

---

# The Parliament in the time of coronavirus

## Bulgaria

# **Covid-19 Pandemic and Its Impact on Parliamentarism in Bulgaria.**

## **A self-restricting of the control power**

**Martin Belov\***, **Aleksandar Tsekov\***

\*Professor in Constitutional Law, University of Sofia 'St. Kliment Ohridski'

\*Chief Assistant Professor in Constitutional Law, University of Sofia 'St. Kliment Ohridski'

### **1. The Constitutional Status of the State of War, State of Siege and State of Emergency in the 1991 Constitution of the Republic of Bulgaria**

The Bulgarian constitution provides for very concise, succinct and laconic formulation of the constitutional regime of the state of war, the state of siege and the state of emergency<sup>1</sup>. They are provided as three independent regimes without clear differentiation between them with view to their substance. The 1991 Constitution focuses much more on the procedure than on the substance of these three regimes of constitutional emergency.

According to article 84, point 12 of the 1991 Constitution the National Assembly declares state of siege or state of emergency. It acts on proposal of the President of the Republic or the Council of Ministers. The involvement of several institutions in this process is supposed to serve as a safeguard against misuse of power. The state of siege or state of emergency can be declared on the whole territory of the state or on part of it. According to article 100, paragraph 5 of the Constitution the President of the Republic shall proclaim a state of war in the case of an armed attack against Bulgaria or whenever urgent actions are required by virtue of an international commitment. The President of the Republic shall proclaim state of siege or state of emergency whenever the National Assembly is not in session and cannot be immediately convened. The National Assembly shall then be convened forthwith to endorse the decision.

According to article 57, paragraph 3 of the Constitution in case of proclamation of war, state of

---

<sup>1</sup> See E. Tanchev et M. Belov, « The Governmental System of the Republic of Bulgaria » in N. Chronovski, T. Takacs, et T. Drinoczi (Éds.) *Governmental Systems of Central and Eastern European States*, Varsovie, Kluwer Polska, 2011, p. 95.

siege or state of emergency the exercise of constitutional rights may be temporarily suspended or restricted by an act of the Parliament with the exception of the rights provided in articles 28, 29, 31 paragraph 1, 2 and 3, 32 paragraph 1, and 37 of the Constitution. Hence, several constitutional rights enjoy higher level of constitutional protection and must remain unrestricted even in case of war, state of siege or state of emergency. These are the right to life and the prohibition of torture, the safeguards of the right to personal liberty, namely the right to be brought before the judiciary within a legally prescribed period, the prohibition of conviction on the basis of confession, the presumption of innocence, privacy and freedom of conscience, thought, and religion.

The Bulgarian Constitution does not provide for the possibility of delegated legislation, including during a state of emergency<sup>2</sup>. Thus, the Parliament in Bulgaria must remain in monopoly of adopting the most important norms which frame the social relations with high and durable importance even in case of war, state of siege or state of emergency.

## **2. The State of Emergency and the Emergency Epidemic Situation in Bulgaria caused by the COVID-19 Pandemic**

On 13 March 2020 the National Assembly of the Republic of Bulgaria has adopted a decision<sup>3</sup> which has introduced for a first time in the modern Bulgarian history a state of emergency. According to this decision, that has been grounded on article 84, paragraph 12 of the Constitution, the Parliament:

1. Declares state of emergency on the entire territory of the Republic of Bulgaria;
2. Empowers the Council of Ministers to take all necessary measures to control the emergency situation related to the COVID-19 pandemic.

