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REPORT

PHASE TWO OF COVID-19 RESPONSES ACROSS THE EU – THE RULE OF LAW STRESS TEST CONTINUED

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SUMMARY

This report was written by Théo Fournier and Michael Meyer-Resende. The authors of country chapters are acknowledged there.

Across the EU restrictions to human rights were gradually lifted until 10 June (the end date of the period this report covers), but some restrictions were maintained in all EU member states (see overview table below). Serious restrictions are now typically imposed only in small geographic areas where covid-19 outbreaks are registered. Nevertheless, the risk of a second wave of widespread infections is much discussed. If it materialises, member states should avoid the legal uncertainties and improvisations which characterised many legal responses in March (see previous [Briefing Paper](#)), when the pandemic broke out in Europe.

The pandemic cast a spotlight on member states' legal responses to a health crisis (see overviews on each member state in the second chapter of this report). Thirteen member states invoked a "state of emergency" or similar emergency framework. Fourteen member states did not apply a state of emergency in the strict sense but imposed restrictions on the basis of legislation dealing with combating infectious diseases or civil protection. The legal solutions chosen did not always correspond to the gravity of the situation nor the level of restrictions imposed. For example, Finland called a state of emergency but its restrictions were less severe than those in Germany which did not call a state of emergency. The legal choices were rather based on legal traditions and available legal bases.

"States of emergency" have a bad reputation because they are often abused by authoritarian regimes. They do have the advantage, however, of clearly signalling that a special legal situation requiring exceptionally strict limitations is in place and also signalling when that situation has passed (when they are lifted). In countries without states of emergency, scholars have frequently warned against the drifting into a *de facto* state of emergency without clear signalling by the government. There are [different views](#) on this issue which deserves deeper debate across the EU.

Member states should consider reinforcing sharing competencies on public health at the EU level while also streamlining their own legal responses.

THE CURRENT HUMAN RIGHTS SITUATION (STATUS: 10 JUNE)

By 10 June¹ the human rights situation across the EU was not back to its pre-pandemic state. Significant restrictions remained, but were lighter than six weeks earlier, reflecting the decrease in infections.

Only Ireland maintained significant restrictions (border restrictions, and very significant restrictions on freedom of assembly, even if the government *de facto* permitted some demonstrations). It was the only country still limiting freedom of movement within the country and prohibiting the opening of certain businesses. Ireland's proximity to the UK explains these levels of restrictions. Belgium, Italy, Spain, Hungary

and France still maintained some significant restrictions, especially on freedom of assembly (prohibited for large groups), the right to education or the freedom of business. In most EU states education services were open and freedom of assembly allowed for larger groups (mostly between 100 and 500 people). At the other end of the spectrum, Croatia became the least restrictive EU country, while it was very strict before. By mid-June the Croatian government had lifted all temporary border restrictions and allowed freedom of assembly as before.

Overview of the restrictions on human rights (as of mid-June)

Low (no border restrictions, no restriction on freedom of assembly, only recommendations on social distancing): Croatia.

Moderate (border restrictions, assembly between 100 and 500, all education services open): Austria, Czech Republic, Estonia, Finland, Greece, Latvia, Lithuania, Malta, Romania, Poland, Slovakia, Slovenia, Sweden.

Significant (some border restrictions, restrictions on freedom of assembly, limited access to education services, restrictions on freedom of business): Belgium, Bulgaria, Cyprus, Denmark, France, Germany (varying regimes in the 16 federal states), Hungary, Italy, Luxembourg, Portugal, Spain, The Netherlands.

High (border restrictions, restrictions on freedom of assembly, limited access to education, restrictions on freedom of business, restrictions on freedom of movement): Ireland.

STATE(S) OF EMERGENCY

The extent of human right restrictions in the context of the pandemic suggests that declaring a special, temporary regime of restrictions was appropriate to clearly signal the extraordinary situation. All EU member states adopted or applied special legislation to deal with the crisis, but there are significant differences in how they did so.

Thirteen states declared an official state of emergency. Some, like Bulgaria and France, created a new state of emergency at the very beginning of the crisis. Others applied a broader emergency framework either based on ordinary legislation (Czech Republic, Italy, Estonia, Finland, Latvia, Slovakia) or based on the Constitution (Portugal, Spain, Luxembourg, Romania, Hungary's "state of danger").

Fourteen states did not call a state of emergency in the strict sense but instead used various special legislation. Belgium and Romania relied on existing legislation on exceptional circumstances. Greece used the procedure of "acts of legislative content" foreseen in its constitution. Most governments applied special legislation related to public health, the prevention of infectious and communicable diseases, or civil protection (Austria, Croatia, Cyprus, Denmark, Germany, Ireland, Malta, Poland, The Netherlands, Sweden, Lithuania and Slovenia).

Despite the variety of legal bases, some tendencies can be discerned. First, all the countries which officially declared a state of emergency put an explicit time limit to its application, except in Hungary where the enabling law did not include a time limitation (the law was lifted on 16 June 2020, but emergency decrees remain in force if they are not lifted by Parliament). On the contrary, a majority of countries that did not

¹ The country chapters cover the situation until 10 June 2020 and so do not reflect more recent developments that have happened between then and the publication of this report.

declare a state of emergency did not put a temporal limitation on the application of the relevant legislation (the only exceptions being Ireland, Portugal and Romania). Such a situation is problematic for human rights as any restriction must be necessary and the criteria of necessity include a time limitation.

As of early June some countries adapted their legal responses to the evolution of the situation and replaced the state of emergency with a softer legal regime (Bulgaria, Estonia, Portugal, Romania and Czech Republic). Such a decision could have been an option for other countries that decided to maintain the state of emergency despite the clear improvement of the situation.

Second, in all EU member states the application of special legislation resulted in a strengthening of the executive branch of power at the expense of the legislative. In most cases, the parliament empowered governments to adopt decrees in domains usually reserved for parliamentary legislation. In some cases, a single minister was empowered (as opposed to the government), mostly the minister of health.

Such a strengthening of executive powers is normal in times of emergency and is necessary for a swift and coordinated response to a crisis. However, it is essential that the parliament remains able to control the actions of the government. A majority of countries continue to involve the parliament in the decision-making process. However, in countries such as Bulgaria, France, Austria, Slovenia or Hungary the control of the parliament has been relatively limited. A related risk is the multiplication of decrees which can reduce legal certainty and can open space for abuses. The Hungarian government adopted 159 emergency decrees. In France and Italy the application of fines had a convoluted legal basis. The multiplication of decrees can also result in governments going beyond the legal mandates and passing legislation that is not related to the crisis (see part four of this report).

An additional problem arises when the executive passes significant responsibilities to administrative or expert bodies or seems to do so, thereby diffusing democratic accountability. In Croatia and Malta, administrative authorities had significant authority. While the passing of authority to expert authorities is an option, it needs to have a clear legal basis and it needs to be clearly communicated to the public. Instead in many member states, the public was given the impression that “experts” were making the decisions and that there may have been “no alternatives”, when in fact expert advice is rarely uniform and governments need to take the responsibility for decisions made.

Overview of the legal regime:

13 countries which declared an official state of emergency: Bulgaria (until 13 May 2020), Czech Republic (until 17 May 2020), Estonia (until 17 May 2020), Finland (until 15 June 2020), France (until 10 July 2020), Italy (until 31 July 2020), Latvia (until 10 June 2020), Luxembourg (until 24 June 2020), Portugal (from 18 March to 2 May 2020), Romania (from 16 March to 14 May 2020), Slovakia (from 15 March to 13 June 2020), Spain (until 21 June 2020), Hungary (until 16 Jun 2020)

Legal basis of the state of emergency:

- Special act adopted in direct connection with the crisis (Bulgaria, France),
- Existing legislation (Czech Republic, Italy, Estonia, Finland, Latvia, Slovakia),

- Constitution (Portugal, Spain, Luxembourg, Romania, Hungary).

14 countries without a state of emergency: Austria, Belgium, Croatia, Cyprus, Denmark, Germany, Greece, Ireland (until November 2020), Malta, Lithuania, Poland, Slovenia, Sweden, The Netherlands.

Legal basis:

- Existing legislation such as public health act/infectious and communicable diseases, health act, civil protection (Croatia, Cyprus, Denmark, Germany, Lithuania, Malta, Poland, Slovenia, Sweden, The Netherlands),
- Existing legislation on exceptional circumstances (Belgium),
- Special legislation adopted for the crisis (Austria, Ireland),
- Constitution (Greece).

THE ROLE OF COURTS IN THE EVALUATION OF THE MEASURES

Courts – ultimately constitutional courts and the high courts – are central to assessing whether human rights restrictions are necessary and proportional. This is particularly important in this specific case of a sudden and unexpected nationwide emergency leading many governments to rush decisions, often with weak parliamentary involvement and oversight. Constitutional courts could review laws in abstract, where constitutions so allow. Courts also had a central role to play in assessing the legality of measures taken. At the same time, courts were also affected by the crisis, and in many countries, their activities were reduced to urgent matters. In Poland, the administrative branch of the legal system stopped working altogether – a problematic situation given that many covid-19-related measures affected administrative justice.

In some countries, the constitutional courts or the high courts have already made decisions on specific aspects of the measures. In France, Romania and Czech Republic courts decided on the postponement of elections. In Germany, Ireland and Italy, high courts took several decisions on measures related to covid-19. In Finland, the Committee on Constitutional Law gave its opinion on every emergency decree. In many other countries, decisions on the constitutionality or the legality of the measures are pending. That is the case for Bulgaria, Croatia, Hungary, Italy, Portugal, Slovakia and Spain. In Austria, more than 70 complaints are pending.

CHALLENGES FOR THE POST-EMERGENCY PERIOD

Access to justice as a result of the suspension of court hearings

The crisis affected an overwhelming majority of member states’ justice systems, impacting more than their ability to assess covid-related matters. Governments or sometimes the judicial institutions themselves decided to limit court hearings to a strict minimum and to postpone non-urgent hearings to after the end of the emergency where no such postponements were foreseen in the law. The suspension of court hearings poses a serious challenge in terms of access to justice not only during the crisis but also after the crisis. The main risk is an increase of the backlog in justice systems which are already overburdened (Italy, France, Slovakia). In some countries such as France, the government decided to prolong preliminary detentions. The judicial Supreme Court invalidated this measure, but in the meantime, it affected many detainees.

The legal basis of human rights restrictions

Even if considerably decreased, human rights restrictions remain a reality across the EU. Also, the risk of a second wave of the epidemic is

present in official discourses. This raises the question of legal bases for current and future human rights restrictions. It is not always clear on what basis restrictions continue in countries that have lifted the state of emergency. In states that have continued the state of emergency into July, one could question the necessity given the considerable improvement of the pandemic situation.

Another key question is the anticipation of a second wave: are countries going to repeat the same legal strategy? Or are they going to adapt their legal arrangements? In Bulgaria, Latvia and Estonia, parliaments have already amended emergency legislation and created special legal regimes. Similar discussions are ongoing in Finland and in France.

Potential impacts of the exceptional measures on rule of law principles

One of the most obvious risks to the rule of law is corruption in the context of covid-19 measures. In the early days of the crisis, some expenditure was made at great speed, raising concerns in Slovenia, Romania, Bulgaria and Hungary (see the previous DRI Briefing Paper) and now huge amounts of public money are being invested to revive the economies across Europe. Here too speed plays a role – the funds need to be invested fast to make a difference.

Another risk relates to the separation of powers. In some cases, governments took the opportunity of the crisis to adopt measures unrelated to covid-19. In Poland, the government introduced changes to laws that have little to do with the pandemic. For example, an amendment of the criminal code increased penalties for offences like petty theft, facilitating an illegal abortion or slandering the President. After postponing the election to 28 June, the Polish government also changed the electoral arrangements in ways that made voting abroad more difficult. In Slovakia, the government brought changes to the Judicial Council Law to modify the termination of the members' mandates. In Hungary, several of the 159 emergency decrees had no relation to the crisis.

The third deviation concerns the long-lasting effects of exceptional measures beyond the stated purpose. Emergency rules should not result in lasting legal changes unrelated to similar emergencies.

In Bulgaria, the right of police to collect traffic data without judicial review has remained in place. In Slovenia, the government took the opportunity of the crisis to expand police powers beyond the necessity of this crisis. In Hungary, the government created special economic zones and modified the conditions for information requests. In Malta, the crisis has served as a distraction from pre-existing rule-of-law problems (separation of powers, independent judiciary). In France, there are concerns about the gathering and centralisation of personal data through tracking even after the end of the emergency. In Luxembourg, the government authorised an extension of working hours up to 60 hours per week. Criticism arose on the necessity of this measure and on its temporal limitation. Similar issues might appear in other countries with the shift from health emergency to economic emergency.

