

**COVID-19 measures, hard or soft law applied from International Organization and
Albania**

Jonida Mehmetaj¹, Stela Meçaj²

Abstract

This study goal is to analyze the role of international and national actors such as international organizations and different states, in our case Albania, taking into account the legal application measures or instruments, in order to defeat Covid-19 situation. The whole study relies on the qualitative method of research through the use of the ontological and epistemological approach of interpretation, as one of the most common methods of legal analysis. This research is analytical and conceptual one and surely is based on a methodology, which applies the method of interpretation, the research method in the literature, the comparative method too and refers to a current legal phenomenon such as Covid-19. To further extend, this analyze is developed about the concepts definition of hard law and soft law, surely is related to the mandatory and non-mandatory character of normative acts; as well as the impact that the instruments approved by international organizations and countries like Albania have to face with the defeat against Covid-19. The result of the study is that the character of legal norms defines the way of responding to the pandemic situation, meanwhile the normative character of hard law is not negotiable, soft law measures conceived as non-mandatory have had an impact on the orientation of decision makers towards measures against Covid-19. At the end of the paper we

¹ Dr., University “Ismail Qemali” Vlora, Albania, Faculty of Humanities Science, Justice Department, jonida.mehmetaj@univlora.edu.al

² Dr., University “Ismail Qemali” Vlora, Albania, Faculty of Humanities Science, Justice Department, e-mail address, stela.mecaj@univlora.edu.al

conclude that the soft law measures taken by the organizations have served to orient all the states around the world through this dangerous defeat against Covid-19 situation.

Keywords: *Soft Law, hard Law, Covid-19, international organization, Albania.*

Introduction

In international law and in the legal order of international organizations there has always been a discussion about the nature and binding character of normative acts. It is extremely and even more interesting when this character of international organizations influences the measures implementation against Covid-19. Such a pandemic situation that rocked all subjects of international law and in fact all nations faced the life threat and health, an unprecedented case while peacetime was ruled. Such international security threat was not coming from a state or enemy that is threatening common security and the international equilibrium system but from a pandemic situation, a deadly virus known as Coronavirus or Covid-19 first identified in 2019, Wuhan, China (Center for Disease Control and Prevention).

In fact, it was the World Health Organization (WHO) on January 30, 2020, declared the COVID-19 outbreak of global health emergency, and on March 11, 2020, the organization declared that the world was facing a global pandemic situation (The New York Time, 2020; Gallegos, 2020; McNeil, 2020), which turned out to be one of the deadliest pandemics that democratic nations were facing while peace was ruling. The global pandemic situation threatened “human health, safety and well-being” and had a “devastating impact on people's life style and daily routine, societies and economies disruption, as well as global travel and trade” (Resolution 74/270, General Assembly, UN, 2020). Given the magnitude of this pandemic situation and the need for an urgent response, it is seen as reasonable one, to conduct a study which analyzes the legal nature of hard and soft instruments of international organizations and domestic law, specifically in Albanian case.

Further Scientific research seeks to explain the legal concepts of hard and soft law, as well as to comprehend the role of international organizations, while coping with the international crisis through the analysis of the character and legal nature of the acts adopted by these organizations. As far as, the hard law is not often found in international law, as is the case with domestic law, the study dwells on many abbreviations in the concept of hard law, in order to continue in the

light of soft law analysis. Such doctrine in majority part has been focused on the analysis of soft measures in their domestic legislation, referring here, among others, soft measures analysis undertaken in Italy (Aperio Bella, Lauri and Capra, 2021), in China (Cheng, 2021), in Hungary (Láncos and Christián, 2021), in Spain (Utrilla Fernández-Bermejo, 2021), in Greece (Tsourdi, and Vavoula, 2020), in Britain (Nehushtan, 2020), in Slovakia (Steuer, 2020). While in this study we will be analyses the soft measures taken from the state of Albania.

This study focuses on three main issues, *first*, the explanation of the two concepts hard and soft law, in order to comprehend the legal nature of international organizations and states, *second*, the role of international organizations in the fight against Covid-19, their position and the instruments used, expressed in real cases and *thirdly*, the domestic instruments used by states, a such as hard or soft law in the measures against Covid-19, the case of Albania.

