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THE IMPACT OF COVID-19 PANDEMIC ON HUMAN RIGHTS, CIVIC ENGAGEMENT, CONSULTATION, AND DEMOCRATIC PROCESSES WITH A FOCUS ON MEDIA AND CIVIL SOCIETY IN ALBANIA

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Irena Dule

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I. Introduction

Participation of civil society in the country's democratic processes is crucial for the materialization of what is known as "*participatory democracy*". Such participation is expressed through engagement in public consultations during the decision-making/legislative process; through participation in reporting and investigation of other democratic events and processes; through manifestations and protests; through monitoring of democratic processes, etc.

Civic engagement becomes even more important and significant in the case when a state of natural disaster has been declared, a moment when governments, being democratic or not, tend to rule/control over as many citizens as possible, to gather much power in their hands. Moreover, this is even more likely and encouraged by the conditions, when the daily routine is interrupted and there are restrictions on fundamental human rights and freedoms.

It is only through civic participation in the monitoring of democratic processes that the necessary conditions are set to preserve democracy and save it from falling into autocracy. The role of the media and civil society organizations, as specialized and structured groups, is of particular importance in this context.

The countries that respect democratic aspects, such as freedom of expression, public participation in decision-making, which in general encourage civic engagement in the country's democratic processes, are believed to be more effective in protecting their citizens than undemocratic regimes.

Therefore, the focus of this article is the role of the latter in the participation in democratic processes during the state of natural disaster caused by the Covid-19 pandemic.

This article comes as a need to assess the situation when Albania faced two consecutive decisions taken to declare the state of natural disaster - the first imposed by the earthquake of 26 November 2019 and the second having a longer duration and greater impact, due to the Covid-2019 pandemic. This article is focused on the impact that the state of natural disaster declared due to Covid-19 had on the engagement of media and civil society organizations in the democratic processes of the country.

This article aims to highlight the followings:

1. The legal framework that defines the restrictions on the rights and freedoms of citizens and the limits of citizen participation in democratic processes;
2. The behavior of public bodies with regard to civic engagement, where the main actors are the media and civil society organizations, during the state of natural disaster declared due to the Covid-19 pandemic;
3. Give some recommendations to improve the legal and administrative practice in case of declaring a state of natural disaster.

II. Methodology

Civic engagement in democratic processes in countries with fragile democracies, such as Albania, always poses a challenge. This kind of engagement, in the time of natural disaster, a situation that is accompanied by a series of restrictions on fundamental human rights that are closely linked with the democratic processes, becomes even more difficult. Therefore, this paper deals with this issue by evaluating the problem both theoretically and practically.

This paper raises the following questions for discussion:

1. What are the main components of civic engagement in democratic processes?
2. What are the restrictions that affect elements of civic engagement during a state of natural disaster?
3. Is there any evidenced case of violation of civic engagement during the state of natural disaster declared by the Albanian Government due to the Covid-19 pandemic?

To address the above questions, the following were taken into consideration in the research:

- The respective legislation governing the situations when the state of natural disaster is declared, the legislation that defines the main components of civic engagement in democratic processes.
- Other sources, such as explanatory reports accompanying the acts of the Parliament, the minutes of the Parliamentary Committees meetings, articles, and reports of evidenced cases of violation of civic engagement during the state of Covid-19 natural disaster.
- Semi-structured interviews and opinions obtained from police officers, leaders of civil society organizations, journalists, and lawyers involved in criminal, administrative, or civil cases defending the journalists or activists, who eventually have been impeded in their work and mission as engaged citizens in democratic processes.

This paper is organized into two parts:

- The first part explains the restrictions that are allowed on fundamental human rights and freedoms after the state of natural disaster is declared.
- The second part deals with the behavior of the legislative and law enforcement bodies towards civic engagement during the state of natural disaster in Albania due to Covid-19. This part studies some examples of human rights violations and consequently the impediments to civic engagement in this context.

III. Definition of the state of natural disaster and the restrictions on human rights under the Albanian legislation

3.1. *What is the state of natural disaster*

According to the Law on Civil Protection, "*the natural disaster*" is defined as any disaster caused by extreme natural events, such as earthquakes, floods and overflows, extreme and prolonged temperatures, landslides, avalanches, strong winds on land and sea, massive forest fires, massive infectious diseases and others events that affect the lives of people, animals, property, cultural heritage and environment.¹

¹Law No. 45/2019 "On Civil Protection", article 3

The Constitution and the *Law on Civil Protection* are the basic regulatory framework that establishes the activities and measures to be taken by state bodies following the declaration of the state of natural disaster. According to this legal framework, the government has the right to set the extraordinary measures that can be imposed and implemented during the state of natural disaster, to cope and mitigate the consequences caused by disasters as per subjects. These measures include restrictions on the fundamental rights and freedoms of citizens.

