

## POLITICAL AND CONSTITUTIONAL APPROACH TOWARD COVID 19: THE CASES OF KOSOVO AND CROATIA

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### **Summary**

*This paper analyzes the political and constitutional confrontation of Kosovo and Croatia with the COVID-19 pandemic. The similarities of the constitutional provisions governing emergency situations and possible restrictions on human freedoms and rights in both countries, alongside hybrid parliamentary systems with strong presidents, have produced the same approaches, respectively similar in political and constitutional terms as well as in the academic and professional aspect. Therefore, this paper is focused more on government responses to the situation, including divergences between presidents and governments, as well as constitutional court approaches and respective academic opinions on the subject axis: extraordinary measures within the ordinary or extraordinary legal order with a formal declaration of a “State of Emergency”. Both countries set out for the first model, contenting themselves with amending legal frameworks without a formal declaration of a state of emergency. How and why, it happened is explained in the second and third parts of the paper, resulting in conclusions and recommendations.*

**Keywords:** *Kosovo; Croatia; COVID-19; State of Emergency; Constitutional Court; Human Freedoms and Rights.*

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## 1 INTRODUCTION

The COVID-19 pandemic has not only affected people and national economies but also the constitutional order and democracy of many countries, where taking rapid restrictive measures were inevitable. Many democratic countries initiated immediate action in declaring a ‘state of emergency,’ reinforcing the power of the executive branch.<sup>1</sup> As usually seen in such situations, the leaders of different countries who demonstrate autocratic tendencies, including some leaders from European countries, were ready for the sake of the measures against COVID-19 and for the political benefits to damage the liberal constitutional governance.<sup>2</sup>

Within this framework, the reactions of well-known philosophers and constitutionalists were evident. For example, philosopher Giorgio Agamben, researcher of ‘State of Exception’,<sup>3</sup> appalled his colleagues with his approach toward the virus, minimizing and ignoring it and its consequences. As a result, special debates arose.<sup>4</sup> Moreover, he continues to repeat the fear of a “growing tendency to use the state of exception as a normal paradigm of government”.<sup>5</sup>

Yet, other countries (including Croatia and Kosovo) had a different response, clubbing the “factual state of emergency” with “ordinary legal order” by amending the existing legislation and approving special laws against the COVID-19. Kosovo and Croatia are two of the few countries from the region<sup>6</sup> that have similarly responded, with an almost similar approach. Therefore, this paper will specifically

- 1 Christian Bjørnskov, Stefan Voigt, “The State of Emergency Virus”, *VerfBlog*, April 4, 2020, <https://verfassungsblog.de/the-state-of-emergency-virus/>.
- 2 Leaders of Hungary and Poland used the opportunity to promote their personal political parties’ agenda. In Hungary, the authorities declared the state of emergency for an unspecified time, while the country continued to be governed on decree’s basis. Whereas, in Poland, *inter alia* the Law on Election of President was amended, even though this amendment was not allowed for a period of less than six months prior to elections. See reaction of European Parliament *vis-à-vis* measures in Hungary and Poland, European Parliament Resolution of April 17, 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences (2020/2616(RSP). Drinóczi, Tímea, Agnieszka Bień-Kacała. “COVID-19 in Hungary and Poland: Extraordinary Situation and Illiberal Constitutionalism”. *The Theory and Practice of Legislation* 8, N° 1–2 (2020): 171–192. <https://www.tandfonline.com/doi/full/10.1080/20508840.2020.1782109>.
- 3 Giorgio Agamben, *State of Exception*, (Chicago, London: The University of Chicago Press, 2005). Agamben is the main author who has fully addressed both the historical, philosophical aspect as well as the political and legal aspect the doctrine of “State of Exception”, based in other authors, too, like: Carl Schmitt, *Dictatorship*, (Cambridge: Polity Press, 1921); Frederick M. Watkins, “The Problem of Constitutional Dictatorship,” *Public Policy*, 1940: 324-279; Carl J. Friedrich, *Constitutional Government and Democracy*, (Boston: Ginn and Company, 1950) and finally Clinton L. Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, (New York: Routledge, 2017).
- 4 See debate: Michael Foucault *et al.*, “Coronavirus and Philosophers,” *European Journal of Psychoanalysis*, <https://www.journal-psychoanalysis.eu/coronavirus-and-philosophers/>.
- 5 Giorgio Agamben, “The Invention of an Epidemic.” *Quodlibet*, November 1 2020. <https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia>.
- 6 “Democracy and the State of Emergency, Responses to the Corona Crisis in the Western Balkans,” Friedrich Ebert Stiftung, *Croatia and Slovenia Report One*, April 20, 2020, <http://library.fes.de/pdf-files/bueros/belgrad/16119.pdf>. Accessed on November 2, 2020.

concentrate on the comparative aspect of the political, constitutional, and professional approaches of these two countries (Kosovo and Croatia) *vis-a-vis* the COVID-19. This comparative approach is particularly triggered as a result of the similarities of the political and constitutional system of the Croatian<sup>7</sup> hybrid parliamentarism and the atypical Kosovo parliamentarism.<sup>8</sup> An additional prompt for such an approach was our admiration for the Croatian constitutional doctrine and our eagerness that our country follows the Croatian model of constitutional design.

The first part of this paper will focus on our analysis of the approaches of political leadership of Croatia and Kosovo, attempting to identify eventual similarities and differences, while the second part will tackle the approach of constitutional courts and their decisions *vis-à-vis* claims against the COVID-19 measures. In addition, we will also discuss the academic debates concerning comparative and emergency constitutional law, considering specifically the emergencies arising from the pandemic.

## 2 POLITICAL APPROACH

### 2.1 Kosovo

The beginning of the pandemic found Kosovo with a new government that was created after five months of negotiations between two political parties with completely different ideologies and a lack of absolute trust amongst their leaders.<sup>9</sup> Unfortunately, the political agenda of this government was mainly to manage the new situation created by COVID-19, which was followed by the lack of unity within the coalition that appeared to be fragile from the beginning. In fact, the two first decisions<sup>10</sup> were rendered on the grounds of general competencies of the government to issue decisions and administrative acts to implement laws, which are ordinary competencies of each executive branch in peacetime. With the first decision, the government approved some preventive measures to control the pandemic outbreak. This decision affected some human rights such as the freedom of movement, freedom of public gatherings, right to education, and right to work. Moreover, with the second decision, the government established a special commission to prevent the spread of the infection. The Prime Minister was the head of this commission, followed by

7 Branko Smerdel, "Hibridni parlamentarizam nakon tri predsjednička mandata," *Informator* 6363, 27. 04. 2015, <https://informator.hr/strucni-clanci/hibridni-parlamentarizam-nakon-tri-predsjednicka-mandata>.

8 Murat Jashari, Behar Selimi, "Kosovo-An Atypical Parliamentary Republic," *Academicus – International Scientific Journal*, N°14 (2016): 136-146.

9 The Democratic League of Kosovo (LDK) centered-right political party, whereas Self-determination Movement (Levizja Vetëvendosje - LVV) cantered-left political party. Dissatisfaction, differences, distrust will become the main factors for the short-lived governance (50 days plus two months and half of resigned government).

