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EXPRESSING CIVIL AND POLITICAL LIBERTIES IN TIMES OF CRISIS

COVID-19 first wave as a case study:
Bulgaria, Greece, North Macedonia, and Romania

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ANALYSIS

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1. Introduction

Ivaylo Tsonev

The coronavirus pandemic has brought unprecedented challenges to our societies. These challenges have not only had health or economic aspects, but they also relate to the form and means of governance in a middle- and long-term timeframe.

During the first wave of the pandemic, Europe adopted extraordinary measures in the “war against an invisible enemy”. A state of Emergency was declared across virtually all of Europe, with governments seizing exceptional powers in order to promptly and effectively counteract the growing spread of the virus. This crisis-reaction allowed for a well-coordinated, centrally-led national approach to effectively address the unprecedented challenge that found both citizens and governments unprepared. In many places, however, fragile democracies developed worrisome trends in governance during the state of emergency.

Broadly speaking, the rights and freedoms of citizens have greatly diminished under the newly established crisis-state order, and unprecedented restrictions on the right to travel, gather together, and spread information/disinformation were introduced. These were often taken to the extreme, which blurred the line between medically justified measures and actualized restrictions; between spreading misleading news and restricting free expression; between crucial data analysis and personal privacy. To a large extent, the motivation to protect public health prevailed over human rights. In order to justify personal hardship, governments promoted collectivism as the only viable response to the crisis. Curbing individual rights, including individual choice, has been promoted as the new, existential necessity.

Although the government's anti-COVID-19 measures, all across Europe, did not always meet the fundamental criteria for necessity, proportionality, and non-discriminative character, the society at large was not alarmed by such infringements on human rights. Some quietly acquiesced, while others enthusiastically supported the limitations placed on basic freedoms. This is evidenced by the general tolerance towards the centralisation of power and the breach of the principles of the liberal democracy we believe in. Given the high rates of approval for the actions taken by governments against COVID-19, up to the point of the production of this research (March-September 2020), it seems that those who were alarmed by various governments' abuses of power were in fact in the minority. This poses not only an immediate threat to our democracies, but a future threat, as similar tendencies, across different contexts, may re-emerge in the future.

The lessons learnt from the first wave of the pandemic could provide a key as to how to deal with the challenges brought by the next surges. The manifold clashes of governments, with their obligations to preserve individual rights and the critical public reaction, will surely lead to a more reasoned and citizen-oriented response.

This research on the limitation of civil and political rights in Bulgaria, Greece, North Macedonia, and Romania during the first wave of the pandemic focuses on three main pillars: it gives a first-hand insight into the context in which the various governmental measures were introduced; the extent to which those individual rights were affected; and the shape and strength of the citizen's response to the government-led measures.

2. COUNTRY REPORTS

2.1 Bulgaria

Ekaterina Baksanova



2.1.1. Context and background of the state of individual liberties before COVID-19 in Bulgaria

Bulgaria joined the European Union (EU) in 2007. Since then, the country has traditionally been lagging behind the rest of the EU member states in many respects. According to the last *World Justice Project Rule of Law Index*¹, in the context of the EU, the country ranks second to last (the last being Hungary due to its serious democratic backsliding). With regard to the fundamental rights in particular, the situation also appears to be the same.² As evidenced from the country profile³, there seems to be a tangible issue specifically related to the right to privacy. The "due process of law", "an absence of discrimination", and the "freedom of expression" indicators also seem to be problematic. The situation appears further deteriorated due to the low levels of respect for the right to information.

Moreover, the country is notorious for being perceived as one of the most corrupt states in the EU⁴ and suffers from many institutional deficiencies that are primarily related to the independence of the judiciary, or lack thereof – flaws which are acknowledged by the European Commission in its numerous reports under the Cooperation and Verification Mechanism (CVM).⁵ In addition, the majority of the media serves opaque interests due to the allegations that they are owned by people connected to the mafia likewise its freedom seems to decline, as is evident from Bulgaria's poor score in the Reporters

Without Borders Ranking. According to the latest report, the country ranks 111th in the world (preceded by Ethiopia and followed by Mali), and the worst in the EU.⁶

This environment is conducive to low levels of public trust in public authorities, in general, and in their ability to effectively uphold and protect individual rights and freedoms more specifically. Although such erosive processes have been consistently pervasive in the country, under the state of emergency resulting from the spread of COVID-19 the situation has further deteriorated.

2.1.2. the COVID-crisis and the crisis of good governance in Bulgaria

Nobody was prepared for the initial shock the new pandemic caused, Bulgaria was no exception. It is understandable that due to the extraordinariness of the situation, the government acted in a chaotic manner in order to preserve the life and health of its citizens. However, even if we try to be more lenient in our reactions to the institutional responses to the spread of COVID-19, this would prove to be a difficult task due to the numerous examples of unnecessary and disproportional restrictions of some rights and freedoms.

According to the Constitution, "the exercise of particular citizens' rights may be temporarily restricted in cases of war, of a state of martial law or another state of emergency" (Art. 57, para. 3). The same provision stipulates

that such temporary restrictions may take place only by law. The government, however, introduced constraints on various freedoms/rights (movement, assembly, privacy, etc.) through orders issued by the Minister of Health. Subsequently (after a series of orders issued by the minister), the parliament finally legalized the imposed measures by adopting the Law on Measures and Actions during States of Emergency. Many of the restrictive measures imposed by the authorities were contradictory, inconsistent and rarely able to motivate individual citizens, or the society as a whole, as it was unclear as to why the state-of-emergency, in conjunction with a set of highly restrictive measures were introduced on 13th March⁷ at a time when there were only a handful of infected people. This is especially true when considering that during the current situation, (as of the beginning of July 2020), when there are more than a 100 new cases per day, the measures are much looser and no emergency exists (only the so called epidemic situation).

At the beginning of the state of emergency, the Minister of Justice stated that he would request from the Council of Europe the derogation from the European Convention of Human Rights and Fundamental Freedoms. Fortunately, his words did not come into action, but this was indicative of the institutional confusion and culture leading to unsound actions.

2.1.3. Restricted civil freedoms and rights as a part of the governmental approach against COVID-19

2.1.3.1. Freedom of thought and speech:

The practical constraints on the freedom of thought and speech in Bulgaria were probably amongst the most severe cases. This was facilitated by the coercive actions of the prosecutor's office which began pressing criminal charges against people who publicly expressed critical opinions about the way the COVID-19 virus was being handled. The institution justified its repressive measures by presenting it as a fight against "fake news". For that purpose, the prosecutor's office used a provision⁸ of the Criminal Code (CC) which was practically inapplicable prior to the state of emergency, except for in extremely rare cases in which false calls were made to the national emergency number (112). Not only did the provision begin to be implemented in a distorted way, but following a demand made by the Prosecutor General to the MPs, the parliament supplemented the second paragraph of the article in order to make the potential punishments more severe. The amount of the fines thus increased in range, from between "BGN 500 to 2000" to between "BGN 10,000 to 50,000".

In the proceeding section, we will present some of the publicly known cases in which the violation of the freedom of thought and speech became particularly evident. They are not exhaustive but are indicative of the abuses of power we have witnessed.

Charges under the abovementioned provision were pressed against:

- the President of the Bulgarian Pharmaceutical Union, Prof. Asena Stoimenova, because she publicly stated that a possible shortage of drugs at the beginning of the state of emergency was possible;
- doctors from Plovdiv who expressed concerns about the lack of personal protective equipment— which puts them in danger;
- the leader of the Vazrazhdane political party, Kostadin Kostadinov, for his statement that the State Reserve is practically empty and that the imposed measures are propaganda and are meant simply to distract people;
- the chairman of the civil association BOEC, from Vidin, Georgi Georgiev, for reporting that the spread of the coronavirus in the city was due to infected medics who were not tested and in turn infected others.

Likewise, a man who broke his own TV in protest against the measures imposed by the government was also investigated by the prosecutor's office. The investigation, however, was for hooliganism and not for spreading fake news. At the same time, members of the government and National Operational Headquarters on COVID-19 expressed much more severe views ("truck with dead bodies", "war situation") with no consequences whatsoever.

As is evident from the above description and specific examples, the severity of the restrictions placed upon freedom of speech were significant. Critical opinions were treated as criminal activity. This was facilitated by the legislator and the prosecutor's office without serious professional and public discussions. The activities, in that regard, were not only disproportional, they were completely unnecessary and unjust. The personal sphere was thus completely violated in an illegitimate manner. This created the impression among the citizens that they may become subject to arbitrary and repressive measures and that democratic backsliding and the erosion of the rule of law are deepening under the COVID-19 crisis. The fact that the criminal charges were pressed very selectively raised many concerns and created confusion as to what the exact purpose of this kind of persecution actually was. Instead of making the public discourse calm and mature, these actions instilled fear and anxiety among the citizens.

Lawyers, NGOs and the civil society as a whole, vocalized their concerns through independent media outlets⁹, while the pro-government media remained uncritical. A group of self-organized jurists prepared a series of articles and videos with reputable experts regarding the violations of various rights and freedoms¹⁰ which concluded with a substantive publication.¹¹ There were also different initiatives and comments on the emerging issues related to the infringements on freedoms.¹² It is difficult to assess the effect of these efforts in the long-

run. With regard to the freedom of thought and speech specifically, the investigations remain ongoing and the final outcome is yet to be established by the courts. It should be noted, however, that following the experts' criticism, no other charges were pressed (at least not publicly known ones).

2.1.3.2. Freedom of movement:

Freedom of movement, understandably, had to be restricted due to the main goal of the government – limiting the spread of the virus and preserving the health and life of the population. Movement in and out of the 28 district cities was restricted, except in cases where there was a good reason for travelling (work, healthcare, caring for relatives, etc.). Additionally, citizens had to provide proof that their reasons were legitimate by presenting specific documents. These documents included: a statement by their employer, a referral from their doctor, and their current living address etc. Initially, the national borders were closed for people arriving from countries outside of the European Economic Area (EEA), as well as Spain, Italy, the UK, Ireland, France, Germany, the Netherlands and Switzerland, with slight changes in the country list afterwards. Those with a permanent residency status in Bulgaria who were travelling from any of these countries had to be quarantined in their place of living for a period of 14 days which was subsequently prolonged to 28 days.