Country	Label, type of legislation and duration	Main authority in charge	Court review of emergency legislation	Level of human rights restrictions	Potential effects on the rule of law after the crisis
Austria	No state of emergency , no explicit time limit	Federal and state governments (without strict monitoring of the parliament)	More than 70 appeals pending at the constitutional court despite the partial suspension of court proceedings	Moderate	The government has shown few concerns for constitutional law despite numerous criticisms in this regard.
Belgium	No state of emergency , decrees of the Federal Minister of Security and Home Affairs and procedure of "Special Powers Decree"	Federal Minister of Security and Home Affairs, federal and state governments (with a suspension of parliaments until April)	Suspension of court proceedings until 30 June, no particular review of measures	Significant	
Bulgaria	State of emergency , law on the state of emergency (March 2020), until 13 May 2020 Extraordinary epidemiological circumstances , Amendments to the Law on Health (May 2020), until 13 July 2020	Government via decrees (Parliament's activities suspended during the state of emergency)	Amendments to the law on health currently challenged in front of the constitutional court	Significant	The right of police to collect traffic data without judicial review remains. High risk of corruption.
Croatia	No official state of emergency , amended versions of the Law on Civil Protection and the Law on Prevention of Infectious Diseases, no explicit time limit	The Civil Protection Authority via administrative decisions	Many of the authority's decisions have already been subject to constitutional challenges, currently pending	Low	Budgetary concerns seem to have prevailed over concerns for public health.
Cyprus	No official state of emergency , article 4 of The Infectious Diseases Law (1960), no explicit time limit	Minister of Health via decrees	No review (courts suspended until 4 June)	Significant	
Czech Republic	State of emergency , Constitutional Act on the Security of the Czech Republic, from 12 March to 17 May A new legal regime is under discussion	Government resolutions and decrees of the Minister of Health (Parliament under the state of legislative emergency)	The supreme administrative court ruled against the cancellation of by-elections, review of numerous government resolutions and ministerial decrees	Moderate	
Denmark	No official state of emergency , amended version of the Danish epidemic act (March 2020), until 1 March 2021	Government via decrees (with the involvement of Parliament through broad political agreements)	Review of the cases involving temporal statutory limitations, private initiatives to monitor the human rights situation	Significant	

Estonia	State of emergency , amended Emergency Act, until 17 May 2020	Government via decrees (without suspension of Parliament)	No review	Moderate	
	Risk of emergency , amended Emergency Act, no time limit				
Finland	State of emergency , Emergency Powers Act, until 15 June	Government via decrees, Parliament via normal procedure and recommendations	Several complaints submitted to the Chancellor of Justice for the parliamentary Ombudsman, review of the Committee on Constitutional Law and public monitoring	Moderate	Restrictions might continue via simple approvals of memoranda prepared by the Border Guard Agency and the Ministry of Interior, some issues around the contact tracing app.
France	State of public health emergency , amended version of the Code of Public Health, until July 10	Government via decrees, Parliament for the prolongation of the state of health emergency	Several complaints addressed to the Constitutional Court and the two Supreme Courts (judicial and administrative)	Significant	
Germany	No official state of emergency , amended version of the Infectious Diseases Protection Act.	Governments of the 16 states and central government for coordination	More than hundred 140 cases decided by the courts	From moderate to significant, differing across 16 federal states	
Greece	No official state of emergency , acts of legislative content on the basis of Art. 44§1 of the Constitution, explicit time limit	Government via decrees with a monitoring of Parliament	No review	Moderate	
Hungary	Constitutional state of danger , article 53 of the Constitution, no time limit	Government via decrees after authorisation of Parliament (via Enabling Act), 159 decrees until 10 June	One case pending before the Constitutional Court regarding the amendment of the Criminal Code	Moderate	Questions about the amendment of the criminal code, the creation of special economic zones, and a decree modifying the conditions of information requests. The parliaments will decide on the continuation of some measures after the end of the state of danger.
Ireland	No official state of emergency , Health Act 2020 and Emergency Measures in the Public Interest Act 2020, until November 2020	Government via decrees and without subsequent parliamentary approval	One high profile case challenged the constitutionality of measures without success	High	
Italy	State of emergency , Law on Civil Protection, until 31 July	Government via decrees with retrospective approval of Parliament, regulations and administrative measures at the sub-state level	In various occasions courts have overturned the restrictive measures. The issue of procedural guarantees for remote hearings in criminal law is not before the Constitutional Court	Significant	Interruptions of court activities are expected to increase the already serious backlog of cases.

Latvia	State of emergency , Law on Emergency Situation and State of Exception, until 10 June Special legal regime , Law on the Management of Covid-19 Infection Prevalence and law on the Suppression of Consequences of Covid-19 Infection Prevalence, since 10 June and without time limit	The government was entitled to rule by decree but nevertheless introduced measures on the basis of ordinary laws	No review	Moderate	The new regime is not limited in time and the government must report on the risk to Parliament at least every three months. Only Parliament is entitled to amend the law or repeal it but going against the government is unlikely, even if a new coalition is possible within the next month.
Lithuania	No state of emergency , Law on Civil Protection and Law on Control and Prevention of Contagious Diseases, no time limit	The Minister of Health via regulations	No review and suspension of court activities	Moderate	
Luxembourg	State of emergency , Article 32 (4) of the Constitution, until 24 June 2020	The government via regulations (the Parliament kept functioning to its full capacity)	No review and suspension of court activities	Significant	There are some concerns about the expansion of legal working hours (now up to 60 hours a week as a response to the economic crisis).
Malta	No state of emergency , Public Health Act, no time limit	The Minister of Health and the Superintendent of Public Health via regulations	No review	Moderate	The government's attitude implies an attempt to gloss over grave concerns by confusing the return to normality from covid-19 with the return to normality from corruption. In this sense, the crisis has served as a distraction from extant problems rather than an aggravation.
The Netherlands	No state of emergency , Public Health Act, no time limit	The minister of public health and mayors via emergency regulations	No review	Significant	A formal emergency law will be debated in parliaments if there is a renewed flaring up of covid-19. The draft law is raising serious concerns from the National Ombudsman, the National Human Rights Institution and leading constitutional law experts.
Poland	State of the epidemic , Prevention of Infectious Diseases Act (2008), no explicit time limit	The government via decrees	No review even if the top courts continue to function normally	Moderate	A new election was called for 28 June. Concerns persist regarding the equal treatment of new candidates.
Romania	State of emergency , emergency ordinance 21/2004, from 16 March to 14 May State of alert , emergency ordinance 21/2004. From 18 May to 17 July	Government via decrees	Review of the state of alert by the Constitutional Court – restriction of the court's activities	Moderate	High risk of corruption.

Portugal	State of calamity , Framework Law and Civil Protection, Framework Health Law and the Law on Public Vigilance on Health Risks, until 18 March Constitutional state of emergency , article 19 of the Constitution, until 2 May State of calamity , until 14 June	Government under the state of calamity, government and President of the Republic under the constitutional state of emergency (with severely limited parliamentary activity)	Pending cases on the Constitutional Court and in front of the Ombudsperson	Significant	The measures and the litigation resulting from it will inevitably flood the judicial system for years to come. The reduced oversight for public expenditure added increasing risks of corruption and inefficiency in a country already suffering from structural deficits in public sector accountability.
Slovakia	Emergency situation , Stephen Protection of the Population Act until 15 March State of emergency , State Security at the Time of War, State of War, State of Emergency and State of Crisis Act, until 13 June	Government via decrees, Public Health Authority	Several cases are currently pending in front of the Constitutional Court (collection of data, shortened legislative procedure, mandatory state quarantine)	Moderate	The shortened procedure was used to bring changes in the Judicial Council Law concerning the termination of the members' mandates.
Slovenia	No state of emergency , amended version of the Communicable Diseases Act, no explicit time limit	Government via decrees and a passive role of Parliament	The constitutionality of the decrees has been challenged before the Constitutional Court	Moderate	Some measures expanding police powers were included in normal legislation. Alleged risk of corruption at the local level.
Spain	State of alarm , article 116 of the Constitution and Organic Law on States of Alarm Exception and Siege, until 21 June	Declaration by the executive via decree and ratification by one of the chambers	Pending case on the constitutionality of the decree in front of the Constitutional Court	Significant	
Sweden	No state of emergency , amended version of Communicable Diseases Act	Government via regulations with Parliament's approval	No restriction of the courts' activities but no pending cases on the constitutionality of the measures	Moderate	

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AUSTRIA (LUKAS WIESER)

SPECIAL LEGAL REGIME

It is key to the understanding of the legal situation concerning covid-19 in Austria that no constitutional state of emergency has been called. This means that neither have competences been centralised, nor have the regular procedures for norm creation been overridden. Thus, all covid-19 acts and ordinances were created by the respectively competent legislators and agencies under the constitutional division of competences. Likewise, each minister remained competent for the carrying out of measures within their portfolio. For example, ordinances addressing matters of schooling (such as A levels) were issued by the Minister of Education, while ordinances concerning the reduction of working hours by the Minister of Employment.

Since due to its limited scope the existing Epidemic Diseases Act was deemed inadequate for the handling of the crisis, a whole new body of (statutory) law was passed, including more than 10 federal covid-19 acts. Under these acts, the respectively competent federal, state and municipal authorities issued countless ordinances addressing various issues concerning covid-19. The entirety of all these acts and ordinances and their far-reaching effects amounted to a de facto state of emergency.

Since all constitutional provisions applied at all times during the crisis, the various covid-19 acts and ordinances must all fully comply with the Constitution. The overall constitutionality of the measures taken is contestable, with more than 70 appeals pending at the Constitutional Court. Issues raised mainly concern the reasonability and proportionality of forced closure of businesses and services.

MEASURES AFFECTING RIGHTS OF CITIZENS

Although not exceptional from a constitutional point of view, the measures have proven highly intrusive from a rights perspective. With a few exemptions (shopping for necessities, work, taking walks with household members) people were required to stay indoors; schools, universities, shops (except for supermarkets), restaurants and bars etc. were closed, causing an almost complete standstill of public and private life in the country.

In the initial stage of the lockdown, assemblies were banned (permitted again since 1 May), almost all businesses as well as schools/universities were closed and elections postponed. For business owners, an amendment replaced the entitlement to compensation in cases of enforced closure with the possibility to apply for subsidies. Moreover, the gradual easing of the measures meant some businesses could reopen sooner than others, raising issues regarding the justification of the differentiations applied.

Rights affected by the covid-19 measures also include the right to education, with schools/universities closed as well as the right to health due to the suspension of e.g. surgeries. However, it must be stated that the closing of universities and the suspension of health services were never formally included in any act or ordinance. For example, the closing of universities was only recommended to universities by the Minister of Education.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

From an institutional viewpoint court proceedings were partially halted (1st Covid-19 Judiciary Accompanying Act) and Parliament, while formally unaffected, confined itself to "rubber-stamping" governmental measures. Also, in the drafting of the Covid-19 Measures Act a proposal to involve Parliament's main committee in the creation of ministerial ordinances restricting movement was rejected over fears of Parliament's possible inability to convene.

While the measures did not substantially affect the formal functioning of the democratic state, the disregard for constitutional law exhibited by the government must be qualified as problematic. Chancellor Sebastian Kurz has labelled well-grounded constitutionally based criticisms of the lockdown as "legal sophistry". In the political debate, the government has been justifying its actions less with reference to legal arguments, but rather moral ones or arguments of necessary effectiveness. This attitude of disregard of the law is exemplified by the Minister of Health's response to objections that the existing legal basis did not permit the prohibition of private gatherings included in a ministerial decree (Easter Decree). When faced with the criticism the Minister responded by simply stating that such a prohibition had never existed "in the strict sense of the law", dubbing the debate "bizarre".

BELGIUM (SARAH GANTY)

The covid-19 health crisis happened in the context of a political crisis in Belgium. As the virus was spreading in the EU in early March, political parties were still negotiating the formation of a federal government. In this context, a new minority government was appointed by King Philippe I on 17 March. It received the support of a large majority of the members of the Chamber of Representatives on 19 March for the duration of the health crisis, and on the condition that the parties which had voted for the government would be kept informed of decisions taken by the government.

SPECIAL LEGAL REGIME AND MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Belgium does not have any emergency powers. Instead, decrees of the Federal Minister of Security and Home Affairs and the procedure of "Special Powers Decree" enabled the adoption of exceptional measures with a result comparable to a state of emergency.

On 13, 18 and 23 of March and 3, 17 and 30 of April, the Federal Minister of Security and Home Affairs adopted ministerial decrees in order to give a unified answer to limit the spread of the virus and impose quarantine measures on the population (e.g. see here). Indeed, the crisis affects many fields which are spread between the federal state, regions and communities such as health, education and economy. The competence of the Minister was justified by the jurisdiction of the Home Office in civil protection, police function and civil security. It allowed him to bypass the competences attributed to regions and communities in normal times. Although these ministerial decrees contain some constitutional flaws, they were adopted after consulting with federated entities and with their non-formal agreement. The main quarantine measures imposed by these decrees have effect until 30 June.

The system of Special Powers Decree was created in order for governments to adopt exceptional and urgent measures. According to this mechanism, parliamentary assemblies delegate the exercise of

powers to governments for a temporary period of time, under some conditions, such as a retroactive confirmation by the legislator. As opposed to the previous mechanism, governments can take measures for which they normally do not have any powers in several areas including public health, public order, social provision and the safeguard of the economy. In the context of covid-19, the federal state and most of the federated entities – with the exception of the Flemish and German communities – fell back on the mechanism of Special Powers Decrees. On a federal level, two legislative acts (1 and 2) of 27 March were adopted by the federal parliament granting special powers to the federal government from 30 March until 30 June. The measures adopted by the King can have a retroactive effect to 1 March, 2020. The federal government has adopted 29 Special Powers Decrees in many fields including administrative sanctions, criminal procedure, enforcement of sentences and prescriptions, time limits to act and for written procedures before courts and tribunals, mortgage credits, and health insurance. All the jurisdictions, including the Council of State, saw their activities limited and their rules adapted in April (see here, here and here for the extension; the measures were extended in May). Such measures were adopted later for the Council for Alien Law Litigation (5 May, extended on 26 May), undermining the effective remedies for migrants.

Despite the fact that some parliaments temporarily suspended or limited their activities (such as the Chamber of Representatives), they started working again in April under some safety measures.

MEASURES AFFECTING RIGHTS OF CITIZENS

If the Belgian federal and federated entities seem to have found a balance regarding institutional and constitutional difficulties, the same cannot be said for the respect of fundamental rights. The ministerial decrees imposed significant quarantine measures greatly limiting *inter alia* the freedom of movement: many places were inaccessible, people could not leave the country and had been ordered to stay at home, only being allowed to go out with family members who lived in the same household or with one friend, provided that a distance of 1.5m was respected. The federal government authorised municipalities to fine people who did not respect the measures. Moreover, the closure of restaurants and most shops, bans on group gatherings and the fact that people could be questioned at any time on where they were going, hindered freedom of association and religion, property rights, and the right to private and family life. The right to education was also affected because all schools and universities were closed, as well as socio-economic rights – such as the right to health – especially regarding hospital workers who are particularly exposed. In early May, the measures started to be slowly relaxed following a “step by step” plan, based on ministerial decrees adopted by the Minister of Security and Home Affairs. Since 11 May all shops are allowed to open, under certain conditions. Since 15 May some pupils have been allowed to go back to school. Since 8 June bars and restaurant can open under some restrictions, the ban of being on the public road has been lifted and groups of up to 10 people are allowed to meet.

BULGARIA (RADOSVETA VASSILEVA)

SPECIAL LEGAL REGIME

Between 13 March and 13 May 2020, Bulgaria was in a state of emergency (*izvunredno polojenie*) declared by Parliament. This is provided for in the Constitution and the Law on Defence and Armed

Forces, but there is very little guidance in legislation regarding what it entails. Parliament enacted a special Law on the State of Emergency containing diverse measures to govern it and to address covid-19.