The initial period of the state of emergency has been stretched between 13 March 2020 and 13 April 2020. Few weeks later, on 2 April 2020 the National Assembly adopted new decision<sup>4</sup> by virtue of which it has extended the state of emergency until 13 May 2020. On 24 March 2020 the National Assembly has adopted the Measures and Actions during the State of Emergency Act (MADSEA)<sup>5</sup>. This act of Parliament regulates the range of anti-pandemic measures and activities imposed and accomplished during the state of emergency on the territory of the Republic of Bulgaria (Article 1). The MADSEA Act introduces several legislative amendments in numerous acts of Parliament. Special attention deserve the amendments that have been introduced in the Health Act. They authorize the Minister of Health to order mandatory isolation of patients, contaminants, contact persons and persons who have entered on the territory of the country from other countries, when there is a threat to the health of the citizens from diseases (§ 22 of MADSEA Act). This provision was valid until 13 May 2020, when the state of emergency was brought to an end and has been replaced by “emergency epidemic situation” introduced via ordinary legislation namely through amendments in the Health

---

<sup>2</sup> For the prohibition of emergency legislation see Belov, M. Constitutional Law in Bulgaria, Kluwer, 2019, p. 248.

<sup>3</sup> State Gazette n° 22, 13 March 2020

<sup>4</sup> State Gazette n° 33, 7 April 2020

<sup>5</sup> State Gazette n° 28, 24 March 2020

Act.

A legal definition of the term “emergency epidemic situation” has been given. Pertaining to §1, point 45 of the Health Act the “emergency epidemic situation” is present in case of a “disaster caused by a contagious disease, which leads to an epidemic with immediate danger to the life and health of citizens, the prevention and overcoming of which requires more than the usual activities to protect and preserve the life and health of citizens”. The emergency epidemic situation shall be declared for a certain limited period of time by virtue of a decision of the Council of Ministers adopted on proposal of the Minister of Health and on the basis of an assessment of the existing epidemic risk by the Chief State Health Inspector in case of imminent danger to the life and health of the citizens from the epidemic spread of a contagious disease in order to protect and preserve the life and health of the citizens for a certain period of time. The "epidemic emergency" can be extended. It has been extended several times by virtue of decisions of the Council of Ministers<sup>6</sup>.

The President of the Republic has approached the Constitutional Court with a demand to declare the unconstitutionality of the “emergency epidemic situation”. The President claimed that the legislator – the National Assembly – has inadmissibly delegated to the executive power its exclusive constitutional powers provided by article 57, paragraph 3 of the Constitution. It should be indeed reminded that delegated legislation is not allowed by the current Bulgarian constitutional model<sup>7</sup>.

In its Decision n° 10 of 23 July 2020 the Constitutional Court has explicitly – but wrongly – identified the state of emergency with the idea of “constitutional dictatorship”. According to the Constitutional Court the state of emergency is

“a temporary and reversible transformation of the constitutional order and its peculiar readiness to overcome a life-threatening threat to society. The state of emergency is an ‘emergency’ mode of functioning of the constitutional system. The main consequence of switching to such a regime is the redistribution of power and authority (for example, granting functions to the country’s defense bodies inherent to the bodies of the Ministry of Interior) and restricting the exercise of certain rights and freedoms in order to neutralize and overcome serious external or internal threat to the existence of the state and society.”<sup>8</sup>

The Constitutional Court believes that the “emergency epidemic situation” differs from the “state of emergency”. According to its reasoning the “emergency epidemic situation” does not lead to redistribution and relocation of government functions. Its aim is not to deviate from the established order of government, but instead to introduce a special protection regime allowing for the undertaking of urgent measures to protect and safeguard the lives and health of citizens. The Constitutional Court believes that the difference is in the degree and the scale of the threat. Hence, the resulting divergence in the scope and intensity of possible infringement of constitutional rights. According to the Court the declaration of an “emergency epidemic situation” does not presuppose an intensive violation of

---

<sup>6</sup> See e. g. Decision n° 325, 14 May 2020; Decision n° 378, 12 June 2020; Decision n° 418, 25 June 2020; Decision n° 482, 15 July 2020; Decision n° 525, 30 July 2020.

<sup>7</sup> See M. Belov, *op.cit.*, p. 56-58.