In comparative terms, the limitations in Bulgaria were milder than in some other countries. However, the lack of any clear reasoning or detailed explanations, on the part of the government, about the introduction of some of the stricter restrictions raised questions and caused unrest. The inconsistent and confusing orders issued by the Minister of Justice perplexed the people. For instance, people were puzzled as to why going to parks/mountains was forbidden. We witnessed awkward regulations that allowed dog owners to visit parks/gardens while parents were prohibited from going there with their child/children. Also, there were de facto abuses such as the checkpoints erected in Roma neighbourhoods in a few towns and cities around the country (Kazanluk, Nova Zagora, Sliven, etc.), which were in blatant contradiction to the law. This was carried out by the police and endorsed by the prosecutor's office. In addition, some town mayors introduced curfews by way of independent initiatives with no legal basis whatsoever. Thus, the incoherent and sometimes even contradictory orders of the executive branch had a negative spill-over effect that led to arbitrariness across different levels. Additionally, in May, the Minister of Health issued an order mandating that persons above the age of 60 who had been infected with COVID-19 had to be hospitalized, regardless of their symptoms.

Although some of the limitations placed on the freedom of movement were necessary, and from today's perspective appear to have been somewhat effective, others (as is evident from the above examples) constituted unlawful and discriminatory actions that caused

more harm than needed. Additionally, several of the restrictions were not proportional to the danger they were trying to tackle. Instead of using minimal means to fulfil their intended goal, the restrictions took the form of blatant violations of basic rights and freedoms.

Regarding the response of civil groups, there was action taken concerning the abuse taking place in the Roma communities¹³. Local actions (for example those undertaken by the Bulgarian Helsinki Committee) also led to international responses, both by the UN¹⁴ and Amnesty International¹⁵. This, however, did not stop the authorities from erecting checkpoints in the village of Bukovluk (where the population is mainly Roma) and in Kyustendils' Roma neighbourhood¹⁶ just a couple of months after the international response and local criticism. Despite the inability to strongly affect the situation in Roma communities, advocates were still able to affect change. For instance, the order of unlawful mandatory hospitalization was challenged by a group of lawyers¹⁷, and, as a result, the Minister revoked his previous order and issued a new one, thus reversing mandatory hospitalization.

2.1.3.3. Freedom of conscience:

With regard to religious gatherings, the situation in the country was very liberal. In practice, this freedom was not restricted – both Christian and Muslim communities could celebrate their respective holidays.

However, this raised concerns among many citizens. It was not made clear by the authorities why any other gatherings were considered perilous, while the religious ones were allowed take place. Some lawyers¹⁸ even questioned the constitutionality of the decision to allow religious gatherings and forbid others due to the text of Art. 37, para. 2 of the Constitution which states the following:

"The freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others. Nevertheless, no severe restrictions with regard to celebrating religious holidays by getting together were imposed. There were requirements for wearing masks and keeping physical distance in the temples, but still in churches, people were using the same spoon during communion."

In June, the National Operational Headquarters on COVID-19 was "explicit that the spread of COVID-19 also started from the holding of festive and religious celebrations".¹⁹ However, there is no objective and clear data supporting this claim.

2.1.3.4. Freedom of assembly:

Freedom of assembly was significantly limited and no public gatherings were allowed. Therefore, cinemas, theatres, gyms, schools, universities, and parks (including big national parks) were completely closed. Restaurants and bars were likewise closed but with possible options for delivery. Similarly, malls were also closed with the

exception of pharmacies, and payment services, etc. operating at their premises. However, street shops and public transport systems remained operational.

With regard to the freedom of movement, and after the state-of-emergency was replaced by the "epidemiological situation", the Minister of Health forbade organized gatherings of groups of more than 10 persons. In practice, this makes it impossible for people to participate in public gatherings, including those for peaceful purposes. Hence, the freedom of assembly was hampered and the possibility of peaceful protests, including those against the arbitrary actions of the state, were taken away. While the abovementioned closing down of public spaces might be seen as a necessary and effective measure that could reduce the spread of the virus and protect citizens' health and life, the explicit prohibition of gatherings was, on the contrary, neither necessary nor effective. Furthermore, the measure was far from being just and proportionate to the goal it sought to achieve. On this precise basis, the order was challenged before the Supreme Administrative Court by the Bulgarian Helsinki Committee²⁰.

2.1.3.5. Freedom of media/freedom of information/ the right of information:

Initially, authorities found themselves in an extraordinary situation whereby their confusion as to how to deal with the pandemic facilitated a lack of transparency and publicity. This has subsequently been overcome, to a certain extent, through an increase in publicity and data concerning the situation. A specially designated website was even created that acts as an official source for information²¹.

That being said, there were a few instances where authorities tried to deny access to information using the state of emergency as a justification. The Head of the National Health Insurance Fund (NHIF) unlawfully limited this right by extending the period for providing information after it was requested, which, according to the law, is 14 days. He issued an order which stipulated that this period should be extended to 30 days instead. This attempt to circumvent the law was publicly criticized by lawyers and NGO experts in the field.²² As a result, the very next day the Head of the NHIF revoked his order. This is yet another example proving that civil groups' activity not only contributes to public debate but may even outweigh at least some of the arbitrary tendencies of the state.

Another unsuccessful attempt was related to the freedom of the media. One of the nationalistic political parties (Internal Macedonian Revolutionary Organization – Bulgarian National Movement (IMRO-BNM) or VMRO in Bulgarian – coalition partners to the ruling party) proposed a legislative amendment to the Radio and Television Act in order to battle disinformation and fake news. In addition to the fact that there was no public discussion, the proposal included measures such as: the closing down of websites due to fake news, imprisonment or high fines for those who spread fake news, and a

shift in power toward the Electronic Media Council, etc. This directly threatened the media's freedom as well as freedom of speech in general, which is one of the main pillars of a democratic society, and as a result, created the potential conditions for censorship. Fortunately, the proposed amendments were not passed, otherwise the government would have had a "Ministry of Truth" similar to the one described in George Orwell's *1984*.

Unfortunately, a second draft of the bill was put on the table at the end of May which resembled the first one. This time, however, the proposed amendments were to the Personal Data Protection Act. Again, the draft bill was publicly criticized by the Access to Information Programme, the Association for Protection of Personal Data and a number of other organizations.²³ The draft bill is currently pending.

2.1.3.6. Freedom of communication:

The state-of-emergency facilitated the emergence of a dangerous precedent. Through amendments made to the Electronic Communications Act, authorities were granted additional powers that seriously undermine the right to privacy. The Ministry of Interior (Moi) was provided with the possibility of directly accessing the traffic data of Bulgarian citizens for the purpose of forcing citizens, under Article 61 of the Health Act, to comply with mandatory isolation and treatment if they had previously failed to do so. Before the amendments, this was possible only for the detection and investigation of serious criminal offences. Moreover, and what is even more disturbing, is the fact that the access to the traffic data is done without prior authorization by the court (something which is ordinarily done by default). The regional court endorses the access *post factum*. Thus, the law does not provide for the initial judicial review of the request and the Moi would, in any case, have accessed the data it wanted already. As if such a widely open door for abuse is not troubling enough, the legal framework, in practice, allows for the unsupervised access to traffic data to be applicable even after the state of emergency is over if the person in question is under quarantine.

The expansion of the Moi's legal powers with respect to the direct accessibility to traffic data was not preceded by public discussion, this, despite the fact that it creates conditions for arbitrariness and the violation of citizen's personal spheres. The new legislative arrangements grant powers which represent a very high degree of uncontrolled state interference in the personal life of particular individuals. It allows unmonitored access to sensitive information which reveals the movement, contacts, time and duration of calls/messages, etc. of individuals. To ensure compliance with quarantine rules, the state could have used more proportionate measures. Although different experts²⁴ expressed their criticism towards this development, it remained unchanged.

2.1.3.7. Right to access to justice:

Similarly to other countries, Bulgaria has also suspen-

ded the work of the courts in order to prevent the further spread of the virus. However, unlike other states, e-justice is practically non-functioning here, which, combined with the suspension of the hearings of some cases, led to a restricted access to justice.

Right after the state of emergency was announced, the Judicial College to the Supreme Judicial Council (SJC) decided on a number of measures that had to be taken, including the type of cases that were to be suspended, with the exception of cases which pertained to the most urgent and necessary nature (such as remand measures, parental rights that only concern interim measures, etc.). However, this did not include the carrying out of administrative proceedings concerning the complaints against the measures stipulated in the Health Act that were introduced due to the state of emergency. Thus, for a period of time, the possibility to protect freedoms was severely hampered, which, in an environment where the rights are restricted, represents a great risk for the democratic functioning of the country.

Later on, the Law on Measures and Actions during a State of Emergency and, more specifically, its subsequent amendment, included a list of cases and proceedings with an indefinite time limit. More cases and proceedings could be heard and the JC of the SJC adopted a series of other decisions. Moreover, the SJC encouraged the discretion of court presidents to decide for themselves which other cases might be of "urgent and pressing nature" and respectively hear them. This not only contradicts the constitutional pillars of the judiciary, but also sets a dangerous precedent for vicious local practices and unequal access to justice. The latter practically depended on the views of the respective court president and not on objective criteria.

In a nutshell, the actions of the body managing the judiciary were inadequate. The lack of e-justice greatly impeded the possibility for distant (online) hearings. What's more, is that this happened despite the significant funding received by the SJC provided by the EU for developing effective e-justice. When online court proceedings did take place, it was questionable as to whether the existing conditions could guarantee the basic principles of publicity, fair trial and effective protection. The type of court cases which could be heard during the state of emergency placed more focus on the safeguard of the institutions rather than the protection of the citizens and their rights and freedoms. No particular attention was paid to vulnerable groups. In a time when the executive was exceeding its powers and when the parliament was non-functioning, the access to courts was paramount to preserving the rule of law. Unfortunately, that access was to a great extent denied. As judge Tzarigradska notes in her paper citing Prof. Evgeni Yochev: "even during wartime, Sofia bombings and disastrous earthquakes which led to lack of judges, lawyers, jury, court buildings, justice has been disturbed, but has never been suspended"²⁵.

2.1.4. Restricted political freedoms and rights as a part of the governmental approach against COVID-19

2.1.4.1. Right to vote and get elected:

This is not applicable to Bulgaria, thus no issues arose in that regard.

2.1.4.2. Right to legislation:

A couple of weeks following the introduction of the state of emergency, the work of the parliament was suspended. It held hearings only when a vote was needed to deal with the state of emergency legislation. Only the Bulgarian Socialist Party was against that state-of-affairs, citing the words of Benjamin Franklin: "[t]hose who would give up essential Liberty, to purchase a little temporary safety, deserve neither liberty nor safety."

This was yet another example where authorities preferred fast, easy and simple solutions whose effectiveness was dubious. The situation in which the legislative and judicial branches are barely functioning while the executive is overactive exposes the citizens to abuses of their fundamental rights and freedoms, which is evident from the examples provided above.

