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## Area, Extent, and Restriction of Fundamental Rights During the Special Legal Order, with Exceptional Regard to the Epidemiological Situation in the Territory of the Slovak Republic

- **ABSTRACT:** *The Slovak Republic, as other countries around the world, was affected by the coronavirus pandemic in the first half of 2020. This epidemiological situation has had a substantial social impact on the basis of which it was necessary to take measures that affected the daily lives of individuals. To prevent the spread of the coronavirus, states have often been forced to apply restrictions that were on the verge of acceptance in terms of respect for fundamental rights. Interference with such sensitive issues as fundamental rights and the adaptation of urgent and immediate measures to minimise the spread of the coronavirus had to be effective and conform to the requirements of balance and mutual proportionality. In 2020, the Slovak Republic, as many countries, faced difficulties in the fight against the coronavirus. This paper focuses on this global problem, the steps taken by government officials in the Slovak Republic, and the theoretical basis for respecting and exercising fundamental rights in this area. The aim of the introduction of this professional article is to present the anchoring of fundamental rights and freedoms in the context of revolutionary events. The purpose of the remaining portions of this expert article is to explain and analyse the related and most discussed legal facts that have had a social impact following the discovery of the coronavirus in the Slovak Republic. An additional intention is to elucidate and generalise the solutions that have been introduced in the fight against the pandemic while noting the actual steps taken by the government over time.*
- **KEYWORDS:** fundamental rights, epidemiological situation, coronavirus, COVID-19, special legal order in the Slovak Republic.

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## 1. General cross-section of the legal regulation of fundamental rights in the Slovak Republic

Following the events of November 1989, which resulted in the birth of the so-called Velvet Revolution and victory over the communist regime, a democratic system was established in the Czech and Slovak Federal Republic.<sup>2</sup> In the spirit of democracy, society's priority was to enshrine, respect, and exercise the fundamental rights and freedoms that had been dishonoured, deceptively proclaimed, and often violated by the communist regime for a long period of time. The violation of these values led people to raise their voices against the principles and actions of the communist regime.

Following these crucial events, the hard work of the new governmental officials began with the preparation of a document that would guarantee fundamental rights and freedoms that would be binding on level with the constitution. On 9 January 1991 Constitutional Act No. 23/1991 Coll., which introduced the Charter of Fundamental Rights and Freedoms as a Constitutional Act of the Federal Assembly of the Czech and Slovak Federal Republic, was approved based on the submitted material. The Charter of Fundamental Rights and Freedoms became a sample for the nearly identical wording of the provisions of the second title of the Constitution of the Slovak Republic. It was approved on 1 September 1992 by the Constitutional Act No. 460/1992 Coll. of the Constitution of the Slovak Republic.<sup>3</sup> The basis for both constitutional documents was agreements and treaties of an international character that reflected and completed the European standards of fundamental rights and freedoms.<sup>4</sup>

The supranational documents that contributed most to the creation of the Charter of Fundamental Rights and Freedoms and the Constitution of the Slovak Republic were mainly the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and parts of Charter 77.<sup>5</sup>

An essential feature of enshrined fundamental rights and freedoms is reflected in their universality and inviolability, which are typical features of natural human rights. For this reason, fundamental principles and freedoms are inviolable, inalienable, imprescriptible, and inderogable. These principles are explicitly expressed in the provisions of the Constitution. At that time, the possibility of their full-fledged protection was declared.

The constitutional enshrinement of fundamental rights and freedoms included not only natural rights but other rights as well. Basic human rights, political, economic,

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2 Orosz, 2012, p. 36.

3 On the constitutional law and the Constitution of the Slovak Republic, see, for example: Drgonec, 2019; Giba, 2019; Svák-Cibuľka-Klíma, 2013; Bröstl et al, 2019; Čič, 2012.

4 Posluch and Cibulka, 2009, pp. 77-78.

5 Král, 2004, p. 43.

social, and cultural rights, rights of national minorities and ethnic groups, rights to the protection of the environment, the right to judicial protection, etc., were also consolidated at the constitutional level.

In drafting the provisions of the Constitution, it was necessary to consider the compliance of the state's interests and the interests of the subjects of human rights should the need arise to limit them. Unpredictable future situations that could occur due to force majeure or other relevant circumstances also had to be taken into account. Given such a situation, however, the state must also protect the interests of those to whom fundamental rights and freedoms were granted.

Legal restrictions on fundamental rights are, therefore, permissible only in the case of objective interest, which may include the security of the state, protection of life and health, protection of property, protection of morals, protection of the environment, protection of the rights and freedoms of others, and protection of public policy. Fundamental rights are not denied by such restrictions; they merely constitute restrictions in the exercising of rights by any of the above-mentioned titles, which arose on the basis of an objective reason.<sup>6</sup>

A provision of the Constitution directly enshrines and explicitly states the nature of the restriction on the basis of which, when restricting basic rights and freedoms, attention must be paid to their essence and meaning, and the restrictions may only be used for the prescribed purpose.<sup>7</sup> Based on the above, they cannot be abused.

