaties, may be altered from time to time so as to adapt them to the changing conditions which are constantly taking place in the world in which we now live. (Garner, 1943, p.465) Vital change of circumstances constitutes an exception to the general rule that treaties conclude for a specified period of time or to set up a permanent condition may not be dissolved by withdrawal. As a practical matter it would appear illogical to maintain that a treaty, even though it may purport to be of indefinite duration, remains binding for all times, notwithstanding any change of conditions, unless discharged or modified by mutual consent. (Historical Evaluation and Research Organization, 1964, p.41) The common practice today of limiting the duration of treaties to relatively short periods of time, of allowing the right of denunciation and of inserting among their stipulations a provision for their revision is a recognition of the necessity of the principle underlying the rule *rebus sic stantibus*. Where a treaty is concluded for a long or indefinite period of time and provides no method of procedure by which it may be revised, a demand for revision or termination is almost certain to be made sooner or later and justified on the basis of that rule, whenever owing to an important change of conditions occurring subsequent to the conclusion of the treaty, its operation has become for one of the parties inequitable or difficult of execution. (Garner, 1943, p.467) All international lawyers are aware of the pitfalls surrounding the application of the *clausula rebus sic stantibus* and the controversies which have raged as to its admissibility as a ground for the unilateral denunciation or termination of a treaty. The concept that (whether by way of an implied term or otherwise) a treaty may become

inapplicable by reason of a fundamental change in circumstances obviously presents serious dangers to the security of treaties. (Sinclair, 1973, p.105) Such security of treaties is manifested by the doctrine of *pacta sunt servanda*, which represents the fundament of common law in relation to contracts, protecting the requirement for the terms of a particular contract to be upheld by the parties, respectively. However, there is a difference of opinion among the authorities as to whether the principle of *rebus sic stantibus* is a recognized rule of international law or not, but the majority of them seem to admit that "as a principle at least of international morals and public policy it is well established." T.Y. Huang observes that "most early writers recognized the fact that all treaties are necessarily concluded under the tacit condition *rebus sic stantibus*," and he appends a long list of authorities to support this position. (Robinson, 1964, p.68) Furthermore, particularly during the Cold War, Soviet diplomats have encouraged application of the doctrine of *rebus sic stantibus* because it could easily be invoked by national liberation movements to justify altering treaty arrangements with Western powers. They have found this doctrine particularly appealing because it resonates with the historical strain in Marxist thought. From the Soviet standpoint, successful national liberation movements represent the triumph of the proletariat in the dialectic of class struggle. They view such an event as a fundamental change of circumstance, because Marxism views the identity of a society's ruling class as its most fundamental characteristic. (Binder, 1988, p.116) As a result, the Soviet international law experts considered, as do some experts in the West, that the *clausula rebus sic stantibus* must be recognized as a particular exception to the *pacta sunt servanda* principle that is dictated by life and progress and necessary to economic and political progress. (Historical Evaluation and Research Organization, 1964, p.44)

2. THE RECEPTION AND APPLICATION OF REBUS SIC STANTIBUS WITHIN THE INTERNATIONAL COMMUNITY

The principle that a person may no longer be bound by a contract if there has been a fundamental change in the circumstances which existed at the time it was signed (in English common law, the doctrine of frustration), has been acknowledged to apply also to treaties. But there has been a lively debate about the conditions under which it could be invoked. Because the concept was abused in the past, particularly

between the two World Wars, article 62 was drawn in restrictive terms. (Aust, 2007, p.297) Although this may be true, various scholars in the past have either proclaimed the abuse or the lack of abuse in relation to the doctrine of *rebus sic stantibus*. For instance, Rolin-Jacquemyns, a writer of great merit and distinction, views with favor the theory of the *clausula rebus sic stantibus*, provided it is not abused. He holds that a change of circumstances which makes the execution of a treaty either morally or materially impossible, may justify an *ex parte* denunciation of it. Otherwise, he says, one would conclude that treaties are perpetual, which is, he adds, an absurdity. (Ion, 1911, p.278) On the other hand, although the eminent Russian author, F. de Martens champions the maxim *"Pacta sunt servanda"* and says that treaties ought to be carried out faithfully, he simultaneously approves the theory of the *rebus sic stantibus* and contends that the abuse of that doctrine does not prove that it should not be adopted, and that a state cannot reasonably, conclude a treaty, except in view of a political object and that if by a reason of a change of circumstances, the object in view cannot be attained and the existence of the treaty becomes dangerous to a state, the effect of such instrument ceases to exist. (Ion, 1911, p.280) Going back to the principle of *rebus sic stantibus*, it is of constructive relevance to analyze Article 62(1) of the 1969 Vienna Convention on the Law of Treaties, regarding 'Fundamental change of circumstances', which stipulates the following:

"A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be evoked as a ground for terminating or withdrawing from the treaty unless:

a) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

b) The effect of the change is radically to transform the extent of obligations still to be performed under the treaty." (The United Nations, 1969)

The phrase "to transform the extent of obligations" in paragraph 1(b) is misleading. A change of circumstances or an alteration of facts has no direct effect in law on the extent of the obligations. Here the "changed circumstances" rule relieves the party from the unjust burden by changing the extent of the obligation. It is the legal principle of *rebus sic stantibus* that works the legal effect, not the change of circumstances as such. (Koeck, 1974, p.105) Nevertheless, Paragraph 1 of Article

62 defines strictly the (cumulative) conditions under which a change of circumstances may be invoked. The principle of *rebus sic stantibus* has been *invoked* many times, and recognized by treaties. But so far it has not been applied by an international tribunal, though no tribunal has denied its existence. (Aust, 2007, p.298) Such conditions contribute toward the opinion that the principle underlying the rule *rebus sic stantibus* is a just and necessary one, especially in this age when far reaching changes are constantly taking place in the national and international life of states. This is admitted by practically all writers, even by those who criticize it on the ground that in the present state of the development of international law it lacks a juridical foundation and is not yet sanctioned by a settled jurisprudence of its application. One of the tasks of the future is to organize the principle and devise a method by which it can be applied in practice without impairing or subverting that other fundamental principle, *pacta sunt servanda*, which is the basis of all orderly and stable international relations. (Garner, 1943, p.479) Alternatively, the International Law Commission did not limit the doctrine of *rebus sic stantibus*, as had been suggested by some writers, to treaties with unlimited duration and no termination clause, though the Commission noted that, since most treaties now have either express duration or termination clauses, today the scope for invoking the article is more limited. (Aust, 2007, p.297) When explaining the rationale behind this doctrine, the ILC acknowledges that as a result of a fundamental change of circumstances the provisions of a treaty might come to place an undue burden on one of the parties. This 'undue burden' approach – which can be seen as a less radical version of the vital interest's theory – has found expression in the requirement that the effect of the change must be to radically transform the scope of obligations still to be performed under the treaty. But this requirement is not a sufficient criterion on its own. It constitutes just one of the five requirements of Article 62 VCLT. (Kulaga, 2020, p.493) Regarding the application of an implied clause, the article provides that a party may terminate or suspend operation of a treaty due to a change in a circumstance essential to the consent of the parties. This doctrine, the international analogue to the civil law doctrine of *clausula rebus sic stantibus*, is fundamentally concerned with the enforcement of agreements rather than with their validity. (Binder, 1988, p.13) The modern approach is to admit the existence of the *rebus sic stantibus* doctrine, but severely restrict its scope. The International Court in the *Fisheries Jurisdiction* case declared that:

> *International law admits that a fundamental change in the circumstances which determined the party to accept a treaty, if it has resulted in a radical transformation of the extent of the obligations imposed by it, may, under certain conditions, afford the party affected a ground for invoking the termination or suspension of the treaty.*

Before the doctrine may be applied, the Court continued, it is necessary that such changes 'must have increased the burden of the obligations to be executed to the extent of rendering the performance something essentially different from that originally undertaken. (Shaw, 2017, p.720) On the other hand, the dissension engendered by the continuous doctrine of *rebus sic stantibus* vividly reflects the controversial nature of the norms of customary international law, many of which are admittedly imprecise, confused, and outmoded; their limited adequacy for the resolution of international disputes; and the role of international law generally, in an unintegrated world order which has undergone unprecedented political, economic, and social changes. The law essentially represents stability and the *status quo*. In fact it is the function of law to uphold the existing order of things, not to change or destroy them. Fundamental changes in social, economic, and political processes and the accommodation of incompatible national interests can only be accomplished by legislative action; by the rescission, modification, and alteration of the law. (Historical Evaluation and Research Organization, 1964, p.44)

As applied to international treaties, the doctrine of *rebus sic stantibus* has been recognized by national tribunals in a number of countries. In the United States it was so recognized by the federal Court of Claims in *Hooper v. United States*, which held that the United States was justified in abrogating the treaties concluded with France in 1778, in part on the ground of an essential change of conditions following their conclusion. (Garner, 1943, p.472) Moreover, Chesney Hill proclaims that the doctrine of *rebus sic stantibus* has not been defined either by international tribunal not treaty and there is no definition upon which there is a general agreement by the writers. He advances the following juridical basis in explaining why a change of circumstances might legally alter treaty obligations:

1. The change, if foreseen, would have altered the original intentions of the parties.
2. Fulfillment after the change is injurious to a fundamental right of one of the parties.

3. The change frustrates the object of the treaty.
4. The change makes the fulfillment of the treaty impossible.
5. The change may adversely affect the interests of a party whose interests the treaty was meant to promote.
6. Certain changes of circumstances by their very nature affect the obligations of a treaty. (Robinson, 1964, p.68)

Regarding the status of *Rebus Sic Stantibus* in international law, there are no common grounds among the international law experts. Most of them consider that despite there is no concession, at least *Rebus Sic Stantibus* as a principle has been acknowledged as a general rule of international law and as a government policy of a State. All of them agree that the main principle of international treaty is *Pacta Sunt Servanda*, a treaty is binding for the parties of the treaty. On the other hand, the presence of a condition, where one of the parties may get away unilaterally from the treaty without being deemed as a violation of law, should be contemplated. (Suraputra, 2014, p.466)

3. DEROGATION OF OBLIGATIONS REGARDING INTERNATIONAL HUMAN RIGHTS TREATIES IN CASE OF A GLOBAL PANDEMIC

In relation to the COVID-19 global pandemic, guaranteeing human rights for everyone poses a challenge for every country around the world to a different degree. The public health crisis is fast becoming an economic and social crisis and a protection and human rights crisis rolled into one. (United Nations, 2020, p.2) International treaties such as the International Covenant on Civil and Political Rights (ICCPR), The European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR) aim to protect human rights. International human rights conventions, however, impose conditions under which a derogation to human rights can be justified. Beyond the requirement of notification, the implementation of derogatory measures needs to meet certain substantive criteria. (Lebret, 2020, p.5) States may not fail to comply with their non-derogable obligations, including the duty to treat all persons with respect for their human dignity. Even when derogations are legal, human rights obligations remain in place. For example, under the African Charter, Article 5 on the prohibition of tor-

ture and cruel, inhuman and degrading treatment, and Article 6 on the right to personal liberty and protection from arbitrary arrest have not been suspended. (Saunders, 2020, p.21) Moreover, derogation clauses do not, according to Gerald L. Neuman, contradict the notion human right but may on the contrary contribute to their effective protection. Indeed, states have positive obligations to protect the right to life, which might justify derogations to some other human rights. (Lebred, 2020, p.3) Consequently, it is said that only three treaties – the ICCPR, the ECHR, and the ACHR – include functioning derogations clauses. (Helfer, 2020, p.2) In particular, the ECHR holds a specific provision authorizing to derogate unilaterally to conventional rights. Article 15, entitled 'derogation in time of emergency,' permits states 'in time of war or other public emergency threatening the life of the Nation [..] to take measures derogating from its obligations …' Similar provisions can be found in Article 4(1) of the ICCPR, Article 27(1) of the ACHR, or Article 4 of the Arab Charter on Human Rights. (Lebret, 2020, p.2) In application of Article 15(3) of the ECHR, Latvia, Romania, Armenia, Estonia, Moldova, Georgia, Albania, North Macedonia, Serbia, and San Marino notified the Secretary General of the Council of Europe that they were invoking this provision to face the ongoing pandemics. In application of Article 27(3) of the ACHR, Guatemala, Peru, Ecuador, Columbia, Bolivia, Panama, Chile, Honduras, Argentina, El Salvador, and the Dominican Republic notified the Secretary General of the Organization of American States (OAS) of the state of emergency, informing other states on the special regulations they adopted. (Lebret, 2020, p.3) Furthermore, in application of Article 21 of the ICCPR, Guatemala, Latvia, Armenia, Estonia, Ecuador, Romania, Peru, Georgia, Palestine, Chile, Kyrgyzstan, Colombia, El Salvador, San Marino, Moldova, Ethiopia, the Dominican Republic, Senegal, and Namibia notified of their official derogation on the basis of the COVID-19 pandemic. (Derogations by States Parties, 2020) Regarding the application of the doctrine of *rebus sic stantibus*, the COVID-19 Crisis represents a circumstance that the parties could not foresee when they entered into a contract. Hence, derogations from human rights treaties are also perceived as justified. In order to prevent the spreading of COVID-19, states usually start by imposing self-confinement. This restriction of the right to liberty and security actually finds an explicit support in the ECHR, which Article 5§1 (e) authorizes 'the lawful detention of persons for the prevention of the spreading of infectious diseases [...]', providing that this is made in 'accordance with a procedure prescribed by law'. Because of the scale of this pandemic, the general nature and duration of the restrictive measures might only

be justifiable under the derogatory regime. (Lebret, 2020, p.6) Most COVID-19 derogations unsurprisingly focus on freedom of movement, assembly, and association. But states have also restricted the rights to liberty, to respect for private and family rights, to a fair trial, to the protection of property, to freedom of expression and to education. Some COVID-19 controls have also infringed non-derogable rights – including the right to life, the prohibition of torture and cruel, inhuman or degrading treatment, and forced labour – and implicated a state's positive human rights obligations, including those related to economic and social guarantees. (Helfer, 2020, p.6) Furthermore, in relation to emergency legislation, some states have considered a state of emergency unnecessary because other laws are already sufficient. If a state of emergency is declared, that triggers various obligations under international law. As noted above, while derogations are permitted subject to strict conditions in the ICCPR, there is no equivalent authorization for derogations in the ICESCR, perhaps because the latter provides for progressive realization, which, as the Committee on Economic, Social and Cultural Rights (CESCR) explains in its General Comment (No 3):

> *'imposes an obligation to move as expeditiously and effectively as possible towards that goal... any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...'*

Whether the extraordinary laws and executive actions are under a state of emergency or not, some common themes appear. Some such laws restrict freedom of movement, such as curfews. Others involve privacy issues around tracking and tracing, compulsory testing, and surveillance. (Saunders, 2020, p.19)

4. THE MANIFESTATION OF CONTRASTING PRINCIPLES DURING HARDSHIP: *FORCE MAJEURE VS. PACTA SUNT SERVANDA*

Regarding such comparison, the crucial point in the first place is to determine the threshold of hardship. When has performance become excessively onerous? When has the equilibrium of the contract been fundamentally altered? The starting point has to be the contract itself.

Primarily, it is up to the parties to define their respective spheres of risk in the contract. One party may have expressly or impliedly assumed the risk for a fundamental change of circumstances or, on the contrary, certain risks may have been expressly or impliedly excluded. (Schwenzer, 2008, p.715) By contrast, it is also stipulated that a treaty should not be applied in circumstances which are so different from those for which the parties sought to provide that its application would be contrary to the parties' shared expectations and would defeat their apparent objectives. Thus viewed, the problem of the effect of a change of circumstances on treaty relationships becomes in principle one of interpretation – of establishing the shared intentions and expectations of the parties. This approach is consistent with the goal of stability in treaty relationships and with the principle of *Pacta sunt servarda*. A treaty is not breached if it is not applied in circumstances in which the parties did not intend or expect it to be applied. (Lissitzyn, 1967, p.896) The *pacta* principle stands for the sanctity and stability of contractual relations. The principle forms the "hallowed basis" of classical contract theory. That theory regards a contract as a deal: a discrete transaction in the form of a mutual promise that must be kept. Each party is entitled to rely on the performance of obligations undertaken by the other side: "my word is my bond". (Berger & Behn, 2020, p.84) Determining which of these two principles prevails in a given case of changed circumstances depends on the strength of the *pacta* principle in the relevant jurisdiction and the willingness of courts, doctrine and parties alike to accept equitable exceptions to the rule. In international or transnational contract law, equitable exceptions to the *pacta* principle in the form of various *force majeure* and hardship doctrines have long since been accepted. (Berger & Behn, 2020, p.87) The relations between hardship and *pacta sunt servanda* regarding the COVID-19 global pandemic have already been discussed within the previous sections, where it has been concluded that, even though *pacta sunt servanda* is ordinarily considered the primary principle of international treaty, the occurrence of the COVID-19 global pandemic has allowed the contemplation of *rebus sic stantibus* (the principle of hardship). On the other hand, contracts have the binding force of law between parties and they oblige them to comply with the agreed terms. If performance is not possible, however, and based on the principle of good faith, the law allows for various exceptions that add flexibility to the compliance obligation and the responsibility of the debtor: those being *force majeure* and *rebus sic stantibus*. In accordance with these exceptions, the party obliged to comply is released of its liability for non-performance or the contractual relationship is amended

or terminated. (Llorca, 2020, p.2) In cases of *force majeure*, it is more or less unanimously held that it is irrelevant whether the impediment arose after the conclusion of the contract or if it already existed at the time of conclusion. In cases of hardship, however, it is argued that the changed circumstances must have occurred after the conclusion of the contract. (Schwenzer, 2008, p.717) The COVID-19 pandemic appears as a classical example for such an event. However, it is important to distinguish between the general evaluation of the pandemic from a political, socio-economic or health-related standpoint, for example by medical researchers, politicians, governments and public authorities and international organizations, and the legal qualification of a COVID-19 related situation as a *force majeure* event. (Berger & Behn, 2020, p.90) Typically, the *force majeure* event is not the pandemic as such, but the factual or legal effects of the public health crisis. Factual effects may involve illness or quarantine or even death of key personnel, production facility closures, or interruption of supply chains. (Berger & Behn, 2020, p.91) Such conditions would lead us to the potential consideration of *force majeure* exemption, where the main requirement of the *force majeure* exemption, namely that the non-performance be due to an 'impediment beyond the obligator's control' includes situations where the impediment renders performance unreasonably burdensome, i.e., not merely 'more onerous', but 'excessively onerous' as required under the hardship concept. The individual requirements of the hardship and *force majeure* exemptions are in principle identical. The hardship test does not have any additional elements which would not be covered by the *force majeure* excuse; it is only more specific and narrower in its scope than the *force majeure* excuse, as only those 'impediments' (changes of circumstances) are to be considered which 'fundamentally alter the equilibrium of the contract'. (Brunner, 2009, p.221)

5. CONCLUSION

The doctrine of *rebus sic stantibus*, which represents a principle in customary international law, has proven to reflect legal practice regarding the dynamic world we live in, often characterized by essential change of circumstances. Such conditions comprise the exception to the general rule that treaties concludes for a specified period of time or to set up a permanent condition may not be dissolved by withdrawal. Particularly during the COVID-19 global pandemic, maintaining a treaty to

remain binding for all times appears illogical. As a practical manifestation, international treaties such as the ICCPR, the ECHR and the ACHR impose conditions under which derogation to human rights can be justified. Moreover, both the contrasting principles of *pacta sunt servanda* and *force majeure* have been analyzed in relation to the derogation of obligations in terms of hardship. It has been concluded that, even though *pacta sunt servanda* represents the primary principle of international treaty, the occurrence of the COVID-19 global pandemic has allowed the contemplation of *rebus sic stantibus*. By contrast, a *force majeure* event is not manifested by the pandemic itself, but rather the factual or legal effects of the public health crisis.

