



Comparative experiences on policies and practices for human rights protection under declared state of emergency in EU member-states



This project is financed by the European Union



REAC—OR
research in action



These policy documents are developed to help the civil society organizations and, generally, the citizens, to engage in informed debate and to have access to expert knowledge, opinions and views on topics relevant for EU integrations. Areas in which the Republic of North Macedonia will lead the accession negotiations are both complex and diverse, while reforms to be taken by the country will open numerous dilemmas that require expert debates. Contents created within the project “CSO Dialogue – Platform for Structural Participation in EU Integration” are available on the website: www.dijalogkoneu.mk.

- Author: M.sc. Aleksandra Cvetanovska
- This document is available only online

This publication was produced with financial support of the European Union. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union.

Comparative experiences on policies and practices for human rights protection under declared state of emergency in EU member-states

Emergence of the new virus COVID-19 around the world and proclamation of global pandemic by WHO caused a global crisis that has left deep marks in the areas of healthcare and economy, but also in the area of protection and respect for human rights and freedoms. Faced with widespread infection across Europe, many EU member-states established special legal regimes on their territories, entrusting the executive branch of government with greater powers, all for the purpose of efficiently addressing the risks.[1] While the constitutions of some EU member-states include detailed provisions on declaring the state of emergency in cases of external or internal threats (France, Germany, Poland, Hungary), other states (Belgium, Italy) are dealing with these threats by using the rules that allow certain modifications to the principle of power sharing between the executive and legislative branch of government. In that, it should be noted that even in cases where constitutional provisions on the state of emergency are in place, member-states do not use them either due to historical reasons (Germany) or due to fear of using mechanisms that could be interpreted as excessively repressive (France).[2]

However, what is important to note is that, in the context of the situation with coronavirus infection, almost all countries have taken some form of more or less restrictive measures, which have undoubtedly impacted the exercise of human rights and freedoms.

Republic of North Macedonia was not exempted from global developments and therefore, on 18 March 2020, it declared the state of emergency on its entire territory,[3] which lasted by 22 June 2020. Throughout the period when the state of emergency was in place, the Government of RNM adopted 250 decrees with the effect of law, of which 29 decrees regulated the area of healthcare and social protection.[4] Moreover, the government adopted a number of decisions on additional measures aimed to prevent the spread of the coronavirus, including prohibition for movement on particular days, i.e. periods during the day.

Therefore, this document will identify good practices from EU member-states, primarily in the areas of healthcare, social protection, freedom of movement, and access to justice.

1. Support for the exercise of healthcare rights

Increased number of cases with people infected with COVID-19 and widespread presence of the virus have created a pressure on healthcare systems, especially on intensive care units. In many EU member-states, healthcare was focused on patients infected with the coronavirus, whereby all non-urgent interventions were cancelled and hospital capacities were unburdened in order to be able to accommodate and treat patients with COVID-19.

[1] States of emergency in response to the coronavirus crisis: Situation in certain Member States, European Parliament, June 2020, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649408/EPRS_BRI\(2020\)649408_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649408/EPRS_BRI(2020)649408_EN.pdf)

[2] Ibid.

[3] Decision on declaring the state of emergency, "Official Gazette of RNM" no. 68/2020

[4] State of Emergency 18.03.2020-22.06.2020, Overview of Decrees with the Effect of Law, Macedonian Young Lawyers' Association, available at:

<https://myla.org.mk/2020/07/%d0%b2%d0%be%d0%bd%d1%80%d0%b5%d0%b4%d0%bd%d0%b0-%d1%81%d0%be%d1%81%d1%82%d0%be%d1%98%d0%b1%d0%b0-18-03-2020-22-06-2020-%d0%bf%d1%80%d0%b5%d0%b3%d0%bb%d0%b5%d0%b4-%d0%bd%d0%b0-%d0%b4%d0%be%d0%bd/>

