# NORMATIVE FRAMEWORK FOR APPROACHING THE GLOBAL PANDEMIC WITH TECHNICAL GOVERNEMENT -THE CASE OF NORTH MACEDONIA

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#### **ABSTRACT**

When the global pandemic occurred, North Macedonia was ruled by Technical Government, with strictly limited powers and clear mandate to organize elections. In conditions of a declared coronavirus pandemic by the WHO, a state of emergency may be declared in North Macedonia according to the Constitution. As the Assembly was dissolved in the run-up to the early parliamentary elections scheduled for April 12, 2020, the decision to declare a state of emergency was only possible to be made by President of the State and "submitted to the Assembly for confirmation as soon as it is able to meet." This opened huge debate among experts and politicians, since this case was not covered by the existing legal and constitutional framework. The technical government came up from the Przhino agreement with clear and very limited mandate.

However, institutional mechanisms were used to enable legal and operational environment for the citizens, providing successful transfer towards political normality. This case study provides analysis of that sui generis situation.

**Keywords:** North Macedonia, pandemic, Przhino agreement, bylaws, Constitution

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#### Introduction

The global pandemic is ongoing challenge to even strongest world's governments. The Western Balkan countries were also heavily heat in the second quarter of 2020, and even nowadays, approaching the 2021, the rates of newly diagnosed patients are raising.

North Macedonia faced another challenge: the fact that when pandemic occurred, the country was led by technical government with very limited mandate to operate, and dismissed parliament- in according with the Przhino agreement of 2015 and the Law on government that was adopted after the political agreement was signed.

The Przhino agreement and the Law on Government do not affect the roles and responsibilities of the institutions in state of emergency or crisis, that are regulated by different laws- the Law on crisis management and the Law on protection and rescue that are not fully harmonized. So, it was quite unique situation that was overcome only by the expressed political will of the stakeholder and the appropriate interpretation of law.

#### Context

In December 2019, in the city of Wuhan, in the province of Hubei in the People's Republic of China, a new coronavirus appeared and began to spread in a short time in other provinces of the People's Republic of China. This disease is an acute respiratory infection in category B (based on the Guidelines for the Prevention and Treatment of Infectious Diseases of the People's Republic of China). With a series of preventive and treatment measures, the epidemic in the People's Republic of China has

finally stabilized by hundreds, up to a few cases a day. The other provinces in the People's Republic of China are recovering from the epidemic, while the spread outside the People's Republic of China is constantly growing (Vlada, 2019).

On March 11, 2020, the World Health Organization declared a pandemic of the new coronavirus COVID-19, due to the fact that it is a new type of coronavirus, as well as due to the fact that it has spread to several continents. With this, the World Health Organization sent a strong and clear message to all countries in the world that the situation with COVID-19 is extremely serious and that every country, according to its set-up and health system, must begin to prepare to deal with this crisis.

This virus in Europe, at that time, was spread mostly in the Republic of Italy, where the speed of spread reached enormous proportions. The first case officially registered in North Macedonia was the head of deramotvenerology clinic who despite the warnings flee to Italy for a winter holiday and ignored the first symptoms of the virus (""Докторката Која Не Се Грижеше За Сопственото Здравје": Твитер Реакции За Директорката Нина Цаца Биљановска - Емагазин" 2020).

The (technical) Government of the Republic of Northern Macedonia, at the session held on March 18, 2020, based on Article 125 paragraph 1 of the Constitution of the Republic of Northern Macedonia concluded to the Parliament of the Republic of North Macedonia to submit a Proposal to the Assembly of the Republic of North Macedonia to determine the existence of state of emergency on the territory of the Republic of North Macedonia in order to prevent the introduction, spread and management of coronavirus COVID-19, and according to a pandemic epidemic declared by the World Health Organization as a new type of virus that has

spread to all continents and spread to the territory of the Republic of Northern Macedonia (Влада, 2019)

#### **Background**

The autumn of 2019 was politically tense for North Macedonia. The opposition led by conservative VMRO DPMNE urged for early parliamentary elections for some time, but on the other side citizens were already tired of the repetitive electoral processes in the last decade, due to the fact that for the last decade, there were early parliamentary elections nearly every two years.

The next regular parliamentary elections were scheduled for November 2020, but Prime Minister Zoran Zaev called for early elections after the European Council failed to come to an agreement on starting talks with North Macedonia on joining the European Union in October 2019 (European Commission, 2019). Announcing the early election on October 19th, Mr Zaev said: "I am disappointed and angry and I know that the entire population feels this way". He also added that Macedonian citizen should now "decide the road we are going to take" alluding to the announcement of the early elections ((www.dw.com) 2020).

