

THE CONCEPT OF FORCE MAJEURE IN COMMERCIAL CONTRACTS AND ITS INTERPRETATION DURING PANDEMIC IN NORTH MACEDONIA / Nikola Dacev

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Abstract: *A pandemic, defined as an epidemic spread over larger regions, is of course not unknown in the world. There are several pandemics in history that have left a great impact on humanity. However, so far there has not been a pandemic of such proportions and consequences as the Covid-19 pandemic. It literally paralysed life and led to unprecedented health, economic and political consequences on a global scale. As has been the case in every area, Covid-19 has also had a serious impact on legal systems. Many countries were not ready with appropriate legislation to deal with the pandemic in terms of implementing appropriate measures to help their citizens. Because of that, a large number of trade agreements were not realised or their realisation was made difficult. What was a serious problem in trade agreements that could not be realised and what is the subject of primary analysis in this paper is the concept of force majeure (vis major), its regulation and the question of whether the pandemic can be considered as a force majeure event. Uncertainty in the interpretation of outdated provisions or lack of appropriate provisions regulating force majeure in pandemic conditions has led to many citizens not being able to exercise their rights derived from contracts and thereby creating dysfunctionality in legal systems. In this paper, it is essential to review the force majeure clause, its concept, development and representation in different legal systems, by making a brief comparison between French law and English law and determining key regulations on an international level. At the same time, the main focus of research will be on the regulations in North Macedonia and the manner of regulating this concept of force majeure. It is also equally important to find the answer to the question of the role of legal systems, whether law as such will continue to exist in the same form and with the same content or whether we already are in the phase of creating the so-called pandemic law, i.e., whether the pandemic initiates a rearrangement of the concept of force majeure in trade agreements in North Macedonia, as well as everywhere in the world.*

Key words: *Pandemic law; Force majeure; Trade agreements; Law of obligations; UNIDROIT; North Macedonian law*

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1. INTRODUCTION

The impact of Covid-19 was so significant that even after more than 2 years, we cannot say with certainty when and if we will return to the normal way of life, that is, the life before the pandemic. Most of the countries around the world struggled fighting the virus. Taking into account the urgency of the situation, a large number of so-called restrictive measures translated into new laws to combat the Covid-19 virus were adopted, and in some countries a large number of decrees with legal force were passed in conditions of emergency, as was the case in the Republic of North Macedonia. The content and the need for some of those acts was controversial, to say the least, especially those directly violating basic human rights guaranteed by the Constitution. The usefulness of those measures is debatable, whether and to what extent they prevented the spread of the virus. But the more important question right now is: if we get past this pandemic situation, what will happen if a pandemic of similar proportions happens again? Many countries did not have adequate legislation, so they interpreted existing laws, passed new laws or decrees with legal force in fast-tracked legislation and any law passed in urgent procedure cannot have the same quality as a law passed in a regular procedure, especially due to the difference in time intervals. Now legislators, taking into consideration the acquired experience, have more time to prepare laws in case of a pandemic.

In particular, this paper has as its research subject matter the trade agreements that remained unimplemented due to the pandemic. Specifically, a comprehensive analysis will be made of the concept of force majeure, its meaning, development, manners of regulation in different legal systems, in order to get to the point of trade agreements that cannot be realised and the pandemic. This begs the question whether the pandemic is considered a force majeure and consequently whether the contracts can be considered rescindable? A large number of, for example, tourist companies did not want to return the invested money of citizens for tourist trips that were cancelled due to the pandemic, with the explanation that the pandemic does not constitute an event of force majeure and that there is no regulation on this matter. Some of the companies claimed that they would fail financially if they returned all the funds to the clients. Should the state governments have stepped in and helped the companies by covering part of the losses or not? This is precisely why I believe that adequate special pandemic law or set of laws to regulate trade agreements in the event of a pandemic would be of great benefit in the future.