REFERENCES:

1. Aust, A. (2007). *Modern Treaty Law and Practice*. Cambridge: Cambridge University Press.
2. Berger, K.P. & Behn, D. (2020). *Force Majeure* and Hardship in the Age of Corona: A Historical and Comparative Study. *McGill Journal of Dispute Resolution*, 6(4), 79-129.
3. Binder, G. (1988). *Treaty Conflict and Political Contradiction: The Dialectic of Duplicity*. New York: Praeger Publishers.
4. Brunner, C. (2009). *Force Majeure and Hardship Under General Contract Principles: Exemption for Non-Performance in International Arbitration*. Alphen aan den Rijn: Kluwer Law International.
5. Derogations by States Parties from Article 21 ICCPR, Article 11 ECHR, and Article 15 ACHR on the Basis of the COVID-19 Pandemic. (2020) The Right of Peaceful Assembly. https://www.rightofassembly.info/assets/downloads/Derogations_from_the_Right_of_Peaceful_Assembly_(at_11_November_2020)_.pdf
6. Garner, J.W. (1943). *Studies in Government and International Law*. Illinois: The Illinois University Press.
7. Helfer, L.R. (2020). Rethinking Derogations from Human Rights Treaties. *American Journal of International Law*, 115(1), 20-40.
8. Historical Evaluation and Research Organization. (1964). *Study "Riposte": Annulment of Treaties*. Washington: Historical Evaluation and Research Organization.
9. Ion, T. P. (1911). Sanctity of Treaties. *Yale Law Journal*, 20(4), 268-291.
10. Koeck, H.F. (1974). The "Changed Circumstances" Clause after the United Nations Conference on the Law of Treaties (1968-69). *Georgia Journal of International and Comparative Law*, 4(93), 93-115.

11. Kulaga, J. (2020). A Renaissance of the Doctrine of Rebus Sic Stantibus? *International and Comparative Law Quarterly*, 69(2), 477-497.

12. Lebret, A. (2020). COVID-19 pandemic and derogation to human rights. *Journal of Law and the Biosciences*, 7(1), 1-15.

13. Lissitzyn, O. J. (1967). Treaties and changed circumstances (rebus sic stantibus). *American Journal of International Law*, 61(4), 895-922.

14. Schwenzer, I. (2008). Force Majeure and Hardship in International Sales Contracts. *Victoria University of Wellington Law Review*, 39(4), 709-726.

15. Special Information Briefing COVID-19 (No.6): The legal consequences in the civil sphere due to potential contractual breaches resulting from COVID-19. (2020, March 19). Perez Llorca. https://www.perezllorca.com/wp-content/uploads/2020/03/special-information-briefing-covid-19-no-6-the-legal-consequences-in-the-civil-sphere-due-to-potential-contractual-breaches-resulting-from-covid-19.pdf

16. Suraputra, S.D. (2014). Doctrine of Rebus Sic Stantibus and Law of International Treaty. *Jurnal Hukum Internasional*, 11(4), 462-482.

17. Robinson, R.D. (1964). *International Business Policy*. New York: Holt, Rinehart and Winston.

18. Saunders, J. (2020). *COVID-19 and Human Rights: States' obligations and businesses' responsibilities in responding to the pandemic*. Oxfam. https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621037/dp-covid-19-human-rights-principles-070820-advance-en.pdf?sequence=4

19. Sinclair, I. M. (1973). *The Vienna Convention on the Law of Treaties*. Manchester: Manchester University Press.

20. Shaw, M.N. (2017). *International Law: Eighth Edition*. Cambridge: Cambridge University Press.

21. United Nations. (1969). Vienna Convention on the Law of Treaties. *Treaty Series, 1155,* 331.

22. United Nations. (2020). *COVID-19 and Human Rights: We are all in this together*. United Nations. https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf

DOMESTIC VIOLENCE IN THE REGION OF THE MUNICIPALITY OF TETOVO IN THE TIME OF THE PANDEMIC

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Abstract

Taking in consideration the problems that were caused by the pandemic period more precisely the impact of Covid-19 that influenced on all the countries, it is required to make a detailed research on how this phenomenon impacted directly on the justice system in our country.

The purpose of this research is to reflect what was the impact of the pandemics Covid-19 on the Rule of Law and Society in the municipality of Tetovo? In this regard a research was conducted on the competent state institution's actions of the judicial system which legally have the competences to prevent and fight against the crime in the municipality of Tetovo, such as the Ministry of Interior Affairs Sector- Tetovo, The Basic Public Prosecution-Tetovo and the Basic Court of Tetovo. The reason why this research paper is conducted for the period from when the pandemic Covid-19 touched our country is because the juridical consequences stared to be implemented during February- March 2020 in our country such as the police hours, the movement restriction of the citizens. But there is also have been colleced data for a year before the pandemic, for 2019 for the reason of making a comparison aspect about the hypothesis- Did the pademic Covid 19 influenced in the increse of the criminal cases of domestic violence in Tetovo?Nevertheless, even before the pandemic time there were various types of crimes committed in the country, however, the restrictions of movements for the citizens for long periods such as in some cases to 48 hours, the closed schools, the closed work places etc. became factors which influenced on increasing the number of the crimes in the field of domestic violence especially, because most of

the time people had to spend time with their close family members. Moreover, the criminological objective factors that influenced on the socio-economic situation such as poverty caused a consequence of the private businesses closing, the isolation and the subjective factors such as the mental health of the people related to increased depression, the panic and the fear from the pandemic and the passivity on activities have all influenced on the emergence of the new cases of domestic violence. The results of this research paper are followed with an empirical study made by collection and analysis of the official data of the number of the crimes of domestic violence happened in the the region of Tetovo during the February-December 2020 and a year before. There is a data collection about the number of the domestic crimes reported to the Ministry of Interior Affairs-Sector Tetovo, with details such as the types of the crimes defined by the Criminal Code of Republic of North Macedonia, the gender of the perpetrators and and the family relation of the parities. Also the same nature of the data is collected from the Basic Public Prosecution-Tetovo for the accused perpetrators for these crimes and from the the Basic Court of Tetovo for the sentenced perpetrators for domestic violence crimes. Domestic violence is incriminated as a aggravating circumstance in some types of crimes, in some of the chapters of the Criminal Code of Republic of North Macedonia. So, besides the empirical research, the paper is followed with the normative methodology by interpreting the positive legal provisions that incriminate domestic violence, the utilization of adequate literature regarding the reseach topic.

Key words: *Pandemic period, crimes, the influence of Covid-19 on domestic violence, increase*

1. NATIONAL LEGAL FRAMEWORK ON DOMESTIC VIOLENCE IN REPUBLIC OF NORTH MACEDONIA – THE CRIMINAL CODE AND OTHER LAWS

In the Republic of North Macedonia, the legal framework for the rights of women victims of gender-based violence, including domestic violence, consists of: the Constitution, ratified international documents, laws and bylaws. Article 9 of the Constitution of the Republic of Macedonia guar-

antees the principle of equality and prohibits discrimination on several grounds, including sex, while in other laws that contain provisions on gender equality regulate the protection from gender and race or separately for one of these grounds. Furthermore, paragraph 2 of Article 9 of the Constitution guarantees equality of citizens before the Constitution and 15 laws.[1] Article 50 guarantees fundamental freedoms and rights, which lays down that every citizen may invoke protection of the freedoms and rights established by the Constitution before the courts and before the Constitutional Court of the Republic of Macedonia through a procedure based upon the principles of priority and urgency.[2]

Domestic violence is incriminated as a aggravating circumstance in some types of crimes, in some of the chapters of the Criminal Code. There is descriptive analysis of the incrimination of the domestic violence in the specific articles of the Criminal Code, as follows:

Murder Art. 123 (2),2; Manslaughter Art. 125, Bodily injury Art. 130, Severe bodily injury Art. 131 (2); Chapter fifteen "Crimes against the freedoms and rights of humans and citizens": Coercion Art. 139 (2), Unlawful deprivation of liberty Art. 140(2), Threatening the safety Art. 144 (2), Chapter nineteen "Crimes against gender freedom and morality: Sexual assault by position abuse Art. 189 (2), Mediation in prostitution Art. 191(3), Child prostitution Art. 191-a (4).[3]

As it is presented in all the articles from the criminal Code in this paper, the domestic violence presents an aggravation circumstance for the mentioned crimes, and as a judicial consequence there are provided more tougher sanctions for the perpetrators of the domestic violence for the same crimes.

The research hypothesis is that the pandemic period caused from Covid -19 has influenced in the increase of the number of the crimes of domestic violence in our country and concretely in the municipality of Tetovo.

Furthermore, everyone's right to equal access to courts for protection of their rights and legal interests is guaranteed. In terms of legal protection from domestic violence, the legal framework provides for the protection of the victim in criminal and civil proceedings. Prosecution of perpetrators of domestic violence is implemented in accordance

1. Constitution of the Republic of Macedonia (1991)
2. Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence, Kristina Plechikj-Bekjarova Natasha Dimitrovska Frosina Ivanovska Maja Balshikjevska Igor Jadrovski Publisher: National Network to End Violence against Women and Domestic Violence – Voice against Violence, 2016, p.14-15
3. Criminal Code Consolidated text, "Official Gazette of the Republic of Macedonia, 1996. (2017)

with the Criminal Code and the Law on Criminal Procedure. Particularly important laws closely associated with the system of protection of victims of domestic violence are the Law on Social Protection and the Law on Free Legal Aid. [4]

The Law on Social Protection establishes the right to financial support to women victims of domestic violence and accommodation of women victims in shelters. According to the Law on Free Legal Aid to victims of domestic violence, the application for free legal aid may be granted in any judicial and administrative proceedings, if it is related to matters of interest to the victim of domestic violence, and on rights related to social, health, pension and disability insurance, labour relations, protection of children, protection from offenses and property issues.[5]

In Chapter fourteen " Crimes againsts life and body" of the Criminal Code it is incriminated the criminal offence Murder, in article 123(1). It states as follows: Whosoever deprives another of life shall be sentenced to at least five years of imprisonment. But in point (2) it is stated that Imprisonment of at least ten years or life imprisonment shall be ordered to whosoever: 1) deprives another of life in a cruel or treacherous manner, 2***) deprives another of life by committing family violence etc.*** In Article 125 - Manslaughter: "Whosoever shall cause death to another person by committing manslaughter, brought against his will into a state of strong irritation by attack or by severe insults or as a consequence of family violence by the killed, shall be sentenced to imprisonment of one to five years."[6]

Bodily injury Article 130 (1) stipulates: "Whosoever causes bodily injury or health deterioration to another, shall be fined or sentenced to imprisonment of up to three years. (2) Whosoever commits the crime referred to in paragraph 1 while committing family violence shall be sentenced to imprisonment of six months to three years. (3) Whosoever commits the crime of hate shall be imposed the sentence referred to in paragraph (2) of this Article".[7]

Severe bodily injury in Article 131 (1) states that whosoever causes severe bodily injury or health deterioration to another shall be sentenced

4. Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence, Kristina Plechikj-Bekjarova Natasha Dimitrovska Frosina Ivanovska Maja Balshikjevska Igor Jadrovski Publisher: National Network to End Violence against Women and Domestic Violence – Voice against Violence, 2016, p.15
5. Ibid.
6. Criminal Code Consolidated text, "Official Gazette of the Republic of Macedonia, 1996. (2017)
7. Ibid.

to imprisonment of six months to five years. (2) Whosoever commits the crime referred to in paragraph 1 while committing family violence or out of hate shall be sentenced to imprisonment of one to five years.[8]

In Chapter fifteen "Crimes against the freedoms and rights of humans and citizens" the domestic violence is incriminated as follows: The criminal offence Coercion in Article 139 (1): "Whosoever, by force or serious threat, coerces another to commit or not to commit or bear something, shall be fined or sentenced to imprisonment of one year. (2) If the crime stipulated in paragraph 1 is committed while performing family violence or out of hate, the offender shall be sentenced to imprisonment from six months to three years."

For the incriminated criminal offence Unlawful deprivation of liberty in Article 140 (1) the Code states that Whosoever unlawfully confines, keeps another confined or in any other manner deprives or limits the freedom of movement to another, shall be fined or sentenced to imprisonment of up to one year. (2) If the crime stipulated in paragraph 1 is committed while performing family violence, out of hate, or against a child, the offender shall be sentenced to imprisonment from six months to three years.[9]

For the Criminal offence Threatening the safety in Article 144 (1) of the Criminal Code, it is regulated as follows: "Whosoever threatens the safety of another, by serious threat to attack his life or body or life or body to a person closely related to him, shall be fined or sentenced to imprisonment of six months.(2) Whosoever commits the crime referred to in paragraph 1 while performing family violence or out of hate shall be sentenced to imprisonment of three months to three years."[10]

Sexual assault by position abuse incriminated in Article 189 (1) of the Code states that whosoever by abusing his position induces another, who is subordinated or dependent, to sexual intercourse or some other sexual act, or with the same intention abuses, intimidates or acts in a way that humiliates the human dignity and the human personality against another, shall be sentenced to imprisonment of minimum five years. (2) If the crime referred to in paragraph (1) of this Article is committed by a blood relative in direct line or a brother, i.e. sister, teacher, tutor, adoptive parent, guardian, stepfather, stepmother, doctor or another person by abusing their position or by committing family vio-

8. Ibid.
9. Criminal Code Consolidated text, "Official Gazette of the Republic of Macedonia, 1996. (2017)
10. Ibid.

lence commits a statutory rape or other sexual act with a child who has turned 14 years of age and who is entrusted to him/her for education, tutoring, care, shall be sentenced to imprisonment of at least ten years.

Also, the other criminal act incriminated in the Code is Mediation in prostitution Article 191 (1). It states: "Whosoever recruits, instigates, stimulates or entices another to prostitution, or whosoever in any way participates in handing over a person to someone for the purpose of prostituting, shall be sentenced to imprisonment of five to ten years. (2) Whosoever because of profit enables another to use sexual services shall be sentenced to imprisonment of three to five years. (3) Whosoever organizes the commission of the crimes referred to in paragraphs (1) and (2) or commits the crimes while performing family violence shall be sentenced to imprisonment of minimum ten years." [11]

Despite the will to improve the proposed legislation, none of the essential comments or suggestions from civil society organizations was accepted. During 2015 the Law was amended twice[12]with provisions related to the powers of the centres for social work and misdemeanour sanctions in a process that was closed to civil society organizations. In 2015 by laws were adopted by the competent institutions, as follows: Ministry of Labour and Social Policy[13] , Ministry of Interior[14] and Ministry of Health. These documents determine the manner of implementation and monitoring of measures for protection from domestic violence, assessment of the risk on the life and physical integrity of the victim, and the risk of recurrence of violence.[15]

The legal framework for the protection of victims in civil proceedings is provided by the Law on Prevention, Combating and Protection from

11. Ibid.

12. Law on Prevention, Combating and Protection from Domestic Violence "Official Gazette of the Republic of Macedonia" No. 33 from 05.03.2015 http://www.slvesnik.com.mk/Issues/e048c05b469b4c4bb12a15588da27a25.pdf

13. Rulebook on the implementation and monitoring of measures for protection of victims of domestic violence taken by the center for social work and on the manner of monitoring of the imposed measures for protection; Rulebook on the execution of temporary protection measure - mandatory attendance of counseling for perpetrators of domestic violence ("Official Gazette of RM" 17/2015)

14. Rulebook on assessment of risk to life and physical integrity of the victim of domestic violence and the risk of recurrence of violence; Rulebook on execution of the imposed interim measures to protect victims of domestic violence and members of her family ("Official Gazette of the Republic of Macedonia" No.28/15)

15. Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence, Kristina Plechikj-Bekjarova Natasha Dimitrovska Frosina Ivanovska Maja Balshikjevska Igor Jadrovski Publisher: National Network to End Violence against Women and Domestic Violence – Voice against Violence, 2016, p.17

Domestic Violence, which was adopted in 2014 and entered into force on 1.1.2015. This law regulates the overall actions of the institutions and the associations of citizens in prevention of domestic violence and providing protection to the victims.[16]

2. DOMESTIC VIOLENCE CRIMES DATA FOR THE PERIOD 2019-2020 IN TETOVO BY THE MINISTRY OF INTERIOR AFFAIRS-SECTOR TETOVO

Based on the data published from the Ministry of Interior Affairs- Sector Tetovo, these are the results:

16% increase in the reported cases of domestic violence in Tetovo for the period 2020 comparing year 2019.

T.1 REPORTED DOMESTIC VIOLENCE CRIMES DURING 2019 IN TETOVO

DOMESTIC VIOLENCE CRIMES IN 2019	87
PERPETRATORS	100
CRIMINAL CHARGES	85

Based on the data in table 1 during 2019 there were 87 reported cases of domestic violence in the Ministry of Interior Affairs-Sector Tetovo, against 100 perpetrators. For the cases mentioned above, there were registered 85 criminal charges.

T.2. REPORTED DOMESTIC VIOLENCE CRIMES DURING 2020 IN TETOVO

2020	PERPETRATORS	106
The gender of the perpetrators	91 Men	46 SPOUSES,6 FATHERS, 13 SONS, 8 ILLEGITIMATE SPOUSES, 5 EX-SPOUSE, 13 OTHERS-FATHER IN LAW, GRANDFATHER
	15 Women	2 WIFES, 3 MOTHERS,1 DAUGHTER, 1 EX WIFE, 8 OTHERS (SISTER, MOTHER-IN-LAW, GRANDMOTHER ETC.

Based on the data presented in table 2 during 2020 there were 106 reported perpetrators for domestic violence in the Ministry of Interior Affairs-Sector Tetovo, against 106 perpetrators. The majority of the reported perpetrators were men (91) and the others were female (15).

16. Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence, Kristina Plechikj-Bekjarova Natasha Dimitrovska Frosina Ivanovska Maja Balshikjevska Igor Jadrovski Publisher: National Network to End Violence against Women and Domestic Violence – Voice against Violence, 2016p.15

In the group of the reported men perpetrators the relationship between the perpetrator and their victims are as follows: 46 of the perpetrators were spouses-husbands, 13 of them were sons, 8 of them were illegitimate spouses, 5 of them were ex-husband, 13 of them were: Father in law and grandfathers.

T.3 REPORTED DOMESTIC VIOLENCE CRIMES DURING 2020 IN TETOVO BY THE TYPE OF THE CRIMINAL OFFENCES

PERPETRATORS	106
CRIMES REPORTED AND DETECTED	104
BODY INJURY	52
SERIOUS BODY INJURY	1
THREATENING WITH A DANGEROUS TOOL DURING A FIGHT	1
FORCING	1
THREATENING OF THE SAFETY	49

Based on the data presented in table 3, from the total number of the reported perpetrators for domestic violence during 2020 in MIA-Tetovo, there were 104 crimes wich were reprted and detected.

From the total 104 criminal cases these are the types of the crimes and their number: 52 Body injury, 1 Serious body injury, 1 Threatening with a dangerous tool during a fight, 1 Forcing and 49 Threating of the safety. It is obvious that the most often crimes of domestic violence commited in Tetovo, or often reported are Body injury and Threating of the safety.

3. DOMESTIC VIOLENCE CRIMES DATA FOR THE PERIOD 2019-2020 IN TETOVO BY THE BASIC PUBLIC PROSECUTION-TETOVO AND THE BASIC COURT TETOVO

T.4 BASED ON THE DATA PUBLISHED FROM THE THE BASIC PUBLIC PROSECUTION-TETOVO AND THE BASIC COURT OF TETOVO FOR 2019, FOR THE CRIMINAL OFFENCE BODY INJURY THESE ARE THE RESULTS:

2019	Number of charges received	Number of the persons against whom the charges were received
BODY INJURY	28	33
Public Prosecution	Number of charges rejected	The number of persons for whom the charges against them were rejected

	17	22
	Number of Indictments for criminal charges	Number of the persons the Indictments were made against them
	11	11
Basic Court	1 charge was left	Number of persons
	1	1
	Number of verdicts passed	Against -number of persons
	10	10
	Types of the court decisions	
	3 suspended sentences; 7 repulsive (reconciled).	

Based on the data presented in table 4, during 2019, in the Basic Public Prosecutor's Office - Tetovo, for the criminal offense BODY INJURY under Article 130 paragraph 2 of the Criminal Code of RNM, received 28 charges against 33 persons. A decision was made to reject 17 charges against 22 persons, Indictments were filed for 11 criminal charges against 11 persons, of which 1 charge was left against 1 person, 10 verdicts were passed against 10 persons, out of which court decisions were 3 suspended sentences and 7 repulsive (reconciled).

