



## **Comparative analysis on criminal code changes in response to covid-19 pandemic emergency case of Europe and Albania**

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### **Abstract**

The response of governments around the world regarding the COVID-19 pandemic emergency, is challenging in terms of human rights vulnerabilities, mainly the main rights such as right to life, the right to freedom of movement, assembly and freedom of speech, and beyond. In European countries, the above freedoms have been restricted to one degree or another due to the emergency of the situation, and even criminal sanctions have been imposed to offenders of the public action plan. The same thing has happened in Albania, even though the situation has not been as problematic as in Europe in terms of infections and deaths. The latest amendments to the Criminal Code regarding the punishment of violators during the COVID-19 pandemic, measures include a fine but also imprisonment of up to 8 years. Civil society in Albania has widely contested these amendments as quite harsh and in violation of international human rights standards. The current study aims to present a theoretical comparative review of the legal changes that have taken place in Europe and Albania in response to the situation created by COVID-19 from the point of view of human rights violations. The selected methodology is qualitative, and the comparative method of legal analysis of European and Albanian legislation is applied in this analysis. It should be noted that emergency public measures often give good results in tackling pandemics as also seen from cases around the world, providing health care for all and preserving human dignity, but they must maintain a careful balance and not touch in any way the fundamental human rights.

**Keywords:** COVID-19, pandemic, criminal law, Europe, Albania

### **1. Introduction**

Coronavirus (COVID-19) is an infectious disease which is spreading worldwide. The formal name of the disease is "2019 novel coronavirus" or "2019-nCoV" <sup>[1]</sup>. The new COVID-19 virus belongs to the SARS (Severe Acute Respiratory Syndrome) group of viruses. The World Health Organization (WHO) has suggested that governments around the world take steps to stop the transmission of the virus from person to person, by preventing transmission amplification events and further preventing international spread; early identification, isolation and care for patients, including the provision of effective care for infected patients; identification and reduction of animal transmission; addressing unknowns related to disease severity, extent of transmission, options for treatment, and raise the extent of diagnostics, therapy and vaccines development; communicating information on critical event risk to people wherever they are and against misinformation; promote the creation of multisectoral partnership to minimize the disease impact at social and economic level. In order to reach the objectives set in the framework of WHO partnership, countries should apply public health measures, such as fast identification, diagnosis and case management, identification and follow-up of contacts, prevention of infection and control in health care facilities, implementation of adequate measures related with the health of travelers, population awareness and risk communication <sup>[2]</sup>. According to the Worldometer search engine, there are now over 6,700,000 people affected, over 390,000 people dead and over 3,000,000 people who have been cured of the COVID-19 virus <sup>[3]</sup>. For this reason,

governments in all countries have taken measures to limit the further spread of pandemic, limiting the free movement of their citizens.

In compliance with certain rights that stand first in the fight against COVID-19, such as the right to life and the duty to protect it, as well as the right to health system access, restriction of free movement should occur only in circumstances strictly necessary, proportionally and non-discriminatory <sup>[4]</sup>. The impact on human rights of this pandemic however has been multifaceted and discriminatory, such as the rising unemployment for some categories, food insecurity, the cessation of education for children, the cessation of access to violence reduction services in the family etc. Also, another challenge came to surface relates to the capacity of countries to maintain the role of law throughout pandemic and to prohibit arbitrary violation of human civil rights by individuals, organizations or government authorities.

The governments of European countries have taken a series of extraordinary measures in order to respond to the emergency situation created by the pandemic of COVID-19. Most notably of are the strict restriction of the right to free movement based on European treaties and human rights instruments, the OSCE commitments and the United Nations human rights treaty system, which continue to be implemented even during crises <sup>[5]</sup>. European countries have adapted their criminal legislation in support of the procedural rights of suspected and accused persons, providing support and protection to victims of crime, domestic violence, cybercrime, hate crime, and persons in institutions serving a sentence, etc., during the period of

pandemic [6].

