

RULE-OF-LAW CRISIS DURING THE COVID-19 EPIDEMIC: THE CASE OF SLOVENIA

NEŽA KOGOVŠEK ŠALAMON^{1, 2, 3}

Accepted

3. 2. 2025

Revised

18. 7. 2025

Published

10. 10. 2025

¹ Constitutional Court of the Republic of Slovenia, Ljubljana, Slovenia
neza.kogovsek-salamon@us-rs.si

² Peace Institute - Institute for Contemporary Social and Political Studies, Ljubljana, Slovenia

neza.kogovsek-salamon@us-rs.si

³ University of Primorska, Faculty of Humanities, Koper, Slovenia
neza.kogovsek.salamon@fhs.upr.si

CORRESPONDING AUTHOR

neza.kogovsek-salamon@us-rs.si

Abstract This article examines the Constitutional Court of Slovenia's rulings on the government's COVID-19 measures between 2020 and 2022. During the pandemic, the Slovenian government imposed lockdowns, curfews, and school and business closures, and required a "COVID pass" for access to services. These restrictions significantly interfered with fundamental rights, leading to numerous legal challenges. The Constitutional Court found several of these decrees unconstitutional, revealing serious tensions between public health governance and constitutional democracy. The article has two main goals: to evaluate the extent of rights violations and to assess whether rule-by-decree is aligned with democratic principles. The findings show that the rule of law was often undermined, with pandemic-related legal tools at times used to pursue authoritarian political aims. Slovenia's case demonstrates the fragility of democratic institutions in emergencies. It highlights the vital role of constitutional courts in defending the constitutional order, especially when they themselves face political attacks in increasingly illiberal environments.

Keywords

Rule of law,
constitutional
democracy,
COVID-19 epidemic,
constitutional court,
Slovenia

<https://doi.org/10.18690/mls.18.2.215-240.2025>

CC-BY, text © Kogovšek Šalamon, 2025

This work is licensed under the Creative Commons Attribution 4.0 International License.

This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use.

<https://creativecommons.org/licenses/by/4.0>



1 Introductory Explanation

This article addresses the impact of the decisions of the Constitutional Court of the Republic of Slovenia (hereinafter: CCtRS) related to COVID-19 measures. The Government of the Republic of Slovenia managed the COVID-19 epidemic by issuing decrees ordering lockdowns, including closures of schools and businesses, prohibiting public gatherings, imposing curfew, and conditioning access to goods and services with the so-called "COVID-pass". These measures severely impacted individuals' fundamental rights and freedoms. Consequently, many people turned to the CCtRS to determine whether these measures conformed to the Constitution. During the epidemic from 2020 to 2022 and beyond, the CCtRS issued several decisions, finding that the legislative measures and the decrees designed to prevent the spread of infections failed to conform with the Slovenian Constitution. The purpose of this article was twofold. First, it will examine the extent to which the legislative and executive branches of the government interfered with individuals' rights during the epidemic, and second, it will explore whether such governance by decree still retains the characteristics of a constitutional democracy. The numerous CCtRS decisions issued on this matter during and after the epidemic raised questions on the role of the law in a constitutional democracy. The fact that many decrees and laws were declared unconstitutional in this period triggered a question about whether the options that the authorities had at their disposal were instrumental in achieving political objectives that were not democratic. Another question that arose was whether the CCtRS appropriately performed its function as a guardian of the Constitution.¹ Notably, this function is crucial for maintaining constitutional democracy, particularly in times marred by crises such as economic or financial turmoil, epidemics, natural or ecological disasters, wars, civil unrest, as well as internal or international conflicts. During a period when countries worldwide were compelled to manage an epidemic of a global scale, which posed a significant health risk not only to immunocompromised individuals and older people, but also to the wider population, the significance of the CCtRS, alongside other control mechanisms² limiting the powers of the executive and legislative branches of government, was indispensable.

¹ CCtRS has a power to decide, *inter alia*, on the conformity of laws with the Constitution, on the conformity of regulations (which also include government ordinances) with laws and the Constitution, and on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts.

