

Challenges of constitutional judicial control of the delegated legislative power during the COVID-19 Pandemic in the light of international standards: the case of North Macedonia

Professor **Jeton SHASIVARI**¹
Associate professor **Bekim NUHIJA**²

Abstract

In order to effectively prevent the COVID-19 Pandemic, for the first time in the history of the Republic of North Macedonia by decision of the President of the Republic on March 18, 2020, a state of emergency was established, which in addition to intensified measures to protect public health, also implied the introduction of a special legal regime whose basic characteristics are: deviation from the constitutional principle of separation of powers and taking over by the Government of legislative powers and the opportunity to limit basic human rights and freedoms and to take intervention measures by the executive power in economics, education, labor relations, and other spheres of social life. In this regard, the declaration of a state of emergency has activated the constitutional authority of the Government to perform its legislative function. Unlike other constitutions that regulate in more detail the powers of the Government, parliamentary control, enactment of decrees with the force of law and other regulations, as well as the restriction of human rights in a state of emergency, the Constitution of North Macedonia does not contain special provisions on the government powers, except enacting decrees with the force of law. Due to such a constitutional gap, the question remains whether such regulations remain in the legal system even after the state of emergency ceases. The Constitution of North Macedonia only stipulates that the authorization of the Government to adopt decrees with the force of law lasts until the end of the state of emergency, which is decided by the Parliament, without considering the situation when the state of emergency is declared not by the decision of Parliament but by the decision of the President of the Republic. With this paper authors by explaining the principle of the Rule of Law as a generally accepted International and European standard in such situations, using: normative legal method, comparative legal method, intentional, systematic and objective interpretive methods, will focus on the specific analysis of the judicial control of decrees with the force of law by the Constitutional Court of North Macedonia, in terms of, to what extent the principle of proportionality was respected in the adoption of such decrees which derogated existing laws in order to protect the public health of citizens.

Keywords: *a state of emergency, rule of law, proportionality, judicial control, legitimate goal, decrees with the force of law, constitutional limits on government power.*

JEL Classification: K23, K40

¹ Jeton Shasivari - Full professor in the legal field of constitutional and administrative Law, Faculty of Law, South East European University, Tetova, Republic of North Macedonia, j.shasivari@seeu.edu.mk.

² Bekim Nuhija - Associate Professor in the legal field of international law, Faculty of Law, South East European University, Tetova, Republic of North Macedonia, b.nuhija@seeu.edu.mk.

1. Introductory reviews

Although different constitutional and legal methods may differ in the way they deal with emergencies, they all serve to the same purpose: managing situations of acute and critical danger. Emergencies can have different characteristics. They can manifest as very short and temporary disturbances or longer conflicts. However, they are by definition extraordinary and uncertain. They result from violent actions such as terrorist attacks or political upheavals, environmental disasters, pandemic, epidemic and financial crises. Resolving emergencies inherently requires the state to take swift and emergency measures. Taking constitutional democracies as a starting point, emergencies signal a temporary need to set aside principles, especially the principle of separation of powers (check and balance). The state can restrict fundamental rights and freedoms and extend the executive power. A state of emergency can arise in a wide range of situations, and several key principles must be adhered to that will not jeopardize democratic principles, and that any deprivation of rights needed to deal with the crisis is temporary and is intended to restore normal condition and preservation of fundamental rights. In this regard, national constitutional orders envisages a number of situations when a state of emergency is to be declared, ranging from armed action threatening the constitutional order to a natural disaster, pandemic, epidemic or financial or economic crisis. The definition of these exceptional situations depends on each national constitutional order, within the states having to use special procedures to resolve the crisis and its consequences.

2. International legal standards and principles

The main question that arises from the point of view of International and European Law is whether states, and especially EU member states, are absolutely free to create their own measures and mechanisms as they wish, or whether there are restrictions in this direction. It should be noted that the EU Treaties and Human Rights Instruments, such as the European Convention on Human Rights (ECHR), the OSCE commitments and the United Nations system of human rights treaties, continue to apply even during a state of emergency in which these obligations guarantee human rights and fundamental elements of the rule of law during a state of emergency, such as the prohibition of torture, inhuman or degrading treatment or punishment, while other rights and freedoms may be limited but their essential core must remain inviolable.

Therefore, in accordance with international legal standards, states are not free to create their own emergency legislation entirely as they wish. Many of the most important international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and (in the pan-American context) the American Convention on Human Rights, enumerate a number of so-called non-derogable human rights, which cannot be suspended in

any circumstances, including during a state of emergency or in wartime. In the wake of the democratization of large parts of Central and Eastern Europe after 1989, recommendations regarding the constitutional regulation of emergency powers were also made by the Venice Commission within the Council of Europe³. The list of non-derogable rights in the international instruments vary somewhat, but generally encompass the right to life, the prohibition of slavery and of torture or cruel, inhuman or degrading treatment or punishment, as well as the principle of non-retroactivity of penal law. According to the Venice Commission, it is also crucial to maintain certain other rights during a state of emergency, in particular minimum guarantees against arbitrary detention, the right to a fair trial and to recourse to courts against acts and actions of the authorities wielding emergency powers. Moreover, rights should be enjoyed by everyone without discrimination⁴. The instruments also provide rules for how and in what circumstances emergency regulations which derogates from certain rights can be established. According to the ECHR Art 15, derogations can only be made in times of “war or other public emergency threatening the life of the nation”, and the Secretary General of the Council of Europe shall be kept fully informed. A number of qualifying criteria, developed in European Court of Human Rights case law, further restrain the usage of emergency rule⁵; where the same applies to ICCPR Art 4⁶.

In this regard, under the European Convention, the European Commission and Court have consistently declared themselves competent to examine emergency situations according to Article 15 of the ECHR. The right of States to declare a public emergency and to take measures derogating from their obligations under the Convention is recognized but also supervised by them. In international law, in evaluating the existence of a public emergency and the need for derogating measures, States enjoy a margin of discretion⁷.

In summary, it should be noted that the international principles relating to emergencies to be met to ensure transparency, proportionality and the necessity of measures, are as follows:

³ Anna Khakee, *Securing Democracy? A Comparative Analysis of Emergency Powers in Europe*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Policy Paper-№30, Geneva, 2009, p. 9.

⁴ Ibid, pp. 9-10, cited by: Venice Commission-European Commission for Democracy through Law (1995); “Emergency powers” by Ergun Özbudun and Mehmet Turhan, in the series *Science and technique of democracy* No. 12 CDL-STD (1995) 012, Strasbourg.

⁵ Ibid, p. 10, cited according to the following leading cases: *Lawless v Ireland* (No 3) (1961) 1 EHRR 15; *Askoy v. Turkey*, Judgment of 18 December 1996, 23 EHRR 553; *Brogan v. UK* A 145 (1988) 11 EHRR 117; *Brannigan and McBride* A 258-B (1993) 17 EHRR 539.

⁶ Ibid, see: General Comment No. 29 of the Human Rights Committee on derogations during a state of emergency (article 4) (2001). For a thorough discussion of the issues of non-derogable rights and the proclamation of a state of exception, see Chowdhury, Subrata Roy (1989): *Rule of Law in a State of Emergency: The Paris Minimum Standards of Human Rights Norms in a State of Emergency*, London: Pinter Publishers and Fitzpatrick, Joan (1994), *Human Rights in Crisis: The International System for Protecting Rights during States of Emergency*, University of Pennsylvania Press.