In Albania, on March 8, 2020, the first two cases of COVID-19 were confirmed by the government, and immediately, the government undertook a series of orders, acts, assembly decisions and guidelines on measures to restrict air and sea transport, closing schools, banning different gatherings and social activities, self-isolating or punishing (by fees) people entering Albania from affected areas abroad and finally closing intercity public transport. More on, the government closed most businesses, allowing only food and pharmaceutical business to be open, as well as main economy income generators as call centers or production plants, and meantime restricting the movement of individuals only on specified schedules. Violation of these restrictions during the pandemic was punishable not only by a fine but, in special cases, by imprisonment of up to eight years according to the latest amendments to the Criminal Code. Civil society in Albania has widely challenged these amendments as quite harsh, as disproportionate, the procedure for approval of laws, and as a whole a violation of international human rights standards. Based on the above situation, the current analysis aims to present a theoretical comparative review of the legal changes that have occurred in Europe and Albania in response to the situation created by COVID-19, analyzed from human rights violations point of view. The research questions of this article are as follows:

1. What legislative changes have taken place in Europe under COVID-19 pandemic emergency?
2. What is the relationship between these changes regarding human rights in Europe?
3. What legislative changes have occurred in Albania within the COVID-19 pandemic emergency and in particular those regarding in the Criminal Code?
4. What is the ratio of changes in the Criminal Code regarding human rights, are those changes justifiable given the number of cases of infections and deaths in Albanian case?

## 2. Materials and Methods

The selected methodology qualitative, focusing on the comparative review of criminal code legislation changes in Europe and Albanian. The focus on human rights is essential in the pandemic response, at one hand for public health urgency and at the other, for a wider impact on people's lives. Publicly taken measures in respect of the human rights yield better results in tackling pandemics, providing health care for all, and preserving human dignity.

## 3. Comparative overview of changes in the legislation of European countries and Albania regarding COVID-19 emergency response

The first cases of COVID were first reported by officials in Wuhan, a Chinese city in December 2019. Experts have studied the full genetic sequence of this virus in human cases from the beginning. According to them, SARS-CoV-2 has not been a fabricated virus in laboratory [7].

COVID-19 causes a mild to moderate respiratory illness. From December 31, 2019 to June 7, 2020, over 6.7 million (6,799,713) cases of COVID-19 have been reported worldwide, and more than 300,000 (397,388) of them have resulted in death [8]. Furthermore, the European Monitoring System for All Mortality Causes showed high mortality rates in Belgium, Switzerland, Italy, Malta, France, Spain, and the United Kingdom, concentrated in the 65-year-old

age group [9]. The risk of COVID-19 disease in the EU/EEA and the UK is currently perceived as moderate for all population categories and very high for the high-risk population; while the risk of increased COVID-19 transmission in the EU/EEA together with UK is considered to be moderate if the mitigation measures are effective, and very high if there are insufficient mitigation measures. Moreover, the risk of exceeding the capacity of the health system and social care to respond to the situation in the EU / EEA together with UK is considered "high" with mitigation measures and "very high" if there are insufficient mitigation measures. The situation is more emergent in developing countries, like Albania, where human and infrastructures' resources are not enough to cope with an increasing number of infected patients.

In the current situation, WHO and the European governments have stated that the focus should be on comprehensive testing and supervision strategies (including contact tracking), community measures (including physical distance), strengthening health care systems, informing the public and the health community. Another key point to the statement is promoting mental well-being, as it is essential to ensure that populations have consistency in adhering to these measures [10].

There is still no specific vaccine or treatment for COVID-19, but there is much clinical evidence to evaluate a possible therapy for this virus. In support of the protection of the health and well-being of citizens, the governments of European countries and beyond have taken extraordinary measures to protect the health and well-being of the population.