Method and methodology

The methodology applied in this study for legal research focuses on the issue of interpretation of norms through the qualitative method of the ontological and epistemological approach. The methods that according to Grix (2002) are “*tools, techniques and procedures* by which we analyze empirical material and reach the results of scientific research” are oriented to the findings of cases in which we have the use and effectiveness of *soft law*, definitely stopping even in explaining and applying *hard law* norms. In this framework of qualitative analysis, a number of methods and approaches of legal discipline take place. We mainly focused on the interpretation method (through the interpretation of normative acts, provisions, etc.), the research in the literature method (through analytical study on scholarly attitudes regarding the concept of hard law and soft law), and the comparative method (analysis comparative between normative acts hard law and soft law, and comparative analysis between international and national legal order).

Hypothesis and research question

The study raises a hypothesis and some research questions. The study hypothesis is that: *soft legal measures are effective even though they are not mandatory as in the case of strong legal measures*. In the meantime, we ask research questions, the answers to which can be found in

the scholastic research of scientific researchers. The research questions are: *Does the character of the norms of international organizations influence the way of dealing with the international crisis Covid-19?* and *Are the measures taken within the soft law effective?* The answers of the research questions are found in to the analysis of the issue discuss below.

Data Collection Tools

The data of the paper have been collected mainly from the analysis of primary sources, extracted from the legislative bodies of international organizations and states. Including the whole range of hard law normative acts in international legal system and national legal system, such as: Treaty, Conventions, Constitution, laws, bylaws, considered mandatory; as well as soft law acts such as: instruments, documents, opinions, recommendations, strategies, resolutions, declarations etc., considered non-mandatory. The data were also found from the analysis of secondary sources, through the scientific articles, books and opinions of legal researchers.

Hard law and soft law concepts, in search of a meaning

Hard law

In order to determine the role and efficiency of international organizations in facing the global Covid-19 pandemic situation, we dwell are focused on the hard and soft character of these normative acts. The hard law concept obviously encompasses the legally binding framework for all. In domestic law since all normative acts such as the Constitution, laws and other sub – legal acts have legally binding effect, then this makes it easier to analyze the efficiency of acts taken against Covid-19, they are simply mandatory. As government agencies took immediate action against the Covid-19 in pandemic situation, the situation is changing in the international arena. This is not due to a later reaction, on the contrary the international organizations in accordance with the goal of their activity reacted immediately, but in terms of the mandatory character of the measures issued by them.

Hard law includes that category of normative acts in which the parties have no choice but to obey to the act or not. The mandatory character of hard law, determines the obligatory

instruments to be implemented, orders, prescriptive rules (Mehmetaj and Meçaj, 2020) and imposes their implementation through sanctions. Given the fact that there is a lack of international centralized agencies governing domestic law at the international level, agreeing with the doctrine of international law, international public law is conceived of as soft one rather than hard law (Shaffer and Pollack, 2010; Abbott and Snidal, 2000).

However, we can exclude the existence of these two categories of law and we cannot say that hard and soft law do not interact with each other in the international arena. It has even happened that normative soft law acts can also turn into hard law. The authors Shaffer and Pollack, (2011), define two elements of hard and soft interaction. According to them soft law can develop over time into strong law, and the authors have taken the example of customary international law which has been codified and progressively developed into treaty law. Whereas on the contrary, strong law can be elaborated, expanded and developed progressively through soft law (Shaffer and Pollack, 2011). Examples of hard-working acts in international law are numerous, but we refer to the Founding Acts of international organizations, Treaties, Conventions or international agreements, the Treaty of the United Nations, the Treaties of the European Union, etc. Statutes of regional and international courts, etc.

Soft law

Let us focus a little further more on the meaning of the soft law concept. Attempts to find a possible definition of what we conceive of as soft law are practically difficult, and within the doctrine we find different views on this thesis. Part of the doctrine defends the argument that soft law is not a law and the other part presents opposing arguments which put soft law in the category of laws, even though of a special kind. Without any doubt the concept is vague and unclear and we all agree on that. However, a standard perception predicts that: the category of instruments, documents, opinions, recommendations, strategies, resolutions, declarations or non-binding provisions constitute what is called “soft law”. So, the classic difference of the soft law concept is related to whether an act is mandatory or not.

Most traditional articles explain the mandatory character of soft law, while others exclude it from the law and make it part of political statements. This paper stays away from a conception such as this, we mean the latest, staying away from soft identification with political statements

or illegal characters. The impact of this right is greater than just political influence, as “legally non-binding commitments have legal consequences” (Guzman and Meyer 2010). Since the soft law calls into question the legal character of the norm, i.e. its mandatory character, then these norms are labeled as non-legal norms. We also find such a reference in the legal nature of international law where, among other things, we find norms categorized as soft law. In this respect international law and consequently international organizations created on the basis of international law, which have always been criticized for their soft character and the adoption of acts which are not binding on states.