Certain restrictions on fundamental rights and freedoms may go beyond admissibility where the enforcement of restrictions may already be presumed to be at an unacceptable level and the protection has thus been guaranteed at the level of the proceedings of the Constitutional Court, which has jurisdiction to rule whether such violations, abuse, or misuse of powers was not permitted. Any natural or legal person who claims that their fundamental rights or freedoms as guaranteed by the constitutional order have been violated by an international treaty that has been ratified and promulgated in a manner laid down by law when their violation should have occurred by a valid decision, measure, or other intervention of a public administration body and their protection is not decided by another court, may make a legal complaint before the Constitutional Court.<sup>8</sup>

Finally, it should be noted that after expressing interest in joining the European Union, the Slovak Republic had to begin respecting the European Union's goals and values, including fundamental rights, thus maximising the consolidation of the rights and the need to comply with evolving standards.

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6 Král, 2004, p. 55.

7 Article 13(4) of the Constitution of the Slovak Republic.

8 Article 127(1) of the Constitution of the Slovak Republic.

## 2. The first wave of coronavirus on the territory of the Slovak Republic from the point of view of the most important facts and legally relevant events

With the worldwide spread of the coronavirus SARS-CoV-2 (also known as COVID-19), the Slovak Republic eventually succumbed to pandemic infection. This infectious disease has caused a global state of emergency which appears to be very difficult to overcome. This state of medical emergency not only has paralysed states economically and financially, but it also prevents the state from providing proper health care and education. The restrictions on social freedom have been so demanding that it will be extremely difficult for the world to heal. It can also be debated whether the sovereignty of the states has been undermined to some extent because of dependence on the help received from others in many cases. The deficiencies of medical devices, technological conveniences, and finances have caused dependence on non-governmental organisations. Although it is a necessary action, it can also give the impression of a weak and unstable state system as the state should be able to handle such critical situations on its own.

A state with foresight might have been a key element, as it could have played a huge role in preventing the massive spread of the coronavirus. Some states have taken such prevention too lightly; thus, the pandemic has affected every individual in the world in a matter of only a few weeks. In the Slovak Republic, efforts to prevent the spread of the coronavirus were made at a governmental level on behalf of the public and the entirety of Slovak society several weeks before the first infection occurred.

*‘An active approach to managing crisis phenomena requires an effective, comprehensive strategy for the analysis of threats and risks, permanent monitoring and analysis of crisis factors, and the creation of management bodies, forces, and the necessary resources to minimise the consequences of these threats.’<sup>9</sup>*

In January and February 2020, the Security Council of the Slovak Republic and the Crisis Staff made a decision regarding the general preparedness of the country. Initially, medical, rescue, tactical, and strategic readiness were checked through exercises, the provision of laboratory equipment, and assessment of laboratory environments. A call centre and an Infoline were established for the public through which information was provided. Important guidelines regarding personal and food hygiene were issued.<sup>10</sup> Gradually, more serious decisions were made, such as inspection at airports and random inspections of vehicles at border crossings. Leaflets were provided to passengers with information and recommendations for people coming from countries

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<sup>9</sup> Buzalka and Blažek, 2011, p. 18.

<sup>10</sup> Press release of the Ministry of Health of the Slovak Republic. Available at: <https://www.health.gov.sk/Clanok?premier-koronavirus-opatrenia>.

and areas where COVID-19 cases had occurred.<sup>11</sup> Simultaneously, urgent mobilisation has begun in the security, defence, and health departments.

The turning point came when the first resident of Slovakia became infected, an inevitability that occurred in the first week of March in the Bratislava district.

On 6 March as a result of the confirmed case, a meeting of the Central Crisis Staff of the Slovak Republic was held, at which its representatives took measures for the first time in the form of bans and strict recommendations for the country's residents. Measures against the epidemic included application of a ban on hospital visits, social service home visits, visits to children's homes visits, and prison institution visits throughout the Slovak Republic. Outside the Slovak Republic, students were not allowed to participate in excursions, and arrivals from and departures to Italy were also stopped. Recommendations were made that residents avoid participating in mass events, namely in sports and cultural events, church masses, and other entertainment events where a large number of people would be expected to gather. Visits to shopping centres and submission to voluntary isolation and quarantine remained at the discretion of the population. At that time, border controls were ordered at the Slovak Republic's western border with Austria.<sup>12</sup>

In the following days, the number of confirmed positive cases increased. Hence, the Central Crisis Staff of the Slovak Republic decided to ban the organisation of public events, including sports and cultural events, for 14 days as of the date of the decision, which could be extended in case of need. Persons returning from the most affected countries (i.e. Italy, China, Iran, and South Korea) were ordered to undergo a 14-day quarantine as were persons living in the same household with them. Non-compliance with this regulation could result in imposition of a fine of up to 1650 euros for a public health offence.<sup>13</sup>

On 12 March the Government of the Slovak Republic declared an emergency situation in accordance with the Act of the National Council of the Slovak Republic No. 42/1994 Coll. on Civil Protection of the Population, as amended, as a period of danger or a period during which the consequences of an emergency event affect life, health, and property and during which measures to safe life, health, and property reduce the risks of danger or methods and operations to eliminate the consequences of an emergency event are carried out.<sup>14</sup> On the same day, the Central Crisis Staff of the Slovak Republic decided on strict measures to limit the spread of the coronavirus, which concerned the closure of schools and school facilities as well as the closure of all three international airports in the Slovak Republic. Finally, cultural facilities, leisure ski resorts,

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11 Information from the Public Health Authority of the Slovak Republic. Available at: <https://bit.ly/3mKLiyl>.

