PANDEMIC LAW (CASE OF REPUBLIC OF NORTH MACEDONIA)

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Abstract

The pandemic defined as an epidemic spread to larger regions is not unknown in the world. There are many pandemics in history that have had far-reaching consequences for humanity like plague, cholera, flu, severe acute respiratory syndrome coronavirus (SARSCoV) and Middle East respiratory syndrome coronavirus (MERS-CoV). But so far there has been no pandemic of this magnitude and such consequences as the Covid-19 pandemic, with so many infected and dead people. It has literally paralyzed life and led to unprecedented health, economic, political consequences on a global scale. The blow from Covid-19 was so great that even after almost two years we can not say with certainty when and if we will return to normal life at all, i.e. life before the pandemic. Many countries around the world are still struggling to fight the virus. As was the case in every area, Covid-19 had a serious impact on the legal systems. Many countries were not ready to deal with the coronavirus with appropriate legislation in terms of implementing appropriate measures to help their citizens. Thus, due to the urgency of the situation, new laws to combat the coronavirus were adopted in a speedy manner, and in some countries a number of decrees with a force of law were adopted in a state of emergency such as the case of North Macedonia. In this paper I will refer to the content of some of those decrees in North Macedonia, the need for them, the disputed provisions, especially those that directly violate the basic human rights guaranteed by the Constitution of the Republic of North Macedonia. The key question that needs to be answered is the appropriateness of those measures contained in the decrees, whether and to what extent they prevented the spread of the virus. But it is also equally important to find the answer to the question of the role of the legal systems, whether law as such will continue to exist in the same form and with the same content or we are already in the process of creating the so-called pandemic law.

Keywords: *human rights, decrees, pandemic laws, restrictions, Covid-19*

INTRODUCTION

The Covid-19 pandemic came as a surprise for the whole world. There was no country in the world that was prepared in any aspect for the Covid-19 pandemic. That is why making the right political decisions was crucial. The Covid-19 pandemic has rather spectacularly confirmed the relevance of the philosophical paradigm known as bio-politics. To quote Michel Foucault, bio-politics is "to ensure, sustain, and multiply life, to put this life in order. (Foucault, Michel. 1976) Not only are we specimens of a biological species who also happen to organize our lives together through politics, but this pandemic has made it crystal clear how much our politics (and economics) are dependent on our capacity to "govern" or "manage" our species life in relation to non-human life as such. (Castrillón and Marchevsky, 2021) Many governments and political authorities failed to do so or had partial success in facing with Covid-19 pandemic. The question still remains-why communities around the world have tended to respond relatively poorly and belatedly to the Covid-19 pandemic-despite the fact that the likelihood of this sort of infectious outbreak had been widely recognized by public health experts, and furthermore in early 2020 communities outside of China were, in effect, given an advance warning of the imminent threat of this particular outbreak before the virus began to spread globally. (Miller, 2020)

In North Macedonia, as in other countries, a number of measures have been adopted translated into decrees with legal force in order to deal with the pandemic. Many of these measures were taken by other European countries and countries in the region. The content and the aim of these measures will be analyzed in this paper. Some of the restrictive measures that were adopted are: restriction of the right to movement, mandatory wearing of masks indoors and outdoors, curfew, several-day quarantine for citizens, ban on unvaccinated persons entering certain premises (coffee restaurants, closed concert halls, etc.), ban on movement of infected people by the virus, etc. It can be said that some of the restrictions were not as rigorous as in other countries, but also some of them were only implemented in North Macedonia and in no other country, without any scientific and social justification. One of them was allowing vaccinated people and people who were infected by Covid-19, for 45 days from the day of recovery to enter cafes, bars, shopping malls, sporting events. Therefore, North Macedonia is the only country in the world that do not recognize certificates for recovery older than 45 days. The question is what was the purpose of the

Commission for infectious diseases and the Government with such a measure? It turns out that the intention was to get the citizens to be vaccinated, primarily due to the low vaccination rate of the citizens (currently around 40%), but it led to counter-production. Namely, the vaccination rate started to stagnate, the citizens seemed to be additionally revolted, and among other things made them violate the measure (entering closed facilities with certificates under another name or with forgeries).

At the same time, peeople who had received only one dose of Covid-19 vaccine were allowed to enter indoors, which was medically proven not to create immunity. It follows from the aforementioned that people to be vaccinated was more important than the public health. Unfortunately, the law was used as a tool for that.