However, we cannot always think that in international law and more specifically in the law of international organizations legal obligations are always effective. International soft law acts have also been effective. It is more than enough to recall important international acts, issued by international organizations and considered soft law. These types of acts although they did not have a binding character, they have had a significant impact in the international arena. Such Examples include the Universal Declaration of Human Rights, the Helsinki Final Act of 1975, and UN Security Council resolutions. So, there is no question that follows such procedures, and as such contributes to the definition of legislation by later becoming mandatory rules and even when they do not become legally binding, they have a very large impact similar to legal rules.

However, in order that a legal norm to be such and consequently to be effective and valid it must be binding. Without wanting to focus on philosophical concepts, but referring to legal positivists or philosophers of law such as Austin, Kelsen, Hart, Bobbio and many others, legal norms are only those that are binding. Or if we focus on an argument of what constitutes a norm, we say that, “a legal norm imposes or allows certain behaviors in a mandatory form, as the norm is created by a legitimate government body, which has the power to impose the implementation of these norms approved, through sanctions” (Mehmetaj and Meçaj, 2020). Since some of these acts are not issued by international institutions and organizations are not sanctioned and have not been approved by a centralized government agency in accordance with all legislative procedures, then they are not binding.

In the continuation of such an argument we find many arguments which express that soft law is not a law itself, it is enough to bring the assertion of Malcolm Shaw (2003), that “soft law is

not law”. Like Weil (1983), who explains that “obligations arising from soft norms are neither a soft law nor a strong law: they are simply not law at all”. As well as Shelton (2000), according to which “the law that is characterized as soft law, can also be defined as 'illegal' in itself or an illegal norm”. These is only one sight of the problem of the soft law norms. While other authors support other arguments.

Even though most doctrine agrees that such a norm is not law, this does not mean that such a norm does not exist and has no impact on the regulation of relations between entities in the international arena. On the contrary, soft law is envisaged in the doctrine as, a special right, logically wrong to exclude from what is called law and that law is not only binding. We agree with the position of Shaw (2003) who states that “its importance within the general framework of international legal development is such that it should be given special attention”, so it has a special importance and how such should be treated, despite the fact that the author in question conceives soft law as not law. While the author Klabbers (1996) sees such a conception as “logically wrong” because the law cannot be “more or less binding”. For, Higgins (1994) “enforcing binding decisions is not the only way in which the development of law takes place. Legal consequences can also derive from acts that are not, in the official sense, binding. While Guzman and Meyer (2010) define soft law as “non-binding rules that have legal consequences because they form states’ expectations of what constitutes compatible behavior”.

As far as our study goal concerns, in accordance with the doctrine, many of the acts undertaken by international organizations, such as measures against Covid-19, have had an impact and have helped guide countries to apply these measures against the pandemic. Extensive decisions have been taken by international organizations, but also by the states themselves, which correspond to soft law and which have really proved effective in coping with the situation or the fight with the invisible enemy. So, if we raise the question: are the measures taken within the soft law effective? The answer would be yes even though these measures are considered quasi-legal, or “rules of conduct” that “have a practical effect” (Stefan, 2020).

The role of international organization in global pandemic Covid-19

The International organizations have tried to play a significant role in the overall orientation of measures against Covid-19, although we cannot compare their efficiency with that of the states.

However, the ongoing efforts of organizations of various kinds to provide guidance in taking action against states should be noted. In general, we talk mainly about soft law measures. We have a number of international organizations where one more and the other less reacted in accordance with their field of expertise. The reaction of many regional and international organizations was present because the pandemic situation was not only a matter of public health but also of human rights, humanitarian, political, economic, trade, transport, social, issues. This led each organization to react and guide states, institutions and individuals on how to act in their field of activity.