12 Information from the Public Health Authority of the Slovak Republic. Available at: <https://bit.ly/3wkLLEd>.

13 Information from the Public Health Authority of the Slovak Republic. Available at: <https://bit.ly/3GTIo2j>.

14 Article 3(1) of the Act of the National Council of the Slovak Republic on Civil Protection of the Population

amusement parks, wellness centres, water parks, discos, and bars were closed. Additionally, temporary border controls were introduced with neighbouring countries, with the exception of Poland; however, the situation was continuously monitored at border crossings with Poland. International and domestic train and bus transport were restricted. The opening hours of offices and client centres were reduced. During the weekends, shopping centres were restricted such that only stores from which medicines, food, and drugstore products could be purchased were open. For persons coming from abroad to Slovakia, mandatory isolation in domestic quarantine was imposed for at least 14 days. For persons without permanent residence, temporary residence, or not working in the Slovak Republic, entering the country was prohibited. Foreigners were not permitted to travel to Slovakia without adequate confirmation that they belonged to one of those categories.<sup>15</sup>

Within a few days, people living and working in Slovakia experienced major changes and limitations in their lives in regard to their safety. The regulations elicited dissatisfaction and fear because people did not know what to expect in this situation, as it was constantly changing. This eventually led to a crisis.

According to Constitutional Act No. 227/2002 Coll. on State Security at the Time of War, State of War, State of Emergency, and State of Crisis, as amended by later constitutional acts and Act No. 387/2002 Coll. on the Management of State in Crisis Situations Other than Time of War and State of War as amended, the term 'crisis situation' refers to the period outside the time of war and state of war, during which the security of the state is endangered or disturbed and the constitutional authorities may declare a state of emergency, state of crisis, or extraordinary situation after fulfilment of the conditions set out in a constitutional or special act.<sup>16</sup>

at this point, shops and services, with the exception of the above-mentioned grocery stores, pharmacies, and drugstores as well as online stores, were closed even during weekdays.<sup>17</sup> On 15 March new exceptions were added to the list: newsagents, refreshment stands, and restaurants without the presence of guests outside the dining area. On the same day, the Government of the Slovak Republic declared a state of emergency<sup>18</sup> and imposed a work obligation on persons employed by institutional health care providers to ensure the performance of health care and to prohibit such persons from exercising their right to strike.<sup>19</sup>

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15 Press release of the Ministry of Health of the Slovak Republic. Available at: <https://bit.ly/3mKtoMe>.

16 Article 1(4) of the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis and Article 2(a) of Act on Management of State in Crisis Situations Other than Time of War and State of War.

17 Press release of the Ministry of Health of the Slovak Republic Available at: <https://bit.ly/3qahzRS>.

18 See, for example, Drgonec, 2012.

19 Resolution of the Government of the Slovak Republic. Available at: <https://rokovania.gov.sk/RVL/Resolution/18252/1>.

A similar situation related to the declaration of a state of emergency has already taken place in Slovakia during the last decade. In September 2011, following the example of fellow Czech doctors, 2411 Slovak doctors resigned collectively in 34 hospitals due to dissatisfaction regarding non-compliance with four key requirements: salary increases, halting the transformation of hospitals into joint stock companies, compliance with the Labour Code, and co-financing of the health care system. The mass departure of doctors was the reason for declaring a state of emergency, effective beginning 29 November 2011, which was to be avoided so as not to endanger human lives. The state of emergency concerned 16 providers of institutional care, which took measures to ensure both acute and emergency medical care. The emergency regime did not affect doctors who did not resign and continued to work as expected in hospitals. It affected only medics who had a notice period and whose profession was essential for the proper functioning of the designated hospital wards.

A state of emergency may be declared by the Government of the Slovak Republic only on the condition that there is an imminent threat to people's life and health, in causal connection with a pandemic, the environment<sup>20</sup> or significant valued property as a result of a natural disaster, catastrophe, or an industrial, traffic, or other operational accident. The government may declare a state of emergency only in the affected or immediately endangered area,<sup>21</sup> only to the necessary extent, and only for the necessary time, for a maximum of 90 days.<sup>22</sup>

Notably, within the countries of the European Union, in *'terms of definition, the definition of the special legal status of a state of emergency appears in all constitutions, with the exception of the Slovak Constitution.'*<sup>23</sup>

As a result of the declaration of a state of emergency, the state implements a set of measures that form and represent activities that can manage, limit, and adapt the operation of state and local authorities as well as institutions, economic entities, and social organisations in the affected or directly endangered territory in the necessary range and time according to the seriousness of the threat to restrict fundamental rights and freedoms and impose obligations and to clarify the duties and tasks of the armed forces if the life and health of persons, the environment, or significant property values are endangered or threatened due to a pandemic, natural disaster, catastrophe, or industrial, traffic, or other operational accident.<sup>24</sup>

It is necessary to be aware of the seriousness of the declaration of a state of emergency in terms of fundamental rights and freedoms and the scope of their application

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20 Note: A problem arising from the wording of the provision of the Constitutional Act exists, which has been unresolved for a long period of time.