These urgent action in all countries, including Albania must be in accordance with the principles of European Convention on Human Rights and the OSCE, in order to guarantee their human rights, prohibit torture, harsh and inhuman treatment and punishment [11]. However, each country has its own rules for dealing with situations that are considered emergency, in terms of national security and public health. In the case of Europe, Poland for example, has anticipated in the Constitution, conditions about the state of emergency, the relevant laws and regulations which must take place and how the situation must be dealt with. Germany has not adopted a clear legal definition about the state of emergency, as governments have the authority to address such a situation, and the role of the federal government lies in ensuring uniformity of measures throughout the country. France has also dealt with the crisis legally through a presidential decree to take extraordinary power. However, the constitutions of other EU countries do not mention emergency measures, as for example the case of Denmark, which have not adopted a specific emergency legislation [12].

In Albania, the Albanian Parliament has adopted the law No. 45/2019 "On Civil Protection" [13], which aims to reduce the risk of disasters and the implementation of civil protection to guarantee the protection of human life, living things, property, cultural heritage and the environment, through strengthening of the civil defense system. This law regulates the functioning of the civil defense system, defining the responsibilities of the institutions and structures of this system, international cooperation, the rights and obligations of citizens and private entities, education, training and inspection. According to this law, "Natural disasters" are disasters caused by extreme natural

phenomena, related to earthquakes, floods and floods, extreme and prolonged temperatures, architectural landslides, avalanches, strong winds at sea and at sea, massive forest fires, diseases, massive infectious and other phenomena affecting human life, living thing, property, cultural heritage and the environment. "State of natural disaster" is the situation established by the Council of Ministers in accordance with the Constitution of the Republic of Albania, for the prevention or elimination of the consequences of a natural disaster or other disasters.

The pandemic has brought challenges to the rule of law in terms of measures taken by some states in Europe. In Italy, due to the aggravated situation by COVID-19, the government has used legal instruments that comply with the country's constitutional framework. Decrees on the state of emergency are subject to a 60-day parliamentary vote. They were used to approve blocking measures, restricting freedom of movement, closing some economic activities, but also to strengthen medical services, suspending some administrative and fiscal duties and protecting the social rights of Italian citizens affected by pandemic [14]. According to a report by Juridicia, in Italy, over 5,000 people have been charged with violating the Criminal Code in connection with the COVID-19 emergency measures, with possible sentences of up to 6 years if found guilty [15]. It should be noted that there have been many deaths in Italy as a result of COVID-19. Italy was the first European state which had a very high number of infected and many deaths in Europe. In France, there are also reports of citizens who have regularly violated quarantine rules and have endangered the lives of others (according to charges prescription) and have been fined 15,000 Euros or up to a year in prison [16]. In Romania, non-compliance with quarantine or hospitalization includes a sentence of 6 months to 3 years in prison or a fine [17]. Also, false information about contact with infected persons is punished, or failure to provide information about persons with whom an infected person has had contacts is punishable by a fine or imprisonment of 6 months to 3 years [18].

Poland was one of the first countries to adopt broad measures to restrict freedom of movement and close a large number of businesses and activities. Although the Polish Constitution provides all the legislation for possible emergencies, such as natural emergencies, the Polish government adhered to its adoption. On the contrary, Warsaw has announced a "state of pandemic", which is not included in the constitution, as a legal basis for restricting human rights and freedoms, raising the issue of legality as well as the motive behind this measure. However, the declaration of an emergency state due to the natural disaster would automatically postpone the next presidential election [19]. Hungary also imposed strict measures in order to minimize the spread of corona virus, approving the emergency state on March 11, 2020. This measure itself was controversial, as the government pursued its constitutional obligation and used the appropriate means at least in principle. Later, a bill came out that expanded the government's power to fight pandemics, with measures exceeding EU standards [20].

The proposed law was passed by the parliament on March 30. According to that law, the emergency state will be extended without a specified limit. This can enable the government to rule by decree without parliamentary approval. Another measure taken is that the spread of the

false information will be criminalized [21].

The bill includes very few explanations on what these crimes would actually mean, while critics describe the move as a takeover by the ruling party, resulting in full authoritarianism in Hungary.