10 *Kosovo Government*, Decision N° 01/07 (09.03.2020) and Decision N° 01/08 (12.03.2020). Accessed November 8, 2020, <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimet-e-Mbledhjes-s%C3%AB-7-t%C3%AB-t%C3%AB-Qeveris%C3%AB-s%C3%AB-Republik%C3%ABs-s%C3%AB-Kosov%C3%ABs-2020.pdf>.

other members mainly including the ministers of ministries (Ministry of Finance, Ministry of Internal Affairs, Ministry of Health, etc.) as well as representatives of the security sector (Police, Army, Customs, etc.). Distinctively, these measures and the following measures were taken without declaring a state of emergency. Six days after the first executive anti-COVID decision, the government approved the decision to declare “public health emergencies,” which required actions from all institutions in accordance with the National Response Plan.<sup>11</sup> This decision was in contradiction with itself, as the responsibility to manage the situation was placed on the Ministry of Health. According to the National Response Plan, in case of natural disasters,<sup>12</sup> the responsibility falls under the Ministry of Internal Affairs.<sup>13</sup> Therefore, this decision provided legality and legitimacy to the undertaken measures, which now were in conjunction with the Law for Prevention and Fighting Against Infectious Diseases and the Law on Health.<sup>14</sup> The government continued to manage the situation through executive decisions, avoiding constitutional procedures to declare a state of emergency. Furthermore, the government was convinced that this management model had sufficient legal ground and there was no need for any extraordinary legal order. However, the President and some other political parties, including the Democratic League of Kosovo (LDK), which was in a governing coalition with the self-determination movement (LVV), had different opinions. According to them, the situation required declaration of a state of emergency due to the necessity of restriction of human rights and freedoms, which go beyond the legal provisions in force, that do not allow such restrictions at a national level. In particular, the president (H. Taçi) was very active; he, following a meeting of the National Security Council, not in agreement with the prime minister, declared a state of emergency.<sup>15</sup> His persistence went to the point of stubbornness, trying to take a chance for leadership, as Chinese proverb says: “crisis is danger plus opportunity.”<sup>16</sup> However, the President’s decree was never published nor discussed in the Parliament, as required by the constitution.<sup>17</sup> Decision No. 01/15 (23 March 2020),<sup>18</sup> which restricted freedom of movement and

11 *Kosovo Government* Decision N°01/11 (15.03. 2020). Accessed on November 9, 2020, <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-nr.01-11.pdf>.

12 According to the Law on Protection from natural disasters and other disasters, infectious diseases fall under the definitions of natural disasters. See: Law N° 4/L-027 on Protection from natural disasters and other disasters, Official Gazette, N° 22/2011.

13 Ministry of Internal Affairs of Kosovo, National Response Plan, Accessed on November 9, 2020, <https://mpb.rks-gov.net/f/39/Strategic-documents>.

14 Law N° 02/L-109 For Prevention and Fighting Against Infectious Diseases, Official Gazette, N° 40/2008; Law N° 04/L-125 on Health, Official Gazette, N° 13/2013.

15 See: “Kosovë - koronavirusi: presidenti kërkon gjendje të jashtëzakonshme – qeveria kundër”, *Voice of America (VOA)*, March 17, 2020, <https://www.zeriamerikes.com/a/kosovo-covid-19/5332938.html>.

16 Oren Gross, “Emergency Powers in the Time of Coronavirus and Beyond,” *Just Security*, May 8, 2020, <https://www.justsecurity.org/70029/emergency-powers-in-the-time-of-coronaand-beyond/>.

17 Constitution of Republic of Kosovo, Art. 131.4. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>.

18 Decision of Kosovo’s Government on protective measures against spread of virus, as per proposals of Healthy Ministry.

freedom of public and private gatherings at a national level was one of the decisions that provoked serious objections between the government and the president. President Thaçi and other political leaders (Isa Mustafa and Ramush Haradinaj) considered the government decision unconstitutional; according to them, restrictions foreseen by such a decision could only be imposed after a state of emergency is declared. President Thaçi further went on to inform the citizens and institutions (particularly targeting the police) that should the ‘decision not be respected, it would constitute a criminal offense.’<sup>19</sup> Fortunately, the president’s appeal did not have any impact on the normal functioning of institutions, which continued to obey that decision. The President continued with his persistence, seeking from the constitutional court to make such a decision null and void and declare it as unconstitutional.<sup>20</sup> However, the constitutional court promptly (within a week) rendered a judgment that was not in favour of either the government, who believed the pandemic is manageable within an ordinary legal order within the existing legal framework in force, nor of the President, who insisted an extraordinary legal order. After the declaration of a state of emergency, approved by the Parliament, the President through the National Security Council took charge of the executive power.<sup>21</sup> This opportunity of changing roles in executive appeared to be reasonable for the prime minister who feared<sup>22</sup> any new eventual executive role of the president. The Security Council is a body with an advisory role. However, during the period, a state of emergency takes on an executive role. Conclusively, all confrontations and dilemmas ended with the approval of the Law on Prevention and Combating COVID-19 Pandemics,<sup>23</sup> which legitimates and legalizes restrictive measures, including the drastic restrictions of freedom of movement, freedom of gatherings, right to work, right to education, etc. The said law authorizes the Ministry of Health to impose necessary measures that restrict all human rights and freedoms, except those that are unabrogated under any circumstance. This law and other respective laws (Law for Prevention and Fighting against Infectious Diseases and Law on Health) appear to reasonably fulfill the legal infrastructure for managing situations created by the COVID-19, where any declaration of a state of emergency with the potential risk of abrogation and suspension of human rights and freedoms would be unnecessary. As expected, misunderstandings regarding the operation of the Civil Protection System arose, although recommendations for a coordinated system and an integrated approach have existed for years. For example, there are principal documents for actions (Integrated

19 Bekim Shehu, “Kosovë: Dramë politike në kohën e rritjes së pandemisë”, *Deutsche Welle*, March 24, 2020, <https://www.dw.com/sq/kosov%C3%AB-dram%C3%AB-politike-n%C3%AB-koh%C3%ABn-e-rritjes-s%C3%AB-pandemis%C3%AB/a-52895425?maca=sq-EMail-sharing>.

20 For this process, we will discuss under the part of professional approach.

21 See Art. 131.8 of Constitution of Kosovo and Law N° 03/L-050 on the Establishment of the Kosovo Security Council, Official Gazette N° 26/02.

22 “Kurti flet për konfrontimin me Hashim Thaçin: Mendonte se ishte mbret”, *Indeksonline*, November 10, 2020, <https://indiksonline.net/kurti-flet-per-konfrontimin-me-hashim-thacin-mendonte-se-ishte-mbret/>.

23 Law N° 07/L-006 on Preventing and Combating COVID-19 Pandemics in the Territory of the Republic of Kosovo, Official Gazette N° 03/2020.