21 Article 5(1) of Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis.

22 Article 5(2) of Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis.

23 Farkas and Kelemen, 2020, p. 214.

24 *Terminologický slovník krízového riadenia a zásady jeho používania*. The Security Council of the Slovak Republic, Bratislava, 2017, p. 22. Available at: <https://bit.ly/3nXfqGI>.

because under the provisions of the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis, it is legal *'to limit fundamental rights and freedoms and impose obligations in the affected or directly endangered territory for the necessary time, depending on the seriousness of the threat, to the maximum extent of:*

- a) *limit the inviolability of the person and its privacy by evacuation to a designated place,*
- b) *impose work duties to ensure the supply, maintenance of roads and railways, the operation of transport, the operation of water supply and sewerage, the production and distribution of electricity, gas and heat, the performance of health care, maintaining of the public policy or to eliminate the damage,*
- c) *limit the exercise of ownership of real estate for the deployment of soldiers, members of the armed forces, medical facilities, supply facilities, rescue services and release and other technical facilities,*
- d) *restrict the exercise of ownership of movable property by prohibiting the entry of motor vehicles or restricting their use for private and business purposes,*
- e) *to limit the inviolability of the person's home to the accommodation of evacuees,*
- f) *restrict the delivery of postal items,*
- g) *restrict freedom of movement and residence by applying a curfew at a specific time and a ban on entering the affected or directly endangered territory,*
- h) *restrict or prohibit the exercise of the right to peaceful assembly or assembly in public conditional on authorisation,*
- i) *restrict the right to spread information freely, regardless of state borders, and freedom of speech in public;*
- j) *to ensure access to radio and television broadcasting associated with calls and information for the population,*
- k) *prohibit the exercise of the right to strike,*
- l) *take measures to address the state of the oil emergency.*<sup>25</sup> Such special interventions under the mechanism of the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis provide an opportunity to limit the fundamental rights and freedoms enshrined in the Constitution of the Slovak Republic and the Charter of Fundamental Rights and Freedoms.

However, it must be noted that the same constitutional law explicitly enshrines in its introductory provision that the basic mission of public authorities, even in times of emergency, is to take all necessary measures to respect fundamental rights and freedoms.<sup>26</sup> Due to the occurrence of the circumstances of threats to life and health caused by the COVID-19 pandemic, the declaration of a state of emergency by the Government of the Slovak Republic was justified under the conditions set out in the Constitutional

25 Article 5(3) of Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis.

26 Article 1(2) of Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis.



Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis.

The territorial delimitation according to the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis may raise several issues. The provision does not explicitly regulate the possibility of declaring a state of emergency for the entire territory of the Slovak Republic; however, it states that ‘a state of emergency may be declared only in the affected area or in the area immediately endangered.’ Here, the question of the lawfulness of restrictions on the fundamental rights of persons arises, in particular, their right to personal freedom linked to the observance of quarantine and the inference of consequences, which is the most significant interference with personal integrity. I would like to note that it is necessary to consider the seriousness of the pandemic situation, the objective interest of the public and society as a whole, and the protection of lives and health. In addition, in this regard, if the entire territory of the Slovak Republic is affected or directly endangered, this detail should not be an obstacle, taking into account the objective interest, threat to life, and health of the entire society in relation to the COVID-19 pandemic. To clarify, my intention is not to criticise the measures that were taken, but I feel that it is important to emphasise that the term ‘the whole territory’ should be explicitly included and legislated in the provisions of the constitutional act for reasons of legal purity and clarity in the future.

At the end of March, specifically on 25 March a measure of the Public Health Authority of the Slovak Republic came into force until further notice, prohibiting all persons from going out and moving about in public without covering their upper respiratory tract; protective masks, respirators, or other suitable alternatives had to be worn to cover the mouth and nose, effective immediately.<sup>27</sup>

Based on the recommendations of a council of experts, medical authorities, and prominent epidemiologists and infectologists, stricter measures were approved in the first week of April to restrict the free movement of people during the Easter holidays. On 6 April the Government of the Slovak Republic approved a decision according to which emergency measures were extended to restrict the movement of persons in consideration of the prevention of the spread of COVID-19. This decision also prohibited the exercise of the right to peaceful assembly for the period of the Easter holidays, with the exception of persons belonging to the same household. In addition, other exceptions have been considered with regard to restrictions on free movement in the public. These exceptions included transferring to and from work, performing business and other similar activities, transferring to procure necessary food, medicine, medical devices, hygiene goods, cosmetics, other drugstore goods, and feed and other pet supplies, arrangements of care for children, arrangements of pet care, fuel refill, trips aimed at arranging necessary life needs for another person, volunteering, neighbourhood assistance, and others within the district of residence. In

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27 Measure of the Public Health Authority of the Slovak Republic No. OLP/2732/2020. Available at: <https://bit.ly/2ZX0uiX>.

the case of the capital, Bratislava, and of Košice, the above-mentioned activities could be carried out only within the city limits. Other exceptions included transportation to a medical facility for urgent examination, including escorting a close person or relative, transport to the funeral of a close person, and transport to care for a close person or a relative who is dependent on such care; however, such exceptions applied only within the district in the case of the capital city of Bratislava and only within the city limits in Košice. Finally, the exceptions included a stay in nature within the district in the case of Bratislava and within the city limits in Košice.<sup>28</sup>

We must again highlight that the restriction of fundamental rights and freedoms can be realised only to ensure the adequate protection of the public interest of society, the life and health of society, and the economy. The adequacy of the restrictions in relation to the circumstances, the degree of real necessity, and their purpose should be taken seriously. The only appropriate method is to subsequently verify the real justification of the circumstances and actions; if this is not confirmed, such action may be considered disproportionate, thus leading to the question of whether they may also be considered unconstitutional with regard to interference in fundamental rights and freedoms.

