

The constitutional court of Bosnia and Herzegovina in the Great council, in the case of number of **AP 3683/20**,

solving filed all the expected **E. W. and the other**, on the basis of article VI/3.b) of the Constitution of Bosnia and Herzegovina, article 57. paragraph (2), subparagraph b), article 59. st. (1), (2) and (3) and article 72. st. (2), (4) and (5) the Rules of the Constitutional court of Bosnia and Herzegovina – consolidated text ("Official gazette of Bosnia and Herzegovina" no. 94/14), composed of:

Zlatko M. Knežević, president

Mato Tadic, vice-president

Mirsad His, vice president

Valeria Galić, judge

Miodrag Simović, the judge

Sead Sprska, the judge

at the meeting held on 22. December 2020. the year brought

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THE DECISION ON DOPUSTIVOSTI AND MERITS

Partially to adopt filed all the expected **E. W., Lejla Dragnic, Vesna Hadžović, Slavs Raguža, Ivan Džalte, Daria Hrkaća, Muhammad Hundura and Harris Agića** been filed against the Orders of the Crisis staff of the Federal ministry of health the number of 01-33-6301/20 of 9. November 2020. year and the Orders of the Crisis staff of the Ministry of health of Sarajevo Canton the number of 62-20/2020 12. October 2020. year.

Defines the violation of the right to "private life" in article II/3.f) of the Constitution of Bosnia and Herzegovina and article 8. The european convention for the protection of human rights and fundamental freedoms in relation to the apelanta **E. W.**, these rights to freedom of movement under article II/3.m) of the Constitution of Bosnia and Herzegovina and article 2. Protocol number 4 with the European convention for the protection of human rights and fundamental freedoms in relation to the apelante **Lejla Dragnic, Vesna Hadžović, Slavs Raguža, Ivan Džaltu, Daria Hrkaća, Muhammad Hundura and Harris Agića**.

Refusing as unfounded filed all the expected in the part of the request to revoke an Order of the Crisis staff of the Federal ministry of health the number of 01-33-6301/20 of 9. November 2020. year and the Order of the Crisis staff of the Ministry of health Canton Sarajevo no. 62-20/2020 12. October 2020. year.

On the basis of article 72. paragraph (4) Rules of the Constitutional court of Bosnia and Herzegovina, ordered the Parliament of the Federation of Bosnia and Herzegovina and the Government of the Federation of Bosnia and Herzegovina to immediately and at the latest within

30 days from receipt of this decision, take action and align its activities with the standards referred to in article II/3.f) of the Constitution of Bosnia and Herzegovina and
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Herzegovina and article 8. The European Convention for the Protection of Human Rights and Fundamental Freedoms, and standards referred to in article II/3.m) of the Constitution of Bosnia and Herzegovina and article 2. Protocol number 4 with the European Convention for the Protection of Human Rights and Fundamental Freedoms, as stated in this decision.

On the basis of article 72. paragraph (5) the Rules of the Constitutional Court of Bosnia and Herzegovina, ordered the Parliament of the Federation of Bosnia and Herzegovina and the Government of the Federation of Bosnia and Herzegovina in the following within 15 days of the expiration of the period referred to in paragraph 3. the operative part of this decision inform the Constitutional Court of Bosnia and Herzegovina on implementation of order from paragraph 3. the operative part of this decision.

The decision to publish in the "Official Gazette of Bosnia and Herzegovina", "Official Gazette of the Federation of Bosnia and Herzegovina", "Official Gazette of Republika Srpska" and in the "Official Gazette of Brčko District of Bosnia and Herzegovina".

EXPLANATION

I.

Introduction

1. E. W. (hereinafter: applicant) from Sarajevo, which represent the lawyers Nina Kisić and Goran Dragović from Sarajevo, submitted 19. October 2020. year's appeal, the Constitutional Court of Bosnia and Herzegovina (hereinafter: Constitutional Court) against the Orders of the Crisis Staff of the Ministry of Health of Sarajevo Canton (hereinafter: the Cantonal Crisis Staff) number of 62-20/2020 12. October 2020. year. This appeal is registered under number AP 3683/20.

2. Lejla Dragović and Vesna Hadžović (hereinafter: applicant) from Sarajevo, which represent the lawyers Nina Kisić and Goran Dragović from Sarajevo, submitted 11. November 2020. year's appeal to the Constitutional Court against the Orders of the Crisis Staff of the Federal Ministry of Health (in further text: the Federal Crisis Staff) number of 01-33-6301/20 of 9. November 2020. year. Applicant they, also, asked the Constitutional Court to bring a temporary measure that would
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the specified command (in section 3) placed outside forces, particularly "bearing in mind that the local elections scheduled for 15. November 2020. of the year". This appeal is registered under number AP 4072/20.

3. Slaven Raguž from Mostar, Ivan Džalto from Čapljina and Dario Hrkać from Široki Brijeg (in the further text: apelanti) submitted 11. November 2020. year's appeal to the Constitutional court against the

Orders of the Federal crisis staff number 01-33-6301/20 of 9. November 2020. year. This appeals to is registered under number AP 4076/20.

4. Muhammad Hundur and Haris Agic (hereinafter: apelanti) from Tešanj submitted 13. November

2020. year's appeal to the Constitutional court against the Orders of the Federal crisis staff number

01-336301/20 of 9. November 2020. year. This appeals to is registered under number AP 4109/20.

II.

The procedure before the Constitutional court

5. On the basis of article 23. The rules of the Constitutional court, in the period from 23. October to 20. November 2020.

the year has been asked by the Government of the Federation of Bosnia and Herzegovina (hereinafter: the FBiH Government),

the Federal ministry of health, Federal of the crisis staff, the Institute for public health of Federation of Bosnia and Herzegovina, the Ministry of health of Sarajevo Canton (hereinafter:

Cantonal ministry of health), the Cantonal crisis staff, the Institute for public health of Canton Sarajevo and the Ministry of internal affairs of Sarajevo Canton (hereinafter:the MUPKS) to submit answers to an appeal.

6. The FBiH government (Office for cooperation and representation before the Constitutional court), Federal ministry of

health, the Cantonal ministry of health, Institute for public health of Canton Sarajevo, and MUPKS provided the answers to have filed all the expected in the period from 29. October to 1. December 2020.

year.

7. The cantonal crisis staff and the Institute for public health have not provided the answers to have filed all the expected in

the set deadline.

8. Given that the above filed all the expected to launch the same and similar question, the Constitutional court, in accordance with the

article 32. (1) the Rules of the Constitutional court of Bosnia and Herzegovina (hereinafter: the Rules

of the Constitutional court), decision on the merger following appeals to the br. AP 3683/20, AP 4072/20, AP

4076/20 and AP 4109/20 in which will take one case and make a decision under number AP 3683/20.

III.

Facts

9. The facts of cases arising from allegations apelanata and documents presented to the Constitutional

the court can be summarised in the following way:

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a) In relation to the AP 3683/20

10. Apellant E. W. filed an appeal against the Orders of the Cantonal crisis staff of 12. October 2020. year and expressed apelacione stated as follows.

11. Apellant points out that his osporenom order violated rights under article II/3.b), f) and h) of the Constitution

Of bosnia and Herzegovina and art. 3, 8. 10. The european convention for the protection of human rights and fundamental freedoms (hereinafter: European convention). First of all it states that the appeals submitted in terms of article 18. paragraph (2) of the Rules of the Constitutional court, since the decision

of the competent court (in the sense of article 18. paragraph (2) of the Rules of the Constitutional court) appellant could provide

just the way to break the aforementioned osporenu order, and therefore be prosecuted.

The foregoing, according to appellantovoj assessment, stavljalo too big a burden on him. It further states that it is

evident that this is about the general act that violates appellantova human rights and basic freedoms.

Then, appellant points out that the European court of human rights (hereinafter: European court) in

its judicial practice treated the questions included in this apelacijom as a violation of article 3.

Of the ECHR (prohibition of inhuman and degrading treatment), until a regular court in Strasbourg

(France) the question of compulsory wearing masks treated in connection with the injury, art. 8. 10. European

convention. Also, appellant to referirao and the practice of regular court in Berlin (Germany), who

dealt with the issue of proportionality of the new restrictions on working hours "pubs and bars" as

measures in the fight against the virus COVID-19.

12. According to appellantovim allegations, stated has been impugned order is not based on the law, she is

contrary to the European convention, and appellant for her daily suffers nenadoknadivu damage. With that

in a relationship, it stresses that the challenged order contains exceptions, but they are not specified, and that is

absolutely nekonkretna and unpredictable. In this regard states that it is not clear what the Cantonal

crisis staff meant by the term "athlete in training", i.e. if this is about

professional athletes in training in the region provided for it, or it refers to

ordinary people who train for their own health: jogging, fast walking, and how to MUPKS distinguish between these categories.

13. It further points out that appellant has a physical hindrance-an obstacle that makes it difficult to breathe and in the normal

circumstances, and especially in a situation when you are carrying an additional physical obstacle. Therefore, appellant considers

that in the present case on him, put excessive burden and that the measures are not proportional

to what he wants to achieve, and especially points out that the competent authorities not previously considered was

what kind of more lenient measures (i.e. barriers in both "sinus-deviatio septi our"). In light of

your

health status apelant stated that by limiting the breaths of the oxygen mask on apelantovom
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your face can lead to headaches, fainting, insufficient saturation of blood oxygen and other consequences. Still, višesatno continuously wearing a mask, which is mandatory under the threat of

civil liability adopted osporenom the directive, according to apelantovim allegations, leads to skin infections, the development of microorganisms in some dank, wet and warm atmosphere both respiratory entrances

and exits (mouth and nose). When it comes to the application of article 3. The european convention, apelant stated that

under the protection of a member of the falls and forced medical treatment, believing that in this particular case

the obligations imposed osporenom order the closest community medical tretmanuprinudnom because it was imposed under the threat of punitive accountability (through financial

penalties). So, apelant considers that in the present case the obligation of wearing a mask for the face, when

there is no any studies, experts, vague orders, and exceptions from the orders constitute inhuman

and degrading procedure, especially bearing in mind the way in which she formulated, as well as its duration.

14. Below have filed all the expected apelant points out that the challenged order is not published in the "Official gazette of

The Sarajevo canton", already on the Internet and in the means of public information, which "of course" is not a

legal way to declare a legal act whose contempt retreats penal liability.