The existence of a state of natural disaster is decided by the Council of Ministers for a period not longer than one month, a duration that may be extended by the Albanian Parliament.² This term can be extended for a second term, only with an act of the Parliament. There is no maximal limit on how long the Parliament can extend such a situation. This loophole has been resolved by the Constitution. In case of declaring a state of emergency, the Constitution provides that the Parliament, upon the request of the Council of Ministers, may impose the state of emergency in a part or entire the territory of the state. Such a state of emergency can last for as long as the danger persists, but no longer than 60 days. This term may be extended every 30 days, for a period not exceeding 90 days.³

In the case of the state of natural disaster declared due to Covid-19, the Albanian Parliament decided to extend the state of disaster by two months. Lawyers and academics⁴ considered this as a wrong and unconstitutional act because: (1) the extension cannot be longer than the initial term, so if the government had set the duration of this situation by one month, the Parliament could not extend it by more than another month, and (2) in the absence of a specific legal provision, an analogy with a similar existing provision should be made, which, in this case, is the state of emergency.

Based on these arguments, it would be fair for the Parliament to set a term shorter than the two-month duration, with a reservation of its extension, in case of valid grounds. The decision of the Parliament, in this case, was not grounded on any argument as to why the state of disaster should be extended, or why it should be extended by two months. No argument was reported by the Government that proposed the extension of the term, which by rule, should have attached the act proposed by the Government for the extension of the state of natural disaster. Nor the minutes of the parliamentary session⁵ did refer to any argument or scientific data or experts' opinion as to this fact. This aspect is crucial, because the extension of the state of natural disaster in abusive ways prolongs the possibility for eventual abuse of power, to the detriment of the constitutional freedoms of citizens.

3.2. *Fundamental human rights and freedoms that can be restricted during a state of natural disaster*

Declaring the state of natural disaster is useful to take measures to prevent or eliminate the consequences of a natural disaster. These measures are considered extraordinary and, at the same time, temporary. They should last as long as the state of natural disaster persists.⁶ During the state of natural disaster, some democratic processes are very restricted, such as, for

²Article 174 of the Constitution

³Article 173 of the Constitution

⁴ <https://boldnews.al/2020/04/22/shtyrja-e-gjendjes-se-fatkeqesise-natyrore-avokati-braho-eshte-antikushtetuese-video/>

⁵See the minutes of the meeting of 23 April 2020, of Albanian Parliament, <https://www.parlament.al/Files/Procesverbale/20200430161946Procesverbali%20i%20seances%20%202023.04.2020.pdf>

⁶Article 170, paragraph 1 of the Constitution

example, no local elections or referendums can be held, nor can a new President be appointed.⁷ Additionally, other measures are taken during this situation concern restrictions on human rights that directly limit the participation of citizens in democratic processes, therefore the latter risks remaining unsupervised, as this paper will explain below. In principle, the restriction on human rights is allowed. However, no restriction can be imposed if certain criteria are not met:

1. The restriction must be provided by law.⁸
2. The restriction must be proportionate or indispensable in a democratic society.⁹
3. The restriction must serve to the public interest.

The Albanian Constitution provides explicitly the fundamental rights that can be restricted, which are as follows:

- Inviolability of the residence and body search.¹⁰
- Freedom of movement and free choice of residence.¹¹
- Expropriation against a fair compensation¹²
- The right to choose freely the profession, the place of work, and how the means of living are earned.¹³
- The right to strike.¹⁴

On the other hand, not every fundamental right can be restricted, even in cases of a state of natural disaster. The Constitution explicitly provides the case when the restriction of fundamental rights is not allowed. According to the respective provision, no one shall be required to perform forced labor, except in cases of execution of a court decision, military service, and service arising from a state of war, from a state of emergency, or from a natural disaster that threatens the life or health of people.¹⁵

It should be stressed that the "*Law on Civil Protection*" gives a special role to the non-profit organizations during the state of natural disaster. Therefore, all these entities have the right to be permanently informed and updated on the hazards posed by disasters, as well as about the necessary measures and the measures taken for their management. The civil society associations and organizations have the right to conduct studies on the reduction of risk from natural disasters, to present the relevant conclusions, and to be partners in the implementation of disaster risk reduction policies.¹⁶

⁷Article 170, paragraph 6 of the Constitution

⁸Article 170, paragraph 2 of the Constitution provides that: "*The principles of the activity of public bodies and the degree of restriction of human rights and freedoms throughout the situations that require the taking of extraordinary measures, are defined by law.*"

⁹Article 170 of the Constitution, paragraph 4, provides that: "*The acts undertaken in the framework of emergency measures should be proportionate to the degree of risk and should aim to restore the conditions for the normal functioning of the state, as soon as possible.*"

¹⁰Article 37 of the Constitution

¹¹Article 38 of the Constitution

¹²Article 41, paragraph 4 of the Constitution

¹³Article 49 of the Constitution

¹⁴Article 51 of the Constitution

¹⁵Article 26 of the Constitution

¹⁶Chapter 9, Law no. 49/2019, "*On Civil Protection*"

3.3. *Albania's derogation from the European Convention on Human Rights*

Albania has ratified the European Convention on Human Rights (ECHR) in July 1996, together with its additional Protocols 1, 2, 7, and 11.