The start of pandemic has found many countries with a lack of a strong constitutional framework for such crises, and thus the response to COVID-19 poses a challenge for many countries, taking into account the domestic, regional and international obligations to protect human rights and democracy. On March 13, 2020, the Danish parliament passed an emergency law which gave more powers to the public health authorities, enforcing the law, and allowing measures that restrict access to public transport as well as public institutions. According to critics, this law is the most extreme measure of public safety undertaken by Copenhagen since World War II [22]. Although this country has a strong culture of law and a good record for respecting human rights, the Danish constitution does not provide for a special regime for such an extraordinary situation.

But the case of Albania has a few distinct circumstances. Firstly, we must specify that along with other European countries, Albania also took swift legal action in response to the COVID-19 situation. Until June 7, 2020, in Albania, the city of Tirana (the capital of Albania) has the highest number of affected (627 people), followed by the city of Durrës (265 people), the city of Shkodra with 135 people [23]. The first week of June 2020, businesses were allowed to open, citizens' movement schedule was expanded, but there are still restrictions on urban, intercity and international air, land and sea transport. In addition to citizen information and awareness, the government undertook a number of legal changes, such as orders, acts, and decisions originating from the Council of Ministers. Since the appearance of the first cases with COVID-19 in Albania, there were approved: orders, mainly from the Minister of Health and Social Protection to declare the state of the epidemic by COVID-19 (11.3.2020), to close public and non-public activities, canceling of mass gatherings, the restriction of the movement of patients' companions in hospitals, the self-assembly of persons coming from abroad, the closure of universities, schools, kindergartens and nurseries, the restriction / restriction of air, sea and land movement and the restriction of the movement within the country as well as within the city, closure of many businesses, cessation of planned surgical interventions in public and non-public structures, cancellation of mass and social gatherings, functioning of public and non-public residential centers that provide housing services (shelters) for victims of domestic violence and trafficking, schedules the movement for retired pedestrians, chronically ill patients in medical treatment, determination of business categories which can or cannot continue to work according to risk levels and the adoption of protocols of hygienic-sanitary measures and social distancing to minimize the spread of COVID-19, special facilitation of movement in different cities of Albania.

Council of Ministers decisions were and still are oriented towards taking measures to increase the infrastructure for the quarantine service, meeting the needs and relevant funds, for setting certain dates as holidays for the foster parent of minor children, for the engagement of the Armed Forces, those changes are, as stated by the government in line with the infections and deaths by COVID-19 pandemic in Albania and in the world. The government role in Albania

as stated by the authorities, after declaring of course the natural disaster state, is to ensure the implementation of preventive measures against COVID-19, to take measures to provide housing assisting the persons in need, the purchase of materials for protection, including medical ones for protection against COVID-19, for financial assistance for employees, etc. A number of legislative changes have been adopted in Albania during the pandemic period. They are divided into Decisions of the Council of Ministers, normative acts, decisions of the Inter-Ministerial Committee for Civil Emergencies, orders of the Minister of Health and Social Protection and laws approved by the Albanian Parliament. Laws for the adaptation of the normative acts, with the force of law by the Albanian Parliament were about amendments on the prevention and fight against COVID-19, special administrative measures in times of pandemic and the necessary changes in the budget. Also, these amendments were adopted in the legal, social and economic field, with a focus on legal activity, administrative measures of a punitive nature, in the field of taxation and the local tax system, in the criminal field, in the sector of cleaning and public transport, in the pharmaceutical field and that of the courts.

Normative acts by the Albanian Council of Ministers were about amendments and changes regarding the fight against COVID-19, administrative measures in case of non-compliance with restrictions by individuals, amendments to contracts with cleaning and public transport businesses, changes in budget, tax on income, local taxes, taking special measures in the services of the judge, etc. Decisions of the Inter-Ministerial Committee on Civil Emergence were about changes on economic activities due to COVID-19 in terms of support schemes in the form of grants, rent payments, temporary treatment of public officials, financial assistance to employees, temporary accommodation of repatriated persons, etc. Orders of the Minister of Health and Social Protection concerned restrictions on the right of movement of citizens, the closure of the activities of state institutions and businesses. The orders were based on the number of infected people, their health progress, etc.