2.1.5. General evaluation and the response by civil society

The civil society was vocal during the state-of-emergency when certain rights and freedoms were infringed upon and/or were about to be violated. As we can see from the above descriptions of civil society's responses, the strategies when dealing with particular problems varied from: local actions, such as collaboration among professionals; the creation of platforms for information sharing; confronting the problems in the media; and contacting EU/international institutions and partners. All of these had strategies with varying success rates. When the government made mistakes due to incompetence and/or a lack of experience when dealing with emergency situations rather than intentional wrongdoing, it was inclined to fix those mistakes and listen to the experts (for instance, the Ministry of Health was sometimes, and at least to some extent, prone to listen to experienced lawyers when it had issued inadequate orders). However, there were demonstrated instances of abuses of power in which they did not listen to the criticism— this applies both to some of the legislative changes and the actions carried out by the prosecutor's office and the police. It appeared that the government was ready to acknowledge and repair only those mistakes that did not hurt the status-quo.

2.2. Greece

Dr. Christos Frangonikolopoulos
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2.2.1. Context and background of the state of individual liberties before COVID-19 in Greece

The balancing of liberty and security is difficult, particularly in times of crisis. During the COVID-19 pandemic, governments across the world exercised their power in order to enact policies in an effort to slow down the spread of the virus. The risk of potential instrumentalization used to restrain fundamental rights beyond reason is real and has generated a lot of discussion.

For Greece, which has undergone a severe economic crisis over the last 10 years, with a tremendous political, economic and social impact, the pandemic created additional fear and insecurity. It was and remains challenging not only in economic, but also in societal (especially for the younger generation) and political terms, given the low levels of trust in the political system. Special measures have been introduced that began in late February. Health and state authorities issued precautionary guidelines and recommendations, while measures, up to early March, were taken locally and included the closure of schools and the suspension of cultural events in the affected areas. In late April, the government announced a series of measures worth a total of around 24 billion euro, 14% of the country's GDP, to support the economy. While acknowledging the duty to provide a response to a health crisis, it was deemed equally important to endorse a watchdog

role and ensure that the response to the pandemic would not infringe on the principle of the rule of law.

However, and taking into account the weaknesses of the Greek health system, while also closely observing the situation in neighbouring Italy, the government hoped to avoid the worst-case scenario. As with other countries within the European Union, the Greek government took drastic measures as soon as the first cases were detected in the country, including cancelling cultural events, closing schools, and prohibiting public gatherings. Taking all of this into consideration, the authorities ordered a general lockdown. Despite the economic crisis, these measures received an approval rate of 80% to 82% in the majority of polls. On 1st March, despite protests from merchants and hotel owners, Patras Carnival, the largest event of its kind in Greece, was cancelled after only three confirmed cases in the country. On 12th March, following the first official death, and with 117 reported cases of Covid-19, the Greek government announced that it must take drastic measures to stop the spread of the virus including closures of: schools, universities, childcare centres, cinemas, theatres, entertainment hubs, coffee shops, bars, restaurants etc.

These closures intensified on the 14th March, and now also included museums, libraries, and archaeological sites. All travellers arriving from abroad were tested at airports and quarantined for 14 days. On 17th March the government announced lockdown measures for refugee

camps across the country. Visits from individuals and humanitarian organizations were suspended, asylum seekers were required to justify any trips outside the camps, and gatherings of more than ten people were also strictly prohibited. Anyone who violated these rules would have to pay a fine of 1000 euro. In addition to this, boat travel toward the islands was strictly reserved for permanent residents. On 4th May, with only 146 deaths officially attributed to the coronavirus, and the number of new cases decreasing since mid-April, Greece started easing lockdown measures by gradually reopening small businesses, markets, and schools, as well as allowing increased travel. Wearing a mask has become mandatory in public transportation, hospitals and hair salons.

2.2.2. The COVID-crisis and the crisis of good governance in Greece

Although it is difficult to define good governance, we measure it in relation to the provision of public services in an efficient and transparent manner, and increased participation and empowerment given to certain groups in the population. Based on these criteria we have not witnessed a crisis of good governance, due to a) the successful handling of the crisis, b) the rates of infections and victims, and c) the rally around the flag phenomenon where all major political parties supported the measures and the necessities behind it. However, there were two main issues in relation to transparency. Firstly, the "We stay home campaign" during the coronavirus lockdown, an indirect way to support media and news organizations in their attempts to overcome the crisis. Larger amounts of funds were allocated to media outlets in support of the government, while media which was critical of the government reportedly received just 1% of the 20 million euro in total. Secondly, the new law introduced, regarding demonstrations that imposed restrictions, raised questions both about the timing and the aim. It was not, however, linked with Covid-19 or justified as a protective measure, but rather justified as a result of long needed "reform".

2.2.3. Restricted civil freedoms and rights as a part of the governmental approach against COVID-19

The Greek government adopted general measures in response to the COVID-19 outbreak in the form of Acts of Legislative Content, Joint Ministerial Decisions and circulars that were issued to implement or specify the provisions in the acts of legislative content.

Acts of Legislative Content are provided for in the Constitution of Greece and their use is restricted to extraordinary circumstances. The core measures that were adopted, until this moment, are incorporated in three Acts of Legislative Content and are being specified by multiple ministerial decisions and circulars. The Act of

Legislative Content O.G A' 64/14-3-2020 was published on 14th March 2020 and contained additional emergency measures in response to the necessity of limiting the transmission of COVID-19 (10Act O.G A' 64/14-3-2020). Temporary quarantine measures have been imposed on individuals or groups according to a detailed procedure.

Deprivations of basic liberties in response to the pandemic have mainly focused on infected or exposed people. By contrast, stay-at-home orders were less intrusive in some respects (they are lightly enforced, and "essential" outings are permitted) and more intrusive in others (most people subjected to them are neither infected nor exposed). This combination of moderation and breadth makes the principles of individualized "due process", developed for traditional quarantine orders, less applicable. Owing to the fact that restrictions related to Covid-19 are motivated by community-wide risk and apply to entire populations, legal protections that focused on how much risk one person poses to others have little relevance. Moreover, because many restrictions apply to the government's own institutions (e.g., parks and schools) or are imposed by private actors (e.g., employers), they avoid standard constitutional scrutiny.

2.2.3.1. Freedom of thought and speech:

During the period examined, no special measures were introduced regarding the freedom of thought and speech. There were, however, cases that should be taken into consideration such as the directive recently (August 2020) introduced against media personnel who disseminate fake news regarding COVID-19. During the quarantine period (23/03/2020) the Greek Ministry of Health, citing reasons of public health security, decided to hold their daily briefings online instead of having reporters be physically present. Journalists were informed that they would be able to have one question per week, which would have to be submitted in writing to the Press Office.

2.2.3.2. Freedom of movement:

The government also imposed restrictions on the movement of persons residing in Reception and Identification Centers (RICs) on the Greek islands. The Ministry of Migration and Asylum named specific precautionary measures that had to be applied in RICs. These measures included compulsory temperature checks, as well as the receipt of specific documents in all relevant languages and the creation of special confinement spaces within the RICs for infected persons. Medecins Sans Frontieres reported on the need to evacuate refugee camps on the Greek islands due to the unhygienic conditions and overcrowding that poses a real threat to public health. However, the relevant Joint Ministerial Decision on 22nd March regarding the measures within refugee camps and reception centres did not include any measures concerning either evacuations or the construction of new facilities that would be needed to relieve the problem of overcrowding.

The general temporary restriction of movement for the residents of the entire Greek territory was imposed on 22nd March, 2020, and lasted until 6th April, 2020 by way of Joint Ministerial Decision. All forms of movement were prohibited without a special permit that was granted on limited grounds. The special permit was granted through a new online platform launched by the General Secretariat of Civil Protection (GGPP) or via SMS. Permission to move outside was only granted for the select purposes of: buying food and medicine, attending doctor's appointments, going to work, training outdoors alone or with one other person, walking a pet, and attending a ceremony for the purpose of a funeral or wedding. It is underlined here that the measures were to be taken with respect to the general principle of proportionality and the rule of law.

2.2.3.3. Freedom of conscience:

All services in all places of worship, regardless of religion or dogma, were suspended on 16th March. The announcement followed a decision by the Greek Orthodox Church to suspend all daily services and sacraments with the exception of funerals. Churches only remained open for individual prayer. Easter provided a test of the population's commitment to the rules. While the Greek Orthodox Church was initially reluctant to stop gatherings and the practice of communion – announcing on 9th March that the coronavirus could not be transmitted by communion, wine, or wafer – Easter services saw Orthodox priests hold services in empty churches.

2.2.3.4. Freedom of assembly:

Gatherings of more than ten people were strictly prohibited. Anyone violating this rule had to pay a fine of 1000 euro. This prohibition lasted until 8th May 2020.

2.2.3.5. Freedom of media/freedom of information/ the right of information:

No new amendments were introduced regarding media freedom. Regarding the right of information and especially the use of personal data, Article 5 of act O.G A' 64/14-3-2020 mandates the collection of personal data of potentially or actually infected persons by the Hellenic National Public Health Organization (EODY) for the purpose of sharing it with the General Secretariat for Civil Protection (GGPP). The data shared with G.G.P.P will be anonymised and its transmission encrypted. The data processing is limited to the purpose of coordinating between EODY and GGPP for an effective response to the impact of COVID 19. In relation to the collection of data and the right to information, the Ministry of Health denied permission to use cameras in hospitals for the purpose of monitoring COVID-19 patients on the grounds that even in these exceptional cases the use is not justified. It was maintained that all rights consolidated in Regulation (EU) 2016/679 on data protection must be respected, while critical public health and safety risks should be taken into consideration. As far as the other incidents of contraction or death due to the coronavirus are concerned, only the age, gender and the place of per-

manent residence of the patients or the deceased have been revealed. Other identifying data such as names, occupations, addresses, social security numbers or phone numbers have not been published at all.

All radio and TV stations are obliged to transmit one-minute-long messages on how to prevent the spread of the coronavirus infection. The Journalists' Union of Athens Daily Newspapers issued an announcement on 18th March, 2020, reminding all press stakeholders of their obligations with regard to factual reporting, abstaining from spreading fake news and compliance to journalistic deontology. Incidents of fake news and misinformation were limited in the professional media sources that most people followed. On 6th March, 2020, the Minister of Health pressed charges against a newspaper for spreading fake news, an offence according to Article 191 of the Penal Code. Furthermore, the National Council for Radio and Television (NCRTV) also received complaints against a TV station which advertised a commercial ointment as minimising the risk of COVID-19 contamination. NCRTV immediately initiated disciplinary procedures against the TV station.

Incidents of xenophobic speech, acts of harassment, and/or violent attacks have neither been portrayed in headline news nor have they been reported by public authorities or the civil society through their official websites. The Racist Violence Recording Network (RVRN), which consists of 46 human rights organisations and receives and records complaints, has not reported any concerns about racist incidents deriving from or related to the coronavirus outbreak. The same stands for the Greek National Human Rights Commission (GNCHR), an independent advisory body of the state on human rights issues.