Professor Michael O'Flaherty, Director of the European Union Agency for Fundamental Rights (FRA), said the following: *'We clearly need strong public health responses to protect life during the pandemic. But we can protect our health and respect human rights. It is not a zero sum game'*<sup>29</sup>. At the same time, Professor Michael O'Flaherty expressed the following idea: *„The more we respect human rights, the better will be our public health strategies. These strategies must also ensure that any limitations to people's fundamental rights should only last as long as necessary and that they protect already vulnerable people who may face even greater risks from COVID-19.'*<sup>30</sup>

An additional dangerous situation occurred with the confirmation of the COVID-19 infection of a Roma person who had visited several places and contacted persons from several other Roma communities before being placed in quarantine. As a result, the disease began spreading in the affected communities, and there was a need for preventive placement of approximately 6,200 people in quarantine. The situation was monitored by the relevant authorities with the continuous assistance of soldiers deployed by the Armed Forces of the Slovak Republic, who managed the supply needs of these communities and the observance of measures, such as maintaining quarantine, in the affected communities.<sup>31</sup> The European Union Agency for Fundamental Rights (FRA) has ranked Roma people as a vulnerable and at-risk population, along with

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28 Information from the Public Health Authority of the Slovak Republic. Available at: <https://bit.ly/2YgDcEi>.

29 Press release of the European Union Agency for Fundamental Rights (FRA). Available at: <https://bit.ly/3D2GESp>.

30 Presse release of the European Union Agency for Fundamental Rights (FRA). Available at: <https://bit.ly/3ohOlOr>.

31 Information from the Public Health Authority of the Slovak Republic. Available at: <https://bit.ly/3wj7GSO>.

refugees, the elderly, children, and people with disabilities. In addition, according to the FRA, attention should be paid to four important aspects when examining the impact of proposed measures by individual governments on fundamental human rights and freedoms during the actions to fight COVID-19. For this reason, the application of measures should focus particularly on vulnerable groups, racism, misinformation, and data protection in everyday life.<sup>32</sup>

Following the above-mentioned events and facts, a preliminary plan for a release program was presented by the Government of the Slovak Republic on 20 April, which had several phases. The first phase of the release program plan included the opening of services, retail shops, shops up to 300 m<sup>2</sup>, markets, car bazaars, and car dealerships, the possibility of operating a long-term accommodation, and the possibility of access and subsequent performance of outdoor contactless sports. The release of the measures in the first phase was effective on 22 April.<sup>33</sup> As the rate of the spread of COVID-19 was favourable, the government of the Slovak Republic decided that the second and third phases of the release program plan would be combined. For this reason, the following permissions came into force on 6 May: taxi services could operate again, and several beauty salons providing pedicures, manicures, cosmetic treatments or massages, hairdressers, barbershops, solariums, and rehabilitation centres were opened. Galleries, museums, exhibition halls, and libraries were also opened, people were permitted to engage in outdoor tourism again, organise weddings, attend church masses, and run short-term accommodations, though excluding restaurants and dining in common areas. The fourth phase of the release program plan started on 20 May when the number of people per square meter in the interior of the shops would be increased. The organisation of events was permitted, though limited of 100 people, and the organisation of theatre, music, film, and other artistic performances was allowed again. Shopping centres, fitness centres, swimming pools, and entertainment establishments were fully opened, and access to restaurants and other public catering services was restored. The wearing of protective masks, respirators, or other suitable covering of the upper respiratory tract was no longer required if there was a distance of at least 5 m between the two individuals. Travel beyond the borders of the territory of the Slovak Republic was again permitted without the obligation of quarantine if the passenger returned to the Slovak Republic within 24 hours after crossing the border. From 27 May the period of staying abroad without the obligation to complete quarantine was extended from 24 to 48 hours. Kindergarten care and primary school teaching began on 1 June with attendance remaining voluntary at the discretion of the children's parents. Students from the second stage of primary and secondary schools were educated in the form of distance learning. In the fifth phase of the release program, which began on 3 June, the opening of the remaining facilities, services, and leisure activities was

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32 Press release of the European Union Agency for Fundamental Rights (FRA). Available at: <https://bit.ly/2Yi63bo>.

33 Information from U.S. Embassy in Slovakia. Available at: <https://bit.ly/3q6vvMr>.

allowed.<sup>34</sup> The state of emergency in the Slovak Republic ended on 13 June and on that date, the obligation of medical workers to ensure health care as well as the ban on exercising the right to strike were abolished. However, after the abolition of the state of emergency, the extraordinary situation, which was declared by the Government of the Slovak Republic on 12 March remained in force.<sup>35</sup> Finally, the full-time teaching of second-grade primary and secondary school students was permitted in the last week of the school year, though it remained on a voluntary basis depending on parental decision.<sup>36</sup>

Gradually, the lives of the residents of the Slovak Republic began to normalise. People returned to their everyday lives as they had lived before the spread of COVID-19. The effects of the previous period were still present in society because the number of infected people continued to grow slowly.

### **3. Summer of 2020 and the impact of coronavirus**

As summer arrived, people had high expectations regarding the complete victory over COVID-19 beginning around the beginning of June, and the number of patients was stagnating in the Slovak Republic. As the number of infected individuals slowly decreased, there were days when no cases of the disease were confirmed, so there was hope to overcome the problem. After the announcement of the second wave of the disease, the situation took an unexpected turn. A more significant problem arose when the first deaths of people associated with the disease began to be registered, as they had not previously been recorded by the Slovak Republic. The residents could not accept the idea that the Slovak Republic could be brought to its knees again, as in the first half of 2020.