It also indicates that "at first glance it seems that the adoption of the challenged orders has legitimate

ciljzaštitu of public health", and it is evident that its adoption contrary to that goal, and that is harmful to the public health, and her consistent application of the endangering and life. In this regard,

apelant to referirao on document the World health organization (hereinafter: WHO) titled "Recommendations on the use of masks in the context of disease COVID-19"

(published 6th. on April

2020. year in English language) in which it is stated that there is no evidence that, if healthy people wear masks (medical or other types of masks), in the wider environment can prevent

disease by viruses (respiratory), including COVID-19. So, according to apelantovim the allegations,the

recommendations of the WHO to understand the real difference between a person with symptoms and all other persons, so

it is recommended that the first category should wear masks, while for the other faces of such recommendations

no.

15. In addition, it was stated that the challenged directive leaves the impression arbitarnosti, because in its decision-making

they didn't take into account the relevant indicators (there are no available statistics on the number of tested samples in a way that would be clear how many of the samples tested represents the retestiranje, is about tested contacts the person at whom presence of virus COVID-19 already established, how in every moment of active cases COVID-19 per 100,000 of the population, or percentage) on the basis of which they can make protective measures. Also states and Item number: **AP-3683/20**

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The decision on dopustivosti and merits challenged an order applies under the threat of punitive accountability, and that it represents an additional financial burden to the citizens of Sarajevo Canton.

16. Finally, when it comes to the legal basis of the challenged orders, apelant points out that the order

brought the Cantonal crisis staff, and that on the basis of Orders of the Federal crisis staff number

01-335472/20 of 1. October 2020. years, i.e. despite the clear instructions of the Constitutional court from the Decisions

number of AP 1217/20 of 22. on April 2020. year. So, apelant believes that he still missed the reaction of

the legislator, and that in the present case a double (the Parliament of the FBiH and the Cantonal assembly of

Canton Sarajevo). In this regard, it is pointed out that the Government of Sarajevo Canton and the Cantonal assembly

not monitor sufficiently the Cantonal crisis staff. In view of the foregoing, apelant proposes The constitutional court, to adopt the above appeal, you lift osporenu order of the Cantonal

crisis staff.

b) In relation to the AP 4072/20

17. Apellantice Lejla Dragic and Vesna Hadžović (AP 4072/20) believe that their osporenom by order of the Federal crisis staff of 9. November 2020. years violated the right under article II/3.m) of the Constitution of Bosnia and Herzegovina and article 2. Protocol number 4 with the European convention

(freedom of movement), and, in this regard, the prohibition of discrimination in article II/4.

The constitution of Bosnia and

Herzegovina and article 14. Of the european convention. First of all, they stated that the above appeal

filed in terms of article 18. paragraph (2) of the Rules of the Constitutional court, since the decision of the competent court

may provide just the way to break the osporenu order, and therefore be facilitated.

In this regard states that it is clear that this way of establishing the jurisdiction of the Constitutional court

Would put too big a burden on apellantice. Namely, apellantice refer to point 3. these challenged orders, which limits the movement of the population throughout the territory of the Federation of

Bosnia and Herzegovina in a time of 23 hours in the evening to 5 o'clock in the morning the next day. In this regard,

citing to the specified point of the Order contains certain exemptions, but that it threatens the process

of conducting local elections in the Federation of Bosnia and Herzegovina. In that sense,

apellantice point out that

both observers in the local elections, and that, therefore, don't belong in one of the exceptions listed in osporenoj orders. Especially states that they are not employees who would eventually employer could give approval for the movement in the period of 23 hours in the evening to 5 o'clock in the morning

the next day, and that observers need to reside on the electoral places before the start of the voting, all the way to the end of the counting of the votes, which is significantly after 23 hours in the evening.

18. It further states that challenged the order in the part relating to the restriction of movement the population on the territory of the Federation of Bosnia and Herzegovina does not contain any explanation on that

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way just this limitation should contribute to resolving the epidemic of the virus COVID-19 with

regard to "even in the one study known to these representatives or publicly released"

is not mentioned to the virus COVID-19 faster spreading at certain times of the day or night.

It also

points out that in osporenoj order, in section 13. II, stated that the Order has a validity of 14 days, and

that includes the local elections of 15. November 2020. year. Also states that in this specific case any more lenient measures of prevention apelantica to leave their apartment were not considered,

and that is the very decision completely arbitrary, because it is not clear based on which criteria is

prohibited from movement in the period from 23 hours in the evening to 5 o'clock in the morning.

19. Based on the above, and especially bearing in mind that the local elections scheduled for 15.

November 2020. year, it is proposed that the Constitutional court pursuant to article 64. The rules of the Constitutional court

brings a temporary measure that will be challenged the order in point 3. put out of force.

c) In relation to the AP 4076/20

20. Apelanti Slaven Raguz, Ivan Džalto and Dario Hrkać consider them osporenom order

The federal crisis staff of 9. November 2020. year violation of rights under article II/3.m) of the Constitution

of Bosnia and Herzegovina and article 2. Protocol number 4 with the European convention (freedom of movement), and, with

regard, prohibition of discrimination in article II/4. The constitution of Bosnia and Herzegovina and article 14.

Of the european convention.

21. First of all, according to the appeals submitted in terms of article 18. paragraph (2) of the Rules

The constitutional court, since "appeals to the indicates serious violations of the rights to freedom of movement

within the Federation of Bosnia and Herzegovina, prohibition of movement in a time of 23 hours in the evening to 5

o'clock in the morning on the territory of the Federation of Bosnia and Herzegovina, imposed by the administration authority who

has no authority, and which are apelanti, like other citizens of this entity discriminated against compared to other citizens of Bosnia and Herzegovina". In this regard, apelanti, first of all, indicate that the Government of the Federation of Bosnia and Herzegovina 31. on may 2020. year made the decision to 31. on may 2020. the year ends the situation of the accident caused by the emergence of corona virus (COVID-19) in the territory of the Federation of Bosnia and Herzegovina. Namely, apelanti point out that a Federal crisis staff, there is no constitutional, or legal authority to apelantima denied freedom of movement, and particularly to ordering the cantonal ministries of interior of the Federation of Bosnia and Herzegovina to monitor the implementation of these orders, as it's illegal makes the enactment of this legislation. In that sense, the states that by examining the osporenu the order can determine that during the making of this orders Federal crisis staff don't call in no one legal ruling, but only on secondary and internal acts, which, also, indicates that there is no valid legal basis which is
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The decision on dopustivosti and merits this administration was given the authority to impinge on human rights and basic freedoms guaranteed by the Constitution. Moreover, apelanti believe that, even if there was some legal basis for the adoption of these measures and when even the Crisis staff was not authorized to bring such a measure, according to the apelanata, this measure would have remained meaningless and disproportionately rigorous, especially bearing in mind općepoznatu the fact that the movement of the population anyway, at least a busy road in the period in which the Order relations (between 23 hours in the evening and 5 o'clock in the morning). It also indicates that it is not clear why is that the limits placed on 23 hours a night and exactly at 5 o'clock in the morning (which seems completely reasonable kolokvijalni phrase "to the virus attacks only at night"), and not on a broader period of time.

22. In light of the above apelanti question whether it was necessary that they obrazlažu the public authorities the reasons and motives for which they are out of their homes after 23 hours, or to work in private offices until late in the night, like take a walk when you finish work and family day, to love to hang out late, love to walk at 4 o'clock in the morning, to love to walk the dog at midnight. In that sense, apelanti question from which the provisions of the stems the right of the Federal crisis staff that that defends citizens, or of citizens requires the aforementioned explanations, i.e., "have we abandoned

the concept of the rule of law???" . Also, apelanti question "is enough to compile and read the statistical overview of the number of the infected person to the body of administration may take over absolute power and the right encroaches on the constitutional rights and freedoms of citizens???" . While apelanti point and, for difference since April this year, public power can ekskulpirati „novonastalošću“ situation, than she had in a situation like that to bring adequate (legal) solutions, and not leave the organs of the administration (ministry of health) to arbitrary encroaching on the constitutional rights and freedoms, and that on the basis of statistical data (the results of which were, by nature, subject to change) increase or decrease measure zadiranja in constitutional human rights and basic freedoms.

23. Finally, apelanti point out that the citizens of the other entity (Republic of Srpska) and Brcko District of Bosnia and Herzegovina do not have the above restrictions of movement, and that it is not clear whether the citizens of the other entities can smoothly move in the entity Federation of Bosnia and Herzegovina, and vice versa, which further opens the question of quality and this part of the „law“. In view of the foregoing, apelanti propose to the Constitutional court finds a violation of the aforementioned rights and abolish osporenu the order of the Federal crisis staff of 9. November 2020. year.

d) In relation to the AP 4109/20

24. Apelanti Muhammad Hundur and Haris Agic consider them osporenom by order of the Federal of the crisis staff of 9. November 2020. years violated the right under article II/3.m) of the Constitution of Bosnia and Herzegovina and article 2. Protocol number 4 with the European convention (freedom of movement). First of all
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The decision on dopustivosti and merits states that the appeals submitted in terms of article 18. paragraph (2) of the Rules of the Constitutional court, since there is no decision "by a competent court

“ we could secure only if they were sanctioned for violations of the above mentioned challenged orders, and which would represent an additional burden in the current situation in the Federation of Bosnia and Herzegovina. It further stated that the specified command "controversial, unconstitutional and illegal" to refer to while on its contents, and that the Chapter And the General provisions (article 3) and Chapter XIII Transitional and final provisions (section 5). The above mentioned provisions, according to the apelanata, both in their right to movement. In this regard, it stresses that the Federal the crisis staff "even according to the Constitution, even according to the Law is not empowered to make general orders that limit the freedom of movement of citizens". By calling on the provision of article 6. paragraph

(5) of the Ordinance on the organization and method of work of the Federal crisis staff ("Official gazette of FBiH", number 10/12), the Federal crisis staff, according to apelanata, unlawfully expanded its authority. In this connection, it stresses that the Federal crisis staff has no basis to make a general order for the citizens, but to make the order solely for the health services or private health care workers when manage and co-ordinate their work, and that everyone must abide by these orders adopted for the work of health care institutions and private health workers.

