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Power of government in Emergency Situations

Introduction

The COVID-19 pandemic impacted the world's health and their political systems. Democracies that commit to upholding the rule of law must follow their country's constitutional legal framework when implementing restrictions during the pandemic. The International IDEA's Global Monitor of COVID-19s Impact on Democracy and Human Rights found that 61 percent of countries implemented problematic measures from a human rights perspective; such measures violated international human rights standards because they were either "disproportionate, illegal, indefinite or unnecessary in relation to the health threat, expansion of executive power over other powers was also noted" (IDEA 2020, 1).

Like individuals with preexisting health conditions who are more likely to get seriously ill from COVID, countries that lack strong democratic consolidation have been more likely to exhibit serious threats to

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democracy including the adoption of measures that violated human rights standards. Globally, measures of National State of Emergencies that represent risks to democracy in some states include : lack of sufficient scrutiny by the legislature, the judiciary of the executive decisions and implementation; concentration of power within the executive branch of the government; the inclusion of societal measures that go beyond limiting the spread of the virus (particularly measures that harm the media and/or entail the excessive use of force against citizens during the enforcement of emergency restrictions) (IDEA 2020).

In order to address the pandemic's threat to democracy and human rights, the Council of Europe published a toolkit for its member states which urges government responses that safeguard the fundamental values of democracy, rule of law, and human rights. This toolkit provides an important framework with which to assess the legality and effectiveness of the COVID-19 emergency response in select member states. The CoE recognizes that by making confinement measures to address COVID-19, states may decide to derogate (temporarily suspend) safeguarding of particular rights; however, restrictions should always be proportional to the threat and time-restricted. If states decide to take emergency measures that temporarily restrict human rights, the Council of Europe mandates that states need to follow several rule of law and democratic principles during an emergency.

As we will see in the empirical analysis below, in hybrid democracies such as Albania these risks have been observed during the governments' initial response to the Covid-19 pandemic. We use four principles –

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legality, a bounded timeframe for emergency measures, necessity, and distributed power with checks on executive action—to examine Albania’s response to the pandemic in a case study perspective.

Research methodology

This study is based on quantitative and qualitative data. The research focused is on the response and effectiveness of a select one countries’ governments in the face of the COVID-19 pandemic. In this case Albania used like a case study (hybrid regime). We use four principles to examine Albania’s response to the pandemic.

First, the principle of legality specifies that the rule of law should prevail even during an emergency. States should follow constitutional provisions when coming up with new legislation and executive decrees. New laws passed during the pandemic should comply with the domestic constitution, as well as international standards, and they must be reviewed by the Constitutional Court as well as the European Court of Human Rights (CoE, 2020a, 2).

The second principle that applies during the pandemic is the limited duration of the state of emergency and its measures. The power that governments receive during the state of emergency to issue decrees with the force of law should be temporary. Parliaments must decide whether, and under what conditions, it would be necessary to prolong the

emergency measures. The indefinite continuation of emergency powers is not permitted by international human rights and democratic principles.

The third principle of necessity stipulates that emergency measures should achieve their goals with as few as possible changes to normal democratic rules and procedures. Furthermore, measures should be as narrow as possible in scope and should not result in a “carte blanche given by the legislator to the executive” (CoE, 2020a, 4). Thus, while the executive may issue emergency decrees, it should not make broad fundamental legal reforms during the state of emergency that would lead to abuse of power.

The fourth principle refers to the distribution of powers and checks on executive action. During a crisis such as a pandemic, the executive must be able to act quickly to address the situation and protect public health in the interest of national security. That may involve the central authorities bypassing local and regional authorities in order to coordinate the crisis response until the situation is resolved. On the other hand, Parliaments must still oversee the executive by verifying that emergency measures are justified. Dissolving the Parliament during the emergency is not a proper measure. Similarly, the judiciary—especially the Constitutional Court—should still be able to investigate the limitations to human rights introduced during the emergency.

This study is based on rigorous comparative desk research and qualitative empirical research focused on government response in the

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face of the COVID-19 pandemic. Our analysis incorporated quantitative and qualitative data from the international and local institutions. We conducted 7 semi-structured interviews with experts of field and two focus groups with representatives of NGOs, Public Health experts, Interior Ministry, Ministry of Justice, and media using a purposive sampling technique. The goal of these methods is to understand the constitutionality and proportionality of the emergency measures as they relate to human rights protections and distributed power with checks and balance. Questions also focused on the level of transparency of government policies, participation in discussions of experts and various interest groups during the policy-making process, and the public response to the emergency measures.

In related with main question that formulation in this study are:

What impact does the pandemic have on countries with hybrid regime in terms of the expansion of executive power over other powers?