The decision to hold early elections meant that a so-called technical government would have to be formed 100 days ahead of the elections, scheduled for April 12th. The requirement to form a technical government stems from the 2015 Przino Political Agreement( Agreement, 2015), which was reached between the main political parties with the mediation of the European Union amid a deep political crisis in 2015. According to the Agreement, 100 days ahead of elections, a technical government is to

be formed, so that opposition ministers and deputies are included in several key posts in order to ensure a fair vote and to remove doubts about political pressures impacting the electoral process. Additionally, according to the Agreement the Prime Minister's post should be replaced by a new Prime Minister from the ranks of the ruling party. In accordance with these requirements, Prime Minister Zoran Zaev resigned on the 3rd of January, 2020. After confirming the resignation of the Prime Minister, the President of the country, Stevo Pendarovski, gave the mandate to Oliver Spasovski who was at that time Minister of interior from SDSM. The obligation arises from Article 43 of the Law on Government, which states: "One hundred days before the parliamentary elections, and after the previous resignation of the Prime Minister, the Assembly will elect a new, transitional government to conduct parliamentary elections, led by "from a new Prime Minister nominated by the largest political party forming the governing majority."

So, when the pandemic occurred, the country was led by technical government and the electoral dates were getting near.

## The Przhino Agreement –why the technical Government matters

The Przino agreement is the result of painstaking quarterly talks to find a way out of a political crisis that has intensified with each newly announced "bomb" (public press conference held by PM Zoran Zaev, at that time chief of opposition, producing wiretapping materials which revealed systematic irregularities and corruption). Concluding the so-called Agreement from Przino finally happened at the seventh inter-party meeting held on June 2, 2015 at the residence of the EU Ambassador Aivo Orav in the area called Przhino near Skopje. The first of the seven

meetings of the four largest parties was held on March 30 in Brussels; the second on April 15, again in Brussels; the third on May 14, in the Club of MPs in Skopje; the fifth on May 19, in Strasbourg; a the sixth penultimate meeting on May 26, again in the Club of MPs.

The first serious progress in the negotiations was made on 2 June 2015, after eight hours of negotiations, when EU Commissioner Hahn announced that the leaders of the four largest political parties have agreed to hold early parliamentary elections in April 2016, and until then will be the so-called transition period. Ever since Hahn arrived in Skopje and convening a leadership meeting at the highest level could expect Commissioner Hahn determined to achieve any solution to the crisis.

The final agreement was reached on July 15, 2015, and in the intervening period two meetings were held: the first on June 19 and the second on June 29. On 15 July 2015, again in the presence of the European Commissioner Hahn, the final Przino Agreement was reached, which regulates the key issues for holding parliamentary elections on 24 April 2016. The obligations undertaken with the agreement among the other things urge for:

- ➤ Reaching an agreement between the parties on the exact way of organizing the government that will prepare the elections.
- Revision and modification of the composition of the State Electoral Comission.
- > Return of the opposition to the Parliament.
- ➤ No further publication of any material from wiretapped conversations.

- ➤ Transfer of all wiretapped materials by SDSM to the competent public prosecutor.
- ➤ Increase the powers of the State Electoral Comission to ensure free and fair elections, with equal conditions for all political parties.
- ➤ Appoint a new special public prosecutor with full autonomy to conduct communications interception investigations, as well as everything that arises from wiretapping.
- ➤ Commencement of work and issuance of the first report of the parliamentary commission (chaired by a representative of SDSM) which will oversee the work of the UBK and the interception of communications.
- ➤ Facilitate negotiations between stakeholders to ensure greater media freedom.
- ➤ Appointment of a new Minister of Interior (nominated from SDSM).
- ➤ Appointment of a new Minister of Labor and Social Policy (nominated by SDSM).
- ➤ Appointment of a new Deputy Minister of Finance with the right to veto (nominated by SDSM).
- ➤ Appointment of a new Deputy Minister of Agriculture, Forestry and Water Economy with a veto (nominated by SDSM).
- ➤ Appointment of a new Deputy Minister of Information Society and Administration with a veto (nominated by SDSM).
- Submitting a formal resignation of the current government to the Assembly.

- ➤ Appointment of a new Prime Minister proposed by VMRO-DPMNE.
- ► Holding fair and democratic parliamentary elections.

The agreement ended the Macedonian political and institutional crisis in the first half of 2015 and led to change of government in power after 12 years.

