

THE IMPACT OF THE COVID-19 PANDEMIC ON HUMAN RIGHTS AND THEIR RESTRICTION THROUGH THE PRISM OF THE “FAIR TRIAL” PRINCIPLE IN CRIMINAL PROCEEDINGS

Vesna Trajanovska

International Balkan University, Skopje,
vesna.trajanovska@yahoo.com

Abstract

Today the world is facing a new challenge, called COVID-19. The pandemic caused by this virus is a global, primarily health problem, but also a general problem that has affected more than millions of people from almost every country on the planet. In such circumstances, countries face the challenge of tackling an unknown enemy, protecting their citizens, while not violating their freedoms and rights. However, it seems that one does not go without the other, and the global pandemic dictates a new way of running the "normal" functioning of the world, by imposing an urgent obligation to undertake a series of "extraordinary" measures. However such extraordinary measures largely encroach on the democratic values of states, placing the enjoyment of human rights and freedoms in question with the justification - achievement of the common good. Hence, the picture is real of states that in the fight against the "invisible enemy" crossed the allowed borders and went so far as to derogate rights, which should not be derogated under any circumstances. There are certain institutions, functions, and instruments that are a key link in a democratic society and their work should not be completely stalled under any circumstances. One of those links of democracy is the judicial system, and the work of the courts and the judicial administration must not be questioned even under these conditions of a global pandemic, primarily due to the fact that they are a guarantee for the realization of one of the essential human rights - the right of access to justice and the right to a fair trial. The personal and physical presence of the parties during the trial is invaluable. However, the current situation with Covid- 19 dictates the previous experience from the spring of 2020 to be considered, and it is desirable that no ideological approach be taken, whether in favor of or against a videoconference. Special focus of the paper is put on the various aspects of the right to a fair trial as set out in Article 6 of the European Convention on Human Rights (ECHR) during the Covid 19 pandemic, and in particular on the provision of procedural guarantees in court proceedings during this extraordinary health crisis.

Key words: *human rights, access to justice, right to fair trial, COVID-19*

1. Introduction

The Covid-19 outbreak has affected the world in dramatic fashion and led to emergency measures in most member states of the Council of Europe, aimed to contrast a deadly pandemic

with few precedents in modern times. Restrictions on human rights (as an effect of emergency measures) have been put in place and justified as exceptional measures to protect public health (UN Human Rights office of the High Commissioner, 2020).¹ Subsequently, in most countries, ordinary hearings, held physically in a courtroom, were no longer possible. This was notably the case from 9 March 2020 (Gori, 2020)² in Italy, the first western country to be hit severely by the spread of the virus.

As a result, all pending ordinary proceedings were suspended until 11 May 2020 (in the case of civil and criminal proceedings) and until 15 May 2020 (in the case of administrative proceedings), (Decree law no. 23, 2020) with significant exceptions for urgent matters, which were expected to be regularly addressed by the courts and decided without delay. Such a goal was considered by the lawmaker to be compatible with respect for the right to life of defendants, lawyers, judges and for public health only by means of physical distance through the systematic use of videoconferencing in court hearings. (European Law Institute, 2020)³ Before the Covid-19 pandemic, videoconferencing in court was already used in Italy as a technical solution, in specific situations and the European Court of Human Rights found no violation of Article 6 of the European Convention on Human Rights. (Marcello Viola v Italy, 2006)⁴ For instance, minors heard as witnesses in trials for sexual abuse or a person who, in any

¹ The UN Human Rights office of the High Commissioner on 27 April 2020 adopted guidelines for emergency measures and Covid-19. Restrictions on such fundamental liberties have to meet four requirements (legality, necessity, proportionality, non discrimination): “The restriction must be ‘provided by law’ (...) of general application (...) not be arbitrary or unreasonable, and it must be clear and accessible to the public. (...) necessary for the protection of one of the permissible grounds stated in the ICCPR, which include public health, and must respond to a pressing social need. (...) proportionate to the interest at stake (...) and it must be the least intrusive option among those that might achieve the desired result. (...). No restriction shall discriminate contrary to the provisions of international human rights law.”