Hypothesis

Countries that have lack strong democratic consolidation are more likely to expansion of executive power over other powers in pandemic situate

Albania's Response to the Pandemic

In assessing the response to the COVID-19 pandemic in Albania, these four principles – legality, a bounded timeframe for emergency measures,

necessity, and distributed power with checks on executive action - can serve as a useful guiding framework for evaluating the government's adherence to democracy and rule of law.

In terms of the timeline of the government's response, the first COVID-19 case was detected in Albania in March 9th, 2020. On March 11, the World Health Organization named COVID-19 as a global pandemic, and Albania imposed partial lockdown measures. To enforce the curfew rules, the government used the military during March 9-15. On March 24, the Council of Ministers of Albania proclaimed a State of Natural Disaster for 30 days, following Articles 170-175 of the Constitution, thereby restricting air, land and sea traffic, suspending education, and setting procedures for quarantine and self-isolation among other measures. On April 21st, the Albanian parliament approved a proposal to extend the State of Natural Disaster until June 23rd. To address the impact of the pandemic on the economy, the government approved a financial package to support people employed in small size enterprises that were impacted by the pandemic on March 25.

On March 31st, the Albanian government notified the Council of Europe that it would be delaying the implementation of human rights laws (derogation from obligations) under Articles 8 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The rights impacted under derogation were Article 8: Right to Privacy; Article 11: Right of Assembly and Association; Article 1, Protocol 1: Protection of Property; Protocol 1, Article 2, Right to Education; and Article 2,

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Protocol 4. Freedom of Movement.² The government withdrew the derogation, thereby committing to fully implement the obligations from the convention, on June 24th 2020³. Following the gradual removal of curfew hours and the reopening of businesses, Albania declared the end of State of Emergency on June 22.

The Constitution of Albania (1998) regulates the decision-making practices of the state of emergency. Article 170 of the Constitution stipulates that “acts taken in the framework of extraordinary measures must be proportionate to the degree of risk and must aim at restoring as soon as possible the conditions for the normal functioning of the state. In situations that require extraordinary measures, none of the following laws can be changed: the Constitution, the laws on elections to the Albanian Parliament and local government bodies, and the laws on extraordinary measures.⁴ Article 74 of the Constitution allows for the convening of an extraordinary session of Parliament in order to review the adoption of emergency-related measures, limited in time and scope, as provided in Article 174. Furthermore, Article 84 states that in case of extraordinary measures, as well as in case of urgency, with the consent of the President, the law will enter into force immediately, but only after it has been publicly announced.

² Notification - JJ9020C Tr./005-231. 1 April 2020. Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5). <https://rm.coe.int/16809e0fe5> Macedonia submitted the derogation for the same list of rights, while Serbia submitted its derogation without a list of rights. See: <https://rm.coe.int/16809e1288>

³<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>

⁴ Afrim Krasniqi (2020) Impact on Democracy of Emergency Measures against COVID-19: The case of Albania, IPS. pp. 3.

According to the monitoring conducted by ISP (2020, 27), for the January - July 2020 period, the Albanian Parliament approved a record number of laws; a total of 115 laws were approved, as compared to 55 and 57 laws in the same periods for 2018 and 2019. During the March 15 - June 23 period, the Council of Ministers adopted 30 normative acts with the force of law. The Constitution of Albania, article 101, recognizes the right of the Council of Ministers, in case of need and under conditions of urgency, to issue normative acts that have the force of law, as temporary measures (WFD and Krasniqi, 2020, 5). Despite this fact, in this period, the government could approve its initiatives with an accelerated procedure in the parliament; they could easily be approved in the form of normal laws. In this case, the government chose to use the instrument of normative acts and de facto the parliament lost its checking and leading role in the COVID-19 crisis, becoming a sort of notarial body certifying the acts already undertaken by the government. Also, a detailed reading of the normative acts shows that not all of them were related to the emergency situation; for example: the initiative known as “anti KÇK” was passed as a normative act without having major reasons to treat it as such, in circumstances that parliament was functional and there was no emergency in its area of operation.

This behavior of the government in times of pandemics made it possible that the absolute majority of normative acts were passed without a parliamentary control of their need, urgency and impact on the state and society, especially in terms of human rights, compliance with constitutional principles and guaranteeing legal protection mechanisms.

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The procedures of accelerated debate in the committees and then the almost collective approval in the plenary sessions overshadowed the possibility, responsibility and potential of the parliament to strengthen the control function over the executive power, and was not accompanied by any public consultation process.⁵

In these conditions, the first principle - legality - was partially fulfilled, despite the fact that the declaration of the state of emergency was carried out in accordance with constitutional procedures and provisions. But the high number of normative acts and the impossibility of reviewing them in parliament and beyond undermine the legality of these acts.

