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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

NORTH MACEDONIA

DRAFT LAW ON THE STATE OF EMERGENCY

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I. BASIC PROVISIONS

Scope

Article 1

This Law regulates the procedure for determining the existence of state of emergency, the rights and obligations of the bodies of the state government and of the local self-government during the state of emergency, the mode of governance with the state of emergency and the authority for adoption of decrees with the force of a law.

Reasons for determining the existence of state of emergency

Article 2

- (1) The state of emergency shall occur when great natural disasters or epidemics occur.
- (2) The decision for determining the existence of state of emergency on the territory of the Republic of North Macedonia or part thereof may be adopted when the risks and threats or consequences from great natural disasters or epidemics are of such scope and intensity that their occurrence or the consequences cannot be prevented or removed with the functioning of the established systems for crisis management and protection and rescue because of which, in order for them to be mitigated or removed, application of special measures and means with increased intensity and different mode of work shall be necessary.

Territorial relevance of the state of emergency

Article 3

- (1) The decision for determining the existence of state of emergency may be adopted for one or several municipalities, for the City of Skopje or one or several municipalities within the City of Skopje, for one or several municipalities in the Republic of North Macedonia, as well as for the whole territory of the Republic of North Macedonia.
- (2) The decision for determining the existence of state of emergency in one or several municipalities, in the City of Skopje, in one or several municipalities within the City of Skopje, shall be adopted if there is a direct danger that it will encompass or are encompassed part of the municipality or the City of Skopje or the municipalities within the City of Skopje.
- (3) The decision for determining the existence of state of emergency for the whole territory of the Republic of North Macedonia shall be adopted if there is a direct danger that will encompass or are encompassed several municipalities or the City of Skopje or if the municipality or the City of Skopje shall not have sufficient capacities to handle the emerged danger.

Meaning of certain expressions of this Law (glossary)

Article 4

The expressions used in this Law shall have the following meaning:

- 1) "state of emergency" shall mean a state that is caused by great natural disasters or epidemics;

- 2) "great natural disaster" shall mean an elementary disaster from hydrometeorological and geological origin caused as a result of the activity of natural forces such as earthquake, flood, storm, hail, drought, rockfall, landslide, glare ice, excessive snow and avalanche, extreme air temperatures and other natural events that may jeopardize the health and life of people and may cause excessive damage that would surpass the possibilities and capacities of the regular functioning of the systems established for crisis management and protection and rescue;
- 3) "epidemic" shall mean the increase of infections from a certain contagious disease that according to time and place surpasses the usual number of cases in the previous period, as well as unusual increase of the number of infected people with complications or fatal outcome, occurrence of two or several mutually connected infections from contagious disease that has never or for several years not appeared in one area or occurrence of greater number of infections from unknown cause followed by a febrile state;
- 4) single system for protection and rescue is part of the national security system that shall continue to perform its function during the state of emergency and is integrated form of governance and organization of the entities and implementation of preventive and operational measures and performance of tasks for the protection and rescue of people and goods from the consequences caused by natural disasters or pandemics.

II. APPLICATION OF PRINCIPLES DURING STATE OF EMERGENCY

Basic principles

Article 5

During the state of emergency and the implementation of this Law the following principles shall be respected:

1. Principle of priority and emergency
2. Principle of integrated activity and intersectorial cooperation
3. Principle of proportionality of limitation of human rights
4. Principle of prohibition of discrimination
5. Principle of participation of the citizens
6. Principle of publicity
7. Principle of limited duration

Principle of priority and emergency

Article 6

(1) Overcoming the circumstances that led to the determination of the existence of state of emergency, protection of the rights and freedoms of man and citizen, as well as the creation of conditions for regular functioning of the bodies of the state government and local self-government shall be national and local priority.

(2) Protection and rescue of human lives shall be priority regarding all other protective or rescuing activities.

Principle of integrated activity and intersectorial cooperation

Article 7

The bodies of the state government and of the local self-government shall be obliged to mutually cooperate in order to more efficiently overcome the consequences of the great natural disaster or of the epidemic.

Principle of proportionality of limitation of human rights

Article 8

(1) Freedoms and rights of the man and of the citizen may be limited during state of emergency, if necessary, to overcome the circumstances that led to declaring the state of emergency or for removing the consequences thereof.