Except for financial incentives and benefits for healthcare workers that were provided in almost all member-states, as well as investment of additional funds for procurement of health equipment, in Germany, measure were taken to stimulate donation of protective equipment to hospitals. Notably, legal entities that donate funds to those offering medical services are exempted from payment of VAT. Identifying healthcare companies as essential service in the overall situation, in Germany these companies had their financial liabilities suspended by 30 September 2020. At the same time, the trustees were unable to initiate receivership procedures against these companies for a period of three months. Almost identical possibility was introduced in the Republic of North Macedonia, but the same was not limited only to healthcare companies and covered all legal entities, i.e. new receivership procedures could not be initiated during the state of emergency and three months after its expiration, while previously initiated procedures were postponed for the same period of time.[5] Additionally, VAT exemptions were instituted for trading in goods and services awarded as donation to budget beneficiaries in order to deal with the coronavirus,[6] while tax incentives for such actions were stipulated under the decrees adopted with the effect of law concerning enforcement of the Law on Donations and Sponsorships in Public Activities during the state of emergency.

In Belgium, although non-urgent surgeries and interventions were cancelled, ongoing treatments continued and patients were allowed to be accompanied by one person, while visits were limited only to parents of hospitalized children and close relatives of patients in critical condition.[7]

Due to the lack of personal protective equipment and extremely high prices, in France measures were taken to set price-caps for [disinfecting gels](#) and [surgical masks](#), while supermarkets were encouraged to institute [rules on maximum quantity that could be purchased by one person](#). In Spain, price-caps for protective equipment were also introduced, purchase of such equipment was centralized and healthcare companies were tasked to report on their stocked supplies within a deadline of 48 hours, while in the Netherlands a system was devised whereby particular medicines could be purchased only on prescription, with a pre-defined recommended limit of three packages per person.[8]

In Belgium, the state[9] compensated costs for personal protective equipment in order to protect persons with disabilities, while in the Netherlands, elderly people accommodated at care centres received free-of-charge pneumococcal vaccines.[10] In France, free-of-charge [medical consultations](#) and special consultations with medical doctors on effects from the lockdown were introduced.

Having in mind that kindergartens and schools were closed in almost all EU member-states, healthcare workers needed to find ways to care for their children. Hence, in Germany[11], the Netherlands[12] and in Denmark,[13] [emergency care for children](#) of people working in sectors identified as essential services, healthcare sector included, was introduced.

In Germany, the project initiated by seven organizations and supported by the federal government, i.e. the federal chancellor, organized a hackathon (#WirVsVirus) to brainstorm solutions for problems faced by citizens.

[5] Decree with the effect of law concerning enforcement of the Law on Bankruptcy during the state of emergency, “Official Gazette of RNM” no. 76/20

[6] Decree with the effect of law amending the decree with the effect of law concerning enforcement of the Law on Value Added Tax during the state of emergency, “Official Gazette of RNM” no. 102/20

[7] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Belgium, FRA, 23 March 2020

[8] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: the Netherlands, FRA, 23 March 2020

[9] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Belgium, FRA, 3 June 2020

[10] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Denmark, FRA, 4 May 2020

[11] Measures by the Federal Government to contain the spread of the COVID-19 pandemic and address its impacts, April 22, 2020

[12] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: the Netherlands, FRA, 23 March 2020

[13] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Denmark, FRA, 20 March 2020

Hackathon participants reconsidered almost 2,000 problems and developed 130 projects in areas such as: healthcare; everyday live during the crisis; psychological health; public life; risk groups and their special needs; and crisis management. Some project activities resulted in creation of a website ([match4heathcare](#)) connecting hospitals in need of personnel with specific qualifications with medical students that match these qualifications, in order to respond to the lack of medical staff and to find a solution to this problem. Having in mind the seriousness of the situation, in RNM capacities for provision of services for protection against COVID-19 were expanded, i.e. private hospitals with intensive care units and those that perform PCR tests were allowed to be involved in treatment of people infected with COVID-19, while the possibility for healthcare workers to retire at the age of 62, i.e. 64 years, was postponed in order to prevent the lack of medical staff.

2. Support for the exercise of social protection rights

Introduction of restrictive measures seriously affected members of vulnerable categories of people, further increasing their vulnerability under conditions of serious health crisis that later brought about economic consequences. In such cases, the social protection system needs to mitigate these effects and ensure dignified and quality life for these people.