25. Since it's not the decision of the FBiH Government on the proclamation of state of natural disaster, and since neither management authority - the Crisis staff of the Federal administration of Civil protection, as the only authorized body who can do it, it's not made the order about restriction of freedom of movement, apelanti believe that they violated the right to freedom of movement. While was pointed out from the statement marked official (Goran Cerkez) it follows that the challenged order was made solely because the competent authorities do not perform their job in accordance with the law and authority, and not because of other more lenient measures have not yielded the expected results, or because he denied the order (about the limit of movement) is necessary.

e) Answer to appeal (AP 3683/20)

26. The FBiH government (Office for cooperation and representation before the Constitutional court) stated that the World health organization 12. June 2020. the year brought a new document to update the guidelines of the 6. on April 2020. year work effective prevention transmission of the virus COVID-19.

It was pointed out that in these (new) guidelines stated that the government needs to encourage the public to wear masks in specific situations and environments as part of a comprehensive approach to curbing the spread of SARS-CoV-2, and that the mask is a key measure in preventing transmission of the virus and to reduce potential infection from the infected person with symptoms or without them, i.e. they people who wear the mask are protected from infection and prevents further spread of the disease if carrying a person who is infected. Considering the listed recommendations, it was also pointed out that the Federation of BiH and

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The decision on dopustivosti and merits Sarajevo canton introduced restrictive measures for the protection of the health of the population, among which is the measure of the obligations of wearing the protective masks in an open space. Such treatment, according to the Government of the Federation, imposes on itself the European convention in terms of the positive obligations stemming from,

for example, the right to life (article 2) or the right to private and family life that comes and protection of health (article 8), and of the state requires action, because it would be nepreduzimanje measures or their nepravovremeno taking (but inadequate and insufficient information of the public) could be considered as a positive obligation of the state. In this regard, it is pointed out that article 15. position 1.

The european convention provided that in time of war or other public danger threatening the survival

of the nation any contracting party may take measures that deviate from its obligations according to the Convention, and that in najnužnijoj extent that it requires the urgency of the situation. Therefore, it is stated that

for these reasons, the imposition of duties to carry protective masks in a confined and open space, with exceptions, the necessary measures in order to preserve the health of the community and preventing the spread of infectious diseases.

27. The federal ministry of health (and in the name of the Federal crisis staff), first of all, the show is on

the chronology of events on the occasion of the outbreak of the virus COVID-19 on the territory of the Federation of Bosnia and

Herzegovina and decisions in this regard, citing the obvious data about

epidemiološkoj situation in connection with the movement of the virus COVID-19 in the Federation of Bosnia and Herzegovina

for the period to 14. October 2020. year. Then he pointed out that at the time of passing the challenged

orders of the Cantonal crisis staff of 12. October 2020. year in effect was an Order

of the Federal crisis staff of 1. October 2020. year, which is in Chapter XII (Transitional and final provisions) allow the cantonal crisis centres ministries of health to

introduce a more restrictive and different measures according to the assessment of the epidemiological situation, and that possibility

is just using the Cantonal crisis staff bringing the specified osporenu the order of 12. October 2020. year in conditions seriously worsened the epidemiological situation in the Federation of BiH caused by the

virus COVID-19. Further according to the Federal crisis staff was established in accordance with article

187. The law on health care protection and article 60. The law on protection of population from infectious

disease. In this regard, it is pointed out that in the current epidemiološkoj situation caused by the new

corona virus (COVID-19) proceeds in accordance with the provision of article 187. The law on

health care and for managing and coordinating the work of the health sector in the Federation of BiH, and

through the appointed Federal crisis staff, as well as through appointed crisis staffs, cantonal ministries of health. Further it is pointed out that, in accordance with article 6. paragraph

(5) of the Regulation on organization and manner of work of the Federal crisis staff, the orders and decisions of the

the federal crisis staff binding for the crisis staffs cantonal ministries of health,

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crisis staff works to declaring natural and other accidents.

28. Then it was pointed out that, in accordance with article 3. The law on protection of population from contagious diseases, is regulated to protection from infectious disease duties of local government units - municipalities,

cantons and the Federation, health care institutions, the institute for health insurance, the holders of private

practice, commercial companies and other legal entities and physical persons. Therefore, according to the article 70.

the above law provided the offence for a physical person if you don't enable the treatment article

of the same law. He also pointed to the Rulebook on organization and manner of work of the Federal

crisis staff, it was determined that he relates to the treatment and the Federal crisis staff and crisis

headquarters, cantonal ministries of health. In this regard it is stated that, pursuant to article 6.

the above ordinance, orders that are made binding, and that is scheduled that they are published in official gazettes, but they are available to the public on the web-site of the crisis

staffs, the government, and the ministries of health in the Federation of BiH, and regularly transmitted via

the media, and through conferences for the media, and through social networks. Therefore, according to

the Federal ministry of health, the public is transparent and fully familiar with the orders that are made in the context of these serious javnozdravstvene crisis caused by the virus COVID-19 in

the Federation of BiH.

29. Then the Federal ministry of health made the appeal stated that the measure which prescribed by the mandatory wearing of protective masks violated article II/3.d) of the Constitution of Bosnia and

Herzegovina, as well as a violation of the provisions of the European convention. In this regard, he

pointed out, among other things, that the European convention (article 15. paragraph 1) foresees that in time of

war or other public danger threatening the survival of the nation any high contracting party may

take measures that deviate from its obligations under the European convention (which includes

the prohibition of discrimination), and that in najnužnijoj extent that it requires the urgency of the situation, with such

measures are not inconsistent with its other obligations under international law. From the above it is pointed out that the European convention knows the possibility that in a situation like

the current pandemic virus COVID-19 in the world and an epidemic of the virus COVID-19 in the Federation of BiH

states are defined by the measures that requires appropriate treatment in the population as

compulsory wearing of protective masks which must be viewed as an important preventative and
protivepidemijska measures that must be implemented together with other measures such as
maintaining physical distance, often wash and disinfect hands, airing the rooms, etc. when
such restriction is in the interest of public health. He also pointed out that the danger to life
and
health, which is threatening due to appear completely new corona virus, has a very large
weight in

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compared to the imposed preventive and protivepidemijske measures compulsory wearing of
protective masks.

With that in mind, in comparison with danger for life and health, the Federal ministry of
health submitted that the above mentioned measures, which have temporal character, in the
specific

circumstances that follow epidemiološki report certainly have their justification and weight.

This is

especially if you take into account the far-reaching consequences for the protection of life and
health, which would be

able to perform in the event that, for example, these measures are not taken. In that sense, he
pointed out

the state, ie. its competent organs must not bring in a position to consciously accept the
responsibility for the implementation of the blažih measures, i.e. to exclude the
aforementioned general measures, such as the

obligation of wearing protective masks, in circumstances when there is indisputable danger to
their

implementation, and according to all available information on the manner and rate of
infection (new corona

virus), led to an increased number of patients, and ultimately deaths. In this regard, it is noted
that the mask key measures for stopping the transmission of the virus and storage life, since
they

reduce the potential risk of exposure to the virus from the infected person were those with
symptoms or not,

and that the persons who wear masks protected from infection.

30. In the conditions when they affected the lives and health of citizens, including apelanata,
Federal

the ministry of health submitted to the Federal crisis staff made the appropriate orders, and
that in

the present case satisfied the principle of proportionality, because any other reduced
measure this objective could not be achieved at the time when the measures imposed.

Therefore, it is pointed out that

none of the measures, including determination of measures for compulsory wearing of
protective masks in a confined

and open space for the general population, citing certain exceptions defined by

the recommendations of the Institute for public health of the Federation of BiH, there is no
objective to prevent or limit the

basic human rights and freedoms, than that taken solely in the interest of the protection of the
public

health of the population of the Federation of BiH.

31. When it comes to the measure of restrictions of movement in the present case, it was stated that from the media wrote, as well as inspection findings based on surveillance of catering facilities stems to measure restrictions of work no longer than 23 hours is not respected, more specifically, to about the extent which massively violated. It is, among other things, regulated the Federal crisis staff to determine measures restrictions on movement in the period from 23 hours in the evening to 5 o'clock in the morning. He also pointed out that the specified measures restrictions on movement, which is conducted together with all the other measures, of great importance in a situation when the virus SARS-CoV-2 rapid-horizontal spread in the community.

While it is stated and the measures adopted on the basis of article 54. paragraph (2), item 2. The law on protection of population from contagious diseases, which entitles the Federal ministry of health that the measure can be introduced as a special emergency protective measure.

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32. Cantonal ministry of health led to the spread of infection with the virus COVID-19 in Canton

Sarajevo required to necessary to bring certain measures in order to combat the spread of corona

virus and for protection of the population. Further it is stated that the members of the Cantonal crisis staff of

top-notch experts, and that it was denied an order of the authority made for the protection of the population of

corona virus and curb its spread. It is also stated that apelant falls into a special category of the population that is sensitive to falls in the risk groups who are getting sick from the virus

COVID-19 with the complications that can follow (in which occur the symptoms and complications that can endanger life), and that in apelantovom the interest of everyone around him are wearing

protective masks, because only in this way enables a 95% security of transmission of corona virus.

The foregoing, according to the Ministry of health Canton Sarajevo, confirmed the World health organization, which further confirms the justification of the challenged orders of the Cantonal

crisis staff. He also pointed out that apelant submitted medical documentation that dates back to 2011. year, or that his state of health unknown in October 2020.

year. Therefore, it is stated that apelant not proved to osporenom the directive violates one of his human rights. Then it was pointed out and the masks that are osporenom order prescription

are not the cause of the health difficulties of the citizens, and the incorporation of reduced amounts of oxygen. And then

pointed out that the main goal of making the challenged orders was to protect the population in

the area of Canton Sarajevo and to contain the spread of infection corona virus, and that the

measures of the challenged orders in accordance with a legitimate aim.