Many questions remain unanswered, such as why countries reacted relatively weakly and belatedly to the Covid-19 pandemic – despite the fact that the likelihood of this type of contagion was widely recognised by public health experts, and furthermore in early 2020, countries except for China were, in fact, forewarned of the imminent threat before the virus began to spread globally (Rojas, 2000, pp. 61-68). Another crucial issue is the necessity to restrict civil liberties and rights to a degree never-before-seen in the world. Gatherings have been banned or restricted, travel restrictions and curfews have also been imposed, companies have been forced to close, and, for some, those closures may have proved permanent. Perhaps these measures were necessary to limit the transmission of the disease and thus reduce the final death toll. But most of these decisions were made without the required objective evidence of their value and approval by parliaments or even local representative governing bodies (Zuckerman, 2020, pp. 79-84). The fact is that all these restrictions affected the business relations of business entities. The effect of the pandemic on the contractual relations between the parties was enormous. Therefore, the focus of this paper is one crucial aspect related to the pandemic and commercial contracts, or more precisely the subject of analysis will be the

pandemic as a force majeure for non-fulfilment of trade agreements that were concluded during the pandemic, and how to regulate such agreements in the future if a new pandemic occurs.

2. CONCEPT OF FORCE MAJEURE (VIS MAJOR, CASUS FORTUITUS)

"Force majeure", "vis major" and "casus fortuitus" clauses, or in a word force majeure clauses, are common in commercial contracts and essentially release the contracting parties from responsibility or liability when an extraordinary event or circumstance beyond their control occurs. It means that in such cases the contracting parties are not able to avoid damage. These circumstances include cases such as war, strike, riot, crime, pestilence, or an event described by the legal term of "act of God" (hurricane, flood, earthquake, fire, volcanic eruption, etc.) which prevents one or both parties from fulfilling their contractual obligations towards the other contracting parties.

The concept of force majeure or vis major originates from French civil law and is an accepted standard in many jurisdictions that build their legal systems from the Napoleonic Code. In common law systems such as those of the United States and the United Kingdom, force majeure clauses are acceptable, but they must be more explicit about the events that would trigger the clause. There are two main criteria that determine whether something is force majeure: 1) no human activity or action can prevent the event, 2) no natural or legal person by any action can prevent or avoid the side effects of the event. The key thing about force majeure events is that they are unpredictable and impossible to prevent.

The word force majeure appears in article 1148 of the Civil Code of France which provides: "There is no place for any damage when, as a result of force majeure or cas fortuit, the debtor has been prevented from transferring or doing what he undertook or doing what he was forbidden." To be able to successfully invoke force majeure, the debtor (obligor) must prove that the fulfilment of the obligation is impossible, not just difficult. In this respect, force majeure corresponds to English law. However, where French law differs is in the rule that the technical performance of an obligation precludes the parties from invoking force majeure. If the contract is technically enforceable, the possibility for the parties to invoke force majeure will not be available, even though the economic basis of the contract may have disappeared. In this respect, the force majeure concept in French law is narrower than in English law, which exempts the promisor in such circumstances. French law only considers physical or legal impossibility. Although there is no general doctrine of force majeure in English law, parties often use the words force majeure in their contracts, forcing the English courts to attribute some meaning to them. It is rare for the words force majeure to appear in a contract regulated otherwise, and most often they are part of a list of exceptions, and the words should be interpreted on a case-by-case basis with due regard to what precedes or follows them, and with due regard to the nature and general terms of the contract (*Lebeaupin v Richard Crispin & Co*, 1920). It is worth mentioning that in English law a distinction is made between the frustration clause and the force majeure clause. The former means that the contract is to be immediately and automatically ended, irrespective of the wishes of the parties, whereas enforcing force majeure clauses in contrast involves no danger of becoming involved in making a new contract for the parties or imposing an outcome irrespective of their wishes (McKendrick, 2013).

Regarding international trade agreements, we will highlight article 7.1.7 of the Principles of International Trade Agreements of the UNIDROIT International Institute for the Unification of Private Law, which provides a form of force majeure similar, but not

identical, to the concepts of the term in common law and civil law: "release from the performance of an obligation is granted if the party proves that the non-performance is due to an obstacle beyond its control and that it cannot be expected that the party was able to take into account the obstacle at the time of the conclusion of the contract or that was able to avoid it or overcome the obstacle or its consequences."¹