## The declaration of state of emergency

The Parliament was officially dismissed due to the requirements of Przhino Agreement and the Law on Government-however, the MPs were still receiving their salaries until the constitution of the new mandate. Thus, huge debate occurred, starting with linguistic analysis of the constitutional construction on the possibilities of declaring a state of emergency. The constitution states in article 125 that "A state of emergency occurs when major natural disasters or epidemics occur. The existence of a state of emergency on the territory of the Republic of Macedonia or its part is determined by the Assembly on the proposal of the President of the Republic, the Government orat least 30 MPs. The decision determining the existence of a state of emergency is made by two-thirds majority of the total number of MPs and lasts 30 days. If the Assembly cannot convene, the decision is adopted by the President of the Republic and submitted to the Assembly on confirmation as soon as it is able to meet". (Sobranie, 2020)

The ability of the Parliament to meet was a subject of enormous analysis and debate. A group of 35 MPs urged from the President of the Assembly, although the Parliament was officially dismissed, to recall them based on Article 63 point 4 of the Constitution that states that the mandate of the MPs may be prolonged due to the declared state of emergency or crisis ((www.dw.com) 2020)). However, the fact that the Assembly was already dismissed when the State of emergency was declared was the reason the President of the Assembly, Talat Xaferi, did not recall the MPs.

This decision was backed up by a very few constitutional experts—who sticked to the interpretation that the Constitution allows the extension of the mandate of the Members of Parliament in a state of crisis or emergency only in case when the Assembly is caught by such a state and when its four-year mandate is coming to an end, referring to previous decisions of the constitutional court over the effect of the decision to dissolve and extend the mandate of the dissolved Assembly that creates legal uncertainty and means a violation of the rule of law(Шкариќ 2020).

There was not however a consensus among the constitutional experts- in a analysis published by the Macedonian academy of sciences, a group of law professors state that the only way out of the complex legal situation with the declaration of a state of emergency, closest to the postulates of that principle is to convene the Assembly and assume that it is its duty to do so, determined by the constitutional provisions on the state of emergency. If MPs, ie their parties, are unable to reach a consensus on such a proposal, it remains as a matter of fact to be decided by the Constitutional Court with a decision to annul the decision on dissolving the Assembly, and thus returning things to their proper constitutional way (Kamovski and others, 2020).

So, under the pressure of the seriousness of the situation, President of the State, Stevo Pendarovski undertake the political risk and of the legal uncertainty and declared State of emergency in duration of 30 days (MIA, 2019). He brought another decision on the state of emergency when the first one expired and the last one of 8 days when parties finally agree how would electoral process continue (Радио Слободна Европа, 2020)

### The importance of the declaration of state of emergency

The state of emergency represents not only a period in which special measures have been put in place to tackle the coronavirus. It can also be viewed as an extraordinary situation whose daily outcomes will depend on the effective and efficient coordination between various institutions. As such it will surely represent a litmus test for the capacity of the state and its various institutions to manage specific crisis situations, to communicate and streamline their various operations and decision making process, as well as to locate the specific weaknesses and possible strengths that emerge out of the specific challenges faced and their resolution. Besides, in a situation there was not operational Parliament, it gave the necessary power to the Government to pull all the capabilities in the struggle with the pandemic.

The declaration of the state of emergency was essential for the Government, in order to be able to allocate resources and manage the situation effectively, since according to article 126 of the constitution, in case of martial law or state of emergency, the Government, adopts decrees with legal force. In a situation where the Parliament was not functional, that was the only way to coordinate institutions and resources effectively.

The authorization of the Government to adopt decrees with legal force lasts until the end of the martial law or the state of emergency, which is decided by the Assembly.

This was the first time in the history of independence National state of emergency was declared.

The declaration of a state of emergency coincided with the accession of RSM to NATO and the decision of the EC (March 25, 2020) to start membership negotiations with the EU. The health crisis, which will surely spill over into the area of economy and in other social spheres, complicates the functioning of the state and public institutions in timely preparation and provision of all necessary resources (human, material, institutional) to start negotiations. (Kambovski and others, 2020)

It also affected the electoral process- On the 22d of March 2020, the Government announced its decision to delay the early Parliamentary elections that had been scheduled to take place on the 12th of April with a decree. (OSCE, 2020)

Thus, it could be argued that there are three main reasons why the state of emergency had been declared at a stage when the number of cases had not yet reached alarming levels (42 confirmed cases on the 18th of March). Firstly, this was a way to anticipate a peak that would coincide with the elections a month away in mid April. Secondly, declaring a state of emergency was the only constitutionally viable way to postpone the elections. Thirdly, in the context of the corona crisis another justification for delaying the elections was to prevent the health crisis from becoming another pre-electoral battlefield and to allow all political energy to be focused on fighting the epidemic. Previously in early March the opposition VMRO-DPMNE accused the Government for "an insubstantial response" to the growing crisis. In reaction to the

accusations, the SDSM responded with a statement saying "VMRO-DPMNE should stop chasing political points and creating a public hysteria at a time when all the institutions and all the citizens are focused on dealing with the coronavirus" (Prizma, 2020).