(2) Limitations of freedoms and rights must not refer to the right to life, prohibition from torturing, inhumane and humiliating treatment and punishment, to legal determination of punishable deeds and punishments, as well as to the freedom of faith, consciousness, thought, public expression of thought and religion.

(3) Limitations of freedoms and rights in scope, the duration and the means used shall be proportional and appropriate to the fast overcoming of the state of emergency.

(4) In the event of limitations of certain human rights, the Ministry of Foreign Affairs shall inform the Office of the Secretary- General of the United Nations.

(5) In the event of limitation of certain rights, the Ministry of Foreign Affairs shall be obliged to inform the Office of the Secretary-General of the United Nations and the Secretary General of the Council of Europe for the undertaken measures and for the reasons that caused them to be undertaken.

(6) After the termination of the measures with which certain human rights shall be limited, the Ministry of Foreign Affairs shall inform the Office of the Secretary-General of the United Nations and the Secretary-General of the Council of Europe about the date of termination of the measures.

Principle of prohibition of discrimination

Article 9

(1) Everyone shall have the right to protection from the consequences of the natural disaster or epidemic without any discrimination.

(2) When undertaking the measures for overcoming the reasons because of which the existence of the state of emergency is determined, the competent authorities and institutions shall ensure that the measure shall not instigate or lead to an unfavorable situation for any individual or group on the basis of the prohibited discriminatory bases referred to in paragraph (1) of this Article.

3) The limitation of the freedoms and rights must not be discriminatory on the basis of race, skin color, origin, national or ethnic affiliation, gender, sex, sexual orientation, gender identity, affiliation of marginalized group, language, citizenship, social origin, education, religion or faith, political affiliation, other affiliation, disability, age, family or marital state, property status, health state, personal capacity and social status or any other basis.

Principle of participation of the citizens

Article 10

Citizens who shall be jeopardized from the natural disaster or the epidemic shall have the right in proposing, undertaking and execution of certain measures, tasks and activities for overcoming the reasons because of which the existence of the state of the emergency is determined and the consequences thereof.

Principle of publicity

Article 11

The Government and the other competent authorities shall be obliged to timely and fully inform the public about the risks, as well as about the measures undertaken for overcoming the reasons because of which the existence of state of emergency is determined, as well as the consequences thereof.

Principle of limited duration

Article 12

(1) The duration of the decision for determining the existence of state of emergency shall be limited in accordance with the deadlines stipulated in the Constitution.

(2) The state of emergency may be terminated before the expiration of the deadline for which its existence is determined if the danger ceases, i.e. when the need for implementing the foreseen measures for handling great natural disasters or epidemics shall cease.

III PROCEDURE FOR DECLARING STATE OF EMERGENCY

Initiative for determining the existence of state of emergency

Article 13

Initiative for determining the existence of state of emergency to the competent entities for its proposal may be submitted by the governmental bodies that manage the crisis management system, public sector institutions, the mayor of a municipality or of the City of Skopje, the Republic Headquarters for State of Emergency or the Municipal Headquarters for State of Emergency.

Procedure upon the proposal for determining the existence of a state of emergency

Article 14

(1) The existence of state of emergency on the territory of the Republic of North Macedonia or part thereof shall be determined by the Assembly upon the proposal of the President of the Republic, the Government or at least 30 MPs.

(2) The proposal for determining the existence of state of emergency shall be submitted to the President of the Assembly by the authorized proposers.

(3) Within one day from the day of submission, the President of the Assembly shall be obliged to schedule a session of the Assembly at which the proposal for determining the existence of state of emergency shall be decided upon.

(4) When the President of the Assembly shall not schedule a session of the Assembly after the submission of the proposal for the determination of the existence of state of emergency, the MPs shall meet the day following the day of submission of the proposal at 12:00 p.m. to have a session.

(5) The session of the Assembly at which the proposal for determining the existence of state of emergency shall be decided upon shall last one day at the most.

(6) The decision with which the existence of state of emergency shall be determined shall be adopted with two-third majority of votes of the total number of MPs and shall have an effect of maximum 30.