If we compare the countries where there were no measures against the spread of the coronavirus, such as Sweden and the countries where more measures were taken, most of them aimed at restriction and deprivation of the basic human rights and liberties, we will see that the situation with infected and dead people is not much different. Some countries even did much worse than Sweden despite all the measures taken.

Its not scientifically proven that all measures were taken in vain and it is not appropriate to get into conspiracy theories but it is a fact that some of the restrictive measures were unnecessary. I would like to point out that, especially with regard to basic human rights, great care should be taken so that the political authorities do not decide so easily to restrict them. However for such a thing political authorities need to be sure of it. In the case of the pandemic, this was done perhaps mostly out of fear of the unknown and possible dire consequences.

1. HUMAN RIGHTS VIOLATIONS DURING THE COVID-19 PANDEMIC

In 1755, Benjamin Franklin wrote, “Those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety.” To slow the spread of coronavirus, civil liberties have been broadly curtailed to a degree never seen in the world. Gatherings-whether for religious or social purposes-have been restricted. Businesses have been forced to close, and for some, those closures may prove permanent. Individuals have been stopped and questioned for screening at state borders. Access to national and state parks has been denied. Curfews have been imposed. Perhaps these measures were indeed necessary to limit the transmission of the disease

and thereby reduce the ultimate number of casualties. But most of these decisions were made without the usually requisite objective proof of their value and the approval of parliaments or even local representative governing bodies. (Knorr and Matthews, 2020) Many countries in the world, many organizations, the United Nations, etc., have devoted a lot of time in the fight for the basic human rights and so many acts have been passed that seem to have lost their meaning with the outbreak of the Covid-19 pandemic.

Human rights violations that were reported from different parts of the world during the Covid-19 pandemic included censorship, discrimination, arbitrary detention, xenophobia and others. Human rights violations hinder, rather than facilitate, responses to public health emergencies and undercut their efficiency. (Amnesty International, 2020) The World Health Organization (WHO) has stated that stay-at-home responses for slowing the pandemic must not be mandated at the expense of human rights. (World Health Organization, 2020) Broader concerns have been expressed about the effect of COVID-19 containment measures on human rights, democracy and governance. (Stephen, 2020; Francisco-José and Justina, 2020) Numerous experts report that various issues intersect, and are no longer an issue of only one category. (Karima, 2020) Basically there is mixture of violations of the human rights. One restrictive measure adopted by the official bodies can violate directly or indirectly several basic human rights at the same time.

Governments across the world have taken exceptional measures in response to the Covid-19 pandemic. Some measures were justified and accepted by majority of the citizens like for example wearing masks in closed spaces. But some measures were not and people have protested in many countries, especially related to the limitations of the right to movement and quarantines. Therefore, human rights organizations have expressed concerns over the nature, scope and duration of the adopted measures and their effects on human rights and democracy. While government action was justified in order to protect the right to health for all, concerns have also risen from the possible adoption of long-term measures likely to extend and deepen limitations of human rights. (International Federation for Human Rights, 2020) With the commencment of the vaccination process, governments began to mitigate the measures, but doubts remained as to whether such rigorous measures were needed to excessively restrict basic human rights and freedoms for a virus that was still unknown. The consequences are yet to be felt and hardly any country can deal with them. In North Macedonia, as in most countries in the world, the consequences of restrictions on human rights and freedoms due to the pandemic are economic,

health, educational, cultural, sociological, legal, political, etc. There is no sphere that has not been hit by the pandemic.

The question remains, have countries chosen the right way to deal with the pandemic?