⁷ Özbudun, Ergun; Turhan, Mehmet; *Emergency Powers*, European Commission for Democracy through Law (Venice Commission), Strasbourg, 1995, p. 26.

- Principle of temporality: which refers to the exceptional nature of declaring a state of emergency;
- The principle of exceptional threat: the crisis must be presented as a real, ongoing or at least immediate threat to the community;
- The principle of proclamation: the state of emergency must be made public;
- The principle of communication: reporting on the measures used to be directed to other countries or relevant monitoring bodies;
- The principle of proportionality: the severity of the crisis must be proportionate to the measures taken against it;
- The principle of legality: that human rights and fundamental freedoms during a state of emergency must remain strictly within the limits provided by international law, i.e. the relevant international instruments to which they are bound; whereby the state of emergency does not mean a temporary suspension of the rule of law; and
- The principle of inviolability: which refers to certain fundamental rights and freedoms that can not be restricted even during a state of emergency⁸.

3. The National constitutional framework of the state of emergency

The main question that arises from the point of view of the Constitutional Law is in the constitutional-legal framework for dealing with the state of emergency and whether the state can preserve the foundations of the rule of law in such a state. Therefore, one of the main challenges in itself involves preventing the abuse of power during the state of emergency, in the sense that it is not normal for it to grow into something normal. Of course, not all constitutions explicitly regulate the issue of state of emergency, but this should not be understood as a lack of appropriate legal mechanisms to regulate the various issues arising from the state of emergency.

In this regard, it is important to analyze the constitutional provisions of North Macedonia regarding the state of emergency. Namely, the state of emergency is regulated by several articles of the Constitution of North Macedonia. The provisions are distributed in several places in the constitutional normative text and when talking about it, every provision should be taken into account, as a whole. The Constitution in Articles 54, 125, 126, 128 stipulates when a state of emergency exists; who proposes its determination; who makes a decision on its establishing; how long it lasts; who controls its effects; which rights of citizens cannot be restricted and which bodies continue their work in these conditions.

In this context, according to Article 54, the freedoms and rights of the

⁸ Kesetovic, Zelimir; Korajlic, Nexhat; Toth, Ivan; Gjurovski, Marjan, *Управување со кризи меѓу теоријата и практиката [Crisis management between theory and practice]* University "St. Kliment Ohridski "-Bitola, Faculty of Security-Skopje, 2017, pp. 189-190.

individual and citizen can be restricted only in cases determined by the Constitution. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot discriminate on grounds of sex, race, color of skin, language, religion, national or social origin, property or social status. The restriction of freedoms and rights cannot be applied to the right to life, the interdiction of torture, inhuman and humiliating conduct and punishment, the legal determination of punishable offences and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession⁹.

According to Article 125, a state of emergency exists when major natural disasters or epidemics take place. A state of emergency on the territory of the Republic of Macedonia or on part thereof is determined by the Parliament 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 Parliament 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 Parliament for confirmation as soon as it can meet¹⁰.

According to Article 126, during a state of war or emergency, the Government, in accordance with the Constitution and law, issues decrees with the force of law. The authorization of the Government to issue decrees with the force of law lasts until the termination of the state of war or emergency, on which the Parliament decides¹¹.

According to Article 128, the mandate of the judges of the Constitutional Court of North Macedonia, as well as members of the Republican Judicial Council is extended for the duration of the state of war or emergency¹². In the above context, Article 39 of the Constitution should also be mentioned, which stipulates that, every citizen is guaranteed the right to health care. Citizens have the right and duty to protect and promote their own health and the health of others, which means that public health in such conditions grows into a priority constitutional value over other constitutionally guaranteed values¹³.

When it comes to this aspect, it is necessary to underline the paradoxical situation in the legal order of North Macedonia, namely, there is a Law on Crisis Management (adopted in 2005, and amended in 2011, 2014, 2015 and 2016) which provides the proclamation of the state of crisis, in conditions when the Constitution does not provide this category, and there is no special Law on the State of Emergency, which as we have seen is a constitutional category, because the

⁹ Article 54 of the Constitution of the Republic of North Macedonia, available online at: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nsp (accessed on July 21, 2020).

¹⁰ Ibid, Article 125.

¹¹ Ibid, Article 126.

¹² Ibid, Article 128.

¹³ Ibid, Article 39.

Constitution recognizes the declaration of state of emergency, but does not recognize the declaration of crisis. This means that the state of emergency in addition to being a constitutional category, in the near future, should also be a legal category. What was said above it can be seen from the first measures that were imposed in North Macedonia with the introduction of the first cases of Covid-19 which were related to the management of medical crises under the Law on Crisis Management, where the municipality of Dibra and Centar Zhupa were quarantined on 10 and 11 March 2020 as Covid-19 blast sites¹⁴.

Thus, in North Macedonia, a debate took place regarding the declaration of a state of crisis or state of emergency. Finally, on March 18, the Government asked the Parliament to declare a state of emergency. But, since the majority of the Representatives on February 16 had already approved the decision to dissolve the Parliament, and with this act *ex-constitutionem*, 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 crisis¹⁵. The first author of this paper, prof. Shasivari 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 scheduled for April 12. The meeting discussed several possible solutions deriving from the Constitution of North Macedonia¹⁶.

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.

¹⁴ For more information see at: *Кризна состојба во Дебар и Центар Жуна поради коронавирусот, затвор за непочитување на препораките*, Радио Слободна Европа [*Crisis situation in Debar and Centar Zupa due to the coronavirus, prison for non-compliance with the recommendations*, Radio Free Europe], 13.03.2020, available online at: <https://www.slobodnaevropa.mk/a/30486178.html>, (accessed on July 22, 2020).

¹⁵ For more information see at: *Political parties in Macedonia reach a consensus to postpone the elections*, META.MK, 17.03.2020, available online at: <https://meta.mk/en/political-parties-in-macedonia-reach-a-consensus-to-postpone-the-elections/>, (accessed on July 22, 2020).

¹⁶ 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, available 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/>, (accessed on July 22, 2020).

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 midnight¹⁷.

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, 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,

¹⁷ For more information see at: *Завршува петтата вонредна состојба, од среда почнува изборната кампања* [The fifth state of emergency ends, the election campaign starts on Wednesday], available online at: <https://www.slobodenpecat.mk/zavrshuva-pettata-vonredna-sostojba-od-sreda-pochnuva-izbornata-kampana/>, (accessed on July 23, 2020).

due to which its time limit is necessary and subject to mandatory review¹⁸. 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 adoption 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 emergency¹⁹.

4. Government measures to deal with the consequences of the COVID-19

From the first day of the entry into force of the state of emergency i.e. from March 19, 2020, the Government of North Macedonia took some concrete measures according to the decrees with the force of law to face the consequences of the COVID-19 in accordance with the Law on the Government, where its Article 10 stipulates that, during a state of emergency, if there is no possibility to convene the Parliament, the Government adopts decrees with the force of law on issues within the competence of the Parliament, as well as Article 36 which provides that, by decree with the force of law, the Government regulates issues within the competence of the Parliament in case of emergency if there is no possibility for convening the Parliament²⁰.

¹⁸ For more see the Constitutional Court Decision of May 12, 2020, Y.6p.55/2020, available online at: <http://ustavensud.mk/?p=19269>, (accessed on July 24, 2020).

¹⁹ For more see the Constitutional Court Decision of July 8, 2020, Y.6p.207/2020, available online at: <http://ustavensud.mk/?p=19693>, (accessed on July 25, 2020).