T.5 DATA PUBLISHED FROM THE THE BASIC PUBLIC PROSECUTION-TETOVO AND THE BASIC COURT OF TETOVO FOR 2020, FOR THE CRIMINAL OFFENCE BODY INJURY THE RESULTS ARE AS FOLLOWING IN TABLE 5:

2020	Number of charges received	Number of the persons against whom the charges were received
BODY INJURY	34	39
Public Prosecution	Number of charges rejected	The number of cases and persons for whom the charges against them were unsolved
	8	15
	Number of Indictments for criminal charges	Number of the persons the Indictments were made against them
	11	11
Basic Court	Number of verdicts passed	Against -number of persons
	11	10
	Types of the court decisions	

	5 charges against 5 persons remained unadulterated, 6 charges against 6 persons were adjudicated - 1 conditional sentence against 1 person, 5 repulsive against 5 persons (reconciled).	

Based on the data presented in table 5, during 2020, in the Basic Public Prosecutor's Office - Tetovo, for the crime of BODY INJURY under Article 130 paragraph 2 of the Criminal Code of the Republic of Macedonia, 34 charges were received against 39 persons, of which 15 charges were unresolved against 15 persons, and while 8 charges were rejected with a Decision rejecting charges against 13 persons.

11 Indictments were filed with the Basic Court in Tetovo against 11 persons, out of which 5 charges against 5 persons remained unadulterated, and 6 against 6 persons were adjudicated, of which one conditional against 1 person and 5 repulsive against 5 persons (reconciled).

T.6 BASED ON THE DATA PUBLISHED FROM THE THE BASIC PUBLIC PROSECUTION-TETOVO AND THE BASIC COURT OF TETOVO FOR 2019, FOR THE CRIMINAL OFFENCE THREATENING OF SAFETY THESE ARE THE RESULTS:

2019	Number of charges received	Number of the persons against whom the charges were received
THREATENING SECURITY	23	29
Public Prosecution	2 criminal charges	Against 2 persons were resolved
	Number of charges rejected	The number of cases and persons for whom the charges against them were unsolved
	3 Decisions	9
Basic Court	Number of Draft Criminal Orders submitted	Number of the persons the Indictments were made against them
	18	18
	Number sentences	Number of sentenced persons
	18	18
	Types of the court decisions	
	17 suspended sentences, 1 fine.	

Based on the data presented in table 6, during 2019, in the Basic Public Prosecutor's Office - Tetovo, for the criminal offense THREATENING SECURITY under Article 144 paragraph 2 of the Criminal Code of RNM,

received 23 criminal charges against 29 persons, of which 2 criminal charges against 2 persons were resolved. The Public Prosecutors brought 3 Decisions to reject the criminal charges against 9 persons, to the Basic Court in Tetovo, submitted 18 Draft Criminal Orders against 18 persons, sentenced 18 against 18 persons, out of which 17 suspended sentences and 1 fine.

T. 7 THE DATA PUBLISHED FROM THE THE BASIC PUBLIC PROSECUTION-TETOVO AND THE BASIC COURT OF TETOVO FOR 2020, FOR THE CRIMINAL OFFENCE THREATENING OF SAFETY SHOWS THESE RESULTS:

2020	Number of charges received	Number of the persons against whom the charges were received
THREATENING SECURITY	28	28
Public Prosecution	Number of charges rejected	The number of persons for whom the charges against them were unsolved
	5	5
	19 criminal charges were submitted to the Basic Court in Tetovo	
Basic Court	Number of Draft Criminal Orders submitted	Number of the persons the Indictments were made against them
	10	19
	Number sentences	Number of sentenced persons
	19	19
	Types of the court decisions	
	17 of which were suspended, 1 fined and 1 rejected (reconciled).	

Based on the data presented in table 7, during 2020, in the Basic Public Prosecutor's Office - Tetovo, for the criminal offense THREATENING OF SAFETY under Article 144 paragraph 2 of the Criminal Code of RNM, a total of 28 charges were received against 28 persons, of which 5 criminal charges against 5 persons The Public Prosecutor submitted a Decision for rejection.

19 criminal charges were submitted to the Basic Court in Tetovo, 19 with a Draft Criminal Order against 19 persons, 19 of which were sentenced, 17 of which were suspended, 1 fined and 1 rejected (reconciled).

The Basic Public Prosecutor's Office - Tetovo, in relation to the criminal acts under Art. 123 paragraph 2 item 2; art.125; Article 131 paragraph 2 and paragraph 6; Article 140 paragraph 2; Article 188 paragraph 2; Art.191 paragraph 4; art.186 paragraph 2; and Article 191, paragraph 4, we inform you that he has not received criminal charges.[17]

CONCLUSION

As a conclusion, the reseach hypothesis is that the pandemic period caused from Covid -19 had influenced in the increase of the number of the crimes of domestic violence in our country. Based on the data published from the Ministry of Interior Affairs- Sector Tetovo, these is a 16% increase in the reported cases of domestic violence in Tetovo for the period 2020 comparing year 2019.

We can suppose that the dark number of the domestic violence is bigger than the number reported for the cases of the domestic

violence. The reason why the dark number of the domestic violence is present in Tetovo, there are influenced by many factors such as:

- The society and the victims' mentality about reporting the case of domestic violence;
- The not insured future of the children of the victim who is not economically independent;
- The insufficient support from the victims' family;
- The inadequate institutional protection of the victims;

The economic factors such as the unemployed status of the victim, no financial resources to live.

Based on the factors mentioned above, these can be the most often consequences for the victims of domestic violence: Mental disorders, sometimes they can be with fatal consequences where the victims make suicide.

So, despite the increased number of the reported cases of the domestic violence crimes in 2020, the dark number (UNREPORTED CASES) is much bigger.

17. Data received from the Basic Public Prosecution Office –Tetovo on 24/02/2021 (А.бр.03-48/21-1)

BYBLIOGRAPHY:

1. Constitution of the Republic of North Macedonia (1991)
2. https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf
3. https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx
4. Criminal Code Consolidated text, "Official Gazette of the Republic of Macedonia, 1996. ("Official Gazette of the Republic of Macedonia" nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 and 248/2018). Decisions of the Constitutional Court of the Republic of Macedonia: U. no. 220/2000 dated 30 May 2001, published in the "Official Gazette of the Republic of Macedonia" no. 48/2001; U. no. 210/2001 dated 06 February 2002, published in the "Official Gazette of the Republic of Macedonia" no. 16/2002; U. no. 206/2003 dated 09 June 2004, published in the "Official Gazette of the Republic of Macedonia" no. 40/2004; U. no. 228/2005 dated 05 April 2004, published in the "Official Gazette of the Republic of Macedonia" no. 50/2006; and U. no. 169/2016 dated 16 November 2017, published in the "Official Gazette of the Republic of Macedonia" no. 170/2017)
5. https://vlada.mk/sites/default/files/dokumenti/zakoni/criminal_code.pdf
6. Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence, Kristina Plechikj-Bekjarova Natasha Dimitrovska Frosina Ivanovska Maja Balshikjevska Igor Jadrovski Publisher: National Network to End Violence against Women and Domestic Violence – Voice against Violence, 2016
7. Law on Prevention, Combating and Protection from Domestic Violence
8. "Official Gazette of the Republic of Macedonia" No. 33 from 05.03.2015 http://www.slvesnik.com.mk/Issues/e048c05b469b4c4bb12a15588da27a25.pdf "Official Gazette of the Republic of Macedonia" No. 150 from 02.09.2015
9. http://www.slvesnik.com.mk/Issues/7efd6a20679240d499ccae5fbdceb856.pdf 7
10. Law on Prevention, Combating and Protection from Domestic Violence "Official Gazette of the Republic of Macedonia" No. 33 from 05.03.2015 http://www.slvesnik.com.mk/Issues/e048c05b469b4c4bb12a15588da27a25.pdf
11. Rulebook on the implementation and monitoring of measures for protection of victims of domestic violence taken by the center for social work and on the manner of monitoring of the imposed measures for protection; Rulebook on the execution of temporary protection measure - mandatory attendance of counseling for perpetrators of domestic violence ("Official Gazette of RM" 17/2015)
12. Rulebook on assessment of risk to life and physical integrity of the victim of domestic violence and the risk of recurrence of violence; Rulebook on execution

of the imposed interim measures to protect victims of domestic violence and members of her family ("Official Gazette of the Republic of Macedonia" No.28/15)

13. Data taken form MIA-Sector Tetovo in 2021
14. Data taken form BPO-Sector Tetovo in 2021
15. Data taken from Basic Court Tetovo in 2021

THE IMPACT OF COVID-19 ON DOMESTIC VIOLENCE

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Abstract

COVID-19 is a disease caused by SARS-Cov-2, virus from the coronaviruses, first discovered in China in December 2019. The virus causes acute viral respiratory disease, transmitted from person to person through touch and droplets (sneezing, coughing, etc.).

As long as there is no vaccine or other treatment for this disease at the moment, although, in many laboratories and hospitals around the world clinical trials and studies are being conducted for an eventual treatment, cure or vaccine, the best way of protection from Covid-19, remains good hygiene, physical distance, self-isolation etc.

World data show an increase in the number of domestic violence cases worldwide as a result of the enforcement of stay-at-home governmental policies. Staying at home, as a preventative measure against Covid-19, and sharing confined spaces with other people has led to an increase in domestic violence cases during the time of pandemic and quarantine.

Being at home for a long and uninterrupted time in many cases has influenced the increase and intensification of episodes of domestic violence because the victim has been forced to stay indoors with the perpetrator of violence. Stress, general insecurity, deteriorating economic conditions, fear of job loss, and overall perceived powerlessness are some of the causes of increased domestic violence in these

times of pandemic, violence which disproportionately affects women, compared with men.

Keywords: *Covid-19, domestic violence, prevention*

1. INTRODUCTION

The family is a major social institution, as well as a legal one, regardless of its type, nuclear or extended. The social and state interest in regulating and disciplining marital and family relationships has been high throughout all stages of human evolution. The legal doctrine broadly recognizes that the social interest in family relations' legal regulation and protection is closely related to the social functions of the family. The nuclear family carries out some important social functions such as the reproductive function, the economic cooperation function, the educational function.[1] The numerous transformations that the family structure has undergone, especially during the second half of the 20th century, enabled the emergence of other functions of post-modern families such as the function of family to provide protection, affection as well as emotional support for its members.[2] These multiple functions are of paramount importance especially to minor children in terms of their formation and development. Thus, in addition to providing material security and other objective conditions of the minor's life, the family is also presented as one of the primary groups where the process of education and socialization of minors takes place.[3] Certainly, these family functions are best developed in families where harmony and mutual respect between family members prevail. On the other hand, when a marital family relationship degenerates or goes through a crisis, it is very likely that domestic violence will manifest as a symptom which indicates us that it is very important to find the most appropriate ways to protect its victims and maintain certain standards of family life.[4] Families that are affected by the phenomenon of domestic violence, where rarer or more frequent episodes of violence occur, are dysfunctional families. These families are not able to properly perform all or

1. Murdock, G. (1967), *Social Structure*, Third Printing, The Free Press, New York
2. Trpenovska et al. (2013), *Semejno Pravo*, Kulturna ustanova Blesok, Skopje
3. Jashovic, Z. (1991), *Kriminologija maloletnicke delikvencije, Beograd*, p.236
4. Mandro-Balili et al. (2006), *E drejta familjare*, Tirane, p.257

some of the above-mentioned functions, which are typical for healthy and harmonious families.

Domestic violence is a problem that is wide spread all over the world. It does not discriminate between countries and affects all social classes, being the most graphic symptom of the imbalance of power in the relationship between men and women. It is a harmful and destructive practice in its very nature with severe consequences on health and overall wellbeing of the victims. It knows no economic, social or geographic boundaries. Accordingly, it is a global phenomenon that in order to be addressed properly two points have to be taken into consideration: that it reflects gender inequality, and that it supports this inequality.[5] Global data published by World Health Organization (WHO) indicate that about 1 in 3 (35%) of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime. Worldwide, almost one third (30%) of women who have been in a relationship report that they have experienced some form of physical and/or sexual violence by their intimate partner in their lifetime. Globally, as many as 38% of murders of women (cases of femicide), are committed by a male intimate partner.[6] However, some national studies show that up to 70% of women have experienced physical and/or sexual violence from an intimate partner in their lifetime.[7]

Due to the importance and degree of consequences, the phenomenon of domestic violence is doubly regulated, both by civil and criminal legislation. As criminal behaviour of domestic violence[8] or as criminality of domestic violence in the criminological literature are considered some manifested forms of violence such violence between spouses or intimate partner violence, violence against children, and violence against parents.

According to the Criminal Code of Republic of North Macedonia, family violence shall refer to abuse, rude insults, safety threats, inflicting physical injuries, sexual or other mental and physical violence which causes a feeling of insecurity, threat or fear towards a spouse, parents or children or other persons who live in a marriage or unwed partner-

5. Metaj-Stojanova, M. (2016), *Identifying and defining the problem of domestic violence*, In *Proceedings of the IIIrd International Scientific Conference on "Social Change in the Global World", pp. 119-129. "Goce Delcev" University,* Shtip

6. *Violence against Women: Key Facts*, World Health Organization (2017), Available online at: https://www.who.int/news-room/fact-sheets/detail/violence-against-women

7. Facts and Figures: Ending Violence against Women United Nations Entity for Gender Equality and the Empowerment of Women, UN Women, (2017). Available online at: https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#notes

8. Halili, R. (2016), *Kriminologjia,* Prishtine, p.180

ship or other joint household, as well as towards a former spouse or persons who have a child together or have close personal relations.[9] While, a crime victim shall refer to any person who has suffered damage, including physical or mental injuries, emotional suffering, material loss or other injury or threat of his basic freedoms and rights as a consequence of a committed crime.[10]

According to the Law on Prevention and Protection from Domestic Violence, the notion of domestic violence means ill-treatment, insult, endangerment of safety, bodily injury, gender-based violence or other psychological, physical or economic violence which causes feelings of insecurity, danger or fear, including threats of such actions, towards the spouse. , parents or children or other persons living in a marital or extramarital union or joint family economy, as well as to the current or former spouse, extramarital partner or persons who have children together or are in a close personal relationship, regardless of whether the perpetrator shares or has shared the same residence with the victim or not.[11]

Today, in the 21st century after numerous movements, efforts and successes in recognizing equal status of women and men, domestic violence still remains a dark spot on the fight against discrimination and recognition of equal status, both, in society and in the family. Although, over the past three decades the issue of violence against women, and its form domestic violence, has achieved increasing recognition on international and regional level as well. Domestic violence which is not sanctioned by the state *de jure* and fought against *de facto*, essentially denies women equality before the law and reinforces their subordinate social status. [12] States that do not prevent and prosecute domestic violence, and do not protect women victims of violence seriously endanger women's human rights and send out a clear message that violence against women is left under the auspices of family regulation i.e. in the realm of the private.

Often domestic violence is defined as any form of abuse perpetrated by one person against another, which results in a violation of his or her physical, moral, psychological, sexual, social or economic integrity.[13]

9. Article 122, paragraph 21 of the Criminal Code of Republic of North Macedonia, Official Gazette No. 19/04,
10. Article 122, paragraph 22 of the Criminal Code of Republic of North Macedonia
11. Article 4 of the Law on Prevention and Protection from Domestic Violence, Official Gazette No 138/14 and 33/15
12. Netkova, B. (2007), *Human rights and domestic violence*, Tetove, p.13
13. Si të kërkojmë mbrojtje nga dhuna në familje – Manual, OSCE, Shqipëri (2013), Available online at: https://www.osce.org/files/f/documents/3/4/106385.pdf

Abuse can occur at any time during a relationship, including the time during which the relationship is ending, or even after it has ended. This type of violence recognizes no cultural, ethnic, educational, or economic background. Abusive partners can use a variety of different tactics in an attempt to exercise power and control over their victims, such as: intimidation, emotional abuse, use of isolation, minimization, denial and justification, use of children, male privileges, etc. Abuse can happen once, or it can happen with a recurring and escalating pattern over a period of months or years. It can also change shape over time. There are several different forms of domestic violence, and a person can be subject to more than one form.

According to WHO, violence against women is highly prevalent and intimate partner violence is the most common form of violence. Furthermore, violence against women tends to increase during every type of emergency, including epidemics. Reports from China, the United Kingdom, the United States, and other countries suggest an increase in domestic violence cases since the COVID-19 outbreak.[14]

2. THE IMPACT OF COVID-19 CRISES ON DOMESTIC VIOLENCE

On 31 December 2019, the WHO China Country Office was informed of cases of pneumonia of unknown cause detected in the city of Wuhan, Hubei Province, China. Chinese authorities made a preliminary determination of a new coronavirus, designated SARS-CoV-2, identified in a hospitalized person with pneumonia in Wuhan. The coronavirus transmission rate (infection rate) began to escalate in mid-January 2020. Now, one year later the virus shows no sign of slowing down. However, with the development of COVID-19 vaccines by many pharmaceutical companies the situation is expected to improve significantly. Though, mass production and launching effective vaccination campaigns remains the main challenge for the pharmaceutical industry and health authorities.

Meanwhile, the different reactions of governments increased fear of people for an appropriation of human rights, especially in countries with fragile democracies. In Albania, at the beginning of the Covid-19 pandemic, fear made people except without question the strict condi-

14. COVID-19 and violence against women What the health sector/system can do, World Health Organization (2020), Available online at: https://www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf

tions of movement and distancing. The same goes for North Macedonia and Kosovo. To a large extent institution were placed entirely dependent on individual discretion as opposed to rule-governed institutions. This prompted many institutions in the EU and the US to call for monitoring the situation so that the novel conditions were not used by those in power in developing democracies to establish or strengthen their political power at the expense of human rights.

Quarantine restrictions and reduced movement on the one hand have helped prevent the spread of Covid-19, but on the other hand, according to scarce data, long-term closures at home have increased abuse against women. Most governments in the Western Balkans declared a state of emergency or natural disaster in their countries, shortly after the pandemic was declared on March 11th 2020, due to the situation with the novel COVID-19. By the end of March 2020, all Balkan countries had some form of state of emergency, curfew, list of measures and self-isolation guidelines, quarantine measures, and various sanctions if not these restrictions were not to be respected. In the Republic of North Macedonia, the Government declared a state of emergency on March 18th 2020 for the whole country in order to prevent the spread of COVID-19.

According to Ivana Stoimenovska, a psychologist and family counsellor in North Macedonia, forced isolation during a pandemic greatly increases the risk of domestic violence. *"All those living in dysfunctional families in times of isolation are more likely to be abused or raped, because the increased stress, frustration and tension brought about by isolation can reinforce dysfunctional patterns of behaviour among family members or abusive partners. So a violent person in these conditions can become even more violent."*

In North Macedonia, the Skopje-based Association for Emancipation, Solidarity and Equality of Women, wrote to the government calling for greater protection of victims of domestic violence, including a "crisis fund" to provide financial support.