2.2.3.6. Right to access to justice:

In Greece, all courts of justice and prosecution offices closed their buildings, initially from 28th March to 10th April and then until 15th May 2020. District Courts have suspended operations since 10th March 2020. All deadlines and limitation periods were suspended and proceedings were adjourned. As exceptions, courts remained in operation for the following proceedings:

- Petition and granting of temporary orders;
- Petition and granting of provisional relief measures;
- Trials of detained misdemeanour defendants caught in the act;
- Selection of jury members;
- Trials of felony defendants under pre-trial custody who have served time close to the maximum time allowed in pre-trial custody;
- Trials of felonies bound to become time-barred;
- Publication of judgments.

2.2.4. Restricted political freedoms and rights as a part of the governmental approach against COVID-19

2.2.4.1. Right to vote and get elected:

No elections were about to take place so none of these measures have been introduced.

2.2.4.2. Right to legislation:

The Greek parliament continued to operate under special conditions. It was decided that it would only vote on one draft bill per week, with priority given to bills related to the management of the coronavirus outbreak. These special measures were lifted on May, 2020.

2.2.5. General evaluation and the response by civil society

Greek citizens responded exceptionally quickly to the rules that the government announced. The Greek society, as a whole, also responded positively to the measures that were introduced, and treated them as necessary. Thus, they avoided gatherings, and followed the 'stay home' mantra that had been all over the news in the mainstream media and on social media. The Greek media responded swiftly to the increase in demand for news coverage about the pandemic, correctly balancing their coverage between images from neighbouring Italy and Spain (to make Greek citizens realise the danger)

and information from the scientific community. While the Greek media is ordinarily highly politicized, the crisis brought about a change of tone. Journalists pushed politicians aside and let the scientists and experts inform and direct their audiences. In fact, according to our survey, 77% of respondents stressed that they are using scientific sources to inform themselves about the coronavirus infection, and respondents' trust in the media had increased from 41 percent to 55 percent, so far, throughout the crisis.

The measures were effective and necessary in order for the government to be able to respond and handle an emergency situation. It is the main reason that the majority of the society reacted very positively to the measures, keeping in mind the socio-cultural characteristics of Southern societies that tend to be more cautious towards state decisions and more reluctant to comply with them. In addition, these measures have also been supported by the opposition political parties. There were no reactions from civil society organisations for the measures that concerned the general population. Reactions to government decisions regarded a) the controversial suspension of asylum applications imposed in response to an influx of refugees crossing the border from Turkey, (from the beginning of March until 1st April, while all asylum services remained frozen until 18th May) due to the coronavirus pandemic and, b) the decision to suspend all services in all places of worship, regardless of religion or dogma, as part of the effort to contain the spread of COVID-19.

2.3. North Macedonia

Dr. Katerina Kolozova



2.3.1. Context and background of the state of individual liberties before COVID-19 in North Macedonia

By certain metrics, among which include those of well-established organisations such as Freedom House and others cited in Berglund's *The Handbook of Political Change in Eastern Europe*²⁶, North Macedonia, since its independence, has been a state constantly governed in an authoritarian manner to varying degrees. In Berglund's handbook, the designation used to describe the model of governance in question is "hybrid regime."

Between 2006 and 2016, during the rule of a coalition led by the centre right-wing party VMRO-DPMNE²⁷, a presumably moderate member of the European People's Party (EPP), one could witness a descent into what is nowadays termed "illiberal democracy" by precisely those European politicians that have been open and vocal supporters of VMRO-DPMNE, most notably by Viktor Orbán. Instead of using the term "illiberal democracy" (then still very much contested by the European political mainstream), the EU progress report for 2016 notes systemic democratic backsliding and terms the model of governance "state capture." In the second report of the Senior Experts Group led by Reinhard Priebe, published in September 2017, the "Macedonian

case of state capture" is explained as being a problem of profound asymmetry between the three branches of power in favour of the executive. In order to remedy the stated problem, first established by Priebe's Senior Expert Group in 2015, the European Commission set a number of "Urgent Reform Priorities" that have become the key criteria against which the democratic capacities of the state and its society have been measured in the subsequent EU progress reports. The priorities in question are the benchmarks that divide "soft authoritarianism"²⁸ from "European democracy." The latter is merely a de-ideologised term for what is known in political science as "liberal democracy." The latest update of the EU progress report, released in March 2020,²⁹ praises North Macedonia's remarkable progress, in particular in the areas of the independence of the judiciary, combatting corruption, freedom of the press and other aspects of what essentially comes down to a "decapturing" of the once captured state of an "illiberal democracy."^{30 31}

2.3.2. COVID-crisis and the crisis of good governance in North Macedonia

The state of exception that was implemented due to the pandemic was introduced at a time when a caretaker government was in place after the parliament was dissolved due to early elections that were initially scheduled

for 12th April 2020. The state of emergency was introduced on 18th March, 2020 and was dominated by military type curfews, which in turn were introduced on 20th March 2020, in an indiscriminate manner, i.e., as a blanket prohibition of any movement except for life-threatening situations. The curfews at issue were in place for halves of workdays and almost full weekends. However, for certain age groups, and for a considerable part of the state of emergency, confinement lasted entire days except for 2 hour allotments where movement was allowed and, finally, during certain weekends and holidays the entire nation was confined for up to 60 and 85 hours at a time (variations depended on the traditional length of the holidays and their being followed or preceded by a weekend). The measures were draconian, as were the fines for breaking the curfew that counted on average between 1000 and 2000 euro or even prison.³² The "V-Dem Institute" from Göteborg listed North Macedonia among the 48 countries at highest risk of sliding into authoritarianism thanks to the handling of the COVID-19 pandemic crisis.³³

Certain socio-economic measures intended to alleviate the dangers of rapid unemployment, poverty, and the bankruptcy of small businesses were introduced early on, in a transparent and responsible manner. The government covered 50% of the benefits in order to minimize the risk of companies laying off employees. It also distributed minimal wages to the precariously employed and to the unemployed, self-employed, artists, and other parts of the labour force that did not belong to the conventional economy. It also covered utilities and rent expenses for the poorest individuals and some of the weaker companies. The stated measures only constitute a select few out of a much larger range of interventionist support.³⁴ The economic think tank Finance Think, from Skopje, evaluated the set of measures as efficient and, according to the think tank's simulations, they are supposed to have prevented up to 80% of the potential layoffs.³⁵ Finally, according to the World Bank study, commissioned by the International Labour Organisation and the European Bank for Reconstruction and Development, the lockdown measures have been "highly stringent."³⁶ Nonetheless, the economic support measures were introduced in line with the recommendations of the two said organisations.

2.3.3. Restricted civil freedoms and rights as a part of the governmental approach against COVID-19

On 2nd April 2020, The Council of Europe published the previously verbally issued note of the Republic of North Macedonia informing the Secretary General of the Council of its derogation from the European Convention on Human Rights on several counts. North Macedonia thereby joined the group of 8 other countries, namely: Albania, Georgia, Armenia, Estonia, Latvia, Moldova, Romania and Serbia (later on joined by San Marino). Unlike

the majority of the other countries that restricted the derogation on counts mainly concerning public gatherings, covered by Article 11 of the Convention, North Macedonia derogated from four articles including the protection of private and family life (Article 8) and freedom of movement (Article 2).³⁷ Certainly due to the pandemic, freedoms to travel or to move without restrictions were suspended or severely undermined everywhere on the continent. Thus, it remains unclear as to why the state chose to derogate from either this article or Article number 8. The special provisions for tackling the pandemic implied restrictions of this sort, but none of North Macedonia's EU neighbours derogated from the Convention. The only EU member from the region that did so was Romania. I would read the gesture of derogation, duly prolonged for several months and on more than one count, as the interim government's assessment that it may breach the degree of restrictions that could be undisputedly justified by the mere handling of the pandemic emergency.

2.3.3.1. Freedom of thought and speech:

Legal provisions against "disinformation" that could undermine the struggle against the pandemic were introduced during the state of emergency, according to Articles 205 and 206 of the Criminal Code, and entail imprisonment.³⁸ None of the lawsuits filed on counts of Articles 205 and 206 of the Criminal Code have been processed by now, because the Public Prosecution's work was suspended throughout the entire period of the state of emergency. Different and opposing views on the pandemic, and the methods of tackling it, were present in both the social and conventional media, and public debate was not precluded. These measures have been excessive and have served to stifle any criticism. Even though none of the reported cases have been processed thus far, we have no reason to expect them not to be. Due to the vagueness of the legal provisions, any sort of problematization of the government's approach in tackling the crisis could be interpreted as the "spreading of fake news" and/or undermining the fight against the pandemic. The enactment of these provisions has not been as excessive as the fining, and critical, expert voices could be heard in the media – but only coming from epidemiologists and other medical experts. Expert criticism on the rest of the policy aspects, including the derogation from the ECHR, has been quasi-absent, with the exception of the monitoring – with implicit criticism – of a handful of expert institutions such as the European Policy Institute and the Centre for Legal Research and Analysis.

2.3.3.2. Freedom of movement:

Considering curfews of 60, 80, or more consecutive hours had been introduced on several occasions, coupled with blanket curfews that were present on a daily basis, allowing only several hours of permitted movement a day, and segregating citizens by age and by income, all provisions whose breaching was draconically sanctioned, we could conclude that the government's

strategy was an *intimidating and authoritarian handling of the crisis*. "No exceptions", with the exclusion of life threatening medical emergencies corroborated by documentation that entailed unnecessary bureaucratic intricacies, was the philosophy of the caretaker government.

Measures were not proportionate, nor did they take into consideration the specific needs of minority social groups. Individual rights and liberties were repeatedly called a "luxury we cannot afford" (author's paraphrase) – due to our Balkan "mentality" – by medical experts that served as consultants to the Ministry of Health, by pundits in the social and conventional media and last, but not least, by ministers.³⁹ Thus, visits to family members in need, or visits to the doctor or pharmacy for reasons that could not be considered fatal, were not allowed during the curfews which lasted for most of the day throughout most of the period of the state of emergency (from 18th March till 7th June), occasionally for 3 to 4 consecutive days. Privacy breaches were introduced at the centre of the control of the freedom of movement when the elderly (over the age of 65) were not only discriminated against, and segregated when exercising their right to move within a two-hour a day slot, but also when they were segregated in their right to visit the bank according to their income. For example, those receiving retirement compensation in the amount of 11,000 MKD (the minimal pension, approx. 178 euro) could visit the bank only on Mondays between 10.00 AM and 12.00 PM. Whereas the recipients of pensions higher than 18,000 MKD (approx. 291 euro) could visit the bank on Fridays in the same daily 2-hour timeslot. (For the days in between, a more detailed and scaled approach regarding income was in place, and again to be exercised in the same two-hour weekly time-slot).⁴⁰

The measures were effective in the sense of being consistently executed and respected by, virtually, the absolute majority. They were, however, ineffective in containing the virus because the minimum number of infections was contained for too long without a managed loosening of the measures in order to achieve the projected peak prior to June. The abrupt liberalisation backlashed with a spike in infections, betraying a flippant approach on the part of the government. The overly restrictive measures were unjust and counter-productive because they could only increase the number of infections among the vulnerable groups. This was because the movement was squeezed into short timeslots enabling access to institutions and facilities with diminished availability. They were also discriminatory and, therefore, unjust.