² For example, various state institutions responsible for the control and observance of legal regulations in various areas of legal regulation, for example, courts, the Ombudsperson, the Information Commissioner, the Court of

In this paper, I set aside the question of which intensity of state intervention during the COVID-19 epidemic was optimal, i.e., which states had a better approach, those that adopted highly restrictive measures and shut down public life, or those that implemented policies based on recommendations and less stringent social controls. Some level of state intervention to control the spread of the infections was undeniably necessary to protect the health and lives of the population, in line with the constitutional provisions of Articles 51 (right to healthcare) and 17 (inviolability of life). However, the question was whether the measures of intervention were appropriate, necessary, and proportionate to the aims they were pursuing. Legislatures, executives, and courts had a difficult task of balancing the right to life and healthcare on one hand and all other rights that the measures affected on the other hand. Stricter protection of the former very often disproportionately affected the latter. Some commentators observed that in some countries, e.g., France, their responses to the epidemic were becoming "increasingly authoritarian" (Golia et al., 2021, p. 284). Across many nations, constitutional and supreme courts have scrutinized the extent to which authorities may infringe upon the rights and freedoms of their citizens. As several authors point out, where interventions were deemed excessive, courts in various countries abrogated measures that lacked legal grounding, were indefinite, overly broad, disproportionate, unjustified, or unsubstantiated by scientific evidence (Tzifakis, 2020, p. 201; Milinković, 2021, p. 449; Renders, 2021, p. 432; Dobrovičová, 2022, p. 29; Flander, 2022). Tzifakis (2020, p. 201), however, points out that in some Western Balkan countries, particularly Serbia and Albania, the constitutional courts were not even operational, while the political leaders disregarded domestic institutional procedures, ignored the system of checks and balances, and sidelined the legislatures. Some authors have pointed out that in Bosnia and Herzegovina and in Slovakia. At the same time, the constitutional courts in those countries continued to operate throughout the health crisis, their decisions were delayed and limited in scope (Milinković, 2021, p. 449; Dobrovičová, 2022, p. 29). Piotrowski (2024) underlines that in Poland, the measures tackling the epidemic could pass constitutional scrutiny only if a state of emergency had been declared - but no such emergency was officially declared. For some other countries, the academic criticism of both the management of the epidemic and the response of the courts is not that severe. In Belgium, for example, according to Renders (Renders, 2021, p. 432), the Council of State was indeed

"seized" by a high number of judicial reviews against the measures related to epidemic, claiming an infringement of fundamental rights, but it has confirmed most of these measures as being consistent with the Belgian Constitution. This corresponds to the finding of Iamiceli & Cafaggi (2023), that generally the role of the courts during the epidemic was seen to be constructive and not disruptive.

2 Methodology

There is extensive literature already available for both individual countries as well as on the comparative level concerning the legality and constitutionality of the epidemic's management. The aim of this article was to complement this literature by a normative dogmatic method, comparative method, as well as by critically assessing the situation in Slovenia, where the authoritarian tendencies were, in my view, particularly visible, and to carry out this assessment from a certain time distance. For this purpose, I analysed the decisions of the CCtRS to explore key constitutional aspects of managing the COVID-19 epidemic in Slovenia and examine where these authoritarian tendencies are most visible. I aimed to explore whether the CCtRS was constructive or disruptive, and if it was disruptive, was it towards the management of the epidemic or the authoritarian tendencies? The research conducted for this article focused on all COVID-19-related CCtRS decisions issued between 2020 and 2024. The analysis examined the outcomes of the key decisions, focusing on key legal issues emerging from these decisions, and the types of constitutional scrutiny applied to the regulations the Court reviewed. The analysis tested the main hypothesis that was set before the research began, which was, as indicated, that the governmental management of the epidemic in Slovenia unveiled authoritarian tendencies that have manifested themselves in increased social control. The starting point of the research was to verify whether the measures passed to prevent the spread of the virus also served to discipline the population (Završnik & Šarf, 2021). In this context, another goal was to examine what role the system of checks and balances played in this situation (Bardutzky & Zagorc, 2021). The research examined whether the crisis posed a danger to public health caused by insufficient and inadequate medical capacities to handle the spread of the infections, and whether it constituted *a crisis of the rule of law*. Due to the limited scope of this article, the research and the conclusions have focused on legal aspects (i.e., conformity with the constitution and checks and balances among different branches of power), as

opposed to the wider social aspects, as the latter would require additional and wider research methods.