²⁰ Law on the Government-editorially consolidated text. Art. 10 and Art. 36, available online at: https://vlada.mk/sites/default/files/dokumenti/zakoni/zakon_za_vladata_na_republika_makedonija.pdf. (accessed on July 25, 2020).

In this regard, we will briefly present the main measures, as follows:

- Restrictions on citizens' free movement:
 - Each citizen is obliged to wear personal protective equipment on the face when leaving the home and moving in public places and areas of open and closed type, at markets, in public transport and while entering closed areas with groups of people.
 - Association in groups of more than five persons in parks and other public places and areas is banned.
 - All citizens are obliged in their headquarters, affiliates, and facilities where they perform their activity to ensure wearing personal protective equipment on the nose and mouth by all natural persons working and to prohibit entry and movement through these premises of any natural person who enters these premises as a visitor and does not wear personal protective equipment.
 - All domestic and foreign natural persons, symptomatic and asymptomatic, who have been tested for the presence of COVID-19 in their body, shall be placed in a mandatory self-isolation from the moment of taking the sample for testing (mouth swab, throat swab, nasal swab, blood etc.), until negative result is obtained.
- Restrictions for Legal Entities:
 - The retail trade facilities are allowed to only one person per 20 square meters, whereas for retail trade facilities smaller than 20 square meters the ban refers to one person at a time. Each trader is obliged to provide protective equipment (masks and gloves) for the employees in the facility and the employees are obliged to wear protective equipment during the working hours.
 - The banks and savings houses are obliged to place appropriate signs which mark the direction of movement and preserve the required minimum distance of two meters both inside and outside while waiting to be served in front of any window the customers need to approach for doing their financial services, as well as in the diameter of 10 meters at the entrance of the facility.
 - Persons with disability accompanied by another person must be released from the working obligations.
 - The care and education processes in all kindergartens, elementary and secondary schools, high education institutions and public scientific institutions are terminated.
 - All extracurricular activities and additional programs like foreign language courses or similar are terminated.
 - Massive gatherings and events in open and closed facilities and all cultural events and festivals are terminated.
 - All hospitality premises that prepare and sell food can work without accepting clients (guests) and may sell their products using alternative methods (online orders, telephone orders, etc.) and to perform delivery or to enable individual collection of the order outside the object (via stand, etc.).

- The banks and savings houses are obliged to organize security guards at the entrance and exit of their offices in order to provide for the minimum required distance between the persons waiting outside and inside the facility. They have to provide for the necessary hand disinfection at the entrance and not allow entrance into the office to persons that fail to wear the necessary protective masks, scarves or covers which will protect their mouth and nose.

- Classes and training, as well as exams in driving schools is forbidden.

- All sports facilities where gatherings of any type may be organized are closed for activities.

- To terminate the work of libraries and student homes on the territory of the Republic of North Macedonia; the employees in these institutions should be free from work for this time period.

- All cinemas, theatres, children's playhouses and all other facilities where mass gatherings, events or concerts including other cultural and information events may be organized are closed for activities.

- It is banned to hold and organize all kinds of public and private gatherings regardless of the scope or number of participants.

- To shut down all stores in the malls on the territory of the Republic of North Macedonia, except for the markets, food stores and pharmacies. All other legal entities can work and perform sales using alternative methods (deliveries) and to perform delivery of orders) and to perform delivery of orders²¹.

Due to the objective impossibility to show the content of all decrees with the force of law because as will be seen below their number is too large, we will focus on some decrees whose implementation most affected the lives of citizens and other legal entities.

In this regard, for example, at its 45th session held on 22 April 2020, the Government adopted a Decree with force of law for mandatory self-isolation when testing for the presence of COVID-19. According to this Decree, all domestic and foreign natural persons, symptomatic and asymptomatic, which have been tested for the presence of COVID-19 in their body, are placed in a mandatory self-isolation from the moment of taking the sample for testing (mouth swab, throat swab, nasal swab, blood etc.), until negative result is obtained. The decree provides that if taking sample for testing is done outside the home, that is to say, the place of potential self-isolation of the natural person that is tested, the person is obliged without delay, in the shortest possible time and in the fastest way, to go to the place of self-isolation while reducing to minimum contact with other persons on his way to self-isolation until they arrive at the place of self-isolation. This Decree stipulates that the self-isolation shall last until negative result from the testing is obtained. Self-isolation is carried out in the person's home or in an apartment or a house where they can be fully isolated from the people they live with (a holiday

²¹ For more on government measures in North Macedonia see: Government's Measures, available online at: <https://koronavirus.gov.mk/en/governments-measures>, (accessed on July 26, 2020).

home, an apartment in which they don't live etc.). During the period of self-isolation, the person who is self-isolated must not go out at all, they should minimize the contacts with the people they live with (if they cannot be entirely separated) and they should obey the recommendations of the Ministry of Health regarding self-isolation. Self-isolation can turn into home isolation based on the Decision for health supervision by the State Sanitary and Health Inspectorate in accordance with the protocols for reduction of the importation, spread and dealing with COVID-19²².

Also, at the 45th session of the Government held on 22 April 2020 a Decree with force of law for implementation of the Law on banks during curfew was adopted. It stipulates that the provisions of this Decree shall apply with regards to maintaining order and discipline upon entrance and exit of clients in the premises of the banks and savings houses. Pursuant to this Decree the banks and savings houses are obliged to organize security guards at the entrance and exit of their facility in order to provide for the minimum required distance between the persons waiting outside and inside the facility. They have to provide for the necessary hand disinfection at the entrance and not allow entrance into the facility to persons that fail to wear the necessary protection masks, scarves or shawls which will protect their mouth and nose. The banks and savings houses are obliged to place appropriate signs which mark the direction of movement and preserve the required minimum distance of two meters both inside and outside while waiting to be served in front of any window, where the customers need to approach for using their financial services, as well as in the diameter of 10 meters at the entrance of the facility. Pursuant to this Decree banks and savings houses are obliged to provide their employees who work in their premises or have contact with clients with protective equipment (gloves and masks), which they are obliged to wear during all working hours. The Decree stipulates that banks and saving houses are not allowed to have at a time:

- more than 5 persons in a facility of 50 square meters;
- more than 10 persons in a facility of 50 to 100 square meters;
- more than 15 persons in a facility of 100 to 200 square meters, and
- more than 20 persons in a facility of more than 200 square meters²³.

On the other hand, on 23 April 2020 the Official Gazette of the RNM published the Decree with force of law for wearing personal protective equipment against spreading, suppression of the infectious disease caused by the corona virus COVID-19, and protection of the population during the state of emergency, which the Government declared at its 45th session. This Decree with the force of law regulates the wearing of personal protective equipment on a person's face for prevention of spreading, suppression of the infectious disease caused by the corona virus COVID-19, and protection of the population, as well as the supervision of wearing personal protective equipment during the state of emergency. Pursuant to

²² Ibid.

²³ Ibid.

this Decree all domestic and foreign physical persons on the territory of RNM shall wear personal protective equipment on the face when leaving their home, and moving in public spaces and areas of open and closed type, green markets, public transport and when entering closed areas of facilities which due to the nature of their work represent a place where many people gather (state institutions, supermarkets, shops, banks, post offices, waiting rooms, health institutions, and similar). Personal protective equipment shall consist of any form of protection, which covers the nose and mouth (FFP2 Respirator Mask or a higher standard, single-use surgical mask, cloth mask for multiple use, a silk scarf or a shawl, a cotton scarf or a shawl, or a bandana, and similar). Pursuant to this Decree, all domestic and foreign physical persons on the territory of RNM may not wear the personal protective equipment on their face only in the case if the person:

- wear special personal protective equipment on their face due to performing their job;
- is in the yard of a family house;
- rides a bicycle or plays sport in the open as an individual sport;
- travels in a motor vehicle with persons with which he or she lives in the same household;
- moves in public spaces and open-air spaces where he or she thoroughly keeps the minimum allowed distance of two meters from any other person.