Thus, postponing the elections was also a means to avoid the continuation of the ping pong political fighting characteristic of pre-electoral periods, and to allow for the attention to be focused on fighting the spread of the coronavirus.

In spite of the justifiability of the curfew in the context of the pandemic, there were also those who opposed it. The concerns expressed mainly on social media related to fears that States of emergency can also be used as a rationale or pretext for suspending rights and freedoms guaranteed under a country's constitution.

# The continuing of electoral processes and election of new government

After a prolonged stalemate over the date of new elections, the main political parties in North Macedonia have finally agreed that the country should go to the polls on July 15.

At June 15<sup>th</sup>, President Stevo Pendarovski declared a state of emergency for 8 days. The state of emergency is to enable the smooth preparation of the elections, and especially the implementation of measures for protection of public health during the election process, in conditions of a pandemic. Pendarovski's Cabinet announced that the eight-day state of emergency will enable the election process to continue uninterrupted, a decision on the elections to be made by the President of the Assembly and a changed schedule by the State Election Commission to hold the

elections.Late at night, the government passed a decree related to early parliamentary elections. It stipulates that the election campaign will start on June 24, 2020 and will last for 20 days. On July 13, those infected with covid-19 who are being treated at home and people who have been given a measure of self-isolation will vote, and the next day - July 14, the weak and sick will vote. Voting on election day on July 15 will last from 7 am to 9 pm. (InStore,2020). The electoral process passed well, however the web of the state electoral commission was hacked so the results were delayed (SDK 2020). Following the tight results the formulation of new coalition was also prolonged. The new government was finally elected on the 30<sup>th</sup> of August.

#### **Conclusions**

Insufficient and confusing constitutional and legal regulations on the state of emergency leave space for improvisations and political conflicts over the interpretation of the terms for declaring a state of emergency, the powers of the Government, judicial control over the legality of the decisions of the Government, the possibility and the duty of the dissolved Assembly to be re-convened, ordinances with legal force, the necessary restrictions on human rights and the duration of the effects of intervention measures in the economy and other areas. (Kambovski, 2020)

The case study analysis shows that although the provided normative framework was weak, the institutions managed to overcome the situation due to the political will and proactive approach to their duties and capabilities. The technical government de facto and de iure fulfilled the mission of the given mandate by Przhino agreement – organized elections. The technical government faced, in a manner of obstacles and challenges, probably the most in a row, since country's independence. Although the

institutional and legal framework provided before the pandemic occurred, did not contain specific instructions for the context that occurred, there was institutional framework that was operative and effective, thanks to the political will for overcoming of the situation, as result of exercising power in a broader manner. Being not "prescribed by law" does not mean legal uncertainty in this case.

The wider approach towards its duties and obligations led to successful dealing with the crises for the period given. If the technical government kept strictly to the given mandate, the country would face a dead end. If the President of the country did not announce state of emergency, the government could barely manage to keep the situation under control. Political burden took by the President Pendarovski and TPM Spasovski is not to be underestimated.

The effectiveness of the technical government as a whole is recognized by the European Commission progress report, whose executive summary states that "In terms of political criteria, Northern Macedonia continued to implement EU-related reforms throughout the reporting period. Efforts to strengthen democracy and the rule of law have continued, including by activating existing mechanisms of control and balance and through discussions and debates on key political and legislative issues." (European Comission, 2020)

It is necessary to question the content of the ordinances with legal force and their relation to the existing legislation to be precisely regulated with a new Law on State of Emergency so that it will be explicitly determined that with the decrees with legal force the government can only change, suspend or amend existing laws in the country. It is also necessary to regulate the issue of the legal effect of the decrees with legal force after

the ending of the state of emergency. Namely, the legal is needed regulation to contain an explicit legal provision determining the termination the validity of the decrees with legal force adopted by the Government itself lifting the state of emergency.

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