3. FORCE MAJEURE CLAUSES IN COMMERCIAL CONTRACTS

In contractual relations, the rule applies that the parties must respect the contract and fulfil their contractual obligations. However, there are cases in which the contracting parties are prevented from performing their contractual obligations due to events beyond their control, such as in the case of force majeure events. Commercial contracts often include a force majeure clause that sets the conditions for determining the existence of a force majeure event or circumstance that prevents or hinders the performance of a party's contractual obligations. Contractual behaviour is very much concerned with risk taking in the sense that the parties to a contract will have expectations as to the outcome of the contracting process, some of which may not be fulfilled. Non-fulfilment of expectations may arise due to some event beyond the parties' control, therefore, those who are risk-averse should make arrangements through the use of force majeure clauses (Oughton and Davis, 2000, pp. 245-247). Force majeure clauses vary from contract to contract, so it is important to check the specifics of a given clause. In the absence of a force majeure provision in the contract, the law applicable to the contract will be relevant, and the contracting parties are therefore advised to seek appropriate legal assistance. The concept of force majeure is not universally recognised, and different legal systems provide different solutions when an obstacle or event prevents the performance of commercial contracts. Force majeure clauses generally share some basic characteristics. An authentic example is the International Chamber of Commerce Model Force Majeure Clause 2020 which is a balanced model that can be a useful reference for drafting future contracts and offers users a choice of short or long form.² The long form of the International Chamber of Commerce force majeure clause may be included in the contract or incorporated by the words "The force majeure clause (long form) is incorporated into the contract". The parties may also use the clause as a basis for drafting a clause tailored to the specific needs of the contracting parties. The short form of the force majeure clause of the International Chamber of Commerce is a reduced version of the long form, limited to some essential provisions. It is intended for users who wish to incorporate in their contract a balanced and well-drafted standard clause that covers the most important issues that may arise in this context. Users must be aware that the short form, by its nature, is limited in scope and does not necessarily cover all issues that may be relevant in a particular business context. When this is the case, the parties should draft a specific clause based on the long form of force majeure clause of the International Chamber of Commerce. The basic test for many force majeure clauses requires the party invoking the clause to prove that - the impediment is beyond the party's control; - the obstacle could not be reasonably foreseen at the conclusion of the contract; and - the party could not avoid or overcome the effects of the impediment. If a party to a commercial contract successfully invokes a force majeure clause after timely notice of the force majeure event, that party is usually released from its duty to perform its

¹ The Principles of International Trade Agreements of the UNIDROIT International Institute for the Unification of Private Law, 2010.

² The International Chamber of Commerce Model Force Majeure Clause 2020.

impaired contractual obligations and from liability for damages for breach of contract, during the period when the event of force majeure prevents the execution of the contract. The other party to the contract may also be allowed to terminate the performance of the contract after receiving timely notice of the force majeure event from the party invoking the clause. The International Chamber of Commerce's 2020 Model Force Majeure Clause provides that plague and epidemic are examples of presumptive impediments that trigger the use of the clause; with respect to such presumed impediment, the party invoking the clause need only prove that such impediment could not have been avoided or overcome. The 2003 International Chamber of Commerce Model Force Majeure Clause also took a similar approach.³

Force majeure clauses come in many shapes and sizes, ranging from simple clauses that provide for the termination of the contract in the event that performance is prevented by circumstances covered by the term force majeure, to clauses of enormous complexity that contain, among other things, a list of events as an obstacle to breach of contract, notice provisions that need to be sent to the promisor that contain the consequences in details of the force majeure event. To have a clearer picture of the mentioned clauses, we will take just one example of a force majeure clause, clause 17 of the refined sugar association agreement which provides the following: "If EEC legislation, government intervention, frost, war, strikes, riot, political unrest or, labour disturbances, civil commotion, fire, weather, act of God or any cause of force majeure (whether similar to the aforementioned or not) beyond the seller's control prevents directly or indirectly within the delivery period specified in the contract: the full or partial supply or delivery of the sugar in accordance with the contract or the means of transport declared or to be declared for the loading of the sugar, and the seller or his agent are unable to provide other means of transport of an equal nature in order to enable delivery within the period of the contract, the seller will immediately notify the buyer through a means of communication of such fact and the quantity concerned, and the term of delivery will be extended for 45 days. If the seller is prevented from responding immediately due to circumstances beyond his control, he is obliged to notify the buyer as soon as possible. If delivery is still prevented by the end of the extended period, the contract will be void for such quantity without payment of penalty or other claim." From this example of a force majeure clause, we can see the manner of its regulation, as well as the effects of its use. The clause can not only protect the promisor who was prevented from performing the contractual obligations due to certain events; sometimes such a clause may extend protection to the promisor whose performance is merely impeded or delayed (The Refined Sugar Association, 2021, pp. 9-14).