According to this Decree all domestic and foreign legal persons on the territory of RNM are obliged to take measures of precaution in their offices, companies and constructions, where they perform their activities. All physical persons that work there are obliged to wear personal protective equipment on the mouth and nose and ban the entrance and movement in these premises to all physical persons that enter as visitors and who do not wear personal protection gear. Articles 4, 5, and 6 of the Decree shall be established by the institutions, which shall exercise supervision and control of the implementation of the decisions, as well as the misdemeanors of physical and legal persons, who will not abide to the provisions of the Decree. The Ministry of Internal Affairs, the State Sanitary and Health Inspectorate, the State Labor Inspectorate, and the State Market Inspectorate, each one according to its competence shall be competent for the implementation of the provisions of the Decree. The Decree prescribes that in case of violation of the provisions of this Decree with force of law, from the day of entry into force until 30 April 2020, the authorities will issue warnings only. After 30 April, pursuant to the Decree a fine of 20 Euros in denar counter value shall be issued for a misdemeanor to every domestic and foreign physical person if he or she does not abide to the provisions of this Decree with force of law. A fine of 2.000 Euros in denar counter value shall be issued for a misdemeanor of every domestic or foreign legal person if they do not abide by the provisions of Article 3 of this Decree with force of law, which stipulates that all domestic and foreign legal persons on the territory of RNM are obliged in their offices, branches and constructions, where they perform their activities, to provide that all physical

persons who work there wear personal protective equipment and to ban the entrance and movement in these premises to all physical persons that enter as visitors and do not wear personal protective equipment. A fine of 1.000 Euros shall be issued to every responsible person within the legal person if he/she does not abide by the provisions of this Decree with force of law²⁴.

Table 1. Tabular presentation of the Decrees with the force of law adopted in the sessions of the Government in the time period March 21 - June 22, 2020²⁵

Session number/Date	The number of the adopted Decrees
Session no. 25/21.03.2020	3
Session no. 26/23.03.2020	7
Session no. 27/24.03.2020	1
Session no. 28/25.03.2020	1
Session no. 29/26.03.2020	1
Session no. 30/27.03.2020	6
Session no. 31/30.03.2020	6
Session no. 32/31.03.2020	4
Session no. 33/02.04.2020	17
Session no. 34/03.04.2020	6
Session no. 35/04.04.2020	2
Session no. 36/06.04.2020	1
Session no. 37/07.04.2020	12
Session no. 38/08.04.2020	5
Session no. 39/09.04.2020	6
Session no. 40/13.04.2020	8
Session no. 41/14.04.2020	4
Session no. 43/16.04.2020	7
Session no. 44/18-21.04.2020	2
Session no. 45/22.04.2020	5
Session no. 46/24.04.2020	5
Session no. 47/28.04.2020	4
Session no. 48/30.04.2020	6
Session no. 49/05.05.2020	7
Session no. 50/08.05.2020	1
Session no. 51/12.05.2020	8
Session no. 52/14.05.2020	7
Session no. 53/15.05.2020	1
Session no. 54/16.05.2020	8
Session no. 55/19.05.2020	1
Session no. 56/22.05.2020	4
Session no. 57/26-27.05.2020	3
Session no. 58/29.05.2020	13

²⁴ Ibid.

²⁵ For more on decrees with legal force adopted by the Government during the period of the state of emergency, see on its official website: <https://vlada.mk/uredbi-covid19>, (accessed on July 28, 2020).

Session number/Date	The number of the adopted Decrees
Session no. 59/30.05.2020	1
Session no. 60/02-03.06.2020	3
Session no. 61/05.06.2020	1
Session no. 62/08.06.2020	1
Session no. 63/09.06.2020	4
Session no. 64/10.06.2020	10
Session no. 65/12.06.2020	10
Session no. 66/14.06.2020	7
Session no. 68/15.06.2020	1
Session no. 70/19.06.2020	2
Session no. 71/22.06.2020	13
	Total: 225

As can be seen from the table above, during the period of the state of emergency in North Macedonia, from the 25th session of March 21 to the 71st session of June 22, the Government has adopted a total of 225 decrees with the force of law which indicates an extremely increased delegated legislative power exercised by the Government for the time period that has been analyzed. In this regard, the largest number of decrees with the force of law, the Government adopted in its 33rd session on 2 April (17 in total); followed by a total of 13 decrees adopted in its 58th session of May 29 and in its 71st session of June 22, otherwise the last day of the state of emergency in force, which expired that day at midnight.

5. The decrees with the force of law as specific legal regulations in the national legal order

Decrees with the force of law are specific legal regulations that are adopted in a state of emergency when there is a need to take prompt and effective measures, meaning the rapid regulation of certain issues that are not regulated by law at all or are regulated in a way that does not allow effective measures that imposes the state of emergency, in order to face and overcome the causes that led to the state of emergency and their consequences, and to restore the regular constitutional legal order. The competence of the Government to adopt decrees with the force of law is, in fact, a form of delegated legislative power in the narrow sense, because they must be in accordance with the Constitution and laws, they have territorial, temporal, material and formal legitimacy and must be subject to constitutional-judicial control.

These decrees are different from the laws according to the procedure for their adoption and according to the body that adopts them, but they are compatible with the laws on the subject of their regulation and their legal force. For these reasons, these decrees differ from other decrees adopted by the Government which have the character of bylaws that are adopted in order to enforce the laws. The purpose of adopting decrees with the force of law is to amend or supplement the legal provisions, but they must not go beyond the constitutional provisions and

therefore it is very important that they are subject to constitutional judicial control; an issue in which in particular we will focus on our analysis.

The main difference between decrees with the force of law and ordinary decrees is that such a decree regulates issues that are within the competence of the Parliament and which are legal issues. By ordinary decree, the Government regulates the execution of laws; establishes principles for internal organization of the ministries and other bodies of the state administration and regulates other relations in accordance with the Constitution and the laws. Ordinary decrees are bylaws, they do not regulate a matter that is the sole competence of the Parliament, which means that an ordinary decree must not amend or supplement an existing law, nor can it regulate unregulated legal matter²⁶.

The decrees with the force of law are the most effective tools in the hands of the government during a state of emergency. The government can stop enforcing a certain law for a certain period of time, if it deems its application to be an unbearable burden for the citizens; the Government did this with the decree with legal force for stopping the application of the Law on Enforcement. Or it can stop certain legal actions and set a new deadline for their extension; the Government did this with the decree with legal force for termination of all actions for conducting the elections scheduled for April 12, 2020²⁷.

Regarding the adoption of decrees with the force of law during the state of emergency in North Macedonia, at least three main legal dilemmas arose²⁸, as follows:

The first dilemma arises regarding the procedure for adoption of these decrees by the Government. With these decrees, the Government regulates issues within the competence of the Parliament in case of war or state of emergency if there is no possibility for convening the Parliament. This means that these decrees have the same legal effect as the laws because they regulate issues that are within the competence of the Parliament and which are legal matters. However, neither in the Constitution nor in the Law on the Government there are provisions that regulate the special procedure for adoption of such decrees. This is a legal gap because a regulation that by its legal force and legal effect has the character of a law and which most often derogates from certain legal issues and changes legal conditions previously regulated by laws adopted by the legislative power, should not be adopted by the executive power in the same procedure as the bylaws are adopted outside the state of emergency.