On 13 May (the day the state of emergency expired), new rushed amendments to the Law on Health, which developed the concept of “extraordinary epidemiological circumstance” (*izvunredna epidemiologichna obstanovka*), entered into force. The following day, 14 May, Bulgaria’s government declared a state of extraordinary epidemiological circumstance. Bulgaria’s President challenged the amendments to the Law on Health as anti-constitutional before the Constitutional Court. On 22 May, the Constitutional Court unanimously declared the President’s submission admissible. The President’s key concerns included: 1) the state of “extraordinary epidemiological circumstance” was declared by the executive based on unclear criteria (Bulgaria is a parliamentary republic); 2) there was no limit regarding how long this state can last; 3) meanwhile, this state allows the restriction of fundamental rights such as the freedom of movement and the right to work by the executive via orders. Initially, this state was declared until 14 June. However, following a meeting of the Council of Ministers on 10 June, it was extended until 30 June.

On 13 May, amendments to the Law on the State of Emergency which was enacted to govern the covid-19 state of emergency also entered into force. In this way, while the state of emergency itself expired on 13 May, many measures enacted for its sake were extended until 13 July. Other measures such as a controversial amendment to the Law on Communication implemented through this “emergency law” have remained permanently.

MEASURES AFFECTING RIGHTS OF CITIZENS

Similarly to the state of emergency, the state of extraordinary epidemiological circumstance is characterised by legal confusion (issuing of unclear or contradictory government orders, issuing and cancelling orders on the same day), which makes it difficult for citizens to know what is legal. For instance, on 12 June, the government issued an order forbidding nightlife and celebrations with more than 10 people. On 13 June, it cancelled this order via another order.

At the time of writing, there are restrictions in place implemented via government orders. These include border restrictions (borders are closed for non-EU citizens except for citizens of Serbia, Bosnia and Herzegovina, and Montenegro), some restrictions on gatherings, and health measures requiring isolation or quarantine of certain persons. Some rights continue to be restricted via legislation enacted during the state of emergency — the right of police to gather traffic data without judicial review under the Law on Communication has remained.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament: After the state of emergency expired on 13 May 2020, Parliament returned to work. In March 2020, it had taken a decision to sit to consider “only Bills pertaining to the state of emergency” during the state of emergency, which significantly limited the scope of its work and closed the door to efficient parliamentary control of rulemaking by the executive.

Courts: During the state of emergency the work of courts was significantly curtailed. Since 13 May, courts are functioning again with a few restrictions. On 12 May 2020, the Supreme Judicial Council (SJC) issued special measures for court functioning during a pandemic.

Sittings that are normally public remain closed, which makes it difficult for civil society to monitor them. Generally, the courts' work has slowed down because of the government-imposed health measures and the measures by the SJC such as working from home and social distancing. E-justice is poorly developed and physical access to courts is currently forbidden for citizens unless they have a hearing.

Court review of emergency legislation: The amendments developing the concept of extraordinary epidemiological circumstance are currently being challenged before the Constitutional Court by the President; the largest opposition party (BSP) has challenged the controversial amendments to the Law on Electronic Communication carried out during the state of emergency before the same court; according to the rules of the Constitutional Court, a decision should be handed down within two months after the Court deems that the evidence gathered is sufficient.

Other bodies: An emergency plan was developed by the central government and a specially set up task force; there have been multiple reports of corruption such as manipulating the numbers of affected people, deliberately not testing people who could be affected such as front-line workers, dual standards in implementing and enforcing the health measures.

CROATIA (NIKA BAČIĆ SELANEC)

SPECIAL LEGAL REGIME AND MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Croatia never activated its constitutional framework for emergency situations to respond to the threats posed by the pandemic (the Constitution, in a nutshell, requires that individual rights can in the event of a "natural disaster" be limited by a two-thirds parliamentary majority). Instead, the government decided to rely on existing statutes on civil protection and prevention of infectious diseases, making them subject to legislative amendments necessary to provide an institutional framework responding to covid-19. The body thereby authorised to introduce epidemiological measures was the Civil Protection Authority, a government-appointed committee composed of representatives of the ministerial cabinets and national civil protection units. Parliament approved the amendments in regular legislative procedures, as it functioned normally throughout the period of the pandemic. The judicial system, in contrast, suffered some delays as the Supreme Court ordered the postponement of all hearings except in cases of urgency.

The Civil Protection Authority was put into the spotlight in fighting the pandemic. Its decision-making and public image were initially praised for its effectiveness in combating covid-19 (and keeping the number of cases low). Over the past few months, however, it has been dogged by a number of controversies. Formally, the legislative mandate given to the Authority to introduce measures "protecting the lives and health of citizens in specific circumstances" was described as undetermined, yet potentially vast. It was also publicly criticised for allowing severe limitations on fundamental rights without the constitutionally required safeguards. Many of the Authority's decisions have already been subject to constitutional challenges, currently pending. Moreover, the body presented to the public as composed of experts protecting public health, which served to justify the wide extent of the imposed restrictions, soon proved to be government supporters susceptible to political agendas.

MEASURES AFFECTING RIGHTS OF CITIZENS

The measures introduced in Croatia to combat covid-19 were characterised early on as some of the most rigorous in Europe considering the actual number of infections. The measures, including significant restrictions of the freedom of movement, and social and economic rights, were introduced in mid to late March. The legislation provided no rules or conditions concerning their duration nor the scope of the measures introduced. In practice, however, the Authority's decisions by administrative decision contained an in-built temporal limitation (mostly for 30 days) and were prolonged if considered necessary. Some were renewed several times, but due to the surprisingly good epidemiologic developments in the country, most measures were gradually reduced and practically eliminated by mid-June.

The process of relaxation was, in a way, also marked by extremes, and was perhaps more controversial than the introduction of the measures in the first place. Ahead of the 5 June 2020 parliamentary elections, the Authority was accused of leading the (centre-right) ruling majority's political campaign, for example, by allowing religious services much sooner than all other social gatherings or prohibiting work on Sundays and public holidays under the pretext of limiting the working hours for "epidemiological reasons".

The most problematic measure, however, pertains to the opening up of national borders, with budgetary concerns that seem to have prevailed over concerns for public health. Instead of preserving the low number of cases by setting up methods for controlled entries into the country, like many of its fellow EU member states, Croatia (with its tourism-dependent economy) opened its borders with no epidemiological safeguards imposed. On 28 May, borders were fully open for 10 Schengen countries with similar epidemiological conditions. More problematically, the Authority also allowed entry to all other foreign nationals for "personal reasons" (such as family reunification or owning real-estate), but also reasons that are "economic" in nature (including a simple tourist reservation). After several weeks of viral stagnation, the recent rise in numbers of new infections is attributed to imported cases and perhaps too lenient, politically charged decision-making. A return to stricter limitations is likely to take place after the parliamentary elections of 5 July.

CYPRUS (MIKAELLA YIATROU)

SPECIAL LEGAL REGIME

Although news outlets reported a state of emergency, this was not strictly speaking the case. If an official state of emergency had been declared, then any decrees adopted would be subject to a two-month time limit with possibility of extension. However, instead of declaring a state of emergency, a special regime was triggered pursuant to Article 4 of the Infectious Diseases Law Cap. 260 allowing the Minister of Health, by Notice authorised by the Council of Ministers, to declare the local districts of Nicosia, Limassol, Larnaca, Ammochostos and Paphos as "infected areas", and, as such, subject them to decrees adopted pursuant to Article 6 (a)-(f) of the Infectious Diseases Law. Such decrees prescribe the steps to be taken within the infected areas preventing the spread of any dangerous infectious disease and fixing the powers, duties, and fines to be imposed in enforcing the measures adopted. So far, the Minister of Health has adopted 29 such decrees. The measures of some decrees have a specific time limit of application. Others are

amended or explicitly repealed by subsequent decrees. However, new decrees do not automatically repeal previous ones. That is, the Infectious Diseases Law contains no explicit time limitation and the measures can be applicable for as long as an area is considered “infected”. The latest comprehensive decree of 5 June has relaxed the measures in place as Cyprus is entering Phase 3 of de-escalation, but does not contain an explicit time limit of application. The outlook of the Minister of Health in his latest press release, following the decision of the Council of Ministers in easing the measures for Phase 3, is that “as long as the measures of self-protection are observed there is no reason to worry”.

MEASURES AFFECTING RIGHTS OF CITIZENS

There are currently no restrictions to the freedom of movement within the Republic of Cyprus except the persisting closure of the internal border with the non-recognised Republic of Northern Cyprus and travel restrictions. While such travel restrictions have been eased with the opening of the airports, the decrees still require either a valid Sars-Cov-2 test or a molecular test upon arrival. This requirement was eased for passengers from a list of “A” countries after 19 June. Passengers who are positive to the virus must quarantine under the prescriptions of the Ministry of Health. Exceptions to the closure of the internal border are being set. Despite Cyprus entering Phase 3, freedom of assembly is still restricted. Notably, demonstrations are prohibited in public and private places. In addition, home gatherings or indoor gatherings are restricted to 10 people or to 10-people groups subject to the relevant updated guidelines. While a specific local election had been postponed to be carried out upon the removal of the restrictions, no general measures with regards to elections have been adopted. The presidential elections in the non-recognised Republic of Northern Cyprus have been postponed as a consequence of the covid-19 crisis. While schools had previously closed, schools and summer schools are currently open.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament is fulfilling its normal role either remotely through video conferences or in larger rooms limiting the number of individuals to one representative per unit. A special scientific team was consulted for adopting and easing of the restrictive measures and drafting the specific guidelines per sector. The most notable measure passed indicating potential abuse in the measures prohibits entering and exiting asylum seeker centres even after freedom of movement has been reinstated for everyone else within the Republic, causing severe controversy and reported riots by the individuals residing therein.

The operation of courts was previously suspended; however, since 4 June, the Supreme Court decided that courts can function normally subject to the relevant guidelines of the Ministry of Health. The Supreme Court’s decision was based on an evaluation of the current situation of the pandemic in Cyprus, the currently applicable decrees, the draft guidelines for the functioning of the courts by the governmental epidemiology unit, and after consulting the Pancyprian and local lawyers’ societies and district judges. Notably, the Frequently Asked Questions section on the government’s website mentions the functioning of the courts as a means to increase the credibility of enforcing stricter sanctions, such as imprisonment, as the police can file cases for immediate trial. The government’s legal service and the Ministry of Justice were within the list of essential services guaranteed during the lockdown, with the latter proposing a draft legislation of stricter sanctions as the restrictions are eased.

The government implemented measures amount to €1.2 billion to support workers, students living abroad, accommodating individuals in mandatory quarantine, testing, and the suspension of loan repayment, VAT etc. No allegations of corruption have been made so far.

CZECH REPUBLIC (ZUZANA VIKARSKA)

SPECIAL LEGAL REGIME

Pursuant to the Constitutional Act on the Security of the Czech Republic (CAS), a state of emergency can be declared by the government for a period of up to 30 days in order to protect people’s lives and health. The Chamber of Deputies may annul the government’s decision to declare a state of emergency, and any further extension thereof requires the approval of the Chamber. In response to covid-19, a state of emergency was declared on 12 March and prolonged on 9 April and 30 April, in both cases by a government resolution following prior approval of the Chamber, as required by the CAS. Although the declaration of the state of emergency was not seen as controversial, the further steps of the executive branch were challenged in courts.

The state of emergency ended on 17 May after which the country returned “to normal”. On 7 May the government presented draft legislation (Lex COVID) which should enable the Ministry of Health to adopt measures in reaction to covid-19 without a state of emergency. Parliament will discuss this draft in July 2020. Should a second wave hit the country before Lex COVID enters into force, the country will probably return to a state of emergency.

In general, there are two ways the executive may issue normative acts in cases of emergency. First, the Ministry of Health may issue decrees pursuant to the Act on Protection of Public Health (258/2000 Coll., ‘APPH’) whenever there is a threat to public health. This power is not linked to a state of emergency. Second, the government may issue resolutions pursuant to the Crisis Management Act (240/2000 Coll., ‘CMA’), but this power is strictly limited to a state of emergency or other extraordinary states foreseen in the constitutional order. During the state of emergency in 2020, the situation was governed both by government resolutions and by decrees of the Ministry of Health.

MEASURES AFFECTING RIGHTS OF CITIZENS

The executive branch imposed significant restrictions on the freedom of movement: the borders were closed and any movement within the country was prohibited, except journeys to and from work, journeys to medical facilities, family visits, and other essential journeys. This obviously caused restrictions also on the freedom of assembly (prohibition of religious services) or right to education (prohibition of teaching at all institutions). Since most services could not be provided during the state of emergency (such as shops, restaurants and hotels), the freedom to conduct business was also severely restricted. Individual freedom was also inhibited by a requirement to cover one’s mouth and nose whenever leaving home. After the state of emergency came to an end, these government resolutions no longer applied. Some of the restrictions were lifted (state borders reopened, restaurants and hotels resumed service), while others were re-adopted as Ministry decrees pursuant to the APPH (the requirement to wear face masks, some further limits to the provision of services and to the functioning of e.g. educational or medical institutions).

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament was not significantly affected by the pandemic: both chambers met regularly, working in reduced numbers that respected the relative representation of political parties. During the state of emergency, draft legal acts were discussed and adopted in a state of legislative emergency (declared on 19 March, and which lasted until the end of the state of emergency, although it is not necessarily linked to it). After 17 May, Parliament returned back to normal.

Courts have played an important role during the crisis. The first intervention came from the Supreme Administrative Court on 1 April, in reaction to the annulment of by-elections to the Senate which were to take place in March. The Court declared this decision of the government ultra vires and the by-elections took place in June. A number of government resolutions and ministerial decrees were challenged in courts. On 23 April, the Municipal Court in Prague annulled some of the restrictive measures issued by the Ministry of Health and emphasised that they should have been adopted by the government. Conversely, the Constitutional Court refused to annul the declaration of the state of emergency and the follow-up crisis measures for procedural reasons. From a citizen's point of view, most of the measures issued by the executive are immune to judicial review. This follows from a line of decisions where the Constitutional Court dismissed the complaints for lack of standing. Although the case-law is still developing, it seems that the government's measures can only be challenged by "privileged applicants" (group of MPs, president, ombudsperson, etc.). However, it should be acknowledged that courts have reacted swiftly and that their operation was not slowed down by the pandemic. Also *de facto*, there have not been any significant delays in the operation of courts, prosecution or attorneys on the Czech territory.