Albania met the second principle of the limited duration of the emergency and its measures. Figure 1 below indicates that the Albanian government responded early to the public threat of deaths by COVID-19. The figure compared daily deaths with the degree of the stringency of government response⁶ measured by a composite of several indicators that include school closures, workplace closures, and travel bans. The strict lockdown during the emergency measures of Natural Disaster in Albania limited the spread of the virus and the number of related deaths. According to Johns Hopkins Coronavirus Resource Center, by January 31st, 2021, Albania had 49 deaths due to COVID-19 per 100,000

⁵<file:///C:/Users/Administrator/Desktop/Desktop/Studimi%20mbi%20epidemin%20dhe%20sigurine%20njerezore/ISP-PARLAMENTI-NE-KOHEN-E-PANDEMISE-Monitorimi-per-periudhen-janar-korrik-2020-1.pdf>

⁶ Government Stringency Index is calculated on the basis of the following metrics: school closures; workplace closures; cancellation of public events; restrictions on public gatherings; closures of public transport; stay-at-home requirements; public information campaigns; restrictions on internal movements; and international travel controls. <https://ourworldindata.org/coronavirus>

citizens, a lower ratio than the other comparative cases of Greece (55 deaths), Slovenia (172 deaths), Serbia (58 deaths) and North Macedonia (138 deaths).⁷

When viewing the data trajectory of Albania's response to the pandemic, the government's response to the danger of the pandemic does not fully correlate with the daily deaths, since the highest amount of restrictions occurred during April and May, while the most daily deaths have occurred in September to December 2020.

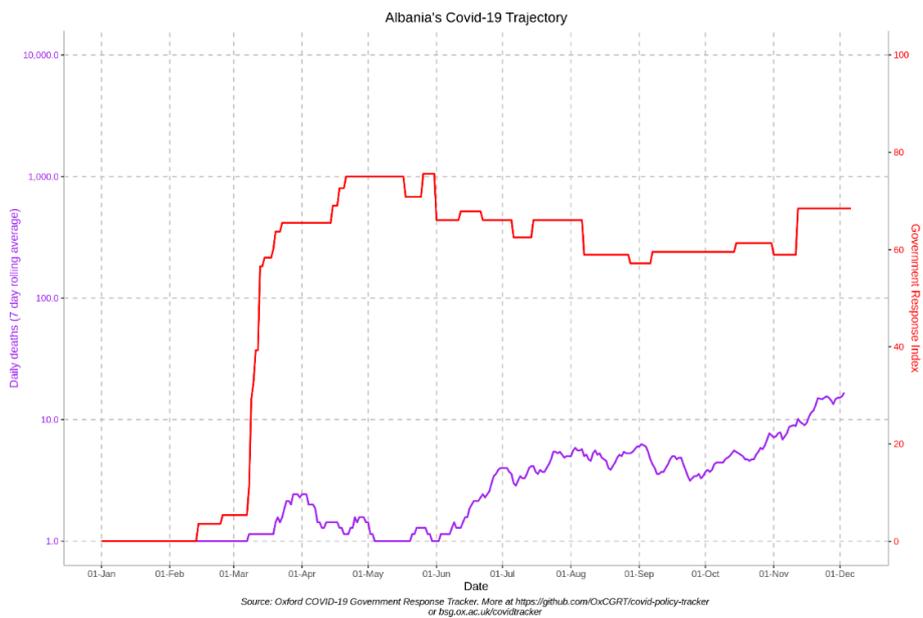


Figure 1. Albania's COVID-19 Trajectory

⁷ <https://coronavirus.jhu.edu/data/mortality>. We should interpret such data with caution, since there might be underreporting of deaths by governments, especially in Albania and North Macedonia that had fewer tests per capita.

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As well, Table 1 below compares the total number of people affected, as well as recoveries and deaths due to COVID-19 at different stages of the pandemic with different government measures in Albania. The data indicates that the lockdown measures during the emergency situation limited the spread of the virus and the number of deaths. The increase in the number of tests after the emergency lockdown measures was accompanied by an increase in the detection of persons infected with COVID-19 during the period September - December. The number of COVID-19 infections and deaths is higher in this period compared to March - June.⁸

	Patient s tested	Positiv e tests	Currentl y in Hospital	Cured patient s	Activ e Cases	Total Death s	Administrativ e measures
Up to 23 March 2020	853	104	49	5	99	4	Order no. 193, on 20.3.2020 “On the Closure and Restriction of Movements in the Republic of

⁸ According to data by the Ministry of Health and processed by "Monitor," the age group with the highest mortality in the country from COVID-19 is 60-69 years old followed by 70-79 years old and over 80 years old for the period March - September. However, there is a significant increase in the number of deaths under the age of 60, which on July 28 accounted for 23% of the total, from 8.7% in mid-April. <https://www.monitor.al/gati-10-e-vdekjeve-nga-covid-19-ne-vend-nuk-kishin-semundje-shoqeruese-moshamesatare-zbret-ne-66-8-vjec/>