Except for facilitating access to and exercise of certain social protection rights, often by allowing electronic submission of applications or extending these entitlements by default, some countries scaled up the coverage of people eligible for already existing social protection rights and increased the amount of social allowances.

In Spain, the coverage of people entitled to [unemployment benefits](#) was expanded for this group to include employees who have stopped working or have reduced workload due to the crisis, people whose work contracts expired and those who have voluntarily terminated their employment at one company for recruitment at another company which did not take place due to the corona crisis. Similar measure was introduced in North Macedonia where the right to monetary allowance in case of unemployment for duration of two months was entitled to all persons whose employment status had been terminated in the period from 11 March to 30 April, irrespective of the duration of their employment contacts and the grounds for employment termination.[14]

Germany[15], Belgium[16] and the Netherlands[17] implemented relatively similar policies that prohibit termination of rent contracts (in the Netherlands, this policy also prohibits eviction on the ground of mortgage loan arrears) and allow rent contracts to be extended during the special regimes that were introduced. Unlike these countries, Spain introduced [a series of measures in this regard](#) targeting people exposed to economic vulnerability due to the crisis, which included prohibition for evictions or prohibition for termination of rent contracts, i.e. extension of rent contracts. Moreover, these measures covered momentary postponement of rent payment or rent reduction by 50%, state guarantees for bank loan applications (without interest rate) intended for rent payment, state credits for repayment of bank loans targeting people with demonstrated inability for loan repayment, and [postponed payment of mortgage loans](#) without additional costs and without additional interest rate. Although the possibility for postponed loan repayment was introduced in North Macedonia, no intervention was made in regard to the obligation for payment of interest during the period covered by the postponed payment.

[14] Decree with the effect of law amending the decree with the effect of law concerning enforcement of the Law on Employment and Insurance in the Case of Unemployment during the state of emergency, “Official Gazette of RNM” no. 136/20

[15] Measures by the Federal Government to contain the spread of the COVID-19 pandemic and address its impacts, 22 April 2020

[16] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Belgium, FRA, 4 May 2020

[17] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: the Netherlands, FRA, 4 May 2020

In Germany, citizens were allowed to defer payment of utility bills (electricity, gas, telephone) and repayment of consumer loans[18], while in Spain, [measures targeting the vulnerable families](#) prohibited the supply of utility services (gas, electricity, water and fuel) to be disconnected, deferred loan repayment (including liabilities of loan guarantors), allowed termination of contract-based services without financial penalties, prohibited price increase for telecommunication services, and cancelled deadline expiration for return of goods. In France, [vouchers for electricity bills](#) and supplemental allowance for housing were introduced for [seasonal workers engaged during the crisis](#) or [workers whose housing costs have increased as a result of the crisis](#). In Belgium, the authorities introduced supplemental rent allowance for all economically vulnerable categories and food allowance for people who are economically endangered due to the crisis.[19]

In North Macedonia, households that receive minimum income allowance were also entitled to monetary allowance intended to cover portion of their energy costs for the months of April and May 2020.[20]

Unlike Germany which introduced [parental allowance for parents who are employed but have to stay at home to care for their children](#), North Macedonia enforced provisions from the Labour Law allowing for 50% salary reduction when employees are unable to perform their work due to a force major.

The Government of RNM adopted a decision and terminated the educational process, whereby all state administration bodies and all state agencies, bureaus and enterprises were tasked, but private entities were only recommended, to release from work one parent who has to care for minor child up to age of 10 years, and to classify such absences from work as justified.

This measure, adopted as a result of the discontinued educational process, was later amended and tasked parents to submit evidence/certificate indicating the grounds on whose basis they are entitled to justified absence from work.[21]

In Germany, introduction of [emergency child allowance](#) allowed the municipalities to provide hot meals for children despite the fact that schools and kindergartens are closed, by delivering food to their homes. This type of actions allow the conclusion that EU member-states made due consideration of children protection. In Spain, [special hot meal allowance](#) was introduced for children affected by closure of schools and school cantinas, while in France [the amount of educational allowance for families](#) at social risk was increased. In Denmark, municipalities were tasked to establish services that will help children in need of care, while civil society organizations that provide support and counselling to vulnerable children and their families were awarded financial grants.[22]

Support to elderly people, persons with disabilities and homeless people is absolutely necessary at times when they are the most vulnerable group in terms of health and economic status. In Germany, pensioners were allowed to earn [additional income by increasing the amount of such earnings without negative effect on the amount of their pension benefits](#), while [legal entities that provide social services](#) were supported by state grants for reimbursement of their actual costs.