DENMARK (KRISTIAN CEDERVALL LAUTA)

SPECIAL LEGAL REGIME

No official state of emergency has been declared, and no such mechanism exists under the Constitution or in other legislation. The emergency management structure, placing the government as the central actor, has a legal basis in an amended version of the Danish Epidemic Act. Under the Constitution, Parliament has a wide margin to delegate power as it wishes, and accordingly the arrangement itself is constitutional. The Act was amended by Parliament in March, mainly to transfer competences from health authorities and regional epidemics commissions to the government, and to expand the mandate somewhat, including a wider scope to limit public assemblies and removing the Act's requirement to mandatory compensation. With the amendment the government was given a legal basis to issue a number of statutory orders on e.g. freedom of assembly, ordering quarantines and interfering with businesses. It is adopted under a sunset clause, and accordingly, the entire Danish Epidemic Act will automatically be suspended on 1 March 2021, unless Parliament adopts a new Act. This legal design has been subject to controversy including for the lack of parliamentary oversight, the length of the sunset clause and the specific use of the provisions. However, overall the government enjoys unprecedented popularity among the population.

The Prime Minister has been lifting restrictions continuously over three phases (a fourth, and final, phase is scheduled from 8 August) starting from 6 April (announced before Easter on 30 March), and in an

accelerating pace in particular from the expansion of Phase 2 on 28 May. The government has on numerous occasions repeated that it is taking a precautionary approach to the crisis, indicating its readiness to reintroduce measures under the Danish Epidemic Act if necessary.

MEASURES AFFECTING RIGHTS OF CITIZENS

As of 10 June, a number of restrictive measures remain in place. Higher education institutions are, with a few exceptions, still closed for students. Schools and pre-school are open again but under the observance of a strict health code. A ban of public assemblies of more than 50 remains in force; however, a large number of exceptions apply including for political assemblies, weddings and other religious events. These exceptions recently allowed for massive Black Lives Matter demonstrations, primarily in Copenhagen – reportedly with more than 15,000 people attending. Furthermore, a number of restrictions remain in force for private companies; night clubs, for example, remain closed. Restaurants and cafes operate under restrictions including adherence to a strict health code and fixed opening hours (a requirement to close at midnight). Borders remain largely closed. Tourists from Germany, Norway, and Iceland are under lighter restrictions, but all incoming travellers must document that they have a "worthy" purpose for their stay. There are no interferences with the right vote or with planned elections. Some restrictions on the freedom of movement remain in place. Mostly, however, are in the form of non-enforceable public recommendations and guidelines.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament has remained in function throughout the covid-19 response, though it has, on its own initiative, altered voting and deliberation procedures in order to reduce the spread of the disease. Parliament's constitutional status also remain intact, and the government has continuously involved Parliament through broad political agreements on the lifting of restrictions. A plan by the opposition to initiate an expert evaluation of the decisions around the lockdown appears to be underway. Furthermore, a number of private initiatives to monitor the human rights situation has been initiated by think tanks, labour unions and the bar association. No claims of human rights violations are known to have been filed to date.

No *de jure* restrictions have been enforced on courts, which have remained independent of the government in accordance with Article 3 of the Constitution. Nonetheless, courts did significantly reduce activities during the initial phases of covid-19, while giving essential cases and cases involving temporal statutory limitations (e.g. *habeas corpus*) priority. The backlog of cases gives rise to some concern, of a practical nature, about courts' ability to ensure a fair trial within a reasonable period.

The central government did, with the amendments of the Epidemic Act, remove influence from, in particular the regions, and centralised emergency management decisions (reducing the possibility of regional variations). However, the past month has seen increasing differences allowed in regional implementation. At present, despite huge government pay-outs, there are no allegations, rumours or suspicions of corruption or misuse of funds.

ESTONIA (MART SUSI)

SPECIAL LEGAL REGIME

The state of emergency due to covid-19 was announced on 12 March 2020 and lifted on 17 May 2020. The legal basis was the Emergency Act. There was wide social consensus about the necessity of the declaration of the emergency situation. Some members of the legal community initially expressed a view that there was no need for the emergency situation. They explained that it is possible to limit some basic freedoms without announcing a special regime (emergency situation), since constitutional provisions allow for the limiting of freedoms due to the need to protect public health (article 11 provides a general principle and article 47 is related to freedom of assembly).

Currently, there is no special regime. Restrictive measures – for example, the prohibition of airlines from certain countries to enter Estonian airports, the prohibition of passenger ferry traffic between Estonia and Sweden, a limit of 100 attendees at public outdoors events until 30 June, and the principle of 50% occupancy for indoor events until 30 June – are based on the amended Emergency Act, which was hastily passed by the Parliament, then announced by the President and came into force on 18 May 2020. It gives the authority for emergency risk assessment and for implementing measures to minimise this risk to the government. The Act differentiates between the state of emergency and the risk of an emergency.

The government continues to reiterate that a plan to reintroduce a special regime exists, but it could be implemented in a less restrictive way, for example by applying special measures in certain areas or institutions only.

MEASURES AFFECTING RIGHTS OF CITIZENS

Political and civil rights:

Freedom of movement inside Estonia was only restricted for the largest island, Saaremaa. Freedom of movement to exit and enter Estonia was also restricted.

Estonia derogated for the period of the emergency situation from the European Convention on Human Rights (ECHR) in respect of the following rights: the right to personal liberty and security, freedom of assembly, fair trial, right to private and family life, right to property, and right to education. The scope of the derogation was not specified. The Estonian Parliament did not discuss the necessity of the derogation, nor was the public informed beforehand. The fact that Estonia had derogated from certain provisions of the ECHR was revealed in social media and thereafter intense public debate followed for about a week.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament (and state/regional/local assemblies): The Parliament continued to function both *de jure* and *de facto* according to its normal role in a democratic society. It has been alleged that the government is using the situation to restrict the arrival of students into Estonian universities from non-EU countries, citing the unreliability of data concerning health situation in these countries. No effective remedy against this measure exists.

Functioning of courts: The courts have continued to operate both *de jure* and *de facto* as normal. The constitutionality of the emergency

measures, or of the amendments to the Emergency Act have not been challenged before the courts according to the information which is known at this time.

Other state/public bodies: All public bodies have continued to operate according to the procedures and rules which were in place before the covid-19 crisis. The only change is that public employees were allowed to work from home.

Local governments have all supported measures against the spread of the virus. Currently, there are no major concerns about governmental loans to fight the virus. The main concern related to the funding is that the financial support does not reach those in need quickly enough.

FINLAND (MARTIN SCHEININ)

SPECIAL LEGAL REGIME

On 16 March the President and Cabinet jointly concluded that covid-19 constituted an “exceptional situation” (*poikkeusolot*) on public health grounds, triggering for the first time ever the application of the Emergency Powers Act. Subsequently, the Cabinet issued decrees that activated some of the powers provided by that Act during a health emergency. All such decrees were issued for a very short period of time, usually one month. Some of them had lapsed by 10 June. A decree sealing off of the capital region with one third of the country’s population was criticised in particular for being a highly restrictive and at the same time poorly targeted measure. All remaining emergency decrees were repealed by the Cabinet on 15 June, putting an end to the state of emergency. The Emergency Powers Act worked well as its application was guided by the aim of restoring normalcy as soon as possible.

MEASURES AFFECTING RIGHTS OF CITIZENS

One set of measures, the closing of restaurants, was decided through a temporary Act of Parliament enacted pursuant to Section 23 of the Constitution on derogation from fundamental rights during a state of emergency. Their reopening, subject to restrictions, was decided through a temporary amendment of the Communicable Diseases Act, again reflecting restoration of normalcy.

Many more measures have been introduced either in the form of recommendations by the Cabinet, pursuant to generally applicable legislation such as, most importantly, the Communicable Diseases Act, or through amendments by Parliament to existing laws. These arrangements all reflect the primacy of the principle of normalcy in Finland’s approach during covid-19.

One set of measures, related to the closing of national borders, has been criticised for a lack of proper domestic legal basis and therefore as unconstitutional. Several complaints have been submitted to the Chancellor of Justice or the Parliamentary Ombudsman. The restrictions have been gradually relaxed but even in their latest iteration of 12 June and after the lifting of the state of emergency, they still represent the approach of the Cabinet issuing simple approvals of memoranda prepared by the Border Guard Agency and the Ministry of Interior, rather than amendments of legislation or issuing of by-laws such as government decrees. The clearest remaining controversy concerns the crossing of the Swedish-Finnish border. Some experts have taken the view that compulsory virus tests and quarantine decided by a doctor at

the border would be the only legal method for stopping, rather than simply checking, EU citizens coming from Sweden.

As the state of emergency was lifted as of 16 June, preparations for a “second wave” are primarily based on the possibilities provided by the Contagious Illnesses Act which is likely to be upgraded through amendments to be introduced in June or September, such as in the issue of a so-called contact tracing app (which some legal experts refer to as “proximity-alerting app”).

Except for the sealing off of the capital region for three weeks, in-country freedom of movement has been discouraged through recommendations which were very strict for the elderly. Freedom of assembly was limited by banning meetings of more than 10 people – a number that has been gradually relaxed so that even events of more than 500 people will be allowed with the proper compartmentalisation of attendees. As to other rights, many businesses were closed, schools and other educational institutions moved to distance learning, and non-urgent health and social services were postponed with the consequence of severe backlogs.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament and in particular its Committee on Constitutional Law has scrutinised all emergency decrees and has on several occasions had a real impact in constraining or redirecting the measures. The opinions of the Committee have been based on hearing independent legal experts (constitutional law professors), and the scrutiny itself has been subject to public commentary by other professors at Perustuslakiblogi (Constitutional Law Blog).

The functioning of courts has been affected as many hearings have been postponed and others have been moved online. Such measures are decided and administered by the courts themselves. The Chancellor of Justice is closely and continuously monitoring the adoption by the Cabinet of emergency measures, to a degree that concern has been expressed as to whether the institution can remain independent. The Parliamentary Ombudsman has maintained more distance but has also taken a lower profile.

As to corruption, how the public procurement of face masks was handled and what the criteria are for allocating subsidies to companies affected by covid-19 have become topics of public discussion.

FRANCE (THEO FOURNIER)

SPECIAL LEGAL REGIME

The first measures were adopted outside the scope of the state of emergency but in the application of the Code on Public Health. Because of the narrowness of the legal basis – only the minister of health could take a specific set of measures – Parliament adopted the Law of Emergency to Face the Covid-19 on 23 March. The law amended the Code on Public Health and foresaw the first application of a so-called a “state of public health emergency”. A second law adopted on 18 June prolonged it until 10 July 2020.

Under the state of public health emergency, the government is authorised by Parliament to take any decree necessary to fight the emergency. In less than three months, the government has adopted 54 decrees. Commentators often criticised the lack of preparation of the

government and the lack of solid legal basis of the first decisions taken before the creation of the public health state of emergency. Some have doubted of the necessity of a special state of emergency and argued that a reform of the existing legislation was sufficient. They underlined the rather accommodating position of the constitutional court which refused to conduct a genuine analysis of the proportionality of certain measures. Another criticism was the centralised approach of the government in the management crisis.

A plan for the post-emergency situation is currently under discussion. It will allow the government to continue certain measures despite the end of the public health state of emergency, but no further information is yet available.

MEASURES AFFECTING RIGHTS OF CITIZENS

At the peak of the crisis, from 17 March to 11 May 2020, no movement outside of the house was authorised without a certificate. Anyone could face a fine and even jail in the case of a second offence. All assembly was prohibited and most businesses were shut down. Education continued remotely. The first round of the local elections took place one day after the prime minister strongly recommended staying home. Consequently, in a lot of places, mayors were re-elected with less than 40% turnout. The second round of the local elections, which was supposed to take place in late March, has been postponed to late June. There is currently a complaint before the Constitutional Court to contest the integrity of these elections.

As of 10 June, the situation returned to a quasi-normal state. Businesses are open if social distancing is respected. Assemblies remain subject to authorisation even if recent spontaneous demonstrations have been tolerated. Education will be mandatory again from 22 June but universities are closed until September. Borders reopened progressively from 15 June without an obligation for self-quarantine for Schengen countries (with the exception of Spain and Great Britain).

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament passed the law on the state of emergency in a very restricted composition. It only returned to its normal functioning with the end of the lockdown. Since the government has been authorised to act by decree, parliamentary oversight has been scarce. The latter has nevertheless set up a commission of inquiry. Because of the nature of the French political system, Parliament has been very passive. For example, it didn’t defer the law of 23 March to the Constitutional Court.

The Constitutional Court has been criticised for its lack of consistency in its decisions related to the protection of the fundamental rights. On the contrary, the administrative and judicial Supreme Courts both challenged the measures taken by the government, with regards to freedom of religion, and the extension of preliminary detentions. Activities of the regular courts have been suspended for non-urgent cases, and preliminary detentions have been prolonged by decree, without the intervention of a judicial judge. The ombudsman (*Defenseur des Droits*) has been particularly active in monitoring the proportionality and the necessity of the measures, but his opinion is not binding.

The National Commission on Informatics and Freedom (CNIL) gave a green light for the covid-tracking app. With only a few exceptions, the government applied the exact same restrictions over the whole country

despite the variation in terms of infection. The government consulted local and regional authorities only for the post-lockdown measures. It could be said that the crisis amplified the weaknesses of France's overcentralised system.

GERMANY (MICHAEL MEYER)

SPECIAL LEGAL REGIME

Germany has no special constitutional regime to deal with the pandemic. At the end of March Parliament adopted ten laws which adjusted legislation in many fields to make it compatible with crisis measures. The most important adaptions were made on 27 March and on 20 May to the Infectious Diseases Protection Act, which is the principal legal basis for the human rights restrictions. The Act now foresees the calling of an "epidemic situation at national scale" (§ 5) by the federal parliament. It has determined in March that such a situation is present and it is still in force. However, the special state mainly gives some additional powers to the Federal Ministry of Health, while the more far-reaching human rights restrictions were imposed by Germany's 16 federal states (*Länder*). The law empowers them to do so in order to prevent the spread of infectious diseases (independently of whether the epidemic situation is called or not). Some scholars have criticised the fact that an ordinary law could include far-reaching human rights restrictions, in particular to freedom of movement.

Contrary to international appearance, the federal government's role was often more one of co-ordination and mediation with the governments of the federal states, rather than one of unified executive leadership. Government communication on the exact objectives of its pandemic strategy was not always transparent.

MEASURES AFFECTING RIGHTS OF CITIZENS

The last change of measures was decided by a decision of the federal government and the governments of the federal states on 17 June. Distancing rules are maintained, major events remain banned until 31 October and people are encouraged to keep their contacts to a minimum. Federal border controls were lifted on 15 June. There are no restrictions to freedom of movement in principle.