System and emergency management as well as National Reaction Plan). Therefore, we can conclude that “Kosovo was not prepared enough to prevent and combat the pandemic,”<sup>24</sup> and the institutional responses were of an *ad hoc* nature, which gave some results at the beginning of the pandemic. Concerning the legislation for the management of emergencies, Kosovo has an overly complicated legal framework. One of the reasons for this could be the involvement in the drafting of legislation of various experts from different and mixed legal cultures, such as common and civil law systems. Such circumstances give the impression, as Professor R. Maruste says for Estonian legislation, “It gives the impression that relevant laws and regulations in force were drafted under the assumption that they will never be used.”<sup>25</sup>

## 2.2 Croatia

The pandemic in Croatia also began during the year of the parliamentary election. In the first half of this year, Croatia took up leadership of the Presidency of the European Council. The first rapid responses toward the pandemic, initially taken up by the Croatian Ministry of Health followed later one by the Civil Protection Headquarters.<sup>26</sup> Croatia, like Kosovo, did not declare a state of emergency. The announcement of the COVID-19 pandemic dated 11 March 2020 was a reasonable step taken in this direction.<sup>27</sup> It was believed that the civil protection system and the amended legal infrastructure are sufficient responses to the situation of a health emergency. The change of health ministers,<sup>28</sup> during the pandemic period where the health of people was at high risk due to COVID-19, resulted in a delay in the establishment of structures for the management of emergencies within the health ministry.<sup>29</sup> The establishment of Civil Protection Headquarters (20 February 2020), headed by the deputy prime minister and the minister of internal affairs, seemed like proper solution.<sup>30</sup> Gradually, this institution became the key decision-making

24 Besa Kabashi - Ramaj, “Kosovo was not Adequately Prepared for the Pandemic,” *European Western Balkans*, April 28, 2020, <https://europeanwesternbalkans.com/2020/04/28/kosovo-was-not-adequately-prepared-for-the-pandemic/>.

25 Rait Maruste, “State of Emergency in Estonia,” *VerfBlog*, May 17, 2020, <https://verfassungsblog.de/state-of-emergency-in-estonia/>.

26 European Union Agency for Fundamental Rights, Coronavirus pandemic in the EU – Fundamental Rights Implications, *Country: Croatia*, November 3, 2020, [https://fra.europa.eu/sites/default/files/fra\\_uploads/hr\\_report\\_on\\_coronavirus\\_pandemic\\_november\\_2020.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/hr_report_on_coronavirus_pandemic_november_2020.pdf). Accessed on December 4, 2020.

27 Ministarstvo zdravstva, *Odluka o proglašenju epidemije bolesti COVID-19 uzrokovana virusom SARS-CoV-2*. Accessed on April 26, 2021, <https://zdravstvo.gov.hr/UserDocsImages/2020%20CORONAVIRUS/ODLUKA%20O%20PROGLA%20C5%A0ENJU%20EPIDEMIJE%20BOLESTI%20COVID-19.pdf>.

28 Minister Milan Kujundžić was removed from his position due to assets declarations issues, to be replaced with Minister Vili Beroš.

29 Max Brändle *et al.*, “Analysis: Democracy and the State of Emergency- Responses to the Corona Crisis in the Western Balkans, Croatia and Slovenia. Report One,” *Friedrich Ebert Stiftung*, <http://library.fes.de/pdf-files/bueros/belgrad/16119.pdf>.

30 See composition at: Narodne Novine, Rješenje o imenovanju načelnika, zamjenika načelnika i članova Stožera civilne zaštite Republike Hrvatske. Accessed on December 10 2020, <https://>

authority whose decisions became a subject of contest. Compared to Kosovo, the Croatian experience with its independence<sup>31</sup> and in crisis management, during and after the war, as well as in the crisis related to natural disasters (earthquakes, flooding) enabled the creation of an effective emergency reaction system. It can also be noted that there are other differences for both formal and substantial formats. Therefore, in Kosovo, from the beginning until the end, the Minister of Health, assisted by a professional steering board, was the main person in charge of situation management regarding the pandemic, while in Croatia minister of the health was key player only in the first weeks of the pandemic, being replaced later one by the Minister of Internal Affairs.

In Croatia, like Kosovo, the government tried to find alternatives to gain the necessary legal base for emergency management without declaring state of emergency. The Croatian Prime Minister Andrej Plenković made efforts to convince the parliament in enabling the government to lead the country through decrees.<sup>32</sup> Unlike Kosovo, the Security Council in Croatia did not appear to be as active as the Coordination for the Homeland Security System “as the central platform and actor of crisis management”.<sup>33</sup> The government, in the process of decision-making, relied on civil protection systems with a focus on the Civil Protection Headquarters. During the first few weeks, the government tried to achieve the public’s trust in its work.<sup>34</sup> It later turned out that Civil Protection Headquarters was at the center of criticism as an illegal institution not constitutionally authorized for restricting human rights and freedoms. President Zoran Milanović was the one who criticized the most. In a TV interview he called this institution as a “group of people who are not elected by the people to determine how many people are allowed to be at the wedding.”<sup>35</sup> He insisted that the circumstances of the pandemic required a state of emergency declaration. Therefore, the declaration of a state of emergency should come from the Parliament. It is important to note that the Croatian president was more careful with his language, compared with the Kosovo president, who, with his actions, could cause political polarization, contrary to his constitutional responsibility being the representative of

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narodne-novine.nn.hr/clanci/sluzbeni/2020\_02\_20\_492.html.

- 31 Even 13 years after the declarations of the Independence, regarding security issues, Kosovo still depends on NATO.
- 32 Sanja Despot, “Za najavljene mjere i za zabrane kretanja nije nužno proglašenje izvanrednog stanja. Dovoljna je i odluka ministra,” *Faktograf.hr*, March 17, 2020, <https://faktograf.hr/2020/03/17/za-najavljene-mjere-i-za-zabrane-kretanja-nije-nuzno-proglasenje-izvanrednog-stanja-dovoljna-je-i-odluka-ministra/>.
- 33 Robert Mikac, “COVID-19 Pandemic and Crisis Management in the Republic of Croatia”, *Anali Hrvatskog Politološkog Društva* 17, N° 1 (2020): 31-55, <https://doi.org/10.20901/an.17.02>.
- 34 Goran Čular, “Ustavni i politički aspekti borbe protiv epidemije u Hrvatskoj,” *Politički Život - Časopis za analizu politike*, Centar za demokratiju, Fakultet političkih nauka Beograd, N° 18 (2020): 35-40.
- 35 See: “Milanović o Stožeru: Nije normalno da grupa ljudi koja nije birana od naroda određuje koliko ljudi smije biti na svadbi”, *Novi List*, 26. 7. 2020. Accessed on December 10, 2020., <https://www.novolist.hr/novosti/hrvatska/milanovic-o-stozeru-nije-normalno-da-grupa-ljudi-koja-nije-birana-od-naroda-odreduje-koliko-ljudi-smije-biti-na-svadbi/>.

unity of the people.<sup>36</sup>

Dilemmas concerning the legal basis for the pandemic management were almost the same. In addition, in Croatia, there were restrictions within the civil protection system. As of then, the Law on the Protection of Population from Infectious Diseases foresaw some of the restrictive measures. The first decisions did not have a legal basis, which is why the amendment of the two laws was necessary. The amendments of the Law on Civil Protection<sup>37</sup> and the Law on Protection of Population from Infectious Diseases<sup>38</sup> clearly enumerate procedures for the declaration of a state of emergency due to a pandemic. Further, such amendments foresaw precise competencies for the Civil Protection Headquarters. Further, this body ‘in extraordinary circumstances where the risk of citizens’ health is evident might lead to issue mandatory decisions and instructions for both local and central governance.’<sup>39</sup> However, some of the decisions issued by Civil Protection Headquarters were challenged through individual constitutional claims. Yet, the academic debate regarding the state of emergency continued. The comparative approach presented below will show the reactions of constitutional courts of Croatia and Kosovo. We will also consider the individual opinions of the professors and jurists of these two countries.