²⁶ See more in: Vlado Kambovski; Ana Pavlovska-Daneva; Gordana Lazetic; Elena Mujoska-Trpevska; Konstantin Bitrakov, "Правните аспекти на вонредната состојба" ["*Legal aspects of the state of emergency*"], Macedonian Academy of Sciences and Arts, Skopje, 2020, p. 13.

²⁷ See more in: Svetomir Shkaric, "Правната битка за вонредната состојба" ["*The legal battle for the state of emergency*"], ResPublica, 17 April 2020. available online at: <https://respublica.edu.mk/mk/blog/2020-04-16-23-18-27>, (accessed on August 1, 2020).

²⁸ Regarding these three legal dilemmas see at: Ana Pavlovska Daneva, "Правната регулатива во услови на вонредна состојба" ["*Legal regulation in conditions of emergency*"]. Online academic work desk organized by the Faculty of Law "Iustinianus Primus"-UKIM-Skopje on April 29, 2020, entitled: "*Legal-Political and Economic Discourse in the time of COVID-19*", Skopje, Book of Abstracts, p. 9-10.

The second dilemma arises from the question of whether these decrees can only change, suspend or amend existing laws, or a certain matter can be regulated from the beginning. Unfortunately, this issue is not regulated by any constitutional or legal regulation in North Macedonia. In principle, in order to consistently respect the principle of the rule of law and in accordance with the principle of separation of powers, in an state of emergency when the Government acquires the opportunity to adopt such decrees, it should limit its normative activity only to amendments to existing laws and in exceptional situations, when the nature and urgency of the issue requires it to establish new rights or obligations for the citizens, but always taking into account the principle of proportionality, which means prescribing and undertaking measures for protection of the public interest only to the extent that is proportional to the danger.

The third dilemma is how long these decrees last; whether it ceases after the cessation of the state of emergency or can create rights and obligations that will continue after the cessation of the state of emergency. According to Article 126 of the Constitution: the authorization of the Government to adopt such decrees lasts until the end of the state of emergency, which is decided by the Parliament; and this is the only constitutional provision that regulates the issue of the duration of the authority of the Government to adopt such decrees but does not regulate the issue of the duration of their validity. By analogous logical interpretation, the conclusion should be drawn that these decrees cannot create legal conditions and relations that will last even after the cessation of the state of emergency²⁹.

In this regard, it is important to state the position of the Constitutional Court regarding the duration of the decrees with the force of law adopted in conditions of state of emergency. Namely, according to the Court, given the fact that the function of those acts is to resolve the reason that caused the emergence of the state of emergency and return to regular social relations and the regular legal order, the one based on fundamental values set out in Article 8 of the Constitution, it follows that the duration of these decrees, normatively, must be only for the duration of the state of emergency; and the legal action, in principle, to end after the expiration of the state of emergency and until the decision of the Parliament, which should be done as soon as possible after the end of the state of emergency. Thereby, the extended duration of the legal effect of these decrees after the end of the state of emergency is in cases when those acts regulate a issue that is closely (according to Article 15 of the European Convention on Human Rights (ECHR) "strictly" related to the reason which caused the state of emergency (for example: to consider that the annual leave from the previous year was used if the employee did not perform the work tasks, and did not perform them due to the necessary need to be at a physical distance from other employees in order to prevent the spread of COVID-19 which means that there is a close link to the cause and there is an objective justification) and if the measure is appropriate (there were no milder forms of virus prevention and a physical distance-principle of proportionality had

²⁹ Ibid.

to be provided, and the scope was weighed because it can use the annual leave from the current year (principle of proportionality), as well as if the decree does not "close" any legal relationship occurred before the declaration of the state of emergency (for example: does not provide for the payment of utility bills incurred by a state body or does not regulate the payment of unpaid salaries to employees of a state body, because there is no "strict" connection with the state of emergency and that issue may be regulated in another, regular and legal manner, not extraordinary: for example: by agreement or in regular court proceedings; in addition, if the stated or other funds are paid to one state body and its employees, they must be paid to all other state bodies and their employees if there are the same non-payments-therefore, in these cases there is no social justification or proportionality for arranging that issue in conditions of emergency). If these are not the exceptions, the decrees with the force of law would have such a duration that prevents the rapid return of social reality and the legal order to "normality", which is not in accordance with the fundamental values of the constitutional order set out in Article 8 of the Constitution³⁰.

The Constitutional Court also emphasizes that, the state of emergency is an institute with its own specifics. During this state, the Government is empowered to adopt decrees with the force of law that are sui generis regulations, other than laws. In such conditions, respect for the fundamental values of the constitutional order must be ensured. Furthermore, in conditions of emergency, human rights are restricted, which imposes the need for this institute to have precisely established and generally accepted principles in accordance with international documents that have been ratified by the Republic of North Macedonia. Namely, by a decree with the force of law, in case of a state of emergency, the Government may regulate certain issues that are regulated by applicable laws, may set new deadlines, may change existing ones and bring new solutions. But, such powers are not unlimited. The Constitution has two constitutional restrictions on the authority of the Government to issue decrees with the force of law. The first restriction is that the decrees regulate the necessary measures that are functionally related to directly or indirectly confronting and overcoming the causes and consequences of the state of emergency, taking into account that the measures have a legitimate purpose, social justification, be reasonable and proportionate in the light of what faster return to regular condition. The second restriction is regulated in Article 54 of the Constitution, the satisfaction of which requires that the restriction of freedoms and rights in a state of emergency can not be discriminatory on the grounds of sex, race, skin color, language, religion, national or social origin, property or social position. The right to life, the prohibition of torture, inhuman and degrading treatment or punishment, the legal nature of criminal acts and punishments, as well as the freedom of belief, conscience, thought and religion may not be restricted in a state of emergency³¹.

³⁰ See more in: <http://ustavensud.mk/?p=19255>, (accessed on August 2, 2020).

³¹ See more in: <http://ustavensud.mk/?p=19454> and <http://ustavensud.mk/?p=19490>, (accessed on August 3, 2020).

In this regard, it is interesting to note that, the constitution maker of North Macedonia apparently started from the assumption of the existence of a functioning Parliament that will decide on the end of the state of emergency, and thus will intervene in the laws if any of them is derogated by decrees with the force of law, whose action continued to be valid even after the end of the state of emergency or will legitimize the solutions provided by them. The ratification of these decrees must be done only by law, because they have force equal to law and only by law can another law be repealed or amended. If such decrees are left in force even after the end of the state of emergency, it can create a number of problems, primarily in court proceedings due to the court's commitment to the application of the Constitution, laws and ratified international agreements. Any other solution, i.e. the extension of the validity of the decrees with the force of law without confirmation from the Parliament and after the end of the state of emergency is problematic due to the weak legitimacy of those decrees adopted by the Government without parliamentary control³².