2.3.3.3. Freedom of conscience:

The 60, 80 and 85 hours of blanket curfew nationwide were intended to preclude free movement during the religious holidays. Instead of arranging a protocol with the Church and allowing the citizens free, even though reasonably restricted, movement and an alternative way of celebrating the holidays, the state confined the entire population to their homes. The leader of the Islamic

Community in the country called for an ignoring of the curfew and invited the Muslims to the mosques on Ramadan Bayram without any observance of the anti-pandemic protocols. He was voted out of office several days after the holidays. During the month of Ramadan fasting, restrictions were slightly relaxed and led to an alleged uncontained spreading of the virus among the Muslim community due to the Iftar dinner gatherings, as argued by the Commission for infectious diseases. We should note that the dramatically increased number of infections occurred in the areas predominantly populated by ethnic Albanians, and not in the other predominantly Muslim areas. There were two protests related to the Easter curfew and they are covered under the section "Freedom of Assembly."

2.3.3.4. Freedom of assembly:

Public assembly has been forbidden ever since the declaration of the state of emergency and is still ongoing (19th July 2020). There were a handful of examples of breaching it, including several religious gatherings and one protest against the overly restrictive measures. The prohibition was absolute and without any exceptions permitted. There were two protests of conscience related to the 85 hour, nationwide curfew during Easter – the organizers and the participants were fined 1000 and 2000 euro depending on the role and type of the protest. One was a protest, and the other was a collective breach of the curfew in the form of a religious procession for the occasion of St George, a religious holiday following Easter. Additionally, there was one that was merely an objection to the disproportionate measures and demonstrated an absence of trust in the institutions. The organizers of the latter protest were also fined. The civil society unanimously supported the prosecution of the protesters by the government, criticising it by saying that the punishment was slow and not strict enough. Prominent figureheads of the civil society, NGO's, academia and media, mocked the religious and secular protesters for their intellectual inferiority – the former for being religious and superstitious, while the latter were labelled as anti-vaxxers and flat-earthers. The public intellectuals that attempted to defend the right to conscience or assembly were a meagre handful.

2.3.3.5. Freedom of media/freedom of information/ the right of information:

The right to information regarding the pandemic and the measures undertaken by the government were respected in a consistent manner: daily briefings by the Minister of health, as well as press conferences by the caretaker prime minister and the president were organized in all key moments. Let us note, however, that the information on the derogation from the ECHR was withheld from the public (not counting the government's publication of the document on its website).

2.3.3.6. Freedom of communication:

There were no restrictions to the freedom of communication of any sort. Quite to the contrary, the government

appealed to the telecom providers to be flexible with the general population concerning their internet and telephone bills, thereby showing solidarity with the general population and the state.

2.3.3.7. Right to access to justice:

The judiciary was practically dormant and its regular work was constantly postponed, with a handful of exceptions. Thus, access to justice and fair trials was curtailed and the justification for the general referral of practically all activities of the judiciary was the protection of public health. The public prosecutor was available to receive lawsuits, reports, and complaints via email, but did not act on them in line with the legislation adopted by the caretaker government due to its status of a legislative power granted through the state of emergency declared by the president (in the absence of an active parliament). The Judicial Council took the decision that the deadlines of court proceedings, and actions in public prosecution, as well as in the administrative courts, would be postponed for after the end of the state of emergency. This decision was endowed with the power of a legislative act through a decree of the caretaker government declared on 30th March 2020.

2.3.4. Restricted political freedoms and rights as a part of the governmental approach against COVID-19

Without parliamentary oversight, the caretaker government, endowed with the capacity to be the legislator, the executor and, considering the excessive fines for breaching the state of emergency provisions, to also de facto (if not de jure) act as the judiciary, it is safe to conclude that the governance was undemocratic. It should be noted that the interim, or caretaker government, was composed of the opposition (the "illiberal democrats" of VMRO-DPMNE), the ruling Social Democrats, and the ethnic Albanian party DUI⁴¹ (that has been part of all ruling coalitions in the past 17 years).

2.3.4.1. Right to vote and get elected:

The parliamentary elections that kept being postponed due to the crisis are finally scheduled for 15th July 2020, and the realization of the right to vote will be ensured for everyone, including the sick and those quarantined. The campaigning has been ongoing in a manner that respects the pandemic prevention protocols, the media has been diversely outspoken, and criticism of either the ruling coalition or the opposition has not been stifled in any way. The Covid-19 pandemic has been the reason for the opposition's persistent demands for delaying the elections (and, *de facto*, sustaining the limbo of a state of emergency with an all-powerful government and no parliament in session). The elections took place as scheduled, in an orderly manner, without any incidents or deficiencies regarding the protocols concerning the pandemic. Shadow has been cast on the otherwise "effectively administered elections" (OSCE/ODIHR) by the

fact that the care-taker government, which justified its absolute power granted by the state of emergency as serving only to contain the pandemic, voted for changes in the electoral code that may have undermined the public trust in the State Electoral Committee and its processing of the results. The stated shortcoming was criticized by the European Commission in a joint statement by High Representative/Vice-President Josep Borrell and Neighbourhood and Enlargement Commissioner Olivér Várhelyi, released on 17th July 2020.

2.3.4.2. Right to legislation:

There was a tension between the President of the Republic and the Speaker of the Parliament regarding the question of reconvening the parliament, which, according to the president's interpretation of the constitution, the state of emergency permits. The speaker, an MP coming from DUI, however, refused to heed the appeals of the president for reconvening the parliament. The speaker was supported in this position by VMRO-DPMNE and his fellow MP's from DUI. On 23rd April 2020, MP's of the ruling coalition, led by the Social-Democrats (SDSM⁴²) and some smaller opposition parties (including the independent MP's formerly part of VMRO-DPMNE), submitted an initiative to reconvene to the speaker of the parliament. The speaker, representative of the biggest ethnic-Albanian party in the parliament, rejected the request.⁴³ In spite of this failed attempt, that signals the ruling coalition's will to reinstitute the legislature's oversight, North Macedonia, next to Serbia and Hungary, remained one of only three countries in Europe without a functioning parliament during the crisis. One of the reasons for the constantly prolonged state of exception was the impossibility of reaching an agreement about the date of the parliamentary elections which could allow for an interregnum without a parliament, and that wouldn't be unconstitutional. The opposition pushed toward a constant prolongation of the elections and, hence, of the state of emergency, invoking the pandemic as the main reason. The final extension of the state of emergency ended on 23rd June 2020, and the pre-election period was initiated.

2.3.5. General evaluation and the response by civil society

Regarding the question of proportionate restrictions with the purpose of protecting public health, we could argue that not only did the measures not serve their purpose but they produced the opposite effect. Access to health-care was curtailed for many, even for the seriously and chronically ill by way of constantly delayed operations or impeded access to medication. The period of constant deferral for the non-Covid affected patients lasted for months.⁴⁴ Paradoxically, only those with the slightest chances to survive were operated on as urgent. Those whose lives could have been saved were delayed for at least two months, if not more. It remains to be counted and analysed how many lost their lives due to these constant deferrals.⁴⁵ Except for the Department of Infec-

tious Diseases, the greatest part of the State University Hospital, the largest health institution in the country was practically not operating, remaining "on stand-by" for months, in case of a presumed sudden peak of Covid-19 infections.⁴⁶ Around 20th June, clinics began to resume their normal activities in spite of the fact that the peak of infections had spiked dramatically.

As for performing the role of a watchdog, the civil society, with the exception of several public intellectuals, has been completely passive throughout the entire period.⁴⁷ It did offer support to the government and to the citizens to help alleviate the hardships of confinement, but no criticism whatsoever could be heard or read regarding possible violations of the basic democratic principles and undermining of civil liberties. It is interesting to note, that it was the Constitutional Court that overruled the segregationist act concerning the freedom of movement of the elderly (and the younger than 18), in spite of the deafening silence of the civil society.

The Institute of Social Sciences and Humanities from Skopje (ISSHS), a scientific higher education institution and think tank, has engaged in monitoring both the government's response, its possibly anti-democratic and/or authoritarian tendencies, and the response of the civil society. Its findings demonstrate that CSO's have displayed hardly any criticism, if one does not count the pronouncements of slogans, such as "You have human rights during the pandemic too!" (Helsinki Committee of Human Rights in North Macedonia), without any substantive criticism of the government's breaching of those very same rights.

The Institute (ISSHS) has produced a lengthy qualitative research study of citizens' reactions in social media to the government's policies during the pandemic, applying methods of communication studies, discourse analysis of comments under government officials' posts, and announcements on Facebook. The study demonstrates an overwhelming compliance and a rooting for an authoritarian approach up to the point when the stifling of individual and collective civic freedoms became excessive in infringing upon economic-social rights, rights to privacy, and family life. The more restrictive and authoritarian the measures were the more vocal and almost aggressive the citizens' outcry in the social media became.⁴⁸ The findings demonstrate a low tolerance of the population toward the suspension of cultural as well as religious rights (e.g., the prohibition to celebrate 1st May was received as negatively as that concerning Easter).