### **3 ACADEMIC AND PROFESSIONAL APPROACH**

#### **3.1 Kosovo**

As already mentioned, in Kosovo, the main political debate was about the constitutionality of the anti-COVID-19 measures issued by the government, wherein some human rights and freedoms became subject to violation. There were neither professional nor citizen dilemmas about the need for restrictions. The only dilemma was whether such restrictions should be made with or without a state of emergency. The government insisted that situation management should be done without the need of declaring a state of emergency, while the President was firm in his actions toward declaring such.

The Constitution of Kosovo recognizes three situations of declaration of a state of emergency:<sup>40</sup> the first is when the country is under the risk of protection, and emergency measures are inevitable; the second is when there are circumstances when the internal constitutional order is at risk; and the third is when there are circumstances of natural disaster in the entire country or in a part of it. The only authority to declare a state of emergency in all these three situations is the president. The constitution requires that before the president issues a decree to declare a state of emergency, they should consult the prime minister. Such consultation is not formal and legal in nature, but it is essential and practical as the prime minister represents the

36 Constitution of the Republic of Kosovo, Art. 4.3.

37 Zakon o sustavu civilne zaštite, Narodne novine 82/15, 118/18, 31/20.

38 Zakon o zaštiti pučanstva od zaraznih bolesti, Narodne novine 79/07, 113/08, 43/09, 130/17, 114/18, 47/20, 134/20.

39 Zakon o zaštiti pučanstva od zaraznih bolesti, Art. 22 a.

40 Constitution of the Republic of Kosovo, Art. 131.



assembly majority that will decide on the decree. Therefore, the decree for declaring a state of emergency will have no effect without being confirmed in the Parliament. It appears that the president was wrong to think that such supposed constitutional circumstances created by the pandemic were equal to circumstances related to natural disasters.<sup>41</sup> Thus, a state of emergency should be declared in accordance with Article 55 of the Constitution that stipulates situations when fundamental rights and freedoms might be subject to certain degrees of limitations. Yet, the prime minister thought that the declaration of a state of emergency was unnecessary and that Article 55 of the Constitution had sufficient constitutional ground for any limitation for the sake of protection of the health and life of the citizens. Article 55 allows limitations of fundamental rights and freedoms only as far as the law foresees such limitations. In contrast, Article 56 establishes derogation of fundamental rights and freedoms during a state of emergency. Government decisions for limitations of the freedom of movement and the freedom of gatherings, as well as other rights and freedoms,<sup>42</sup> were in line with Article 56 of the Constitution. Therefore, the president sought from the Constitution a review of the constitutionality and legality of the government decision. Following this, the constitutional court reviewed the decision issued by the government in line with Article 55 of the Constitution and held that such a decision was not in conjunction with the constitution and lacked sufficient legal ground, the reason being that the limitation of fundamental rights and freedoms should be regulated by law, despite the declaration of a state of emergency. According to the constitutional court, Article 55 of the Constitution regulates situations where interference in limitation of fundamental rights and freedoms is slighter, compared to Article 56, where interference is more serious.<sup>43</sup> Moreover, field experts supported such a distinguished approach, which is reflected in the Syracuse Principles.<sup>44</sup> Perhaps, this explanation could also be argued upon regarding Article 55, and it can be said that this article is more about “state of emergency” while Article 56 concerns “state of exception.”<sup>45</sup> However, since the field experts were more reserved, the public debate mainly focused on the form of TV debates with incompetent analysts.<sup>46</sup>

41 According to the Kosovo Law for Prevention and Fighting against Infectious Diseases (N° 04/L-027) infectious diseases are part of definitions related to natural disasters.

42 *Kosovo Government*, Decision N° 01/15, 23.03.2020. Accessed on December 12, 2020, <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimet-e-Mbledhjes-s%C3%AB-15-t%C3%AB-t%C3%AB-Qeveris%C3%AB-s%C3%AB-Republik%C3%ABs-s%C3%AB-Kosov%C3%ABs.pdf>.

43 *Constitutional Court of Kosovo*, Judgment in Case N° KO54/20, 6 April 2020, 45-46. Accessed on December 13, 2020., [https://gjk-ks.org/wp-content/uploads/2020/04/ko\\_54\\_20\\_agj\\_ang.pdf](https://gjk-ks.org/wp-content/uploads/2020/04/ko_54_20_agj_ang.pdf).

44 See: *Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. American Association for the International Commission of Jurists, Geneva 1985, <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

45 This division is based on follow theory: Agamben, *State of Exception and State of Emergency*.

46 Behar delivered a lecture in Youth Centre of Skenderaj Municipality as well as a presentation for an International Conference organized by UBT College with topic: “The State of Emergency in the Constitutional Law of Kosovo.” See: <https://knowledgecenter.ubt-uni.net/conference/2020/>

One of the most active professors was the former president of the constitutional court (Enver Hasani), who was of the opinion that the government's decision was unconstitutional and led to the usurpation of power. According to Hasani, this was a situation of derogation of fundamental rights and freedoms, not only limitations.<sup>47</sup> The assembly members were also active in objecting the government's measures, disputing such measures with claims filed in the constitutional court. With one of its decisions,<sup>48</sup> the government ruled to declare the entire region of Prizren a 'quarantine zone'; this was followed by a vast limitation on fundamental rights and freedoms. In this case, the constitutional court *inter alia* found that the level of limitation of fundamental rights and freedoms was not in accordance with either Article 55 of the Constitution or the existing legal infrastructure related to health protection and prevention and combating of infectious diseases, since such a level of limitations is not permitted.<sup>49</sup> Differing from his colleagues' opinion, Constitutional Judge Bekim Sejdiu, reasoned that the right to life prevails compared to other fundamental rights and freedoms, and it is a positive obligation for the state to protect this right with priority.<sup>50</sup> In Kosovo's case, all legal and constitutional provisions that constitute emergency law, also the academic's views promote the legal model of crisis management, through which "emergencies are to be handled by enacting ordinary statutes that delegate special and temporary powers to the executive."<sup>51</sup> This model could be referred to as an accommodation model<sup>52</sup> that aims to handle and manage emergencies through necessary accommodations that are in line with the existing legal order. The Constitution *expressis verbis* forbids other *extra-legal* models<sup>53</sup> since it does not permit the suspension of the Constitution in any situation.<sup>54</sup>