							Albania.
Up to 1 June, 2020	14824	1143	28	877	233	33	Order no. 351, on 29.5.2020, "On taking special measures and restrictions to prevent the spread of COVID-19"
Up to 22 October, 2020	114381	18556	258	10395	7390	469	Instruction no. 1163/1, dated 13.10.202, of the Institute of Public Health "On the mandatory use of masks outside home"

Table 1. COVID-19 Cases and the action by the Ministry of Ministry of Health and Social Protection⁹

During the period March - June, in the measures taken by the government, the tendency of minimizing the spread of COVID-19 at the expense of economic effects on different social categories and different sectors of the economy predominates. The lockdown was accompanied

⁹ https://www.wfd.org/wp-content/uploads/2021/01/WFD-Report_Follow-the-Money_Shendetesi_ShqipFINAL.pdf, page. 12

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by aid packages from the government for enterprises. For medium and large companies. “100 million USD (in the form of a sovereign guarantee) is offered to guarantee the borrowings of medium and large companies (Albanian annual turnover of more than ALL 14 million or €110,000) to finance the payment salaries of their employees. Small companies and individuals may not apply for this scheme, however there is an alternative. Businesses will be able to apply to borrow up to the value of 3 months of gross salaries of declared employees (i.e. including social security and pensions) and with this loan, the company can pay the salaries of any employees earning up to 150,000 ALL (€1,181) per month.”¹⁰ “in addition to the large and medium company scheme noted above, 65 million USD is available to be granted to people and small companies with the most immediate needs, for example those threatened by unemployment as a result of the outbreak. These grants were available to small companies (Albanian annual turnover of less than ALL 14 million or €110,000) and self-employed individuals, who employed staff.”¹¹

The benefiting categories were Self-employed natural persons; Unpaid family workers of the natural commercial person; Employees of commercial natural persons and Employees of legal entities.”¹² The government also offered “salary compensation in the amount of €320 per person per month for employees in medium/large entities which

¹⁰ https://assets.ey.com/content/dam/ey-sites/ey-com/en_al/generic-content/pdf/ey-government-support-package-albania-and-kosovo.pdf, page.6

¹¹ Ibid, page.7

¹² Ibid, page 7

have closed their activities between 24 March 2020 and 10 April 2020. According to orders of the Minister of Health and Social Protection, the employees who lost their jobs due to the COVID 19 situation on 24 March 2020 in small entities (with annual income below €110,000), even where the employing entity is still able to perform activities as per the Orders.”¹³

From the point of view of the interviewers, this behavior of the government was, among other things, a result of the models that manifested in other countries in times of pandemics. The measures taken by the governments of countries close to Albania often served as pressure or as a model that should be followed by the Albanian government. One of the interviewers says: "the financial package offered by the Greek and Italian governments should have been offered by the Albanian government despite the fact that the financial capacities of the respective governments are not the same".¹⁴

While the government reserved the right to take restrictive measures in September-December 2020, it has not enforced another lockdown, despite the rise in infections and deaths from COVID-19. On June 1, 2020, by order no. 351, dated 29.5.2020, "On taking special measures and restrictions to prevent the spread of Covid-19" through an action plan, the most stringent restrictions were lifted.¹⁵ Instead of a complete

¹³ Ibid, page 7

¹⁴ Interview with experts of security issues, 2020

¹⁵ https://www.wfd.org/wp-content/uploads/2021/01/WFD-Report_Follow-th-Money_Shendetesi_ShqipFINAL.pdf, pg. 12

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lockdown, the Albanian government chose to emphasise less restrictive sanitary measures and the mandatory use of face masks. The decision of the Albanian government to avoid the imposition of a new lockdown was likely due to the inability of the government to cope with the negative economic impacts of the restrictions¹⁶, including the increased national debt after the issuance of a 650 million Eurobond.¹⁷

Interviewees note that “Albania did not follow a completely individual and unique approach but got involved in managing the situation by imitating models of other countries. The Prime Minister followed others’ examples very often, as he took some measures or restrictions.¹⁸ At least compared to the neighbors, the government did not bring any different management model.”¹⁹

During the first month of the lockdown, the Police administered 7,107 fines for pedestrians and 1,941 fines for drivers.²⁰ At the same time, 266 businesses were fined for violating quarantine rules. The government on April 23 took the decision to increase the penalty measures for persons who break the rules of karate. It decided to make changed to the criminal code. So the Albanian Penal Code²¹ was amended to introduce sanctions