4. REGULATION OF THE CONCEPT OF FORCE MAJEURE IN THE REPUBLIC OF NORTH MACEDONIA

As in most legal systems, force majeure is recognised and regulated in a large number of laws in the Republic of North Macedonia. Here, we will refer to a part of them, more precisely the laws that refer directly or indirectly to commercial contracts. It is understood that the basic law in which force majeure is covered is the Law on Obligatory Relations, although in the provisions where force majeure is defined, the term force majeure is not used, but the impossibility of fulfilling the obligation of one party in a bilateral agreement for which neither party is responsible. According to the Law on

³ The International Chamber of Commerce, Model Force Majeure Clause 2020.

Obligatory Relations of North Macedonia, in such a case, the obligation of the other party is extinguished, and if the latter has fulfilled some of its obligation, it can request a return according to the rules for the return of what was acquired without a ground.⁴ The event must be unforeseeable and must occur after the conclusion of the contract and before the arrival of the obligation. Law on Obligatory Relations also gives the parties the opportunity to terminate the contract due to the impossibility of fully fulfilling the contractual obligations when the partial fulfilment does not correspond to their goal, otherwise the contract remains in force, and the other party has the right to request a proportional reduction of its obligation.⁵ The term *force majeure* is used in other provisions of the Law on Obligatory Relations, such as in the provisions on the failure of objects due to *force majeure*, from which it follows that the contract is terminated and the remaining obligations of the contracting parties are extinguished.⁶

It is worth noting that the Law on Obligatory Relations makes a distinction between contracting parties who behaved within the framework of what was agreed and those who did not do so when recognizing the *force majeure* event as a reason for the impossibility of fulfilling the contract. That is, in case of failure to act according to the contract and damage or destruction of the object due to *force majeure*, the party that did not act according to the contract is not released from its obligations, that is, it is responsible for the damage caused.⁷

From the other laws that regulate or may have an effect on commercial contracts, *force majeure* is also covered in the Law on Contractual Pledge, where it is established as a reason for termination of the right of pledge, in case of destruction of an object due to it, unless the pledged object is insured.⁸

In the Law on Bills of Exchange, on the other hand, *force majeure* is recognised in the provision that is considered dishonest if in the consumer contract in the case of *force majeure* the consumer is able to terminate the contract only by prior payment of damages.⁹ Furthermore, the Law on Bills of Exchange regulates the extension of deadlines and notifications in case of impossibility to submit the bill of exchange for payment due to a *force majeure* event. At the same time, the Law on Bills of Exchange also lists the cases that are not considered as *force majeure* i.e., the obstacles that are purely personal for the holder of the bill of exchange or for the one to whom he entrusted the bill of exchange to submit it for acceptance or payment.¹⁰

What was very relevant at the height of the pandemic, that is, when there were serious restrictions and bans on cross-border travel in most countries, was the issue of cancellation of tourist travel contracts, and the possibility of travellers being compensated. Some of the tourist companies did not return the invested funds to the clients under the pretext that in that case they would go bankrupt and gave them a voucher that they can use the following year but without returning their money.

The Law on Tourist Activity of the Republic of North Macedonia regulates this issue in such a way that when the travel agency cancels the tourist package – arrangement, the user of the services has the right to get a refund of the entire amount

⁴ Law on Obligatory Relations, "Official Gazette of the Republic of Macedonia" no. 18/2001, 78/2001, 4/2002, 59/2002, 5/2003, 84/2008, 81/2009, 161/2009, 123/2013, 215/2021, Article 126, paragraph 1.

⁵ *Ibid.* Article 126, paragraph 2.

⁶ *Ibid.* Article 601.

⁷ *Ibid.* Article 889, paragraph 5.