Like any ratifying party to this Convention, Albania may derogate from certain rights provided for by the latter, as the Convention has granted such a right to member states. However, such derogation must be temporary and the respective state must keep the Council of Europe continuously updated on the situation that was the cause of such derogation.

Additionally, according to Article 15, the first paragraph of ECHR, in any case, the states cannot derogate from Articles 2, 3, 4, paragraph 1 and Article 7 of ECHR, nor from the Protocols 6 and 13 of the Convention, respectively being the right to life; prohibition of torture; prohibition of slavery and forced labor; prohibition of a punishment without law; abolition of the death penalty.

Albania has previously derogated from the Convention in 1997 and resumed its full implementation in October 1997.

The derogation during the pandemic is the second derogation on the grounds of declaring the state of natural disaster, which has brought about restrictions on fundamental human rights and freedoms in respect to the free movement, assemblies, rallies, manifestations and mass-gatherings, the right to property, education process, administrative procedures and the provision of public services. On 31 March 2020, Albania asked the Council of Europe, through a note verbale, to derogate temporarily from Article 8 and Article 11 of ECHR, as well as Articles 1 and 2 of the Additional Protocol to the ECHR and Article 2 of the Protocol 4.

This notice was sent after the Council of Ministers' decision to restrict certain constitutional rights through the declaration of the state of natural disaster on 24 March 2020.

The consequences of the derogation from the Convention are related to the inability of the citizens to appeal before the ECtHR the acts and actions of the state bodies that restrict their fundamental rights.

During the pandemic, only three western countries asked for the derogation from the Convention.¹⁷ However, we can mention the case of Italy, which despite the collapsed health system and the country suffering from devastating consequences in general, did not derogate from the Convention. The list of 10 states that requested the derogation from the Convention contains countries with new or hybrid democracies.¹⁸

The derogation from the Convention is the shortest path, but it should be the last resort, and not to be chosen when the principle of balance of rights and obligations is not desirable to be applied. If the state was willing to apply this principle, there would be no reason to derogate from the Convention. In any case, when judging the restriction of human rights, the ECtHR assesses precisely the balance of proportionality, or otherwise said, it ponders whether the restriction of a right is indispensable in certain circumstances in a democratic society.

¹⁷*"Emergency measures and the rule of law in the age of Covid-19"*, Democracy Reporting International, 31 March 2020
https://democracy-reporting.org/dri_publications/emergency-measures-and-the-rule-of-law-in-the-age-of-covid-19/

¹⁸Derogation in time of crisis, September 2020,
https://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf

The withdrawal of the derogation was notified to the Council of Europe on 25 June 2020.

IV. Restrictions on fundamental rights and civic participation in democratic processes were made when judicial control was absent.

Launched in 2017, the justice reform brought about a series of negative consequences, where among the most crucial, is the taking out of the functioning of the Constitutional Court. The declaring of the state of natural disaster due to Covid-19 found the country without a functioning Constitutional Court. In this situation, the acts defining the restrictions on human rights and resulting in impeding the media and NGOs' engagement in democratic processes were issued and adopted without undergoing a constitutional review. In principle and practice, this increased the possibility for abuse by imposing these measures, even when they were not backed by the Constitution. In other countries, where the Constitutional Court is functional, many measures restricting fundamental rights, similar to the measures taken by our country, were declared unconstitutional by the respective Constitutional Courts. Here, we can mention the case of the Decision of 31 March 2020 of the Kosovo Constitutional Court, which considered the declaration of the state of emergency as ungrounded¹⁹ and the cases ruled by the German Federal Constitutional Court,²⁰ the Constitutional Court of South Africa,²¹ etc.

In addition to the non-functioning of the Constitutional Court, among the measures taken during this time was the suspension of the activity of ordinary courts, for ordinary cases, leaving them in operation only for urgent cases, such as criminal measures and measures for domestic violence cases. This made the decision-making of the executive completely free during this time and uncontrollable by the judiciary, which is contrary to the principle of control and separation of powers, *the check and balance principle*. The suspension of the activity of the courts, in particular in the absence of the Constitutional Court, during this time, was an extreme measure, because there could have been less restrictive measures available, such as restricting the presence of the public during the hearings, conducting each hearing in ventilated rooms, etc. While the judicial activity was suspended, the commercial activity was not suspended, so the spread of the virus was more probable due to the gathering of many people indoors and often unventilated premises, such as call centers, fason manufacturing, and factories. This fact suggests that the suspension of the courts serves more to the executive and its purpose to be undisturbed in its decision-making from any eventual judicial control, and not to protect the public from the spread of the virus.