[18] Measures by the Federal Government to contain the spread of the COVID-19 pandemic and address its impacts, 22 April 2020

[19] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Belgium, FRA, 4 May 2020

[20] Decree with the effect of law concerning enforcement of the Law on Social Protection during the state of emergency, “Official Gazette of RNM” no. 89/20

[21] Excerpt from draft-minutes for 15th session of the Government of the Republic of North Macedonia held on 10 March 2020, no. 44-2147/1

Excerpt from draft-minutes for 16th session of the Government of the Republic of North Macedonia held on 11 March 2020, no. 44-2147/3

[22] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Denmark, FRA, 4 May 2020

Aimed at addressing challenges faced by care centres for elderly, Spain [supported services for persons with disabilities, elderly people and homeless people](#) by anticipating delivery of medical services at the facilities that provide services for these categories of people, in respect to availability of medical staff, personal protective equipment and increased security at all care centres for elderly people and persons with disabilities. Coordination efforts were taken in respect to deployment of volunteers at these facilities, including teams designated to deliver packages with hygiene products, goods and drinks to homeless people. Their body temperature was measured, social canteens secured take-out food and more than 19,500 beds for more than 1,000 facilities were secured in coordination with the army, thereby ensuring implementation of these measures.

In France, [toll-free telephone line was opened for people with disabilities](#) in order to connect persons with disabilities and family members who care for them with civil servants who will assist in finding solutions to their problems (assistance in securing continued medical treatment for diseases unrelated to COVID-19, assistance in finding physiotherapists, support in finding solutions to housing problems, and the like). Special [website](#) was created to share information and provide support to persons with disabilities in different areas of social life, together with increased amount of [allowance for adults with disabilities and supplemental payment for activity and the right to active solidarity income](#). In France, daily vouchers in the amount of 7 EUR were distributed to homeless persons in order to ensure they have access to food and hygiene products, and additional 177,800 beds were secured for accommodation of homeless persons, extending the so-called “winter protection period” (which means opening of new shelters for homeless people) until 31 May 2020. As was the case in France, Denmark also extended the “winter protection period” and identified social services as essential work, excluding them from the work-at-home recommendations and ensuring that persons with disabilities continue to receive support and assistance, while municipalities were tasked to secure shelter centres for homeless persons.[23]

As part of its social policy for support to vulnerable groups, France developed a series of measures to support youth and students, such as: [extending disbursement of scholarships by one month](#) and exempting students from rent payment at the Regional University Residences (CROUS) when leaving such accommodation to be with their relatives during the lockdown. Obligations for regular class attendance and other eligibility requirements for scholarships (e.g. internship) were suspended; students and young people up to the age of 25 years who are exposed to risks due to closure of universities/schools and loss of jobs were awarded [assistance in the amount of 200 EUR](#), and program for youth integration in the labour market was implemented through [financial support to companies and support for youth training](#).

In Germany, students and pupils awarded education grants were allowed to continue to receive funds in spite of the closure of schools. Similar opportunities were introduced in North Macedonia, i.e. students accommodated at student dormitories were released from payment of participation fees for accommodation and food at their dormitories[24], while students from low income household were entitled to one-off payment intended to cover portion of costs for accommodation at student dormitories or private housing or they were entitled to one-off payment intended to cover portion of tuition fees at their universities.[25]

[23] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Denmark, FRA, 20 March 2020

[24] Decree with the effect of law concerning enforcement of the Law on Student Standard during the state of emergency, “Official Gazette of RNM” no. 84/20

[25] Decree with the effect of law concerning reimbursement for portion of university tuition fees for students, participation fee for accommodation at student dormitories and reimbursement for portion of costs for accommodation at private housing for students whose education is financed from the Budget of the Republic of North Macedonia and come from low-income households, during the state of emergency, “Official Gazette of RNM” no. 157/20

Moreover, pupils from low-income households were entitled to one-off payment to cover portion of costs for procurement of school supplies,[26] while young people were allowed to apply for vouchers to cover costs for digital training.[27] Applications for above-enlisted entitlements were submitted electronically, i.e. students and youth had to register on specially designed and designated websites.