<https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf>, visited 8 November 2020.

² Art. 1 of Decree-law no. 11, published in the Official Gazette on 8 March 2020. For a commentary, P. Gori, “Covid-19: la Cassazione apre alle udienze da remoto” <www.questionegiustizia.it>, visited 8 November 2020. A key provision adopted a few days later is Art. 83 of Law-decree 17 March 2020, No. 18 (as further modified), carrying out urgent measures in the field of civil, criminal, tax and military justice in order to deal with the epidemiological emergency from Covid-19, resulting in: 1) postponement of all hearings scheduled from 9 March to 11 May (civil and criminal matters), 2) limitation of access to courts, whereas it is ensured that urgent civil and criminal activities are carried out, 3) suspension of the expiry of the terms for the carrying out of any procedural act, including the terms for starting judicial proceedings and the terms for the notification of appeals before the upper courts; 4) the expiry of the term for the carrying out of a procedural act that begins during the suspension period is deferred to the end of the above-outlined period. This complex procedural regulation has been converted in Law no. 27, published in the Official Gazette on 29 April 2020.

³ This practice is consistent with European Law Institute (ELI) guidelines for the Covid-19 Crisis:

“The judiciary should do all that is reasonably practicable to continue to conduct proceedings and trials, particularly through the use of secure video and other remote links where available to the courts (...) provided that the right to a fair trial, including the right to defence, is not infringed. The restrictions on the operation of the judiciary must be immediately removed when the Covid-19 emergency permits.”

See Principle 5 ‘Justice System’ 2020 <<https://www.europeanlawinstitute.eu/>>, visited 8 November 2020.

⁴ ECtHR 5 October 2006, No. 45106/04, Marcello Viola v Italy (No. 1), CE:ECHR:2006:1005JUD004510604, paras 21–2: provided that the relevant Italian regulation demands that certain ‘results’ have to be attained and, in particular, the ‘effective’ participation of the accused in the proceedings with a view to ensuring the proper exercise of his right to a defence, and contact between the accused and his defence counsel, present where the defendant is situated with the ability to communicate with each other, “in the opinion of the [Italian] Constitutional Court, the fact that the new provisions departed from ‘tradition’ did not upset the balance and dynamics of a trial that, on the contrary, remained substantively unchanged.” Finally, the Court found no violation under Article 6 (1) ECHR.

capacity, was detained in a prison regarding mafia-related and other serious offences (Italian Code of Criminal Procedure, 1998)¹ could already take advantage of such technology.

However, the exceptional measures adopted in March and April 2020 (Decree of the Court, 2020) to govern the health crisis introduced for the first time the idea of a possible full legal procedure being carried out through videoconferencing instead of by the parties being physically present in court. This is the case for urgent criminal matters like trials of arrested persons, where the exercise of the police power of arrest needs by law to be validated within 48 hours by a court. (Consiglio superiore della magistratura, 2020)

Such a new approach raises a number of questions, regarding its compatibility with key fundamental rights – namely respect for privacy, due to the specific technology adopted for court videoconferencing, (Ministry of Justice, 2020)– and more generally with the right to be heard in court, the right of defence, the right to effective judicial remedies and the right to a fair trial. The issue is expected to be salient in the future, at least in the event of the return of exceptional conditions, not to mention the possibility that videoconferencing in court hearings may become an ordinary procedural tool. (Marinho, 2020)

Emergency legislation governing the Covid-19 crisis in the Netherlands is very interesting as well. A bill proposed by the Dutch government was adopted by the Senate, and published on 24 April 2020. (Staatsblad, 2020) The emergency legislation was set to cease to apply on 1 September 2020. As it couldn't be excluded that temporary legislation would still be needed after this date, the law included a clause providing for extensions (of two months each time) which is now extended until 30 November 2020. (Staatsblad, 2020) Some provisions in the Bill have taken effect retroactively to 16 March 2020.