Although global estimates show an increase in cases of domestic violence, the situation in North Macedonia seems a bit different. The non-profit organization Nexus – Civil Concept conducted a survey on how the pandemic was affecting the lives of women and girls, especially during the isolation period of last year. On the survey, which gives a clear picture of the conditions of women during the pandemic, 1790 women and girls responded. According to the NEXUS survey, when asked whether domestic violence has increased at this time of the pandemic and especially during curfew, an extremely high percentage or 82% of

the women say that there is no domestic violence and that this situation has brought family members closer, but 17% of the 1790 respondents, or 304 women and girls, a number that should not be overlooked, say that not very often, but nevertheless occasionally there are fights that lead to destructive and abusive behaviour.[15]

Nevertheless, the information received from the Ministry of Internal Affairs of North Macedonia on criminal offenses related to domestic violence and their perpetrators for the period January – March 2020, compared to the same period of the previous year, shows a different reality. According to this data, in the period January – March 2020, 241 criminal offenses related to domestic violence have been committed, compared to 207 in the period January – March 2019. Thus, there has been a 16% increase in domestic violence criminal offences in national level. According to the data disaggregated by different cities we notice a spike in these criminal offences in almost all large cities. However, the largest increase is in Tetovo, by 50% and in Skopje, by 36%. Regarding perpetrators, in the period January – March 2020, 245 are men, while 23 are women. In the period January – March 2019, 197 perpetrators are men and only 10 are women. Regarding the kinship of victims with perpetrators of domestic-violence related crimes for the period January – March 2020, the vast majority of victims, 102 are wives of the perpetrators, 21 victims are their mothers, 20 victims are women in extra-marital unions abused by their partners, 10 victims are ex-wives of the perpetrators, 16 victims are fathers of the perpetrators, 7 victims are husbands, 7 victims are sons of the perpetrators, 6 victims are daughters and 1 victim is an ex-husband.[16]

"*According to the statistics of the Ministry of Internal Affairs, in the period from March 12 to April 12, 2020, 79 criminal offenses of domestic violence were registered, which is a figure 28% lower compared to the same period last year. On a weekly basis, an increase was observed only in the first week of April, while during other weeks, cases of domestic violence were stagnant, compared to many European countries, but also globally, where the increase in domestic violence since the beginning of the isolation has increased over 25%*", states the report of the Helsinki Committee for Human Rights of the Republic of North Macedonia. However, according to the Helsinki Committee this data confirms the long-standing problem of non-reporting of domestic violence by the victims, but

15. Women in the time of pandemic, fear or challenge, fight or defeat?, NEXUS – Civil Concept, (2020), Available at: https://drive.google.com/file/d/1Wv2XLWjsMguHfWQ2WdRxJdw1O2b-2WRjY/view

16. More information in the tables attached to this paper

also the inappropriate way of registering criminal offenses and keeping statistics disaggregated by gender. Another reason for this data might be the inadequate way of qualifying cases of domestic violence, which are often treated as offenses against public order and tranquillity, rather than as criminal offenses.[17]

In the next monthly Report of the Helsinki Committee, three concrete cases of domestic violence have been reported where the competent institutions have failed to undertake procedures related to domestic violence, which according to the law are urgent. One case referred to a victim to whom officials from the Centre for Social Work, which is the institute that represents the primary protection mechanism for victims of domestic violence, refused to provide assistance and support because of the address of her place of residence, which was in another city according to her identification document, so that she has been redirected to report the case in the other city. The second case refers to an elderly woman, with a physical disability, again from Kriva Palanka, who was experiencing domestic violence by her son. Although she had several times reported the violence at the Competent Centre for Social Work in Kriva Palanka, she had not yet received the necessary protection, although her living in a shared house with the perpetrator posed a daily risk to her life and health. The other victim from Skopje, who was also experiencing violence from her son, had tried to report the case to the police several times but her attempts were unsuccessful.[18]

Following the example of other countries, which affected by the coronavirus crisis were forced to find new and creative solutions in order to increase the number of reported cases of domestic and gender-based violence by facilitating the reporting process itself, the Ministry of Labour and Social Policy in cooperation with UNDP launched a joint activity towards the preparation of a mobile application called BE SAFE, following the example of Montenegro, where the application was first launched. The purpose of the application is to enable easy, fast and secure reporting of gender-based and domestic violence, which will serve to support victims, both during the crisis caused by the COVID-19 virus, but also during "normal" conditions.[19]

17. Monthly Report on Human Rights in the Republic of North Macedonia – April 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-prill-2020/
18. Monthly Report on Human Rights in the Republic of North Macedonia – May 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-maj-2020/
19. Monthly Report on Human Rights in the Republic of North Macedonia – June 2020, Helsinki

During September 2020, a woman was killed by her husband in their house in Gostivar. This was the third case of femicide in the country during last year. Femicide is defined as intentional killing of women or girls just because they are females, and is the most extreme form of violence against women.[20] Based on the information that was transmitted by the media, there is a suspicion that the police did not act after a preliminary denunciation of violence. The unserious approach of the institutions to gender-based violence or the inadequate response to denunciations of violence, have an additional effect on undermining the trust of the victims in the responsible institutions. Research in our country shows that in over 80% of femicide cases, the murder takes place in the joint family home or if the divorce proceedings have started, in the home of the victim's parents, and in most cases the murder is committed by the ex-partner or the current partner, so non-response or delayed and inadequate response of relevant institutions may increase the likelihood that the violence will escalate into femicide.[21]

A case of domestic violence, which is both serious and indicative, was reported to the Helsinki Committee for Human Rights in November last year. It is a case of domestic violence in Tetovo, which was reported to the police several times. The victim was exposed to violence by her husband, in the form of verbal and non-verbal intimidation, rape, coercion, harassment, physical assault, deprivation of monthly income, etc. while their minor children were indirect victims who often witnessed the episodes of rape and physical violence in general. In the week before this latest incident, it was found that the perpetrator was positive for COVID-19. When the victim was physically assaulted by her husband, she immediately had reported the case to the police. The response from the competent police station in Tetovo was that they could not intervene in this particular case, because the perpetrator was positive for COVID-19 virus. While the perpetrator was abusing her in front of their children, police officers called the at-risk victim so that service officers could hear "directly" what was happening in the home. Although the police officers knew and were aware that the life and health of the victim were in seri-

Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-qershor-2020/

20. Metaj-Stojanova, A. (2020), *Femicide – the most extreme form of violence against women In Proceedings of the XXVIth International scientific conference - The teacher of the future, pp. 1071-1076*, Institute of Knowledge Management, Budva, Montenegro

21. *Analiza na slucai na femicidi – ubistva na zeni vo Republika Makedonija*, Nacionalna mreza protiv nasilstvo vrz zenite i semejnoto nasilstvo (2017), Skopje, Available at: http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Femicidi-mk.final_.pdf

ous danger, they consciously decided not to intervene because the perpetrator had tested positive for COVID-19. Furthermore, the response from the Ministry of Internal Affairs states that the Sector for Internal Affairs - Tetovo has protective equipment against COVID-19 and that it is used by police officers based on a preliminary assessment.[22]

In this case, police officers have seriously violated the provisions of the Law on Prevention and Protection from Domestic Violence, which provides that, whenever there is a report of domestic violence, in order to eliminate the immediate and serious risk to life and physical integrity of the victims and their family members, the police officer is obliged to go to the scene and prepare a police report immediately, no later than 12 hours after intervening in the case. Also, the police officer in cases of domestic violence, when undertaking police work and implementing police powers, operational-technical and preventive measures defined by the Law on Police, always makes a risk assessment of life and physical integrity endangerment of the victim as well as of the risk of recurrence of violence, in order to protect the victim, through proper risk management.[23]

Another case of domestic violence was reported by a 25-year-old mother from Resen, whose 15-month-old child from her extramarital union, had been living with the father in Struga. Although the Centre for Social Work in Resen was notified of threats and blackmail by the man against his wife and her parents, the Centre neither registered nor acted on the reports of domestic violence. Moreover, the woman was facing extraordinary obstacles and injustices in the fight for her child's custody. The Centre for Social Work in Struga had approved the request for custody of the father and for the same request of the mother had not acted at all, although it had been submitted in advance. The Centre had justified this decision with the age of the child, the developmental needs at this stage of personal development and the fact that the mother had left her partner and minor child. However, this reasoning is not based on the Law on Family of North Macedonia, which does not establish a basis for the father's custody of a minor child, based on the fact that the mother has left the extramarital union. On the contrary, the legal framework governing this issue takes into account above all the interests of the child, whereas the interests of a 15-month-old child do not coincide

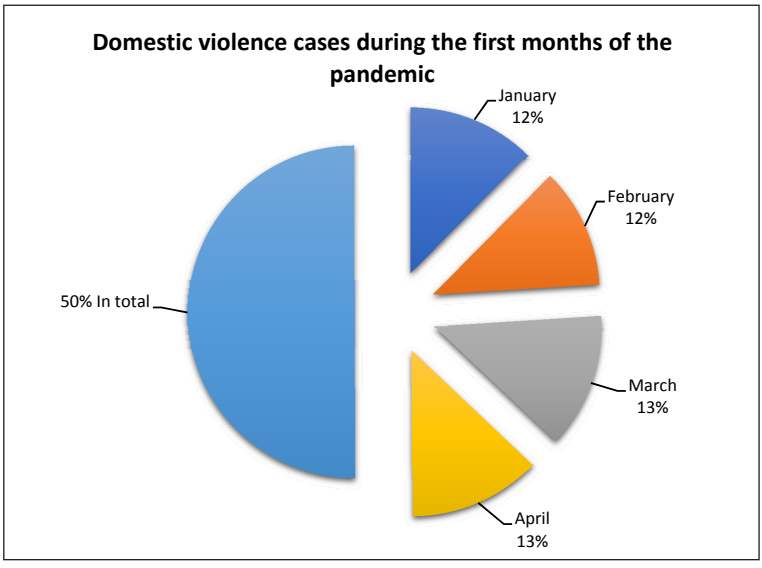
22. Monthly Report on Human Rights in the Republic of North Macedonia – November 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-nentor-2020/
23. Article 29 of the Law on Prevention and Protection from Domestic Violence, Official Gazette No 138/14 and 33/15

with living in a community in which domestic violence has occurred, nor is it in his interest to be deprived of maternal care at such a young age.[24]

While official statistics in some Balkan countries show an increase in domestic violence cases, experts and NGOs say the data rarely reflects the true extent of the problem, as victims often do not report incidents and some do not even acknowledge that are being abused.

The Animus Association, one of the oldest organizations providing support and housing for victims of domestic violence, said it had received more than 550 calls to its helpline since January 1st, a rate significantly higher than normal.

In the following text we will present data on domestic violence in the Balkan countries during the COVID-19 crises, respectively during the first months of the pandemic. Based on Kosovo Police statistics provided to Prishtina Insight, during the first months of 2020 almost 650 cases of domestic violence were reported throughout the country: 161 cases reported in January, 151 cases reported in February, 169 in March and 167 in April.[25]



24. Monthly Report on Human Rights in the Republic of North Macedonia – December 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedinise-se-veriut-dhjetor-2020/
25. Reports in domestic violence increase in 2020, Prishtina Insight, Available at: https://prishtinainsight.com/reports-of-domestic-violence-increase-in-2020/

During March 2020 the Kosovo government declared a public health emergency and a 13-hour curfew was imposed by March 24th. On April 2020 the Ministry of Justice reported a 17% jump in gender-based domestic violence cases, with urban areas witnessing a particular spike.

In Montenegro, the Centre for Women's Rights on April 5th 2020, reported that domestic violence had increased by 20% compared to the previous month.

In Serbia, the Autonomous Women's Centre in Belgrade stated in a press release on April 16th 2020 that during the first month of the state of emergency they had recorded a threefold increase in the number of contacts by women.

The Zagreb Women's House reported on April 8th 2020 that it had received 19 applications for admission to its shelter from abused women during February and March, and that it was also receiving about 10 such calls each day. Meanwhile, the Domine Association in the Croatian city of Split, also reported an increase in calls from women seeking urgent housing or other assistance.

In Romania, statistics published by the police on April 13th 2020 showed a 2.3% increase in domestic violence cases compared to March 2020.[26]

The United Nations has declared that since the coronavirus outbreak in 2020, domestic abuse reports have doubled in countries like Lebanon and Malaysia, compared to the same period in 2019, while in China the figure has tripled.

Some of the reasons of the increased risks of domestic violence for women during the COVID-19 crisis where people are encouraged to stay at home are:

- Family members are spending more time in close contact which increases the likelihood that women in abusive relationships and their children will be more exposed to domestic violence.
- Families are coping with additional stress and potential economic or job losses.
- Women have less contact with family and friends who may provide emotional support and protection from violence.

26. KOVID-19 i semejnoto nasilstvo: Koga domot ne e najbezbdenoto mesto, BIRN, April 2020, Available at: https://prizma.mk/kovid-19-i-semejnoto-nasilstvo-koga-domot-ne-e-najbezbednoto-mesto/

- The disruption of livelihoods and ability to earn a living, including for women, many of whom are informal wage workers, will decrease access to basic needs and services, increasing stress on families, with the potential to exacerbate conflicts and violence. As resources become scarcer, women may be at greater risk for experiencing economic abuse.
- Perpetrators of abuse may use restrictions due to COVID-19 to exercise more power and control over their partners to further reduce their access to services, help and support.
- Due to the constant physical presence of the perpetrator women are often unable to call helplines or lines of support to report domestic violence.
- Many women might be afraid to seek health care and medical assistance due to the risk of infection with COVID-19.
- Many women might not want to leave the violent environment and be placed in centers for victims of domestic violence or shelters for fear of infection with COVID-19.
- Furthermore, the Centres for Social Work in Macedonia were functioning part-time and working from home, which means that they only provided telephone counselling.

CONCLUSIONS AND RECOMMENDATIONS

The Republic of North Macedonia is a member state of all the relevant international acts from the United Nations, the Council of Europe and the European Union for the protection of human rights, which are incorporated in the national legislation. One of the most important documents of the Council of Europe that specifically refers to violence against women and domestic violence is the Istanbul Convention signed in 2011 and ratified in 2018. The existing legal provisions are in compliance with the principle of gender equality and the international instruments on the protection of women's human rights.

Nevertheless, during the time of pandemic, domestic violence has increased due to many factors, such as isolation at home, difficult financial conditions, aggravated mental state of the abuser, reduced contacts of the victim with relatives and friends, and often concrete inability of the victim to use the helplines or report the case.

Failure to report domestic violence and non-disclosure of domestic violence cases or the so called obscure number of unreported cases is another issue that needs to be resolved. Precisely for this reason when there is knowledge about eminent danger to life and health of citizens as a result of domestic violence, regardless of who the victim of domestic violence is, it should be reported to the nearest Police Station or to the competent Centre for Social Work.

Victims of domestic violence should not hesitate to call the police and report the perpetrator in any case of domestic violence, as soon as they have the possibility to do so.

However, it is clear that the pandemic caused by the corona virus has only further crystallized and made more visible the shortcomings of the system for protection from domestic violence. During this period, the state and institutions were put to the test in relation to the measures and services they provide for the protection of victims of domestic violence, which is a very fragile category of citizens, mostly women, children and elderly. But even though measures were adopted, the services for now, in many cases proved to be dysfunctional. Police and Centres for Social Work must not be unavailable to victims and be passive in their actions. On the contrary they must act urgently with all the force of law in cases of denunciation of domestic violence, taking into account the possibility of reoccurrence of violence as well as the degree of danger in which the victims are. Moreover, in some of the reviewed cases of domestic violence there is a significant lack of protection and unprofessional behaviour by the primary intervention institutions, which are the Police and the Centres for Social work.

Under these circumstances, it is extremely important in this period that the responsible institutions adequately and in a timely manner act on denunciations of domestic violence and gender-based violence, in order to avoid fatal consequences for the victims.

In this context, we are presenting some recommendations that can help prevent or report more effectively cases of domestic violence.

- National and local televisions, as well as other types of media, should regularly publish helplines and telephone numbers for reporting and assistance with domestic violence for cities where such services and Centres for Social Work are available.

- Posters and stickers with telephone numbers and directions for reporting domestic violence should be distributed in public places such as post offices, shops, restaurants, cafes, pharmacies etc.
- Relevant ministries and institutions should publish detailed and frequent statistics on the number of reported cases of domestic violence, disaggregated by cities and gender of victims.
- Smartphone applications that can be used by the victims to report domestic violence should be developed.
- Internet online support for the victims should be developed.
- Relevant ministries must conduct public campaigns and activities for raising awareness against domestic violence.
- These campaigns should contain specific reporting guidelines for citizens who are aware that someone's health and life are in danger.
- National and local institutions must allocate funds for establishment and sustainability of specialized services for women victims of gender-based violence and domestic violence and their children.
- Specialized accommodation services such as shelters and crisis centres with special with special protection and health accommodation protocols should be provided urgently.

REFERENCES

1. *Analiza na slucai na femicidi – ubistva na zeni vo Republika Makedonija*, Nacionalna mreza protiv nasilstvo vrz zenite i semejnoto nasilstvo. 2017). Skopje, Available at: http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Femicidi-mk.final_.pdf
2. COVID-19 and violence against women What the health sector/system can do, World Health Organization. 2020. Available online at:
3. Criminal Code of Republic of North Macedonia, Official Gazette No. 19/04
4. Facts and Figures: Ending Violence against Women United Nations Entity for Gender Equality and the Empowerment of Women, UN Women. 2017. Available online at: https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#notes
5. Halili, R. 2016, *Kriminologjia,* Prishtine,
6. https://drive.google.com/file/d/1Wv2XLWjsMguHfWQ2WdRxJdw1O2b2WRjY/view

7. https://www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf
8. Jashovic, Z. 1991. '*Kriminologija maloletnicke delikvencije',* Beograd
9. KOVID-19 i semejnoto nasilstvo: Koga domot ne e najbezbdenoto mesto, BIRN, April 2020, Available at: https://prizma.mk/kovid-19-i-semejnoto-nasilstvo-koga-domot-ne-e-najbezbednoto-mesto/
10. Law on Prevention and Protection from Domestic Violence, Official Gazette No 138/14 and 33/15
11. Law on Prevention and Protection from Domestic Violence, Official Gazette No 138/14 and 33/15
12. Mandro-Balili et al. 2006, *E drejta familjare*, Tirane
13. Metaj-Stojanova, A. (2020), *Femicide – the most extreme form of violence against women In Proceedings of the XXVIth International scientific conference - The teacher of the future, pp. 1071-1076*, Institute of Knowledge Management, Budva, Montenegro
14. Metaj-Stojanova, M. (2016), Identifying and defining the problem of domestic violence, In *Proceedings of the IIIrd International Scientific Conference on "Social Change in the Global World", pp. 119-129.* "Goce Delcev" University, Shtip
15. Monthly Report on Human Rights in the Republic of North Macedonia – April 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-prill-2020/
16. Monthly Report on Human Rights in the Republic of North Macedonia – May 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-maj-2020/
17. Monthly Report on Human Rights in the Republic of North Macedonia – June 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-qershor-2020/
18. Monthly Report on Human Rights in the Republic of North Macedonia – November 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedonise-se-veriut-nentor-2020/
19. Monthly Report on Human Rights in the Republic of North Macedonia – December 2020, Helsinki Committee for Human Rights, Available at: https://mhc.org.mk/sq/njoftime/raport-mujor-per-te-drejtat-e-njeriut-ne-republiken-e-maqedinise-se-veriut-dhjetor-2020/
20. Murdock, G. 1967. '*Social Structure*', Third Printing, The Free Press, New York
21. Netkova, B. 2007. *Human rights and domestic violence*, Tetove

22. Reports in domestic violence increase in 2020, Prishtina Insight, Available at: https://prishtinainsight.com/reports-of-domestic-violence-increase-in-2020/

23. Si të kërkojmë mbrojtje nga dhuna në familje – Manual, OSCE, Shqipëri. 2013. Available online at: https://www.osce.org/files/f/documents/3/4/106385.pdf

24. Trpenovska, L., Mickovik, D., Ristov, A. 2013. '*Semejno Pravo'*, Kulturna ustanova Blesok, Skopje

25. Violence against Women: Key Facts, World Health Organization. 2017, Available online at: https://www.who.int/news-room/fact-sheets/detail/violence-against-women

26. Women in the time of pandemic, fear or challenge, fight or defeat?, NEXUS – Civil Concept. 2020. Available at:

Table1. Criminal offenses, perpetrators and victims related to domestic violence for the period January – March 2020/2019

СЕКТОРИ ЗА ВНАТРЕШНИ РАБОТИ	кривични дела		сторители		мажи - сторители		жени - сторители		жртви		мажи жртви		жени - жртви	
	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019
СВР Скопје	75	55	78	55	70	51	8	4	79	55	9	14	70	41
СВР Битола	38	38	38	38	37	37	1	1	44	42	9	9	35	33
СВР Велес	18	17	18	19	17	19	1		18	21	5	8	13	13
СВР Куманово	25	28	25	28	24	27	1	1	26	28	5	1	21	27
СВР Охрид	21	12	21	12	16	11	5	1	21	12	7	1	14	11
СВР Струмица	14	19	14	19	13	17	1	2	14	19	3	5	11	14
СВР Тетово	26	13	26	14	22	13	4	1	26	14	4	4	22	10
СВР Штип	24	25	25	22	23	22	2		26	26	5	10	21	16
Вкупно:	**241**	**207**	**245**	**207**	**222**	**197**	**23**	**10**	**254**	**217**	**47**	**52**	**207**	**165**

Табела 1: Кривични дела, сторители и жртви во врска со семејно насилство за период јануари - март 2020/2019

Table2. Kinship of victims with perpetrators of domestic violence-related crimes

СЕКТОРИ ЗА ВНАТРЕШНИ РАБОТИ	сопруг		сопруга		син		ќерка		мајка		татко		поранешен сопруг		поранешна сопруга		маж во вонбрачна заедница		жена во вонбрачна заедница		останато	
	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019	јануари - март 2020	јануари - март 2019
СВР Скопје	3	2	35	16	2		1	1	4	4	2	8		1	1	4			5		26	19
СВР Битола		1	14	23	2	1	1	3	6	3	3	5			3	1			4	2	11	3
СВР Велес			4	9		3	1			1	3	5			1	1			4	1	5	1
СВР Куманово			9	19	1		1		5	5	2		1						2	2	5	2
СВР Охрид	3	1	6	5	2					3					2				1	1	7	2
СВР Струмица	1		7	8					1	3	2	3			1			1	2	2		2
СВР Тетово			13	6		1	1		2	1	1	2			2				1	1	6	3
СВР Штип			14	5		4	1	1	3	6	3	7		1	0				1	1	4	1
Вкупно:	**7**	**4**	**102**	**91**	**7**	**9**	**6**	**5**	**21**	**26**	**16**	**30**	**1**	**2**	**10**	**6**	**0**	**1**	**20**	**10**	**64**	**33**

Табела 2: Сродство на жртвите со сторителите на кривичните дела во врска со семејно насилство за период јануари - март 2020/2019

POSITIV E-STATE OBLIGATIONS IN THE FIELD OF PROTECTION FROM DOMESTIC VIOLENCE AND THE RIGHT TO LIFE

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Abstract

This paper will look into the subject of state positive obligations for the protection from the domestic violence and the right to life that stem from the Constitution of the Republic of Kosova, and Article 2, of the European Convention on Human Rights and Fundamental Freedoms. In order to elaborate the paper in the best possible light, I have used the method of analysis, using different sources of practical information and materials mainly related to human rights and freedoms in Kosova from the view of the Ombudsperson, especially on the right to life that is often deprived in domestic violence cases. The purpose of this paper is to analyze the history of domestic violence and the institutions that are linked with the aspect of treatment of domestic violence cases in Kosova and review the legal and constitutional regulation of these institution's separately in protection of the rights of the domestic violence victims. During the analyses of the details and the research, it was observed that in the Republic of Kosova, the history of the institutional treatment of the domestic violence cases is recent and started after the war. However, many institutional mechanisms and NGOS were that deal with domestic violence cases were established, which treat them differently but there are still legal gaps that lead to loss of lives of victims.