Federal states have the discretion to adopt measures on school openings, child care, restaurants and cultural life but follow some common criteria. The state of Thuringia adopted the most liberal regime: it imposes no limitations on contacts and opened up most of the cultural life (cinemas, theatres, etc.). Bavaria, which was most affected, maintains the strictest regime, for example on cultural life. Critics say that the 16 different regimes lead to a lack of clarity. Other stress that it is the nature of a federal state and that a decentralised approach can better adapt local realities.

Freedom of assembly is allowed but authorities can impose sanitary restrictions. Several court cases, including by the Federal Constitutional Court, decided in favour of demonstrations against bans by authorities.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament (and state/regional/local assemblies):

Both chambers of the parliament continue to operate. The lower house (*Bundestag*) changed the law for a limited period until 30 September: a quorum in the plenary and in committees is now reached if more than 25% members are present (down from more than 50%). Committee

sessions can be held electronically. The immunity of MPs is lifted if state bodies impose a quarantine on them (in case of infection), but in such a case the president of parliament needs to be informed and the relevant committee can question the decision.

The parliaments of the federal states and local councils largely continued working, often adapting their rules to the situation. Some state parliaments suspended deliberations for a few weeks.

Functioning of Courts:

The activity of courts has slowed down significantly. Sometimes court buildings were closed. However judicial personnel often work from home and in some areas procedures allow deliberations through online conferences or written procedure. The legislators (federal and states level) changed laws to allow for extended deadlines, as well as the suspension of criminal trials. High courts kept working and made several decisions related to covid-19 restrictions.

By early May around 1,000 urgent applications had been made against covid-related restrictions and 140 cases decided by courts. In the beginning of the pandemic courts tended to confirm legal and administrative decisions, but over time increasingly insisted on a more detailed assessment of individual cases, often upholding appeals.

Other state/public bodies

Independent institutions, such as the Federal Audit Court or the Bundesbank continued functioning, but like all other institutions resorted to staff working from home. The Federal Audit Court offered a brief assessment of the massive additional budget adopted by Parliament and stressed its commitment to accompany the implementation of these measures.

GREECE (GEORGE KARAVOKYRIS)

SPECIAL LEGAL REGIME

A state of emergency has never been triggered, as article 48 of the Greek Constitution applies only to extreme situations of threats on national sovereignty and security from external or "internal" enemies of the state. The Greek atypical "emergency law" for facing natural disasters or social and economic disruptions and unexpected events refers mainly to article 44 par. 1 of the Constitution and the adoption of "Acts of Legislative Content". Consecutive Acts of Legislative Content (submitted to the Parliament for approval) and ministerial decisions have been issued during the pandemic.

MEASURES AFFECTING RIGHTS OF CITIZENS

Greece has experienced nearly two months of unprecedented restrictions on fundamental rights and various measures assuring social distancing. Freedom of movement was allowed for a set of specific reasons: working, shopping, visiting a doctor and assisting a person in need of help, individual exercising or walking a pet or attending a ceremony. When leaving their domiciles, citizens were obliged to carry their ID and declare (by document or SMS) the purpose of their movement. The almost general lockdown affected horizontally constitutional rights: the freedom of trade and commerce (commercial stores were shut down), the freedom of assembly (maximum 10 persons permitted to gather) the freedom of religion (churches remained open only for private prayer). All universities and schools offered only online courses and access to public spaces (parks, hills,

beaches) was safeguarded. The exercise of rights was limited so as to protect the individual (article 5 par. 5 of the Constitution) and the social right (a positive obligation of the state, article 21 par. 3 of the Constitution) to health.

The debate on proportionality and necessity of the restrictions on rights has ended, for the time being, due to their provisional character and their efficiency in flattening the covid-19 curve. In any case, only a minority of scholars has challenged the constitutionality of the crisis law, which was highly observed by the vast majority of Greek society. The Greek government has lifted the bans and measures, and all commercial establishments, stores, services, malls and outlets, archaeological sites, museums, amusement parks have resumed business. Social life is also, to some extent, returning to normal: bars, restaurants and cafes are open and public access to parks and beaches is no longer limited. Public schools have reopened.

However, the preventive policy of the Greek state against the virus remains, albeit partially, in place: a safety distance (2m) is required between consumers, customers and owners, a limited number of entries is allowed when indoors and wearing a face mask is compulsory for the personnel of health-related and wellness services and for everyone in all public means of transport, taxis, and airports. The "Stay Safe" national campaign has evolved into an ongoing governmental project, constantly updated and assessed, according to the epidemic data.

The Greek government is also very keen to ensure that the tourism industry will overcome the major effects of the pandemic crisis. Thus, the year-round hotels were allowed to reopen on 1 June and the seasonal/tourist ones on 15 June, under the necessary hygienic precautions. Moreover, covid-19 "isolation rooms" and "quarantine hotels" will be provided for possible cases, especially in popular tourist destinations (such as the Greek islands). The resuming of international flights is a two-step process: air connections with Athens and Thessaloniki were restored from 15 June and direct flights to other destinations restarted on 1 July, with the exception of countries and airports highly affected by covid-19. When entering Greece, from 15 June, passengers were to be randomly tested and, if found positive, restricted to a 14-day quarantine at a designated hotel. Even if the test is negative the passenger is obliged to self-quarantine for 7 days. This "bridge-phase" ends on 1 July with only spot checks to be conducted afterwards. In the event of minor outbreaks of covid-19, the government has announced that local and localised lockdowns will be forced to contain any further risk.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

The Greek Parliament has always been operational during the pandemic, although in smaller groups and formations, in order to observe the measures of social distancing. Currently, it has found again its regular legislative pace and procedural integrity after the exceptional "fast-track" legislation of March and April. Court operations were suspended, with the exception, mostly, of temporary judicial protection and the publication of judicial decisions. They have resumed their activities, like all public institutions.

HUNGARY (JANOS FIALA-BUTORA)

SPECIAL LEGAL REGIME

On 11 March 2020, the Hungarian Government declared a nationwide state of danger under Article 53 of the Fundamental Law (the Hungarian Constitution) to combat the covid-19 pandemic. Some scholars consider the declaration unconstitutional, arguing that the pandemic is not a "natural disaster" under Article 53, and the existing measures in ordinary legislation were sufficient to combat the pandemic. The state of danger allows the government to issue legislative decrees that are valid for 15 days. The state of danger is not limited in time: it lasts until the government declares its end. On 30 March 2020 Parliament adopted an Enabling Act which allows the government to issue decrees which are valid until the end of the state of danger. On 26 May the government introduced a bill to Parliament revoking the Enabling Act. It is expected that the government will declare an end to the state of danger soon (the law revoking the enabling act – Law LVII on ending the state of danger – was adopted by Parliament on 16 June).

There are no current plans announced to reintroduce the state of danger and the restrictions. However, the government proposed new legislation introducing a new special regime, a state of medical emergency, which provides for new competencies compared to the state of danger. Their exact scope is not clear at present.

MEASURES AFFECTING RIGHTS OF CITIZENS

Strict restrictions were introduced to freedom of movement, including the closing of schools and childcare facilities, home office regimes, shopping restrictions (separate shopping time for those above and below 65 years of age), and curfews with exceptions. In general, the measures were not strictly enforced, especially outside Budapest. Freedom of assembly was also limited by prohibiting demonstrations. Opposition demonstrators were fined. Elections were suspended, but there were none planned during this period anyway.

The Enabling Act amended the Criminal Code, sanctioning speech criticising pandemic responses. To date, 168 criminal cases have been initiated under the new provision, 12 reaching indictment, and one of them leading to a conviction. The government adopted many emergency decrees – 159 as of 10 June. They affect a wide range of rights, many of them unrelated or only vaguely related to the pandemic. One decree created a special economic zone in the city of Göd, taking over the tax income from the local Samsung plant – the government later introduced a law extending this practice to the whole country. It appointed military officials to the management of key companies and hospitals. The board of one company (Kartonpack) was dissolved, and the government took over. The government cleared 36,000 hospital beds to fight the pandemic by releasing among others terminally ill patients and patients in need of care, some of whom died as a result. A decree modified the conditions of information requests by citizens, seriously limiting freedom of information. Another decree cut the funds provided by the state budget to finance political parties by half, which mainly negatively affects the opposition parties.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament has been sitting during this period, but its ability to control the government has been seriously restricted due to the latter's ability to legislate by decree.

Courts have continued to operate, after an initial gap of two weeks. Since then, courts have organised hearings via videoconference. Cases were prioritised. No abuses of the situation in either civil or criminal cases were reported.

The Constitutional Court is the main check on governmental powers during the state of danger, but it has not ruled on any complaint yet. It is dealing with the issue concerning the amendment of the Criminal Code in an expedited procedure, but it has not yet delivered its verdict.

With the end of the state of danger, Parliament will decide which of the emergency decrees will cease to have legal force, and which will stay in effect as ordinary laws. It is expected that most decrees will stay in force.

IRELAND (ALAN GREENE)

SPECIAL LEGAL REGIME

Article 28.3.3° of the Irish Constitution only allows for a state of emergency to be declared “in time of war or armed rebellion”. Thus, the two pieces of emergency legislation Ireland introduced — the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and the Emergency Measures in the Public Interest (Covid-19) Act 2020 — had to be compatible with the ordinary provisions of the Constitution. Both acts were passed in the usual constitutional manner; however, the period for debate was considerably truncated to allow the measures to be expedited through both houses of parliament. Part III of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 in particular, conferred broad discretionary power on the government to make regulations to control the virus without subsequent parliamentary approval.

MEASURES AFFECTING RIGHTS OF CITIZENS

At its strictest, Ireland’s lockdown prohibited people from traveling further than 2km from their house unless for essential purposes. Measures banning public gatherings were also introduced, clearly interfering with the right to “assemble peaceably” in Article 40.6.1°ii and Article 11 ECHR to which Ireland is a signatory. With no emergency declared, the legality of these measures is based upon the idea that the interference is proportionate to the legitimate aim of protecting public health. This can be stress-tested in the courts in the usual manner, like any other law. Despite no official emergency being declared, however, the exceptional nature of these laws are underlined by the fact that they are subject to sunset clauses. Part III of the Health Act, for example, is due to expire in November 2020.

As of 18 May, Ireland has been easing out of its strict lockdown. The government published a clear Roadmap for Reopening Society and Business, consisting of five phases. On 8 June, Ireland entered Phase 2: among other measures, this widened the distance people could travel from their homes to 20km (or anywhere within their county). Like many European states, police discretion has been pivotal in ensuring compliance and popular support for the lockdown. This can be seen by the Black Lives Matter protest outside the US embassy in Dublin which took place without police interference, despite the fact it was not in compliance with restrictions on public assembly even though participants tried to practice social distancing.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Unlike many European states, Ireland’s bicameral parliament (the Oireachtas) did not hold any virtual hearings during the pandemic. This was because it was claimed that that Article 15.1.3° of the Constitution required a physical sitting “in or near the City of Dublin or in such other place”. “Physical”, however, is not mentioned in the Constitution and this overly literal interpretation of the Constitution has been criticised as ignoring that the purpose of provision was to ensure an accurate record of the parliamentary proceedings. There is no reason to assume that a virtual parliament could not also be accurately recorded. Government formation talks in Ireland following the February general election are still ongoing so Parliament is operating on a reduced basis as there is no government legislative agenda to enact. As there are no virtual sittings, only one third of deputies attend Dáil meetings and Parliament focuses mostly on covid-19 business. If a government is formed and a vote for Taoiseach (Prime Minister) has to be held, this would take place in the larger Dublin Convention Centre so all deputies can attend.

Courts have taken their own steps in response to the coronavirus, with efforts focused on hearing urgent cases and have taken steps to put in place the infrastructure required for remote court hearings. Some urgent hearings did take place in person, for example one high profile case challenging the constitutionality of the state’s lockdown measures. This case was unsuccessful, failing to cross the relatively low bar required to go to a full hearing.

ITALY (JULINDA BEQIRAJ)

SPECIAL LEGAL REGIME

On 31 January 2020 the Italian government declared a public health state of emergency for the duration of six months (until 31 July). This was based on the framework Italian Law on Civil Protection, which sets out the reasons for a state of emergency and the possible scope of responses. The Law also establishes a maximum duration of states of emergency (12 months, renewable once for another year).

After declaring the state of emergency, the government adopted a series of decree-laws setting out the types of measures to be introduced to contain the pandemic and/or mitigate its negative impact. These core instruments under Italian law are governmental acts which bear the same force of ordinary laws for a limited period; if Parliament does not convert them into law within 60 days of their publication decree-laws would lose their effects retroactively. The decree-laws adopted during covid-19 were rapidly converted into laws by Parliament. The measures foreseen in the decree-laws were then further implemented through a number of regulations and administrative measures adopted at different levels (national, regional, local) resulting in different approaches depending on the gravity of the spread of the virus in the concerned area.

The response of the government to the emergency has been criticised for practically resulting in regulatory and legal chaos, affecting the implementation of the measures by citizens and preventing a clear legal understanding of the relationship between the different measures and their effects. More generally, the initial Italian legal response to covid-19 – until late March – incorporates some of the essential rule-of-law safeguards, such as limited duration of the measures and strong reliance on the necessity and proportionality principles, but falls short on others. In response to the criticism in the media and among

academic lawyers ([here](#), [here](#), [here](#), [here](#) and [here](#)), subsequent decree-laws issued by the government have addressed and corrected some of those deficiencies in terms of legality, legal certainty, a clear order between the different measures in force, clarity on the geographical scope, transparency and publicity, including through periodical Parliamentary scrutiny of the measures.

MEASURES AFFECTING RIGHTS OF CITIZENS

Measures introduced included restrictions on freedom of movement (movement between territorial units; curfews; self-declaration form authorising movement); education (school closures); freedom of assembly, access to courts (partial court closure), access to health services beyond those affected with covid-19, etc. Since 4 May, the lockdown has been gradually lifted (Phase 2) but social distancing measures remain in place. The crisis has exposed cracks in the system, highlighting potential risks and [opportunities for corruption](#).

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

As regards [court activities](#), between early March and early May, all proceedings were automatically postponed to a later date, except for urgent cases where delayed examination could cause serious prejudice to the parties. These have been taking place through documental hearings or remote hearings (i.e. videoconference). On various occasions courts have disapproved the restrictive measures introduced to contain the virus considering them a disproportionate interference with fundamental rights (e.g. in relation to the [detention of asylum seekers](#)) and the issue of procedural guarantees for [remote hearings](#) in criminal law cases is now before the Constitutional Court. From 12 May to 30 June, depending on the spread of the virus, court presidents, can enact organisational measures that can limit public access to court, although ensuring in any case access to people who have urgent tasks. The interruptions to court activities are expected to increase the [already serious Italian backlog](#).