33. Further it is stated that they are absolutely unfounded allegations filed all the expected to the challenged order neprimjenjiva, because it's not published in the "Official gazette". In this regard, it was pointed out that in paragraph 3. challenged orders responsible Ministry of interior of Sarajevo Canton to inform the public about the new measures. In this regard, the Ministry of health of Sarajevo Canton submitted that in the present case on all web-portals, in all the daily newspapers the public familiar with the new orders and measures and non-compliance responsibility in the case of contempt orders. Informing the public on the way to publish orders in all means of public information (radio, TV, portals and daily newspapers, as well as on the web-site of the Government of Canton Sarajevo Ministry of health Canton Sarajevo and the Ministry of interior of Sarajevo Canton) is the way that is a lot svrsishodniji and more encompassing. The citizens of Sarajevo Canton regularly monitored funds information (printana and electronic), and it's one of the more efficient ways of informing citizens of the Canton of Sarajevo on new orders, measures and responsibilities in case of violations of these measures. On one of the following ways, according to the Ministry of health of the Canton of Sarajevo, with the Directive's familiar and I apelant. It is also stated that

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34. He finally pointed out that it is clear that in time the struggle against the pandemic virus COVID-

19 take measures which may partially limit the konvencijska, i.e., constitutional rights, and that the European convention and the European court of human rights do not forbid *a priori* the introduction of such measures, as well as nepreduzimanje measures and their nepravovremeno taking could be considered as a positive obligation of the state. Therefore, it was pointed out to osprenom by order of the Cantonal crisis staff establishes a fair balance with public interest for the protection of public health, i.e. that it does not limit the apelantu or one of the human rights to which he calls. In this regard, the Ministry of health Canton Sarajevo

called for the Decision of the Constitutional court number of AP 1844/20, proposing that the appeals be dismissed as unacceptable or unwarranted.

35. Institute for public health of Canton Sarajevo, stated that appeals to the unacceptable and unwarranted.

Namely, it was pointed out that the general picture of the spread of the infection in the Canton of Sarajevo iziskivala necessary the adoption of certain measures in order to combat the spread of corona virus with the aim of protection of the population.

Further states and unfounded allegation filed all the expected to the waist is not which was consulted before making the

challenged orders of the Cantonal crisis staff. In the below responses are distinguished essentially states

that were previously mentioned in the response of the Ministry of health of Sarajevo Canton.

36. MUPKS stated that for the realization of the points challenged the orders of the Cantonal crisis staff, and

that are under the jurisdiction of the police Administration, on web-site of the Ministry of internal affairs of Canton

Sarajevo, in addition to regularly published the text of the Law on modifications and amendments to the Law on

misdemeanors against public order and peace ("Official gazette of Sarajevo Canton" no. 34/20), 15.

October 2020. year published public notice to the citizens entitled to Appeal to the citizens for compliance with the orders of the competent authorities of the mandatory wearing of protective masks in which he pointed out

the relevant provisions of the Law on misdemeanors against public order and peace and in which they are listed

challenged orders. Further it is stated that it was the duty of the police Administration according to item 3. challenged

orders were to inform the public in the Canton of Sarajevo about the current regulations of the Law on misdemeanors against public order and peace, and not about the content of the challenged orders of the Cantonal

crisis staff. However, it was also pointed out that the police Administration on the web-site of the Ministry published

the text of the Orders, because there is a narrow legal and factual connection between these two bills, how would

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the public was familiar with them in the better and more adequate way. In that sense, he pointed out, and

that's 15. October 2020. year police commissioner sent a instructional act in which it is stated:

"Bearing in mind that the Order was made, or delivered to the police department

the ministry of internal affairs of Sarajevo Canton on the day of the beginning of the application, and in view of the fact that there wasn't enough

time to with its contents correctly and in a timely manner to meet the general public, it is necessary to

be in the days 15. 16. October 2020. years of police officers in the field, show acceptable the degree of tolerance and understanding towards citizens, in terms of warning about the obligation of wearing

protective masks, i.e., their proper use (wearing over the nose and mouth).“ So, it was stated that the Management of the police in this case acted on the basis of the law, resolution or order of the competent authorities and even in one segment are not carried out any activities which are in conflict with art. 3, 8. 10. Of the european convention.

IV.

The relevant regulations

37. In the **Constitution of Bosnia and Herzegovina**, the relevant provisions read as follows:

Article X

Changes and amendments to the

[...]

2. Human straightand and basic freedoms

No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in article II of this Constitution or alter this provision.

38. In the **Law on protection of population from contagious diseases** ("Official gazette of FBiH" no. 29/05)

the relevant provisions read as follows:

Article 1.

This Law defines the communicable diseases whose prevention and suppression of interest for the Federation of Bosnia and Herzegovina (hereinafter: Federation) and the measures for protection of population from infectious diseases.

Article 3. paragraph (1)

Protection from infectious diseases, it is the duty of local self-government units - municipalities, cantons and the Federation, health institutions, health insurance, carrier's, private practice, commercial companies and other legal entities and physical persons.

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Article 4. paragraph (1) item 1)

Protection from infectious diseases consists in organizing and conducting:

1. measures for the prevention and suppression of infectious diseases [...]

Article 6. st. (1) and (3)

An epidemic of infectious disease in two or more cantons declares and defines the affected or threatened area, the federal minister of health (hereinafter: federal minister) on the basis of the epidemiological report of the health services and the cantonal institute for public health (in further text: the cantonal institute), with the expert opinion of the Institute for public health of the Federation of Bosnia and Herzegovina (hereinafter: the institute).

Declaration of the epidemic of the century. 1. and 2. this article was published in the "Official gazette of the Federation BiH".

IV - SECURITY MEASURES FOR PROTECTION OF POPULATION FROM CONTAGIOUS DISEASES

Article 54. paragraph (1) and paragraph (2) item 2) and 6)

For protection of the population of the Federation of ingestion cholera, plague, viral hemoragičnih fever, yellow fever, SARS and other contagious diseases take measures provided for by this Law and international sanitarnim conventions and other international treaties.

*For the prevention and suppression of diseases referred to in paragraph 1. this article the Federal ministry of health may order specific emergency protective measures against the disease:
[...]*

2. the ban on the movement of the population, or restriction of movement in infected or directly affected areas;

[...]

6. other measures in accordance with international regulations.

Article 60.

In the case of extremely worsened the epidemiological situation the federal minister or the competent cantonal minister appointed by the crisis staff with the task of organizing and coordinating measures for combating certain infectious diseases.

39. The law on health protection ("Official gazette of the Federation BiH", no.. 46/10 and 75/13) in

the relevant part reads as follows:

Article 187.

In the larger incidentnim situations when it is not declared a state of natural and other accidents from article 189. this law with the aim of managing and coordinating the work of health care institutions and private

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health workers form the crisis staff of the Federal ministry or the cantonal ministry (hereinafter: the crisis staff) which operates to the moment of declaring natural and other accidents, when the role of the management actions for protection and rescue on the territory of the Federation, i.e. the area of canton takes a Federal or cantonal headquarters of civil protection.

Bigger incidentna the situation referred to in paragraph 1. this article is any event that poses a serious threat to the health of people in a particular community, that causes or could cause such number or

kind of victims that it is not possible to take care of the regular organization of the work of health care institutions and private health workers.

Members of the crisis staff referred to in paragraph 1. this article shall be appointed by the competent minister of health.

Federal minister of the rulebook regulates organization and manner of work of the crisis staff in terms of this article.

40. The law on the Government of the Federation of Bosnia and Herzegovina ("Official gazette of the Federation BiH", no.. 1/94, 8/95, 58/02, f bih, no. 19/03, 2/06 and 8/06)

For the purposes of this decision using the text of the regulations as published in official gazettes, because it's not published in all official languages and letters, which in relevant part reads as follows:

Article 19. paragraph (2)

The decision to regulate individual issues or prescribe measures of the Government, gives approval or confirm acts of other authorities or organizations, and decides on other issues not decided regulation.

41. The law on organization of the administration bodies in the Federation of Bosnia and Herzegovina ("Official gazette

Bih" no. 35/05) in relevant part reads as follows:

Article 66.

Federal and cantonal authorities and independent administrative organisations may make by-regulations from their jurisdiction in order to allow execution of laws and other regulations to which they are assigned.

Administrative bodies and administrative organisations referred to in paragraph 1. this article can make the following secondary legislation: regulation as the implementation regulation and a manual, instruction and order as general acts.

Exceptionally, a special law can provide for a different title a by-law regulations, if is it more adequate to the nature of matter, which needs to update the rule (methodology etc.).

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42. The law on misdemeanors against public order and peace ("Official gazette of Sarajevo Canton", no..

18/07, 7/08 and 34/20)

For the purposes of this decision using unofficial consolidated text, prepared in the Constitutional court of BiH, as published in official gazettes, because it's not published in all official languages and letters, which in

relevant part reads as follows:

CHAPTER II. OFFENSES AGAINST PUBLIC PEACE AND ORDER AND PUNITIVE SANCTIONS

Article 8. paragraph (5) point m)

(Violations and fines for natural persons)

(5)

By a fine of 500,00 up to 1.500,00 will be punished for the offense:

[...]

m) who do not act upon the orders of a competent authority which prescribes measures for the protection

the population from infectious diseases.

A member of the slobode, h. 13a.

Police officers authorised bodies perform the control of or implementation of the orders of the member 8. paragraph (5) items. d) and m) of this law and undertake measures and actions

*from its jurisdiction, only
if it is expressly stated in the order.*

43. Rulebook on the organization and method of work of the crisis staff of the Federal ministry of health

the number of 01-37-419/12 from 23. January 2012. year ("Official gazette of FBiH", number 10/12) in

relevant part reads as follows:

On the basis of article 187. position 4. The law on health protection ("Official gazette of the Federation of

BiH", no. 46/10), the federal minister of health brings

RULEBOOK

ON THE ORGANIZATION AND METHOD OF WORK OF THE CRISIS STAFF OF THE FEDERAL MINISTRY OF

HEALTH

I – GENERAL PROVISIONS

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Article 1.

This Rule defines the organization and manner of work Kriznoga staff of the Federal the ministry of health (hereinafter: Ministry).

The provisions of this Ordinance pursuant to apply and on the organization and method of work of the cantonal crisis staffs.

Article 2.

In the larger incidentnim situations, when he declared a state of natural and other accidents shall be established the Crisis staff of the Federal ministry of health, i.e. the cantonal ministry of health (hereinafter: the Crisis staff).

Bigger incidentna the situation referred to in paragraph 1. this article is any event that poses a serious threat to the health of people in a particular community, that causes or could cause a large number or kind of victims that it is not possible to take care of the regular organization of the work of health care institutions and private health workers.

II – ORGANISATION AND MANNER OF WORK OF THE CRISIS STAFF

[...]

2. Way of work of the Crisis staff

Article 6.

The crisis headquarters, in the larger incidentnim situations that represent a serious threat to the health of people in a particular community, manage and co-ordinate the work of health institutions and private health workers.