Following the meeting of the Pandemic Commission of the Government of the Slovak Republic on 11 August the Minister of Health of the Slovak Republic announced that there was a real threat of a second wave of the COVID-19 pandemic due to the growing number of infected and hospitalised persons. Residents were challenged to observe strict hygienic habits, maintain adequate distance, and sufficiently cover the upper respiratory tract when staying indoors. At that point, the Pandemic Plan of the Slovak Republic was adopted at the meeting of the Pandemic Commission of the Government of the Slovak Republic. This plan was divided into four phases. In terms of its content, Slovakia immediately entered the first phase, which consisted of the general preparedness of selected hospitals, the allocation of hospital facilities for the hospitalised so-called 'COVID patients' and monitoring the daily epidemiological

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34 Information from the Ministry of Investments, Regional Development and Informatization of the Slovak Republic. Available at: <https://bit.ly/3bLmjVE>.

35 Information from the Ministry of Investments, Regional Development and Informatization of the Slovak Republic. Available at: <https://korona.gov.sk/prijate-opatrenia/>.

36 Information from the Ministry of Education, Science, Research and Sport of the Slovak Republic. Available at: <https://bit.ly/3ohOt0n>.

situation by regional public health authorities. The second phase would occur when the number of infected persons increased or in the event of a deteriorating epidemiological situation resulting in the overcrowding of hospitals' infectious departments. In the third phase, the plan was to re-declare a state of emergency when occupancy reached 75% in the infectious departments of hospitals. The fourth phase was characterised by a gradual return to the interpandemic period.<sup>37</sup>

At the beginning of September, the Pandemic Commission of the Government of the Slovak Republic introduced what was termed the traffic light of districts. Based on the concept of traffic lights, the districts were divided into green, orange, and red zones. In districts in the orange and red zones (in addition to the measures in force across the entire territory of Slovakia), stricter measures were applied, which primarily concerned the organisation of mass events.<sup>38</sup> In the second half of September, almost all districts in the Slovak Republic were classified as orange and red zones because of the growing number of infected people.

#### **4. The second wave of coronavirus in the territory of the Slovak Republic from the perspective of the most important facts and legally relevant events**

The second wave of SARS-CoV-2 proved to be a serious problem in the middle of the summer and eventually became a substantial threat in the Slovak Republic. The number of patients rose unceasingly, and new records were broken daily in regard to the number of sick and infected people. As the condition of infected persons in the second half of September was worsening, a debate began regarding the possibility of re-declaring a state of emergency.

After negotiations, the Central Crisis Management Staff recommended that the Government of the Slovak Republic declare a repeated state of emergency. Based on these recommendations, the Government of the Slovak Republic decided to declare a state of emergency from 1 October but this time, only for a period of 45 days.<sup>39</sup> As of that date, a new measure of the Public Health Authority of the Slovak Republic came into force, on the basis of which stricter conditions were introduced concerning the wearing of protective masks, respirators, or other suitable coverings of the upper respiratory tract, hygienic provisions on the part of shops and facilities, and stricter travel conditions.<sup>40</sup>

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37 Information from the Public Health Authority of the Slovak Republic. Available at: <https://bit.ly/3BKnFu9>.

38 Information from the Ministry of Health of the Slovak Republic. Available at: <https://bit.ly/3k3y8uP>.

39 Press release of the Ministry of Interior of the Slovak Republic. Available at: <https://bit.ly/3GPINHY>.

40 Measure of the Public Health Authority of the Slovak Republic No. OLP/7694/2020. Available at: <https://bit.ly/3CNXLqR>.

In regard to this issue, a proposal was submitted to assess the constitutionality of the state of emergency, declared on 1 October 2020; the proposal was issued by the First Deputy Prosecutor General of the Slovak Republic and a group of deputies who objected to the formal and factual shortcomings of the government's resolution to declare a state of emergency. They blamed the resolution on the declaration of a state of emergency because the reason for its issuance was not made clear and because the affected area in which it was to apply was not precisely defined. The group also argued that the situation at the time of the declaration of a state of emergency was not such that a state of emergency could be declared. Based on the statistics of the number of infected and sick persons as well as the number of deaths in connection with COVID-19, it is unquestionable that, in the Slovak Republic, the life and health of person was at risk in connection with the emergence of the COVID-19 pandemic. In the proceedings on compliance with the decision of the declaration of a state of emergency with the Constitution of the Slovak Republic, the Constitutional Court of the Slovak Republic ruled that the contested resolution of the government of the Slovak Republic on the declaration of a state of emergency as well as related government regulation were in accordance with the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis. The Constitutional Court of the Slovak Republic stated that the government had not declared a state of emergency without having a basic rational support point for fulfilling the conditions under Article 5 (1) of the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis and had not declared it on grounds other than those permitted by this provision. The government had also met the formal conditions for declaring a state of emergency. The petitioners did not provide any facts or arguments that would signal the obvious excessiveness of the state of emergency or the possibility of its abuse, and the Constitutional Court of the Slovak Republic did not otherwise determine the existence of such facts. Thus, the government did not violate the designated articles of the constitution and the constitutional act; therefore, the contested government resolution was deemed to be in accordance with the constitution and the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis. The Constitutional Court of the Slovak Republic stated that it must always be judicious in order to declare a state of emergency from the point of view of the Constitution and the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis. A state of emergency may be declared only under the conditions specified in Article 5 (1) of the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis. A state of emergency can only be declared on the basis of statutory reasons, and the assessment of whether these reasons have occurred and whether they require a declaration of a state of emergency also requires expert, conceptual, and ultimately political consideration. Therefore, the Constitutional Court of the Slovak Republic declared that the government was in a better position to assess such circumstances and was democratically accountable for such an assessment. The Constitutional Court of the Slovak Republic rebuked the government's resolution on