3 Results

Having analysed the legal developments during the epidemic and CCtRS decisions from the stated period, I assert that what has been witnessed was in fact a rule-of-law crisis. I define *a crisis of the rule of law* in this context as a systematic dismantling of the legal framework by eroding the hierarchy of legal acts, with an aim of social control during the epidemic, which was achieved through the misuse of decrees (ordinances, also by-laws) by the authorities. Predominantly, the measures to curb the epidemic were enacted through government decrees, which, by fundamental legal principles, should have a clear legal basis (a basis in the legislative act adopted by the parliament). These decrees were often hastily adopted, coming into force the day after their publication in the official gazette, if they were published at all. They were in constant flux, frequently unclear, and interpreted inconsistently by different state authorities. The intended addressees, both the populace and legal entities, much too often either misunderstood the rules or were completely unaware of their real meaning. Revelations of such problems eroded public trust in the state management of the epidemic (G.C. & L.Š., 2021). Often, the new rules appeared senseless and unfair, exemplified by the incident where food delivery workers were fined for not wearing masks while eating lunch in central squares, despite being alone (Dnevnik, 2020). The ambiguity of the ordinances, coupled with extremely short notices and inconsistent methods of public communication regarding newly adopted measures, compounded the confusion. Legal entities such as shops and service providers were often forced to open or close with little or no advance notice, many times learning about changes in rules through late-evening news broadcasts. This approach severely undermined legal certainty and trust in the government's ability to manage the epidemic effectively. We now know that this erratic approach reflected the combination of factors, namely global lack of preparedness for a pandemic, lack of national medical capacities, lack of equity among states regarding access to vaccines, and other factors (Maccaro et al., 2023).

Various authors have characterised this period distinctly, including terms like "erosion of law" (Flander, 2021) and "legal hooliganism" (Al. Ma., 2021), indicating the situation indeed amounted to a *crisis* (Koselleck, 2000; Jalušič et. al, 2024). CCtRS

also contributed to this crisis, particularly considering its initial deliberations, due to its reluctance and hesitation to abrogate clearly unconstitutional decrees. In this initial period, we may conclude that CCtRS was not disruptive but played a similar enabling role as in most other jurisdictions. Gradually, this changed. For over three years, the epidemic provided a relentless source of materials for the CCtRS's abstract constitutional review. Many individuals affected by the new slew of rules and measures felt these infringed upon their rights and freedoms and sought redress from CCtRS in large numbers (CCtRS, 2020, p. 83, 2021, p. 76). This offered CCtRS numerous opportunities for constitutional decision-making. This paper analyses the key CCtRS judgments from this period, underlining key legal issues and exploring how the court addressed the constitutional challenges posed by the executive and legislature. Through this analysis, I highlight the instances where the Court's response effectively met these challenges and, crucially, where it fell short.

3.1 The Importance of Constitutional Conformity of Regulations While "Ruling by Decree"

During the epidemic, the executive branch of government ruled by decree for an unacceptably long period of time. Rule by decree is a method of governance that has been deemed problematic at least since the era of Nazi Germany (Fraenkel, 1941; Schupmann, 2017). Many of the anti-COVID ordinances and decrees included problematic provisions or lacked a sufficient legal foundation, rendering review by CCtRS essential. The first decision, in which CCtRS addressed one such measure, pertained to the prohibition on crossing municipal borders, which was aimed at restraining the spread of the disease.³ The CCtRS decision was issued on 27 August 2020, that is, five and a half months after the Minister of Health declared an epidemic.⁴ In the first year of the epidemic, the government issued multiple ordinances prohibiting the population from moving beyond the borders of their

³ CCtRS, Decision No. U-I-83/20-36, 27 August 2020. The petition for the review of constitutionality in the case of the Constitutional Court No. U-I-83/20-36 encompassed several ordinances, all of which shared the common feature of prohibiting movement outside municipal borders for the general population, except for individuals who could demonstrate that they fell under the exceptions specified in the ordinances. Although some of the challenged ordinances were no longer in effect at the time of the Court's decision, the Constitutional Court accepted the petition for the review of certain provisions. This review was deemed essential as it raised significant constitutional questions with precedential value and directly impacted the legal standing of the petitioner.