V. Restrictive measures on fundamental rights and civic engagement during the state of natural disaster were declared due to the Covid-19 pandemic.

31 March 2020 marks the date of Albania's derogation from Articles 8 and 11 of ECHR and Articles 1 and 2 of the Additional Protocol to ECHR and Article 2 of Protocol 4, but despite this, the restriction on fundamental human rights and freedoms was de facto effective from 10 March 2020, i.e. the date of the first order that was later on followed by dozens of normative orders

¹⁹<https://kosovotwopointzero.com/en/constitutional-court-decision-shows-state-of-emergency-is-not-required/>

²⁰"A Preliminary Human Rights Assessment of Legislative and Regulatory Responses to the COVID-19 Pandemic across 11 Jurisdictions, BONAVERO REPORT NO. 3/2020 6 MAY 2020", pg. 36
https://www.law.ox.ac.uk/sites/files/oxlaw/v3_bonaveroreports_series_human_rights_and_covid_19_20203.pdf

²¹"A Preliminary Human Rights Assessment of Legislative and Regulatory Responses to the COVID-19 Pandemic across 11 Jurisdictions, BONAVERO REPORT NO. 3/2020 6 MAY 2020", pg. 98
https://www.law.ox.ac.uk/sites/files/oxlaw/v3_bonaveroreports_series_human_rights_and_covid_19_20203.pdf

issued by the Minister of Health and Social Protection, much earlier than 24 March 2020²², when the state of natural disaster was proclaimed.

All restrictions on fundamental rights and freedoms, together with the normative acts, which served as a means for their restriction, made before 24 March 2020, are contrary to the Constitution and the ECHR.

Furthermore, many rights the restriction of which is unconstitutional were restricted. However, reviewing the constitutionality of measures taken in violation of fundamental human rights and freedoms is impossible in the absence of the Constitutional Court.

In addition, the suspension of judicial activity following the closure of the courts through a Normative Act²³, made it impossible to appeal before the court against individual acts restricting fundamental rights and freedoms.

The restrictions on fundamental rights and freedoms of citizens during the state of natural disaster resulted in the absence of civic participation in democratic processes, such as in legislative processes, protests and manifestations, and other restrictions on freedom of expression. The examples of these restrictions are dealt with below as case studies.

5.1. Restrictions on assemblies/ protests

The right to protest and assembly is one of the rights that were completely banned during the state of natural disaster caused by Covid-19 and after its termination. The fines for the organization of protests, provided in the normative acts, were very heavy going up to five million Albanian Lek.²⁴

In our evaluation, the prohibition of protests and assemblies is not proportionate to the above-mentioned conditions and circumstances. The legislator's intention to prevent the spread of a virus can be achieved even with less restrictive measures, such as allowing outdoor protests, while imposing a limited number of protesters, depending on the space where the protest would take place and maintaining the distance.

The effect of these measures was reflected in the lack of activity and non-organization of protests, the violent dispersal of the few protests that were attempted to be organized after the adoption of this act, as we will notice in some of the following cases.

a. Fining of civil society activists for participation in protests

In an attempted protest, where the protesters, a few citizens, protesting *against the restrictive measures and the establishment of dictatorship in the country*, two civil society activists, K.Ç. and A.G., got a 5 million Albanian Lek fine each for organizing a protest, on 15.05.2020, precisely based on the above normative act. Despite the facts that the number of protesters was small, the protest was taking place in a spacious area where the distance was kept, it being the Skanderbeg Square, the state of natural disaster and the derogation from the ECHR were not

²²Council of Ministers Decision No. 243, dated 24.3.2020 "On the declaration of the state of natural disaster" <https://qbz.gov.al/eli/vendim/2020/03/24/243/dc183551-1297-44e2-b35c-ffb33ee669c7>

²³Council of Ministers Normative act No. 9, dated 25.3.2020 "On taking special measures in the field of the judiciary throughout the duration of the pandemic caused by COVID-19." <https://qbz.gov.al/eli/akt-normativ/2020/03/25/9/ea9736ae-997b-4d4b-92d4-3e9c170552c6>

²⁴Normative Act No. 3/2020, paragraph 2, Article 3.

declared yet, the above-mentioned activists were not proven to be the organizers, yet they were heavily fined.

All fines imposed for participating in protests were annulled by a subsequent normative act²⁵, but the chilling and intimidating effect of these fines had already given their impact by turning the protests of citizens effectively impossible.

b. Suppressing the protests against the demolition of the National Theater building

The National Theater building, as an object of cultural heritage, was protected through protests, manifestations, and other activities of artists, activists, and civil society organizations in a marathon resistance of two years. The protests and other activities against the demolition of the National Theater building were a positive example contrary to the general belief of the apathy of the Albanian society to get involved in democratic processes.