(7) The Assembly shall decide about the extension of the existence of the state of emergency with a new decision that shall be adopted with two-third majority of the votes of the total number of MPs and shall have an effect of maximum 30 days.

Contents of the proposal for determining the existence of state of emergency

Article 15

The proposal referred to in Article 14 paragraph 1 of this Law on determining the existence of state of emergency shall obligatorily contain:

- The reasons for the introduction of the state of emergency with an explanation and detailed insight of the state (threat estimation, consequences that occurred or may occur as a result of the natural disaster or epidemic and the mode of removing the danger or the state that occurred)
- Time period for which the determining of the existence of state of emergency shall be proposed and
- The area for which the determination of the existence of state of emergency shall be proposed.

Contents of the decision for determining the existence of state of emergency

Article 16

(1) The decision with which the state of emergency shall be determined shall contain:

- Reasons for determining the state of emergency
- Time period for which the determination for the existence of state of emergency shall be proposed
and
- The area for which the determination of the existence of state of emergency shall be proposed.

(2) The decision with which the existence of state of emergency shall be determined shall enter into force on the day of its adoption.

Competence of the President of the Republic to adopt a decision for the existence of state of emergency Article 17

(1) When the Assembly shall not be able to meet, the decision for the existence of state of emergency shall be adopted by the President of the Republic.

(2) In the sense of this Law, the Assembly may meet if the majority of the total number of MPs attends the session, i.e. the Assembly may not meet if at the session, due to justified reasons, the majority of the total number of MPs may not attend. Justified reasons in the sense of this Law shall be: illness caused by the epidemic, physical separation of certain areas the MP shall be in because of which the MP shall be unable to attend the session, if the MP is missing in the great natural disaster that occurred, etc.

Alternative of paragraph (2) in the sense of this Law shall be the ability of the Assembly to meet if two-third majority of the total number of MPs attend, i.e. the Assembly may not meet if, due to justified reasons, two-third majority of the total number of MPs shall be unable to attend the session. Justified reasons in the sense of this Law shall be: illness caused by the epidemic, physical separation of certain areas the MP shall be in because of which the MP shall be unable to attend the session, if the MP is missing in the great natural disaster that occurred, etc.

(3) The President of the Assembly shall immediately or within 24 hours the latest inform the President of the Republic that the Assembly cannot meet if the conditions referred to in paragraph (2) of this Article are met. If the President of the Assembly shall be unable to inform the President of the Republic that the Assembly cannot meet, the information to the President of the Republic shall be delivered by the vice-president, secretary general or MPs who attended the session scheduled in accordance with Article 14 paragraph (2).

(4) The decision of the President of the Republic referred to in paragraph (1) shall have effect of maximum 30 days.

(5) The Assembly shall decide upon the extension of the existence of state of emergency after the expiration of the validity of the decision of the President of the Republic referred to in paragraph (1) with a new decision.

(6) When the Assembly cannot meet, the President shall decide upon the extension of the existence of state of emergency after the expiration of the validity of the decision of the President of the Republic referred to in paragraph (1) with a new decision.

(7) When the proposal for determining the existence of state of emergency shall be submitted to the Assembly by the President of the Republic and the Assembly is unable to meet, before adopting the decision for the existence of state of emergency the President shall acquire previous opinion from the Government.

(8) The Government, within 24 hours the latest, shall deliver the opinion referred to in paragraph (7) of this Law to the President of the Republic. When the Government shall not act within the stipulated deadline, after the expiration of the deadline it shall be considered that the opinion had been given.

Confirmation of the decision for the existence of state of emergency

Article 18

(1) The President of the Republic shall submit the decision for the existence of state of emergency to the Assembly for confirmation as soon it shall be able to meet.

(2) The President of the Assembly shall be obliged immediately when the Assembly shall be able to meet, to inform the President of the Republic about it.

(3) If the President of the Assembly shall be unable to inform or shall not inform the President of the Republic about the ability of the Assembly to meet, the vice-president of the Assembly or the majority of the total number of MPs shall be obliged to immediately inform the President of the Republic about the ability of the Assembly to meet.