6. The constitutionality of the decrees with the force of law from the perspective of the Constitutional Court jurisprudence

When it comes to the role of the Constitutional Court during the duration of the state of emergency, it should first be noted that, in conditions when the Parliament is dissolved, and the Government for the above period adopted 225 decrees with the force of law, the Constitutional Court remained the only controller of the constitutionality of these decrees, so although the Government has the complete legislative power during the state of emergency, the Constitutional Court performs direct constitutional judicial control over its legislative power. This is because Article 126 of the Constitution of North Macedonia stipulates that, during a state of emergency, the Government, in accordance with the Constitution and law, issues decrees with the force of law; which means that the constitutional competence of the Government to adopt decrees with the force of law is limited by the Constitution and the laws, because it does not mean the authority of the Government for any arbitrariness for as much as the Constitutional Court has the constitutional duty to protect the constitutionality and legality of these decrees.

In that regard, the Constitutional Court started reviewing initiatives to assess the constitutionality and legality of the adopted decrees with the force of law on the basis of various initiatives submitted to the court, but it should be noted that the Court also acted on its own initiative. So, in a state of emergency the Constitutional Court continued to exercise its constitutional powers and to monitor the situation with these decrees adopted by the Government. Of course, the Court adapted its work in line with the measures taken to prevent the spread of COVID-19, so that in general, the period of state of emergency in the Constitutional Court was marked by a huge influx of new cases in a very short period of time; due to

³² See more in: Vlado Kambovski; Ana Pavlovska-Daneva; Gordana Lazetic; Elena Mujoska-Trpevska; Konstantin Bitrakov, *op. cit.*, 2020, p. 13.

which the Constitutional Court worked with an increased workload, which is reflected in the number of sessions and the number of items on the agenda³³.

Here, it is worth mentioning the fact that, all nine constitutional judges led by humanism, social justice and solidarity as a fundamental value of the constitutional order of the country, on May 18, 2020, donated 20% of their net salary for the month of April in order to support the activities for implementation of the measures for dealing with the crisis with COVID-19³⁴.

When it comes to the constitutionality of these decrees, initially during our analysis, we will present some of the most important decrees with the force of law for which the Constitutional Court refused to initiate procedure for assessing their constitutionality and legality; and after that, we will focus on some decrees that were annulled by the Court, analyzing in particular the legal reasoning of this Court for their annulment.

Thus, some of the more important decrees with the force of law for which the Constitutional Court did not initiate a procedure for assessing their constitutionality and legality are: the Decree on the application of the Law on protection of the population from infectious diseases; the Decree on the application of the Law on health care and its amendments; the Decree on the application of the Law on public gatherings; the Decree on issues related to the election process; the Decree on the application of the Law on budgets; the Decree on the application of the Law on labor relations; the Decree on determining the tasks of the Army; the Decree on the application of the Law on Plant Protection Products; the Decree on the application of the Law on Construction; the Decree on the application of the Law on Financial Companies; the Decree on emergency procurement of medical gloves during the emergency; the Decree on financial support to self-employed individuals affected by the health and economic crisis caused by COVID-19; the Decree on the application of the Law on public sector employees, the Decree on the application of the Law on Primary Education; the Decree on the application of the Law on Profit Tax; the Decree on the Application of the Law on Inspection Supervision; the Decree on the Application of the Law on Enforcement; the Decree on the Law on Leasing; the Decree on the Application of the Law on Execution of Sanctions; the Decree on organizing air transport of domestic citizens with current residence abroad; the Decree on the application of the Law on Public Procurement; etc³⁵.

On the other hand, when it comes to decrees with the force of law that were annulled by the Constitutional Court, for the purposes of our analyses, what matters is the cause of the annulment as well as the legal reasoning of the Court.

³³ For more see the Press Releases of the Constitutional Court and the Interview of the President of the Court, Mr. Sali Murati of May 5, 2020, available online at: http://ustavensud.mk/?page_id=5247&lang=en, (accessed on August 3, 2020).

³⁴ For more see the Press Release of the Constitutional Court, available online at: <http://ustavensud.mk/?p=19134>, (accessed on August 4, 2020).

³⁵ For more see the Press Releases of the Constitutional Court, available online at: <http://ustavensud.mk/?p=19153>, <http://ustavensud.mk/?p=19189><http://ustavensud.mk/?p=19251> <http://ustavensud.mk/?p=19325><http://ustavensud.mk/?p=19411> (accessed on August 5, 2020).

In this regard, by Decision No. 45/2020-1, the Constitutional Court on May 14, 2020 annulled the Decree on Public Prosecutors, Investigators and Other Public Prosecutor's Office Employees for Prosecution of Crimes Related to and Arising from the Content of Unauthorized Interception of Communications and Financing of The Public Prosecutor's Office for Prosecution of Criminal Offenses Related to and Arising from the Content of Unauthorized Interception of Communications. The annulled Decree provided that, all issues related to the rights, obligations and responsibilities of the employment of the above persons would be decided by the Public Prosecutor of North Macedonia; investigators from that public prosecutor's office, the public prosecutor of North Macedonia will deploy them to work in an investigation center or return them to the institution from which they were taken over; the budget of the Public Prosecutor's Office will be used to pay the funds for current operating expenses and the overdue unpaid funds for the running costs of that Public Prosecutor's Office. In its reasoning for the annulment, the Constitutional Court initially relied on the Article 15 of the European Convention on Human Rights (ECHR), which provision refers precisely to the "state of emergency", as well as because this convention is part of the positive constitutional and legal order of the country, immediately under the Constitution and above domestic laws as well as that it is a fundamental value of the constitutional order of the country. According to Article 15 of the Convention, in the event of military or other general danger endangering the life of a nation, any High Contracting Party (State) may take measures which deviate from the obligations under this Convention, strictly in accordance with the requirements what the situation requires; provided that such measures shall not be in conflict with other obligations arising from International Law. From this it follows that in general danger to the life of the nation; in the event of an emergency endangering the health and life of people, the legal rules of the Convention may be deviated; however, the deviation must be in accordance with the requirements imposed by the situation, i.e. in accordance with the reason for the existence of a state of emergency and such measures must not be contrary to other legal rules, as well as the deviation must not go beyond the reason for state of emergency and not to enter into other relations regulated by law. In this concrete case, the Court found that the issue covered by this Decree does not refer to the reason for determining the existence of a state of emergency determined in the decision of the President of the Republic for a state of emergency, which is protection and dealing with the consequences of COVID-19 and goes beyond the stated reason for the state of emergency; due to which, the Court found that this Decree is not in accordance with the constitutional provisions. Also, regarding the connection between the content of this Decree and the reason for the state of emergency, the Court finds that, that degree of connection has no social justification for doing so in a state of emergency, and is not proportionate given the fact that there are milder ways to regulate those relations and given the fact that the situation is resolved only with one state body and some employees³⁶.

³⁶ For more see the Decision of the Constitutional Court No. 45/2020-1, available online at: <http://ustavensud.mk/?p=19255>, (accessed on August 5, 2020).

In another case, by Decisions No. 44/2020-1 and No. 50/2020-1, the Constitutional Court on May 12, 2020 annulled the Decree on determining the amount of the salary of the elected and appointed persons in the public sector during the state of emergency as well as the Decree on supplementing that Decree. The annulled Decrees predicted that, to the elected and appointed persons, as follows: to the Members of Parliament; the President of the Republic; the officials appointed by the President of the Republic; the President of the Parliament; the officials and persons elected or appointed by the Parliament; the Prime Minister; and elected and appointed persons by the Government; mayors and persons exercising the right to a salary after termination of office; the president and the members who manage the regulatory body; persons who manage the institutions that perform activities in the field of education, culture, social protection and child protection, sports, and in the institutions that perform activities of public interest determined by law, and are organized as agencies, funds, legal entities to which is entrusted with the exercise of public authority, public institutions, public enterprises established by the Republic or the municipalities, the City of Skopje and the municipalities in the City of Skopje and the joint stock companies fully owned by the state; the appointed state secretaries, general secretaries, the secretary of the City of Skopje and the secretaries of the municipalities, who exercise the right to a salary in accordance with the law; elected judges who exercise the right to a salary in accordance with the law; elected public prosecutors who exercise the right to a salary in accordance with the law; Ambassadors and Consuls of North Macedonia abroad; for the months of April and May 2020 to be paid a salary in the amount of the minimum wage set for the month of December 2019 in North Macedonia, in the amount of 14.500 denars (236 EURO).