In order to prevent certain categories of citizens to become economically vulnerable, Germany introduced an opportunity for [additional earnings during short-time work](#) that does not affect the right to and the amount of short-term working allowance. In addition to the minimum income allowance, Spain also introduced the right to [minimum living allowance, prohibited dismissal of workers and termination of fixed-term employment contracts, and instituted emergency unemployment allowance for workers under fixed-term employment contracts](#) and [emergency unemployment allowance for artists](#), while France introduced [emergency assistance for socially vulnerable families](#) and [emergency assistance from the pension fund](#). In North Macedonia, when introducing different measures the authorities paid due attention to alleviation of economic vulnerability effects on certain categories of people. In that regard, companies were entitled to financial assistance for salary payment to their employees for the months of April, May and June; those engaged in independent professions, film workers, entertainment artists, media workers, sport workers, etc. were entitled to emergency allowance; and people at social risk, youth and healthcare workers that treat COVID-19 patients were awarded one-off assistance by means of payment cards for purchase of domestic products. Moreover, additional interventions to the Law on Social Protection were aimed at facilitating eligibility criteria for minimum income allowance, while the right to disability allowance and third-party care allowance was automatically extended, i.e. without control examinations during the state of emergency and for a period of two months after its expiration.[28] The same criteria were anticipated in respect to the right to supplemental allowance [29]

A common feature shared by Portugal, [Spain](#), Belgium and the Netherlands is the fact that they have introduced a relatively similar opportunity for deferred payment of tax liabilities and social insurance contributions for self-employed and/or workers exposed to economic vulnerability due to the crisis, while [France](#) and Belgium introduced relatively similar measures on reducing tax rates for certain tax levies (in France, this was done in order to avoid overpayment of taxes that would be refunded as late as September 2021). In North Macedonia, people who earn income from individual professions and have suffered damages due to the spread of the coronavirus were allowed to be exempted from advanced payments on personal income tax for the months of March, April, May, June and July.[30]

In Germany, institutional capacities were adjusted and strengthened by introducing the obligation for legal entities that provide social services to establish interdisciplinary teams that will provide support to children with or without disabilities and to their parents.

3. Freedom of movement

Depending on their respective health situation, almost all EU member-states instituted special regimes of movement.

[26] Decree with the effect of law concerning award of financial assistance to students from low-income households enrolled in public secondary schools for purchase of school supplies, during the state of emergency, “Official Gazette of RNM” no. 157/20

[27] Decree with the effect of law concerning issuance of vouchers for young people intended for digital training aimed to improve their competitiveness on the labour market during the state of emergency, “Official Gazette of RNM” no. 157/20

[28] Decree with the effect of law amending the decree with the effect of law concerning enforcement of the Law on Social Protection during the state of emergency, “Official Gazette of RNM” no. 108/20

[29] Decree with the effect of law amending the decree with the effect of law concerning enforcement of the Law on Protection of Children during the state of emergency, “Official Gazette of RNM” no. 103/20

[30] Decree with the effect of law concerning enforcement of the Law on Personal Income Tax during the state of emergency, “Official Gazette of RNM” 79/20 and 169/20

Full lockdown was not established in Germany, but special rules were in place and had to be complied with. Spain, Italy and France instituted lockdown orders during the day with several exceptions therefrom. Although such restrictions seriously impact the right to freedom of movement, some practices could be taken as guidelines on how to avoid such situation.