¹⁶ <http://pubdocs.worldbank.org/en/254111588143425920/RER-17-Setting-the-Stage-ALB.pdf>

¹⁷ <https://www.intellinews.com/albania-issues-650mn-eurobond-with-3-65-coupon185059/#:~:text=Albania%20has%20issued%20a%20seven,a%20coupon%20rate%20of%203.65%25>

¹⁸ Interview with experts of security issues, 2020

¹⁹ Interview with experts of security issues, 2020

²⁰ See: Euronews Albania. 2020. Falen Gjobat e COVID-19. Rama: S’do te ekzekutohen. <https://euronews.al/al/aktualitet/2020/04/17/falen-gjobat-e-covid-19-rama-s-do-te-ekzekutohen>

²¹ For some additions and amendments to law no. 7895, dated 27.1.1995, "criminal code of the republic of albania", as amended

for violations of measures imposed by state authorities during an epidemic, or state of natural disaster, as well as the voluntary spread of infectious diseases. Non-compliance with quarantine or compulsory isolation was deemed punishable by fine or imprisonment of up to three years. According to the law, in cases where failure to comply caused the spread of infectious disease with high risk to human health or has led to death, this is punishable by up to five years in prison. Where such a spread has produced serious consequences for human health or life, it is punishable by three to ten years imprisonment and five to fifteen years imprisonment when the offense has caused the death of one or more persons.²² 30 civil society organizations opposed to these amendments to the Penal Code. The government claimed that their measures were successful in combatting the spread of the virus; however, the cancelling of the fines and sanctions of the first month of the lockdown indicates a backtracking of the government from the implementation of the more severe sanctions.

Meanwhile, the restrictive measures taken by the government for the period September-December were much milder compared to the period March-June. The government imposed a series of restrictive administrative measures administrative.²³ From the data published by the police, it results that from October 15, when the normative act entered

²² See: Albania Penal Code. Articles 242/1 and 89 /b

²³ For an amendment to the normative act no. 3, dated 15.3.2020, of the council of ministers, "on taking special administrative measures during the period of infection caused by covid-19

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into force²⁴ until December 28, it turns out that these measures for not wearing a mask in public places have been fined in total - from October 15 to December 28 - 40,854 citizens, with 30 thousand old ALL, in total 1,225,620,000. For non-implementation of the protocol in pandemic conditions, 130 businesses were fined with 10 million old ALL, in total 1,300,000,000 (one billion three hundred million) old ALL. For breaking the curfew, 233 citizens with 130 businesses were fined with 100 thousand old ALL, in total 23,300,000 (twenty three million three hundred) thousand old ALL were collected. While for organizing protests in times of pandemics, 2 citizens were fined with 50 million old ALL, in total 100,000,000 (one hundred million) old ALL. For breaking the curfew, 233 citizens were fined with 100 thousand old ALL, in total 23,300,000 (twenty three million three hundred) thousand old ALL were collected. In total, our state - from the fines imposed from October 15 until December 28 - has collected 2,781,920,000 (two billion seven hundred and eighty one million, nine hundred and twenty) thousand old ALL.²⁵

Referring to the opinions given in the focus groups and interviews conducted in this study, the suspension of fines during the quarantine period by the government has created a strong conviction among some citizens: the same will happen with the fines imposed in period October - December. Many of the fines imposed in March-June were pardoned by the government. This act of the government creates the idea in the

²⁴ Ibid.

²⁵ <https://www.asp.gov.al/>

public that the same will happen with the fines of the period October-December. Also, since fines are part of the electricity bill, for some citizens it becomes difficult to cover the fine due to the problems that a significant part of Albanians have with the documentation of home ownership. In fact, even police officers find it difficult to apply the fine. “So far, a total of about 15 thousand minutes (for the fines) have been brought, by both police (criminal and municipal police units), of which, after our verifications, about 2500 have been cancelled, as the those who were fined, were not owners of the electricity contract or some there are other shortcomings in the completion of the minutes.”²⁶ To lawyers, this measure – payment through electricity service or drinking water supply - is inconceivable. They argue that the government cannot intervene with a normative act for placing such fines in the billing of these services.

Albania met the second principle of the limited duration of the emergency and its measures. The emergency laws applied for three months in Albania. During the period March - June, in the measures taken by the government, the tendency of minimizing the spread of COVID-19 at the expense of economic effects on different social categories and different sectors of the economy predominated. The lockdown was accompanied by aid packages from the government for enterprises. While the government reserved the right to take restrictive measures during September – December 2020, it did enforce another lockdown despite the rise of in infections and deaths from COVID 19,

²⁶ See: <https://faktoje.al/gjobat-per-mosmbajtjen-e-maskes-ne-rruge-a-do-pesojne-fatin-e-atyre-qe-u-falen1/>

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The decision to avoid imposition of new lockdown is probably due to the inability of the government to cope with negative economic impact of the restriction.