(4) The session of the Assembly at which the confirmation of the decision of the President of the Republic for determining the existence of state of emergency shall be decided upon shall be immediately scheduled or within one day of its submission to the Assembly the latest.

(5) The session of the Assembly at which the confirmation of the decision of the President of the Republic for determining the existence of state of emergency shall be decided upon shall have duration of maximum one day.

(6) If the Assembly shall not confirm the decision of the President of the Republic for determining the existence of state of emergency, then the validity of the decision shall terminate and the state of emergency shall cease.

(7) Not confirming the decision of the President of the Republic for determining the existence of state of emergency shall not influence the legal consequences occurred during the validity of the decision of the President of the Republic for determining the existence of state of emergency.

IV COORDINATION AND MANAGEMENT DURING THE STATE OF EMERGENCY

Types of headquarters for state of emergency

Article 19

(1) For coordination and management of the state of emergency in accordance with this Law and other regulations, headquarters for state of emergency shall be established as operational and professional bodies as follows:

- Main Coordination Headquarters for State of Emergency for the whole territory of the Republic of North Macedonia,
- Headquarters for State of Emergency of the City of Skopje for the territory of the City of Skopje and
- Municipal Headquarters for State of Emergency for the territory of the municipality.

(2) If necessary, the headquarters for state of emergency form further professional and operational bodies with specific tasks in the state of emergency.

Composition of the headquarters for the state of emergency

Article 20

(1) The President of the Government or member of the Government appointed by the Government shall manage the Main Coordination Headquarters.

(2) The mayor of the City of Skopje shall manage the Headquarters for State of Emergency of the City of Skopje.

(3) The mayor of the municipality shall manage the Municipal Headquarters for State of Emergency.

(4) The Main Coordination Headquarters shall be established by the Government and the Minister of defense, the Minister of Interior, the Minister of Foreign Affairs, the Minister of Finance, other ministers selected by the Government, the Director of the Crisis Management Center, the Director of the Direction for Protection and Rescue, the Director of the National Safety Agency, the Director of the Public Safety Bureau, the Chief of the General Staff of the Army and the Director of the Customs Administration shall be members of the Main Coordination Headquarters. Two representatives of the Cabinet of the President of the Republic, one representative of the Defense and Safety Commission of the Assembly from the members of the Commission from the largest political party in opposition, the president of the Managing Board of the Unit of Local Self-Government Units of the Republic of North Macedonia, the president of the Red Cross of the Republic of North Macedonia shall take part in the work of the Main Coordination Headquarters and, if needed, other selected and appointed persons, as well as administrative officials and representatives of chambers of commerce and other experts in certain issues that are to be subject of review by the Main Coordination Headquarters may be included.

(5) The members of the Headquarters for State of Emergency of the City of Skopje shall be appointed by the Council of the City of Skopje (alternative shall be the Mayor of the City of Skopje) from the directors of public utility enterprises and institutions the activities of which shall be related to protection and rescue, the city organization of the Red Cross, as well as experts in the field of protection and rescue.

(6) The members of the Municipal Headquarters for State of Emergency shall be appointed by the Council of the municipality (alternative is the mayor of the municipality) from the directors of public utility enterprises and institutions the activities of which shall be related to protection and rescue, the municipal organization of the Red Cross, as well as experts in the field of protection and rescue.

Competence of the headquarters for state of emergency

Article 21

The headquarters for state of emergency shall perform the following:

- 1) management and coordination in the implementation of the measures and activities for handling the state of emergency and the consequences thereof;
- 2) shall decide upon the use of resources for protection and rescue, means for aid and other means used in state of emergency;
- 3) shall ensure regular information of the population and all entities included in the activities for handling the state of emergency;
- 4) shall cooperate with the competent authorities of other countries depending on the nature of the state of emergency;
- 5) shall issue orders and adopt conclusions and recommendations within their competences and
- 6) shall perform other things determined by law.

Main Coordination Headquarters for State of Emergency

Article 22

(1) The Main Coordination Headquarters shall be established as an operational body of the Government for providing complete coordination of the state government bodies, of the legal entities established by the state, as well as of the local self-government units in conditions of state of emergency.