Keywords: e-state, domestic violence, right to life, institutional responsibilities, Kosova,

THE HISTORY OF DOMESTIC VIOLENCE IN KOSOVO

Domestic violence was considered as an old wound of the society, sometimes, an open wound that has resisted the development and the progress of the society all over the world, including the democratic development of the society.

Domestic violence is not specific only for an ethnicity or community but is a phenomenon that is spread all over the world but the root causes make it different in every place. Violence in a society is always directed towards the weakest. The burden of problems outside the families influences the internal family mood.

Poverty is the umbrella of the many other problems. Domestic violence is an imminent social problem because it violates the fundaments of the society, such as family. Its root causes are not always in the family, morals and psychological factors. There are social reasons for such problems and issues as well. Studies of this type of violence are pretty complicated since it is a phenomenon that occurs behind the doors of a household and it is very difficult for authorities to take any preventive measure, such as gather evidence, or act directly by using the classic methods of domestic violence prevention.

There are not enough studies regarding the domestic violence in Kosova and the main problem behind this lack of studies is that the society in Kosova is still acting in some cases based on the moral norms and the majority of cases happening within our society are remaining as closed/muted cases within the family.

Therefore, taking into consideration the abovementioned facts, we can say that this problem is present in our society as a result of not being studded properly from the respective institutions.

The biggest value that we had and still have in our society is precisely the family, therefore this needs a bigger and adequate institutional care that was missing until now.

This phenomenon has been and still is present in because until now the society of Kosova acted more based on moral norms than legal regulations.

WHICH ARE THE FORMS OF DOMESTIC VIOLENCE?

There are several forms of the domestic violence and any person can be subjected to many forms of that violence, such as:

1.1.1 **Physical abuse**: includes the use of physical force in a way that harms a person physically, involving a beating, punches and other forms of physical abuse, including isolation, extortion, etc.

1.1.2 **Sexual abuse and exploitation**: forcing someone to participate unwillingly in a sexual activity or use of humiliating tactics to belittle, denigrate and put a partner under control.

1.1.3. **Emotional abuse**: Constant underestimation of the human values and traits of the victim, humiliation on the basis of actions performed, etc.

1.1.4. **Psychological abuse**: includes the continuous control and verbal abuse, isolation, humiliation, belittling or emotional abuse through insults, swearing, blackmail, intimidation, constant stalking and watching, threats and similar forms of control and pressure by keeping the victim under constant emotional and psychological fear of using violence against the victim for other persons in the family setting.

1.1.5 **Economic abuse**: includes the denying of access or control of basic sources through restrictions of the necessary means for life, denial of the access to medical services, education, employment, damaging of property and other forms of pressure that keeps the person in the state of economic dependency.

1.2 Root causes of the domestic violence within Kosovan families

Some of the causes that are influencing the prevalence of this phenomenon in our society are mainly economic, social and policy related, however from the sociologic aspect, the main motives that are causing domestic violence are the following:

a) Individual,

b) Socialization and,

c) Social aspects.

a) Individual reasons - are the most common forms that motivate violence in Kosovar families. Through such motives, the frustrated, nerv-

ous, tired individual, with pressure from outside, enters his/her family and empties his psychological charge into the family through violence.

This is the most common cause of domestic violence. This usually happens in families that have patriarchal hierarchy and have a low level of education.

b) Socialization - it is not by accident that Aristotle said: "The family is the basic cell of the society" because the individual performs the first stage of socialization in the family.

Thus, the individual during the process of socialization in the family takes and carries with him/her the properties, behaviors, actions and characteristics of the family. An individual who was born and raised in a family in which the exercise of violence was present, will definitely practice such trait himself/herself because he grew up with that kind of pressure and violence.

More specifically, in families where physical violence or psychological pressure was exercised in the presence of children or even against them, such children in most cases will use the same methods for organizing and planning the family.

Therefore, socialization plays an important role in the phenomenon of violence or its prevention in Kosovo society.

Violence is a phenomenon that is learned when seen and practiced from the individual or social group and has an important role in this aspect because during this process, the individual learns both positive and negative traits and characteristics.

c) Social issues - some of the other motives that cause violence in Kosovar families are social issues.

Kosovo, being a post-war country, had a difficult recovery, both psychologically and socially, because the entire well-being of the individual was destroyed. Therefore, there were numerous movements within the state from rural to urban areas, this made it even more difficult to cope with the social aspect of some families and as a result of this change there were frequent confrontations and direct violence.

Therefore, we can rightly say that this history, no matter how recent it is for Kosovo, has shown the extent to which we are ready to accept the new changes in our society where treatment between the genders should be equal.

II. LEGAL AND CONSTITUTIONAL REGULATION OF HUMAN RIGHTS IN THE REPUBLIC OF KOSOVO

The rule of law must be a priority for functioning of a democratic society, the rights of victims of crime are guaranteed by the constitution and the law in the Republic of Kosovo. The rights of victims fall within the framework of fundamental rights and as such should be protected by the state through its mechanisms. The state has a legal obligation to provide every individual with fundamental rights and freedoms and to guarantee effective protection thereof as required by international conventions.

Although many countries make efforts to regulate this area with adequate law, the implementation of this law is a problem in itself.

In Kosovo there is a legal infrastructure to protect human rights according to international standards, starting with the Constitution[1], as the highest legal act which envisages the implementation of international human rights instruments and gives precedence to European conventions over domestic legislation.

Kosovo legislation regarding the treatment of this phenomenon of domestic violence which in relation to fundamental rights and freedoms is quite recent. Domestic violence was recognized for the first time in Kosovo in 2003 by UNMIK Regulation 2003/12[2].

This regulation primarily provided for protection measures for the victim of domestic violence in order to protect his/her life as a fundamental right to life.

From its implementation to the drafting of the law, hundreds of protection orders were issued providing for protection measures for victims of domestic violence.

This regulation provides for three types of protection orders:

a) Protection order - maximum 12 months with the possibility of extension for additional 12 months.

b) Emergency protection order - issued within 24/h lasts until the confirmation of the regular order on the day of the hearing usually the eighth day.

1. See the Constitution of Kosovo adopted on 9 April 2008, Chapter II which provides for the protection of human rights and freedoms, in particular Article 22 which provides for the implementation of international conventions in
2. UNMIK Regulation 2003/12 on Protection from Domestic Violence

c) Temporary emergency protection order issued by the police at during weekends or during public holidays.

Although it was the first time that such regulation was implemented in Kosovo there were many cases that were adjudicated and many victims of physical, psychological and economic abuse were treated. However, there were gaps that could not be covered by this regulation, therefore, with drafting of a more specific Law, such as the Law on Protection from Domestic Violence in 2010, protection measures issued by the institutions of the Republic of Kosovo were made more concrete.

This law[3], provides for the following domestic violence:

Definition of domestic violence

1.2. Domestic violence - - one or more intentional acts or omissions when committed by a person against another person with whom he or she is or has been in a domestic relationship, but not limited to:

1.2.1.use of physical force or psychological pressure exercised towards another member of the family;

1.2.2. any other action of a family member, which may inflict or threaten to inflict physical pain or psychological suffering;

1.2.3. causing the feeling of fear, personal dangerousness or threat of dignity;

1.2.4. physical assault regardless of consequences;

1.2.5. insult, offence, calling by offensive names and other forms of violent intimidation;

1.2.6. repetitive behavior with the aim of derogating the other person;

1.2.7. non-consensual sexual acts and sexual ill-treatment;

1.2.8. unlawfully limiting the freedom of movement of the other person;

1.2.9. property damage or destruction or threatening to do this;

1.2.10.causing the other person to fear for his or her physical, emotional or economic wellbeing;

1.2.11. forcibly entering removing from a common residence or other person's residence;

1.2.12. Kidnapping.

3. Law no. 03/L-182 on Protection from Domestic Violence of 2010

The law provides for the same protection orders as the UNMIK regulation, but unlike the Regulation, in addition to the measures provided for the treatment of the victim, measures are also provided for the treatment of the perpetrator of violence.[4]

As an improvement in the treatment of domestic violence cases, last year Kosovo has enshrined domestic violence in the Criminal Code of Kosovo with a separate article as a criminal offense[5].

Therefore, given this fact, Kosovar society must now do more to in the prevention side in order to prevent this phenomenon from happening in our society.

To this end, Kosovo institutions have drafted a National Strategy for Protection from Domestic Violence and an Action Plan,[6] and also drafted Standard Operating Procedures (SOPs)[7].

So, through these two important strategic documents, namely through the preparation, development and adoption of the "National Strategy of the Republic of Kosovo for Protection from Domestic Violence" and the "Action Plan" the Government of Kosovo expressed its serious commitment and responsibility for the treatment of the domestic violence phenomenon as a matter of priority.

The focus of the strategies was on:

1. information and awareness activities aimed at preventing the phenomenon of domestic violence;

2. coordination and actions of all stakeholders for the protection, treatment, rehabilitation and reintegration of victims of domestic violence;

3. punishing perpetrators of domestic violence and bringing them to justice;

4. harmonization of national legislation with the international law, as well as the revision of standards of services for victims of domestic violence;

5. changing of prejudicial and blaming mentality and culture against victims of domestic violence.

4. Law no. 03/L-182 on Protection from Domestic Violence 2010 article 4- Protection measure of psychosocial treatment and article 9- Protection measures medical treatment from alcohol dependency and dependency from psychotropic substances.
5. Criminal code No. 06/L-074 adopted on 23.11.2018, Decree No. DL- 065-2018, dated 13.12.2018, applicable since April 2019 article 248.
6. National Strategy of the Republic of Kosovo for Protection from Domestic Violence and action plan 2011-2014 and 2016-2020
7. Standard Operating Procedures for Protection from Domestic Violence in Kosovo, 2013

6. the provision of specialized services with modern standards, which are located in the country and which can be accessed by all individuals affected by domestic violence, regardless of their characteristics related to age, gender, disability or special needs, gender identity, sexual orientation, etc.;

7. treatment of perpetrators of domestic violence through mandatory rehabilitation programs; as well as many other actions planned more specifically in this strategy,

These actions undoubtedly direct Kosovo towards a new society and generation that unanimously maintains a position of zero tolerance against domestic violence and aims to live in equality, peace and harmony.

Standard Operating Procedures are designed to create a coordinated system of Kosovo institutions, which respond promptly and continuously in cases of domestic violence, in order to provide quality assistance and protection to domestic violence victims.

By designing and implementing these standard operating procedures, state institutional mechanisms and other partners will harmonize and coordinate cooperation and coordination in the stages of activities dealing with identification, referral, protection, rehabilitation and reintegration of victims of domestic violence and treatment of perpetrators of domestic violence.

These procedures are in line with the provisions of the Constitution of the Republic of Kosovo, applicable laws and secondary legislation, international standards and institutional policies. This document aims to clarify the role and responsibilities of competent institutions in the protection of victims of domestic violence through identification, referral, protection, rehabilitation and reintegration.

What makes the victim protection mechanism special in Kosovo is the Institution that I lead, namely the Victim Advocacy and Assistance Office[8] (VAAO) located within the Office of the Chief State Prosecutor with exclusive mandate for representing the rights of victims in the justice system in Kosovo. It is a unique mechanism in the region based on the American model of Victim Advocate, but further advanced in legislative terms for representing the interests of victims from the beginning to the end of all court proceedings.

8. The Victim Advocacy and Assistance Office for Protection and Assistance to Victims - was established in 2002 within the UNMIK Department of Justice, from 2005 it was a part of the Ministry of Justice of the Republic of Kosovo, and from 2011 is is a part of the Office of the Chief State Prosecutor for more see www.psh-ks.net

Victim Advocate is a strong voice of the victim because the sole mandate is to represent the interests of victims of crime in general and with a special emphasis on victims of domestic violence.

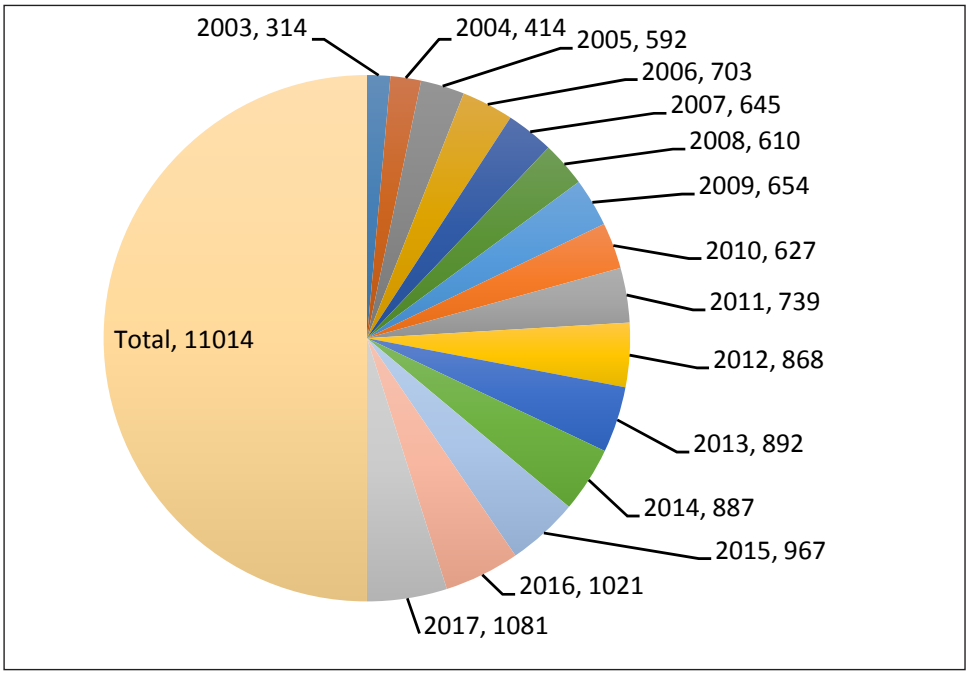
For better illustration of the work and the role of the protection of the victims will be presented in the following details:

Cases treated by the Office for Protection and Help of the Victims hence 2003-2017, which goes to show that the cases of the domestic violence are dominating the chart up to 90%.

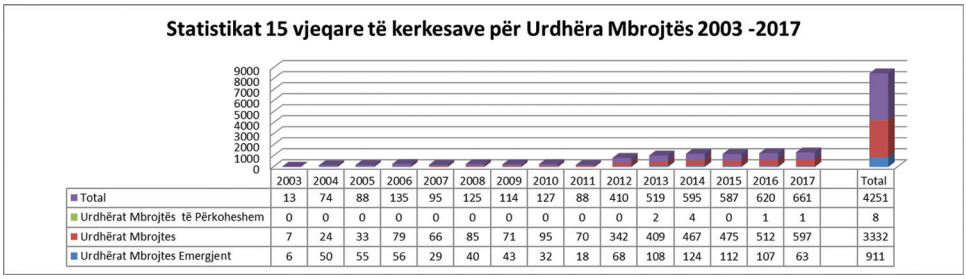
Years	Criminal cases of the domestic violence	Criminal cases of human trafficking	Criminal cases against the sexual integrity	Murders	Robberies	Other cases	Total
2003	314	20	69			110	513
2004	414	24	31			44	513
2005	592	35	56			54	737
2006	703	35	92			32	862
2007	645	33	84			42	804
2008	610	31	90			54	785
2009	654	21	104			62	841
2010	627	50	72			48	797
2011	739	48	70			31	888
2012	868	54	141			60	1123
2013	892	74	98	1		63	1128
2014	887	75	88	16	2	93	1161
2015	967	67	136	11	7	92	1280
2016	1021	70	135	24	13	92	1355
2017	1081	60	116	17	10	90	1374
Total	11014	697	1382	69	32	967	14161

Inside the columns you can be see the domination of the domestic violence cases and the increase in the number of reported cases from a year to a year and in 2013, with the entrz into force of the Criminal Code and Criminal Procedure Code, two categories of the victims are added, including two categories of the victims, the victims of murder and robberies and from this year, the role of the victim advocate is advanced to legal representative the injured party as foreseen in the article 63[9], of the Criminal Procedure Code of the Republic of Kosova.

9. Article 63 of CPC of Republic of Kosovo 2013



Years	Emergency Protection Orders	Protection Orders	Temporary Protection Orders	Total
2003	6	7	0	13
2004	50	24	0	74
2005	55	33	0	88
2006	56	79	0	135
2007	29	66	0	95
2008	40	85	0	125
2009	43	71	0	114
2010	32	95	0	127
2011	18	70	0	88
2012	68	342	0	410
2013	108	409	2	519
2014	124	467	4	595
2015	112	475	0	587
2016	107	512	1	620
2017	63	597	1	661
Total	911	3332	8	4251



	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Total	13	74	88	135	95	125	114	127	88	410	519	595	587	620	661	4251
Urdhërat Mbrojtës të Përkoheshem	0	0	0	0	0	0	0	0	0	0	2	4	0	1	1	8
Urdhërat Mbrojtes	7	24	33	79	66	85	71	95	70	342	409	467	475	512	597	3332
Urdhërat Mbrojtes Emergjent	6	50	55	56	29	40	43	32	18	68	108	124	112	107	63	911

The table shows that the largest number of victims of crime in Kosovo are cases of domestic violence and most of them seek protection measures under the law because they do not feel safe in their home, so when issuing these measures there are errors or inaccurate implementation thereof which will be the subject of this paper from the perspective of the ombudsperson and the European Convention on Human Rights specifically, the right to life in Article 2 of the ECHR.