Overview of the civil society role as a watchdog

As noted above, and as already discussed in relevant regional studies quoted in this paper, the response of the civil society, in terms of a watchdog in regard to protecting individual rights and liberties, as well as the observance of the fundamental rights and the provisions of the European Convention on Human Rights, has been next to none. Let us note some commendable exceptions:

- The European Policy Institute (EPI) has monitored and alerted the public about the derogation from the European Convention of Human Rights. The tone of their report is one more of indifferent documentation than criticism of any sort: Home On shaky ground: Human Rights and COVID-19 in North Macedonia after the derogation from the European Convention on Human Rights, available at <https://epi.org.mk/post/14727?lang=en>, accessed on 29th July 2020.
- ISSHS Collective Research: "Measuring "Authoritarianism from Below" in Macedonian Society in the Context of the COVID-19 Crisis," Skopje: Institute of Social Sciences and Humanities, 2020, accessed on 29th July 2020.
- ISSHS team study led by Katerina Kolozova, The State of Democracy in North Macedonia in the Times of the COVID-19 Pandemic. Skopje: Institute of Social Sciences and Humanities, 2020, accessed on 29th July 2020.
- Through its widely read blog, Res Publica, the Institute of Communication Studies has performed a proper function of a watchdog on the national level.
- As part of the TEN (Think for Europe Network), EPI has participated in a regional study with a critical tone of a watchdog on the democratic backsliding during the pandemic in the Western Balkans titled: "Opening governments in times of lockdown" available at <https://tinyurl.com/y2ts2d6x>, accessed on 29th July 2020.
- As part of BiEPAG, thus one more regional initiative, local activists and experts have participated in the regional study of a highly critical tone indicating authoritarian abuse of the pandemic: Florian Bieber et al. Policy Brief: "The Western Balkans in Times of the Global Pandemic" (BiEPAG: April 2020), available at <https://biepag.eu/wp-content/uploads/2020/04/BiEPAG-Policy-Brief-The-Western-Balkans-in-Times-of-the-Global-Pandemic.pdf>, accessed on 29th July 2020.
- Local civil society activists and experts have participated in the production of the following studies on Southeast Europe providing a critical, watchdog perspective on the government:
- FES SOE: Democracy and the State of Emergency Survey in four parts: July 2020: New Upsurge of the Corona Crisis <http://library.fes.de/pdf-files/bueros/belgrad/16359.pdf>; June 2020: Easing Measures and Rising Tensions in the Struggle with the Corona Crisis <http://library.fes.de/pdf-files/bueros/belgrad/16286.pdf>; May 2020: Political Battles Emerging out of the Corona Crisis <http://library.fes.de/pdf-files/bueros/belgrad/16213.pdf> and April 2020: Responses to the Corona Crisis <http://library.fes.de/pdf-files/bueros/belgrad/16119.pdf>, accessed on 29th July 2020.

2.4. Romania

Cristina Lupu



2.4.1. Context and background of the state of individual liberties before COVID-19 in Romania

Romania is a democratic country, ranking 32nd out of 128 countries in the 2020 International Index of the rule of law by the World Justice Project. Civil liberties were not under major threat, but the situation was far from perfect. In 2018, a referendum to prohibit same-sex marriage took place, but the turnout was minimal at only 21.1%, thus marking a victory for human rights. That being said, it is important to note that many minorities are still facing discrimination, especially the Roma and LGBT communities.

Romania has had a minority Liberal government from October 2019 onward, when the Social Democrat Government received a vote of no confidence in the parliament after two years of street protests and strong reactions from civil society to the multiple attempts at weakening anti-corruption legislation.

The media landscape is diverse, thus making it more difficult for one political side to control, but the economic problems faced by the industry have made it more prone to accepting advertisements that are funded by public money and that come with strings attached— one of the best tools to control media institutions, as is shown in a report published in March 2020, by the Center for Independent Journalism.⁴⁹

2.4.2. COVID-crisis and the crisis of good governance in Romania

On 11th March, the World Health Organization officially designated the COVID-19 outbreak a pandemic. On 16th March, President Klaus Iohannis declared a state of emergency, when the official cases reached 168. The decree included several “exceptional” measures as well as a list of rights that could be limited as a part of these measures.⁵⁰ The state of emergency lasted for two months, after which Romania entered a state of alert, keeping some of the restrictions in place.

The medical crisis hit Romania at a time of political turmoil, when the ruling party was trying to force snap parliamentary elections. Given this, we were caught without sufficient stocks of medical equipment, masks, disinfectants, and testing tools – or even the doctors to operate them. Additionally, the Romanian state did not seem to be prepared for what should have been a predictable event: hundreds of thousands of Romanians coming back home from countries like Italy and Spain.

The authorities also failed to excel at institutional communication. They tried to control the messaging, urging the population to consider only “official sources” and “official news”, they also blocked the media from accessing information and threatened whistle-blowers and journalists alike with penal sanctions if they didn't obey the blockade.

In early March, Romania became one of the four countries that notified the European Court for Human Rights of their temporary withdrawal from the European Convention of Human Rights, a decision that was not officially communicated to the general public and which alerted the civil society. On 15th May, at the end of the state of emergency, the Romanian State notified the seizure of the temporary withdrawal.

2.4.3. Restricted civil freedoms and rights as a part of the governmental approach against COVID-19

2.4.3.1. Freedom of thought and speech:

Although not officially considered a restriction done through presidential decree, there were several attempts to restrict the freedom of speech, with a focus on whistle-blowers from public institutions, such as hospitals or the police.

On 3rd March, Raed Arafat, Chief of the Department for Emergency Situations, announced a new task force as part of the Ministry of Internal Affairs. This Strategic Communication Group was the only entity allowed to publicly communicate about matters directly relating to the COVID-19 pandemic with the media. This would prove to be a closed group, with no public information about its members, despite public information requests.

By mid-March, "Sf. Ioan Hospital" in Suceava became one of the biggest institutional COVID-19 hot spots in the country, due to poor management decisions. Investigative journalist Victor Ilie talked with more than 60 employees, but only two agreed to go on record. The management was changed and one of the first decisions was an administrative order forbidding employees, under criminal law, to give information to the media. A whistle-blower from the police was fired after raising attention about their lack of equipment and the pressures they received to give out large amounts of fines during the state of emergency. The Ministry of Interior eventually reconsidered the decision.⁵¹ Citizens were also fined for opinions expressed on social media or on banners on their balconies. For example, a student from Cluj was fined 1,000 lei (approx. 210 euro) for criticizing her mayor on the way he handled the crisis.⁵²

The restrictions faced by public servants, who saw a reduction in their legal right to blow the whistle, were not proportionate or necessary in relation to the protection of public health in a democratic society. These restrictions prevented the public from learning about the problems in due time and thus stripped them of the opportunity to ask their government to solve them.

The state of emergency allowed authorities to conduct direct public procurements related to COVID-19 without the normal transparency requirements. In this situation, the society needed strong mechanisms to protect whis-

tle-blowers to ensure that public money was spent legally and effectively.

In the long term, this will have a direct impact on the trust public servants will have in the whistle-blower legislation, as they will be even less eager to report wrongdoings. Likewise, citizens will be less inclined to publicly criticize the authorities, for fear of fines or criminal charges. Civil society organizations, like the Center for Independent Journalism⁵³, and APADOR CH⁵⁴, publicly reacted to those limitations through open letters addressed to the government, the institution of Ombudsman, or even in meetings with the prime minister.⁵⁵ The appeals remained unanswered.

2.4.3.2. Freedom of movement:

The presidential decree issued on 16th March, as well as the proceeding Military Ordinances made no distinction between the two different rights, namely, the freedom of movement and the right of liberty. Among the rights that could be limited, the decree mentioned the freedom of movement. People were not allowed to leave their homes, with limited exceptions, flights were suspended, and two cities were placed under total quarantine. The Romanian authorities also made decisions that affected the right of liberty, as perceived under Article 5 of the European Convention for Human Rights.⁵⁶ Examples of this include: forced admission into hospitals, institutionalised quarantines, and the interdiction for people older than 65 to leave their houses outside of two hour intervals. The effected citizens did not have any legal way to protest the decisions in court. That being said, it could be interpreted as a "deprivation of liberty", a measure for which the state has to voluntarily and immediately give the person the possibility of an urgent appeal in front of a judge.

Citizens coming to Romania from "red zone" countries (with high rates of infection, like Italy, Spain, or France) went directly into institutionalised quarantine for 14 days – the rest had to self-isolate. The sanctions were harsh and included fines of up to 20,000 lei (approx. 4,150 euro, for context the net minimum salary in Romania is 480 euro), as well as criminal cases for hampering disease prevention. During the state of emergency, the Romanian authorities applied more than 300,000 sanctions (fines and warnings), with a total value of approx. 600,000,000 lei (125,000,000 euro).⁵⁷ Later on, the sanctions were ruled unconstitutional by the Romanian Constitutional Court (RCC).

The authorities also forcibly admitted all asymptomatic patients into hospitals, with no treatment available for them. Romania was the only European Union country that took this action. The decision was contested from both a human rights perspective and also as an ineffective measure in the management of the pandemic, adding more pressure to an already weakened medical system. On 18th June, the Ombudsman asked⁵⁸ the Constitutional Court to rule on whether this decision was

constitutional. One week later, the RCC agreed on its unconstitutionality, allowing patients - with or without symptoms - to be discharged by request, and leaving the authorities with no legal measures for keeping citizens in quarantine or admitted in hospitals against their will.

In both cases, the main argument was that constitutional rights were affected, thus the imposed limitations must be done through a law adopted by the parliament, and not through governmental ordinances. The government drafted a bill that was amended and adopted by the parliament after 10 days of political scandals. The new law, a better version than the one initially drafted, is still flawed in some regards,⁵⁹ leaving the door open for it to be again contested at the RCC.

The lockdown that ensued from the state of emergency helped contain the spread of COVID-19. The measures that limited movement to only essential trips proved to be effective, necessary, and justified. On the other hand, the forced hospitalization of asymptomatic patients was not necessary or proportional and did not offer a merely minimal violation of citizens' rights. It also went against guidelines from the European Centre for Disease Prevention and Control.

The rhetoric of the prime minister, who criticised all of the decisions taken by the Constitutional Court and even "recommended" for citizens to not take them into consideration, harms the democratic mechanisms and institutions by sending the message that following the Constitution is optional.

At the beginning, the majority of the population supported and abided by the lockdown measures. Some even asked for the borders to be closed for Romanian citizens from the diaspora, who were seen as disease vectors and half-citizens.

As soon as the travel restrictions were lifted, the number of cases increased. On 10th August, Romania became the leading European country when it came to the number of new cases discovered on 14 consecutive days. The authorities proved to be incapable of controlling the epidemic or, due to the proximity of the elections, did not want to enforce the current state of alert rules.

It is important to increase the level of awareness in society of the need to respect human rights and liberties, even for the people we do not agree with. Only this way we can ensure that people are better prepared to resist intimidation and protect their constitutional values.

2.4.3.3. Freedom of conscience:

The medical crisis brought limitations upon religious practices. At first, only indoor activities for groups larger than 100 persons were suspended, but as the crisis evolved, all public masses were forbidden. Services continued without the physical presence of parishioners and were broadcasted online or in the media. Christen-

ings, marriages and funerals were allowed, with a limit of eight participants. Upon request, the priests could pay home visits to the parishioners, while respecting the sanitary norms.⁶⁰ During the Orthodox Easter Celebrations, priests and volunteers brought the "Resurrection Light" to people's homes.