In Spain, during the lockdown children (up to the age of 14 years) were allowed outdoors in the company of one parent/guardian or person authorized by their parent/guardian for a duration of one hour, from 12:00 to 19:00 hours, within maximum distance of 1 kilometre from their place of residence. In France, lockdown exceptions concerned procurement of supplies, outdoor exercise, medical examination and family emergencies, i.e. need to help vulnerable family member. Since April, citizens in France were able to complete an electronic template uploaded on the Ministry of Interior's website and obtain QR code indicating the exact time when this document was issued, which allowed the police to monitor reasons for people leaving their homes.[31]

In Spain, during the lockdown children (up to the age of 14 years) were allowed outdoors in the company of one parent/guardian or person authorized by their parent/guardian for a duration of one hour, from 12:00 to 19:00 hours, within maximum distance of 1 kilometre from their place of residence. In France, lockdown exceptions concerned procurement of supplies, outdoor exercise, medical examination and family emergencies, i.e. need to help vulnerable family member. Since April, citizens in France were able to complete an electronic template uploaded on the Ministry of Interior's website and obtain QR code indicating the exact time when this document was issued, which allowed the police to monitor reasons for people leaving their homes.[31]

In Denmark,[32] although public gatherings with more than 10 people were prohibited, this restriction did not apply in the case of protests and political gatherings.

Pursuant to Article 58 of the Law on Protection of the Population from Infectious Diseases, by adopting a series of decisions[33] the Government of the Republic of North Macedonia introduced measures that affect the right to freedom of movement, including partial or full restriction of movement on the entire territory of the state, prohibition for gatherings of more than 2 people in public spaces, prohibition of movement for certain parts on the territory of the state over certain periods of time (movement in the Park Forest "Vodno" in Skopje was prohibited during certain period of time in the day), closure of border-crossing points, and the like. The government anticipated several exemptions from the established regime of movement (employees who work in shifts due to the nature of their working activity, persons with disabilities, pet owners), prompting introduction of special permits issued by the Ministry of Information Society and Administration[34], i.e. employers, on special template developed by the authorities.

4. The rule of law and access to justice

In almost all countries, the coronavirus has resulted in limited scope and adjustment of work performed by the courts to the new conditions and physical distancing measures. However, no state should fully exclude the respect for the principle of the rule of law even in situations like this one. In all cases, legal guarantees must be in place to prevent abuse of state-of-emergency measures.[35] In that regard, courts and their work are considered a crucial tool in the overall system of protection.

[31] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: France, FRA, 4 May 2020

[32] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Denmark, FRA, 20 March 2020

[33] Decision on measures to prevent import and spread of the coronavirus COVID-19 and Decision on prohibition and special regime of movement on the territory of the Republic of North Macedonia

[34] Decree with the effect of law concerning the procedure for issuance of movement permits valid for periods of time when prohibition of movement is in effect during the state of emergency

[35] Compilation of Venice Commission Opinions and Reports on States of Emergency, European Commission for Democracy through Law (Venice Commission), Strasbourg, 16 April 2020

Similar to the situation in North Macedonia, other countries also revoked deadlines for procedural actions in court proceedings and for holding court hearings. For example, Germany adopted a law whereby deadlines for initiation of criminal proceedings from the start in cases when court hearings had not been held are extended from 3 weeks to 3 months and 10 days.[36]

In France, the courts were closed from 16 March, except for urgent criminal proceedings and civil litigation, proceedings concerning detained persons and proceedings concerning the rights of minor children that include court protection for minor children),[37] while in Spain all court hearings and deadlines were terminated, except in cases of *habeas corpus*, i.e. proceedings related to children custody, proceedings concerning prison inmates, proceedings concerning protection, emergency oversight proceedings concerning prison conditions and all proceedings for protection measures in cases related to violence against women and children; however, irrespective of these restrictions, courts and judges were able to act in cases when such actions were deemed necessary in order to avoid irreparable damages on the rights and interests of lawsuit parties.[38]

Having in mind the importance of the right to lawsuit/appeal in proceedings for exercise of particular rights, as well as possibilities for oral depositions in such proceedings, in Germany oral testimonies were allowed via video or telephone communication.