Albania not met the principle of necessity of achieving the goals with the minimum of change possible to the democratic rules and procedures. Just a few days before the declaration of the state of emergency, on March 5, the Assembly approved a normative act of the government called "On preventive measures in the framework of strengthening the fight against terrorism, organized crime, serious crime and consolidation of public order and security", a law that allowed the police to request seizure for any property of the individuals suspected by it, in case of non-justification of the sources of property within 48 hours. Constitutional experts maintain that in a state of emergency no acts of a permanent nature should be passed unless absolutely necessary. The (mis)use of an emergency situation to spearhead constitutional changes was a severe deviation from sound constitutional practice in Albania. As a consequence of these actions, at least three lawsuits against the government were brought to the Constitutional Court.

In February 2020 the Assembly of Albania cut on the presidential powers of swearing in constitutional judges. In the absence of the Constitutional Court, the President of Albania requested an interpretation from the Venice Commission for this act taken by the

majority.²⁷ In its June 2020 opinion the Venice Commission considered this initiative of the government majority as wrong.

The growingly unchecked government control over the parliament enabled the former to push the latter to approve a host of new pieces of legislation including financial amnesties for individuals in possession of money outside the banking system. The government backed down from the fiscal amnesty only after criticism by the IMF followed by pressure by the EU²⁸. “A draft tax amnesty law published in July 2020 is not supported by the EU, as it did not comply with good international practices on voluntary detection schemes. The draft law has not been approved, but the mission has not yet been provided with any information on the current status of the amnesty proposal.”²⁹

*The law in question has been overturned by the President with the following argument: “This law allows for differentiated fiscal treatment, which in essence violates fundamental constitutional principles and rights.”*³⁰

Another act undertaken by the majority, which is very controversial from the constitutional point of view, was the establishment of the parliamentary inquiry commission to dismiss the President of the Republic. In the absence of the Constitutional Court, an opinion was

²⁷ Krasniqi, A. (2020) Impact of democracy of emergency measures against COVID 19 the case study Albania, p. 3.

²⁸ <https://www.reporter.al/pas-terheqjes-nga-shkarkimi-i-metes-qeveria-terhiqet-edhe-nga-amnistia-fiskale/>

²⁹ <file:///C:/Users/Administrator/Downloads/1ALBEA2021001.pdf>

³⁰ <https://shqiptarja.com/lajm/presidenti-meta-kthen-per-rishqyrtim-ne-kuvend-ligjin-per-tvsh-pjese-e-paketes-fiskale>

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sought from the Venice Commission on the object of the investigation and the procedure followed by the legislature. This commission in the report prepared for such purpose, among other things, argued that this is a right of the Constitutional Court to rule on dismissal or not, but in our view we do not notice a serious violation by the President to justify his dismissal. A year later, the Constitutional Court ruled that "the facts presented as violations of Article 86, point 1, and Article 89 of the Constitution, do not constitute serious violations of the Constitution."³¹

For months in a row, numerous artists, actors, public intellectuals, ordinary citizens and civil society activists had protested against the government's plans to demolish the National Theater building to favour a private development thinly disguised after the construction of a new theater. Over the last three years, the Government of Albania and the Tirana Municipality led by Mayor Erion Veliaj tried various forms to demolish the building, including removing it from the list of protected heritage, its declaration as structurally unsafe, and finally on May 8, 2020, through its transfer under the ownership of the municipality, which is 100% controlled by the Socialist Party of Prime Minister Rama. This gave free rein to Mayor Veliaj to proceed with the destruction of the building. Accordingly, the municipality with an expedited procedure, wholly non-transparent and contrary to the legislation, 24 hours before a

³¹ https://www.gjk.gov.al/web/NJOFTIM_2194_1-1.php

announced meeting of the Municipal Council informed that the meeting was held online and the demolition of the theater was voted unanimously by email. A year later, the Constitutional Court abrogated the special law and the government's decision, which paved the way for the demolition of the National Theater building, calling them unconstitutional and in violation of the rule of law principle. According to the announcement published on the official website, the Constitutional Court partially accepted the request of the President of the Republic, repealing as unconstitutional the special law no. 37/2018 as well as the decision of May 8, 2020 of the government, which transferred the Theater to the ownership of the Municipality of Tirana.