(2) Apart from the things referred to in Article 21 of this Law, the Main Coordination Headquarters for State of Emergency shall perform the following:

1) Shall prepare conclusions, measures and recommendations for the state government bodies, for the legal entities established by the state, as well as for the local self-government units and shall coordinate the performance and implementation of other legally determined competences on the basis of reports, minutes and proposals delivered by these institutions related to handling the state of emergency.

2) Shall propose conclusions, measures, activities and recommendations from the state government bodies to the legal entities established by the state, as well as to the local self-government units,

3) shall propose conclusions, measures, activities and recommendations to the economic entities and business companies related to the engagement of resources in their ownership,

4) Shall follow the dynamics of the realization and implementation of the decisions, conclusions, measures and recommendations adopted by the Government of the Republic of North Macedonia,

5) Shall give directions to the state government bodies, to legal entities established by the state, as well as to local self-government units, in the function of coordination, organization, implementation and operationalization of the decisions, conclusions, measures, activities and recommendations of the Government of the Republic of North Macedonia

6) Shall perform other tasks given by the Government of the Republic of North Macedonia related to handling the state of emergency.

Headquarters for State of Emergency of the City of Skopje

Article 23

Apart from the things referred to in Article 21 of this Law, the Headquarters for State of Emergency of the City of Skopje shall perform the following:

- 1) shall cooperate with the other municipal headquarters for state of emergency;
- 2) shall deliver to the Council of the City of Skopje the annual working plan and the annual workreport for adoption;
- 3) shall engage qualified legal entities and other organizations significant for the City of Skopje;
- 4) shall coordinate the actions and operations for protection and rescue in the City of Skopje;
- 5) shall give orders to the municipal headquarters for state of emergency in the municipalities within the City of Skopje to undertake measures and activities for protection and rescue; and
- 6) shall follow and implement the directions of the Main Coordination Headquarters.

Municipal Headquarters for State of Emergency

Article 24

Apart from the things referred to in Article 21 of this Law, the Municipal Headquarters for State of Emergency shall perform the following:

- 1) shall cooperate with other municipal headquarters for state of emergency;
- 2) shall deliver to the Council of the Municipality the proposal for the annual working plan and the annual work report for adoption;
- 3) shall engage qualified legal entities and other organizations significant for the municipality;
- 4) shall follow and implement the directions of the Main Coordination Headquarters.

Deployment part of the Army of the Republic of North Macedonia in state of emergency

Article 25

(1) Part of the Army may take part in the support of the bodies of the state and local government in the performance of the tasks for handling the consequences of the state of emergency.

(2) The Government shall deliver a proposal to the President of the Republic for the deployment of part of the Army which shall contain the following:

- Type and number of forces and capacities of the Army
- Purpose and tasks for which the deployment of the Army is requested
- Duration of the deployment of the Army.

(3) The Government may propose deployment of part of the Army in state of emergency such as armed and unarmed forces.

(4) Upon the proposal of the Government, the President shall decide about the deployment of part of the Army in handling the state of emergency.

(5) The President may, at any time, reassess the need of the deployment of part of the Army in state of emergency.

(6) The mode of deployment of part of the Army in the state of emergency shall be regulated with a decision made by the President.

(7) The Chief of the General Staff of the Army shall manage and command with part of the forces of the Army deployed to support the bodies of the state and local government in the performance of the tasks for handling the consequences from the state of emergency upon a decision of the President.

V DECREES WITH THE FORCE OF A LAW

Adoption and publishing decrees with the force of a law

Article 26

(1) When there is a state of emergency, the Government, in accordance with the Constitution and with the provisions of this Law shall adopt decrees with the force of a law.¹

(2) The decrees with the force of a law shall be published in the Official Gazette of the Republic of North Macedonia within one day from the day of their adoption.

Principles and objectives of the decrees with the force of a law

Article 27

(1) The decrees with the force of a law shall be based on the principles of urgency, temporariness, necessity and proportionality.

(2) The objective of the decrees with the force of a law shall be to regulate the issues that are necessary for handling the reasons and consequences of the state of emergency as soon as possible and in a manner proportional to the needs.

(3) The decrees with the force of a law may be used to regulate social relations, to change the existing laws or to regulate the application of existing laws for the needs for handling the reasons and consequences of the state of emergency.