Activities referred to in paragraph 1. this member of the Crisis staff conducted until the moment when the competent authorities of the Federation and the cantons declared a state of natural or other calamities on the territory of the Federation, i.e.

the area of the canton, and when the role of the management actions for protection and rescue takes Federal, or cantonal staffs of civil protection in accordance with the Law on protection and rescue of people and material goods from natural and other disasters ("Official gazette of the Federation BiH", br. 39/03, 22/06 and 43/10).

The crisis staff referred to in paragraph 1. this article works in sessions.

The crisis staff referred to in paragraph 1. this article brings orders and decisions.

Orders referred to in paragraph 4. this article binding for the cantonal crisis staffs, health institutions and private practice, as well as other legal and physical persons.

Article 8. paragraph (1)

The crisis center has a preventive role in their work with the aim of preventing and mitigating the

consequences on the health of people at higher incidental situation.

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44. Rulebook on the manner of work and functioning of the headquarters and commissioners of civil protection ("Official

gazette of the Federation BiH", no.. 77/06, 5/07 and 32/14) in relevant part reads as follows: *Article 33.*

Termination condition a natural or other disaster shall be determined by the decision.

The decision on the termination condition of a natural or other accident brings the same authority that brought

decision on declaring the state of natural or accident.

The decision from paragraph 1. this article contains:

[...]

4) the need of continuing the work of the staff of the CZ and after the adoption of the decision on the termination condition of a natural or other disaster, and the deadline by when you will do hq CZ, if necessary, to the headquarters of the CZ to continue its work,

[...]

6) obligations for the authorities, i.e., municipal service for administration to the framework of their regular

activities, conduct additional tasks related to the elimination of all the consequences that arose from a

natural or other disaster and the deadline to perform those jobs,

[...]

8) other tasks for which judges that they are needed.

The decision from paragraph 1. this article now says by way of public information and

published in the official gazette or the official gazette of the municipality, the canton, i.e. the Federation, with the team

to get a copy of the decision must necessarily submit to hq CZ, which is on the affected area led

actions for protection and rescue for the realization of made decisions.

45. Decision on the proclamation of the cessation of the situation of the accident caused by the emergence of koronavirusa

(COVID-19) in the territory of the Federation of Bosnia and Herzegovina number 701/2020 of 29. on may 2020.

year ("Official gazette of FBiH" no. 34/20 3. June 2020.

year) is as follows:

On the basis of article 19. paragraph (2) of the Law on the Government of the Federation of Bosnia and Herzegovina ("Official gazette of the Federation BiH", no.. 1/94, 8/95, 58/02, 19/03, 2/06 and 8/06), and in conjunction with article 33. st. (1) and (2) the Rulebook on the manner of work and functioning of the headquarters and commissioners of civil protection ("Official gazette

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Of the federation of BiH", br. 77/06, 5/07 and 32/14), at the proposal of the Federal civil protection headquarters, the Government

of the Federation of Bosnia and Herzegovina, at 176. the emergency session, held 29.05.2020. year, brings

DECISION

ON THE PROCLAMATION OF THE CESSATION OF THE SITUATION OF THE ACCIDENT CAUSED BY THE EMERGENCE OF

KORONAVIRUSA (COVID - 19) IN the TERRITORY of the FEDERATION of BiH

I.

This decision declared the termination of the situation the accident was caused by the emergence of koronavirusa

(COVID -19) in the territory of the Federation of BiH (hereinafter: the Federation), which was declared

Decision on declaration of state of disaster caused by the emergence of koronavirusa (COVID 19) in the territory

of the Federation of BiH ("Official gazette of the Federation BiH", no. 21/20).

II.

The condition of the accident from the point I. this decision ends days 31.05.2020. year.

III.

They make loans to the Federal headquarters of the civil protection and the Crisis staff of the Federal ministry of health

to continue to monitor and assess the state of the epidemiological situation in the territory of the Federation and on the basis of the

determined measures and activities for prevention of the spread of koronavirusa (COVID - 19).

Charged to the Federal administration of civil protection in case of need, put at the disposal of the

forces and means of the composition of the appropriate federal specialized civil protection units and services

for protection and rescue of the Federation of Bosnia and Herzegovina.

IV.

They make loans to managers of bodies of administration and administrative organisations of the Federation and cantons,

i.e. the managers of municipal/city service for administration, in the framework of their regular activities

they perform additional jobs related to the removal of consequences that arose by accident.

V.

The decision shall enter into force on the day of its adoption and shall be published in the "Official gazette of the Federation of I".

This decision will be published via printed and electronic resources of information.

46. Order on declaration of epidemic infectious diseases COVID-19 number 01-33-3997/20 of 13. July

2020. year ("Official gazette of FBiH" no. 48/20 from 17. July 2020. year) is as follows:

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On the basis of article 6. paragraph (1) of the Law on protection of population from contagious diseases ("Official gazette of the Federation BiH", no. 29/05) and the member 66. paragraph (2) of the Law on organization of the administration bodies in the Federation of Bosnia and Herzegovina ("Official gazette of the Federation BiH", no. 35/05), on the basis of the epidemiological report of the Institute for public health of Canton Sarajevo, epidemiological report

of the health Tešanj and Home health Maglaj, epidemiological report of the Institute for public

health Zenica, and epidemiological reports to the Home health Agency and Institute for public health

The tuzla canton, as well as with the expert opinion of the Institute for public health of Federation of Bosnia and

Herzegovina, the federal minister of health brings

ORDER

ON DECLARATION OF AN EPIDEMIC INFECTIOUS DISEASE COVID-19

1. Declaring the epidemic infectious diseases COVID-19 for the threatened area, territory Of the federation of Bosnia and Herzegovina.

2. For the duration of the epidemic infectious diseases COVID-19 taking the next measures

envisaged by the Law on protection of population from contagious diseases ("Official gazette of the Federation BiH",

no. 29/05), and as follows: performance of the sanitary surveillance at border crossings located

on the territory of the Federation of Bosnia and Herzegovina and the implementation of measures in connection with the performance of the surveillance;

karanten; insurance required reserves of vaccines, when the vaccines are available, immunization

of the population when the vaccines are available, as well as the implementation and other measures which order the federal

the minister of health or the Government of the Federation of Bosnia and Herzegovina.

3. Measures from point 2. these orders shall be financed from the funds of the Budget of the Federation of Bosnia and

Herzegovina, according to the financial possibilities of the fiscal year.

4. This order shall become effective on the date of its publication in the "Official gazette of Federation of BiH".

47. **The order of the Crisis staff of the Federal ministry of health** the number of 01-33-5472/20 of 1.

October 2020. year (taken with

<https://covid19.fmoh.gov.ba/novost/62/naredbe-kriznog-staff-staff-federal-ministry-health>

) reads as follows:

The crisis headquarters of the Federal ministry of health, in order to further monitor the situation and take measures to prevent and early detection of a case of disease caused by new koronavirusom COVID

-19), which is the Conclusion of the Government of the Federation of BiH, V. no. 164/2020 of 31.01.2020. the year was proclaimed

infectious disease whose prevention and suppression of interest for the Federation BiH, in accordance with point

III. paragraph (1) of the Decision on declaration of the termination condition, the accident was caused by the emergence of koronavirusa

(COVID-19) in the territory of the Federation of Bosnia and Herzegovina („Official gazette of the Federation BiH", number

34/20), as well as the provisions of article 6. paragraph (5) of the Ordinance on organisation and manner of work of the Crisis staff

of the Federal ministries ("Official gazette of the Federation BiH", number 10/12), at 17. meeting held

01.10.2020. year, brought the next

ORDER

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1. Orders the compulsory wearing of protective masks in a confined space with respect to a distance of

minimum 2 meters, as in an open space, if open space is not possible to maintain a physical distance of 2 feet between the a person.

[...]

X. ORDERS FOR the RELEVANT INSPECTION ORGANS AND RELEVANT ADMINISTRATION POLICE

1. They make loans to the Federal administration for inspection affairs cantonal/county are of the administration for inspection affairs, as well as inspection organised in the legal ministries in canton/county, or that are represented by the municipal and city inspectors to increase inspection of all the inspections, and in order to control the implementation of the naređenih measures and prevent the spread of COVID-19 in the area of their

jurisdiction, as well as control these orders.

2. Charged to the FMOI - Federal police administration and the MINISTRY of interior of canton - the Administration of

police in accordance with point IV of the Decision on declaration of the termination condition, the accident

was caused by the emergence of koronavirusa (COVID-19) in the territory of the Federation of Bosnia and

Herzegovina ("Official gazette of the Federation BiH", no. 34/20), take measures

from their mjerodavnosti as a support to inspection services, and in order to control

the implementation of the naređenih measures and prevent the spread of COVID-19 in the

area of their jurisdiction.

3. They make loans to the Federal administration for inspection affairs, cantonal/county are the administration for inspection affairs, as well as inspection organised in the legal ministries in canton/county, or that are represented by the municipal and city inspectors to submit the Crisis headquarters of the Federal ministry of health, or crisis stožerima cantonal/županijskih ministries of health reports about its stepped-up to the inspection oversight of all inspections, and in order to control

the implementation of the naređenih measures and prevent the spread of COVID-19 in the area of their

jurisdiction, and that these reports continue to provide continuously every 14 days. Crisis stožeri cantonal/županijskih health ministries referred to

the combined report for the area of the canton/county delivered to the Crisis headquarters of the Federal ministry of health.

XII. TRANSITIONAL AND FINAL PROVISIONS

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1. Allow the canton/cantonal stožerima health ministries

, the introduction of restriktivnijih and different measures towards assessment of the epidemiological situation

in the canton/county, or municipality by regularly informing the Crisis staff of the Federal ministry of health.

2. An order shall be passed with a validity period of 14 days counting from the day of beginning

of implementation of these Orders.

3. After the expiration of the period of Chapter XII. point 2. these orders, with the Crisis headquarters of the Federal ministry of health to examine the complete disease situation COVID-19 in the Federation of BiH and create a risk assessment, and to review opportunities and needs changes to the measures established by this Directive, and after that decide a new directive on measures undertaken and in which within.

4. This order shall enter into force on the day of its adoption, and shall apply from the day, 02. 10. 2020. year.

48.

The order of the Crisis staff of the Ministry of health of Sarajevo Canton number 62-20/2020 12.