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- all\_events/172/.
- 47 Enver Hasani, "Per masat e reja: kunderkushtuese dhe uzurpim i pushtetit". *Indeksonline*. January 7, 2021. <https://indeksonline.net/enver-hasani-per-masat-e-reja-kunderkushtetuese-dhe-uzurpim-i-pushtetit-1/>
- 48 Kosovo Health Ministry, Decision N° 229/IV/2020. Accessed on December 12, 2020, <https://msh.rks-gov.net/wp-content/uploads/2020/04/Vendimi-p%C3%ABr-Komun%C3%ABn-e-Prizerenit-1.pdf>.
- 49 *Kosovo Constitutional Court*, Case N° KO61/20. Accessed December 12, 2020., [https://gjk-ks.org/wp-content/uploads/2020/05/ko\\_61\\_20\\_agj\\_ang.pdf](https://gjk-ks.org/wp-content/uploads/2020/05/ko_61_20_agj_ang.pdf).
- 50 Dissenting Opinion in Judgment KO 61/20 of the Constitutional Court of the Republic of Kosovo. Accessed on December 20, 2020., [https://gjk-ks.org/wp-content/uploads/2020/05/ko\\_61\\_20\\_mm\\_ang.pdf](https://gjk-ks.org/wp-content/uploads/2020/05/ko_61_20_mm_ang.pdf).
- 51 John Ferejohn, Pasquale Pasquino, "The Law of the Exception: A Typology of Emergency Powers," *International Journal of Constitutional Law* 2, N° 2 (2004): 210–239. <https://doi.org/10.1093/icon/2.2.210>.
- 52 More for models see Oren Gross and Fionnuala Ni Aolain, *Law in Times of Crisis Emergency Powers in Theory and Practice*, (New York: Cambridge University Press: 2006), 17-109.
- 53 Gross and Ni Aolain, *Law in Times of Crisis Emergency Powers in Theory and Practice*, 110-170.
- 54 Constitution of the Republic of Kosovo, Art. 131.2.

### 3.2 Croatia

In Croatia, like Kosovo, the main question that provoked academic and professional debates was whether a state of emergency will follow the limitation of fundamental rights and freedoms or whether the crisis management will continue with “The business as Usual or Accommodation Models”<sup>55</sup> without declaration of a state of emergency.

Article 16 of the Constitution of Croatia, same as Article 55 of Kosovo Constitution, regulates rights and freedoms limitations inherent in any piece of (ordinary) legislation. Therefore, within this constitutional framework we cannot find a just constitutional base to impose a heavy limitation of fundamental human rights and freedoms, particularly not their derogation. As we saw in Kosovo case (analyzed above), Constitutional Court did very arguable (to risky for rule of law) interpretation that allow parliament to impose such a limitation even without declaring “state of emergency”, based on law approved in ordinary legislative process. It is up to legislator to decide which way to follow. The similar approach we can find in Croatia, while in similar situations. As noticed by Vuković and Kuzelj, “Croatian constitution-makers left the balancing of conflicting constitutional guarantees to the legislator, on a case-by-case basis, with Art. 16. par. 2 mandating respect for the principle of proportionality (...). Fundamental rights may be limited in regular circumstances (Art. 16. par. 1), relying on the need to protect public health, as well as by use of a stricter procedure in emergency situations (Art. 17).”<sup>56</sup> The power of legislator to decide-when in such dilemmas, is noticed also in the decision<sup>57</sup> of Constitutional Court of Croatia related to complaints of attorneys at law and two members of parliament.<sup>58</sup>

Article 17 of the Constitution of Croatia, same as Article 56 Kosovo Constitution,<sup>59</sup> regulates the limitation of fundamental human rights and freedoms “during a state of war or an immediate threat to the independence and unity of the State, or in the event of severe natural disasters.” Likewise, in Kosovo, all three situations demonstrate legitimate circumstances for the declaration of a state of emergency, followed by drastic limitations and derogation of human rights and freedoms. Seemingly, the Constitution of Croatia recognizes the limitations that might be imposed following a declaration of a state of emergency based on the laws

55 Oren Gross, “Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?” *The Yale Law Journal* 112, N° 5 (2003): 1014-1134. <https://digitalcommons.law.yale.edu/ylj/vol112/iss5/8>.

56 Ana Horvat Vuković and Valentino Kuzelj, “Constitutionality during times of crisis: Anti-pandemic measures and their effect on the rule of law in Croatia”, *6<sup>th</sup> International Conference – ERAZ 2020 – Knowledge based sustainable development*, Online/virtual, May 21, 2020, Conference proceedings. Accessed April 27, 2021, <https://eraz-conference.com/wp-content/uploads/2021/03/ERAZ.2.59.pdf>.

57 See point 28 of Rješenje Ustavni sud Republike Hrvatske N° U-I-1372/2020 September 14, 2020 and five dissenting opinions.

58 Attorneys at law: Martin Sherri, Miran Zorica, Dora Ljevar and Danijel Pribanić. Members of Parliament: Peđa Grbin (President of Social Democratic Party) and Hrvoje Šimić.

59 Constitution of the Republic of Kosovo, Art. 55 and 56.

that require approval from a qualified majority (2/3) of all assembly members. Article 17 of the Constitution of Croatia, same as Article 56 of the Kosovo Constitution, requires that during serious emergencies, measures have “to be adequate to the nature of the danger.” Thus, the derogation of the fundamental human rights and freedoms, such as violation of the right to life, prohibition of torture, cruel or degrading treatment or punishment, on the legal definitions of penal offenses and punishments, or freedom of thought, conscience and religion, are expressly prohibited, even if the existence of the state is at risk.<sup>60</sup> Precisely, these two articles become legal grounds for the initiation of constitutional disputes from Croatian citizens, mainly lawyers, who believe that measures imposed by the government are unconstitutional. On the whole, there were claims that the level of limitation of the fundamental human rights and freedoms should be associated with the declaration of the state of emergency, and such limitations should, on legal grounds, be supported by two-thirds (2/3) of all assembly members. Additionally, it was considered that the amended legal infrastructure to cope with the pandemic was not in accordance with the Constitution and that the following actions and decisions undertaken were unconstitutional. The Constitutional Court found that such proposals and allegations were inadmissible. According to the court, the existing legal infrastructure issued in accordance with Article 16 of the Constitution was in accordance with the Constitution, as it is the assembly that decides which legal ground (Article 16 or 17) for the necessary limitation of fundamental human rights and freedoms is more convenient within supposed emergencies.<sup>61</sup> Yet, not all judges were of the same opinion. Three of them,<sup>62</sup> led by Judge Andrej Abramović, agreed that the situation was extraordinary, and Article 17 should have been the legal ground for necessary limitations. However, Judge Abramović started his ‘battle’ with the media immediately after the imposition of the first measures and amendments of legal infrastructure. A few months prior, the issue was not a constitutional matter. According to Judge Abramović, since the situation was an emergency, the measures for necessary limitation should be based on the grounds of laws that are approved by two-thirds (2/3) of all assembly members.<sup>63</sup> Notably, for comparison, in Croatia, there were opposing opinions to the constitutional framework wherein the government grounded its decisions, while in Kosovo, we had a proponent opinion where Judge Bekim Sejdiu<sup>64</sup> stated that government measures, compared to other rights, should give priority to the right of life and that the State has a positive duty to protect this right. Conversely, in Croatia, same as in Kosovo, opposing political parties insisted on the declaration of a state of emergency, with emergency governance with laws approved by two-thirds (2/3) of all assembly members, as this could have empowered them to control the government

60 Constitution of the Republic of Croatia, Official Gazette N° 85/2010 – consolidated text, Art. 17.

61 Rješenje Ustavni Sud Republike Hrvatske br. U-I-1372/2020 September 14, 2020 and five dissenting opinions of judges, point. 28.