declaring a state of emergency with certain shortcomings, which, however, did not affect its constitutionality. However, the Constitutional Court of the Slovak Republic interpreted the provisions of the Constitutional Act on State Security in Time of War, State of War, State of Emergency, and State of Crisis that required this to remove some ambiguities in regard to declaring a state of emergency and deciding on restrictions on fundamental rights and government obligations on the basis of this constitutional law. The Constitutional Court accepted the reason for declaring a state of emergency and confirmed that it was declared for the entire territory of the Slovak Republic.<sup>41</sup>

In view of the increasing number of infected persons, despite the stricter measures introduced, the Central Crisis Staff of the Slovak Republic determined that anti-epidemic measures need to be tightened further. As of 15 October wearing suitable alternatives to cover the upper respiratory tract outdoors was made obligatory. Mass events were banned, and fitness centres, wellness centres, swimming pools, saunas, and aquaparks were closed as they were during springtime. Food consumption within the dining areas of restaurants was banned; meals could only be consumed outdoors, or people could take their food packed. The number of people permitted in shops and malls was also limited.<sup>42</sup>

On 17 October the government made an important public announcement regarding preparations for mass COVID-19 testing of the population in the Slovak Republic, assuming two rounds of testing to be operated on a voluntary basis. Soldiers, police officers, and paramedics were involved in the implementation of mass testing. The plan was to carry out the announced testing using antigen tests, which were free of charge for the participants.<sup>43</sup>

Due to the deteriorating situation, the previously announced mass testing had to be conducted urgently, particularly in the northern portion of the Slovak Republic. First, pilot tests were conducted on the residents of four northern districts. The testing took place from 23 to 25 October and was relatively successful in terms of the detection of positive cases of infection.<sup>44</sup> Those who wanted to be tested had to travel to the collection point, where they then had to identify themselves with an identification document, perform basic hygienic instructions such as hand disinfection and nose blowing, and then endure a nasopharyngeal swab. Test participants obtained the results of the samples with a maximum delay of up to half an hour. They then received a certificate in a sealed envelope with the result of the sample, which contained instructions on the back if the person tested positive. In such cases, they had to remain in a domestic quarantine for 10 days along with anyone living in the same household. Persons who did not participate in the testing had to stay in home isolation for 10 days.

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41 Judgment of the Constitutional Court of the Slovak Republic of 14 October 2020, file no. PL. ÚS 22/2020-104

42 Press release of the Ministry of Interior of the Slovak Republic. Online: <https://bit.ly/3EQWkIT>.

43 Information from the Government Office of the Slovak Republic. Available at: <https://bit.ly/3GVtBUO>.

44 Press release of the Ministry of Interior of the Slovak Republic. Available at: <https://bit.ly/2ZYiCJG>.

During the time of the pilot testing (24 October to 1 November), a curfew was applied throughout Slovakia, with the exception of travelling to the testing locations or work, escorting a child or a close person, travelling to ensure the necessities for life, and staying in nature, though only within the district of residence. Stricter rules were applied for the districts participating in the pilot test, which consisted of proof by way of a negative certificate if one wished to apply one of these exceptions during the curfew.<sup>45</sup>

The announced plans for the preparation of nationwide COVID-19 testing of the population in the Slovak Republic, assuming two rounds of testing, were confirmed with specific dates. For this reason, after the pilot testing, preparations began for the realisation of the first round of comprehensive testing, which was scheduled for 31 October and 1 November followed by preparations for the realisation of the second round of comprehensive testing, which was scheduled for 7 and 8 November.<sup>46</sup>

Effective beginning 26 October regular schooling was suspended for an indefinite period, excepting primary school pupils and children who attended kindergartens and nurseries. All other students had to switch back to the form of distance learning.<sup>47</sup>

The first round of nationwide testing began on 31 October at 7:00 a.m. and lasted until the evening of the following day. Several complications occurred at some of the testing points, but eventually, all sites were active. Thus, the rules that were applied during the pilot testing of the most affected districts entered into force throughout the entire territory of the Slovak Republic. After the first round of comprehensive testing, police officers and soldiers were entitled to request that people prove their health with a test certificate or a private certificate from a PCR test. If the person in question did not carry a certificate, they risked receiving a fine of up to 1659 euros.<sup>48</sup>

The second round of nationwide testing of the population on 7 and 8 November was carried out in only 45 districts, which, due to the large number of infected people, were marked as red districts. It was also possible for residents of different districts to be tested voluntarily in one of these 45 districts.<sup>49</sup> In the red districts, a negative test certificate from the second round of nationwide population testing was subsequently required, while in green districts, a certificate from the first round of nationwide population testing was sufficient.<sup>50</sup>

During a meeting of the Central Crisis Staff of the Slovak Republic, a plan for a third round of testing of the population (on 21 and 22 November) was approved, but

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45 Press release of the Ministry of Interior of the Slovak Republic. Available at: <https://bit.ly/3nT96iU>.