The Italian covid-19 response, enacted in great haste while trying to keep pace with the challenges posed by the virus, has [been adjusted along the way](#), through the introduction of some important constitutional and rule-of-law safeguards. At the centre of such safeguards lies the key concept enshrined in the Constitution that Parliament has a vital role to play in protecting the health of the democracy, even during times of emergency. It has been a very positive signal that the Parliament remained operative, passing laws and scrutinising the restrictive measures put in place (the same can be fairly stated with regard to regional and local assemblies).

LATVIA (ALEKSEJS DIMITROVS)

SPECIAL LEGAL REGIME

If the state is confronted with disaster, the Government of Latvia can declare an emergency situation in accordance with the [Law on Emergency Situation and State of Exception](#). Since the entry into force of this law in 2013, and until the covid-19 pandemic, the government has only declared an emergency situation twice, and both in 2017. In one case, the special regime covered certain territories due to the spread of African swine fever, in the other it was due to floods.

The regime of emergency situation in accordance with this law lasted in Latvia from 12 March until 10 June 2020. Since 10 June, an *ad hoc* legal

regime is in force, based on the special [Law on the Management of Covid-19 Infection Prevalence](#) covering institutional and rights aspects (hereinafter Management Law) and [Law on the Suppression of Consequences of Covid-19 Infection Prevalence](#) covering economic and financial aspects (hereinafter Consequences Law). Both laws were adopted by the *Saeima* (Parliament) on 5 June.

Although formally the government was entitled to rule by decree in certain fields during the emergency situation, it still preferred to include far-reaching limitations into the laws adopted by Parliament. This is why it was not surprising that even after the emergency situation had been declared, the limitations were introduced on the basis of ordinary laws. The *ad hoc* legal regime has not yet produced major controversies. The *Saeima's* legal service only [questioned](#) additional powers provided to the government and the Minister for Finance to derogate from the annual budget without approval by the *Saeima* (later some extraordinary powers have been mitigated by the necessity to seek non-objection by the *Saeima's* Budget Committee).

The *ad hoc* legal regime is not limited in time, and this approach is questionable from the point of view of the rule of law, as [indicated](#) by the Venice Commission. The Management Law is in force "as long as there is an epidemiological safety risk related to the spread of Covid-19 infection". The government must report on the risk to the *Saeima* at least every three months; the *Saeima* is entitled to amend the law or repeal it. Going against the government is unlikely, but also depends on the stability of ruling coalition. Governments in Latvia are normally not very stable (the current one consists of five parties). As a coalition will likely be needed in the Riga City Council after the local elections on 29 August, there could be repercussions in Parliament, including the possible wish to redefine the modalities of the Management Law.

MEASURES AFFECTING RIGHTS OF CITIZENS

In accordance with the Management Law, the government is entitled to impose restrictions in several areas, including some fundamental rights. Under the relevant [government regulations](#), a 2m distance is compulsory wherever possible. For public events, including assemblies and religious events, a limit of participants has been introduced until 31 August (for example, until 30 June no more than 100 people can gather indoors and 300 people outdoors).

In terms of freedom of movement, there are three affected categories. For the infected themselves, strict isolation is foreseen until recovery. The contact persons of infected people must self-isolate at home for 14 days after the last contact. Those who have arrived from an EU/EEA country or Switzerland/UK with a cumulative indicator above 15 (according to weekly updated [statistics](#) of the Centre for Disease Prevention and Control), or from another country, also have to self-isolate at home for 14 days. International carriage of passengers via airports, ports, by buses and rail transport from/to such countries has been suspended, but there are no movement restrictions at the internal borders of the Schengen area.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

The *Saeima* remains functional. According to the Constitution, the *Saeima* holds its sittings in the city of Riga, and only in extraordinary circumstances may it convene elsewhere. Since 26 May, all plenary sittings take place remotely, using the e-Saeima platform which allows the MPs to speak and vote – "elsewhere" in the Constitution is

interpreted to include the online environment. Extraordinary (for unrelated reasons) elections of the Riga City Council, initially scheduled for May, have been postponed to 29 August.

According to the Management Law, the interaction with administrative bodies is mostly restricted to written exchange. The possibilities to recourse to a written procedure in civil cases are extended if procedural rights are fully ensured. The law also allows the examination in writing of criminal cases on appeal, if neither the prosecution nor the affected persons object. The law delegates powers to the Prison Administration Board to restrict the rights of prisoners, including visits, and the relevant order defines how prisons get back to normal.

Latvia has withdrawn its derogations in accordance with Article 15 of the ECHR. The derogation in accordance with Article 4 of the International Covenant on Civil and Political Rights (ICCPR) has been partially withdrawn.

LITHUANIA (AUSRA PADSKOCIMAITE)

SPECIAL LEGAL REGIME

In response to the covid-19 emergency, on 26 February the Lithuanian government declared a state of extreme situation and on 14 March decided to introduce quarantine (effective from 16 March). The former is regulated in the 1998 Law on Civil Protection, the latter in the 1996 Law on the Control and Prevention of Contagious Diseases. The government's resolution introducing quarantine was based on the provisions of both legislative acts. Some legal experts, as well as the leader of the opposition, raised concerns regarding the chosen legal regime (quarantine instead of a state of emergency under Art 144 of the Constitution) and the lawfulness of the government's actions due to the extent of the imposed restrictions. For example, whereas constitutional rights can only be limited "by law", Parliament has at least twice amended the Law on Contagious Diseases to expand the scope of limitations *after* quarantine was already introduced. Initially, quarantine was declared from 16 to 30 March but was extended several times with the latest extension passed on 27 May. Since April various quarantine restrictions have been gradually relaxed. On 10 June the government decided to cancel quarantine from 17 June. However, the government decided to maintain the state of extreme situation in order to avoid "a new outbreak of covid-19." This means that some restrictions such as control of inner borders, restrictions on persons arriving from certain countries as well as on the freedom of assembly will remain in place after 17 June. Moreover, the Minister of Health who early on was appointed as State-Level Chief for Extreme Situation in charge of the response to the pandemic will continue to issue decisions such as setting requirements for self-isolation, the use of protective equipment, etc. In May, the Prime Minister reassured that the government will do its best not to reintroduce countrywide quarantine, but did not rule out the possibility of introducing quarantine locally depending on the spread of the virus. Municipalities continue to have responsibilities for, among other things, mobile testing stations as well as for arranging self-isolation (transportation and accommodation) of persons arriving from abroad who are not able to self-isolate at home.

MEASURES RESTRICTING RIGHTS OF CITIZENS

Regarding various human rights restrictions, persons arriving from countries where the number of covid-19 cases remains high are either denied entry or required to self-isolate for 14 days. Lithuanian citizens

and their family members are allowed to return from any country, but might be required to self-isolate. Freedom of assembly, which was severely restricted in the initial phase of quarantine, is limited to socially distanced outdoor gatherings of no more than 300 participants, or 100 participants for indoor ones. The right to education was also impacted due to the move to distance learning at all education levels, but as of 10 June kindergartens, pre-schools and schools have reopened (with mandatory precautionary measures such as at maintaining at least 1m distance in the classrooms). Schools are given the option to continue with distance learning. The use of face masks remains mandatory for anyone above the age of 6 years in certain public places, public transport and closed spaces with certain exceptions. Violations of quarantine are punishable by fines and even imprisonment. Lithuania has not derogated from either the ECHR or the ICCPR.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

The work of Parliament seems to have normalised and regular parliamentary sittings (the possibility of virtual meetings was rejected) are taking place twice per week with the necessary precautionary measures (e.g., face masks). However, the participation of MPs could be affected by the requirement to self-isolate. The work of parliamentary committees and commissions is conducted mostly remotely. No special parliamentary commission to assess covid-19 measures has been established and it is unclear to what extent the existing committees are scrutinising the government's measures. As per a recommendation of the Judicial Council, the courts have slowly resumed oral hearings, which were postponed at the beginning of quarantine, with priority given to cases that are in the final stages, where a continued delay might have negative consequences and where a virtual hearing is not possible. Participants are required to use face masks, maintain personal hygiene and social distancing. However, some hearings, as well as other activities such as submission of documents, continue to be implemented remotely (virtually or via post). In practice, the work of courts might be somewhat impacted by the requirement to self-isolate and to maintain precautionary measures which might slowdown the courts' ability to handle cases. Although formally it is possible to complain about the imposed restrictions to courts including the Constitutional Court, as of 10 June no information about such complaints has emerged. Furthermore, no complaints challenging the lawfulness of the actions of the government have been lodged before the Constitutional Court.

LUXEMBOURG (CATHERINE WARIN)

SPECIAL LEGAL REGIME

A state of emergency has been officially called in Luxembourg. The government has activated this state based on Article 32(4) of the Constitution, through the Grand Duke's Regulation of 18 March 2020. As required by Article 32(4), 3rd sentence of the Constitution, this was then submitted to the Parliament, which voted a three-month extension through the Law of 24 March 2020. This has not caused significant controversy within the legal community. There is, however, a blog post on a constitutional law forum likening the state of emergency to the opening of Pandora's box and warning of potential longer-term impacts on the rule of law.

The state of emergency cannot be extended for more than three months. It expires on 24 June. The government has not announced

plans to reactivate a strict legal regime in the event of a second wave of infections.

MEASURES RESTRICTING RIGHTS OF CITIZENS

The freedom of movement is subject to strict restrictions in principle, with a series of exceptions defined in the Regulation of 18 March 2020. The freedoms of assembly and expression, and the right to work are indirectly impacted by the shut-down of all places that usually welcome the public (cultural, social, sports, recreational activities as well as commercial activities). The exceptions have been progressively extended through successive modifications of the regulation by the government. For example, circulation is no longer generally prohibited as of 11 May; as of 10 June, gatherings of more than 20 people remain prohibited. Luxembourg did not close or restrict its borders during the state of emergency. As regards access to education, the government decided to close schools and childcare facilities as of 16 March and gradual reopening began during May. The University of Luxembourg has taken its own measures and moved to remote teaching and remote working, and closed the premises to all visitors as of 16 March.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament (and state/regional/local assemblies):

Although Parliament had granted full powers to the government by voting the state of emergency, it continued functioning to its full capacity during the corresponding period. The government does not appear to be taking advantage of the crisis to pass decrees which are not covid-related nor to circumvent Parliament. However, some derogatory measures taken during the state of emergency have stirred (limited) controversy, for example, individual authorisations granted to some companies to have their employees work up to 60 hours a week.

Functioning of Courts:

De jure: As regards the functioning of courts and the right to an effective remedy, on the legislative level the main instrument is the Grand Duke's Regulation of 25 March 2020 suspending all time limits in administrative and judicial proceedings during the state of emergency period. This is rather favourable to individuals. However, at the level of the courts, the initiatives vary depending on the decisions of each court's president, making it difficult for practising lawyers to adjust to the new measures, even though the Bar Association has set up a web page centralising these measures. These include: postponing many non-urgent hearings, replacing hearings by written exchanges (which places an extra burden on attorneys in criminal matters).

De facto: Some court divisions stopped functioning altogether for a few days, imposing of their own initiative restrictions stricter than those officially decided.

Other state/public bodies:

The *Conseil d'Etat* (Council of State) provides opinions on all covid-related legislative projects, giving them priority on other legislative projects. The *Commission consultative des droits de l'Homme* (Luxembourg's human rights consultative body) has produced an opinion on the legislation aimed at fighting covid-19.

The emergency plan has been decided by the government with no differentiation according to territories (unsurprisingly given the size of the country). Some implementation measures have been performed by

the local governments (e.g. distribution of masks to residents) but always under national governmental orders.

MALTA (JACQUES RENE ZAMMIT)

When the covid-19 pandemic reached the Republic of Malta, its government was already running a high fever in rule-of-law terms. The open dossiers of the Council of Europe's Venice Commission on Malta included monitoring of constitutional arrangements, separation of powers and independence of the judiciary. The effects of the assassination of journalist Daphne Caruana Galizia in 2017 were still felt as developments in November 2019 had a snowball effect on the unearthing of an intricate web linking the political and criminal worlds. The pandemic's arrival ironically provided a breathing space for the government that was under constant pressure from public demonstrations about the rule of law and governance.

SPECIAL LEGAL REGIME

Government Measures and Exercise of Powers: The first reported coronavirus case in Malta was on 7 March. The action of the public authorities had hitherto been limited to recommendations for self-quarantine (particularly for travellers returning from Italy). Although no state of emergency was ever declared, the legal basis for the containment measures was the Public Health Act (Chapter 465 of the Laws of Malta). Specifically, article 27(c) (Epidemics and infectious diseases) of the Public Health Act empowers the Superintendent of Public Health to make, vary or revoke orders prescribing measures to guard against or to control dangerous epidemics or infectious disease.

MEASURES AFFECTING RIGHTS OF CITIZENS

The containment measures introduced from 11 March by means of this legal instrument were rolled out throughout the month covering such areas as the closure of educational establishments, closure of day-care centres for the elderly, the suspension of religious and sports activities and the suspension of political activities. Towards the end of March non-essential retail and services were closed while all organised group gatherings were also banned. For most of the peak period of the pandemic, the containment measures were entrusted to the Superintendent of Public Health and the Health Ministry. The measures did not include a specific time limit, but instead, a new legal notice announcing the end of each measure would be published in a scaled return to pre-lockdown conditions.

Specific Sectoral Situations: Evident internal policy tensions within the government surfaced at different stages of the containment period. An efficient health authority containment plan (lauded by the WHO) risked being undermined by prime ministerial decisions intent on pandering to the economic and sectoral pressures to do away with restrictions. An early sign was the opening of the hunting season notwithstanding the fact that Malta was at its strictest point of lockdown. Covid-19 was also the pretext used by the government to deny entry to several asylum-seeking immigrants found in international waters. The government "rented" three commercial vessels and despatched them to host the immigrants in international waters. Covid-19 had been used as an excuse to avoid international humanitarian obligations. Under fire former minister Konrad Mizzi used the covid-19 situation to remain in the UK for over two months and only returned with the appointment of a new police commissioner. At the start of June, following the gradual

reopening of the courts and relaxation of the measures, the authorities also announced a series of economic measures (including spending vouchers) to incentivise an economic revival.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Constitutional Majority: The latest developments coming from the courts linked to the Panama Paper revelations, high profile government members' involvement in corrupt schemes, and the ongoing Caruana Galizia investigation continue to paint a bad picture of the state of the nation. Although there is no direct relation between the crisis and these systemic faults, the government's attitude implies an attempt to gloss over grave concerns by confusing the return to normality from covid-19 with the return to normality from corruption. In this sense, the crisis has served as a distraction from extant problems rather than an aggravation.