The most contested between them is Law no. 35/2020 "On some additions and changes to law no. 7895, dated 27.1.1995, 'Criminal Code of the Republic of Albania'. Article 242 / a entitled "Non-implementation of measures of state authorities during the state of emergency or during the epidemic" has specifically the following content: "Non-implementation or performance of actions contrary to legal or sub-legal acts issued by state bodies, in function of the state of epidemic or application of extraordinary measures by a person to whom an administrative measure has been previously imposed, constitutes a criminal offense and is punishable by a fine or imprisonment of up to six months. The same offense, when committed in the exercise of commercial activity, endangering the health of people, is punishable by a fine or up to two years in prison. Failure to comply with the order given by the competent authorities for quarantine or isolation, or violation of the rules of quarantine or isolation by the person carrying or not of the infectious disease, to whom this obligation has been notified by the relevant state authorities, shall be punishable by imprisonment of two to three years <sup>[24]</sup>. Article 89 / b "Dissemination of infectious diseases" of the same law, has the following content: "Deliberate spread of infectious disease with high health risk, through the performance of

actions or omissions by the person diagnosed as a carrier of the disease or by the person intending to spread it is sentenced to two to five years in prison. When this offense is committed through negligence, it is punishable by a fine or up to two years in prison. The same act, when it has caused serious consequences for the health or life of people, is punishable by three to eight years in prison <sup>[25]</sup>. Criminal Code amendments regarding the sentencing of citizens to imprisonment for violating measures during pandemics have been the subject of opposition from a number of civil society organizations in Albania. They have considered several key points in this regard. Firstly, because the legislative approval procedure of acts of the Criminal Code must respect the formal and material criteria according to the Constitution of the Republic of Albania. In this case the principle of majority approval based on its Article 81/2, as amendments to the Code Penalties cannot be made in any case by the Assembly with an accelerated procedure <sup>[26]</sup>. According to the decision of the Constitutional Court no. 1, 12.1.2011, criminal legislation: "... is a meaningful indicator for any country, in terms of how much it is able to balance the right of the state to ensure public and social order on the one hand, with the rights and freedoms of the individual on the other...criminal sanctions (must) be provided only for those types of actions or omissions, which are comparable in importance to the values they protect <sup>[27]</sup>. Second, the legal framework in force through Law no. 15/2016 "On the Prevention and Control of Infections and Infectious Diseases", Normative Acts and Council of Ministers Decisions has comprehensively provided administrative sanctions for cases where citizens violate orders of public bodies for measures taken during a natural disaster. In conditions where it is deemed necessary to further increase protection measures against the spread of the epidemic, these administrative measures must first be strictly enforced. Following a regular legal procedure, the justification for the application of criminal sanctions, in respect of human dignity and the principle of humanism can only be a consequence of the successive illegal actions even after taking administrative measures <sup>[28]</sup>. Third, strengthening punitive measures, as evidence of the inability of state authorities to guarantee their rigorous implementation by fostering fear as a means of enforcing the law, is not an effective practice.

Fourth, the proposed Criminal Code amendments aiming to provide imprisonment in case of disobedience to the authorities or violation of quarantine rules are contrary to the criminal policy pursued by the Council of Ministers through the adoption of Normative Act No.7, dated 23.3.2020 "On the temporary stay at home of convicts" <sup>[29]</sup>. This act was intended to take temporary measures to prevent the spread of COVID-19 in the system of execution of criminal decisions by guaranteeing the conditions for the protection of life and health welfare of convicts. Reducing the population in the prison system due to the increased risk of COVID-19 and taking urgent measures to protect their rights is an international appeal of human rights organizations, as well as the Committee European Torture Prevention <sup>[30]</sup> and the Commissioner for Human Rights <sup>[31]</sup>. Fifth, the implementation of criminal measures in conditions of aggravated infrastructural situation of detention centers and prisons in Albania, their overcrowding, staying beyond the permitted capacities of persons in a certain cubicle, hygienic-sanitary difficulties, would add even more very

high risk of spreading COVID infection 19 to sentenced persons, staff of these institutions and family members of the latter <sup>[32]</sup>.