III . DILEMMAS ABOUT INSTITUTIONAL RESPONSIBILITY IN CASES OF DOMESTIC VIOLENCE

The case of Ombudsperson of Kosovo is ex officio containing No:346/2019[10] regarding the positive obligations of the State for protection from domestic violence and the right to life, arising from the Constitution of the Republic of Kosovo and Article 2 of the European Convention on Human Rights and Freedoms, this report with recommendations is addressed to the highest institutions of the country, including the Prime Minister of the Republic of Kosovo, the Director of Police, the Ministry of Health, the two chairmen of Judicial and Prosecutorial Councils, the Mayor and me as Head of the Victim Advocacy and Assistance Office, while a copy is sent to the Chairwoman of the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions.

The report stressed that the protection of fundamental human rights and freedoms is essential for an effective response by Kosovo institutions to prevent cases of domestic violence.

This report firstly aimed to assess the application of the main principles and positive obligations of the state regarding the right to life,

10. Case with reference no. 1300/2019 no. Of report 346/2019 by the Ombudsman to the highest institutions of the State regarding the triple murder in Prishtina.

related to the triple murder which occurred on April 22, 2019, in the Dardania neighborhood in Prishtina, in which case it was reported that a man has shot dead his wife, his daughter in law and then himself. The media reported that the man who committed the murder was mentally ill, and his family members were endangered by violent behavior of the perpetrator in the past[11.]

Secondly, this report aimed to assess the effective implementation of the rights of persons / victims of domestic violence in Kosovo in relation to the access to care and treatment, focusing on discrimination, inequality, failure of the authorities to protect the rights of victims of domestic violence, as well as the obligations of the state to protect the lives of its citizens.

IV . COMPETENCIES OF THE OMBUDSPERSON

The Constitution of the Republic of Kosovo[12], in Article 132, paragraph 1, stipulates: "The Ombudsperson supervises and protects the rights and freedoms of individuals from illegal and irregular actions or omissions of public authorities", while paragraph 3 stipulates: Each body, institution or other authority, exercising legitimate power in the Republic of Kosovo, is obliged to respond to the requests of the Ombudsperson and submit to him/her all information required in accordance with the law ".

According to law no.05/L-019[13] on the Ombudsperson, among others, has the following responsibilities:

To draw attention to the cases when the authorities violate human rights and to make a recommendation to put an end to such cases and when it is necessary to express its opinion on the attitudes and reactions of the relevant institutions[14].

'To inform the Government, the Assembly and other competent institutions on issues related to the promotion and protection of human rights and freedoms, equality and non-discrimination '[15]

11. http //: Indeksonline.net/ triple murder that prompted the 61-year-old to shoot to death his son's wife and daughter-in-law
12. Constitution of Republic of Kosovo Article 132
13. Law 05 / L-019 on the Ombudsperson approved on 28.05.2015
14. Law 05 / L-019 on the Ombudsperson article 18 paragraph 1 subpar1.2
15. Law 05 / L-019 on the Ombudsperson - Article 18. Par 1 subpar.5

"To recommend to the assembly the harmonization of legislation with international standards for human rights and freedoms and their effective implementation."[16]

V. FINDINGS OF THE OMBUDSPERSON

After the ombudsperson institution has contacted all responsible institutions that have dealt with the case in question and finally after reviewing all the findings and facts gathered, as well as analysis of relevant laws, finds violations of fundamental human rights and freedoms, as the relevant authorities have not complied with their constitutional and legal obligations, nor the international standards for the protection of victims of domestic violence as well as the proper psychiatric treatment of a person with chronic psychiatric disorders, resulting in the loss of three lives.

The Ombudsperson finds that Kosovo has a strong constitutional framework, as well as a relevant number of national and local laws, policies, strategies and mechanisms against domestic violence, and in this context some great achievements have been made. However, progress has not been equal to a number of challenges that hinder the proper implementation of these laws, strategies and mechanisms and these have to do with the system as a whole, including poor implementation of laws and policies, poor coordination between sectors and authorities poor monitoring and accountability, actions that are followed by impunity and non-compensation of victims of violence, which violates not only human rights, but also acts as a frustration in the search for public services in Kosovo[17].

Furthermore, the ombudsperson finds that the responsible authorities, by not acting in accordance with their constitutional and legal obligations to address the perpetrator of domestic violence, have directly violated the individual rights of other persons in the family, guaranteed by Articles 25, 31, 32, and 54 of the Constitution of the Republic of Kosovo, as well as Articles 2, 6 and 13 of the European Convention. As a result of the lack of proper response by the competent authorities, there were several cases of death of victims of violence in the family in other cities of Kosovo[18].

16. Law 05 / L-019 on the Ombudsperson - Article 18. Par 1 subpar.9
17. Ex officio report of the Ombudsperson - case no. 346-2019 c
18. Murder cases in Suhareka and Gjakova are also victims of domestic violence

VI. LEGAL ANALYSIS AND EUROPEAN STANDARDS FOR HUMAN RIGHTS

The Constitution, as the highest legal act, protects and guarantees fundamental human rights and freedoms, therefore the implementation and practical realization of these rights is in the interest of the functioning of the rule of law. Constitutional guarantees serve the protection of human rights and the functioning of the rule of law. The Constitution in Article 21, explicitly defines the obligation of all bodies to respect the freedoms and rights of others, therefore this principle is imperative and must be respected by all. Whereas, in Article 25 paragraph 1 it stipulates: "Every individual enjoys the right to life ", also in accordance with Article 53 of the Constitution of Kosovo, fundamental human rights and freedoms are interpreted in accordance with the court decisions of the European Court of Human Rights**.**

Article 2 of the European Convention on Human Rights presents the general obligations of the state to protect the right to life, the right of every human being to life is protected by law. But in addition to the general principle of absolute protection of life, paragraph 2 of the provision provides for the exception, in context of "justification", when deprivation of life comes from the use of force, which is no more than absolutely necessary in order to fulfill one of the alternative purposes which are: first, the protection of every person from unlawful violence; second, to make a lawful arrest or to prevent the escape of a legally detained person; and third, to oppose, in accordance with the law, a riot or insurrection. Although this paper is seen from the perspective of the loss of life of three people as a result of domestic violence where the victim is mainly female, the ECtHR in the case of Opuz v. Turkey, argued that: "The issue of domestic violence, which can be shaped in various ways from physical to psychological violence or verbal abuse... is a general problem that concerns all member states and does not always result on the surface as it often occurs within personal relationships or closed circles and are not alone affected women. "The court recognizes that men can also be victims of domestic violence and, in fact, children are often victims of the phenomenon, either directly or indirectly."

The case of Tomašić and Others v. Croatia[19], faced the Court with an application addressed by the relatives of a child and his mother, both victims executed by the father / husband, who also committed suicide, one

19. Branko Tomasic and others v. Croatia, 15 January 2009

month after his release from prison. He had been jailed for five months because of death threats he had previously made to his own family, so authorities ordered the measure of psychiatric treatment. The Croatian state had failed to take adequate measures to protect the child and his mother and had not conducted an effective investigation into the state's possible responsibility for the deaths of their relatives. Based on the factual circumstances, the failure of the relevant domestic authorities to take all necessary and reasonable steps in the circumstances of the present case to provide protection for two victims is considered sufficient for the Court to find a violation of the substantive aspect of Article 2 of the ECHR. The court also noted some shortcomings in the authorities' conduct: although the psychiatric report drafted for the purposes of the criminal proceedings had highlighted the need for continued psychiatric treatment of the convict, the Croatian government had failed to prove that such treatment had been properly administered, and finally, the convict had not undergone an assessment prior to his release from prison if he still posed a risk to the child and his mother.

In the case of Durmaz v. Turkey[20], the complainant alleges that the investigation into the death of her daughter by the Turkish authorities was ineffective and that the European Court, after dealing with this case, found a violation of Article 2 of the Convention in procedural terms, due to the failure of Turkish authorities to conduct an effective investigation into the death of the applicant's daughter. The European Court noted that domestic violence mainly affected women and that general discriminatory judicial inactivity in Turkey created a favorable climate for domestic violence, which can also be inferred for cases of domestic violence in Kosovo.

In the case of Talpis v. Italy[21], concerning domestic violence, to which the mother of two children was exposed, Mrs. Talpis and resulted in the death of her son and the attempted murder of her. The European Court found that there was a violation of Article 2, due to the murder of her son and attempted murder against her in this case, there was a violation of Article 3 (prohibition of inhuman, cruel and degrading treatment) due to the failure of the authorities in their obligation to protect Ms. Talpis against acts of domestic violence and that there has also been a violation of Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 3 of the Convention. The European Court found that the national authorities had failed to take effective action and did not

20. Durmaz case against T no. 3621/07
21. Talpis v. Italy case no. 41237/14

punish the perpetrator of domestic violence which later resulted in the murder of the boy and the attempted murder of Ms Talpis, so the Italian authorities had failed to protect the lives of the persons in question.

In its position from the caselaw referring to cases of domestic violence, the Court has clearly reiterated that children and vulnerable categories, in particular, have the right to protection by the state in the form of effective prevention, aiming at their protection from equally serious forms of criminal offenses which aim at violating the integrity of the person. The circle of responsible bodies and institutions is very wide, but the positive obligation that Article 2 of the Convention itself reflects aims to create an effective and independent judicial system that will enable the identification of the perpetrator of a murder of an individual and to punish the perpetrator. In the context of the activity of state authorities, specifically front-line authorities such as the police, Victim Advocates and the CSW, there must be safeguards that they rigorously implement legal provisions, implying the need for a reasonable "diligence". But the purpose of positive obligation in the spirit of the Convention cannot be absolute, as no excessive burden can be imposed on state authorities to exercise their legitimate functions in a contemporary society, in the face of unpredictable human reaction or operational solutions, implemented based on a predetermined plan. Consequently, any potential threat to life does not oblige the authorities to take concrete measures to prevent it, unless the threat is objective and the authorities are aware or should have been aware that a certain individual is in fact its target, and that within the competences of the authorities the measures taken by them, from a reasonable point of view, will undoubtedly lead to the neutralization of this situation.

Finally, based on the Istanbul Convention, which was adopted by the Committee of Ministers of the Council of Europe on 7 April 2011[22], which is the first legally binding instrument in Europe, and the widest international treaty that creates a comprehensive legal framework for addressing this serious human rights violation. The Convention provides for and requires States Parties to prosecute or, conversely, to punish various forms of violence against women: domestic violence (physical, sexual, psychological or economic violence), forced marriage, female genital mutilation, forced abortion, forced sterilization and sexual violence, including rape and sexual harassment.

22. The Convention was opened for signature on 11 May 2011 at the 121st Session of the Committee of Ministers in Istanbul and entered into force on 1 August 2014

Although the ultimate goal of the Istanbul Convention is to prevent all forms of violence covered by its scope, victims need adequate protection from further violence, as well as support and assistance, to overcome the consequences of violence and to rebuild their lives.

RECOMMENDATIONS

- Develop a comprehensive strategy aimed at preventing and combating all forms of violence.
- Adapt existing policies and tools to make them easily applicable to gender issues.
- Set up a specialized staff and a sufficient number of support services for these categories of victims and respond to the needs of victims of any form of violence.
- Adopt special protocols and guidelines for all relevant professionals (specialized and general) to cover all forms of violence, as provided for in the Istanbul Convention, and to ensure integration into the work of service providers
- Create maps of support services for victims of violence in Kosovo
- Provide specialized training for service providers for victims of all types, especially those based on gender.
- Ensure that all support services are provided in a manner that protects the intimate life of the victim, and that the collection, recording and storage of all information in a confidential manner is properly handled, and shared with others only on the basis of approved protocols for exchange of information between agencies.
- Extend the practice of using separate rooms or friendly rooms for interviewing victims, especially in general services.
- Extend existing coordination mechanisms at the local level in order to cover, other forms of violence against victims in addition to domestic violence.

REFERENCES

1. UNMIK Regulation 2003/12 "On Domestic Violence"
2. Law no. 03 / L-182 "On protection from domestic violence
3. Law no. 05 / L-020 "On gender equality"
4. Law no. 05 / L-021 "On protection from discrimination"
5. Law no. 04 / L-017 "On free legal aid"
6. Constitution of the Republic of Kosovo
7. II European Convention on Human Rights
8. II Law on the Ombudsperson
9. Criminal Code of the Republic of Kosovo * No. 04 / L-082
10. Criminal Procedure Code No. 04 / L-123
11. Juvenile Justice Code No. 03 / L-193
12. Law no.02 / L-17 "On social and family services"
13. Law "On the family" of Kosovo No. 2004/32
14. Law no. 04 / L-076 "On the police"
15. Law no.04 / L-125 "On health"
16. Law no. 05 / L-025 "On mental health"
17. Administrative Instruction no. 12/2012 on determining the place and manner of psycho-social treatment of the perpetrator of domestic violence
18. Administrative Instruction no. 02/2013 on the manner of treatment of the perpetrator of domestic violence against whom a measure of compulsory medical treatment has been imposed from addiction to alcohol and psychotropic substances.
19. Kosovo Program against Domestic Violence and Action Plan 2011-2014
20. National Strategy for Protection from Domestic Violence and Action Plan 2016-2020
21. Kosovo Program for Gender Equality 2008-2013.
22. Standard action procedures for protection from domestic violence in Kosovo
23. Standard operating procedures for the Office for Victim Protection and Assistance

APPENDIX 1: CONFERENCE AGENDA

RULE OF LAW, GOVERNANCE AND SOCIETY IN THE TIME OF PANDEMIC

2ND ONLINE INTERNATIONAL SCIENTIFIC CONFERENCE ON SOCIAL AND LEGAL SCIENCES

AGENDA

27 FEBRUARY 2021,
SOUTH EAST EUROPEAN UNIVERSITY, REPUBLIC OF NORTH MACEDONIA

09.45 - 10:00	**Online Registration (Main session virtual room link: meet.google.com/hdb-jkem-ojt)**
10:00 - 10:05	Opening of the conference by the moderator Anila Pajaziti
10:05 - 10:30	Welcome speech Rector Academic Abdylmenaf Bexheti Speech Prof. Adnan Jashari – Dean of Law Faculty Speech Prof. Memet Memeti – Dean of Faculty of Contemporary Social Sciences
10:30 - 10:50	**10:30 - 10:50** Speech Prof. Rudina Jasini – Law Faculty, University of Oxford Speech Prof. Anamarija Musa – Law Faculty, University of Zagreb
10:50 - 11:00	Registration of participants in Online sessions
11:00 - 13:00	**Presentations of scientific papers in sessions**
13:00 - 14:00	Cocktail for the organizing committee at the SEEU buffet

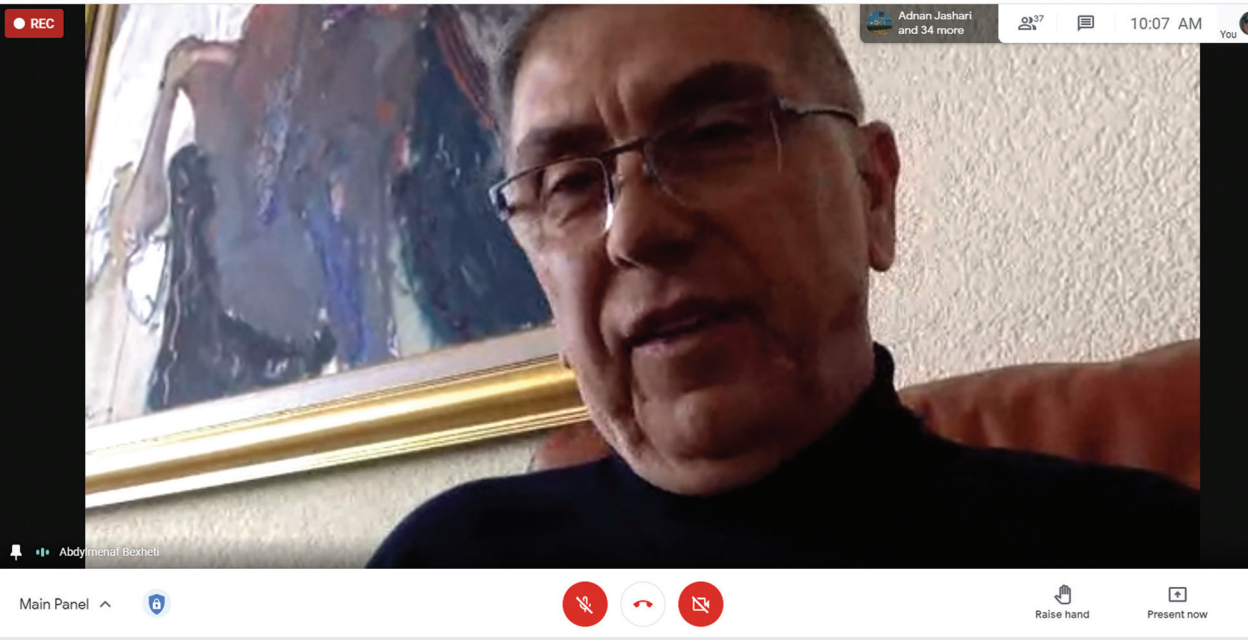
Sessions	Chairperson/s	Author/s	Title
Session 1 Rule of Law and Human Rights in the time of Pandemic **Virtual room link:** meet.google.com/mcu- iccv-wsh	Jeton Shasivari	Adnan Jashari&Egzona Osmanaj SEEU-North Macedonia	Covid-19 as Circumstances for non-implementation of the Principle "Pacta Sunt Servanda"
		Jeton Shasivari SEEU-North Macedonia	Early Parliamentary Elections of July 15, 2020 in North Macedonia during COVID-19-Constitutional and Administrative Legal Aspects
		Arta Selmani-Bakiu; Hatixhe Islami & Emine Zendeli SEEU-North Macedonia	Divorce, children-parent contacts, and COVID-19 pandemic: Challenges & Opportunities
		Adrianit Ibrahimi&Besa Arifi SEEU-North Macedonia	Defending the rights of the victims of corruption in the Republic of Kosovo: With a special focus to the pandemic Covid-19
		Dušan Milošević University of Belgrade-Serbia	Misdemeanor Liability in terms of restrictions on Freedom of Movement during the State of Emergency
		Xhulio Doku University of Tirana-Albania	Albanian Legal Regime of Commercial Activities Established During Marriage
		Ilija Jovanov North Macedonia	Procedural Rights of Suspects and Accused Persons in the time of the COVID-19 Pandemic
		Nur Çeku University of Pristina-Kosovo	Parliamentary Democracy and Rule of Law in Kosovo in Pandemic Time
		Blerton Sinani SEEU-North Macedonia	The COVID-19 Pandemic's Impact on State of Emergency
		Albulena Uka Ghent University-Belgium	The tensed coexistence of the Rule of Law and COVID-19 in the European Union