There is concern that the economic revitalisation is a convenient platform for the government that might lead to the calling of a snap election. Such an election, combined with the power of incumbency risks consolidating an unassailable constitutional majority for a government that, notwithstanding all its democratic faults, and notwithstanding its being mired in corruption scandals, still enjoys the confidence of a majority of the population.

THE NETHERLANDS (ANTOINE BUYSE)

SPECIAL LEGAL REGIME

The Dutch government has not declared, in a legal sense, a state of emergency, nor has it indicated that it could no longer fully uphold the human rights to which it is bound through, for example, the ECHR. The Dutch Constitution has also not been used or applied in this sense to declare a state of emergency. Rather, the Public Health Act (Wet publieke gezondheid) was used. This Act allows for quarantine measures, largely to be taken by municipal authorities. The assumption has been that infectious diseases would first have to be contained locally. Since the pandemic quickly spread over the country in the course of March, the Minister of Public Health used his powers under Article 7 of the Public Health Act to instruct mayors to issue emergency regulations, which ranged from banning virtually all public gatherings and religious services to the closing of schools and restaurants. However, going outside was still allowed and much emphasis was laid on personal responsibility. The emergency regulations were enforceable, including with fines, for example for not keeping a 1.5 metre distance.

Having such local, but nationally coordinated emergency regulations was seen as a temporary and necessary step. These are currently still in force, but suffer from lack of democratic oversight and were criticised for being in tension with several constitutional rights. As the Constitution requires this for such limitations of people's fundamental rights, the government has now drafted a formal law on temporary measures and covid-19 (*Tijdelijke wet maatregelen Covid-19*), to be debated in and approved by Parliament in the coming weeks. While the step to do so was applauded as a matter of principle, the draft text was very heavily criticised for its contents by the National Ombudsman, the National Human Rights Institution and leading constitutional law experts. The concerns centred around the continuing lack of democratic oversight and the lack of explicit tools to weight conflicting human rights (e.g. the freedom of movement or the right to privacy versus the

right to health). While The Netherlands are currently in a phase of step-by-step loosening of the 'intelligent lockdown', as Prime Minister Mark Rutte dubbed it, the concern is also that in the case of a renewed flaring up of covid-19, the law would put too much power into the hands of the national and local executives (the government and mayors). The draft law is currently with the Council of State which has to advise about its constitutionality before it goes to Parliament. The government initially aimed for adoption before 1 July, but has deferred its plan until after summer, especially in light of the very fundamental criticism and the increasing societal resistance, ranging from municipal councillors to the judiciary.

MEASURES AFFECTING RIGHTS OF CITIZENS

The current gradual easing of restrictions, since early May, means that initially severe interferences with human rights have also become less intrusive. Primary (since May) and secondary schools (since June) have partially or entirely reopened. However, higher education premises remain physically closed, with only very limited amounts of practice-based teaching and some exams being allowed again as of 15 June (otherwise all teaching remains online). The pandemic has not affected the right to vote so far, as no elections were planned to take place in the past or coming months. But the rule of 1.5m distancing between people not belonging to the same household remains in place (and enforceable by fines). Public gatherings, whether within buildings or outside, of any kind are prohibited for more than 30 people. The government's stated intention, medical circumstances permitting, is to increase this to 100 persons from 1 July onwards. Travel to a selected number of European countries is again more widely permitted. These are the key mandatory and enforceable measures, which are combined with heavy-handed advice.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament was not formally curtailed, but for many weeks it restricted itself to only the most crucial, purely covid-19-related work. Only since the end of May have debates on other matters slowly started to resume. On 16 June, Parliament by majority called for an independent investigation into the government's handling of the pandemic. As to the work of courts, which initially went fully online, the most urgent (criminal and family law) matters are being handled in-person court sessions again since 11 May (still a small share of all pending court cases). The general public is not yet allowed to attend, but the media are.

POLAND (JAKUB JARACZEWSKI)

SPECIAL LEGAL REGIME

Poland is currently under a statutory state of the epidemic, introduced on 20 March 2020 by the government under a procedure that does not involve the President nor Parliament under a 2008 statute on prevention of infectious diseases. The state of the epidemic was introduced indefinitely until further notice. The Polish Constitution features a distinct state of emergency – the state of a natural disaster – which is appropriate for introduction in the case of, among other things, a massive outbreak of a viral disease, but this state was not invoked. Controversies surround the choice of legal instrument. The state of epidemic enables the government to limit certain human rights through governmental resolutions (decrees). The timing of these limitations is varied; some have been introduced with a set time limit and a

possibility of extension, some, like the ban on mass events, were introduced indefinitely. This framework is controversial, as the Polish Constitution prohibits limiting rights and freedoms via decrees.

Return to stricter limitations is continuously kept in the background of the government's narrative. Some additional measures have been introduced in counties with severe outbreaks, including areas of Śląsk (Silesia) where spikes in infections have occurred among coal miners.

Measures Affecting Rights of Citizens

Freedom of movement was limited strictly, but most of the limitations were relaxed or lifted by 10 June. The most severe measures – the closure of Polish borders to non-nationals (with some exceptions) and a mandatory quarantine upon entry – were lifted on 13 June. Some internal limitations persist, such as limits on the numbers of passengers in public transport.

Freedom of assembly remains heavily limited with the maximum size of allowed assemblies set at 150 people, but the enforcement of this limitation is markedly uneven. Rallies and gatherings organised as part of the presidential campaign were largely allowed to proceed despite being over the limit.

After the presidential election scheduled for 10 May was not ultimately held, a new election was called for 28 June. Concerns persist regarding the equality of new candidates registered for this election, who were required to gather signatures of support under a challenging deadline, and concerning the participation of Poles abroad, who mostly were scheduled to vote by mail, a major novelty in Polish electoral system.

Economic, social, and cultural rights in Poland are under strain due to the pandemic. Most businesses can operate with social distancing and precautions in place, yet the damage to the economy is major. Cultural activities are slowly returning to limited operation.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliament (and state/regional/local assemblies):

Both chambers of the parliament continue to operate normally. Remote sittings were introduced and elements of ancillary work of the *Sejm* (lower house) and *Senat* (upper house) was facilitated using online meetings. No special commission for controlling the government's work was introduced, with this role being fulfilled by regular commissions. There was no instance of curtailing the work of Parliament or of side-stepping it during the pandemic. However, concerns arose from the government's practice of proposing changes to laws unrelated to the pandemic as part of its package of bills aimed at supporting the economy (the so-called "anticrisis shield" laws).

Functioning of Courts

The activity of courts has been severely limited, with the civil and criminal courts handling only urgent cases and slowly returning to normal operation, while the administrative courts were shut down entirely and are not operational as of 10 June. The top courts – the Supreme Court, the High Administrative Court, and the Constitutional Tribunal – are all function normally. Concerns persist as most of the punishments handed out for violation of emergency measures are administrative in nature and the individuals are unable to challenge them before the respective courts.

The Constitutional Tribunal has not reviewed any covid-19 related measures to date. Due to the alignment of the Tribunal with the government and controversies regarding the status of some of its judges, individuals and stakeholders have largely ceased to lodge cases with the Tribunal.

Other state/public bodies

The Commissioner for Civil Rights continues to operate and continues to review emergency measures, inform the government of human rights issues and to challenge restrictions before respective bodies. While most of the public competences in Poland rest with the local self-government, internal security is a competence of the central government and its local representatives. Emergency planning is conducted centrally. There are no indications of major differentiation across the territories.

Economy recovery support and support for anti-covid-19 activities appears to be mostly free from corruption. Controversies persist surrounding research grants and government contracts issued to family members and associates of the Minister of Health, Łukasz Szumowski.

PORUGAL (TERESA VIANTE)

SPECIAL LEGAL REGIME

As of 10 June, Portugal had registered 1,497 deaths (143.32 deaths per million people) and successfully avoided the dramatic figures of its neighbours. The capacity of the National Health Service was not exceeded, and medical staff were spared hard decisions concerning the rationing of life-saving equipment. Between 2 and 18 March, the government adopted strict restrictive measures to contain the epidemic based on previous legislation, such as the Framework Law of Civil Protection, the Framework Health Law and the Law on Public Vigilance of Health Risks. The extensive powers deployed by the government raised concerns of legality and constitutionality. Those concerns prompted the President of the Republic to declare, for the first time under the democratic constitution, a constitutional state of emergency under Article 19 of the Constitution. The state of emergency can only be declared for 15 days subject to renewals. With the initial declaration and two renewals, it lasted between 18 March and 2 May.

From a constitutional state of emergency, the country moved, on 3 May, to the less severe "state of calamity" governed by infra-constitutional law (the abovementioned Framework Laws on Civil Protection and Health and the Law on Public Vigilance of Health Risks). This transition did not entail significant substantial changes at first but allowed the government to regain ownership of the situation, as in the first phase of the pandemic, not being bound by the initiative of the President of the Republic.

MEASURES AFFECTING RIGHTS OF CITIZENS

At an initial stage, restrictions included the closure of schools, limited access to restaurants and bars, the suspension of some economic activities, and mandatory teleworking.

Stricter suspensions of fundamental rights were enforced during the state of emergency. There was a generalised ban on movement and circulation was only allowed for minimal reasons. An extensive list of economic activities was forced to shut down, including shops, and cultural and sporting facilities. During the holiday periods, the ban was increased, and inter-municipality travelling was forbidden. Collective

religious celebrations were also suspended and no demonstrations were authorised during this period except for Labour Day celebrations, closely articulated with the health authorities.

With the transition from the state of emergency to the state of calamity, a “civic duty” of confinement replaced the ban on movement. Still, the effects on fundamental rights were mostly maintained, through regulatory instruments that were not subject to parliamentary oversight nor presidential promulgation. As the first and second renewals of calamity were declared (each declaration is subject to a two-week duration, and they encompassed the periods between 3-17 May, 18-31 May, and 31 May – June 14), it became clearer that deconfinement was gradually in action, and that the government was slowly but steadily lifting the restrictions. Most of the restrictions on movement and economic activities have now been waived except for the Lisbon area, where a stark increase of infections has delayed the reopening of large commercial spaces. Some economic activities are still suspended and 1st-grade to 11th-grade students will be subject to online learning until September. Moreover, evictions are suspended until 30 September and the payment of rents can be delayed. Some restrictions will thus remain in force beyond the expected state of calamity as the public powers aim at cushioning the economic effects of the pandemic on families and individuals.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

Parliamentary work was severely reduced during the state of emergency, and fast-track procedures were adopted but only for governmental initiatives. This context was detrimental not only to parliamentary oversight of the emergency action but also to its deliberative role. Although the dominant political narrative has emphasised steady inter-branch coordination, the crisis provided a setting where the government is *de facto* the conductor of political action with limited checks on its powers. That, however, may be temporary. Although the courts were also subject to restrictions, their supervisory role over emergency action remained intact. There are pending cases at the Constitutional Court, and many more are expected in the months (and perhaps years) to come. The Ombudsperson has remained vigilant and, despite the reduction of works, Parliament remained operative and never shut down.

The most significant challenges for the rule of law remain within three constellations: separation of powers, legal security, and increased risks of corruption. As the government circumvents Parliament on the restriction of fundamental rights, the threat of challenges to the constitutionality of the executive action is high. Leaked emails show uneasiness with this topic, even within the political majority supporting the government. A chaotic body of law and administrative regulations raises issues of legal security. Covid-19 litigation is still in its early days, but it will inevitably flood the judicial system for years to come, much like the previous economic and financial crisis. Lastly, flexibilisation of public procurement rules has reduced oversight for public expenditure thus adding increased risks of corruption and inefficiency in a country already suffering from structural deficits in public-sector accountability.

ROMANIA (ALEXANDRU MOISE)

SPECIAL LEGAL REGIME

By 10 June the legal regime underpinning Romania’s covid-19 response was that of “state of alert”. The previously instated “state of

emergency” lasted from 16 March to 14 May. Unlike the state of emergency, the state of alert is not directly recognised in the Constitution as a state of exception. The state of alert was initially declared on 14 May on the basis of Emergency Ordinance 21/2004. Parliament then passed a new law, Law 55/2020, regulating the state of alert on 15 May. Since legislative acts only enter into force three days after being published, the new state of alert took effect on 18 May. The Constitutional Court clarified that the new state of alert does not allow the government to restrict fundamental rights.

MEASURES AFFECTING RIGHTS OF CITIZENS

The state of alert brought a first easing of the restrictions imposed since 16 March. A second wave of easing restrictions took effect on 1 June. Thus, by 10 June the most important restrictions had been lifted. Most notably the lockdown was lifted, and citizens could leave their homes without a special form. As of 1 June, travel was also allowed between localities without the need for a special form. International rail and road travel were also reopened. Restaurants and bars could offer outdoor seating and beaches were opened, with social distancing measures in place. Outdoor sporting events and concerts with a maximum of 500 attendees were allowed. Hairdressers and dentists could reopen, as could businesses and shopping malls smaller than 15,000 sqm. However, indoor restaurants and bars remained closed. Masks continued to be mandatory in closed spaces and people were not allowed to gather in groups larger than three.

The state of alert was prolonged for another month on 17 June. Both the President and Prime Minister announced that the state of emergency could also be reinstated if the epidemiological situation deteriorated. However, exact guidelines as to what severity of the pandemic would trigger this were not given.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

By 10 June, with restrictions being eased, Parliament and courts were functioning under their regular parameters, with social distancing measures.

Local elections were originally set to take place in June. Due to the pandemic, Parliament passed a law on 23 April that extended the term limits of local officials until the end of 2020. The law was challenged at the Constitutional Court, which upheld the law on 3 June. Parliament must decide a new date for local elections.

Corruption also seems to have been impacted by covid-19. As with other states, it is likely that the incentives around the rapid procurement of large quantities of protective equipment created room for corruption. While not enough time has passed for courts to give final sentences, the DNA (national anti-corruption agency) has started a number of investigations into covid-19 procurements. The most high-profile case currently is that of the director-general of Unifarm, a company involved in procuring public healthcare equipment, charged by the DNA with asking for a €760,000 EUR bribe.