<sup>8</sup> Decision n° 10/2020, 23 July 2020 (State Gazette n° 70, 7 August 2020).

the rights of the citizens comparable to the one provided for in article 57, paragraph 3 of the Constitution which allows for the declaration of war, state of siege or state of emergency. The Court considers that there are two essential differences between an “emergency epidemic situation” and a “military state of emergency”. The first one is the intensity of the measures undertaken for the overcoming of the threat. The second one concerns the authorities which are competent to declare them.

The Constitutional Court bases its argumentation on rather disputable considerations which have no substantial basis in both the text and the spirit of the Constitution. It would be much more reasonable – especially with view to the concrete Bulgarian constitutional model – to accept, as Constitutional Court Judge Georgi Angelov noted in his dissenting opinion, that “the emergency epidemic situation is a special case of the state of emergency”. Judge Angelov considers that the 1991 Constitution allows only the strengthening, more or less sharply, of the intensity and expansion of the scope of the executive power by relocating and/or creating new functions or bodies, but only in its own spheres of competence. No constitutional norm allows the transfer of competences between the various separated branches of state power. Thus, no transfer of powers is permitted between the legislative power (the National Assembly) and the executive power (the Council of Ministers and the ministers). The President of the Republic enjoys an increase of power in case of state of siege or state of emergency only within the executive power to which he predominantly belongs. Therefore, Judge Angelov concludes that any “relocation of the functions and powers of the highest state bodies - the Council of Ministers, the President and the National Assembly” is constitutionally, and therefore legally inadmissible. Much less permitted is a “transformation of the constitutional order” in case of “emergency epidemic situation”.

It is important to note that the exercise of the government’s power to declare an “emergency epidemic situation” and the anti-epidemic measures that have been undertaken by the minister of health are subject to control. According to the Constitutional Court’s Decision n°10 of 23 July 2020 during the declared epidemic the Parliament retains all its powers including its competence to control the acts and activities adopted and performed by the institutions of the executive power. Pursuant to article 83, paragraph 2 of the Constitution the National Assembly and the parliamentary committees may oblige the ministers to appear at their sittings and to give answers to the questions raised by the MPs. Consequently, the declaration of the “emergency epidemic situation” does not change or limit the controlling competence of the National Assembly in general and the MPs in particular. Nevertheless, such changes concerning both the parliamentary procedure in general and the parliamentary oversight over the government in particular were identified during the state of emergency.

### **3. The Impact of the COVID-19 Pandemic on the Parliamentary Procedure**

Important debates emerged in several countries regarding the permissibility of remote sittings of the Parliaments and the subsequent distance deliberation and voting via digital technologies. Such

discussion was present also in the Bulgarian case. The issue whether the National Assembly is constitutionally permitted to hold its sittings and to vote remotely by virtue of electronic means is not explicitly regulated in the Bulgarian Constitution. Article 81, paragraph 3 of the Constitution provides that voting is personal and public, except when the Constitution provides, or the National Assembly decides to make recourse to secret voting. The constitutional text does not contain any indications for the accomplishment of secret voting. The Constitutional Court in its Decision n° 8 of 5 June 2003 has decided that

“The requirement of article 81, paragraph 3 of the Constitution that ‘voting is personal’ is a fundamental constitutional principle related to the work of the National Assembly. Regardless of the type and specifically chosen manner of voting, the right of each MP to participate in it is a personal constitutional right which is inadmissible to be exercised by person different from the entitled MP. The content of this right is that the voting upon the adoption of the acts of the National Assembly is an act of personal discretion, in which the MP expresses immediately, freely and independently his or her personal will in accordance with his or her conscience and convictions.”

It can be assumed that if the opportunity for “immediate, free and independent” expression of the personal will of each MP is safeguarded then there is no constitutional impediment for the sittings and voting in the National Assembly to take place remotely by virtue of electronic means.