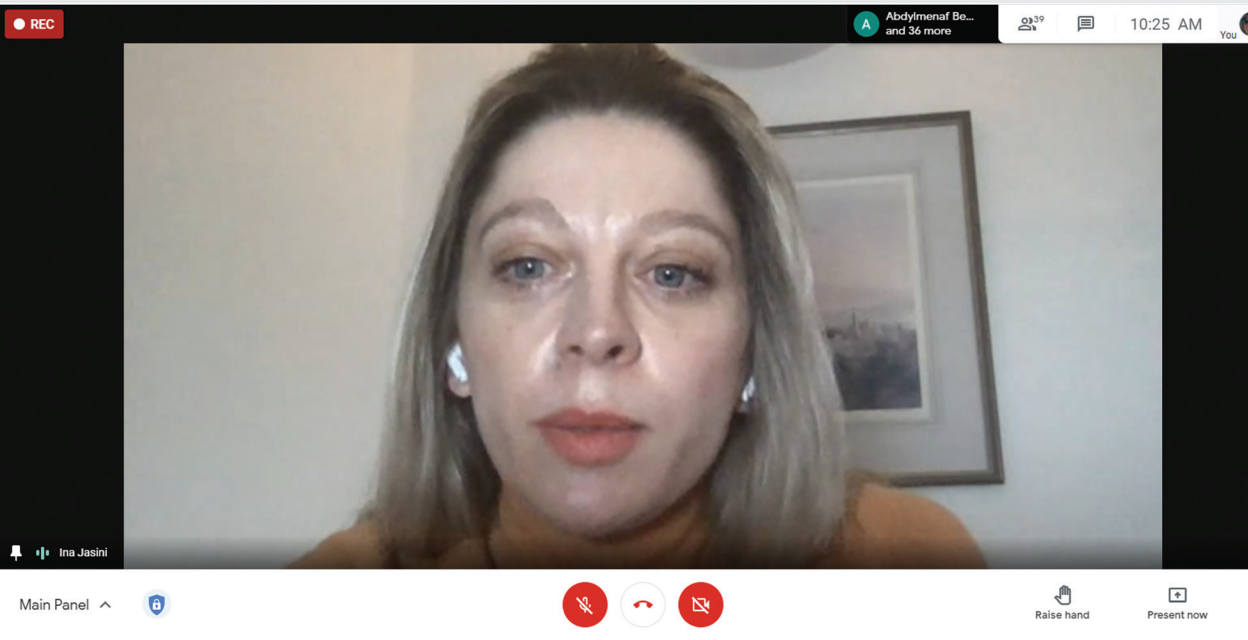
Sessions	Chairperson/s	Author/s	Title
Session 2 Challenges and Opportunities in Governance in Pandemic Era **Virtual room link:** meet.google.com/gsi- hagb-xxj	Abdula Azizi	Memet Memeti SEEU-North Macedonia	COVID-19 and the impact on gender equality policies at local level: The case of the Republic of North Macedonia
		Abdula Azizi; Selim Daku &Gjylzen Berisha SEEU-North Macedonia; University of Gjilan-Kosovo& Universität Marburg, Germany	Rule of Law and abuses of Anti-COVID- 19 Government Measures during the Pandemic: The case of North Macedonia
		Jonuz Abdullai& Lundrim Aliu SEEU-North Macedonia	Governance in Kosovo: The Capacity to Respond to COVID-19 Health Crisis
		Hajrulla Hajrullai SEEU-North Macedonia	Strategies for fighting corruption in education
		Besa Kadriu;Besa Bytyqi; Blerta Ahmedi-Arifi&Lindita Muaremi SEEU; University of Tetova-North Macedonia	The world and the ethical crisis during the COVID-19 period
		Besa Kadriu&Memet Memeti SEEU-North Macedonia	Influence of the pandemic period (Covid-19-2020) on the development of political activities in the practice of North Macedonia
		Imërlije Saliu-Fetai& Shkëlqim Veseli-University of Tetova-North Macedonia	Governance in Municipality of Gostivar during a pandemic
		Merita Zulfiu Alili;Blerta Ahmedi- Arifi&Nevila Mehmetaj SEEU-North Macedonia&University "Luigj Gurakuqi"-Albania	Irregular migration and smuggling of migrants along North Macedonia
		Albina Joga(Shehu)& Arnisa Tepelija University "Marin Barleti"&IOM-Albania	Local Government and Service Delivery in Albania during Pandemic
		Driola Susuri SEEU-North Macedonia	Presidential suspensive veto
		Zenel Hajrizi SEEU-North Macedonia	Socio - Economic Changes and Governance in Pandemic COVID-19 in Kosovo

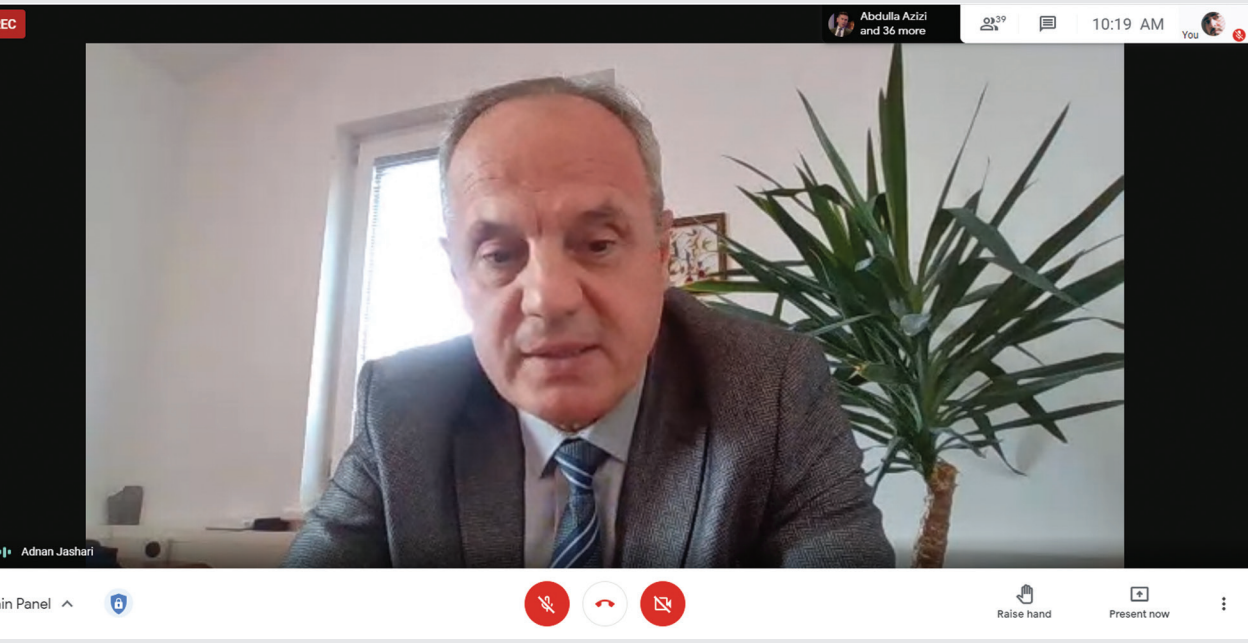
		Ilmiasan Dauti& Memet Memeti-SEEU- North Macedonia	Inter-municipal cooperation, neglected solution for the deficiencies of asymmetric decentralization in the RNM
		Ivana Garanová Petrisková FSES Comenius University, Slovakia	Social Entrepreneurship as post-Pandemic Recovery Driver of Youth Unemployment. From Job Seekers to Job Creators
Sessions	**Chairperson/s**	**Author/s**	**Title**
Session 3 New Social Normality **Virtual room link:** meet.google.com/xjb- gqtk-eid	Ali Pajaziti	Lazo Matovski Language Implementation Agency North Macedonia	The concept of Multiculturalism in times of crisis
		Albana Uka&Vikas Kumar University of Pristina-Kosovo&University of Idaho-USA	The Alimentation in the time of Pandemic
		Ali Pajaziti SEEU-North Macedonia	COVID-19 and "the Discovery of the Sacred"
		Hasan Jashari SEEU-North Macedonia	Multiculturalism as a social theory and practice in the Western Balkans
		Hasan Jashari SEEU-North Macedonia	Hegelian philosophy of law in terms of postmodernism and pandemic
		Ylber Sela&Lazo Matovski University of Tetova-North Macedonia	New Social Normality in the time of Pandemic
		Fatime Hasani&Memet Memeti SEEU-North Macedonia	Gender (dis)parity in STEM, policy implications, the way forward: case of the Republic of North Macedonia
		Viona Rashica SEEU-North Macedonia	The usage of social media by international actors during the coronavirus pandemic
		Fatmir Emurllai SEEU-North Macedonia	Law enforcement and air pollution in pandemic era
		Biljana Cvetanovska-Gugoska&Ilmiasan Dauti SEEU&UNDP-North Macedonia	The evolving context for regional development policy-from theoretical shifts to new policy approaches
		Lulzim Krasniqi&Jonuz Abullai SEEU-North Macedonia	Policy Making in the Pandemic: Kosovo's Double Challenge

Sessions	Chairperson/s	Author/s	Title
Session 4 Administration of Justice in the time of Pandemic **Virtual room link:** meet.google.com/rry-rjdf- jzc	Blerta Ahmedi-Arifi	Juanita Goicovici University Babeş-Bolyai Cluj-Napoca- Romania	Discharge of the Legal Obligations Against Passengers in Air Transportation Contracts under Pandemic Circumstances: "Oxygen Not Included?"
		Bekim Nuhija&Sami Mehmeti SEEU-North Macedonia	Fundamental Change of Circumstances in International Treaty Law
		Blerta Ahmedi Arifi; Merita Zulfiu Alili & Besa Kadriu SEEU-North Macedonia	Domestic Violence in the region of the Municipality of Tetovo in the time of the Pandemic
		Vedije Ratkoceri&Kaltrina Dardhishta SEEU-North Macedonia	Cybercrime during the Covid-19 Pandemic
		Albana Metaj-Stojanova&Ismail Zejneli SEEU-North Macedonia	The impact of COVID-19 on Domestic Violence
		Vesna (Stojkovska) Stefanovska University St. Kliment Ohridski-North Macedonia	The conflict between public health and certain human rights in the time of pandemic
		Basri Kastrati SEEU-North Macedonia	Domestic Violence in Pandemonium and the positive obligations of the State regarding the protection from Domestic Violence for the Right to Life!
		Besjan Pollozhani North Macedonia	Consequences Presented in the lives of citizens by the Covid-19 Pandemic
		Dardan Berisha&Dardan Vuniqi University of Prizren-Kosovo	Restriction of human rights during the pandemic, Authoritarianism, or protection of the public interest? A Perspective from Kosovo