In its reasoning for the annulment, the Constitutional Court assessed that the question of the compliance of these Decrees can be raised, because these decrees as bylaws should be in accordance with the Constitution and the laws. Namely, according to the Court, these decrees in general, which determine the reduction of the salary to be paid to the mentioned persons, for the months of April and May 2020 and the same to be in the amount of the minimum wage set for December 2019 in the amount of 14.500 denars is contrary to the Constitution and the laws.

Based on the constitutional-judicial analysis of the Constitutional Court, the right to salary and the amount of the salary of the mentioned persons is regulated by certain laws that have the character of *lex specialis*. In times of emergency, the Government has the authority and obligation to regulate the functioning of the system in the country, but that regulation must be done in accordance with the existing constitutional and legal order. Examining these decrees, from the aspect of compliance with the Constitution and the laws, the Court found that the determination of the amount of the salary of the mentioned persons made by these decrees has neither constitutional nor legal basis. What is disputable and constitutionally inadmissible is the circumstance that the Government, without any constitutional and legal basis, restricts the rights of the

citizens that belong to them in the field of labor relations. These decrees do not mention any constitutional or legal norm, on the basis of which the executive power gets into restriction of citizens' rights, which on the other hand is understandable, because such restrictions are not provided by the Constitution or the laws.

The decrees with the force of law are not a laws; they have only the force of law in a given situation with a sign of a state of emergency, but only as a legal tool in a situation when the Parliament as a representative body of the citizens cannot meet and function, and the decrees must be in accordance with the Constitution and the laws. The constitutional determination that the decrees must be in accordance with the Constitution and the laws, indicates that they can be adopted only in order to operationalize the constitutional and legal provisions, and not to standardize a certain situation that is not provided by the Constitution or the laws, and even more, by the same, to regulate in principle the restriction of the human rights.

According to the Court, these decrees are contrary to Article 8 of the Constitution, because they violate the fundamental value of the constitutional order: the rule of law and legal security of citizens. Namely, in all laws it is explicitly stated that the salary of the mentioned persons cannot be reduced by law or by a decision of a state body. These decrees have created a state of duality of application of different regulations regarding the same factual and legal issue; the issue of the amount of salaries of the mentioned persons. In this way, due to the occurrence of a legal collision with the applicable laws, these decrees violate the principle of the rule of law and legal certainty of the citizens. These decrees also violate Article 32 of the Constitution, which stipulates that every employee has the right to adequate earnings. Hence, the adequacy of the earnings of the mentioned persons is decisively determined by the stated special laws which in fact determine the protection of the adequacy, i.e. the amount of the salary of the mentioned persons.

The court found that in a state of emergency there can be no restriction on the right to earn because at the same time such a restriction enters into the right of ownership and the measure adopted by these decrees is not appropriate and proportionate to the goal it seeks to achieve and the adoption it is not necessarily justified at the moment, nor is it a general crisis measure. According to the Court, the different treatment of citizens who are in the same legal situation implies at the same time discriminatory treatment on the basis of social status, which means the professional status of the employed citizen, which is contrary to Article 9 and Article 54 of the Constitution. This is because these decrees cover only a certain group of citizens. Such determination of the adopter of the act, i.e. such regulation means violation of the mentioned articles of the Constitution which indicates discrimination against citizens which is contrary to the Constitution, laws and international agreements ratified and accepted as part of the internal legal order³⁷.

³⁷ For more see the Decisions of the Constitutional Court No. 44/2020-1 and No. 50/2020-1, available online at: <http://ustavensud.mk/?p=19241>, (accessed on August 5, 2020).

In another third case, by Decision No. 56/2020-1 the Constitutional Court on June 3, 2020 annulled Article 3 of the Decree on deadlines in court proceedings during the state of emergency and the proceedings of the courts and public prosecutor's offices. The provision of the above article provided that, to the lay judges whose mandate expires during the duration of the state of emergency, by virtue of this decree; their mandate is extended until the end of the procedure in the court case.

According to the constitutional-judicial analysis of the Constitutional Court, the Government, with this Article 3 of this Decree, regulates a issue that is already regulated in the existing legislation, i.e. there is a situation of duality of application of different regulations regarding the same factual issue, i.e. the provisions of the act regulating the same issue cease to apply; which leads to legal uncertainty and double regulation of the same issue, which is contrary to the principle of the rule of law established by the Constitution. For the principle of legal certainty as part of the rule of law as a fundamental value, it is essential, among other things, that the legal order contains norms that are applicable without being a source of possible confusion in the application that may result in violation of rights and freedoms.

In conditions when a state of emergency has been declared in the country, the Government, in addition to its basic competencies with the status of executive power, in accordance with the constitutional and legal powers, regulates issues within the competence of the Parliament, but the Government with the issue regulated in this provision of Article 3 of this Decree, went beyond its powers under the Constitution, taking on the role of the Judicial Council, which as an independent and autonomous body in the judiciary ensures and guarantees the independence and autonomy of the judiciary through the exercise of its functions. Taking over the role of the judiciary means interfering with the executive in the judiciary, contrary to the constitutional principle of separation of powers into legislative, executive and judicial, and thus violates the legal certainty in the legal order, which calls into question the constitutional guaranteed independence and autonomy of the judiciary.

Article 128 of the Constitution precisely prescribes to which the mandate of public office holders is extended during a state of emergency, i.e. the mandate of the President of the Republic, the Government, the judges of the Constitutional Court and the members of the Judicial Council is extended. With the extension of the mandate of the members of the Judicial Council during the state of emergency, it is able to perform its competencies in full capacity, i.e. to re-elect lay judges. In the concrete case, with this Decree, the Government directly entered into the competencies of the Judicial Council, extending the mandate of lay judges in conditions when the Judicial Council can smoothly elect new lay judges in place of those whose mandate has expired during of the state of emergency. Also, with this Decree, the Government, in fact, introduces another category of holders of public office, whose mandate is extended during the state of emergency, in this case lay judges, which goes beyond the limits set out in Article 128 of the Constitution³⁸.

³⁸ For more see the Decision of the Constitutional Court No. 56/2020-1, available online at: <http://ustavensud.mk/?p=19598>, (accessed on August 5, 2020).

7. Conclusions

As pointed out in this paper, during the period of the state of emergency in North Macedonia, from the 25th session of March 21 to the 71st session of June 22, the Government has adopted a total of 225 decrees with the force of law which indicates an extremely increased delegated legislative power exercised by the Government for the time period that has been analyzed. In this regard, the largest number of decrees with the force of law, the Government adopted in its 33rd session on 2 April (17 in total); followed by a total of 13 decrees adopted in its 58th session of May 29 and in its 71st session of June 22, otherwise the last day of the state of emergency in force, which expired that day at midnight.