⁸ Law on Contractual Pledge, "Official Gazette of the Republic of Macedonia" no. (5/2003, 4/2005, 87/2007, 51/2011, 74/2012, 115/2014, 98/2015, 215/2015, 61/2016, Article 41.

⁹ Law on Bills of Exchange, Official Gazette of the Republic of Macedonia no. 3/2002, 67/2010, 145/2015, Article 63.

¹⁰ *Ibid.*, Article 64.

that he paid under the contract, within a period that cannot be longer than 15 days from the day of cancellation of the contract, except when the cancellation is the result of force majeure, which means that the refund deadlines can be extended in case of cancellation of the trip due to force majeure. The Law on Tourist Activity here unequivocally refers to the Law on Obligatory Relations when determining the meaning of the concept of force majeure.¹¹

But this is exactly where we come to the essential question of whether the Covid-19 pandemic can be classified as a force majeure event. That is the reason we emphasise the regulations that govern the concept of force majeure in different legal systems in this paper and that they might be the answer to this question. But there are other aspects that are of great importance in addition to the existing legislation. Whether the execution of the contract is difficult or impossible due to the pandemic, whether the goals of the parties can still be achieved or not. Here, it can be seen that the type of contract can also be decisive. In terms of what kind of event it is, predictable or not? If trade agreements were concluded before the pandemic, then it can be considered as an unforeseeable event and enter into the category of force majeure. But for the trade agreements that are being concluded after the pandemic, it may not be considered as an unenforceable event because the pandemic is certain and ongoing.

In the case of trip cancellations, all the above-mentioned questions are crucial in terms of the possibility of late performance of the contract i.e., realisation of the trip, but I believe that in case of cancellation of the contract, the obligation of the travel agencies to return the funds is indisputable and based on the principle of acquiring without ground.

5. THE ROLE OF THE CONCEPT OF FORCE MAJEURE DURING A PANDEMIC

Due to the impossibility of predicting the development of the Covid-19 pandemic, it seems that the future is becoming increasingly uncertain. Entrepreneurs want to continue with their business ventures, but many are not sure if they will be able to meet their existing obligations and wonder what will happen if they really cannot meet their obligations. As various levels of government in a number of states brought recommendations for closures, travel restrictions, and social distancing, parties want to know what they can do to protect themselves if they cannot honour their agreements. In that regard, the question logically arises of whether the parties can rely on the force majeure provisions in their contracts if the effects of Covid-19 threaten their adherence to these contracts.

To constitute force majeure, the words used in the clause in question must explicitly cover an event such as Covid-19, using the words "pandemic", "epidemic" or "emergency case within the public health". In the absence of such specific wording, courts may not recognise Covid-19 as a force majeure event. That is why the text contained in the force majeure clause is of great importance. Many contracts that have been drafted since the pandemic hit contain this terminology, but the first step in any analysis is, of course, reviewing the text that needs to be interpreted from the contract itself. Depending on the context, Covid-19 could probably be included in the scope of broader phrases such as "act of God" or "plague" or "circumstances beyond reasonable control of the parties". The court is also obliged to determine, in the event of a dispute due to a non-fulfilment of

¹¹ Law on Tourist Activity, Official Gazette of the Republic of Macedonia no. 62/2004, 89/2008, 12/2009, 17/2011, 47/2011, 53/2011, 123/2012, 164/2013, 27/2014, 116/2015, 192/2015, 53/2016, 31/ 2020, Article 21.

the contract connected to a force majeure event, the Covid-19 pandemic, whether the pandemic is the real reason for the non-fulfilment of the contract.

When analysing whether the pandemic can be considered as an event leading to the inability to perform an activity due to force majeure, it is necessary to make a distinction between business entities, the way they work, and the conditions in which they work, while also taking into account the trade agreements they have concluded with their business partners. So, for example, from the subjects that were affected by the restrictive measures, we can highlight the restaurants that can provide services through a delivery system, although they are prevented from using their premises for guests, however, it cannot be considered that they are completely prevented from work and earn a significant income. Coffee shops, on the other hand, that do not have a coffee delivery system cannot perform their activity and meet the condition for the Covid-19 pandemic to be considered an event of force majeure.