The judiciary is in general now allowed to make greater use of electronic means of communication. Video links are already in use for oral proceedings and may be applied more frequently in the future, for example, so that lawyers or parties to proceedings no longer need to appear in person, given that video call technology suffices.

In several European States, emergency measures adopted have been challenged before national administrative high courts (BvR, 2020) and several judgments have already been delivered.² Such a judicial check on central and local governmental action appeared to be a key remedy in democratic societies since many parliaments could not sit and operate properly for a substantial period due to the pandemic.

¹ Law no. 11 of 7 January 1998 introduced, among the implementing provisions of the Italian Code of Criminal Procedure, Art. 146-bis which, as later amended, reads as follows:

“1. In proceedings concerning one of the offences provided for (...) a person who, in any capacity, is detained in a prison shall participate in the hearings in videoconference (...): (a) where there are serious requirements of public safety or order; (b) where the proceedings are particularly complex and participation at a distance is deemed necessary in order to avoid delays (...)

5. The place from which the accused is connected by audiovisual link to the hearing room shall be regarded as an extension of the hearing room. (...)”.

² District Court, The Hague 3 April 2020, NL:RBDHA:2020:3013 on an application (temporary injunction) where the plaintiffs requested a ‘full lockdown’ to be imposed. This application was dismissed on 3 April 2020. (A summary of this judgment can be found in Jurifast ‘ACA Europe’).

2. Right to fair trial

The right to a fair trial refers to the administration of justice in a criminal and civil context. It is a principle that entails a series of individual rights that guarantee the administration of justice from the first moment - from the grounds of suspicion to the execution of the judgment.

The realization or administration of justice has two aspects: institutional and procedural. The institutional aspect, simply put, provides for the right of every individual to be tried before an independent and impartial court, established by a law that operates under the laws of the state and to which everyone has equal access. The second aspect, the procedural one, carries a series of rights related to the right to a fair trial. These include the right to equality before the law and the court, the right of access to effective and equitable remedies, the right to presumption of innocence, the right to a trial without unnecessary delay and in his presence, the right to counsel, the right to a translator (if he does not understand language of the court) and an interpreter, as well as the principle "nulla poene sine lege". Full observance of all of them would represent full observance of the right to a fair trial.

In addition to the domestic law, the principle of the right to a fair trial is also protected by the European Convention on Human Rights (ECHR), where Article 6 states that every citizen when exercising his rights and obligations, or if criminal proceedings are instituted against him, has the right to a fair and public hearing which shall be held within a reasonable time before an independent and impartial court established by law. The ECHR states that proceedings before courts and judgments should be public, and the public can only be excluded (completely or partly) only if it is in the interest of morals, public order, and national security in a democratic society, or when it is necessary for the protection of the interests of underage persons or of the privacy of any of the parties involved in the proceedings, as well as if the court decides that the public would be contrary to the interests of justice. (European Court of Human Rights, Council of Europe, 2020) Furthermore, this article of the ECHR provides for all the above elements (or rights) of the principle of a fair trial, which are a guarantee that it is fully respected.

Our legislator envisaged the principle of a fair trial in the Law on Criminal Procedure and in the Law on Courts. The Law on Criminal Procedure provides for the same in the first chapter (Basic Principles) where Article 5 states "A person accused of a crime has the right to a fair and public trial before an independent and impartial court, in a contradictory procedure to be able to challenge charges against him to propose and present evidence in his own defense. (Code of Criminal Procedure of the Republic of North Macedonia, 2010)" The Law on Courts also stipulates the right to a fair trial in the first chapter (Basic Principles), where Article 6, paragraph 2 states: within a reasonable time before an independent and impartial tribunal established by law. (Law on Courts of the Republic of North Macedonia, 2010)"

3. Comparative experiences in realizing the right to a fair trial during COVID-19

The normal functioning of everyday life around the world is paused by undertaking a series of measures to deal with the virus - the introduction of a state of emergency, restriction of freedom of movement, restrictive and strictly controlled access to institutions, the introduction of a complete "lockdown" of shopping centers, sports centers, restaurants and the like. These, as well as many other measures, have an impact on the overall functioning of society, including the functioning of the criminal justice system, as countries have resorted to rigorous measures that have restricted access to much of the institutions, and consequently, the practice of basic human

rights is also severely restricted. But in the process of creating and implementing measures to combat the virus, they seem to have forgotten the fact that certain functions and institutions in democratic societies must not be completely stalled under any circumstances.