The World Health Organization (WHO) is the leading organization that played the most important role in handling the pandemic situation as the highest authority leading scientific information on public health and responsible for protecting health. This position is defined in Resolution of 2 April 2020 adopted by the UN General Assembly, called “Global solidarity to fight the coronavirus disease 2019 (Covid-19)”. In which is accepted “the crucial role played by the World Health Organization”. Its orientation and ongoing call on governments to take urgent action served as a guide for states' response to the pandemic. The WHO statement called for urgent action by states to stop the spread of the virus. These measures are directed in the form of communications, in the form of opinions, obligations, etc. However, not all measures taken by them had a direct effect and were legally binding, as “these measures will not bear the formal characteristics of legal acts: they have no title number, sections or numbered paragraphs. (Lancos and Cristián, 2021).

The United Nations responded to the global pandemic situation through its Secretary-General and adopted a series of Security Council resolutions and soft law reports such as the UN Comprehensive Response to COVID-19 in June 2020 and September 2020. In Resolution 2532 (2020) adopted by the Security Council, special attention was paid to the maintenance of international peace and security, mainly “women concerning the devastating impact of the COVID pandemic situation across the world, especially in countries ravaged by armed conflicts, or in post conflict situations, or affected by humanitarian crises”. The UN, like many other organizations, applied soft law measures, and the guidelines set out in these measures were relevant and effective, although not mandatory.

The European Union, another organization that reacted through its institutions and adopted soft law measures, in order to cope with the health crisis. The European Commission adopted a Communication COM (2020) aimed at economic coordination in response to Covid-19. Joint statement by the European Council (2020) and by roadmaps by the Council and the Commission “The Joint European Roadmap towards lifting COVID-19 containment measures” (2020). The legal activity of the EU institutions was rich despite the fact that the measures were sophisticated, but even in this case according to Stefan (2020) the instruments of soft law “can be a reference point for national authorities and courts” (joint cases C-189/02 P, C-202/02 P, C-205/02 P to C208 / 02 P and C-213/02). Although the author in question “institutions of the EU have to clarify uniform procedures for the adoption of soft law involving transparent consultations of stakeholders and of the European Parliament. Based on such regards to the legal effects that COVID-19 soft law can produce this extend, but these are limited, similar to any soft law measure issued outside the framework of the crisis” (2020).

Albanian hard and soft law measures against Covid-19

Albanian authorities in early March 2020 took strict anti-Covid measures, as the virus had sounded the alarm in the neighboring country and very soon on March 8, 2020 were identified the first cases coming from Italy to Albania. The Albanian government managed to mobilize and take strict legal and illegal measures since the first confirmations of the Covid-19 cases, and even in early (February 25, 2020) the head of the National Medical Emergency Center announced the precautionary measures and protocols were established by the Committee of Technical Experts. In the first months in Albania due to good management and taking immediate measures hard and soft law, there was not a large number of patients with Covid-19, but the situation would change very quickly and during the summer and autumn the number would increase relatively much. The only way this war could be fought was, *firstly*, through hard law measures, *secondly*, raising community awareness about the danger they posed through soft law measures and *thirdly*, effective vaccination and treatment by white shirts.

The first step of the Albanian government, like any other government all over the world, was to give the first instructions, which it would soon be legitimize by normative acts with the force of law. The first measure, in addition to restricting the right of movement and other rights, was the declaration of a state of emergency, specifically in the legal terminology of Albanian acts,

the declaration of a state of natural disaster in the Decision “On the declaration of a state of natural disaster” (no. 243 , dated 24.3.2020). Focusing on the object of study, government institutions would take a combination of both hard and soft law measures, a combination of these measures would bring greater efficiency in coping with the crisis.

Hard law measures were those measures that regulated the declaration of emergency state and the restriction of some of the fundamental human rights and freedoms, based on certain legal sources, the Constitution, special laws, normative acts with the force of law, decisions and instructions. The Constitution of the Republic of Albania (2016), “*established the essential guarantees for the functioning of the Rule of Law during the pandemic period*” (Anastasi, 2020), these guarantees provided in Part Sixteen, Extraordinary Measures (article 170-176) of Constitution. Another source of hard law are special laws, in the framework of civil emergencies (Law no. 45/2019) in the framework of infectious diseases such as Covid-19 “On the prevention and control of infections and infectious diseases” (Law no. 15/2016) , as well as the law “On Public Health” (Law no. 10 138, dated 11.5.2009). In the doctrinal aspect but also in legal aspect in Albania, not only would a discussion arise regarding an issue created by the state of emergency, but would arise the challenge to guarantee human rights and the possibility of abuse by the executive. Such an approach was not the Albanian case that in respect of the rule of law and democratic principles managed the state of emergency for as long as the pandemic situation lasted.

