

## DECLARATION OF STATE OF EMERGENCY FOR PUBLIC HEALTH (COVID-19) AND CONSTITUTIONAL PROVISIONS AND CONSTITUTIONAL COURT DECISIONS OF THE REPUBLIC OF NORTH MACEDONIA

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### ABSTRACT

The concept of a state of emergency, which is the subject of this study, was regulated by the 1991 Constitution of the Republic of North Macedonia in terms of its declaration conditions, competent authorities, duration, and legal nature. The study also explores the legal discussion surrounding the measures taken during the Covid-19 pandemic period, which restricted many personal rights and freedoms. In this regard, the study will examine how the Constitutional Court's decisions have prioritized public health over personal rights, acknowledging that fundamental rights may be restricted through measures implemented during a state of emergency, which is considered an exceptional situation. These measures, including the curfew, have been implemented not only in North Macedonia but also in many countries around the world. Among these measures, the curfew stands out as the most significant. This study will analyze the impact of the curfew on fundamental rights and freedoms from the perspective of constitutional law, focusing on the decisions of the Constitutional Court. Additionally, the study will evaluate the legal nature of the state of emergency in the Republic of North Macedonia, including the roles of authorized institutions, the duration of the state of emergency, and the measures to be taken, all within the framework of constitutional norms. To achieve this, the study employs a literature review method, utilizing both written book sources and journal articles indexed in Scopus and Ebsco. The primary sources for this study include Constitutional Court decisions, state of emergency decrees, and relevant constitutional and legal norms.

**Keywords:** State of Emergency, Decree, Republic of North Macedonia, Constitutional Court Decisions, Limitation of Fundamental Rights

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## INTRODUCTION

A pandemic is a concept used to describe a disease that affects a large area of the world and spreads uniformly across multiple regions. It is declared a "pandemic" by the World Health Organization (WHO) when a disease reaches this global scale. Covid-19 (Coronavirus) was officially declared a "pandemic" by the WHO on March 11, 2020, leading almost all countries to declare states of emergency and issue emergency decrees that provided broad governmental authority and imposed significant limitations on personal rights to manage the pandemic. During the pandemic, one of the key administrative law enforcement measures taken is the curfew, a strategy employed not only in North Macedonia but also in many countries around the globe. While curfews are designed to manage public health crises, they have significant effects on social life and heavily impact fundamental rights and freedoms, especially the freedom of movement. (Korbayram & Hoca, Human Rights Protection From The Perspective Of The 1991 Constitution Of Macedonia, 2021). As a result, the concept of curfew warrants a thorough legal evaluation. This study aims to analyze the effects of the curfew on fundamental rights and freedoms within the framework of constitutional law, focusing on the Constitutional Court's decisions, and will also evaluate the legal nature of the state of emergency in the Republic of North Macedonia, including the relevant institutions, the duration of the emergency, and the measures prescribed under constitutional norms.

### A. Constitutional Provisions Concerning State of Emergency

Article 125 of the Constitution outlines the conditions and procedures for declaring a state of emergency. According to this article, a state of emergency can be declared when a significant natural disaster occurs or when such a disaster expands to a degree that it disrupts the normal functioning of society. This provision ensures that the government can respond swiftly and effectively to protect the public and maintain order in the face of severe natural calamities. (1991 Constitution, Article 125, 1th paragraph.). A state of emergency is a special legal regime that can be established in all or part of the territory of the Republic. The framers of the Constitution have adopted a highly restrictive approach in determining when a state of emergency can be declared, in order to prevent abuse of this institution and to ensure that any decision to establish a state of

emergency has a constitutional basis. This constitutional provision is extremely important because it clearly specifies the cases in which a state of emergency can be declared. These cases are limited to natural disasters and epidemics.

Generally, the declaration of a state of emergency is determined by Parliament upon the proposal of the President, the government, or at least 30 members of Parliament. Therefore, the authorized entities that can recommend the declaration of a state of emergency are the Head of Government or at least 30 members of Parliament. (Constitution, Article 125, 2nd paragraph.). The decision to determine the existence of a state of emergency, and thereby ensure its declaration, is taken by a two-thirds majority vote of the total number of deputies. This decision is valid for 30 days. (Constitution, Article 135, 3rd paragraph).

Similarly, in the 4th paragraph of Article 125 of the Constitution, there is a provision analogous to that of martial law. It grants all powers, including expanded powers, to the President for declaring a state of emergency if the Parliament is unable to convene for the necessary approval. Should the Parliament subsequently convene, the decision must be submitted for its approval. If the conditions for declaring a state of emergency, such as a natural disaster or epidemic, or martial law are met, the Constitution provides a solution by directly granting the President the authority to make such a declaration. This ensures that decisive action can be taken swiftly in times of crisis. However, the framers of the Constitution have also imposed important limits on the President's authority to prevent potential abuse of power.