Another violation of the human rights was the right to equality and non-discrimination (Article 2, article 16 and article 26 of the International Covenant on Civil and Political Rights, 1966). In North Macedonia, as in many other countries, there is a strict discrimination of the unvaccinated people in relation to the vaccinated and that discrimination exists in many segments. In some countries the discrimination was more intense, and in some was less, but in most countries existed. It mainly referred to the ban on unvaccinated persons entering closed premises, restaurants, cafes, but in some countries also a ban to enter in state institutions, banks, workplaces and the like. These restrictions on the unvaccinated led to the violation of several constitutionally guaranteed rights: the right to work, the right to freedom of movement, the right to freedom of choice and others. Hence, it is very important to note the selective application of certain measures, but also the high fines. In North Macedonia during inspection procedures in closed facilities it is noticed that the inspectors and the police bodies checked the vaccination certificates of certain number of persons in a facility, but not of all the persons found inside. This is an incomplete or random check-up that is not in line with public health protection. Regardless of the nebulousness of certain measures, however, when they have already been adopted, they should be fully implemented. The fines for not having a certificate in North Macedonia when entering in the facilities are worth mentioning and especially the fines which are too high for the legal entities (owners of the facilities regulated with the decrees) if they don't check if the guests have valid certificates (Article 66, Article 66 a, Article 66 b, Article 67 of the Law on Protection of the Population from Infectious Diseases) therefore it is debatable whether the goal is only to punish the citizens or to protect the public health. The owners of the facilities or the employees do not have the necessary instruments to check the validity of the certificates. They don't have legal authorization to check the personal ID cards of the guests. Also, the guests that have false certificates for immunization can be criminally charged.

Decreased attention over situations unrelated to Covid-19 has also been a cause for worry, as it has allowed governments to illegally increase their prerogatives, retain power, control their population and attack fundamental rights and individual freedoms. The crisis has

disproportionately affected the most vulnerable populations and exacerbated the government's failure to protect them. (International Federation for Human Rights, 2020)

2. DISPUTABLE PROVISIONS OF THE DECREES WITH LEGAL FORCE DURING THE COVID-19 PANDEMIC IN REPUBLIC OF NORTH MACEDONIA

Pursuant to Article 28 paragraph (8) and Article 58 paragraph (1) of the Law on Protection of the Population from Infectious Diseases ("Official Gazette of the Republic of Macedonia" No. 66/04, 139/08, 99/09, 149/14 , 150/15, 37/16 and "Official Gazette of the Republic of North Macedonia" No. 257/20) the Government of the Republic of North Macedonia adopted a number of decrees with legal force to prevent the spread of Covid-19 and decisions on preventive recommendations, interim measures, ordered measures, purposeful protocols, plans and algorithms for action to protect the health of the population from the infectious disease Covid-19 caused by the virus sars-cov-2, the cases and the period of their application. In this section we will look at some of them that were controversial to some extent.

When organizing, attending and participating in sports competitions, participants in sports competitions (athletes, officials, members of professional staff, must have and submit one of the following documents: medical certificate with negative result RT PCR SARS-CoV-2 test, certificate / confirmation for immunization against the SARS-CoV-2 virus, i.e. receiving at least two doses of vaccine against infectious disease or certificate / confirmation that were infected by Covid-19, and not more than 45 days have passed counting from the day of recovery.

When attending sports matches, all other present persons, spectators upon entering the sports facility where the match is held must possess and show one of the following documents: certificate / confirmation for immunization against the SARS-CoV-2 virus, i.e. received at least one dose of vaccine against infectious disease or certificate / confirmation that were infected by Covid-19, and not more than 45 days have passed counting from the day of recovery. (Decision on amending the decision on preventive recommendations, interim measures, ordered measures, purposeful protocols, plans and algorithms for action to protect the health of the population from the infectious disease Covid-19 caused by the virus sars-cov-2, cases and the period of their application 24.08.2021) The same measures referred to the entry into all types of facilities of open

and closed type - catering facilities, gas stations, betting houses, facilities where seminars, conferences, trainings are held etc.

From the abovementined provisions it is clear the intention of the legislator to encourage vaccination of the population but not to prevent the infection of the population. According to many epidemiologists, virologists, microbiologists and other medical experts, such a measure is illogical and unsustainable. In all other countries in the world, certificates of recovery are recognized for up to 6 months, but in some countries up to 9 and even up to 12 months, such as in Switzerland and Netherlands. Also, the article on attending sport matches clearly sets out the distinction between participants, organizers, officials on one hand and the present spectators on the other. Spectators were allowed to enter with received single dose of the vaccine immediately after vaccination. It has been medically proven that the vaccine does not create immunity immediately and not after the first dose. Although later in the Decision of 15.10.2021 it was ordered that all citizens must have 2 doses of the vaccine received when entering closed facilities. (Decision on amending the decision on preventive recommendations, interim measures, ordered measures, purposeful protocols, plans and algorithms for action to protect the health of the population from the infectious disease Covid-19 caused by the virus sars-cov-2, cases and the period of their application 15.10.2021)

In this part, it is worth emphasizing the provision for wearing masks outdoors, which is in conflict with the permission to not wear masks indoors, such as in catering facilities, (Law amending the Law on Protection of the Population from infectious diseases No. 257/20) when it was again medically proven that the corona virus spreads incomparably more indoors.