In France, measures were aimed towards adjusting work of the courts pursuant to the prohibited freedom of movement, avoiding contacts and spread of the virus by using videoconference links, and adjusting procedures for execution of sanctions. In that regard, execution of sanctions was discontinued, the scope of cases that could be decided by single judge was expanded and maximum duration of pre-trial detention was extended, i.e. detention orders were automatically renewed.[39] However, concerns were raised about the fairness of automatic renewal for detention orders, resulting in the decision by Court of Cassation from 26 May to take decision whereby, recalling Article 5 of the European Convention on Human Rights, it has determined that duration of detention orders cannot be extended without relevant decision taken by sitting judge “within short period of time from the date of expiration for the initial detention order that was automatically extended”. In the absence of such court review, the person detained should be immediately released to freedom. [40]

The Venice Commission is of the opinion that the constitution and legislation in effect must provide mechanisms, primarily parliamentary and judicial oversight on the executive government, to prevent abuse of power by national governments in situations of crisis. Such control must be efficient because long delays from entry into effect of emergency laws and their parliamentary review would imply unilateral implementation of such measures, without due parliamentary oversight. Domestic courts must have full jurisdiction to review restrictive and derogatory measures in terms of their justifiability and in terms of their conformity with relevant provisions from ECHR, while the judicial system must ensure the right to fair trial.[41]

As regards general measures, provisions from emergency laws should lose their legal effect after the state of emergency expires. Legislative changes should not be pursued by means of emergency laws, and instead they should be pursued as part of common legislative procedures. The most important characteristic of any emergency regime is the temporary nature of their existence. Permanent changes to national legislation must be made as part of normal democratic and political processes, by means of laws that are carefully drafted and adopted in relevant parliamentary procedure.[42]

[36] Coronavirus COVID-19 outbreak in the EU, Fundamental Rights Implications in Germany, FRA, March 2020

[37] Coronavirus Pandemic in the EU – Fundamental Rights Implications, Country – France, FRA, 3 June 2020

[38] Coronavirus pandemic in the EU – Fundamental Rights Implications, Country – Spain, FRA, 3 May 2020

[39] Coronavirus pandemic in the EU – Fundamental Rights Implications, Country – France, FRA, 4 May 2020

[40] Coronavirus Pandemic in the EU – Fundamental Rights Implications, Country – France, FRA, 3 June 2020

[41] Compilation of Venice Commission Opinions and Reports on States of Emergency, European Commission for Democracy through Law (Venice Commission), Strasbourg, 16 April 2020

[42] Ibid.

5. Other good practices and policies identified

Restricted freedom of movement and social distancing measures caused increased cases of domestic violence in almost all EU member-states, which necessitates urgent and adequate reaction.

In Germany,[43] a toll-free telephone line titled “Violence against Women” was opened and functional services were established during the pandemic, notably by developing emergency plans and providing support for implementation of protection measures against domestic violence at regional and local level. Shelters and counselling centres were identified as essential services and were included in the social packages, while information on available support services were disseminated via electronic media and locally (e.g. at pharmacies, supermarkets, and the like), followed by awareness-raising about this issues among the police. In Spain and France, information technologies were used to help the victims.

In Spain, SOS button was installed on the telephone application [Alert Cops](#) and pressing this button 5 times over a period of less than 6 seconds sends an emergency notice to the nearest police station with information about the person’s location and recorded audio-message in duration of 10 seconds to explain the situation.

In France, a specially designed [website](#) was used to disseminate guidelines and information for victims and witnesses on what they should do in case of domestic violence. At the same time, the website allowed victims to electronically report violence. Additionally, violence could be reported at the nearest pharmacy, which would then immediately forward such reports to the police (similar measure was implemented in Belgium using the code “Mask 19” as indication for violence),[44] while persons with hearing impediments were able to report violence by sending SMS to the number 114, which immediately notifies the police and emergency medical services.

At the same time, the application [FLAG!](#) was created in France and was used to report discrimination, homophobia and domestic violence. Reports are classified into adequate categories according to date and location of victims or witnesses, followed by plans for development of policies and activities to suppress these events, and instructions for affected persons to take relevant activities.