APPENDIX 2: PHOTOS FROM THE CONFERENCE



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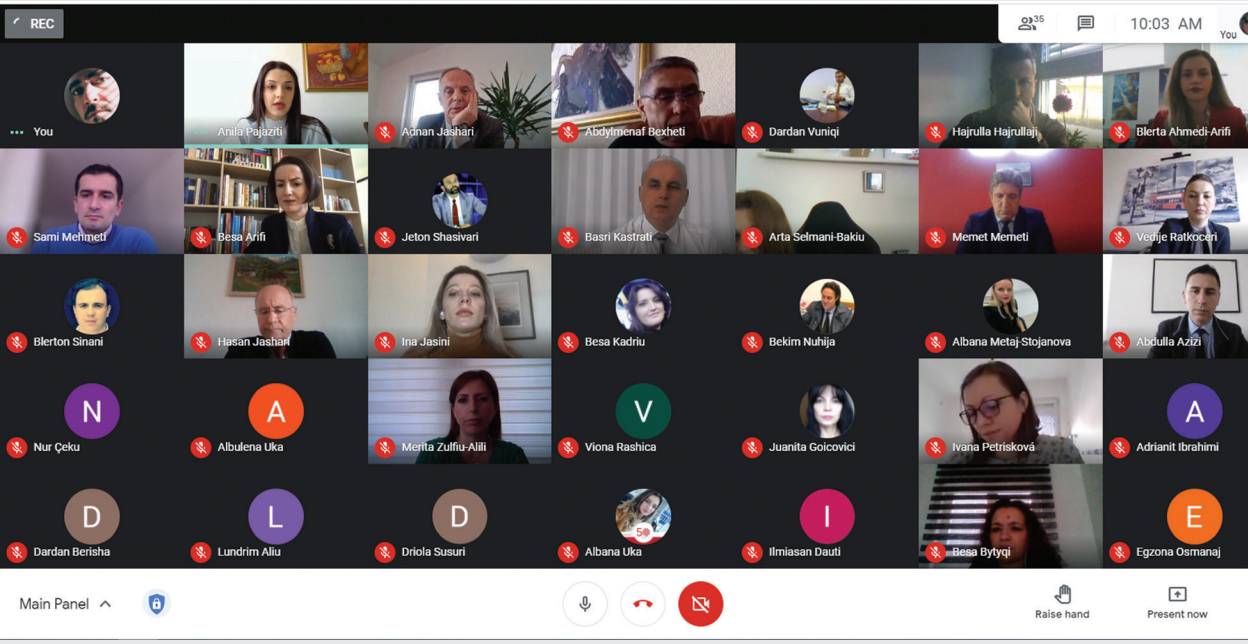
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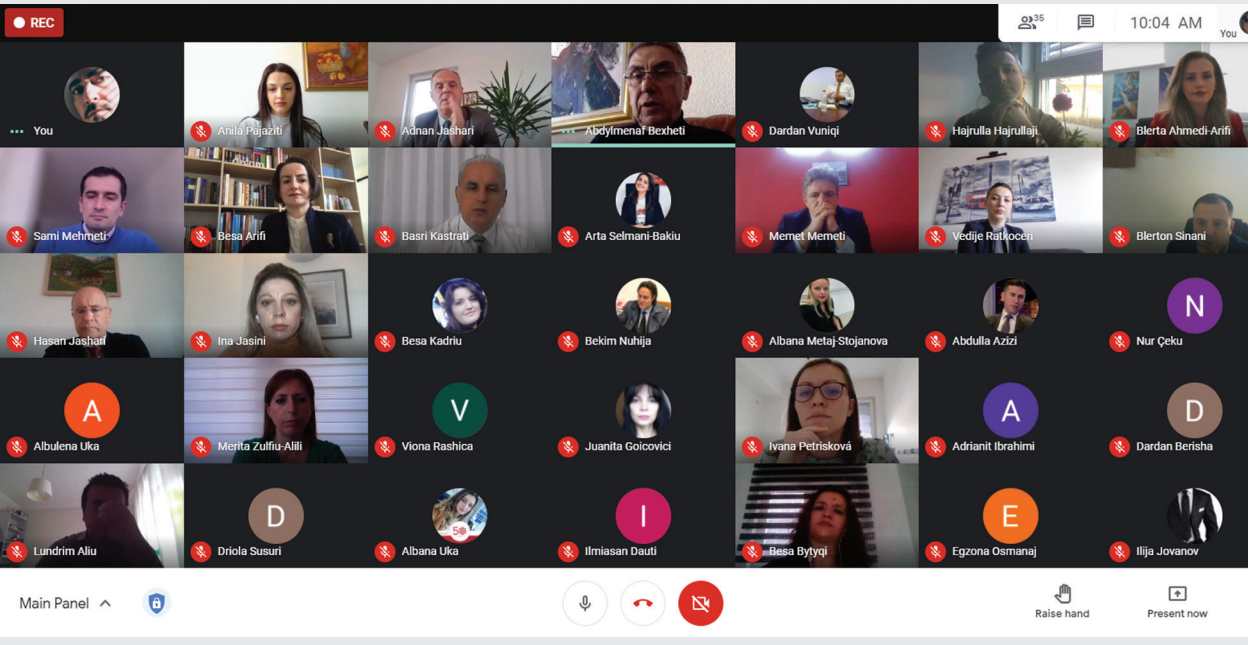
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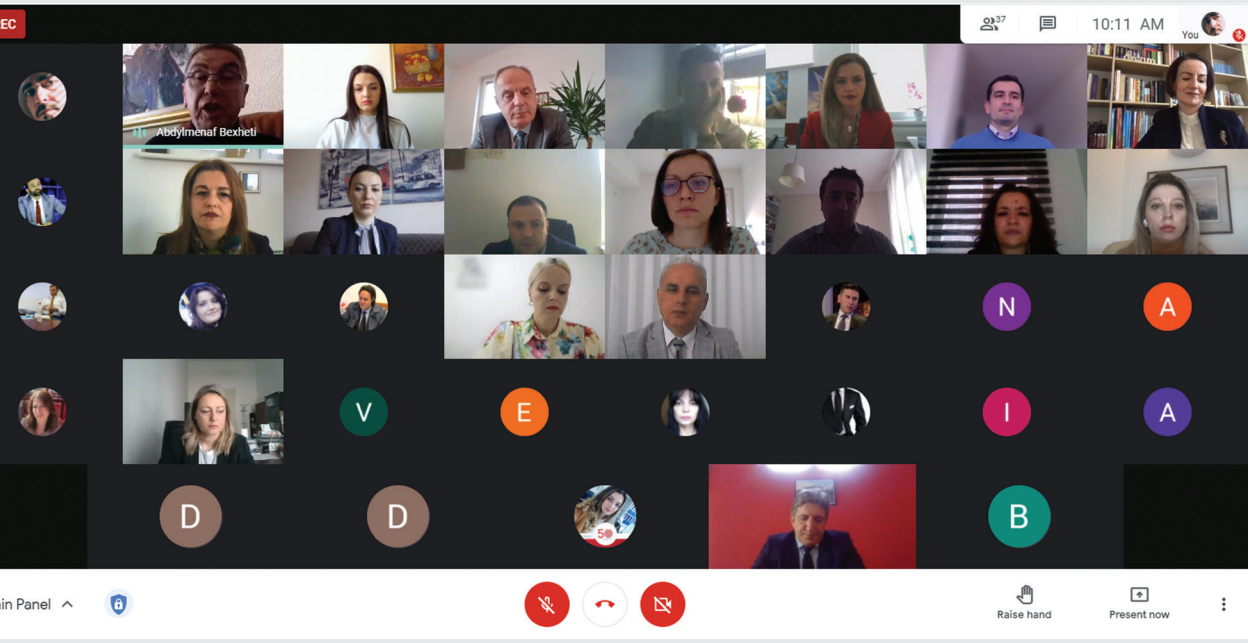
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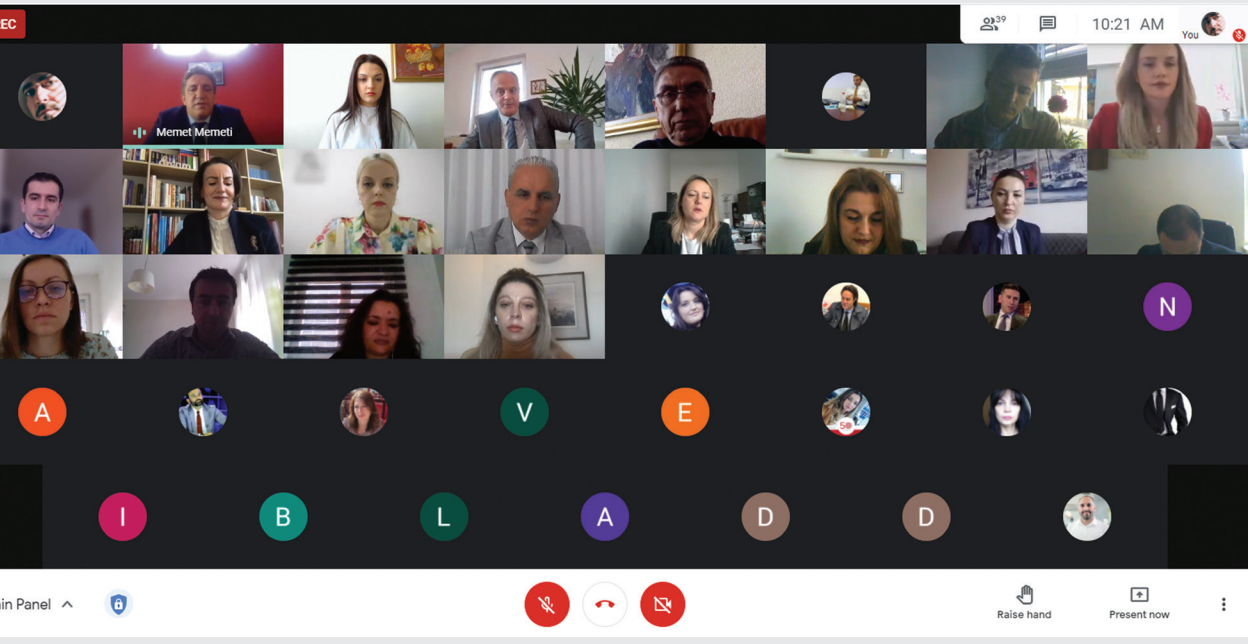
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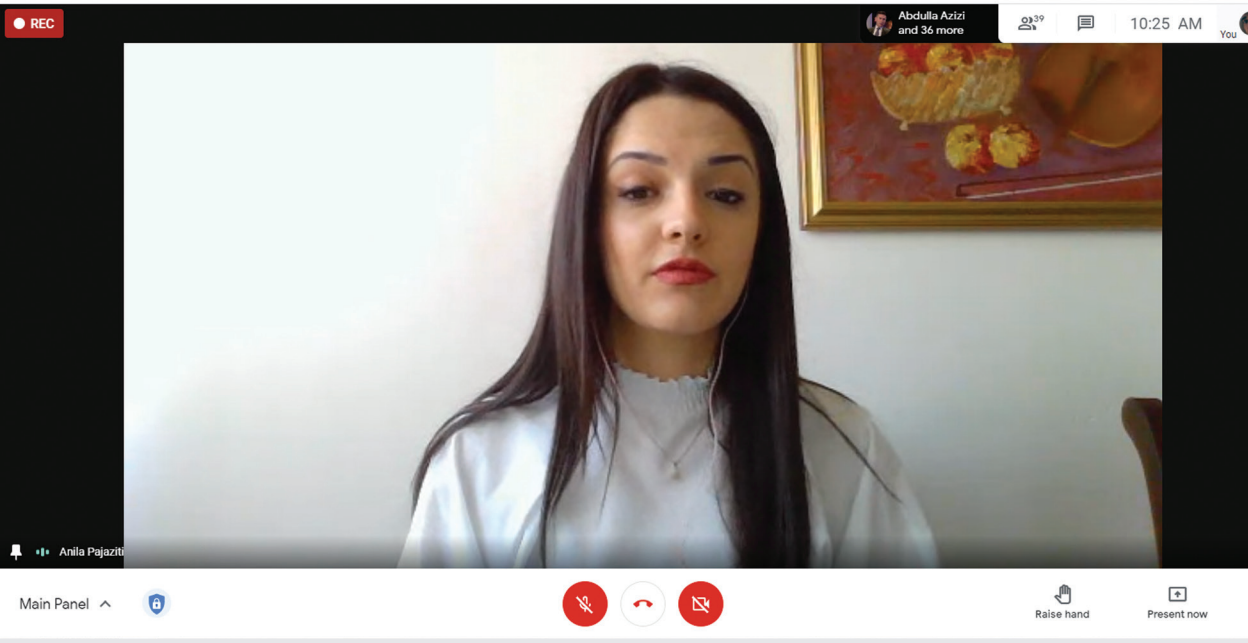
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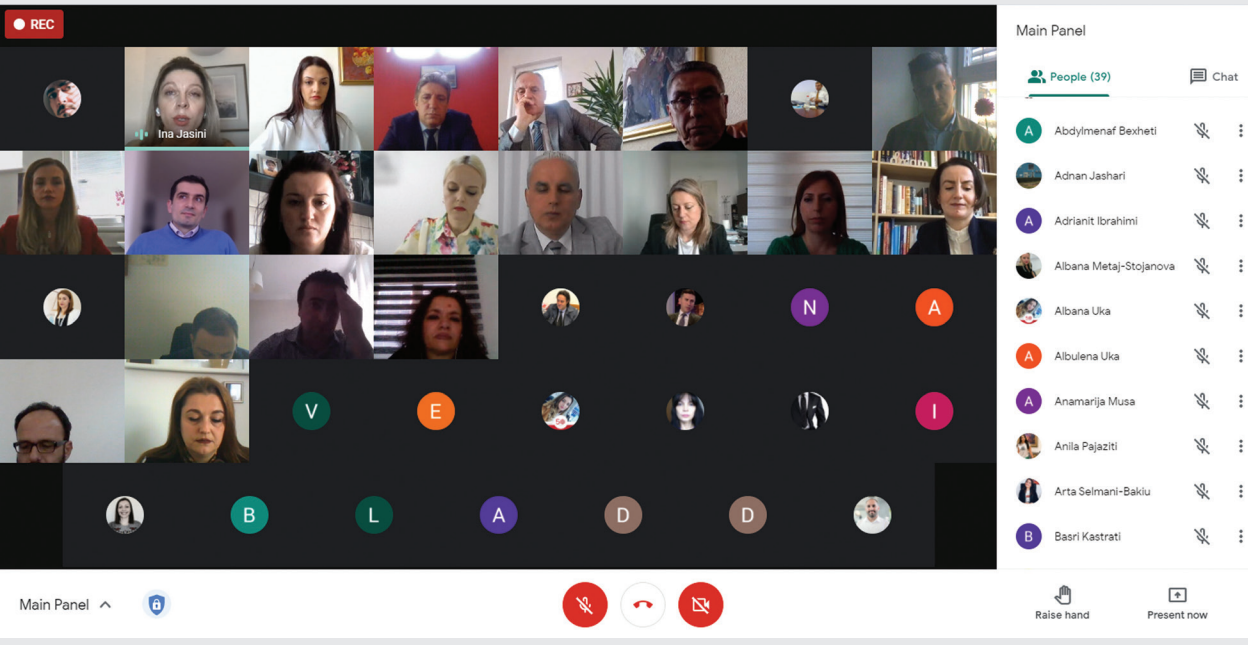
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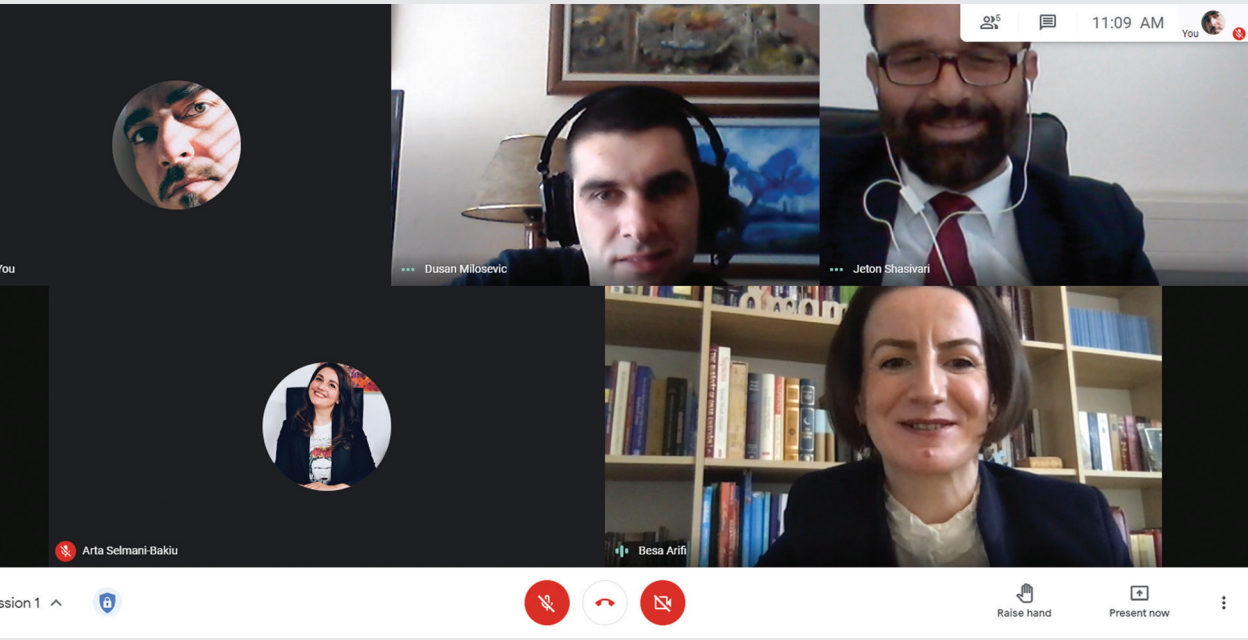
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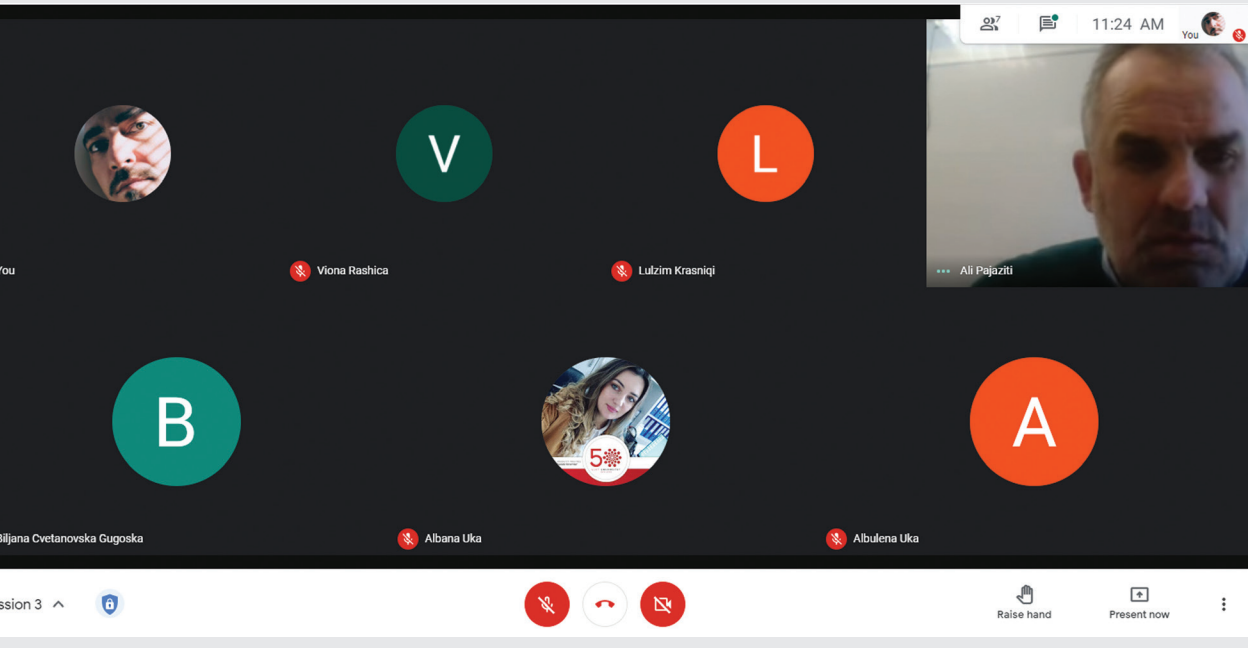
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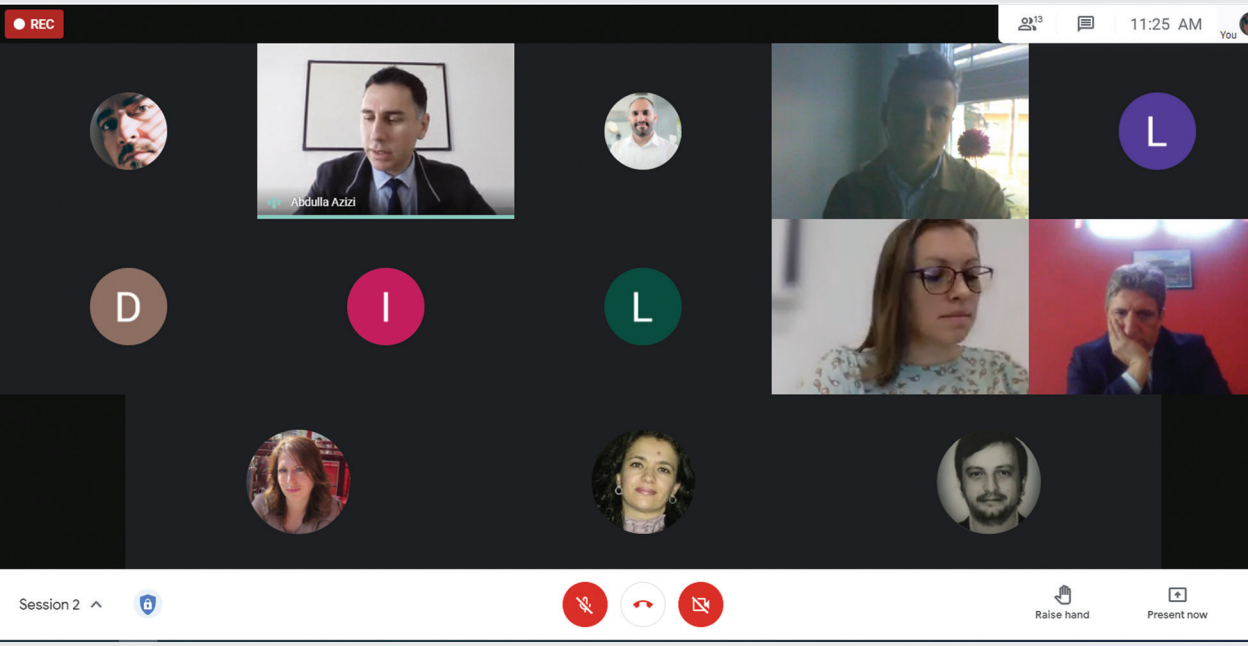
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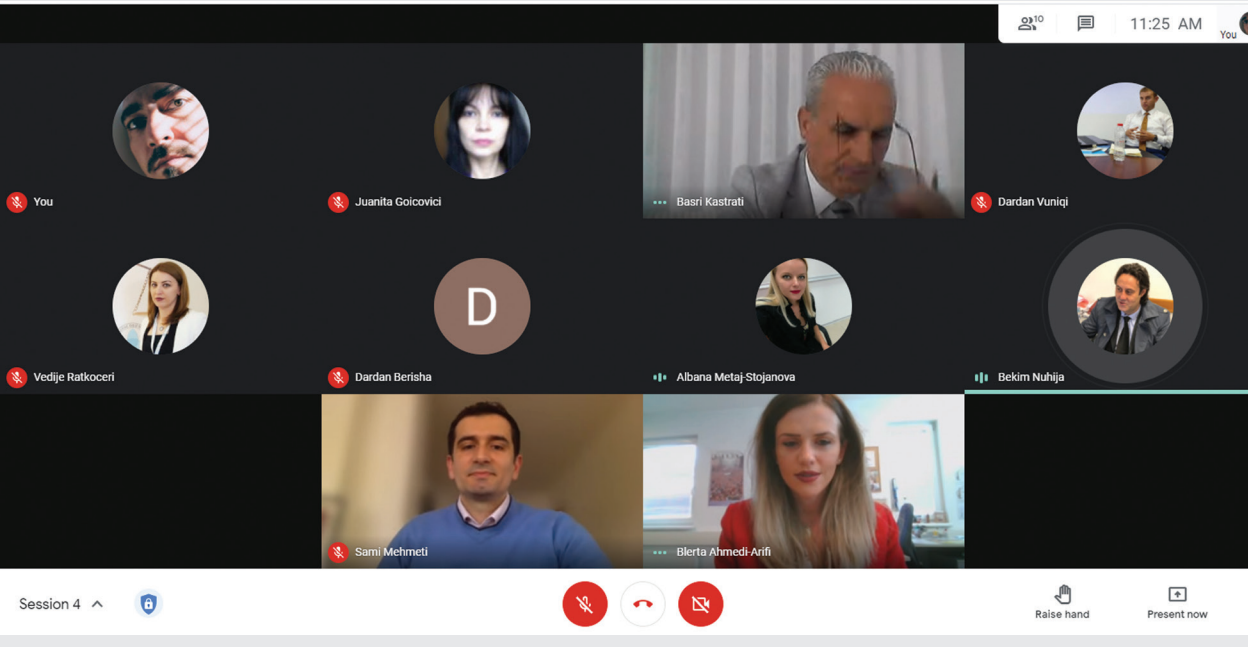
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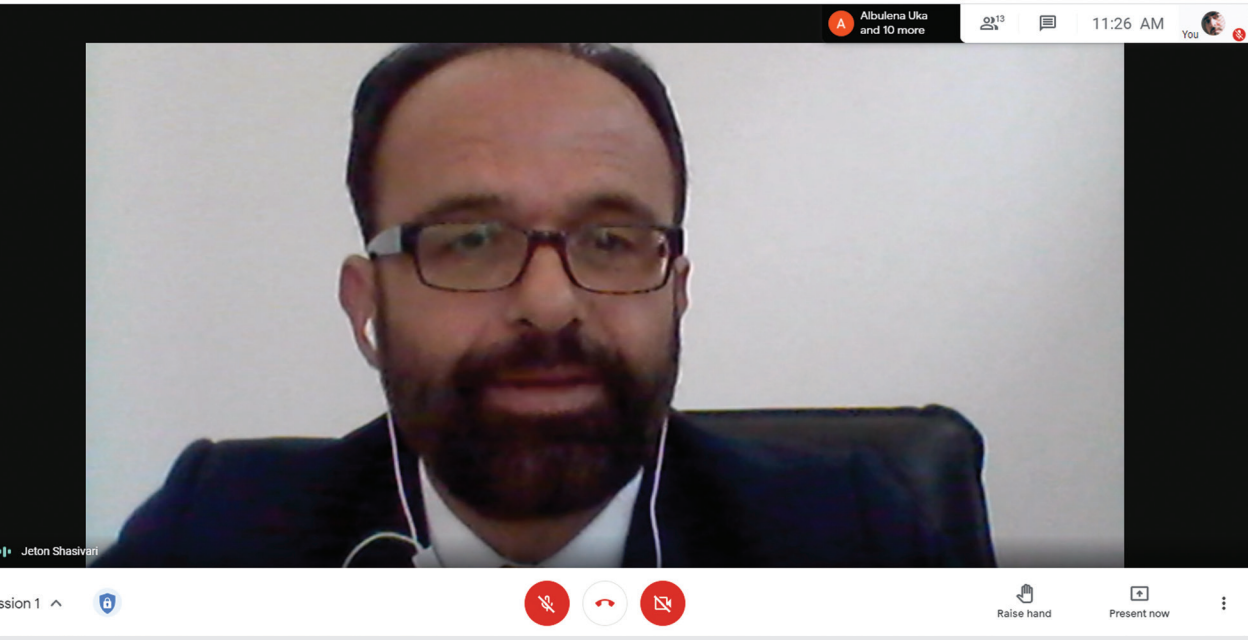
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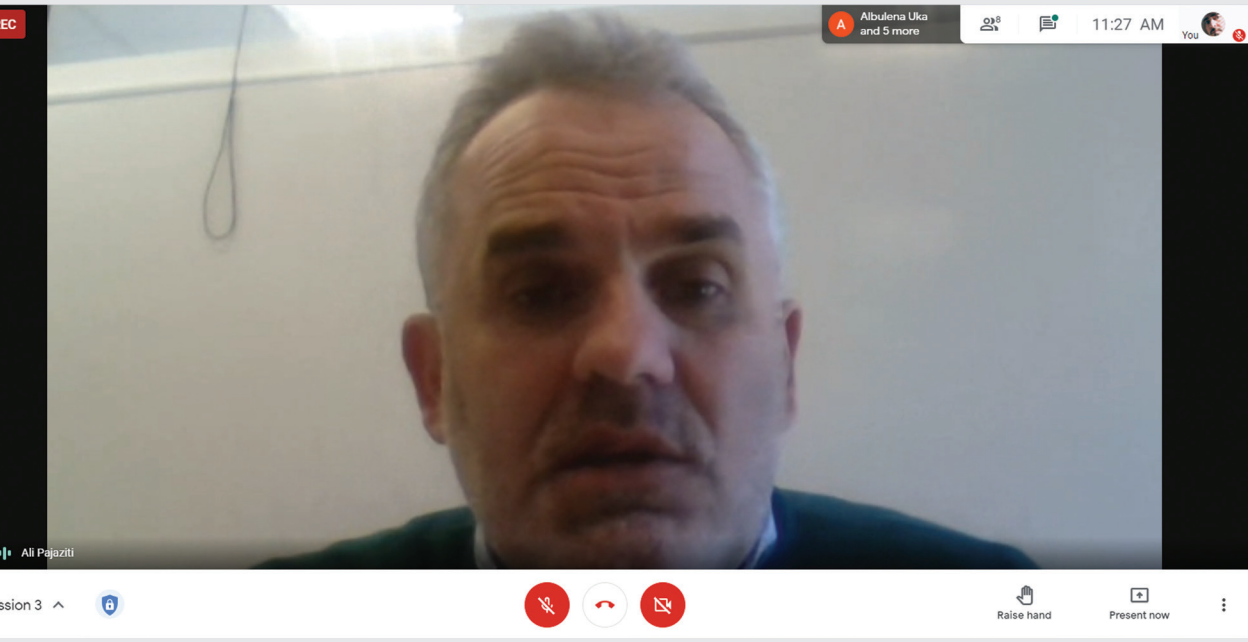
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