A draft measure was also submitted by the Commission for Infectious Diseases to the Government of North Macedonia for mandatory vaccination of public sector employees, and for private sector employees only a recommendation for vaccination against Covid-19. Although the proposal was not accepted by the Government, it is still another indicator of the direction of discriminatory treatment even in the vaccination process.

But there are also private companies that have obliged employees to be vaccinated, otherwise they will lose their jobs. This is again a violation of the constitutional right to work (Article 32 of the Constitution of the Republic of Macedonia) and labor rights from the Law on Labor Relations of North Macedonia.

3. PANDEMIC LAW IN REPUBLIC OF NORTH MACEDONIA

The main question that arises for the post Covid-19 period is how will the countries continue to function after the pandemic is over? Will life return to normal or not? But even more worrying is the question of what will happen if we have a pandemic of similar magnitude again? I believe that there should be a regulated pandemic law. Many countries did not have adequate legislation, so they went on to interpret existing laws, enact new laws or decrees with legal force in urgent procedure, and not every law passed in urgent procedure can have the same quality as a law passed in a regular procedure, especially due to the difference in time intervals. Legislators now have more time to prepare adequate legislation in the event of a pandemic taking into consideration the past experience. Many questions remained unanswered. What to do with the education, judicial processes, trade? Related to the trade for example a common question in many countries was if the pandemic can be considered as vis major and therefore the contracts to be considered terminated? Many travel companies are reluctant to reimburse citizens for tourist travels that were canceled due to the pandemic on the grounds that they would go in bankruptcy if they did. Should the governments help the companies in this aspect or not? In many countries, including North Macedonia, these issues were partially solved by enacting decrees with legal force. Decrees with legal force are especially important in state of emergency when the authorities must act immediately because of the danger that threatens the population in a particular region or on the whole territory. But the pandemic Covid-19 showed that the state of emergency can become long-term. That is why I think that an appropriate special pandemic law or group of laws that will regulate these things in case of a pandemic would be very useful in the future. In North Macedonia, there are still no announcements for creating a law during a pandemic, but some of the previous decrees can be used in that direction. Of course, the main goal of the law should be greater protection of citizens' health. Macedonian citizens who were infected with coronavirus and needed hospital treatment faced insufficient and poor quality of health care in the state hospitals. Part of the reasons are the overload of the health system during the pandemic but also the insufficient quality of the conditions in the state health institutions. Some of the citizens with a higher financial standard could afford better quality health care in some of the private hospitals. However, most of the citizens do not have such an opportunity. Therefore, I believe that agreements between the Health Insurance Fund of Macedonia and private hospitals must exist so the patients would pay

much smaller amounts for treatment of pandemic disease. Activating private insurance companies to cover pandemic diseases should also be part of the private health insurance packages. What should also be a priority in drafting a pandemic law is how most institutions should continue to function regularly during a pandemic. For example, the education system has faced major problems for not having a platform for online teaching and learning but above all with the lack of legislation that will cover all segments of online teaching and learning. Trade agreements and their (non) implementation is also a key issue that should be regulated in the pandemic law in order to help the contracting parties in exercising their rights and fulfillment of the obligations under the agreements. Also the work of the courts during a pandemic should be analyzed and additionally regulated. Some countries for example have introduced the possibility of conducting online trials. In the end we must not forget the issue that was in the focus of this paper, the treatment of the basic human rights and freedoms and the extent of their restriction during a pandemic.

CONCLUSION

Although we are aware of the serious consequences of the pandemic Covid-19, we can not know exactly what the damage will be in many areas of life, but also how long it will take for the world to recover and to return to normal life or the life before the pandemic. Also another question that arises is will we ever return to the lives we had before the pandemic? If that's not the case, then we have to consider the alternative laws called pandemic laws that will regulate the whole legal system in a different manner in accordance to the existing conditions provoked by the pandemic. We learned that many countries, including North Macedonia, have started with online education without any regulation for it. Court processes were interrupted. Cultural events were canceled. Many trade agreements remained unimplemented. The political processes were aggravated. The pandemic had a negative influence on the social, cultural, political, economic aspects of the countries. The fact is that there is no country that was prepared for such a pandemic. That is why many countries are already preparing legislation in case of a pandemic as the one we have it at the moment.