In the framework of the restriction of these rights and freedoms expressed in the above provisions, a series of measures were imposed (Order no. 351, dated 29.5.2020). The measures taken referred to the restriction of freedom of movement, a strict schedule was set when people had to move on foot and by car, otherwise the police clock was constantly changing with the change of the level of the sick people (Order no. 302, dated 8.5.2020; Order no. 193, dated 20.3.2020; Order no. 660, dated 2.12.2020; Order no. 616, dated 9.11.2020). Another measure had to do with the prohibition of all educational institutions instead of all levels (Instruction no. 18, dated 8.5. 2020; Instruction no. 14, dated 18.05.2020; Instruction no. 13, dated 18.05.2020; Instruction no. 12, dated 18.05.2020 etc.). All businesses in the territory of Albania were closed except food and pharmaceutical businesses (Order no. 659, dated 2.12.2020; Order no. 615, dated 9.11.2020). Decisions were taken to close sports and music activities, public transport was banned (Order no. 326, dated 15.5.2020). Also, one of the most common

measures was the obligation to wear the mask everywhere according to the Special Orders “On the Use of Protective Barriers / Masks in Closed Public and Commercial Environments” (Order no. 425, dated 16.7.2020). Individuals coming from other countries were forced to quarantine and travel to many countries was banned (Order no. 305, dated 8.5.2020). Fines were imposed on these citizens who did not respect the anti-Covid rules.

In every country worldwide, such state measures were taken with a restrictive and sanctioning character for quarantine, restriction of freedom of movement and closure of other activities. But not every country has undertaken “obligations accompanied by sanctions that were guaranteed through the police or other responsible bodies as in the case of Albania, Italy, Kosovo, Spain but have applied mixed, advisory and mandatory measures as in the case of the United Kingdom” (Anastasi, 2020). While there was a “third category, states that did not take mandatory measures, but only advisory ones, inviting the civic conscience for their implementation; e.g. Sweden” (Anastasi, 2020).

Even though Albania applied restrictive and sanctioning measures, it also undertook a series of soft law measures that followed international practices, mainly in accordance with the recommendations of the World Health Organization. The measures taken by government institutions such as guidelines, recommendations, opinions, directives, etc., were mainly related to the constant call for wearing a mask, personal care, disinfection of hands with alcohol, the approval of special guidelines that were constantly given and oriented the population to defend themselves. The Ministry of Health and Social Protection, Institute of Public Health (2020) approved the Guide for Administration / Office and Field Work, Covid-19, and the Guide for “Staying and Moving in School”.

Even though soft law instruments were effective, almost quasi-legal, the way individuals respected them gave the impression of mandatory measures, there were some challenges that arose in applying these measures. Some of the challenges identified in Albania, similar to other countries with special reference to the soft law measures applied in Italy, there is a confusion in their implementation. Some of the soft law measures adopted to complement the hard law measures were as detailed as the hard law acts bringing confusion to understanding how to proceed (Aperio Bella, Lauri and Capra, 2021). This is also due to the constant change, overlapping one measure over another and bringing confusion as to which any one of them

should be implemented, perhaps due to the advantage of frequently changing of these measures (Aperio Bella, Lauri and Capra, 2021).

Results and Conclusion

As results and conclusion comes up, and allows us to say that the use of legal mechanisms plays a role in the way to cope with the global crisis Covid-19. These two instruments used by “soft law” and “hard law” have defined the character of normative acts undertaken in international law, specifically in international organizations, and in the domestic law of states, specifically in Albania. The classic difference between hard law and soft law is matched to their obligatory character and while we can say that hard law predicts envisages of the whole obligatory category acts of soft law and constitutes the category of quasi-legal norms, not obligatory, but with a very large impact on the ranks legal. In answer to the questions arose at the beginning “*whether the character of the norms of international organizations influences the way of coping with the international crisis Covid-19 or not? And if the measures taken within the soft law are effective?*” Definitely we declare *yes*. This is seen concretely in the report of the main actors in coping with the crisis that in this case are states themselves and, in most case, managed their crisis through hard acts, legally binding norms, such as the restriction of freedom of movement that cannot be done absolutely with a soft law rate. But on the other hand, soft norms also played a great role in reacting and responding to Covid-19, because were precisely the recommendations, opinions and guidelines of international organizations, specifically the World Health Organization that instructed states to take action in order to confront the pandemic situation and to overcome the crisis.

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