However, the National Assembly decided not take advantage of this opportunity. On 26 March 2020 the Parliament adopted a decision<sup>9</sup> for the organization of the rules of Procedure of the National Assembly during the state of emergency. According to this decision:

1. During the state of emergency declared by virtue of its decision of 13 March 2020 the National Assembly shall hold plenary sittings only on draft acts of Parliament and draft decisions of Parliament which are related to the declared state of emergency. The parliamentary control during this period is carried out only by written questions and answers.
2. During the state of emergency extraordinary plenary sessions can be in accordance with the provisions of article 78 of the Constitution of the Republic of Bulgaria and article 46 of the Rules of Procedure of the National Assembly.

According to article 78 of the Constitution the National Assembly shall be summoned to hold its sittings by the Chairman of the National Assembly. The Chairman of the National Assembly can summon the Parliament either on his or her own initiative or on the basis of the proposal of 1/5 of the MP, the President of the Republic or the Council of Ministers. Article 46 of the Rules of Procedure of the National Assembly provides that in the circumstances described in article 78, points 2, 3 and 4 of the Constitution, the Chairman of the National Assembly is obliged to schedule a sitting not later than 7 days after the receipt of the request for summoning regardless of whether the National

---

<sup>9</sup> Decision amending the Decision on the work of the National Assembly during the State of emergency, announced by a Decision of the National Assembly (State Gazette n° 22, 2020) and promulgated (State Gazette n°26, 2020).

Assembly is during its holiday period or not. The initiator of the summoning request must also propose the concrete agenda of the sitting.

On 7 April 2020 the National Assembly adopted new decision related its functioning during times of pandemic. Its task was to further develop the regulative framework of the Bulgarian parliamentarism in times of COVID-19 restrictions. The Parliament has adopted several special rules for the functioning of the National Assembly during the state of emergency. They can be summarized as follows. The Chairman of the National Assembly shall distribute the draft acts of Parliament only to the leading committee and are considered as adopted only in one reading in the phase of parliamentary committee. Furthermore, article 45, paragraph 2 of the Rules of Procedure of the National Assembly has been suspended. This is the provision that regulates the periods of the parliamentary holidays when the National Assembly is not in session.

The certification of the quorum which is done at the beginning of the plenary sitting shall be carried out through the computerized voting system. The registration of the MPs shall begin one hour before the announced starting time of the sitting. Only 1/4 of all MPs is allowed to be present during the parliamentary debates. The Chairman of the National Assembly sets the time when the voting must commence after closing the debates. The voting is carried out through the computerized voting system according to a schedule determined by the Chairman of the National Assembly. The MPs shall be divided into two groups that shall vote consecutively in the plenary hall of the Parliament. After the voting is finished the results shall be established and summarized by secretaries of the National Assembly and shall be handed over to the Chairman of the National Assembly, who shall announce them during the same sitting. Written proposals of the Members of Parliament for amendment of draft acts of Parliament adopted on the first reading shall be launched within 24 hours before the voting on second reading. The voting on the second reading of draft acts of Parliament should be accomplished after the end of the presentation of the reports of the leading commission in front of the plenary of the National Assembly and the debates on them; the Chairman of the National Assembly schedules the time for the vote on the bills, which cannot be earlier than 30 minutes after the end of the last debate on the draft act of Parliament. The voting is carried out by virtue of the computerized voting system according to the schedule determined by the Chairman of the National Assembly. The MPs have to be divided into two groups, which vote consecutively in the plenary hall of the Parliament. The vote of each group shall be accomplished chapter by chapter, section by section or text by text until the contents of the relevant report for the second vote and of the proposals made during the debate have been exhausted. After the end of the voting, the results shall be established and summarized by secretaries of the National Assembly and shall be submitted to the Chairman of the National Assembly, who shall announce them during the same sitting.