62 Judges: Goran Selanec, Lovorka Kušan and Andrej Abramović.

63 Andrej Abramović, “Ustavnost u doba virusa”, *IUS-INFO*, December 20 2020. <https://www.iusinfo.hr/aktualno/u-sredistu/41073>.

64 Judge Sejdiu reacted in only one of the decisions, decision N° 214/IV/2020 of the Ministry of Health whereby the Municipality of Prizren was declared as a ‘quarantine zone’.

in such circumstances.<sup>65</sup> However, when time came, in both countries the opposition supported all the necessary amendments to the legislative framework. Attitude's pro and contra *vis-à-vis* declaration of the state of emergency (favoring either Article 16 or Article 17) also became the subject of academic debates. In Kosovo, the initial debates about emergency lacked domestic literature, while in Croatia, there were some special papers<sup>66</sup> issued and experience concerning crisis management; in particular, those caused by natural disasters were evident. Nonetheless, the previous academic debates were appropriate enough for sufficient analysis and comparisons. Because of different scientific views, the debates on the COVID-19 pandemic were much quicker and more responsive toward developments related to the situation. The proposal for the law on telecommunication that aimed to legitimately control the movement of the infected individuals via mobile phones provoked the debate the most. The debate mainly included constitutional law professors like, Branko Smerdel, Ana Horvat Vuković, Sanja Barić, Matija Miloš as well as Đorđe Gardašević.<sup>67</sup> The dominant opinion was that limitation of fundamental human rights and freedoms during a pandemic can only be in accordance with Article 17 of the Constitution of Croatia, while Article 16, according to the academicians, authorizes limitation in ordinary situations. Different from the Kosovo Constitution, the Constitution of Croatia does not use the term "state of emergency." Yet, it does not oblige the assembly to declare a state of emergency although emergency circumstances exist; it is only in cases of a declaration of war and achievement of peace that it becomes an explicit requirement for the president to declare a state of emergency upon a decision by the assembly.<sup>68</sup> Generally, the Constitution provides four factual circumstances where limitations of fundamental human rights and freedoms might come into consideration with approval of laws with two thirds (2/3) of the assembly members, or by the President of the Republic at the proposal of the Government and upon the counter-signature of the Prime Minister, in case the assembly is not able to hold meetings. Such circumstances include (1) a state of war (Article 17), (2) the risk for existence, independence and unity of the State (Article 17), obstruction of the usual constitutional operation of state institutions (Article 101), and (4) severe natural disasters (Article 17). Notably, these articles (16, 17, and 101) are unrelenting

65 Ivanka Toma, "HDZ i SDP o suspenziji ljudskih prava", *Jutarnji list*, February 25, 2020, March 25, 2020, <https://www.jutarnji.hr/vijesti/hrvatska/hdz-i-sdp-o-suspenziji-ljudskih-prava-u-kojim-se-okolnostima-treba-aktivirati-clanak-17-ustava-i-kako-tada-funkcioniraju-poluge-drzavne-vlasti-10133575>.

66 See: Arsen Bačić, "Odredbe o "stanju nužnosti" u ustavu Republike Hrvatske iz 1990. godine," *Zbornik radova Pravnog fakulteta u Splitu*, N° 34 (1997): 39-58; Jasna Omejec, "Ograničavanje sloboda i prava čovjeka i građanina", *Društvena istraživanja* 5, N° 2 (1996): 345-376; Jasna Omejec, "Izvanredna stanja u pravnoj teoriji i ustavima pojedinih zemalja", *Pravni vjesnik* 12, N° 1-4 (1996): 172-196.

67 Slavica Lukić, "Na koji način država smije ograničavati ljudska prava u izvanrednim situacijama," *Jutarnji list*, March 28, 2020, <https://www.jutarnji.hr/vijesti/hrvatska/vodeci-ustavni-strucnjaci-za-jutarnji-na-koji-nacin-drzava-smije-ogranicavati-ljudska-prava-u-izvanrednim-situacijama-10144543>; Hrvoje Šimičević, "Gdje je nestao Ustav?" *Novosti*, April 1, 2020, <https://www.portalnovosti.com/gdje-je-nestao-ustav>

68 Constitution of the Republic of Croatia, Art. 100.

toward interpretation *vis-à-vis* situations and circumstances concerning a “state of emergency,” where different conclusions might follow.

From a doctrinal point of view, the constitutional law of emergencies of both Croatia and Kosovo promote and defend the legislative model of crisis management, whereby the amendment of certain laws and relevant correction of inter-institutional relations is permissible. This can only take place within existing constitutional and legal order, where the fundamental human rights and freedoms enjoyed are guaranteed under any circumstances.

#### 4 CONCLUSIONS

This comparative study on Kosovo and Croatia’s approaches toward the situation created by COVID-19 had some interesting conclusions.

First, in both cases, the initial reaction, as it happened in most of the countries, was of *ad hoc* nature, due to the lack of previous experiences dealing with the COVID-19. Governmental decisions lacked clear legal and constitutional grounds, where dilemmas regarding the legitimacy of the decision-making process were evident. However, both countries with new democracies achieved to pass another democratic test successfully, in particularly from the perspective of the rule of law principle.

Moreover, the government of both countries with prime ministers of different political ideologies (A. Kurti – left-centered, while A. Plenković – right-centered) had similar approaches toward the “state of emergency”; both were against the declaration of a “state of emergency.” Both countries promoted the legislative model of crisis management, according to which the situation of natural disasters can be managed within an ordinary legal order, amending necessary legislation or adopting *lex specialis* (Kosovo).

However, the presidents of both countries with different political ideologies (Milanović – left-centered, while H. Thaçi – right-centered) had similar approaches toward the “state of emergency.” They were both for the declaration of a “state of emergency,” which could have afforded them a more powerful role. Apparently, both countries went under unusual presidential activism, aiming to have a new constitution role with relatively more executive competencies. Such situations are atypical for parliamentary republics.

Constitutions of both countries authorize the limitation of human rights and freedoms even during normal situations (light emergencies), where appropriate legal grounds are sufficient, whereas the derogation of fundamental human rights and freedoms can take place only during serious emergencies and within the extraordinary legal and constitutional order. In both countries, the assembly is the final authority that approves the decree of declaration of a “state of emergency.” If circumstances allow, it is left to the assembly to decide which constitutional ground will apply to manage the crisis, whatever the crisis may be.

Conclusively, the emergency legislation is ‘massive and chaotic’, followed by complicated intuitional mechanisms, where during the emergencies, with executive

bicephalous-two-headed approach, the situation becomes even more complicated. We submit that in order to avoid illegalities and uncertainties in crisis management and to better address the situation of the pandemic, both countries, Kosovo and Croatia, need to issue 'organic' laws that will specifically determine the main circumstances and their levels that constitute emergencies. This will also include the need for better institutional and legal infrastructure, with clear roles and responsibilities during emergencies. The law should particularly divide emergencies related to man-made disasters and natural distastes, as well as the manner of reactions and the sort of the structures involved in decision-making processes, where respective individuals and institutions should bear responsibility for respective cases.