As noted, the decrees with the force of law are specific legal regulations that are adopted in a state of emergency when there is a need to take prompt and effective measures, meaning the rapid regulation of certain issues that are not regulated by law at all or are regulated in a way that does not allow effective measures that imposes the state of emergency, in order to face and overcome the causes that led to the state of emergency and their consequences, and to restore the regular constitutional legal order. The competence of the Government to adopt decrees with the force of law is, in fact, a form of delegated legislative power in the narrow sense, because they must be in accordance with the Constitution and laws, they have territorial, temporal, material and formal legitimacy and must be subject to constitutional-judicial control.

Primarily, this paper aimed to emphasize the relevance of the Constitutional Court during the state of emergency, within its constitutional jurisdiction of constitutional-judicial review of the constitutionality and legality of decrees with the force of law adopted by the Government during such a state of emergency.

Bearing in mind the findings of this paper, it can be concluded that, the principle of proportionality is not always respected in the adoption of decrees with the force of law; and on the other hand, based on the constitutional-judicial analysis of the Constitutional Court in some of its decisions it has been established that, the issues covered by those decrees does not refer to the reason for determining the existence of a state of emergency determined in the decision of the President of the Republic for a state of emergency, which is protection and dealing with the consequences of COVID-19 and they goes beyond the stated reason for the state of emergency.

Also, regarding the connection between the content of those decrees and the reason for the state of emergency, in some cases the Court found that, that degree of connection has no social justification for doing so in a state of emergency, and is not proportionate given the fact that there were milder ways to regulate those relations.

It is worth emphasizing the fact that, the Constitutional Court in most of its decisions, was based on the Article 15 of the European Convention on Human Rights (ECHR), which provision refers precisely to the “state of emergency”, as

well as because this convention is part of the positive constitutional and legal order of the country, immediately under the Constitution and above domestic laws as well as that it's a fundamental value of the constitutional order of the country. According to Article 15 of the Convention, in the event of military or other general danger endangering the life of a nation, any High Contracting Party (State) may take measures which deviate from the obligations under this Convention, strictly in accordance with the requirements what the situation requires; provided that such measures shall not be in conflict with other obligations arising from International Law. From this it follows that in general danger to the life of the nation; in the event of an emergency endangering the health and life of people, the legal rules of the Convention may be deviated; however, the deviation must be in accordance with the requirements imposed by the situation, i.e. in accordance with the reason for the existence of a state of emergency and such measures must not be contrary to other legal rules, as well as the deviation must not go beyond the reason for state of emergency and not to enter into other relations regulated by law.

Based on the initial experience of North Macedonia with the state of emergency, as a main conclusion and recommendation, in order to more efficiently and more rationally implement the state of emergency, there is an urgent need for the new Parliament to adopt a Law on State of Emergency after the early Parliamentary elections held on July 15, 2020. Namely, it is paradoxical that, in the legal order of North Macedonia there is a Law on Crisis Management (adopted in 2005, and amended in 2011, 2014, 2015 and 2016) which provides for the proclamation of crisis situation, in conditions when the Constitution does not recognize this category, and there is no special Law on State of Emergency, which is a constitutional category, because the Constitution recognizes the declaration of a state of emergency, but does not know the declaration of a state of crisis. So, it is necessary for the state of emergency, in addition to being a constitutional category, in the near future, to be a legal category. In this regard, the Law on State of Emergency will regulate the system of protection and rescue in emergencies; subjects and objects of protection and rescue; the rights and obligations of the state bodies and other bodies of the local self-government units; the economic entities and other legal entities; the rights and obligations of the citizens; planning and financing the protection and the rescue system; the duration of the decrees with the force of law and the procedure for their approval by the Government; as well as other issues of importance for the organization and functioning of the protection and rescue system.

Bibliography

1. Anna Khakee, *Securing Democracy? A Comparative Analysis of Emergency Powers in Europe*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Policy Paper-№30, Geneva, 2009.
2. Constitution of the Republic of North Macedonia, available online at: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspix.

3. Constitutional Court Decision of July 8, 2020, У.6п.207/2020, available online at: <http://ustavensud.mk/?p=19693>.
4. Constitutional Court Decision of May 12, 2020, У.6п.55/2020, available online at: <http://ustavensud.mk/?p=19269>.
5. Decision of the Constitutional Court No. 45/2020-1, available online at: <http://ustavensud.mk/?p=19255>.
6. Decision of the Constitutional Court No. 56/2020-1, available online at: <http://ustavensud.mk/?p=19598>.
7. Decisions of the Constitutional Court No. 44/2020-1 and No. 50/2020-1, available online at: <http://ustavensud.mk/?p=19241>.
8. Government's Measures of the Government of North Macedonia, available online at: <https://koronavirus.gov.mk/en/governments-measures>.
9. Law on the Government-editorially consolidated, available online at: https://vlada.mk/sites/default/files/dokumenti/zakoni/zakon_za_vldata_na_republika_makedonija.pdf.
10. *Meeting of law and constitutional law experts in the Cabinet of the President of the Republic of North Macedonia, Stevo Pendarovski*, 17.03.2020, available 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/>.
11. Özbudun, Ergun, Turhan, Mehmet; *Emergency Powers*, European Commission for Democracy through Law (Venice Commission), Strasbourg, 1995.
12. *12 Political parties in Macedonia reach a consensus to postpone the elections*, META.MK, 17.03.2020, available online at: <https://meta.mk/en/political-parties-in-macedonia-reach-a-consensus-to-postpone-the-elections/>.
13. Press Releases of the Constitutional Court and the Interview of the President of the Court, Mr. Sali Murati of May 5, 2020. Available online at: http://ustavensud.mk/?page_id=5247&lang=en.
14. Ana Pavlovska Daneva, "Правната регулатива во услови на вонредна состојба" ["*Legal regulation in conditions of emergency*."] Online academic work desk organized by the Faculty of Law "Iustinianus Primus"-UKIM-Skopje on April 29, 2020, entitled: "*Legal-Political and Economic Discourse in the time of COVID-19*", Book of Abstracts, Skopje, 2020.
15. Vlado Kambovski; Ana Pavlovska-Daneva; Gordana Lazetic; Elena Mujoska-Trpevska; Konstantin Bitrakov, "Правните аспекти на вонредната состојба" ["*Legal aspects of the state of emergency*"], Macedonian Academy of Sciences and Arts, Skopje, 2020.
16. *Завршува петтата вонредна состојба, од среда почнува изборната кампања*, [The fifth state of emergency ends, the election campaign starts on Wednesday], available online at: <https://www.slobodenpecat.mk/zavrshuva-pettata-vonredna-sostojba-od-sreda-pochnuva-izbornata-kampana/>.
17. Kesetovic, Zelimir; Korajlic, Nexhat; Toth, Ivan; Gjurovski, Marjan, *Управување со кризи меѓу теоријата и практиката* [Crisis management between theory and practice] University "St. Kliment Ohridski" - Bitola, Faculty of Security-Skopje, 2017.
18. *Кризна состојба во Дебар и Центар Жупа поради коронавирусот, затвор за непочитување на препораките*, Радио Слободна Европа, [Crisis situation in Debar and Centar Zupa due to the coronavirus, prison for non-compliance with the recommendations, Radio Free Europe] 13.03.2020, available online at: <https://www.slobodnaevropa.mk/a/30486178.html>.
19. Svetomir Shkaric, "Правната битка за вонредната состојба" ["The legal battle for the state of emergency"], ResPublica, 17 Април 2020, available online at: <https://respublica.edu.mk/mk/blog/2020-04-16-23-18-27>.