When the situation with the number of infected with COVID-19 escalated, many countries took rigorous measures, such as full or partial closure of courts (Albania, Estonia, Finland, Hungary), courts functioning only in emergencies (Greece, Italy, Latvia, Romania), failure to act on new cases (Belgium), suspension of deadlines and all court activity (Bulgaria, Luxembourg, Montenegro), (UIHJ - International Union of Judicial Officers, 2020) as well as a number of other measures, including a ban on visits to penitentiary institutions, for example in Italy, where all prison visits were banned, which eventually resulted in mass protests by the prison population, but also in the Netherlands, where prison visits were banned except for children that are in institutions. (Penal Reform International, 2020)

The protection of fundamental human rights and freedoms, even in the wake of a global pandemic and state of emergency, is essential and must be respected by all social actors. The ECHR (United Nations Human Rights Office of the High Commissioner), as well as the International Covenant on Civil and Political Rights (United Nations Human Rights Office of the High Commissioner), provide for a range of rights that must not be derogated in this situation. Among those rights, although not explicitly stated, is the right (or principle) of a fair trial, because the denial of certain fundamental human rights can never be strictly necessary, regardless of the situation, because the observance of these rights is of essential importance for ensuring the full enjoyment of those rights which may not be derogated from in any circumstances. (American Association for the International Commission of Jurists, 1985) Hence, the right to a fair trial must never be restricted, as this would circumvent the protection of rights that must not be derogated from.

In addition, deviations from certain fundamental principles, such as the principle of a fair trial, should be prohibited under any circumstances, and even in an emergency, or the restriction on the principle of a fair trial should be kept to a minimum in crisis situations where there is endangered national security. In other words, the restriction of the full enjoyment of certain rights must be necessary and proportional to the situation, but must not undermine the essence of fairness in the proceedings. (OSCE / ODIHR, 2016)

Given the fact that there is still no clear assessment of how long this crisis could last, and in most countries, including ours, only urgent court cases are processed, the need arises to consider and find alternative solutions, all in order to ensure the smooth exercise of criminal law protection. Many countries around the world have already found and started implementing such alternative solutions by introducing a system of "remote" or "virtual" trial, using modern audio-visual technology.

By introducing these measures, the criminal justice system can remain fully functional, which will prevent long delays in proceedings, ensure the processing of emergencies, such as detention, but through the introduction of such technologies the right to an effective defense can be provided, which would enable defendants deprived of their liberty to have regular communication with their defense counsel despite visiting bans. Such alternative measures are also recommended by the European Commission, which recommends the use of audio and video communication or other virtual tools, such as undertaking other precautions and protection, such as glass partitions in police stations, courts, and prisons, in order to ensure the right to a fair trial and access to an effective defense. (The European e-Justice Portal, 2020)

Some countries (inside and outside the EU) have already started to apply this practice, so the United Kingdom, in addition to introducing a "virtual trial" of the Supreme Court, also provides for video streaming on several websites, which provides full respect of the principle of a fair trial by providing all the necessary elements, including the public. (The Judicial Committee of the Privy Council (JCPC), 2020) This practice was undertaken by several courts in the United States and Europe, (Maurice & Ben, 2020) as well as in our neighboring countries, i.e. the Republic of Serbia, where a decision was introduced by the Ministry of Justice through the "Skype" application for persons who violated self-isolation measures. (Ministry of Justice, 2020)

4. Undertaking measures for protection against COVID-19 in exercising the right to a fair trial in North Macedonia

Our country was in a very complicated constitutional and legal situation, primarily due to the fact that the pandemic came in the pre-election period, with a dissolved Assembly and a caretaker government, namely without a functional legislative and executive branch. In such a situation, a solution to deal with the virus was found in the declaration of a state of emergency, all in order to facilitate the management of the situation. However, in a situation of emergency, where the institutions work with a minimum capacity and with a strictly restrictive physical approach, the realization of fundamental rights is questioned.