Sixth, since the imprisonment sentence carries the maximum sacrifice of a person's personal freedom, the latter protected by the Constitution, he is considered by the legislature as the last coercive measure and the most severe punishment among the main punishments <sup>[33]</sup>.

Also, according to Article 5.1 of the European Commission of Human Rights, *“prevention of the spread of infectious diseases is one of the reasons why a person may be deprived of his liberty. Before taking this measure, states are expected to check whether there is a relevant legal basis and consider whether measures leading to deprivation of liberty are strictly necessary against other less restrictive alternative measures”* <sup>[34]</sup>.

Seventh, the sentences are considered harsh and disproportionate, as there is a lack of a fair relationship between the dangerousness of the offense as well as the perpetrator's degree of guilt, so there must be a separation between the subject who is not the carrier of the infection, but has the obligation to apply general restrictive rules, and the subject who is the bearer of the infection or is in danger of being the bearer and is therefore placed in solitary confinement or quarantine in order for the sentencing measures to be imposed in proportion to the degree of guilt of the subject, who consumes the criminal offense and the consequences that have come as a result of the violation of the legal relationship protected by criminal legislation <sup>[35]</sup>.

Finally, the simultaneous provision of a fine and imprisonment, according to the Constitutional Court, is not based on the Constitution as it does not make the sentence proportional to the situation it has dictated and contradicts the principle of individualization of punishment <sup>[36]</sup>.

Based on European standards and human rights, states must apply all exceptional measures in compliance with the principle of proportionality when imposing violations' penalties. Also states must ensure that fines are not imposed arbitrarily or discriminatorily; deprivation of liberty must be the last most reasonable, necessary, and proportionate means of means in the event of a state of emergency; fines should be proportional to violation's severity, the individual circumstances; criminal convictions for informational insults should be banned because this can lead to censorship of non-popular and minority opinions <sup>[37]</sup>.

Measures must be in accordance with the requirements of legality <sup>[38]</sup>, need and proportionality and be non-discriminatory <sup>[39]</sup>. Freedom of movement, expression and assembly may be subject to restrictions for reasons of public health, even when the emergence is absent, but always interference based not on an arbitrary or unreasonable law, but on a clear and unambiguous law, accessible to the public in need of protection of public health; in proportion to the interest concerned, being the least intrusive option among those who can achieve the protective function or desired result; not to be discriminatory; be a strictly interpreted restriction and in favor of the right to the case and not arbitrary; be a restriction of rights justified by the authorities <sup>[40]</sup>. Disregard of human rights have often led to many protests in major European countries, including Albania. Changes in law should be in proportion with the growth rate of infected people or deaths, which has not been the case in Albania. Thus, the amendments on the Criminal Code can be considered harsh and unjustified.

#### 4. Results & Discussion

In general, legal changes in European countries have not included such extreme legal changes to the multi-year prison sentence of offenders in case of pandemics. Of course, the role of law enforcement and the support of the competent authorities of the Ministry of Health and beyond in pandemic times is important, but in European countries disproportionate and arbitrary actions have been reported for law enforcement, including illegal arrests, charges and penalties, while it is not recommended that urgent action due to pandemics burden people with criminal records for life and a fine that cannot be paid by many people that are facing harder times than others <sup>[41]</sup>.