All measures decided on by the authorities were received with reluctance or even ignored by the Romanian Orthodox Church (BOR), the majority church in Romania, although authorities did negotiate some of the measures with BOR.

The decision to forbid the attendance of parishioners of services in churches was an effective and necessary measure. It tried to violate the right of conscience to a minimal degree, but it did affect it.

2.4.3.4. Freedom of assembly:

The presidential decree stipulated that freedom of assembly was a right that may be restricted during the state of emergency, but it was not mentioned by any article in the decree or the following ordinances. One ordinance forbade the circulation of groups larger than 3 persons and another allowed movement for specific activities and other "justified reasons". This was exemplified by a mandatory written statement each citizen had to have every time they went out. Although the right to protest wasn't expressly mentioned among the justified reasons, human rights lawyer Diana Hatneanu says that people had the right to attend a protest if they filled out a statement saying they were going out for "justified reasons" and if they obeyed the distancing rules. The reason this was allowed is because if the right of protest was not expressly suspended, it means that it counts as a justified reason. That being said, most citizens had the perception that the right of assembly and of protest was suspended and this misunderstanding was not clarified by the authorities.

Activist Mihail Bumbes, from the NGO Mili ia Spirituală, organised two protests during the state of emergency. On 9th April, he protested for clean air (Bucharest witnessed bouts of severely polluted air during the lockdown). A month later, he and another man protested in front of the Ministry of Interior against "the police abuses during the state of emergency". If for the first protest Bumbes managed to avoid being fined, for the second he received a fine of 3,000 lei (625 euro) on administrative grounds - and his statement was incorrectly filed. He was also publicly criticised for protesting during a medical crisis, although he was wearing a mask, maintained social distance and did not endanger the health of others.

On 15th May, the state of emergency ended and the legislation for the state of alert had not been adopted in a timely manner. Several hundred people gathered for two days in front of the government, protesting against "dictatorship" and contesting the existence of COVID-19, without adhering to the distancing measures or wear-

ing masks.⁶¹ Many voices condemned and mocked the 'anti-COVID' protests and asked for the Gendarmerie to fine and disperse the participants. Through the voice of the Ministry of Interior State Secretary, Raed Arafat, public authorities condemned the protests from 15th – 16th May as "risky for society", arguing that "we will lose in the next period everything we worked [for] together, if we do not obey the rules."⁶²

The state of alert which started on 18th May was supposed to have weaker interdictions, but, in fact, officially forbade protests.⁶³ Nonetheless, several protests were organised. On June 18th, dozens of protesters gathered to ask the president not to sign a change in the education law banning the teaching of gender studies in the country's schools and universities.⁶⁴ Some of the participants received written warnings from the Gendarmerie. Although weak in physical presence, the protest was strong and visible online. Universities from across the country, student associations, NGOs, and citizens all reacted, voicing opinions and gathering more than 50,000 signatures for a petition. Small rallies continued to be held, like the one on 10th August 2020⁶⁵, to mark the two years anniversary of the largest anti-corruption protests organized in Romania, when the Gendarmerie received orders to attack protesters.

Banning protests in public spaces during the state of alert, even if they were in compliance with the distancing measures, makes this restriction disproportionate and unjustified - especially as other public gatherings are allowed, like open air concerts of less than 500 people.

It is important to discuss the limits of the freedom of assembly during a crisis situation in order to start a dialogue, both in society and with the public institutions, about striking a fair balance between protecting public health and maintaining the right of citizens to protest against measures they consider unjust.

2.4.3.5. Freedom of media/freedom of information/ the right of information:

The authorities excelled at creating a lack of transparency and made it an official position to bash any information directed at citizens from sources that were not deemed "official". The right of information, which includes the right of the media to ask questions and to have access to public interest information, was severely affected. The state of emergency decree doubled the official response time for freedom of information requests, and allowed authorities to centralise the dissemination of information. Most of the communication was done through press statements, without any questions from the media. If journalists from Bucharest had a chance to verify some of the information, this centralized way of communication made it almost impossible for the local media to verify information and properly inform their public. As a result, their questions remained unanswered most of the time.

The Center for Independent Journalism (CIJ), on several occasions, raised the issues of transparency, access to information and freedom of the media, with the purpose of urging authorities to respect the role of the media.⁶⁶ Moreover, CIJ sent a freedom of information request signed by 97 newsrooms and 165 individual journalists⁶⁷ asking for more transparency. It was not officially answered, but authorities started to release more information.

The state was allowed to block content for presenting "false information regarding COVID-19", with no mechanisms for appeal. The decision to cut access to 15 websites was taken by the Strategic Communication Group, and the technical implementation of said removal was done by the National Authority for Management and Regulation in Communication (ANCOM). Once the state of emergency was over, ANCOM restored access to all blocked content.

The measures limiting the freedom of the media and access to information proved to be ineffective, disproportional, and unnecessary. The centralised communication did not offer enough necessary information for the population to understand the situation, and contained factual errors, which in turn increased their already existing lack of trust in the government's decisions. Also, the decision to allow a non-transparent authority to block content and limit the freedom of expression is highly dangerous for the democratic process. This time it was practiced with restraint, but the mere usage of censorship by the state is more than threatening, especially as it accustomed citizens to the idea that it is "ok" to censor communication, especially if you do not agree with it.

2.4.3.6. Freedom of communication:

The Ministry of Health, and the City Hall of one of Bucharest's districts, announced in early March the launch of a pilot project aiming to monitor 1,000 self-isolated coronavirus suspects through the use of electronic bracelets.⁶⁸ In Cluj, the Institution of the Prefect stated that people will be monitored by drones, to check if they obey restrictions.⁶⁹ No other information was made public regarding the implementation or the outcome.

On 24th March, Prime Minister Ludovic Orban publicly announced that the Romanian Service for Special Telecommunications (STS) was working on an app which would allow the monitoring of individuals in self-isolation or quarantine,⁷⁰ a measure included in one of the military ordinances. On 11th April, the STS reported that "at the moment, the STS does not have the necessary technical and operational capabilities to develop an app for monitoring citizens in quarantine or self-isolation."⁷¹ On 23rd April, the prime minister publicly declared that "there is a very serious debate in the Romanian society about using apps and, if they will ever exist, they will be installed only by the citizens, if they will want, with their express consent."⁷²

The local authorities in Braşov decided to install, at the entrance of the City Hall, three video cameras with thermo-vision capabilities and face recognition technology. According to the Mayor of Braşov a body temperature higher than 38 °C would trigger "an alarm that will signal the case and the access in the city hall of that person will be forbidden. At the same time, when the alarm is triggered, a set of images of that person will be automatically sent to a predefined email address, to allow the subsequent identification of the person, if necessary".⁷³

Although the prime minister declared that the discussions about using technology had stirred reactions within the society, these debates were only marginal and, moreover, the society, as a whole, seemed to support these types of actions when dealing with the pandemic and did not see the long term effects on privacy.

2.4.3.7. Right to access to justice:

The state of emergency decrees stipulated that "during the state of emergency, the judiciary activity will continue for the cases of extreme urgency".⁷⁴ This affected mainly civil cases, most of which were suspended, with only the urgent ones continuing. Submitting new cases was possible by sending the documents by post or email. Penal cases also went on, especially if they were about preventive measures. In some cases, video conference systems were used. Additionally, prescription terms were suspended during the state of emergency, and as a result people who wanted to contest fines received during this period of time had 14 days after the end of the state of emergency to do so.

The presidential decrees stipulated that cases referring to the state of emergency would not be suspended, but, nevertheless, not many people sought justice because the legislation in place did not offer them any legal way for attack, and the normal procedures were not suitable to bring an answer in due time.

These limitations affected the right to justice of citizens, making the justice process even longer than normal in Romania, where trials are already considered too slow. The medical crisis will continue to affect the course of justice in Romania, where many of the courts are small and distancing procedures are not easily applicable.

2.4.4. Restricted political freedoms and rights as a part of the governmental approach against COVID-19

2.4.4.1. Right to vote and get elected:

2020 was supposed to be an electoral year in Romania, with local elections in June and parliamentary ones in early December. In April, the government decided to postpone the local elections, "a wise decision", according to Septimius Pârnu, from the NGO Expert Forum. As he elaborates: "They couldn't do anything else at that moment, we were already seeing what happened

in France, for example, with the explosion of cases after the local elections". After months of constitutional battles between the government and the parliament, the new election date was decided by the parliament and was to be held on 27th September.

The pandemic will affect the electoral campaign, with smaller parties having bigger problems. For instance, it will be harder to collect signatures and to advertise their political offers if they are unable to go out and directly meet with the citizens. Likewise, they will not have enough airtime to present their programs on TV. They will move online, but will be isolated from the citizens that are not used to informing themselves in this way. To somehow ease the effects on the electoral process, The Permanent Electoral Authority decided that, for the local elections, the political parties and the independent candidates can also electronically collect signatures if they use a platform that respects the GDPR provisions.⁷⁵

Elena Calistru, President of the Funky Citizens NGO, says that the independent observation of the legality of elections is under threat because, at the moment, there is little information as to whether the health of the observers would or would not be at risk. Moreover, the NGO protested against the decision of the parliament to have only one day for the elections, with the argument that this decision will affect the representativity of the elected, due to the small number of people that would be able to vote.⁷⁶

The pandemic challenges the state in many regards, but the way the authorities will decide to respect electoral rights is fundamental for their understanding of the democratic process. Until now, the Romanian authorities have shown little concern for ensuring the right of citizens to have safe, correct and representative elections. The decisions taken by the authorities are not sufficient to answer all of the questions that the medical crisis brings to the election process. For example, until mid-August, there was no clear information on how the COVID-19 patients or people in isolation, or quarantine, would be able to vote. Normally, hospitalized patients would vote using a mobile voting booth, but this will not be possible in this context. Traditionally, local elections have small attendance numbers, with local turnouts attracting only 10-15% of the population. There is a high risk that if the parliament and the government do not start working together to ensure a safe framework that the representation will be even smaller in this electoral cycle.

2.4.4.2. Right to legislation:

The last few months were marked by attacks between the opposition and the ruling party. The opposition, having a parliamentary majority, showed a desire to score purely political points for the next elections, by leaving the government to handle the pandemic alone, while simultaneously criticising them in the parliament. Moreover, the opposition also drafted populist legislation,

such as postponing bank loan payments until the end of 2020.

There was a continued battle at the Constitutional Court between the parliament and the government over the mandate to draft specific measures. In some cases, the RCC ruled that the parliament had to have more oversight on the decisions of the government. However, there were also decisions made by the Constitutional Court that weakened the control of the parliament over the government, like when it decided that the government could extend the state of alert without parliamentary approval.