The series of measures, recommendations, and decrees that have been adopted have severely restricted access to justice. While on one hand, we have a ban on contact with the outside world in penitentiary institutions, strictly limited access to court, and thus to the right to the public at court proceedings (except when it comes to the professional public), processing of court cases only in emergencies, we can not speak about full observance of the right to a fair trial.

The Judicial Council, on March 17, following the recommendations of the Government, made a decision obliging the presidents of the courts and judges to harmonize the management of court cases with the measures and recommendations of the Government of the Republic of North Macedonia and the competent health authorities and to take all precautions to reduce the risk of infection. For that purpose, the entrance to the courts was (and still is) placed under strict control and it is subject to security and health measures. In addition to preventive measures, the decision obliges the courts to act only on necessary matters such as the trials of criminal cases where the defendants are in custody, house arrest or another measure has been imposed on them to ensure their presence; criminal cases where the parties do not have a place of residence or stay in RNM; criminal cases for which there is a danger of delay; criminal cases for criminal offenses under Art. 205 of the CC, Art. 206 of the CC, Art. 208 of the CC, Art. 382 of the CC, Art. 383 of the CC and Art. 387 of the CC; misdemeanor cases that are urgent in nature; cases that are in the decision-making phase, as well as those for which there is a risk of violation of the principle of trial within a reasonable time and which are urgent by law. With regard to the submissions, with this decision, the courts remained open for their submission, as well as for other matters related to legally preclusive deadlines. (Judicial Council of Republic of North Macedonia, 2020)

Somewhat later, after the declaration of the state of emergency, the Government of the Republic of North Macedonia adopted a Decree with legal force by which all legal and exclusive deadlines related to litigation, extrajudicial proceedings, proposals for criminal prosecution,

filing a private lawsuit, request for enforcement and claims, lawsuits for initiating administrative disputes, initiating proceedings before the Constitutional Court, as well as for all other court proceedings, have ceased to run from the moment the decree enters into force until the cessation of the state of emergency, (Government of the Republic of North Macedonia, 2020) which means that the decree is still in force.

Furthermore, with the decree, all legal and preclusive deadlines related to the declaration of remedies, and taking procedural actions for the above procedures ceased to run. As far as criminal and misdemeanor proceedings are concerned, the deadlines for submitting an appeal or objection to the decisions ending the proceedings have ceased to run, and the deadlines for filing legal remedies have also ceased to run. Also, the deadlines for the statute of limitations for criminal prosecution, initiating and conducting misdemeanor proceedings, execution of criminal and misdemeanor sanctions, as well as the deadlines for issuing referral acts for serving a prison sentence of up to three years, until September 1, 2020, have ceased to run, except for cases for which there is a danger of the statute of limitations of the execution of the sentence. (Government of the Republic of North Macedonia, 2020) If we add to all this the functionality of the penitentiary institutions which, according to the Government's recommendations, operate in strictly controlled conditions, respecting the measures for protection and prevention of COVID-19, we can say that the justice system is at a standstill. An example of this is the recent trial of two people for violence, a case that was widely reported in the media, and whose first hearing was postponed because the defendants, for whom a detention measure was imposed, were placed in self-isolation in the detention units in the Kumanovo prison, so they do not have the opportunity to prepare their defense together with their lawyer. (All for fair trails, 2020)

While countries around the world, but also in our environment, are taking alternative solutions to minimize the effects of the crisis on such essential human rights, our country does not seem to be following that trend. Despite the recommendations and good practices for the introduction of trials at a distance, through the use of various modern technologies, such a practice in our country was reached only by the Basic Court Kavadarci, which held several "virtual" hearings, where the professional public had the right to attend. In addition, the Basic Court in Kavadarci took additional protective measures, and during the month of May, plexiglas screens were installed in the courtrooms, which enabled the safe functioning of the court. Unfortunately, the largest court in the country, Skopje's Basic Criminal Court, where most of the court cases in the country are practically processed, did not hold a single "virtual trial", leaving a large number of defendants, victims, as well as other parties in uncertainty regarding their court proceedings.