Another act of the government was that of constitutional amendments. Meanwhile, the good practices of the Venice Commission prohibit such a thing in times of emergency. Moreover, the amendments to the Constitution were not part of the roundtable discussion between the representatives of the political parties and the presence of the representatives of the main embassies in the country. Despite this, the initiative was voted by 106 deputies. Prime Minister Edi Rama declared that "this is a sovereign decision of the parliament and there is no need to share this sovereignty with foreign ambassadors in Tirana".³²

³² <https://www.zeriamerikes.com/a/5523435.html>

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The extra-parliamentary opposition strongly opposed it and stated that this was a unilateral act, while the European Commission expressed regret that the consensus between the parties required more time. According to expert Buda, “the whole process of approving these Constitutional changes seems to have lasted from 15.6.2020 to 30.7.2020, i.e. a period of 1 month and a half.”³³ Also according to ISP, “after two weeks of consultations and parliamentary procedures, the Albanian Parliament through the Council for Legislation decided to amend the Constitution of Albania. Albania becomes the only European country and the second in the world after Russia that amends the Constitution during Covid 19 pandemics.”³⁴

Albania’s government not met the third principle of necessity in achieving its goals with the minimum change possible to normal democratic rules and procedures. In some instances, excessive responses were criticized by human rights’ defenders. For example, the Albanian government passed disproportional sentences as a penalty for breaking the lockdown, up to 15 years proposed prison sentence. Furthermore,

³³ <https://www.eurospeak.al/news/nga-shqiperia/19076-opinion-lidhur-me-ndryshimet-e-reja-kushtetuese-ne-shqiperi/>

³⁴ ISP (2020) Parlamenti gjatë periudhes Covid 19 <https://isp.com.al/isp-parlamenti-gjate-periudhes-se-covid-19/>

the Albanian government deployed the army and police³⁵ to patrol the streets to enforce the curfew.³⁶

In related in determining the legality and proportionality of Albania's response to the pandemic relates to the distribution of powers and checks on executive actions see that during the lockdown, the Prime Minister clashed with the media during his direct communication with the people through his personal media channels (ERTV) and social media platforms (foremost Facebook). PM Rama was criticized for stating, "Wash your hands, don't leave your house for fun, open the windows as much as you can, and beware of the media" in a voice message broadcast for all mobile subscribers of Vodafone's network in Albania during the first week of extraordinary measures (Erebara, 2020). Rama also referred to media as "trash bins," as media organizations criticized the government for monopolizing information (WFD, 2020b, 77). Print media incurred major losses from the COVID-19 restrictions, since printing presses froze during March and April 2020, and newspapers published only online. Due to new rules to not allow more than two people in a room at one time, TV shows were also cancelled. Reporters found it difficult to work in the field, since they did not have good procedures to protect themselves and the people they interviewed. During this period, the Prime Minister also used "war" metaphors such

³⁵ See:<https://www.usnews.com/news/world/articles/2020-03-21/albania-deploys-troops-to-enforce-40-hourcoronavirus-curfew>

³⁶ In December 2020, the fatal shooting of a 25-year old unarmed male by a police officer led to protests and riots and the resignation of Interior Minister of Albania. See:

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as “wartime wages” (state financial aid), “war hospitals” (COVID-19 medical facilities), “resistance in times of war” (quarantine), “fake news at war times” (media criticism)” (WFD and Krasniqi, 2020, 13). This behavior of the government and the Prime Minister in particular during this period is confirmed by the opinions expressed in the interviews and focus groups conducted with representatives of the main media, civil society and academics in Albania. Focus group respondents stated that:

At the beginning of the pandemic, we had the impression that the government and the government institutions were open to exchange any information regarding the management of the emergency situation. However, as the days went by, the information started to diminish. In other words, we faced the phenomenon of the funnel that was opened initially by the government and then, as the situation worsened, began to close. What is the number of infected cases? How does the health care chain work? How about the infection tracking? How many tests have been used? etc.³⁷ At the beginning of the pandemic, the government was more willing to cooperate with the media and provide information, while, as the situation worsened, this spirit of media-government cooperation began to fade.³⁸

According to focus group participants, the problem of media censorship in the first weeks of the pandemic is not only related to the role of the Prime Minister to censor the media, but members of the media themselves were found unprepared to face such a situation. The

³⁷ A2 CNN journalist participating in the focus group

³⁸ TVSH journalist participating in the focus group.

emergency period of the pandemic served as a lesson for the media, which had to learn how to inform the public in such an extraordinary situation. During October-December 2020, the government was more open and transparent with the media. At the same time, the media were much more active in reporting from the field. In general, experts played a key role in reporting and commenting on the situation. As one of the journalists in the focus group put it, "the media-government relation for the period October - December reversed - compared to the period March-June".³⁹

In related with the role of expert community during the pandemic period in case of Albania the management of the crisis was supposed to be led by the Ministry of Health and the ad-hoc Committee of Experts. Yet, the composition and the role of the medical experts was unclear during the implementation of emergency measures, but became clearer after lockdown measures ended. The role of experts became more prominent in communication about the pandemic after the extraordinary measures ended.