The limitation requires that the President's decision to declare a state of emergency or martial law must be approved by the Parliament once it convenes. (Korbayram, *AUTHORITY OF THE PRESIDENT*, 2020) This serves as a crucial check on executive power, ensuring that the decision undergoes legislative scrutiny and receives democratic legitimacy. The requirement for parliamentary approval of the state of emergency declaration represents a significant control mechanism, reinforcing the balance of power between the executive and legislative branches. By necessitating this approval, the Constitution ensures that the use of extraordinary powers is both justified and accountable, safeguarding against any potential overreach by the executive branch. This system of checks and balances reflects the constitutional commitment to uphold

democratic principles even in times of emergency. The constitutional provision regarding the duration of a state of emergency stipulates that the decision declaring the existence of a state of emergency will be valid for a maximum of 30 days. This sets a constant limit on the duration of a state of emergency, which is restricted to a maximum of 30 days. The time limit is determined by the constitutional category of a "state of emergency" and not by the authority that declares it, whether it be the Parliament or the President. If the reasons for imposing the state of emergency are not resolved within this period, a new decision may be made to declare another state of emergency. This time limit serves as a constitutional safeguard against potential abuse of the state of emergency powers. It ensures that such extraordinary measures remain temporary and subject to regular review and reauthorization. (Svetomir, 2014, s. 432).

Within this framework, the Constitutional Court of the Republic of North Macedonia stated in a decision that the state of emergency will end after the 30-day period expires. Despite this, if the conditions that form the constitutional basis for the declaration of a state of emergency still exist and continue, it does not mean that the state of emergency is automatically extended. Instead, a new decision must be taken by following the same procedure. It has been stated that only in this way will the continuation of the period be in accordance with the regulations and the spirit of the constitution. (Decision, No. 55/2020 dated 2020). Article 126 of the Constitution regulates the issue of the Government's authority to issue decrees having the force of law. Specifically, the framers of the Constitution have stipulated that "in case of a state of emergency or war, the Government issues decrees with legal validity (decrees having the force of law) in accordance with the Constitution and laws." (1991, Article 126, 1st paragraph.). This authority granted to the Government as a collective body constitutes the constitutional basis for taking action in cases where urgent measures are required. The intention of the framers of the Constitution with this provision can be understood as the necessity for a smaller, collective body the Government to assume the burden of decision-making and to act with urgency in situations such as epidemics, major natural disasters, or war.

Unlike the legislative body, which operates with broader and often slower procedures, the Government is designed to respond more swiftly and effectively to emergencies. This provision ensures that in times of crisis,

the Government has the legal authority to issue decrees with the force of law, thereby enabling it to address immediate challenges while still remaining within the framework of the Constitution and existing laws. The constitutional solution outlined here is appropriate, given that the ordinary functioning of legislative bodies does not meet the demands for rapid, efficient, and effective decision-making in situations of emergency or war. On one hand, the usual legislative process is often too slow and cumbersome to address urgent needs effectively. On the other hand, if this authority were transferred to an individual authority, it could lead to a significant increase in the potential for abuse of power.

By assigning the authority to issue decrees with the force of law to the collective body of the Government, the Constitution balances the need for swift action with a mechanism to prevent the concentration of power. This approach ensures that decisions are made more quickly and effectively in times of crisis, while also safeguarding against the risk of abuse that might arise from granting such powers to a single individual. (Renata, Marika, & Jelena, 2021, s. 764-765). The purpose of these decrees and the appropriateness of their enactment lie in the urgent need to mobilize and establish a range of measures, tools, and mechanisms to effectively address the state of emergency or war. These decrees are designed to respond swiftly to the crisis by implementing necessary actions and strategies to manage the situation. However, this authority of the Government is temporary and remains in effect only for the duration of the state of emergency or state of war. Once the state of emergency or war has ended, the Government's authority to issue such decrees also terminates. This temporary nature of the authority ensures that it is used only for the specific period of crisis and does not extend beyond what is constitutionally allowed.