However, the test that laws must pass must be based on their necessity in terms of the urgent social need and being in proportion to the legitimate aim pursued. Public health laws require certain behaviors in protection of the community health, and public order (criminal) laws combat public disorder. The risk of adding general criminal laws to a pandemic lead to the possible over criminalization of the general public. Although there have been many reports of public unrest in the world during COVID-19 pandemic, no evidence of a widespread deliberate transmission of COVID-19 can be provided so far.

Law enforcement in these cases is uncertain and unclear. Moreover, it would be difficult to identify a specific citizen as the source of a possible infection, especially since the virus can survive on the surface for several days. Threatening to track people for the purposeful transmission of the virus can also increase people's fear. High fines in the country can disproportionately affect certain segments of society, such as the poor or the homeless. HIV epidemic has proven that coercive and punitive measures and practices result in human rights abuses, with disproportionate effects on vulnerable communities. Indeed, for COVID-19, the WHO does not recommend the implementation of large-scale compulsory austerity measures such as disproportionate or overly restrictive travel or free movement restrictions <sup>[42]</sup>.

An approach that goes beyond mandatory constraints and focuses on raising the communities' knowledge and providing them with tools to protect their life and health welfare and that of the others (e.g. for COVID-19, increasing social space), helping those in need is a response which prioritizes the approach of human rights, focusing on community empowerment and engagement <sup>[43]</sup>.

#### 5. Conclusions

The main rights that are often implicated in urgent public health cases include the right to health, the right to movement and liberty, the right to non-discrimination, the right to assembly and expression, the right to information, and so on. While combating existential threats, in the case of COVID-19 pandemics, may require countries all over the world to take measures to restrict freedoms and human rights to varying degrees, there is a risk that governments will exploit the situation and somehow overtake and disregard the rights and freedoms of their citizens. In extreme cases, the state of permanent, unlimited emergency can lead to imbalances of power and rule of law, to the point where a country ceases to be democratic. In Hungary, for example, one of the EU countries, the Hungarian bill looks like a push towards autocracy. Countries must follow the rule of regional and international law as well as human

rights standards. Like European countries, Albania had an immediate reaction to the crisis. As a result, public information was provided and a number of orders were issued, mainly from the Ministry of Health, Decisions of the Council of Ministers, normative acts and laws in order to prevent the spread of COVID-19 and protect the lives of citizens. Violation of the protocol of measures in the period of pandemic is punishable not only by a fine but, in special cases, by imprisonment of up to eight years according to the latest amendments to the Criminal Code. Civil society in Albania has widely challenged these amendments to the Criminal Code, as harsh and not in accordance with the principle of proportionality, the procedure for approval of laws and as a whole as a violation of international human rights standards. Even in European countries, such as France, Italy, etc., there have been cases of significant fines and, more rarely, imprisonment for persons who have violated the protocol of measures. Generally, the maximum duration of sentences is up to 3 years, in Albanian case is goes up to 8 years. Criminalization is not the right response to pandemics and can do more harm than good. Using criminal law for prevent the transmission of a virus, is as we saw from different countries sometimes a very important measure. But, as we also saw from HIV epidemic, overuse of criminal law can often have significant negative consequences and human rights violations; it can further stigmatize people who have the virus; discourage people from being tested, and destroy trust between government and communities. People caught by the implementation of a criminal or punitive approach are also often the most vulnerable members of society. Governments should empower people and communities with the right information to protect themselves and others will have a greater overall effect <sup>[44]</sup>. Moreover, the numerous protests in European countries and Albania due to the violation of human rights and freedoms, show that participation, as a fundamental democratic principle, has not been implemented to the appropriate degree. It is imperative that government policies and actions at all times allow for the direct and meaningful participation of communities (especially those most affected and affected), which presupposes transparency in information and decision-making <sup>[45]</sup>. Only in this way will unintentional violations of human rights be avoided, trust in government and among the community will be built. Communities can play a crucial role in responding to emergencies, such as those caused by COVID-19, as people can help each other, seek care, isolate themselves, use medication when needed, and care for family members and their relatives.

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