A law will achieve its goal when citizens apply it even when there is no risk of punishment, when they respect the legal provisions because they believe it is for their own good, such as the measure of wearing masks indoors, as opposed to the measure of wearing masks outdoors, as was

the case in many countries during the pandemic. Therefore, we can conclude from this paper is that great care must be taken in the preparation of such pandemic law and not to find ad hoc legal solutions as is the case now, but after appropriate analysis to insert legal provisions that will truly contribute to the countries and make it easier for citizens to deal with any future pandemic.

REFERENCES:

1. Castrillón, F., Marchevsky, T. (2021). Coronavirus, Psychoanalysis, and Philosophy Conversations on Pandemics, Politics, and Society, Routledge, pp: 79-82.
2. Constitution of Republic of North Macedonia (Official Gazette of Republic of Macedonia No. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, Official Gazette of Republic of North Macedonia No. 6/19, 36/19.
3. Decision on amending the decision on preventive recommendations, interim measures, ordered measures, purposeful protocols, plans and algorithms for action to protect the health of the population from the infectious disease Covid-19 caused by the virus sarscov-2, cases and the period of their application adopted on 24.08.2021, ("Official Gazette of the Republic of North Macedonia" No. 263/20, 269/20, 275/20, 287/20, 292/20, 298/20, 304/20, 306/20, 317/20, 13/21, 45/21, 53/21, 55/21, 58/21, 64/21, 65/21, 75/21, 87/21, 94/21, 100/21, 106/21, 109/21, 113/21, 116/21, 119/21, 126/21, 133/21, 139/21, 141/21, 146/21, 153/21, 162/21, 176/21, 187/21, 193/21, 199/21, 204/21 and 220/21).
4. Decision on amending the decision on preventive recommendations, interim measures, ordered measures, purposeful protocols, plans and algorithms for action to protect the health of the population from the infectious disease Covid-19 caused by the virus sarscov-2, cases and the period of their application adopted on 15.10.2021, ("Official Gazette of the Republic of North Macedonia " No. 263/20, 269/20, 275/20, 287/20, 292/20, 298/20, 304/20, 306/20, 317/20, 13/21, 45/21, 53/21, 55/21, 58/21, 64/21, 65/21, 75/21, 87/21, 94/21, 100/21, 106/21, 109/21, 113/21, 116/21, 119/21, 126/21, 133/21, 139/21, 141/21, 146/21, 153/21, 162/21, 176/21, 187/21, 193/21, 199/21, 204/21 and 220/21).
5. Foucault, M. (1976). History of Sexuality (The Will to Knowledge: History of Sexuality).

6. Francisco-José, Q., Justina, U. (2020). Modest International Law: COVID-19, International Legal Responses, and Depoliticization, American Journal of International Law. 114 (4): 687–697. doi:10.1017/ajil.2020.65. S2CID 225655710.
7. Here are seven ways the coronavirus affects human rights. www.amnesty.org. Retrieved 13 March 2020.
8. International Covenant on Civil and Political Rights, United Nations General Assembly Resolution 2200A (XXI) 1966.
9. International Federation for Human Rights, Covid-19 pandemic and human rights, 24/06/2020 DOSSIER Human Rights Defenders, ES.
10. Karima, B. (2020). Lest We Should Sleep: COVID-19 and Human Rights, American Journal of International Law. 114 (4): 666–676. doi:10.1017/ajil.2020.68. S2CID 226373571.
11. Knorr, L., Matthews, B. (2020). After the Pandemic Visions of Life Post Covid-19, Sunbury, pp.79-84.
12. Law on Protection of the Population from Infectious Diseases ("Official Gazette of the Republic of Macedonia" No. 66/04, 139/08, 99/09, 149/14 , 150/15, 37/16 and "Official Gazette of the Republic of North Macedonia" No. 257/20)
13. Miller, J. (2020). The Coronavirus Human, Social and Political Implications, Palgrave Macmillan, pp. 61-68.
14. Stephen, T; (2020). COVID-19 Emergency Measures and the Impending Authoritarian Pandemic, Journal of Law and the Biosciences. **7** (1): lsaa064. doi:10.1093/jlb/lsaa064. PMC 7543595. PMID 33569176. S2CID 222209692.
15. World Health Organization Director-General's opening remarks at the media briefing on COVID-19 - 13 April 2020. www.who.int. Retrieved 13 April 2020.