[43] Measures by the Federal Government to contain the spread of the COVID-19 pandemic and address its impacts, 22 April 2020

[44] Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications – Country: Belgium, FRA, 3 June 2020

CONCLUSIONS AND RECOMMENDATIONS:

In the overall situation, it is of utmost importance for measures introduced by individual states to be adequate, timely and well-designed in order to achieve their intended objective. Notwithstanding justifiability of measures on restricted freedom of movement, what needs to be taken into account is that, in case such measures are re-instituted in North Macedonia, they need to allow exemptions for the categories of people that cannot fully comply with these restrictions. Although North Macedonia allowed exemptions from prohibition of movement for persons with disabilities, pet owners and people who due to the nature of their work had to perform their profession in continuity, these were not always anticipated in advance, but were introduced as afterthought. Moreover, information technologies must be more broadly used as tool for people to report urgent needs to leave their home, all for the purpose of avoiding situations in which the police apprehended pet owners, as witnessed during the lockdown.

Notwithstanding the justifiability for schools and kindergartens to be closed during the pandemic, North Macedonia should follow examples from EU member-states and must make efforts to establish an emergency care system for children of employees that work sectors which the state would determine as essential services in this period.

Although, some companies ceased operations or operated with reduced intensity during the crisis, which resulted in lower scope of public revenue collected, following the example from EU member-states, RNM should reconsider increasing the amounts of allowances paid under the existing social protection rights and introducing new rights that would support families and individuals at social risk over a longer period of time instead of disbursing one-off or short-term allowances.

North Macedonia must commit to support homeless persons who are most affected at the times of health and economic crisis. Accommodation capacities for these persons must be increased and due attention should be paid to support them in respect to personal hygiene maintenance that would ultimately contribute to improved public health.

It was proved that increased number of domestic violence cases in this period is inevitable. However, the state is obliged to guarantee timely, efficient and effective fight against domestic violence and to provide support to victims. Unlike EU member-states, all of which implemented different measures, the authorities in North Macedonia did not make any interventions in this regard, leaving the fight against domestic violence confined only to activities implemented by civil society organizations. On that account, in the forthcoming period North Macedonia must commit to greater state-funded support for civil society organizations that have established such services, but also to enhanced state response to this phenomenon, by implementing awareness campaigns, strengthening key institutions competent for domestic violence cases, and using the information technologies to facilitate domestic violence victims' access to protection.

Having in mind the importance assigned to the respect for the principle of the rule of law during the state of emergency, efforts are needed to re-examine provisions from the Law on Protection of the Population from Infectious Diseases that authorize the government to adopt restrictive measures in various areas of social life, even without declared state-of-emergency, but fail to anticipate special mechanisms to review justifiability of such restrictions. In spite of the fact that, during this period, the Constitutional Court established a positive example by re-examining and revoking the decision on restricted freedom of movement for elderly people, concerns are still raised whether such laws are in line with the Constitution and principles underlined by the Venice Commission, especially in cases when it allowed restriction of rights without declared state of emergency or state of war. While Article 54 of the Constitution stipulates that human rights and freedoms could be limited only in cases stipulated by the constitution, these rights could be limited during state of emergency or state of war.

Given that the state of emergency is regulated under few articles from the Constitution, accurate and precise rules need to be introduced in regard to validity duration of decrees with the effect of law. In that regard, the above-elaborated opinion of the Venice Commission concerning the validity duration of emergency laws (i.e. decrees with the effect of law according to the constitution in our state) was further confirmed by the Macedonian Academy of Arts and Science,[45] indicating that “the effect [of such decrees] is discontinued after the state of emergency has expired”, insufficiently precise formulations from the constitutional provisions have led to the situation in which these decrees are still enforceable.

Oversight and review of the declared state of emergency were seriously undermined in the period when the Parliament was disbanded and there was difference of opinion about possibilities for its reassemble. On this account, situations like this need to be regulated with precision and sufficient details, especially having in mind the fact that, although the parliamentary elections were held and the new parliamentary composition was constituted, the verification of decisions on declaring the state of emergency by the Parliament is still underway and it remains unclear what would happen if these decisions are not approved.

[45] Legal Aspects of the State of Emergency, Macedonian Academy of Arts and Science – Center for Strategic Research “Ksente Bogoev”, Skopje, 4 May 2020