The state of natural disaster was used to limit civic resistance and to demolish the building on 17 May 2020. Civic resistance was restricted in several directions, one of which was limiting of protests and manifestations. The demolition of the theater building took place at a time when protests were banned, under the measures imposed by the Normative Act No. 3/2020. The demolition of the theater building was made at an inappropriate time in the early morning (04.30 am), supported by over a thousand police officers, while artists and activists were inside the building, taking advantage of the fact that people were unable or afraid to participate in protests.

c. Suppressing the protests against the construction of HPPs

Based on the legislation produced during the Covid-19 pandemic, it results that one of the commercial activities that was not suspended, like many others, was the construction sector, where among the most opposed is the construction of hydro-power plants (HPP) on our country's rivers.

One of the HPP construction projects, against which the residents of the area and civil society had started their protests since the beginning of 2019, is the HPPs over the two rivers of Uraka and Zall i Melthit. The residents, supported by civil society organizations, had challenged this construction project in court.

Over the two months of the COVID-19 pandemic, the residents of the villages suspended the already began protest. Whereas the company *Seka Hydropower Sh.p.k*, which, in 2018, had received from the National Territorial Council the right to build the hydropower plants of Seka and Zajs in the mountainous area of the Municipalities of Mat and Mirdita, continued its work undisturbed.

On 24 June 2020, the residents of Zall Gjoçaj in Mat, while supported by civil society organizations, decided to break the rule against mass gathering and gathered at the Pyramid square in Tirana to protest against the construction of dams in this area. The Police intervened

²⁵Normative Act No. 31/2020 "On forgiving the administrative measures of a punitive nature imposed during the period of infection caused by COVID-19 and of families affected by natural disasters" <https://gbz.gov.al/eli/akt-normativ/2020/10/07/31/6a1c9d73-8efe-4e3c-9ba0-5bd734b04ef0?fbclid=IëAR0ES4wXSklUgWRNOtHH6ICBdwz9Uc6dlhmDWQ15ODKW97uuJqlC5mf4bë>

and 11 protesters were accompanied to the police station for illegal organization of assemblies.²⁶

Regarding another protest over the protection of rivers, the activist L.F., with the initiative "*To protect the rivers*", notified the Tirana Local Police Directorate on 19 June 2020 on the organization of a protest on 24 June 2020, which coincided with the termination of the state of natural disaster due to the pandemic. The protest started as notified and soon thereafter dozens of police officers blocked the passage of the protesters and accompanied the organizer L.F. to the police station, along with eight other protesting citizens. This event is under investigation by the Institution of Ombudsperson following the complaint of the environmental activist L.F.²⁷

The situation deteriorated due to the suspension of all activities of the judiciary during this period.²⁸ The lack of protests together with the absence of judicial control created favorable conditions for abusive and arbitrary actions by the Government and private companies, which used this situation, without opposition from the public, to continue their potentially illegal activity.

Likewise, many similar constructions were found in the same situation, but not all were properly reported due to the restriction of free movement in this period. Another example of HPP construction, which continued with its procedures to be provided with the respective administrative permits required to start working, is the case of HPPs over the Shushica River. The area's residents, supported by civil society, had earlier protested against its construction. Thereafter, the lack of information and prohibitions to protest made it impossible for the area's residents to protest.

In conclusion, we can summarize that all these restrictions are contrary to the spirit of indispensable restrictions allowed in the case of declaring a state of natural disaster. The right to protest can be restricted, in principle, but the purpose of its prohibition is lost when, at the same place, a large number of police officers are gathered exceeding hundreds of times the number of protesters, or when other activities that consist in mass gatherings of people are permitted.

It is worth mentioning the fact that one of the protests/manifestations held during this time, on 5 June 2020, i.e. *a march protesting over abused women and children*, was not hindered by any measure. Also, the police officers during the protest were in insignificantly low numbers that day.

This is an example of how the Government selectively decides to suppress some protests and allow some others, with the justification of the measures. It is obvious that a protest that was not made against a specific *adversary*, such as the Government, was permitted, otherwise, the protests against "*governing ways*" were banned. We must not forget that the purpose of the legislator by suppressing the protests and imposing fines was to prevent the spread of the virus through the gathering of protesters and this goal is equally realized in protests of any kind.

This conclusion is reinforced by other cases of when manifestations and mass gatherings were permitted, which were not lacking during this time, such as the inauguration of Rinia Park, on 1

²⁶<https://shqiptarja.com/lajm/tirane-proteste-per-ndwrtimin-e-heceve-ne-zall-gjocaj-arrestohen-11-persona-per-mosrespektim-te-masave-anticovid>

²⁷<https://www.publeaks.al/wp-content/uploads/2020/09/1683.pdf>

²⁸Normative Act of the Council of Ministers no. 9, dated 25.3.2020 "*On taking special measures in the field of the judiciary throughout the pandemic caused by COVID 19.*" <https://qbz.gov.al/eli/akt-normativ/2020/03/25/9/ea9736ae-997b-4d4b-92d4-3e9c170552c6>

June by the Mayor of Tirana Erion Veliaj, or the commemorations organized by the opposition on "5 May".