#### BIBLIOGRAPHY

1. Abramović, Andrej. "Ustavnost u doba virusa." *IUS-INFO*, December 20 2020. <https://www.iusinfo.hr/aktualno/u-sredistu/41073>.
2. Agamben, Giorgio. *State of Exception*. Chicago, London: The University of Chicago Press, 2005.
3. Agamben, Giorgio. "State of Exception and State of Emergency." *Quodlibet*, December 12, 2020. <https://www.quodlibet.it/giorgio-agamben-stato-di-eccezione-e-stato-di-emergenza>.
4. Agamben, Giorgio. "The Invention of an Epidemic." *Quodlibet*, November 1 2020. <https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia>.
5. Bačić, Arsen. "Odredbe o 'stanju nužnosti' u Ustavu Republike Hrvatske iz 1990. godine". *Zbornik radova Pravnog fakulteta u Splitu*, N° 34 (1997): 39-58.
6. Bjørnskov, Christian, Stefan Voigt. "The State of Emergency Virus," *VerfBlog*, April 4, 2020, <https://verfassungsblog.de/the-state-of-emergency-virus/>.
7. Brändle Max, Tamara Brankovic, Arjan Dyrnishi, Besa Kabashi-Ramaj, Igor Luksic, Nenad Markovikj, Filip Milacic, Tara Tepavac, Nenad Zakosek, Miroslav Zivanovic. "Analysis: Democracy and the State of Emergency - Responses to the Corona Crisis in the Western Balkans, Croatia and Slovenia. *Report One*. Belgrade: Friedrich Ebert Stiftung, Accessed on December 4, 2020. <http://library.fes.de/pdf-files/bueros/belgrad/16119.pdf>.
8. Clinton L. Rossiter. *Constitutional Dictatorship, Crisis Government in the Modern Democracies*. New York: Routledge, 2017.
9. Constitution of the Republic of Croatia, Official Gazette N° 85/2010 – consolidated text.
10. Constitution of the Republic of Kosovo, K-09042008 (09.04.2008).
11. Constitutional Court of Kosovo, Dissenting Opinion in Judgment KO 61/2, Ref. N° MM 1566/20, 5 May 2020.
12. Constitutional Court of Kosovo, Judgment in Case N° KO54/20, Ref. N° AGJ1543/20, 06 April 2020.
13. Constitutional Court of Kosovo, Judgment in Case N° KO61/20, Ref. N° AGJ 1565/20, 5 May 2020.
14. Čular, Goran. "Ustavni i politički aspekti borbe protiv epidemije u Hrvatskoj". *Politički život - Časopis za analizu politike*. Centar za demokratiju Fakultet političkih nauka Beograd, N° 18 (2020): 35-40.
15. Despot, Sanja. "Za najavljene mjere i za zabrane kretanja nije nužno proglašenje izvanrednog stanja. Dovoljna je i odluka ministra." *Faktograf.hr*, March 17, 2020. <https://faktograf.hr/2020/03/17/za-najavljene-mjere-i-za-zabrane-kretanja-nije-nuzno-proglasenje-izvanrednog-stanja-dovoljna-je-i-odluka-ministra/>.

16. Drinóczi, Tímea, Agnieszka Bień-Kacała. "COVID-19 in Hungary and Poland: Extraordinary Situation and Illiberal Constitutionalism". *The Theory and Practice of Legislation* 8, N° 1–2 (2020): 171–192. <https://www.tandfonline.com/doi/full/10.1080/20508840.2020.1782109>. Accessed November 5 2020. <http://doi.org/10.1080/20508840.2020.1782109>.
17. European Union Agency for Fundamental Rights "Coronavirus pandemic in the EU Fundamental Rights Implications, Country: Croatia," November 3, 2020, Accessed December 4 2020. [https://fra.europa.eu/sites/default/files/fra\\_uploads/hr\\_report\\_on\\_coronavirus\\_pandemic\\_november\\_2020.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/hr_report_on_coronavirus_pandemic_november_2020.pdf).
18. Ferejohn, John and Pasquino Pasquale. "The Law of the Exception: A Typology of Emergency Powers". *International Journal of Constitutional Law*, 2, N°2 (2004): 210–239.
19. Foucault Michel, Giorgio Agamben, Jean-Luc Nancy, Roberto Esposito, Sergio Benvenuto, Divya Dwivedi, Shaj Mohan, Rocco Ronchi, Massimo de Carolis. "Coronavirus and Philosophers". *European Journal of Psychoanalysis*. Accessed December 3, 2020. <https://www.journal-psychoanalysis.eu/coronavirus-and-philosophers/>.
20. Friedrich, Carl J. *Constitutional Government and Democracy*. (Boston: Ginn and Company 1950).
21. Government of Republic of Croatia. "Situation with the Disease Caused by the New COVID-19". Accessed December 3 2020. <https://vlada.gov.hr/coronavirus-protection-measures/28950>.
22. Gross, Oren. "Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?", *The Yale Law Journal* 112, N° 5 (2003): 1014-1134.
23. Gross, Oren. "Emergency Powers in the Time of Coronavirus and Beyond". *Just Security*, May 8, 2020. <https://www.justsecurity.org/70029/emergency-powers-in-the-time-of-coronaand-beyond/>.
24. Gross, Oren and Fionnuala Ni Aolain. "Law in Times of Crisis Emergency Powers in Theory and Practice" (New York: Cambridge University Press: 2006).
25. Hasani, Enver. "Per masat e reja: kunderkushtuese dhe uzurpim i pushtetit". *Indeksonline*. January 7, 2021. <https://indeksonline.net/enver-hasani-per-masat-e-reja-kunderkushtuese-dhe-uzurpim-i-pushtetit-1/>.
26. Horvat Vuković, Ana and Valentino Kuzelj. "Constitutionality during times of crisis: Anti-pandemic measures and their effect on the rule of law in Croatia", *6<sup>th</sup> International Conference – ERAZ 2020 – Knowledge based sustainable development*, Online/virtual, May 21, 2020, Conference proceedings, Accessed April 27, 2021. <https://eraz-conference.com/wp-content/uploads/2021/03/ERAZ.2020.59.pdf>.
27. Jashari, Murat and Behar Selimi. "Kosovo - An Atypical Parliamentary Republic". *Academicus Scientific International Journal*, N° 14 (2016): 136-146.
28. Kabashi-Ramaj, Besa. "Kosovo was not Adequately Prepared for the Pandemic." *European Western Balkans*. April 28, 2020. <https://europeanwesternbalkans.com/2020/04/28/kosovo-was-not-adequately-prepared-for-the-pandemic/>.
29. "Kosovë - koronavirusi: presidenti kërkon gjendje të jashtëzakonshme – qeveria kundër". *Voice of America (VOA)*. Accessed November 9 2020. <https://www.zeriamerikes.com/a/kosovo-covid-19/5332938.html>.
30. Kosovo Government, Decision N° 01/07 (09.03.2020); N° 01/08, (12.03.2020); N° 01/11, (15.03.2020).
31. "Kurti flet për konfrontimin me Hashim Thaçin: Mendonte se ishte mbret". *Indeksonline*. November 10, 2020. <https://indeksonline.net/kurti-flet-per-konfrontimin-me-hashim-thacin-mendonte-se-ishte-mbret/>.
32. Law for Prevention and Fighting against Infectious Diseases, Official Gazette N° 04/-L-027.