October

2020.

year

(taken

with

https://vlada.ks.gov.ba/sites/vlada.ks.gov.ba/files/naredba_kriznog_staba_mz_od_22.10.2020.bp.pdf

) reads as follows:

The crisis headquarters of the Ministry of health of Sarajevo Canton in order to further monitor the

situation and take measures for the prevention and early detection of possible

cases of the disease caused by a new corona virus (COVID - 19). that is the Conclusion

of the Government of the Federation of BiH V. the number of 164/2020 of 31. January 2020. year, declared

infectious disease whose prevention and suppression of interest for the Federation BiH. in accordance with section XII. (transitional and final provisions) Orders of the Crisis staff of the Federal ministry of health number: 01-33-5472/20 of 1. October 2020.

year, at the meeting held 12.10.2020. year, brings

ORDER

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1. Orders must be properly wearing a protective mask over your mouth and nose for protecting the respiratory system, in a confined and open space, except for the athletes at the games. training and sports activities, a driver on a bicycle, an electric scooter and a motorcycle, and other exemptions pursuant to the recommendations and

guidelines of the Institute for public health of Federation of Bosnia and Herzegovina and the Institute for public health of Canton Sarajevo.

2. For the implementation of these Orders, in accordance with the provisions of article 8. paragraph (5) point m).

related article slobode, h. 13a. The law on misdemeanors against public order and peace ("Official

gazette of Sarajevo Canton", no. 18/07. 7/08 and 34/20) charged the police Administration of the Ministry of interior of Sarajevo Canton.

3. In the case of failure to adhere to point 1. these Orders, police officers from the police department of the Ministry of internal affairs of Canton Sarajevo will act in accordance

with the appropriate provisions of the Law on misdemeanors against public peace and order from the

point 2. these Orders. Police administration of the Ministry of internal affairs of Canton Sarajevo is obliged to inform the public in the Canton of Sarajevo on the current legal solutions of the Law on misdemeanors against public order and peace.

4. This Order shall enter into force on the day of its adoption, and the same will apply from 15.10.2020. year until 31.12.2020. year.

5. For all time of implementation of these Orders. The crisis headquarters of the Ministry of health

of Sarajevo Canton will consider the complete disease situation (COVID -19)

in the Canton of Sarajevo and compile a risk assessment, to review opportunities and needs changes to the measures established by this Directive, and after that decide a new Directive on measures to take and in which period.

49. The order of the Crisis staff of the Federal ministry of health the number of 01-33-6301/20 of 9.

November 2020. year (taken with

<https://covid19.fmoh.gov.ba/novost/62/naredbe-kriznog-staff-staff-federal-ministry-health>

) in relevant part reads as follows:

The crisis headquarters of the Federal ministry of health, in order to further monitor the situation and take measures to prevent and early detection of a case of disease caused by new koronavirusom (COVID -19), which is the Conclusion of the Government of the Federation of BiH, V. no. 164/2020 of 31.01.2020. year declared infectious

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disease whose prevention and suppression of interest for the Federation BiH, in accordance with

point III. paragraph (1) of the Decision on declaration of the termination condition, the accident was caused by

the emergence of koronavirusa (COVID - 19) in the territory of the Federation of Bosnia and Herzegovina

("Official gazette of the Federation BiH", no. 34/20), as well as the provisions of article 6. paragraph

(5) of the Ordinance on organisation and manner of work of the Crisis staff of the Federal ministries

("Official gazette of the Federation BiH", number 10/12), at 21. regular session held 09.11.2020. years, in conditions seriously worsened COVID-19

the epidemiological situation in the territory of the Federation of BiH, brought the following
N A N D R E D B I N

I.

GENERAL PROVISIONS

[...]

3. Limiting the movement of pučanstva in the whole territory of the Federation of Bosnia and Herzegovina in the period from 23:00 hours in the evening until 5:00 o'clock in the morning the next day.

Referred to in paragraph (1) of this point exempts all employees who are involved in the implementation of

measures and activities to address the epidemic COVID-19 in the Federation of BIH, employees of which process work is performed in shifts, long-distance and international transport of passengers, taxi service, and drivers of commercial vehicles in the domestic

and international transport.

Employees referred to in paragraph (2) who are involved in the implementation of measures and activities to

address the epidemic COVID-19 in the Federation of BIH, employees of which process work is performed in shifts, must have the approval of the employer for the

movement in the period from 23 hours in the evening to 5 o'clock in the morning the next day

For control point 3. Chapter I. "General order" charged to the the cantonal/county are administration the police of the competent cantonal/županijskih ministries of the interior in accordance with county/cantonal regulations on public order and peace.

[...]

X. ORDERS FOR the RELEVANT INSPECTION ORGANS AND RELEVANT ADMINISTRATION POLICE

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1. They make loans to the Federal administration for inpekcijske affairs cantonal/county are of the administration for inspection affairs, as well as inspection organised in the legal ministries in canton/county, or that are represented by the municipal and city inspectors to increase inspection of all the inspections, and in order to control the implementation of the naređenih measures and prevent the spread of COVID-19 in the

area of their jurisdiction, as well as control these orders.

2. Charged to the FMOI - Federal police administration and the MINISTRY of interior of canton - the Administration of police in accordance with point IV of the Decision on declaration of the termination condition, the accident was caused by the emergence of koronavirusa (COVID-19) in the territory of the Federation of Bosnia and Herzegovina („Official gazette of the Federation BiH", no. 34/20), take measures from their mjerodavnosti as a support to inspection services, and in order to control the implementation of the naredenih measures and prevent the spread of COVID-19 in the area of their jurisdiction.

[...]

XIII TRANSITIONAL AND FINAL PROVISIONS

1. Allow the canton/cantonal stožerima health ministries, the introduction of restriktivnijih and different measures towards assessment of the epidemiological situation in the canton/county, or municipality by regularly informing the Crisis staff of the Federal ministry of health.
2. An order shall be passed with a validity period of 14 days counting from the day of beginning of implementation of these Orders.
3. After the expiration of the period of Chapter XII. point 2. these orders, with the Crisis headquarters of the Federal ministry of health to examine the complete disease situation COVID-19 in the Federation of BiH and create a risk assessment, and to review opportunities and needs changes to the measures established by this Directive, and after that decide a new directive on measures undertaken and in which within.
4. This Directive puts out of force Order number 01-33-6191/20 of 4.11.2020. year.
5. This order shall enter into force on the day of its adoption, shall apply from the day 10.11.2020. year, except for point 3. Chapter I. "General orders" which begins to be applied from 11.11. 2020. year.

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V.

Dopustivost

50. In accordance with article VI/3.b) of the Constitution of Bosnia and Herzegovina, the Constitutional court, too, has a apelacionu

jurisdiction in the matters which are contained in this constitution, when she become the subject of dispute because of a judgment of any court in Bosnia and Herzegovina.

51. First of all, the Constitutional court indicates that apelant E. W. (AP 3683/20) called on the guarantees of art. 3,

8. 10. The european convention for imposing the obligation to wear a mask (over mouth and nose in

closed and open space) on the basis of the challenged orders of the Cantonal crisis staff of

12. October 2020. year. Bearing in mind the contents of the apelacionih of the allegations, it should be reminded that

the Constitutional court is not bound to the legal qualification of filed all the expected, and that, according to the principle *iura novit curia*, authorized to the facts of cases to apply the relevant constitutional and konvencijsko right. Therefore, in the circumstances of the concrete case the Constitutional court considers that, bearing in mind the contents of the imposed measure, survey these challenged decisions and all other allegations filed all the expected need to access from the aspect of, I don't how it proposes apelant, guarantees covered by the right to private and family life, home and correspondence under article II/3.f) of the Constitution of Bosnia and Herzegovina and article 8. Of the european convention. Namely, the Constitutional court points out that the essence of each individual case determines whether a certain life aspect can qualify as "private life", or "privacy" in terms of the European convention. In this regard, the Constitutional court reminds of the established principles of practice The european court of human rights which, among other things, in a general way, it was pointed out that "private life" includes a wide range of activities in the personal sphere (*S. and Marper v. United Kingdom*, paragraph 66) from which follows that will take into account all the changes that happen in society. Except for the so-called inner circle within who the individual free to live his life according to his own discretion and which absolutely excludes anyone from the outside, the right to private life includes the relationships that an individual establishes with all other human beings, i.e. "the outside world" in terms of "private social life" (see, *Niemetz v. Germany*, *Bărbulescu against Romania* [GC], paragraph 71, and *Botta v. Italy*, paragraph 32). Likewise, the personal choice of the desired looks of the individual (eg. how is someone's hair, or the way he/she dresses), either at a public or private place, refers to the expression of his personality and so also the notion of "private life". Therefore, in principle, and the measures that they have taken bodies of the public authorities and which limits the choice of this kind constitute interference in the exercise of the rights to respect for private life in terms of article 8. The european convention (see, *S. A. S. v. France*, judgment of 1. July 2014.

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The decision on dopustivosti and merits year, the number of applications 43835/11, paragraph 107). Consequently, the Constitutional court considers that imposing the obligation to wear a mask, in accordance with the osporenom by order of the Cantonal crisis headquarters, in the present case falls under article 8. Of the european convention. 52. In accordance with article 18. (1) the Rules of the Constitutional court, the Constitutional court may consider an appeal

only if they are against the verdict, or decision which it beats, exhausted all effective legal remedies possible under the law and if you file within 60 days from the date when the applicant filed all the expected received a decision on the last effective legal remedy which is used.

53. The constitutional court indicates that, in accordance with article 18. paragraph (2) of the Rules of the Constitutional court, can be extremely consider the appeal, and when there is no decision of the competent court if appeals to the indicates serious violations of the rights and fundamental freedoms protected by the Constitution or international documents applicable in Bosnia and Herzegovina.

54. In the present case apelant E. W. (AP 3683/20) claims that his osporenom decision The cantonal crisis staff violated the right under article II/3.f) of the Constitution of Bosnia and Herzegovina and article

8. The european convention, while others apelanti (AP 4072/20, AP 4076/20 and AP 4109/20) claim that them

is osporenom by order of the Federal crisis staff violated the right under article II/3.m) of the Constitution

of Bosnia and Herzegovina and article 2. Protocol number 4 with the European convention (freedom of movement), and, with

regard to this, some apelanti allegations and a ban on discrimination in article II/4. The constitution of Bosnia and

Herzegovina and article 14. Of the european convention. The constitutional court considers that all four submitted

filed all the expected points to serious violations of rights of the Constitution of Bosnia and Herzegovina and the European

convention which, according to the practice of the Constitutional court, dopustive in terms of article 18. paragraph (2)of

the Rules of the Constitutional court (see Constitutional court, *mutatis mutandis*, by the other, the Decision about

dopustivosti and merits, AP 3376/07 of 28. April 2010. year, available at www.ustavnisud.ba

). Finally, filed all the expected meet and the requirements of article 18. st. (3) and (4) the Rules

of the Constitutional court, because there is some formal reason filed all the expected are not dopustive, or are

obvious (*prima facie*) ill-founded.