SLOVAKIA (KRISTINA BABIAKOVA)

SPECIAL LEGAL REGIME

In Slovakia, on 12 March 2020, the government declared an emergency situation based on Act No. 42/1994 Coll. on Civil Protection of the

Population. Subsequently, from 15 March, the government declared a state of emergency based on constitutional Act No. 227/2002 Coll. on State Security at the Time of War, State of War, State of Emergency and State of Crisis, first for some districts and from 19 March for the whole territory. The state of emergency can be declared for a maximum of 90 days and was terminated on 13 June. The law does not allow any further extension after 90 days. The legal community is divided on whether the state of emergency can be declared again after a certain time or not. The Prime Minister announced that if there are grounds for declaring a state of emergency, the government will declare it again. The emergency situation does not have a statutory time limit and it continues today.

MEASURES AFFECTING RIGHTS OF CITIZENS

The declaration of the state of emergency was generally accepted, but there were doubts about the necessity of its 90-day duration. The government has adopted implementing regulations concerning, for example, financial support for schools and business or border protection. The government decisions due to the threat to public health have been implemented by measures issued by the Public Health Authority. In this field, the questions have arisen with specific decisions such as the mandatory state quarantine, stricter restrictions in movement during Easter, the ban on retired people shopping at certain times or the ban on Sunday sales due to the need for disinfection. There were also doubts about the constitutional and binding nature of the measures issued by the Public Health Authority. The rights and obligations regulated by law have been changed by Parliament (e.g. access to justice, tax regulations and social rights).

Restricted freedom of movement: Restrictions applied to any person coming from other countries, who were first obliged to undergo a 14-day quarantine in state facilities or, after negative tests, to complete it at home. From 10 June, people coming from safe countries do not have to go into quarantine. From other countries such as the United Kingdom or Italy, people must have a negative test for covid-19 taken within the past 96 hours, be in quarantine at home, and must be tested again in five days.

Restricted freedom of assembly: Mass events were banned; as of 10 June, events for up to 500 people can be organised, respecting hygiene rules.

The imposition of duty and limited right to strike in certain professions were valid until the date of termination of the state of emergency. *Changes in labour relations:* The possibility for employers and employees to order or request to work from home modified rules for determining the use of leave or working time.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

During the state of emergency, Parliament and the regional assemblies performed their tasks without any significant restrictions. Newly adopted laws provided exceptions for regional assemblies which could vote by mail. Parliament was meeting properly at this time and adopted many laws to mitigate the impact of covid-19 in the shortened legislative procedure (36 laws, which also change some other laws). The problem is that the shortened procedure was used also for laws that did not meet the condition of urgency, e.g. changes in the Judicial Council Law concerning the termination of its members' mandates.

In connection with the mentioned laws and measures, the Constitutional Court is dealing with complaints about the unconstitutionality of laws concerning the collection of movement data from mobile operators and about the shortened legislative procedure, also with a complaint concerning the mandatory state quarantine.

In relation to the new legislation concerning the functioning of courts, the limitation periods and the prescription periods have been temporarily suspended, court hearings have been adjourned and ordered only in cases of necessity, and the courts have had the option of excluding the public from the hearing to protect public health. The influence of these measures on the state of justice had not yet been assessed. An increase in delays in proceedings is expected.

The government had the decisive say in the fight against the coronavirus, and so the regional structures were mostly adapted to the national measures. Concerning the redistribution of funds to fix the economic consequences of the pandemic, there are questions about the speed with which funds reach recipients; however, it is not yet possible to talk about the specific impacts of the pandemic situation.

SLOVENIA (SAMO BARDZUTZKY)

SPECIAL LEGAL REGIME

The 1991 Constitution envisages the option for the National Assembly (or, if the Assembly cannot meet, the President of the Republic) to declare a state of emergency when a great and general danger threatens the existence of the state (Article 92). Importantly, when the state of emergency has been declared, most of the constitutional rights can be temporarily suspended. However, at no point during the epidemic was a state of emergency declared. Severe limitations of the constitutional rights were thus enacted on the basis of existing legislation, namely the Communicable Diseases Act (ZNB). The powers vested in the executive branch by the ZNB are inadequate for an epidemic of this scale and a strict reading of the relevant clauses of the ZNB cannot support measures as drastic as the ones that Slovenia saw between mid-March and early May 2020. While the ZNB was amended during the crisis to shift the decision-making power from the Health Minister to the government as a whole, the amendments did not provide for broader powers to fight communicable diseases. It is thus expected that the same legislative framework would serve for tackling a "second wave", as there is no time limit for the application of the ZNB. The constitutionality of the ZNB has not been challenged; however, government decrees have been taken before the Constitutional Court.

MEASURES AFFECTING RIGHTS OF CITIZENS

Effective 20 March 2020, the Government issued a general ban on movement, with certain exceptions (commuting to work, travelling to access essential services, as well as accessing parks and other "areas suitable for walks" etc.), which was in force until 18 May. On 30 March, a government decree prohibited traveling outside of the boundaries of one's municipality of residence, with a narrower list of exceptions, with the purpose of preventing large numbers of visitors to the country's beaches and popular tourist spots. Public transportation, except for taxis, was also shut down completely between mid-March and mid-May. A general prohibition of assembly also came into force on 20 March but it was gradually loosened. Currently, assemblies with attendance exceeding 200 people are prohibited. A ban on assembly in educational institutions, ranging from kindergartens to places of higher education entered into force on 16 March and was then gradually partly

lifted in May. Despite the ban on movement and assembly, relatively large-scale (several thousand people) anti-government protests in Slovenian cities, especially Ljubljana, have been taking place since 1 May 2020, with occasional individual incidents with the police. The decision to keep (some) residents of senior citizens' homes contained in the homes and try to provide medical care there rather than in hospitals has been criticised and is yet to be properly scrutinised.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

On 7 April 2020, the National Assembly amended its rules to create a legal basis for holding sessions via videoconference when the concern for the health of the deputies so requires. This reduced the risk of the National Assembly failing to guarantee the necessary attendance in order to hold a session. The upper chamber of the parliament, the National Council, waived pre-emptively its veto rights to make sure the passing of the legislation would not be stalled. This of course partly neuters the mechanisms of democratic control. The government proposal for legislation that provided assistance to business and people affected by the safety measures initially included controversial clauses expanding police powers. Some of these proposals were dropped, while others were made law of the land. The controversial amendments were bundled up with the provisions on bail-out as the latter are protected from a legislative referendum challenge thanks to the 2013 amendments to Article 90 of the Constitution.

Articles 83 and 83a of the Courts Act, adopted some time before the epidemic, had foreseen that court hearings would only take place for urgent matters. Additional legislation (ZZUSUDJZ) which entered into force on 29 March 2020, suspended court deadlines and included a sunset clause (1 July 2020). In the event, the measures ceased with a government decision on 1 June (see Article 2 ZZUSUDJZ).

The role of the local (municipal) government in the covid-19 crisis can be best described as both confused and confusing. There have been attempts by individual mayors to introduce additional measures to prevent the spread of the disease, the legal basis for which is definitely unclear, if not outright nonexistent. As far as it is known, the enactment of these measures has not led to judicial proceedings. Investigative journalists disclosed alleged irregularities and suspicions of corruption in the public procurement of PPE and medical equipment by the incumbent government in March 2020. The motion to remove the Minister of Economy, based on these accusations, was put forward by the opposition parties and the vote was scheduled for 11 June.

SPAIN (DOROTHY ESTRADA)

SPECIAL LEGAL REGIME

Spain declared a nationwide state of alarm on 14 March 2020, which originally lasted for 15 days. It did so through Royal Decree 463/2020, adopted by left-wing Prime Minister Pedro Sánchez and his Council of Ministers in the executive branch of government. As of 10 June, the state of alarm has been prolonged six times through royal decrees, with the sixth and final extension approved to last until 21 June.

According to article 116 of the Spanish Constitution, and "Organic Law 4/1981, on states of alarm, exception and siege", the state of alarm declared by the Executive must be ratified by one of the chambers of the legislative branch of government – the Congress of Deputies – a requirement which has been secured every time, although with

increasing opposition and debate. A de-escalation process has been instituted since 23 May, and is underway.

MEASURES AFFECTING RIGHTS OF CITIZENS

RD 463/2020 placed severe "limitations" on freedom of movement, restricting it to essential activities (procuring food or medical care). It also introduced measures to ensure the supply of goods and services necessary for the protection of public health, suspended the operation of non-essential businesses, and centralised control of health services and other critical government functions. Indirectly, the rights to family life, peaceful assembly, religious expression, and access to culture and recreation have also been affected. While economic and social measures have been adopted to counterbalance the effects of the lockdown, the human health security and socio-economic human rights of the poorest people have been strongly impacted.

Children have also experienced disproportionate effects, in a country where almost 7 of every 10 people live in a flat or apartment. More than six million girls and boys in Spain (and their families), experienced physical, emotional and psychological strains as a result — effects highlighted by the UN Committee on the Rights of the Child.

Concerning the freedoms of information, press, expression and movement, based on the Criminal Code and the Citizen Security Law – dubbed the 'Gag Law' and already controversial before covid-19 – spreading misinformation on covid-19 has been penalised, and contravention of lockdown measures has resulted in thousands of arrests and over a million fines, even though, in general, the Spanish population abided by the state of alarm measures.

As of 10 June, and resulting from the de-escalation, most regions in Spain are in Phase 2 (intermediate), comprising freedom of movement within people's own province of residence, in groups of up to 15 persons, maintaining social distance or protection measures, and mostly without schedule restriction (except the time band of 10-12h and 19-20h, reserved for non-professional physical activity of persons over 70 years of age and vulnerable to covid-19). There is a flexible regime for holding religious ceremonies, and opening of commercial services, restaurants, and cultural centres, but limited to fixed percentages of their full capacity. Right to work in the workplace is semi-restored, though online work is recommended.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

While the state of alarm was adopted under democratic principles, its legal basis has been debated among scholars – as to whether the decree "limitation" of rights is *de facto* a full "suspension" – finding detractors and supporters alike, as well as middle-way proponents of an improved legal basis to face future extraordinary situations.

Parliaments have been generally functioning, though with reduced activity. Deadlines for non-essential judicial and administrative procedures were suspended, though some reinstated through electronic means. Partly deriving from a civil society request calling to the government to guarantee the right of access to information, the administrative suspension was lifted (effective as of 1 June), and as of 10 June, all suspensions are now rescinded.

The constitutionality of RD 463/2020 has been challenged by Spain's far-right party before the Constitutional Court, which is currently

analysing the appeal. While the Spanish state of alarm has been considered predominantly justified under the ECHR, questions have been raised regarding individual instances related to its application, e.g. possible violation of the right to privacy through the implementation of an executive order that allows for geo-localisation to track infected people.

As a result of the de-escalation process, Spain's 17 autonomous regions and the autonomous cities of Ceuta and Melilla, recovered legal competences and are empowered to determine different de-confinement phases, in agreement with the central government, based on the situation of each region.

SWEDEN (ANNA CORNELL)

SPECIAL LEGAL REGIME

The Swedish government's ways of handling the covid-19 pandemic have drawn a lot of international attention. Sweden has tried to limit the spread of the virus by means of recommendations and guidelines, rather than quarantines and curfews. The Swedish constitution is silent on states of emergency in peacetime. Instead, the Swedish Parliament decided to amend the Communicable Diseases Act which is the main legislative basis for the government's and government agencies' responses to the pandemic.

As a main rule, the Swedish approach takes its starting point in delegations to the government, and sub-delegations to government agencies in a variety of statutes (anticipatory statutorification). When such delegations turn out to be inadequate the solution is to rely on the ordinary legislative procedure and the possibility for the government and Parliament to speed up the process. This is exactly what happened when Parliament amended the Communicable Diseases Act. The delegation in the Act was perceived to be too narrow to allow for adequate measures.

The amendment allows for the government to act quickly and to decide on temporary measures to limit the spread of the virus. Parliament's Committee on the Constitution, to which bills raising constitutional issues are referred, had important remarks on the constitutionality of the draft. It suggested that the power to issue government regulations only be exercised where there was a clear need for speed in a particular case. It also emphasised the importance of the government making a proportionality assessment. In addition, the role of Parliament was underlined. The government reformulated the provisions accordingly, including a requirement to submit regulations that have been issued on the basis of the Act immediately for Parliament's approval.

The amendments just mentioned were passed within a 10-day period. The measures taken thus far are within the space of manoeuvre provided by the Constitution. The debate on the constitutional silence on peacetime emergencies has been ongoing for a long time, although currently shifting in intensity. Thus far, the official stance has been that due to the inherent vagueness of the concept of constitutional emergencies it is considered too risky to amend the Constitution in order to include provisions on peacetime constitutional emergencies. This debate has not, thus far, been affected by the threat of a second wave.

MEASURES RESTRICTING RIGHTS OF CITIZENS

It is clear that the Swedish approach is liberal in comparison. Some of the measures adopted thus far have been the restriction on gatherings to a maximum of 50 people, visiting bans in nursing homes, and recommendations on social distancing that have led to the closing of restaurants. On 17 March 2020 a temporary entry ban to entering the EU via Sweden was issued, which was extended to 30 June. The latest version of the Communicable Diseases Act also allows for the closing of shopping malls, and restrictions on transportation, for example the closing of train stations and airports. This has not been applied thus far. There are recommendations and guidelines as to domestic travels saying that non-essential travels should be avoided. Since gatherings with more than 50 individuals are not allowed, the police can dissolve demonstrations and protests if this is not respected. The main issue in Sweden concerning the right to health, and life, has been the high number of elderly people succumbing to the virus, especially those living in nursing homes. Several investigations have been initiated with the task to map out the weaknesses within the system that allowed for this tragedy. Universities and high schools have been shifting to online teaching in line with the recommendations from the Swedish Public Health Agency.

MEASURES AFFECTING THE FUNCTIONING OF THE DEMOCRATIC STATE

The national parliament and local assemblies have been up and running thorough out the pandemic. A debate did arise concerning the local assemblies and to what extent they could fulfill their democratic role when adapting their meetings to the pandemic, which in some cases meant not allowing the public to attend. There are no statutory restrictions on the courts due to the pandemic. However, there are reports of some courts having to slow down their activities due to restricted travel, social distancing and working from home. At this point in time it is unclear if this has caused a significant backlog.

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