#### **4. The Impact of the COVID-19 Pandemic on the Parliamentary Control on the Government**

Despite the declared state of emergency and the central role of the executive branch in managing the crisis, the National Assembly did not adopt special rules to organize more frequent

exercise of its controlling function. On the contrary, by virtue of the above-mentioned decision, adopted on 26 March 2020, the National Assembly has established an unconstitutional restriction of the use of many of the means of parliamentary control. The Parliament has accepted that during the state of emergency parliamentary scrutiny can be exercised only through written answers to written questions and inquiries. Thus, the National Assembly has temporarily abolished all other forms for parliamentary control in sharp contrast to the requirements set by the 1991 Constitution and the Rules of Procedure of the National Assembly. More precisely, the National Assembly has banned the recourse for the duration of the state of emergency to oral questions and interpellations as well as the vote of no confidence provided by articles 89 and 90 of the Constitution and Chapter IX of the Rules of Procedure of the National Assembly<sup>10</sup>.

One day after the end of the state of emergency, on 14 May 2020, the National Assembly has adopted a Decision on the establishment of a Temporary Parliamentary Committee for Control of the Expenditures of Public Funds Related to Overcoming the Consequences of the Spread of COVID-19<sup>11</sup>. According to the initiators of this decision, this Committee has “to fulfill its constitutional power to control the executive branch” in order to ensure the necessary transparency and to check the compliance of the accomplished expenditures with a range of criteria subsequently analyzing their effectiveness. The activities of the commission should cover “all funds collected, received, stored, distributed and spent by public sector organizations” according to § 1, point 1 of the Financial Management and Control of the Public Sector Act.

The Temporary Committee consists of 10 members. Thus, each parliamentary group in the National Assembly has appointed 2 members of the Committee. The Committee is entrusted with the following tasks. First, it requires and publishes information on all expenditures of public funds, including funding provided by the European Union funds or other financial instruments related to overcoming the consequences of the spread of Covid-19. Second, it checks the compliance of the individual costs with the conditions and criteria established for the individual anti-crisis measures. Third, the committee prepares a report with summary data on the costs incurred and analysis of their effectiveness.

The committee has been established for the duration of the health emergency. During the period 20 May 2020 - 31 July 2020 the committee has held [three meetings](#). It has requested information about expenditures of public funds related to overcoming the consequences of the spread of COVID-19 from the Prime Minister of the Republic of Bulgaria, the Minister of Finance, the Minister of Labor and Social Policy, the Minister of Economy, the Minister of Health and the Deputy Prime Minister of the Republic of Bulgaria Mr. Tomislav Donchev. The Deputy Prime Minister and his team have been invited to committee hearings related to the spending EU funds and their restructuring to deal with the crisis. The Minister of Economy Mr. Lachezar Borisov and the Managing Authority of the Operational Program “Innovation and Competitiveness”, Ms. Iliana Ilieva, have also been heard in front of the committee.

---

<sup>10</sup> For the different forms of parliamentary control in Bulgaria see M. Belov, *op.cit.*, p. 127.

<sup>11</sup> State Gazette n° 46, 19 May 2020

\*\*\*

Parliamentarism has rather fragile foundations in Bulgaria. The first Bulgarian Tarnovo Constitution established a constitutional monarchy with elements of parliamentarism. Nevertheless, the history of Bulgarian parliamentarism during the period 1879-1947 experienced a difficult period between prevailing authoritarian regimes established by both the monarchs and the Prime Ministers. Parliamentarism was abolished during the communist regime (1947-1989) and the 1947 and 1971 Soviet type Constitutions. It was reestablished with the current 1991 Constitution.

The last 30 years have allowed the painful establishment of a fragile democratic order. The period of transition from communism to democracy has been marked by attempts to set up a liberal democracy following the best European models of parliamentarism and democracy. These efforts have been partially successful.

The Covid-19 pandemic has placed an immense pressure on the Bulgarian constitutional order. The measures adopted by the government, the minister of health and expert bodies have largely infringed the rule of law. They have also had a very negative impact on parliamentarism with regard to both its formal, procedural and substantial aspects. It remains to be seen whether the distortions of parliamentarism can be removed swiftly after the end of the Covid-19 pandemic.