Validity of the decrees with the force of a law

Article 28

(1) In the decrees with the force of a law the validity thereof shall be determined that may cease before the termination of the state of emergency, at the same time with the termination of the state of emergency or within maximum 30 days after the termination of the state of emergency if not confirmed in the Assembly within that deadline.

¹ A CHANGE OF ARTICLE 10 and ARTICLE 36 PARAGRAPH 1 OF THE LAW ON GOVERNMENT SHOULD BE MADE

(2) The decree with the force of a law that shall limit the basic freedoms and rights may be valid until the termination of the state of emergency the latest.

(3) The decree with the effect of a law shall cease to be valid:

- When the time period of its validity shall expire;
- From the day when it shall not be confirmed by the Assembly;
- If it shall not be confirmed within maximum 30 days after the termination of the state of emergency.

(4) All legal consequences originating from the decree on the day of its adoption and until the day when it ceased to be valid shall be acknowledged.

Confirmation of the decrees with the force of a law

Article 29

(1) The Government shall deliver to the Assembly the decrees with the force of a law including the day of their publication, that shall be valid after the termination of the state of emergency, and it shall obligatorily deliver an explanation of the reasons and purpose for their adoption.

Alternative 2:

(1) The Government shall deliver to the Assembly the decrees with the force of a law including the day of their publication, and it shall obligatorily deliver explanation of the reasons and purposes for their adoption.

(2) The decrees with the force of a law that shall be valid after the termination of the state of emergency should be confirmed by the Assembly.

Alternative 2:

(2) The decrees with the force of a law should be confirmed by the Assembly.

(3) The Assembly shall confirm the decrees with the force of a law in an urgent legislative procedure for the duration of the state of emergency or within maximum of 30 days after the termination of the state of emergency.

(4) The Assembly shall confirm the decrees with the force of a law with:

- A law on confirming a decree with the force of a law;
- Adoption of a new law or by changing and amending the existing laws.

(5) With the Law on confirmation of the decree with the force of a law the decree shall be fully confirmed without a possibility for it to be changed or amended.

(6) After the adoption of the Law on confirmation of the decree with the force of a law, the provisions of the decree with the force of a law shall become integral part of the law.

(7) With the confirmation of the decree with the force of a law by adopting a new law or by changing and amending an existing law, the decree with the force of a law shall be considered as a draft-law of the Government as authorized proposer.

VI OTHER MATTERS ABOUT THE STATE OF EMERGENCY

Durations of the terms of office in state of emergency

Article 30

(1) The term of office of the President of the Republic, the judges of the Constitutional Court and of the members of the Court Council shall be extended in the course of the duration of the state of emergency.

(2) The term of office of the MPs in the Assembly shall be extended in the event of state of emergency.

(3) The term of office of the MPs in the Assembly shall be extended in the course of the duration of the state of emergency and 90 days after the termination of the state of emergency in the period of which elections shall be held.

(4) If the Assembly is dissolved or shall adopt a decision for dissolution during the state of emergency, the decision for dissolution shall not be valid during the state of emergency and the act for calling of elections adopted by the President of the Assembly shall be void and all electoral activities shall be declared null and void, i.e. the President of the Assembly cannot adopt an act for calling of elections.

(5) The President of the Assembly shall adopt an act for calling of elections within one day from the day on which the state of emergency shall terminate.

Control over the Government

Article 31

(1) During the state of emergency the Assembly shall perform the political control and supervision over the Government.

(2) During the state of emergency, the question about the confidence in the government cannot be raised.

Prohibition for having elections or referendum

Article 32

During a state of emergency elections and referendum cannot be held.

Termination of the state of emergency

Article 33

The state of emergency shall terminate with:

- The expiration of the time period for which the existence of the state of emergency is determined in the decision for determining the existence of state of emergency
- Not having confirmation of the decision of the President of the Republic about the determination of the existing of state of emergency.
- Decision of the Assembly for the termination of the state of emergency upon the proposal of the President of the Republic, the Government or at least 30 PMs.

Transitional and final provisions

Article 34

This Law shall enter into force on the eighth day form the day of the publication in the “Official Gazette of the Republic of North Macedonia”.