On 20.10.2020, a Protocol for implementation of measures for protection against COVID-19 in the courts was published on the website of Skopje's Basic Criminal Court, which provides a series of measures that apply to all employees, but also to all parties and citizens who enter in court¹. On the same day, it was noted that in certain courts, persons in the capacity of public, including the professional public in accordance with the procedural laws, on the basis of this Protocol are prevented from attending and observing court hearings, with the explanation that there is not enough space in the courtroom as an adequate physical distance between the persons inside.

In this regard, there are concerns about the potential impact that the Protocol thus drafted and thus adopted may have on the right to a fair trial, in many respects. First of all, although this Protocol, according to its content, refers to all courts in the country, so far it has been published

only by the Basic Criminal Court Skopje and at the same time, it is not stated at all which organ, body or institution has adopted it, but only that it was prepared by the Association of Judges and published by the Basic Criminal Court Skopje. This situation raises a number of questions regarding the transparency and independence of the judiciary. In this context, although the Association of Judges is a professional organization composed of judges, it is still only a civil organization, namely an association of citizens, so it is not recognized as a body, institution, or organ that can in any way formally influence the judiciary and pass obligatory acts for all courts in the country, directly encroaching on the powers of the Judicial Council. In this direction is the Decision for acting of the courts in R. North Macedonia in conditions of increased danger from the COVID-19 virus, which in March 2020 was adopted by the Judicial Council of the Republic of North Macedonia (First Instance Court, Republic North of Macedonia, 2020), and considering this, the question arises whether this Protocol before starting to be implemented should be previously adopted by the Judicial Council and it should be clearly stated by which organ it was adopted, as well as to be made public and available in all courts so that citizens can be properly informed and get adjusted to the measures?

Of additional concern are the measures set out in the Protocol, which give judges broad powers to restrict or even remove the public from proceedings contrary to the legal, constitutional, and international provisions relating to the right to a fair trial. Thus, in accordance with the Constitution of the Republic of North Macedonia, the European Convention on Human Rights of the Council of Europe, the International Covenant on Civil and Political Rights of the United Nations, as well as domestic procedural laws, trials in the courts of the Republic of North Macedonia are public, and the reasons why the public can be excluded, as well as the way it can be done, are properly envisaged. The public character of the proceedings is an important part of ensuring justice, and the administration of justice should be visible so that it is subject to public oversight, which will also serve as a mechanism that can strengthen citizens' trust in the judiciary and judicial institutions (Bianku, Ledi, Nula, & Hannah, 2020). In this regard, the European Court of Human Rights, in the case of *Riepan v. Austria*, emphasizes that the holding of public court hearings is a basic principle of Article 6 of the ECHR, that is, this principle is one of the mechanisms by which to maintain trust in the judiciary (*Riepan v. Austria*, 2000).

In this regard, the ECHR recognizes the need for exclusion of the public for the protection of security or privacy (*B. and P. v the United Kingdom*, 2001), but still concludes that cases in which security concerns justify the exclusion of the public are truly rare (*Riepan v. Austria*, 2000), and that security measures must be appropriately adjusted and in accordance with the principle of proportionality, after all the possible alternatives have been reviewed (*Krestovskiy v Russia*, 2000). In view of the fact that in the criminal procedure there is a particularly high expectation of the public (*B. and P. v. the United Kingdom*, 2001), Article 346 of the Law on Criminal Procedure stipulates that if there are no appropriate conditions for holding the main hearing in certain premises, the court may decide to hold the main hearing in another room. Therefore, we believe that the courts should make efforts to consider all other alternative measures in order to provide adequate premises for holding court hearings during the pandemic, in order to ensure standards for the fair and equitable trial of citizens. Pursuant to the Law on Criminal Procedure, it is precisely determined in which situations the court may exclude the public from the main hearing, and this to not be considered a substantial violation of the procedure in accordance with Article 415 paragraph 1 item 4 of the LCP (Code of Criminal Procedure of the Republic of North Macedonia, 2010). At the same time, the LCP obliges the