Therefore, it is clear that public bodies used restrictive measures to suppress selectively those protests aimed at opposing state actions. In this way, it seems that the law turned into a control mechanism, rather than a mechanism intended to protect the interests of citizens.

Additionally, the suppression of protests should have been accompanied by a suspension of activity of the public-private partnerships, which were previously contested or contestable, eventually to maintain a fair balance between the development and the public's right to protect their interests from the consequences posed by this development.

The position of the Ombudsperson regarding the freedom of assembly and protests should also be noted.²⁹ This institution considered the absolute restriction on the constitutional right to protest as unjust and unfair. The Ombudsperson's recommended that the acts banning this right should be reviewed. It also adds that during the process of preparation of new acts, careful consideration should be paid to the place where the protest/ assembly will take place if it is closed, or open, the area, the number of participants, the safeguard measures against the spread of infection, the important principle of proportionality, etc. According to the information received from this Institution, the Ombudsperson, after making an assessment of the cases on the right of citizens to protest throughout March-July 2020, issued several recommendations addressed to the following bodies: the Prosecutor General, the Minister of Health and Social Protection, the Director General of the State Police and the Inter-Ministerial Committee for Civil Emergencies. Among others, they recommended taking measures for the immediate interruption of the current practice of the State Police structures that are not allowing non-mass gatherings in closed or open areas, such as public assemblies and hearings, organized by various entities throughout the pandemic and the declaration of the state of natural disaster. It remains to be seen how these recommendations will be reflected in the future by the respective bodies.

5.2 The fining of ORA NEWS television channel as an event of restricting freedom of expression.

During the state of natural disaster due to Covid-19, restrictions were imposed also upon television broadcasting. In particular, Normative Act No. 3/2020, in Article 3, paragraph 13 provides as follows: *"All audiovisual broadcasting with the presence of more than one person, in the same television studio, that do not respect the security distance of 2 meters from one another, are punishable by a 1,000,000 Albanian Lek fine. In case of repetitive behavior, the audiovisual media is also ordered to suspend partially or completely its broadcasting, as well as the turning-off and/or interrupting the operation of the devices, after the ministry responsible for health has taken a decision which is to be implemented by the competent body".*

Such restriction, on one side, seems to be a necessary measure for maintaining health, on the other hand, turned into a mechanism of threatening certain television channels having opposing attitudes towards the current Government.

On 14.05.2020, Ora Radio and Television were fined 1 million Albanian Lek from the State Health Inspectorate (SHI) for alleged violation of the rules against Covid-19, after more guests than the number set by the rule were present in the TV studio.

²⁹<https://www.publeaks.al/wp-content/uploads/2020/09/1683.pdf>

Furthermore, one day after this fine was imposed, on 15.05.2020, ORA RTV was punished by the administrative measure of "shutting down the transmission", and the supplementary measure of "1 million Albanian Lek fine." The decision of SHI to shut down this TV channel states, among others, as follows:

"A repetitive violation of article 3, paragraph 13 of the Normative Act no. 3, dated 15/03/2020 was found in the TV studio of the "360-degree show" hosted by Mr. Artur Zheji. Six persons were present in the studio on 14.05.2020."

Such imposition of two fines in the given amount, within such a short time (in two consecutive days), consists in this case in an infringement of freedom of expression. Likewise, the national and international organizations considered this case in the same manner.³⁰ The shutting down of television broadcasting for breaching the measures taken against Covid-19 is disproportionate and infringes freedom of expression.

In this case, the issue of the proportionality of the sentence and of imposing the shutting down of broadcasting is raised for discussion. The very act of imposing administrative measures for the presence of more than two persons in a studio is disproportionate and not coherent to the purpose of the legislator. This purpose can be achieved by taking measures to keep the distance, which depends on the space of the studio. Therefore, a smaller studio can have a smaller number of guests, compared to a bigger studio.

The violations of freedom of expression were also noticed during the protests against the demolition of the National Theater building, on 17 May 2020, where in addition to the restrictions placed on the protesting activists, restrictions were introduced also on the journalists, who were not allowed to approach the scene and those that were present were subject to violence. Such was the case of the journalist M.Z., who got fined³¹ and violated by police officers while being accompanied to the police station, and then while at the Military Hospital, for filming the moment when a group of protesters was leaving the Theater courtyard. The journalist A.L. was also reported to have been violated for asking the police officers to refrain from violating one of the protesters on that day.

One of the indirect ways of violating freedom of expression was through obstructing the flow of information. During the state of natural disaster, the most active institutions, due to their role in this situation, such as the Ministry of Health and its subordinate institutions, did not respect the right to information. According to the register of complaints of the office of the Commissioner for the Right to Information³², a large number of complaints were filed against this Ministry and its subordinate institutions and the Municipality of Tirana. The investigative journalists consulted for this article, confirm that during this time, they have constantly requested information from these institutions, but received no feedback in most of the cases.