In the September – December 2020 period, the presence of the Prime Minister and the Minister of Health in the media and social networks was greatly reduced in relation to the presence of health experts. The Technical Committee of Experts became the main source of information on the pandemic situation; their presence in the media, press

³⁹ Euronews journalist participating in the focus group

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conferences, and public debates was more noticeable in this period. The Technical Committee of Experts made public their recommendations before every decision taken by the line ministries. This point is also supported by the interviews conducted with researchers and experts in the field as well as by the opinions given by the journalists in the focus group. In the focus groups, it was also highlighted the fact that the independence from the policies of the Technical Committee of Experts should be taken with reservations, at a time when one of the representatives of this Committee was placed on the winning list of SP in the 2021 general elections and the another was appointed Deputy Minister of Health.

During the period of March – May 2020, the Albanian Parliament did not hold a single question-and-answer session on the COVID-19 situation. Furthermore, Parliament did not set up a commission to investigate the epidemic and did not set up a monitoring structure on the measures taken by the executive branch. The same situation was repeated during the periods September-October and November-December, despite the fact that the Parliamentary life took place normally, except for the obligatory wearing of the mask during the plenary sessions (ISP, 2020). One of the important reasons for the interviewed experts for this situation is the exit of the real opposition from the parliament.

According to the monitoring conducted by ISP (2020, 27), for the January - July 2020 period, the Albanian Parliament approved a record number of laws; a total of 115 laws were approved, as compared to 55

and 57 laws in the same periods for 2018 and 2019. During the March 15 - June 23 period, the Council of Ministers adopted 30 normative acts with the force of law. The Constitution of Albania, article 101, recognizes the right of the Council of Ministers, in case of need and under conditions of urgency, to issue normative acts that have the force of law, as temporary measures (WFD and Krasniqi, 2020, 5). The large number of laws issued during the initial phase of the pandemic raises concerns about the time available for due process and public consultation. The consultation of legal initiatives with interest groups is a standard procedure, legal requirement, democratic practice, and necessary criteria to implement the rule of law. The lack of consultations and involvement of stakeholders is evidenced in the reaction of some associations to specific laws as well as in the focus group with civil society representatives.⁴⁰ Several of the initiatives, such as fiscal amnesty, and changes to the legislation on the State Police, were criticized by international organizations for their lack of consultation and problematic content. Under this international pressure, Parliament postponed or withdrew from these initiatives (ISP, 2020, 27).⁴¹ Since the Parliament

⁴⁰ <https://ahc.org.al/deklarate-e-perbashket-per-median>

⁴¹ For the period October - December 2020, the parliament approved 50 laws and only one normative act. The very low number of normative acts compared to the period March - June is related to the lifting of the state of emergency. <https://www.parlament.al/LibrariaAkteve>. In this period, the lack of involvement of civil society was a problematic issue - as evidenced in the case of the electoral reform based on the draft report of the Venice Commission. See <https://www.osce.org/files/f/documents/7/2/473655.pdf>

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and the judiciary did not properly monitor the implementation of the emergency measures, the fourth principle was only partially met.

Conclusion

This study has shown that when placing Albania in regional and global context, several patterns can be observed. First, Albania implemented temporary measures of quarantine that limited certain human rights. We find evidence that extraordinary measures such as lockdowns effectively and temporarily limited the spread of COVID-19, thereby reducing illness and deaths. Most citizens viewed such stringent measures as necessary to protect national security and the right to life.

Hybrid democracies in our case Albania with weaker institutions and lower public trust toward the government demonstrated certain risks to democracy and human rights in their implementation of emergency measures. As the executive expanded its power, the legislature and the judiciary were limited in their ability to oversee the measures and their implementation. Thus, hybrid regimes in Albania did not fully meet all four principles of legality, a bounded timeframe for emergency measures, necessity, and distributed power with checks on executive action.

Certain measures went beyond what was necessary to control the spread of the virus. For example, when governments threaten the media or use excessive force during the enforcement of restrictions on the public, long term democratic processes can be harmed. Furthermore, when such restrictive measures are implemented and prolonged in the name of a

national emergency, concerns over rule of law institutions, free and fair elections, and media freedoms may threaten to undermine future democratic consolidation.

As of December 2020, such emergency measures have only been temporary, so we are not seeing indefinite use of emergency powers by the government of Albania or other regional states. There is a legitimate concern, however, that the speed in which the executives in Albania, expanded their power during the emergency may suggest that the legislature and judiciary might not be able to provide sufficient checks and balances to executive overreach. In order to become resilient democracies that protect human rights, such countries need to strengthen their rule of law institutions and adherence to democratic procedures.

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