trial judge, or the judicial council, if there are reasons for exclusion of the public, to make a decision on the same, which must be immediately and publicly explained.

Bearing in mind the abovementioned, the judicial institutions and courts welcome the efforts for protection from COVID-19, undertaken so as not to expose the citizens to the risk of infection, but also appeals to the courts and judicial institutions to make additional efforts to respect human rights during a pandemic, in order to ensure a fair and equitable trial for all citizens in accordance with the highest international standards for a fair and equitable trial.

CONCLUSION

From all of the above, we can conclude that today the world is in an extremely complicated situation for which it is still impossible to estimate how long it would last. This state of emergency requires "extraordinary" measures, which on the one hand help to deal more easily with the pandemic, and on the other hand, they encroach on basic human rights and freedoms. One of those rights, which are endangered by the application of these measures, is definitely the right to a fair trial, with all the rights that belong to it, necessary for full observance of the same.

In a situation, as in our country, where the state of emergency is still ongoing, the courts operate with minimal capacity and work only in emergencies, many urgent court hearings are postponed due to mandatory isolation of one of the parties in the procedure and the like, the principle of a fair trial has been seriously questioned and its full observance requires an immediate response from the competent institutions. Excessive duration of the travel ban, mandatory social isolation, as well as other effects of the measures taken is likely to cause an increase in crime rates, but also victimization of those who are most vulnerable (eg victims of domestic violence). Therefore, it is more than necessary to put the judicial system in full "force", and if it can not be done in the usual way, alternatives must be found by taking practices from countries that have so far successfully dealt with such situations.

Lastly, we must mention that the most important aspect in democratic systems is to achieve the common good of as many citizens as possible, and the common good will not be achieved if we have a successful fight against the virus but we a serious violation of basic human rights and freedoms, thanks to the partial functioning of the state system.

REFERENCES

6.1. Domestic and international documents and sources

1. Council of State 7 April 2020, 202001949/1 / V3, ECLI: NL: RVS: 2020: 991.
2. Council of State 7 April 2020, 202002016/1 / V3, ECLI: NL: RVS: 2020: 992.
3. OSCE / ODIHR Report on the Right to a Fair Trial in Conflict and Emergency, 2016, pg. 6:
4. Staatsblad 2020, 364: all measures are extended until 30 November 2020.
5. European Convention on Human Rights Article 6, Right to a fair trial
6. The ECtHR of 12 February 1985, no. 9024/80,

7. Criminal Procedure Law of the Republic of North Macedonia
8. Law on the Courts of the Republic of Northern Macedonia
9. Italian Constitutional Court 22 July 1999, no. 342, IT: COST: 1999: 342.
10. Lady Biancu, Zero Mall, Hannah Smith, Covid-19 and the Impact on Human Rights - Review of the relevant case law of the European Court of Human Rights, AIRE Center, September 2020.
11. International Covenant on Civil and Political Rights:
12. DECISION On the actions of the courts in the Republic of Northern Macedonia in conditions of increased danger from the virus KOVID-19, Judicial Council of RSM, March 17, 2020:
13. Syracuse Principles for Restricting and Derogating Provisions in the International Covenant on Civil and Political Rights
14. Protocol for implementation of protection measures against Covid - 19 in the courts. (sud.mk)
15. Regulation (EC) No 1206/2001 on EU countries,
16. Announcement - Decision (sud.mk)
17. Emergency Response Guidelines and Covid-19, Office of the United Nations High Commissioner for Human Rights on 27 April 2020
18. Decree with legal force number 11, published in the Official Gazette on March 8, 2020. This complex procedural regulation has been turned into law no. 27, published in the Official Gazette on April 29, 2020.
19. Decree-Law No. 23 on Urgent Measures Concerning, inter alia, the extension of administrative and procedural terms, published in the Official Gazette on 8 April 2020.
20. Decree with legal force on the deadlines in court proceedings during the state of emergency and the actions of the courts and public prosecutor's offices, 30.03.2020.