The measures that restrict the freedom of expression and the right to information are not reasonable during a state of natural disaster. Information is crucial for the public to understand the risk and protect themselves. Restriction of information has negative effects on the public trust in public authorities. Any restrictive measure, whether direct or indirect, taken through

³⁰<https://kshm.al/2020/08/08/reportere-pa-kufij-u-ben-thirrje-autoriteteve-shqiptare-te-respektojne-lirine-e-medias-pas-sekuestremit-te-pasurive-te-time-News/>,
<https://citizens-channel.com/2020/05/27/gjobat-ndaj-ora-news-raportohen-ne-platformen-e-lirise-se-medias-ne-keshillin-e-evropes/>

³¹He was fined under decision No. 339, dated 18.06.2020 of the Police Commission No. 3, Tirana Local Police Directorate.

³²<https://www.idp.al/regjistri-i-kerkesave-dhe-pergjigjeve-2020/>

mechanisms such as fines or detention of journalists and media people by the police officers, are unconstitutional and the violence exercised cannot be justified under any circumstances or towards anyone.

5.3 The absence of public consultation while taking political initiatives, in violation of the required transparency.

A series of different policy initiatives were adopted during the state of natural disaster due to Covid-19, without undergoing public consultation, in the absence of the necessary transparency.

Despite having in place a regulatory framework³³ for holding public consultations, this framework was not applied during this period due to the suspension of public consultation under the Normative Act No. 3/2020.

Whereas, on the other hand, the legislative activity or the decision-making process itself should, in principle, be reduced to the extent necessary to address any current problem the state is facing. These activities should in particular be restricted upon reforms or substantial legislative amendments.

In this spirit, the Constitution stipulates that, during any situation requiring the need to take extraordinary measures, no amendment shall be made to the Constitution, the laws on central and local government elections, the laws on extraordinary measures.³⁴

The Law on Public Consultation has exempted from its scope of application the acts adopted in a state of emergency. The legislator has, however, made such adjustment having in mind that under such circumstances, the acts, which due to their significance are not easily amendable, such as the Codes, cannot be adopted. The legislation was drafted and should be implemented in coherence, as this is the only way to keep the balance.

The executive and legislative bodies did not observe the above-mentioned principles, during the state of natural disaster for they continued their work activities without being affected by the state of the pandemic. In this way, public consultation was completely avoided throughout such legislative activity.

Among the most important initiatives undertaken during this time, we can mention the legal initiatives for the amendment of the Constitution and the Electoral Code. Likewise, is the approval of the amendments to the Criminal Code, and the Municipal Council Decision No. 50, dated 15.05.2020, *approving the demolition of the National Theater building, in the ownership of the Municipality of Tirana, based on the Building Survey Report, prepared by the Construction Institute conducting a "Building Survey of the National Theater Building", etc.*³⁵

With regards to the legal initiatives undertaken for the amendment to the Electoral Code and the Constitution, the agreement on the amendments to the Electoral Code was published on 5 June, so during the state of emergency due to the COVID-19 and the parliament immediately started to put this in place. The draft law *"On some amendments to the Law No. 8417, dated*

³³Law "on Public Consultation", No. 146/2014, Rules of Procedure of the Albania Parliament, Law No. 139/2015, "On Local Government".

³⁴Article 170, paragraph 5 of the Constitution

³⁵The agreement on the amendments to the Electoral Code was published on 5 June, during the state of emergency caused by COVID-19 and the Parliament was put in place to implement them. The draft law "On some amendments to the Law No. 8417, dated 21.10.1998" The Constitution of the Republic of Albania", as amended was submitted to the Parliament on 15.06.2020, i.e. one week before the state of natural disaster was officially terminated, etc. Despite the initiatives, during the period of March-June 2020, there was no amendment to the Electoral Code, or the Constitution.

21.10.1998" *The Constitution of the Republic of Albania*", as amended was submitted to the Parliament on 15.06.2020, only one week before the state of natural disaster was officially terminated. Even though there was no amendment to the Constitution and the Electoral Code made over the period March-June 2020, such legal initiatives are contrary to Article 177, paragraph 2, of the Constitution, which states that: ***"No amendment to the Constitution shall be made when emergency measures are adopted"***.