33. Law N° 02/L-109 for Prevention and Fighting Against Infectious Diseases, Official Gazette, N° 40/2008.
34. Law N° 03/L-050 on the Establishment of the Kosovo Security Council, Official Gazette: N° 26/02.
35. Law N° 04/L-125 on Health, Official Gazette, N° 13/2013.
36. Law N° 07/L-006 on Preventing and Combating COVID-19 Pandemics in the Territory of the Republic of Kosovo, Official Gazette N° 03/2020.
37. Lukić, Slavica. "Na koji način država smije ograničavati ljudska prava u izvanrednim situacijama." *Jutarnji list*. Accessed December 23, 2020. <https://www.jutarnji.hr/vijesti/hrvatska/vodeci-ustavni-strucnjaci-za-jutarnji-na-koji-nacin-drzava-smije-ogranicavati-ljudska-prava-u-izvanrednim-situacijama-10144543>.
38. "Milanović o Stožeru: Nije normalno da grupa ljudi koja nije birana od naroda određuje koliko ljudi smije biti na svadbi". *Novi List*. 26. 7. 2020. Accessed December 10, 2020. <https://www.novolist.hr/novosti/hrvatska/milanovic-o-stozeru-nije-normalno-da-grupa-ljudi-koja-nije-birana-od-naroda-odreduje-koliko-ljudi-smije-biti-na-svadbi/>.
39. *Ministarstvo zdrastva*, Odluka o proglašenju epidemije bolesti COVID-19 uzrokovana virusom SARS-CoV-2. Accessed April 26, 2021., <https://zdravstvo.gov.hr/UserDocsImages/2020%20CORONAVIRUS/ODLUKA%20O%20PROGLA%5%A0ENJU%20EPIDEMIJE%20BOLESTI%20COVID-19.pdf>.
40. Ministry of Health of Kosovo, Decision N° 214/IV/2020; Decision N° 229/IV/2020.
41. Ministry of Internal Affairs of Kosovo, National Response Plan Approached November 9 2020, <https://mpb.rks-gov.net/f/39/Strategic-documents>
42. Omejec, Jasna. "Izvanredna stanja u pravnoj teoriji i ustavima pojedinih zemalja". *Pravni vjesnik* 12, N° 1-4 (1996): 172-196.
43. Omejec, Jasna. "Ograničavanje sloboda i prava čoveka i građanina". *Društvena istraživanja* 5, N° 2/22 (1996), 345-376.
44. Rait, Maruste, "State of Emergency in Estonia". *VerfBlog*, May 17, 2020. Accessed December 3, 2020. <https://verfassungsblog.de/state-of-emergency-in-estonia/>.
45. Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences (2020/2616(RSP).
46. Robert, Mikac. "COVID-19 Pandemic and Crisis Management in the Republic of Croatia." *Anali Hrvatskog politološkog društva* 17, N° 1 (2020): 31–55. <https://doi.org/10.20901/an.17.02>
47. Schmitt, Carl. *Dictatorship*. Cambridge: Polity Press, 2014.
48. Selimi, Behar. "The State of Emergency in the Constitutional Law of Kosovo". Presentation on International Conference organized by UBT College (Publication on process) See: [https://knowledgecenter.ubt-uni.net/conference/2020/all\\_events/172/](https://knowledgecenter.ubt-uni.net/conference/2020/all_events/172/).
49. Shehu, Bekim. "Kosovë: Dramë politike në kohën e rritjes së pandemisë". (Political drama in the time of pandemic outbreak)." *Deutsche Welle*, March 24, 2020, Accessed November 10, 2020. <https://www.dw.com/sq/kosov%C3%AB-dram%C3%AB-politike-n%C3%AB-koh%C3%ABn-e-rritjes-s%C3%AB-pandemis%C3%AB/a-52895425?maca=sq-EMail-sharing>.
50. Smerdel, Branko. "Hibridni parlamentarizam nakon tri predsjednička mandata". *Informator* 6363, 27.04.2015. Accessed November 1, 2020. <https://informator.hr/strucni-clanci/hibridni-parlamentarizam-nakon-tri-predsjednicka-mandata>
51. *Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. American Association for the International Commission of Jurists, Geneva 1985, <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>
52. Šimičević, Hrvoje. "Gdje je nestao Ustav?" *Novosti* 1.4.2020. Accessed April 27, 2021. <https://www.portalnovosti.com/gdje-je-nestao-ustav>.
53. Toma, Ivanka. "HDZ i SDP o suspenziji ljudskih prava". *Jutarnji list* 25.02.2020.

- Accessed December 21, 2020. <https://www.jutarnji.hr/vijesti/hrvatska/hdz-i-sdp-o-suspenziji-ljudskih-prava-u-kojim-se-okolnostima-treba-aktivirati-clanak-17-ustava-i-kako-tada-funkcioniraju-poluge-drzavne-vlasti-10133575>.
54. Ustavni Sud Republike Hrvatske, Rješenje U-I-1372/2020 September 14 2020.
  55. Vlada Republike hrvatske, Rješenje o imenovanju načelnika, zamjenika načelnika i **članova** Stožera civilne zaštite, Narodne novine N° 20/2020 February 20 2020.
  56. Watkins, Frederick M. "The Problem of Constitutional Dictatorship". *Public Policy* 1940: 324-379.
  57. Zakon o sustavu civilne zaštite, Narodne novine, N° 82/15., 118/18., 31/20.
  58. Zakon o zaštiti pučanstva od zaraznih bolesti, Narodne novine, N° 79/07., 113/08., 43/09., 130/17., 114/18., 47/20., 134/20.

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Sažetak

## **POLITIČKI I USTAVNI PRISTUP PREMA BOLESTI COVID-19: SLUČAJEVI KOSOVA I HRVATSKE**

Ovaj rad analizira političko i ustavno sučeljavanje Kosova i Hrvatske s pandemijom bolesti COVID-19. Sličnosti ustavnih odredbi koje uređuju izvanredne situacije i moguća ograničenja ljudskih sloboda i prava u obje države, zajedno s hibridnim parlamentarnim sustavima s jakim predsjednicima, proizveli su iste pristupe, odnosno slične u političkom i ustavnom smislu, kao i u akademskom i profesionalnom aspektu. Stoga se ovaj rad više usredotočuje na vladine odgovore na situaciju, uključujući razlike između predsjednika i vlada, kao i na ustavnosudske pristupe i odgovarajuća akademska mišljenja o predmetnoj osi: izvanredne mjere unutar redovnog ili izvanrednog pravnog poretka sa formalnom izjavom o izvanrednom stanju. Obje su države krenule u prvi model, zadovoljavajući se izmjenama pravnih okvira bez formalne objave izvanrednog stanja. Kako i zašto se to dogodilo, objašnjava se u drugom i trećem dijelu rada uz zaključke i preporuke.

***Ključne riječi:*** *Kosovo; Hrvatska; COVID-19; izvanredno stanje; ustavni sud; ljudske slobode i prava.*

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