6.2. CASE – STUDY

1. Ekbatani v Sweden ECtHR 26 May 1988, No. 10563/83, CE: ECHR: 1988: 0526JUD001056383, para 27.
2. Fejde v Sweden ECtHR 29 October 1991, No. 12631/87, CE: ECHR: 1991: 1029JUD001263187, para 31.
3. Helmers v Sweden, ECtHR 29 October 1991, No. 11826/85,
4. CE: ECHR: 1991: 1029JUD001182685, paras 31–32.
5. Marcello Viola v Italy (No. 1), supra n. 5, para 55. ECtHR
6. Pretto v Italy, ECtHR 8 December 1983, No. 7984/77, ECLI:
7. CE: ECHR: 1983: 1208JUD000798477.
8. Sejdovic v Italy, ECtHR, supra n. 27, para 98.
9. B. and P. v. the United Kingdom (B. and P. v. the United Kingdom), judgment no. 36337/97 dated 24.04.2001
10. Zielberg v. Moldova ECtHR, 1 February 2005, no. 61821/00,
11. SE: ECtHR: 2005: 0201JUD006182100, paragraph 41
12. Kamasinski v. Austria, FR: ECtHR: 1989: 1219 UDUD000978382, paragraph 106: ECtHR, 19 December 1989, No. 9783/82
13. Roll against Italy, SE: ECHR: 1985: 0212 UDUD000902480,

14. Krestovskiy v. Russia, judgment no. 14040/03 dated 14.11.2000
15. Marcello Viola v. Italy, ECtHR 5 October 2006, no. 45106/04, (No. 1), CE: ECHR:2006: 1005JUD004510604
16. Poitrimol v. France ECtHR 23 November 1993, No. 14032/88
17. Riepan v. Austria Judgment No. 35115/97 of 14 November 2000

6.3. Links

1. <http://www.aca-europe.eu/index.php/en/jurifast-en>.
2. <http://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>
3. <https://all4fairtrials.org.mk/wp-content/uploads/2020/04/KSPS-JR-042020.pdf>
4. <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>
5. <https://cutt.ly/RyRpz5n>
6. https://e-justice.europa.eu/content_impact_of_the_covid19_virus_on_the_justice_field-37147-en.do
7. [Fundamental rights under Covid-19: an European perspective on videoconferencing incourt | SpringerLink](#)
8. <https://myla.org.mk/wp-content/uploads/2020/03/rokovi-sudski-postapki.pdf>
9. <https://rm.coe.int/courts-covid-19-measures-as-of-15-april-2020/16809e2927>
10. <https://www.clydeco.com/insight/article/covid-19-impact-on-courts-and-arbitration>
11. https://www.echr.coe.int/Documents/Convention_ENG.pdf
12. https://www.echr.coe.int/Documents/Convention_ENG.pdf 8
13. <https://www.garantepriavacy.it/home/docweb/-/docweb-display/docweb/9316889>
14. <https://www.gdpd.it/web/guest/home/docweb/-/docweb-display/docweb/9347225>
15. <https://www.mpravde.gov.rs/sr/vest/29671/saslusanja-za-lica-koja-su-prekrsila-meru-samoizolacije-putem-video-linka.php>
16. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
17. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
18. <https://www.osce.org/odihr/317766?download=true>
19. <https://www.supremecourt.uk/news/update-about-visiting-the-uk-supreme-court.ht>