Force majeure clauses are a means of allocating risk in a contract. These clauses excuse the failure to fulfil a contractual obligation upon the occurrence of certain, unforeseeable event or circumstance that is beyond the control of the parties. The essential question to which the court must give an answer is whether that event is really beyond the control of the parties concerned and whether the event, which is considered force majeure and is the reason for the non-fulfilment of the contract was foreseeable. Courts sometimes inquire into the foreseeability of an event, even if it is expressly stated in the force majeure clause. In the case of Covid-19, this issue could arise for contracting parties who entered into contracts after it became likely that the pandemic would start. Therefore, the date the contract entered into force or was signed will be of great importance. The Covid-19 pandemic, as a specific event, was probably not predictable, at least up to a certain period of time. Contracting parties that have taken steps to enter into a contract despite the existence of evidence that a pandemic will occur may not be able to rely on a force majeure provision to be released from their obligations to perform the contract.

Whether an event qualifies under a force majeure clause depends on the facts of the case, the wording of the clause, and the obligations of the contracting parties. In addition, Covid-19 (or the event to be relied upon) must have a real and direct impact on the affected party's ability to fulfil its contractual obligation. The indirect impacts of Covid-19, such as price fluctuations, are less likely to prevent contract execution. To determine whether Covid-19 is covered by the force majeure clause, the court must first assess the steps taken by the contracting parties to mitigate damages. Parties wishing to rely on Covid-19 as a force majeure in the contract must keep in mind their obligations and try to avoid or mitigate the foreseeable impacts of the pandemic. Some contracts specify the required level of action taken to mitigate the force majeure event and to mitigate the effects of the force majeure event on the other party to be taken by the affected party. When there is no provision in the contract to take action to mitigate damage by the contracting parties, courts will be more reluctant to recognise Covid-19 as a force majeure where the consequences for the affected party can be avoided. Even in the case of damage that has already occurred, the affected party is still required to take steps to mitigate the consequences of the damage. Even when there is no formal requirement to provide evidence, the affected parties must document how Covid-19 has affected their ability to meet their contractual obligations, as well as their efforts to avoid and mitigate its impact.

Force majeure clauses, similarly to any other change regarding the (non) performance of the contract, often require notification to the party as a condition to trigger the application of the clause. A party must know whether notice or any supporting

documentation are required under the contract, and if so, carefully consider the timing or other formal requirements. The party must provide the required notice according to the contract and according to the prescribed method, but this requirement may be more difficult to achieve given the current restrictive measures, and therefore, an appropriate assessment should be made. However, depending on the nature of the contract, it may be impossible to notify the other contracting party in time, of course, given the rapid changes that occur almost daily in these pandemic conditions. However, it is always in the best interest of the contracting parties to take all necessary steps to perform the contractual obligations and to promptly inform the other party if they are unable to do so.

In short, as far as the situation in North Macedonia is concerned, the Government of North Macedonia made decisions that indirectly had an impact on trade agreements, such as the changes in Article 266-a, paragraphs (1), (2) and (6) of the Law on Obligatory Relations which referred to rates of penal interest.¹² The adoption of this decree was aimed at facilitating the working and payment conditions of the real economic sector, as well as of citizens in the country in conditions of a seriously disturbed economic situation and liquidity of legal entities, and as a result of the Covid-19 pandemic.

Although in North Macedonia no adopted measure defined the pandemic as an event of force majeure, I believe that by declaring the state of emergency, the conditions for the occurrence of "force majeure" have been met, but only for those sectors and economic entities that were directly affected by the pandemic as we stated above in the example.