The amendments to the Criminal Code were made, on the one hand, under unsuitable conditions for holding the public hearings/consultations and, on the other hand, they were adopted through a speedy procedure, in contrary to the Constitution. The Criminal Code falls in the category of acts that are approved by a qualified majority and its amendments should have never been made through a speedy parliamentary procedure.³⁶ The expedited procedure avoids thus the public consultation. If the Constitution had been respected and the ordinary procedure had been followed, the public hearings/consultations would have not been avoided. The Parliament justified the consultation process held, however, certain contacted organizations stated that they did not send any opinion nor were they asked to give an opinion. Additionally, in the Rapporteurs' Report, the statement of 32 civil society organizations was not included; however, it included the opinion of around 31 students, making this unique among the parliamentary practices.³⁷

During the state of the pandemic, a series of important acts that were questioned by the public, were passed with an unreasonable urgency. An important case to be analyzed was the case of a set of acts aimed at demolishing the National Theater building. In particular, the Council of Ministers Decision³⁸, the Municipal Council Decision,³⁹ and the Decisions of the Mayor of Tirana were approved in nine days. Based on this, the action of demolition of the National Theater building took place on 17 May 2020. All these acts took place without holding public hearings; despite public hearings being a legal obligation for the adoption of such kinds of acts.

The absence of the Constitutional Court made it easier to create such legislation, which most likely would have been appealed for unconstitutionality before this court.

³⁶Article 83, paragraph 3 of the Constitution provides that "The use of a fast track procedure for the review of draft laws that require the approval by 3/5 of all members of the Parliament is prohibited, except for the law on the state of emergency".

³⁷The Parliament in the time of Covid-19, ISP, pg.25, <http://isp.com.al/wp-content/uploads/2020/09/ISP-PARLAMENTI-GJATE-PERIUDHES-SE-COVID-19.pdf>

³⁸Decision No. 377, dated 08.05.2020 "On assignment of title to the Municipality of Tirana, on the Property No. 1/241, known with the name" National Theater Building", in cadastral zone 8150, Tirana"

³⁹Tirana Municipal Council Decision No. 50, dated 14.05.2020.

VI. CONCLUSIONS AND RECOMMENDATIONS

1. Restrictions on fundamental human rights and freedoms through normative acts should not be blanket, full and unstudied. Any restriction and restrictive measure should be as a consequence and as a need and to the extent necessary, always based on the scientific arguments and data, which should be presented in the explanatory report of the given act. The absolute restriction of a right should be seen only as a last resort when no other less restrictive measure would bring the required result.
2. The Parliament of the Republic of Albania should not extend the state of natural disaster without having a valid and reasoned argument in this regard. In any case, this extension should not exceed 30 days. There is always the possibility to extend such a state if imposed by the circumstances. Any unreasonable extension beyond this term is not justifiable.
3. To avoid such legal practices as the initiative to make constitutional amendments, amendments to the Codes, in violation of the constitutional principles and norms, it is recommended for the parliamentary Rules of Procedure to be improved to establish detailed rules regarding the parliamentary activity and initiatives prohibited in parliamentary activity during the state of natural disaster.
4. The Parliament should review its Rules of Procedure to enable public consultations in alternative forms, such as expressing written opinions, online consultations, etc. In any case, the parliamentary activity should be reduced to a minimum and it should refrain from taking any important decision-making and should keep on taking only those initiatives and decisions that are necessary during the state of natural disaster.
5. The measures taken during the state of natural disaster should be more coherent, clearer and in accordance with the legislation into force. For this purpose, they must pass through the Codification Directorate in the Ministry of Justice, which has a special role in the codification of legislation.
6. The public authorities, such as the General Prosecution Office, the General Directorate of State Police, the Ministry of Health and Social Protection, and the Emergency Committee should reflect the recommendations given by the Ombudsperson when drafting acts that restrict the constitutional right to assembly and protest.
7. While the judicial activity was suspended during the Covid-19 pandemic, the commercial activity was not suspended, so the spread of the virus was more probable due to the gathering of many people indoors in unventilated premises, such as call centers, fason manufacturing, and factories. This fact suggests that the suspension of courts during this time serves more to the executive and its purpose to be undisturbed in its decision-making from any eventual judicial control, and does not serve the purpose of protecting the public from the spread of the virus.
8. Although not directly restricted, freedom of expression was violated due to other sanctioning measures imposed on the media actors, which indirectly may infringe the freedom of expression.
9. The freedom of expression can be indirectly restricted due to de facto or de jure, restriction on the right to information, as the right to information is closely linked with the exercising of freedom of expression.
10. The suppression of protests should have been accompanied by a suspension of activity of the public-private partnerships, which were previously contested or contestable, eventually to maintain a fair balance between the development and the public's right to protect their interests impacted by this development.
11. The restrictions on fundamental human rights and civic participation in the democratic life of citizens engaged during the Covid-19 disaster were made at a time when their judicial

control was completely missing, both at the constitutional level, due to the non-functioning of the Constitutional Court, and at the ordinary courts level, due to the suspension of their activity.

12. The Albanian Parliament should be more attentive while restricting fundamental human rights, particularly given the conditions of Albania where constitutional control is missing.
13. The suspension of court proceedings should be taken only as an extreme measure when none of the other measures achieves the required purpose. Even in this case, the technology should be used to conduct court hearings or other administrative operations online.

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