Finally, Article 128 of the Constitution contains the provision that "The terms of office of the President, the Government, the Constitutional Court judges, and the members of the Judicial Council are extended during military service and the state of emergency". This provision clearly indicates that by constitutionalizing conditions such as war, mobilization, and states of emergency, the legislator has established concrete regulations concerning the bodies that will be authorized to act during these exceptional circumstances. It specifies the duration of these measures, the level of authority granted, and the procedures to be

followed. In doing so, the Constitution provides a structured framework to manage these critical situations, ensuring that there are clear guidelines for extending terms of office, determining authority, and following appropriate procedures during periods of military service and states of emergency.

Therefore, the Constitutional decision to extend the term of office of the President, the Government, the Constitutional Court judges, and the members of the Judicial Council during military service or a state of emergency is understandable. This provision ensures continuity in the functioning of these critical institutions during periods of national crisis. Additionally, in the case of a state of emergency, the term of office for Members of Parliament is also extended. This extension is intended to maintain legislative stability and ensure that the Parliament remains fully operational during such exceptional circumstances. It is particularly noteworthy to mention that, until March 2020, the Republic of North Macedonia had no practical experience in implementing the constitutional provisions regulating the state of emergency since gaining independence in 1991. This lack of experience highlights the significance of these constitutional provisions as the Republic navigates its approach to managing states of emergency and ensuring that legal and institutional frameworks are effectively utilized in practice.

#### B. Declaration of State of Emergency for Public Health (Covid-19 Pandemic)

At this point, the global spread of the Covid-19 virus (pandemic) (Porta & Last, 2018), which has had serious effects worldwide, revealed the need to declare a state of emergency. One of the measures implemented in this context is the curfew, an exceptional action that restricts the fundamental rights and freedoms people normally enjoy in their daily lives, particularly during a state of emergency. (Commission, Opinion Report on the Legal Framework of Curfews, No. 842/2016, Strasbourg, 13 June 2016, CDL-AD(2016)010.). In other words, the curfew, which forces people to stay in closed places such as residences and workplaces, is a measure that interferes with freedom of movement. (Tolga, 2018, s. 34).

The Government of the Republic of North Macedonia is the authority authorized to make decisions regarding the existence of a state of emergency. However, since the Parliament had been dissolved due to the

election of new members, the decision to declare the state of emergency was made by the President. So, on March 18, 2020, the President declared a state of emergency for a period of 30 days. This was followed by another decision on April 17, 2020, extending the state of emergency for an additional 30 days. On May 17, 2020, a decision was made to extend the state of emergency for 14 days. The President then issued a decision on May 30, 2020, extending the state of emergency for another 14 days, and a final decision on June 15, 2020, extended the state of emergency for an additional 8 days. In total, five decisions were signed regarding the declaration of a state of emergency, each with varying durations. (Official gazette publication date 68/2020; 104/2020; 127/2020; 142/2020; State of Emergency Decisions dated 159/2020.). The first two decisions regarding the declaration of a state of emergency were made to prevent the spread of the Covid-19 virus and to mitigate its consequences. The third decision was initially taken to enable the Government to implement a range of economic measures aimed at overcoming the economic impacts of the epidemic. Although the primary reason for the fourth decision was the postponement of the upcoming parliamentary elections, the Covid-19 virus was cited as the underlying cause for this extension.

Ultimately, after reaching an agreement to hold parliamentary elections on July 15, 2020, and completing the necessary election activities within the set deadlines, a final decision was made to extend the state of emergency for an additional 8 days. This extension focused on implementing measures to protect public health amid the ongoing pandemic conditions. While the general procedures for declaring a state of emergency were carried out in strict accordance with the constitutional provisions, it is important to emphasize that, at that time, no specific law had yet been enacted to provide more detailed regulations for this area. Although the Government was in the process of preparing a comprehensive bill on the state of emergency at the Ministry of Justice, this bill had not yet been enacted into law.

## Conclusion

During the Covid-19 pandemic, North Macedonia implemented several measures that restricted fundamental rights and freedoms, including curfews, travel bans, and limitations on personal freedom and security. The 1991 Constitution designates dangerous epidemics as a valid reason for declaring a state of emergency. The Constitutional Court has affirmed

that such declarations are lawful and that constitutional rights may be restricted in the context of a state of emergency aimed at safeguarding public health.

The emergency declarations during the pandemic were designed to prevent the virus's spread and address its effects. While the third decision was primarily focused on enabling economic measures to combat the epidemic's economic consequences, the fourth decision was made to postpone parliamentary elections, with the pandemic cited as the rationale. This demonstrates that in addition to constitutional regulations, there is a need for specific legal frameworks to prevent misuse of emergency powers.

A fundamental step in this direction is the establishment of a comprehensive State of Emergency Law, which would provide a detailed procedural framework for declaring and managing a state of emergency, in line with legal practices in other countries.

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