55. Bearing in mind the provisions of article VI/3.b) of the Constitution of Bosnia and Herzegovina, article 18. st. (2), (3) and (4)

The rules of the Constitutional court, the Constitutional court found that all three have filed all the expected meet the requirements in terms of

dopustivosti.

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YOU.

The merits of the

a) In relation to allegations of violations of rights from article 8. The european convention and article 2.

Protocol number 4 with the European convention.

56. Article II/3.f) of the Constitution of Bosnia and Herzegovina in relevant part reads as follows:

f) the Right to private and family life, home and correspondence.

57. Article 8. The European Convention in the relevant part reads as follows:

Article 8.

The right to respect for private and family life

1. Everyone has the right to respect for his private and family life, home and correspondence.

2. Public authorities must not interfere in the exercise of this right except if it is not in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

58. Article II/3.m) of the Constitution of Bosnia and Herzegovina in relevant part reads as follows:

m) the Right to freedom of movement and residence.

59. Article 2. Protocol number 4 in the relevant part reads as follows:

1. Everyone lawfully within the territory of a state shall within that territory the right to liberty of movement and freedom to choose his residence.

[...]

3. Any restrictions can't be set in relation to the exercise of these rights other than those which are in accordance with law and are necessary in a democratic society in the interests of national or public security, for the preservation of public order, for preventing crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights referred to in paragraph 1. I can in certain areas, also, subjected to restrictions that are imposed in accordance with law and justified public interest in a democratic society.

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60. Bearing in mind apelacione allegations in the context of the facts of specific cases, and conclusions

Of the constitutional court from the part of this decision-Dopustivost, the Constitutional court considers that imposing the obligation to wear the mask represents the interference in the right to "private life" in terms of article 8. Of the European convention.

61. Likewise, the Constitutional court considers that restricting the movement of the population (on the whole territory

Of the federation of Bosnia and Herzegovina in a time of 23 hours in the evening to 5 o'clock in the morning the next day) on

the basis of Orders of the Federal crisis staff of 9. November 2020. the year is undoubtedly "interference" in the right to freedom of movement under article 2. Protocol number 4 with the European convention.

62. Given the circumstances of concrete cases, the Constitutional court, firstly, reiterates that the protection

the population of the danger Covida 19 big and difficult challenge for the authorities in all the states. Therefore, it is

clear and measures in such a situation dictates undoubtedly limit the number of konvencijskih, or constitutional rights. The European convention and the European court of human rights (in further text: the European court) does not prohibit *a priori* the introduction of such measures. On the contrary, positive obligations, which requires the European convention in order to reach the legitimate aim of protection of health of people require from the member states active concern and timely response. Therefore, the nepreduzimanje measures, as well as their nepravovremeno taking could be considered as a positive obligation of the state (see Decision of dopustivosti and merits, *AP 1217/20* of 22. on April 2020. year, paragraph 36, available at www.ustavnisud.ba).

63. The constitutional court recalls that Bosnia and Herzegovina has not notified the secretary general of the Council of Europe derogatory to the European convention on the basis of article 15. The European convention, what is the deal marks the state authorities that will not question nor European, not even the Constitutional court, since it is a possibility, but not the obligation. With that, the Constitutional court recalls that article II/2. The constitution of Bosnia and Herzegovina established the constitutional status of the European convention to which this act has priority over all other laws. Also, in article II/3. The constitution of Bosnia and Herzegovina is determined by catalog rights that are identical to the rights mentioned in the European convention and protocols along with the European convention, and under article X/2. The constitution of Bosnia and Herzegovina, no amendment to this constitution may eliminate or diminish any of the rights and freedoms referred to in article II of this constitution, or alter this provision.

64. At the same time, for every deviation it is necessary that there is a clear basis in domestic law how to ensure the protection from arbitrariness and any deviation must be strictly necessary for the struggle against the public danger, which in the circumstances of the specific case involves the fight against the epidemic virus COVID-19.

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65. Then, the Constitutional court recalls that the subject filed all the expected launch of questions from the framework guarantee qualified freedom/rights in the context of which the public authorities allowed interference in these rights only in the instances laid down in the European convention. The practice of the European court and the Constitutional court in regard to the test that's necessary to in cases like this to get through the answers to the questions from the test come to the conclusion whether concrete actions of the public

authorities, a violation of these rights is very developed. The constitutional court will in the specific circumstances of a given situation, analyze all the questions from this test.

66. When it comes to the "legality" of the decision, the Constitutional court notes that, according to the practice of the European court, any measure must have some basis in domestic law with a request that he be accessible to the person in question and the predictable about questions the result of which is expected (see the case *Amann v. Switzerland*, paragraph 50). First of all, the Constitutional court notes that the challenged orders of the crisis headquarters in the relevant ministries of health are not taken on the basis of the new "law", like they did to many countries regularizing should a situation arise in connection with the virus COVID-19, but on the basis of the existing legal framework that is regulated the question of health care on the territory of the Federation of Bosnia and Herzegovina in a situation that was established after abolition of the state of natural disaster caused by the infectious disease COVID-19 and the subsequent declaration of an epidemic. So, the Constitutional court notes that the conclusions of the challenged orders in those decisions primarily called for by-laws and decisions adopted on the basis of the Law on health protection. Likewise, the Constitutional court has in mind that the Federal ministry of health in its response to the appeal, referred to, in addition to the law, and the Law on the protection of the population from infectious diseases. Starting from the premise that the mission and obligations of the bearer of the decision (which is mixing) to offer and explain the legal basis for the adoption in the light of the alone its "legality", the Constitutional court considers that it is not in his jurisdiction to find a legal basis beyond the challenged decision, since the application and interpretation of law primarily in the jurisdiction of local organs of public authorities, while the role of the Constitutional court only in it to respond to any such application of the law was arbitrary. On the other hand, the Constitutional court notes that in emergency situations, what is indisputable and this with virus COVID-19, the competent public authorities have a broader space free estimates (*margin of appreciation*) not only in the choice of measures taken to protect public health but also in the implementation of the law on the basis that within their jurisdiction, such measures bring in meeting obligations under the European convention. With regard to this, the Constitutional court observes that the existing legal, or "legal" framework for the adoption of the decision of crisis staffs of the relevant ministries of health general

(generalan) and that was before focused on the operation of the health system than on measures

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1

However, despite the above općenitosti, the Constitutional court accepts that the existing "law" in its wider convention meaning (regulations closer to those listed in the part of these decision- Relevant regulations) foresee the possibility for making appropriate decisions to prevent the spread of infectious diseases. Therefore, the Constitutional court considers that in the present case (after the adoption of the Decision on the termination condition of the accident caused by the emergence of the virus COVID-19 from 3. June 2020. year on the territory of the FBiH), the regulations on which the public (executive) authorities oslonile not without total the founding of the "law".

67. When it comes to the measures that public authorities (in particular the crisis headquarters at the ministry of health) undertake, or when it comes to measures osporenim specific apelacijama, the Constitutional court considers that, in principle, important not to deviate from the measures undertaken in a number of other states and recommended by the World health organization. The fact is that them in the present case, brought in the waist, i.e. the ministry of health, and the Constitutional court is not considered competent, nor invited to these measures assesses with that, ie. the professional medical aspect. But, in any case, measures that impinge on basic human rights, and that in such a big scale in relation to the the entire population, must be proportional to that hard, which implies that they apply after podrobne analysis and conclusion, and the analysis to other more lenient measure would not lead to public order, and must be kept questioning how I would have lasted longer than necessary.

What is particularly important is that the measures that public authorities are taking action in all of its segments must be appropriate in a democratic society, i.e. must be directed towards the protection of the democratic order of threat to this order, and that it is necessary to invest every effort to protect the values of democratic society which, in addition to the primary goal of protection of life of people in a certain space, include and respect for human rights and freedoms.

68. In light of the previously mentioned necessity to protect the democratic order, the Constitutional court recalls that

the unlimited powers of the executive authority (*de iure* or *de facto*) is one of the main danger to democratic order, and that, as such, constitute a feature of the apsolutističkih and diktatorskih

1 the Constitutional court notes that the Law on protection of population from contagious diseases (article 8. position 1) listed diseases that are covered by this law, but that, too, left the possibility (paragraph 2) that, if he shows up the danger of other infectious diseases whose prevention and suppression of interest for the Federation, the Government of the Federation of Bosnia and Herzegovina (hereinafter: the Government) may, on the proposal of the federal minister and with the expert opinion of the Federal institute, determine to be for the protection of the population from such diseases shall apply to all or certain the measures provided for in this law. Conclusion the Government of the Federation from 31. January 2020. year virus COVID-19 was named infectious disease whose prevention and suppression of interest for the Federation

BiH.

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inevitably

affects the determination of the scope of rights from the European convention.

69. However, in situations in which the mass limitations of qualified human rights, or in situations in which only the body was formed from the bodies of the executive authorities

take measures with the aim of protecting the health of people, the Constitutional court

considers that in the assessment of such measures

is not enough to just spend the classical test examination of such interference. In such situations,

according to the opinion of the Constitutional court, it is necessary analysis of such measures and restrictions on lead, first of all,

in connection with mechanisms of protection that establishes control over such actions of the organs

of executive power, to ensure respect for already mentioned values of a democratic society

and the basic principles on which it rests. This is primarily related to control of the legislative power over actions of the executive government in such situations. When it comes to

emergency

situations that are of influence on the safety and health of people, the Constitutional court

indicates that parliament

has the authority and obligation to review an emergency at regular intervals, and to suspend

if necessary. Further, *the post hoc* power of the parliament to match it, i.e. the right

to conduct inquiries and investigations on implementation of powers in emergency situations

are extremely important for

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assessment of the behavior of the government, ie. organs and bodies of executive power.