2.4.5. General evaluation and the response by civil society

In Romania, as it is all over the world, the COVID-19 pandemic acted like a wedge in society, and as a catalyst for our pre-existing problems, shedding light upon our fears and making dialog seem impossible. The public discourse is divided between the “believers” and the “non-believers”; between protecting the economy and protecting public health; between loving the doctors and attacking them for declaring more COVID cases “for money”. Journalists received one of the strongest hits. Never in my experience have I seen such a contestation of their work and such a level of hate and vitriol in the comments of the articles posted on social media.

As previously mentioned, the reactions in the civil society were relatively limited. At the beginning, citizens agreed and supported the measures and condemned protesters, or, in some cases, even asked for stronger quarantine measures. Civil rights were seen as a non-necessary “extra” during the pandemic when the right to health or security prevailed. The decision that was most vigorously contested was the one forbidding religious services

and public attendance of the Easter celebration. Due to those reactions, and the lobbying of the Romanian Orthodox Church, the authorities allowed priests and volunteers to bring the Holy Light to people's houses.

Several civil society organizations have been vocal since the start of the state of emergency. The Center for Independent Journalism asked, on several occasions, for the protection of the freedom of expression, transparency and the right of journalists to have access to information. They also drafted reports monitoring the status of the freedom of expression and submitted them to the Ombudsman.⁷⁷ Apador CH, Center for Resources for Public Participation (Ce Re) and several other CSOs that formed the Group “NGOs for Democracy” reacted to the long list of liberty violations.⁷⁸ Expert Forum and Funky Citizens monitored how the pandemic affected the right to vote and how procurements were conducted during these months. Dăruiește Via a, an NGO with a focus on the healthcare system, criticized the government for the decision to forcibly admit asymptomatic patients into the hospital, and the Foundation for Civil Society Development facilitated a meeting between CSOs, the prime minister, and other members of the government.

As the months passed, the fatigue settled and the authorities continued to fail to properly communicate with their citizens, thus, the support for restrictive measures started to wane. Opposing voices, mostly from conservative camps, started to build on this fatigue and invoked civil liberties as a way to justify their mantra for not obeying rules, like social distancing or mask usage.

These months have proven how vulnerable we are when protecting and understanding the values of civil liberties, and how far away we are, as a society, from having a real conversation about balancing them during crisis situations.

3. Conclusion

Dr. Bican Şahin // Ivaylo Tsonev

The public authorities, in the various countries discussed above, responded to the first wave of the COVID-19 pandemic as a public health threat and an instance of emergency. As it is attested to by the country reports above, many individual freedoms were, and remain to be, curtailed. Some of these limitations were reasonable and proportional in relation to the anticipated threat. However, some of them proved excessive. Yet, the people in the four countries researched were not alarmed by these violations of their individual freedoms. Some quietly acquiesced while others enthusiastically supported the limitations placed on their freedoms. During emergencies, most individuals think that the best course of action is not to question authority, but rather to follow it to the letter. It is believed that, during an emergency, if one questions the decisions of the authorities, the effectiveness of the response is reduced. Thus, those who question authority are shunned by most of the members of the society and can even be silenced by said authorities. Given the high levels of support/approval for the governments' actions against COVID-19 during the initial stages of the global pandemic, it is interesting to note that by the end of August 2020, it seems that those who were alarmed by their government's abuses of power were in fact a minority. This poses a direct threat to our freedoms and democracies, as these tendencies have the potential to re-appear across a multitude of different contexts in the future.

In a liberal democracy, citizens who are disturbed by any given government policy may deploy different methods to reverse, or mitigate said policy. They may petition the government, lobby with lawmakers, take the issue to court, or hold protests. Likewise, in the countries researched in this study, the citizens resorted to any and all of these methods.

As an instance of petitioning the government, the Center for Independent Journalism Romania sent a petition to the government signed by 97 newsrooms and 165 independent journalists concerning freedom of information. During the pandemic, the Romanian citizens gathered more than 50,000 signatures to protest the proposal to prohibit the teaching of gender studies at the universities. In Romania, in response to the restrictions of freedom of speech, the Center for Independent Journalism wrote an open letter to the government to express their concerns. In Bulgaria, lawyers and civil society representatives voiced their opinion through independent media channels and a group of jurists wrote articles and prepared videos about the violations of freedom of speech and the right to information. As an example of contacting law makers, in Romania, the Center for Independent Journalism directly contacted the Prime Minister.

With respect to freedom of assembly, the Bulgarian Helsinki Committee challenged the decision of the government that prohibited gatherings of more than 10 persons at the Supreme Administrative Court. With respect to freedom of movement, the Constitutional Court of North Macedonia revoked the government measure that restricted the movement of people above the age of 65 on the basis of their income level. Again, in Romania, civil society members appealed to Ombudsman in response to limitations set on their freedom of speech.

Monitoring the governments' actions and reporting them was another measure that civil society actors employed in our cases. In North Macedonia, the European Policy Institute and Center for Legal Research Analysis conducted monitoring with respect to violations of freedom of speech. The European Policy Institute also monitored the actions of the government with respect to its decision to derogate from The European Convention on Human Rights during the pandemic.

There were also protests on both individual and mass levels. For example, in Bulgaria one citizen broke his television set in order to protest the restrictions on freedom of speech. In Romania, people hung banners from their balconies. A Romanian activist, Mihail Bumbes, organized two protests during the state of emergency. While one protest was related to air pollution, the other was against "the police abuses during the state of emergency". At a mass protest in Romania, citizens rallied against the government's plans to prohibit the teaching of gender studies at universities. Although there was not a strong physical presence at this protest, it was very visible on online platforms, and was accompanied by a signature campaign.

Another important method of resisting violations on freedom was the establishment of advocacy networks, both on national and international levels. One example of such a network, and show of solidarity, can be found in the actions of Bulgarian actors who fought back against the introduction of checkpoints at some of the Roma neighbourhoods. In order to increase the impact of the resistance, the Bulgarian Helsinki Committee informed the United Nations and Amnesty International of these violations. In turn, these international organizations put pressure on the Bulgarian government. Since all four countries included in this research are affiliated with the European Union and Council of Europe, these latter institutions also provide windows of opportunity for members of civil society in their fights against violations of individual freedoms. International advocacy networks give leverage to local actors vis-à-vis their governments. Keck and Sikkink (1998) explain this with the boomer-

ang metaphor. The local actors, who might not be strong enough to have an impact on the state, throw the boomerang towards their international partners; these partners in turn may have influence on international organizations such as the United Nations or European Union which, in turn, may have impact on the states.⁷⁹ Thus, the boomerang thrown by the local actor goes through international partners and organizations and comes back at the state.

It must be stated that not all of these attempts at preventing freedom/ right violations were successful. All of these strategies seem to be good ones. However, there may be many factors at work that determine the success or failure of any given strategy. One explanation as to why some strategies work while others fail is provided by E. Baksanova.

[W]hen the government had made mistakes due to lack of competence and lack of experience in emergency situations rather than intentional wrongdoing, it was inclined to fix those mistakes and listen to the experts (for instance, the Ministry of Health was sometimes and at least to some extent prone to listen to experienced lawyers when it had issued inadequate orders). However, there were instances of demonstration and abuse of power the criticism about which was not listened to – this applies both to some of the legislative changes and the actions carried out by the prosecutor's office and the police. It appeared that the government was ready to acknowledge and repair only those mistakes that did not hurt the status-quo.

It was stated above that in a state of emergency, generally, people tend to follow the authorities. It is believed that the efficacy of the measures decrease if individuals begin to question them. However, the study conducted by ISSHS in North Macedonia brings an important qualification to this statement. Accordingly, in North Macedonia, the citizens initially, and overwhelmingly supported an authoritarian approach in the fight against the coronavirus disease. However, when those authoritarian measures that curtailed individual and civic freedoms reached a level where social and economic rights, and the right to privacy and family life, were infringed, the support behind them began to decline. As Dr. Katerina Kolozova put it earlier in this study, "The more restrictive and authoritarian the measures were the more vocal and almost aggressive the citizens' outcry in the social media was." Furthermore, the citizens showed less tolerance towards the violations of cultural and religious freedoms.

It is possible to make a generalization here and assert that at the early stages of an extraordinary situation people are more willing to accept the restrictions of freedoms and rights. However, as time passes and the restrictions are prolonged, and their intensity increased, the people lose their tolerance towards such measures. If this statement is correct, then, we could argue that it would be wise on the part of civil society actors to be much more active in raising public awareness about the negative impacts of freedom violations on their individual lives and the quality of democracy in general. At the outset, these warnings may not be heard by the general

public. But, as time passes and the impact of those restrictions is personally felt, the public sensitivity increases and higher levels of engagement are to be expected.

Another lesson that can be derived from this research is that the denial of an emergency is not a good strategy. For example, in North Macedonia, some groups denied the existence of the virus and carried out protests without any precautions. The reaction by the general public to this was to ridicule those groups. They were not taken seriously. Of course, it is also possible that the states may manipulate facts and present normal situations as instances of an emergency. So, liberal actors should use sound judgment, and make use of all of the information available to decide whether there is a real emergency or not. When they decide that there is a real threat, then, they should accept the introduction of exceptional measures. However, at this point, the liberals must insist that the measures must stay within the bounds of the law, and that restrictions on freedoms satisfy certain criteria such as effectiveness, proportionality, justice, necessity, and maintain a minimum violation of rights. The fact that we accept the threat does not mean that we automatically endorse the methods introduced by the state to fight it. For example, liberals can accept the mandatory wearing of masks. However, they cannot accept a total ban on the freedom of assembly, when all precautions such as wearing masks and physical distancing are followed.

This research examines the government measures used to combat the COVID-19 pandemic. with a view to individual freedom, as a case study to any situation where governments might take a course of restricting civil and political rights with an internal or external justification. It is emphasized that to fight the "invisible enemy" our societies do not have to unilaterally give up their liberty. Under strict conditions, certain limitations of political and civil freedoms might be temporarily applied. However, to be acceptable, these limitations must satisfy the criteria of necessity, proportionality, and be of a non-discriminatory character and correspond to general human rights obligations. Furthermore, any restrictions need to be applied in an environment of high public trust, inclusiveness, and transparency. Through the case studies in this paper, it has been well observed that some of the measures taken by the governments violated those criteria. In the second step, the reactions by the civil society actors in response to these unacceptable government actions were surveyed. Various strategies were identified and reviewed. As discussed above, some of these strategies were successful and some were not. It goes without saying that these strategies are not exhaustive, but rather represent a selection of the most popular civic reactions to the restrictive measures imposed by the government as a part of the anti-COVID-19 approaches during the first wave of the pandemic.

The country cases analysed present a good set of key takeaways for a meaningful and evidence-based preparation for the future.

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