46 Press release of the Ministry of Interior of the Slovak Republic. Available at: <https://bit.ly/3BLrK1m>.

47 Decision of the Minister of Education, Science, Research and Sport of the Slovak Republic No. 2020/17949:1-A1810. Available at: <https://www.minedu.sk/data/att/17698.pdf>.

48 Press release of the Ministry of Interior of the Slovak Republic. Available at: <https://bit.ly/3bM1ut7>.

49 Press release of the Ministry of Health of the Slovak Republic. Available at: <https://bit.ly/3GQobL1>.

50 Information from the National Health Portal. Available at: <https://bit.ly/3BORazU>.



this time, it was to take place only in 458 selected cities and municipalities in which the percentage of infected people exceeded a set limit. A third population test was conducted according to the plan.<sup>51</sup>

On 11 November the Government of the Slovak Republic reached a decision on extending the state of emergency for another 45 days, which was declared on 1 October.<sup>52</sup> This step taken by the Slovak government raised a number of questions and a feeling of injustice among experts and the lay public alike. The reason for this was that the provision of the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis did not include the extension of the state of emergency. It should also be noted that although the goodwill of the government did not exceed the limit of 90 days enshrined in the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis, the correctness of the decision to extend the state of emergency and, in particular, the compliance of such a decision with the constitutional law was questionable. It is obvious that, for the aforementioned reasons, the drafting of an amendment to the Constitutional Act had begun, which included the possibility of extending the state of emergency, repeatedly, if needed.

On 16 November, a number of previous measures were lifted again: selected theatres as well as film, music, and other artistic performances could be opened. Fitness centres and swimming pools were also opened with a capacity limit of six people. Some sporting events and church visits were permitted as well. Naturally, it was necessary to follow strict hygiene rules. Milder measures were also related to the borders and border controls.<sup>53</sup>

On 17 November growing public dissatisfaction resulted in anti-government protests against the measures and the government itself, at which many members of the opposition spoke, accompanied by thousands of people demanding their rights on the streets of the capital and other Slovak cities.

Because of the steadily increasing number of people infected with COVID-19, on 16 December, the government decided to impose a lockdown of the country and reintroduce a curfew beginning on 19 December to tighten the anti-epidemic measures until 10 January 2021 that is, for 23 days.<sup>54</sup>

The end of 2020 brought several interesting facts to the forefront. On 28 December, an amendment to the Constitutional Act on State Security at the Time of War, State of War, State of Emergency, and State of Crisis was approved, into which the above-mentioned possibility of extending the state of emergency was introduced. Until that

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51 Information from the Ministry of Education, Science, Research and Sport of the Slovak Republic. Available at: <https://bit.ly/301po1h>.

52 Information from the Government Office of the Slovak Republic. Available at: <https://bit.ly/2ZWZgEF>.

53 Press release of the Ministry of Health of the Slovak Republic. Available at: <https://bit.ly/3GSAx1P>.

54 Press release of the Ministry of Interior of the Slovak Republic. Available at: <https://bit.ly/3BN218w>.

point, it was absent from the previously mentioned Constitutional Act.<sup>55</sup> One day earlier, on 27 December a crucial step was taken against COVID-19: the first vaccine was given to the President of the Slovak Republic. She believes that vaccination may be the only way to defeat the virus and return life to normal. I thoroughly agree with this idea.

## 5. Conclusion

During the nearly year-long fight against the COVID-19 pandemic, numerous national and supranational institutions highlighted the importance of respecting people's fundamental rights and freedoms. The measures that had to be introduced (whether in the Slovak Republic or in other countries around the world) were borderline admissible. The significant impact of state authorities' actions on the prevention of the spread of COVID-19 and on the number of infected people was inseparable as a highly sensitive topic regarding human life and health in society. With regard to the need to respect fundamental rights and freedoms, the decisions taken and the measures introduced were, at times, on very thin ice, and not everyone agreed with them.

With respect to fundamental rights and freedoms, the actions of public authorities still have a significant impact, particularly during the current situation, which continues to be determined by the pandemic. The influence of public administration helps regulate unfavourable factors caused by individual critical situations, which would certainly not be possible to achieve without its action, even if people engaged in independent disciplined efforts.

As stated in the article, with the restrictions adopted, which were permissible because of the multi-dimensional objective of protecting human life and health, it was still necessary to consider the interrelationship, proportionality, and rate between that objective and the means of protection used and their reasonable application so that they can facilitate the elimination of this dangerous threat. However, with regard to the Slovak Republic's obligation to take measures against the spread of the pandemic, fundamental rights and freedoms must remain in focus, while the mutual application of the principle of proportionality must not be neglected in accordance with the decisions taken.

Last but not least, I would like to state that in the event of any violation or presumption of violation of national law regulation, which enshrines the guarantee of respect for fundamental rights and freedoms or such supranational regulation, signed by the Slovak Republic, it is possible to turn to several institutions for the protection of rights, including the general courts, the Constitutional Court of the Slovak Republic, the Public Defender of Rights, and the Slovak National Centre for Human Rights, and with regard to membership in the European Union and the territorial location of the

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<sup>55</sup> Constitutional Act No. 414/2020 Coll. amending the consolidated Act No. 227/2002 Coll. on State Security at the Time of War, State of War, State of Emergency, and State of Crisis as amended.

Slovak Republic, the Court of Justice of the European Union and the European Court of Human Rights must also be mentioned.

In conclusion, I would like to recall the idea of the former President of the United States, John Fitzgerald Kennedy, who said, *'The rights of every man are diminished when the rights of one man are threatened.'*

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