6. METHOD OF REGULATING FORCE MAJEURE WITHIN THE FRAMEWORK OF PANDEMIC LAW (IN THE POST-COVID ERA)

Although we are aware of the serious consequences caused by the pandemic, we still cannot know with certainty and in full what the damage will be, nor how long it will take for the world to return to the state it was in before the pandemic. Especially now with the rapid inflation of the prices everywhere and the war in Ukraine, it is even more difficult to predict the future. It is a legitimate question to ask whether we will ever return to the lives we had before the pandemic. But even more worrying is the question of what would happen if we had another pandemic on a similar scale. The fact is that there is no country that was prepared for such a pandemic. That is why a number of countries are already preparing legislation in case of a pandemic like the one we have right now. In the Republic of North Macedonia, there are still no announcements about the creation of a law during a pandemic, but some of the previous decrees can be used in that direction. It is understood that the main goal of the law should be greater protection of citizens' health. But what was the focus of this research, trade agreements and their (non)realisation is also a key issue that should be regulated in the pandemic law, all in order to help the contracting parties in the realisation of their rights and obligations from the contracts. The concept of force majeure in conditions of a pandemic, in most countries in the world and in North Macedonia, is recognised and regulated in several

¹² Decision to amend and supplement the decision on preventive recommendations, temporary measures, ordered measures, dedicated protocols, plans and algorithms for action to protect the health of the population from the infectious disease covid-19 caused by the sars-cov-2 virus, the cases and the time period of their application on 23.03.2020, ("Official Gazette of the Republic of North Macedonia" no. 263/20, 269/20, 275/20, 287/20, 292/20, 298/20, 304/20, 306/20, 317/20, 13/21, 45/21, 53/21, 55/21, 58/21, 64/21, 65/21, 75/21, 87/21, 94/21, 100/21, 106/ 21, 109/21, 113/21, 116/21, 119/21, 126/21, 133/21, 139/21, 141/21, 146/21, 153/21, 162/21, 176/21, 187/21, 193/21, 199/21, 204/21 and 220/21).

laws, but the complexity of the pandemic, especially on such a scale as Covid-19, undoubtedly needs additional regulation. Can every pandemic be considered a force majeure, should the contracting parties have a clause in the contract that will refer to the pandemic as a force majeure event, how in that case will the contractual obligations between the parties be regulated, etc. are only part of the issues that should be covered in the pandemic law. Particular attention should be paid to human freedoms and rights and the degree of their restriction during a pandemic, among other things, because they are also correlated with the realisation of trade agreements. The greater the restriction of human rights and freedoms, such as restrictions on movement, the more difficult the implementation of trade agreements.

There is no single way to regulate force majeure in pandemic conditions. It is necessary to take into account the existing legislation that regulates the concept of force majeure, the business customs of the contracting parties when concluding contracts, court practice, to observe the legal opportunity offered by the Law on Obligatory Relations expressed in the freedom of contracting and to enable the parties with contractual clauses for force majeure to regulate this issue in their contracts, but at the same time to direct them through appropriate general norming of the clauses in which direction to regulate their relationship if the contract cannot be fulfilled due to a force majeure event such as pandemic. It is very important to prevent abuse of the concept of force majeure as an argument for non-fulfilment of contractual obligations.

7. CONCLUSIONS

In this paper, the concept of force majeure, its notion in different legal systems, the manner of its regulation, and the effect it has on trade agreements, were briefly elaborated. A general conclusion that emerges is that the event must be unforeseeable, beyond the control of the contracting parties, making it impossible for the contracting parties to perform their contractual obligations while releasing them from responsibility or obligation from the moment when an extraordinary event or circumstance occurs. Force majeure is gaining even more relevance in customer contracts and defaults amid a global pandemic. Case law generally points to the fact that force majeure is often cited as an argument in the client's defence when there is a claim for damages due to breach of contract. Although reliance on the clause, of course, does not necessarily absolve a party of a possible lawsuit, taking appropriate steps to mitigate damage to both parties can be an additional tool, in addition to the necessary one provided by law. Of course, it is smart from a business perspective to approach these issues head on. If we are talking about conscientious and honest contracting parties, then it can be concluded that they would be interested in fulfilling the contractual obligations because it is better for both business and the economy. As with any anticipated or potential breach of contract, once the client knows its risk, it is wise to approach the other party to see if partial performance or revised contractual terms will avoid a complete breach or default. It goes without saying that it is the duty of lawyers to help their clients make the best business decisions in these uncertain times. The court should continue to be the last instance for resolving business disputes. With this in mind, I want to point out that despite the need for additional regulation of force majeure in pandemic conditions, the dispositive nature of the provisions governing trade agreements must be maintained for the contracting parties to continue to maintain a high degree of freedom in negotiating business works.

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