Common practice in democratic

systems is that in such situations, the legislature, in light of the existence of the emergency

situation, previously transferred their jurisdiction to the executive, or to subsequently approve

such a

conduct of the executive authorities. In any case the supervision of the legislative authorities

must be, especially

in an emergency situation characterised by the objective impossibility of knowledge of its nature and

dangers, and in which there is uncertainty in terms of the its duration. In such cases

it is necessary that there is such a legal framework on the basis of which the executive

government is taking measures

(which in general and direct way of restricting or removing rights from the Constitution of

Bosnia and

Herzegovina and the European convention), which essentially establishes restrictions on the

executive authorities with

a view to she disable to abuse their authority. As a result of the above is

emerging as a necessity to place emphasis with conventional relations "legislator-citizen" in

a relationship "legislature-executive power" in the context of the assessment not only of

whether the executive

abusing your authority already has legislative power granted, or approved by

the executive branch such broad authority. Setting appropriate and clear limits/boundaries

(which

need to be adhered to) has as a result practically the denial to the executive authorities to abuse their powers.

70. Further, the Constitutional court points out that the obstacles for the effective implementation of the law may appear not just for unlawful or nemarnog actions of the authorities but also for the quality of legislation difficult for his application. Therefore, it is of vital importance to assess in specific circumstances is "the law" provodiv in practice, which include stage which precedes the adoption of the law, and subsequently checking whether the law is effectively applied. This means that, *ex ante* and *ex post*, evaluation of the legislation needs to be implemented when

it comes to the rule of law. Likewise, the Constitutional court indicates that commercial power, which leads to a fundamentally unjust, undesirables, irrational or opresivnih decision violates the rule of law. As previously stated, contrary to the rule of law is at the discretion of the executive authorities are nesputana authority. The purpose of how article 8. The european convention, and article 2.

Protocol number 4 with the European convention is that in a democratic order, there is certain protection from the arbitrary interference of public authorities in the specified rights.

71. In view of the foregoing, the Constitutional court points out that in this case the fight against infectious

disease COVID-19 there is no doubt about the legally complex and an isolated case with which

the competent authorities of the Federation of Bosnia and Herzegovina, but also all other levels of government in Bosnia and

Herzegovina have not had the chance before to meet. It is indisputable, also, to work and to do about

a situation that threatens the security of the population in health terms, and that is the body that is

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formed the executive government has adopted measures in the fight against the pandemic-an epidemic of the virus COVID-19,

which in the context of the allegations of the underlying appeals are reflected, among other things, required to wear

masks in closed and open space, or in the limitation of freedom of movement in the temporal sense. While the Constitutional court emphasises that the framework of the European convention set up

so that, among other things, help states to design how they will react to crisis situations.

So, even the European convention, as well as the Constitution of Bosnia and Herzegovina cannot be viewed

as an obstacle for taking measures that primarily protects the life of individuals, i.e. their health, but she has a goal to it to ensure that any measures take to

achieve that goal are proportionate to the. In this regard, the Constitutional court, firstly, notes that

generally there is not a solid and unique position in terms of all relevant questions in connection with the

pandemic, so that even a solid health care, a scientific attitude in terms of best practices in combating

the spread of these infectious diseases. However, among the measures unique recommended

they are keeping a distance between people, wearing masks and appropriate compliance with hygiene measures. With the other hand, there is a general positive obligation, which, certainly, includes and public authorities in Bosnia and Herzegovina to undertake the necessary, and known measures for health protection of the population.

72. When analyzing the situation in Bosnia and Herzegovina, i.e. the Federation of Bosnia and Herzegovina from the beginning of the pandemic (decisions of public authorities), it is clear that the measures challenged apelacijama not brought at the beginning of the pandemic, because it has since gone through a sufficient period of time in which it was necessary consolidation of all segments of the public authorities, unlike the initial stages of these pandemics. However, the challenged measures are taken on the basis of the command of the crisis staffs of the ministries of health. So, it's about one levels the segment of the executive branch whose activities in the basis by its very nature, is temporary. True, the FBiH Government Decision on declaring the termination condition of the accident caused by the virus COVID-19 authorised the Crisis staff of the Federal ministry of health to, among other things, establishes measures to prevent the spread of corona virus (COVID-19). However, according to the Constitutional court, this legal framework of activities of the crisis headquarters is set to too wide a way and without adequate control, or participation as the highest executive and legislative authorities, and which is as a result of any adoption of the measures (although aimed at the protection of health) that one part of the population of the Federation of Bosnia and Herzegovina (Sarajevo Canton-the obligation of wearing a mask), i.e., its entire population (temporal restriction of movement) seriously impinge on basic human rights, ie. limit, and and removing basic human rights. Stated, on what was previously already pointed out, inevitably leads to the question, and I'm the principle of the rule of law which implies the existence of security mechanisms relevant for all rights from the European convention, and especially

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The decision on dopustivosti and merits those related to the relations of positive and negative obligations of the state. Inclusion bodies of executive authorities in this aspect of the democratic order occurs is the inability to make a clear difference between the obligations of public authorities not to interfere in someone right from the European convention, on the one hand, and the duty of the authorities to undertake positive measures for the protection of rights from the European convention, on the other hand. In such cases the difference between negative and positive

obligations is not so clear. Of course, such a difference becomes more pronounced in situations that include a complex form of action, or inaction of public authorities, depending on the formulation of the primary obligations of public authorities, which in this case is reflected in the protection of the health of the population. However, inadequate and ill-timed action of public authorities, and primarily refers to the legislative power as the highest according to the hierarchy of the democratic order in the light of insurance of a balance between different interests-rights, leads, also, to their violation if that same government fails to regulate the negative effects zadiranja executive authorities in the rights of individuals and the population as a whole. When you bring in a connection request to interference in human rights is based on legality and when you take into account these attributes of a democratic society, clear is that in this case, missed the necessary role of the legislative and most executive what measures (imposed osporenim decisions) are missing these important elements in the fully could be considered to be in compliance with the standards of qualified human rights that are specifically at issue. In a democratic society such significant measures, although aimed at the protection of health, after a long period of the existence of danger-pandemic and when he and the future uncertain its duration and course, must be under the constant control of the legislative authorities and with the participation of the highest organ of executive power. So, should she assesses, approves and continuously verify the measures. On the obligation (pro)active actions of the legislative authorities in relation to the crisis induced virus COVID-19 the Constitutional court has already pointed out in Decision number AP 1217/20. The fact that it is of the declaration of the mentioned epidemic-pandemic, during the last more than nine months, according to the opinion of the Constitutional court, further reinforces the obligation of all levels of government in these emergency situations in the context of the protection of the democratic principles of power sharing and respect for the rule of law. Nepreuzimanje responsibility and the passivity of the highest legislative body in the Federation of BiH (FBiH Parliament) that in a clear and timely manner within the scope of its authority establish framework of operation of the executive branch in its totality, for the whole time duration of the pandemic-epidemic virus COVID-19 inevitably opens the possibility to compromise to achieve a balance between different interests (rights) on that previously pointed out. According to the Constitutional court, it also led to the necessary minimising the risk of possible abuse of authority one of the administration bodies (crisis staffs, ministries of health) in the context of the existence of a general legal framework of his activities and the degree of authority in

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The decision on dopustivosti and merits a situation like this. Therefore, the Constitutional court considers that the (in)action of public authorities, and primarily the FBiH Parliament, in the specific circumstances of the specific case contrary to the insurance of compliance with the guarantees covered by the right to "private life" and right to "freedom of movement" with respect to that in the present case interference in the constitutional rights does not satisfy the principle contained in the test of the necessity of (*democratic necessity test*).

73. Bearing in mind all the foregoing, the Constitutional court considers that in specific cases broken the constitutional right to "private life" in article II/3.f) of the Constitution of Bosnia and Herzegovina and article 8.

The European convention, and the constitutional right to "freedom of movement" in article II/3.m) of the Constitution of Bosnia and Herzegovina and article 2. Protocol number 4 with the European convention.

74. The constitutional court, however, cannot accept filed all the expected in the part in which the claim is made that challenged the orders are lifted, i.e. to put out of legal force, given the current health situation in Bosnia and Herzegovina and in the world, and the fact that for the introduction of the necessary measures to protect the population from pandemics, certainly, there is great public interest, and could be negative consequences if they challenged the orders immediately removed.

75. The constitutional court indicates that, according to their constitutional role, counterbalance the remaining segments of the public the authorities, legislative and executive, to ensure the functioning of all in accordance with the Constitution of Bosnia and Herzegovina. Therefore, the Constitutional court has the jurisdiction and obligation in the present case requires the highest organ of legislative and executive authorities to immediately take measures from their jurisdiction, how would any future interference in the constitutional rights in accordance with the standards of the BiH Constitution and the European convention, mentioned in this decision, and about the appropriate way to inform the public and the Constitutional court.

b) Others quoted

76. Some apelanti consider, also, that the osporenim measures restrictions on "freedom of movement" discriminated against in terms of article II/4. The constitution of Bosnia and Herzegovina and article 14. Of the European convention. Given the established violation of the right to "freedom of movement" in article II/3.m) of the Constitution of Bosnia and Herzegovina and article 2. Protocol number 4 with the European convention, the Constitutional court considers that there is no need to particularly examine the allegations of discrimination.

VII.

Conclusion

77. The constitutional court has concluded that interference in basic human rights and freedoms guaranteed by the Constitution BiH and the European convention, in the present case rights to a private life and to freedom of movement, carried out the orders of the narrow segments of the executive branch about the mandatory wearing

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The decision on dopustivosti and merits protective masks and limit movement of, in this case the crisis staffs, ministries of health, when is absent the active participation of the highest authorities of the legislative and executive authorities in decision-making and review naređenih measures, is a violation of the mentioned human rights and freedom.

78. On the other hand, the Constitutional court concludes that an unsubstantial part of the appeals in which requires the removal of osporenih orders, because such abolition, given the undoubted public interest for the introduction of the necessary measures to protect the population from pandemics, may have developed negative consequences before legislative and highest executive authorities take measures within their powers and obligations.

79. On the basis of article 59. st. (1), (2) and (3) the Rules of the Constitutional court, the Constitutional court decided as in the disposition of this decision.

80. Given the decision of the Constitutional court in this case, it is not necessary to particularly consider the request of certain apelanata for the adoption of interim measures.

81. According to article VI/5. The constitution of Bosnia and Herzegovina, decisions of the Constitutional court are final and binding.

President

The constitutional court of Bosnia and Herzegovina

Zlatko M. Knežević