⁴ Republic of Slovenia (2020) *Odredba o razglasitvi epidemije nalezljive bolezni SARS-CoV-2 (COVID-19) na območju Republike Slovenije* [Order on the Declaration of an Epidemic of the Infectious Disease SARS-CoV-2 (COVID-19) in the Territory of the Republic of Slovenia], Official Gazette RS, No. 19/20, 12 March 2020, <https://pisrs.si/pregledPredpisa?id=ODRE2550>.

municipality of residence,⁵ to restrict the increase in infections. The CCtRS concluded, with a weak majority of five judges out of nine, that the ban was not inconsistent with the Constitution. The restriction of movement was assessed from the perspective of Article 32 of the Constitution, which guarantees freedom of movement.⁶ CCtRS concluded that the provisions of the ordinances undoubtedly interfered with the right to freedom of movement within the country. According to Article 15(3) of the Constitution, interference with human rights is permissible only if the Constitution expressly allows for it or to protect the human rights of others. The latter condition means that an intervention is permissible if it meets the strict test of proportionality, which is derived from the principles of the rule of law as per Article 2 of the Constitution. The court majority held that the intervention was permissible because it pursued the constitutionally permissible goals of controlling the epidemic and simultaneously characterized it as appropriate, necessary, and proportionate. As the reasoning reveals, the majority opinion was significantly influenced by the fact that the epidemic was still in its early stages and involved an infectious disease that was "unknown to the population, especially at the beginning of its appearance, and above all it was scientifically and medically unresearched".⁷ Furthermore, it was described as a "severe infectious disease" that "broke out for the first time in the country".⁸ The court majority in this decision emphasized that even the scientific community was not unanimous on which measures were most suitable for protecting public health. Consequently, it recognized that the authorities, charged with the duty to protect public health, should be afforded a wide margin of discretion in choosing the measures to apply for this purpose. CCtRS considered that limiting contact between people reduces the potential spread of the virus and

⁵ Republic of Slovenia (2020) Odlok o začasnih splošni prepovedi gibanja in zbiranja ljudi na javnih mestih in površinah v Republiki Sloveniji ter prepovedi gibanja izven občin [Ordinance on the Temporary General Prohibition on the Movement and Gathering of People in Public Places and Areas in the Republic of Slovenia and the Prohibition on Movement Outside Municipalities], Official Gazette RS, No. 38/20 and 51/20, 14 April 2020, <https://pisrs.si/pregledPredpisa?id=ODLO2041>; Republic of Slovenia (2020b) Odlok o začasnih splošni prepovedi gibanja in zbiranja ljudi na javnih krajih, površinah in mestih v Republiki Sloveniji ter prepovedi gibanja izven občin [Ordinance on the Temporary General Prohibition on the Movement and Gathering of People in Public Places, Areas and Cities in the Republic of Slovenia and the Prohibition on Movement Outside Municipalities], Official Gazette RS, Nos. 52/20 and 58/20, 24 April 2020, <https://pisrs.si/pregledPredpisa?id=ODLO2049>.

⁶ Article 32(1) and (2) of the Constitution: "Everyone has the right to freedom of movement, to choose his place of residence, to leave the country and to return at any time. This right may be limited by law, but only where this is necessary to ensure the course of criminal proceedings, to prevent the spread of infectious diseases, to protect public order, or if the defense of the state so demands."

⁷ Republic of Slovenia (2020) Odlok o začasnih splošni prepovedi gibanja in zbiranja ljudi na javnih mestih in površinah v Republiki Sloveniji ter prepovedi gibanja izven občin [Ordinance on the Temporary General Prohibition on the Movement and Gathering of People in Public Places and Areas in the Republic of Slovenia and the Prohibition on Movement Outside Municipalities], Official Gazette RS, No. 38/20 and 51/20, 14 April 2020, <https://pisrs.si/pregledPredpisa?id=ODLO2041>.

⁸ Ibid.

that the spread varies by municipality. Therefore, prohibiting residents from leaving their own municipality was seen to prevent the introduction of infections into less affected areas. These considerations led a narrow CCtRS majority to conclude that the measure restricting movement to the municipality of residence was not considered disproportionate or excessive. In this decision, CCtRS extensively quoted the speeches of leading representatives of the authorities at press conferences, indicating that their cautious public appearances strongly influenced the majority opinion.⁹

What is unusual about this decision is that the majority focused solely on the constitutionality of the ordinance itself, without addressing the constitutionality of the Communicable Diseases Act¹⁰ upon which the ordinance was based, relative to the Constitution. Thus, CCtRS directly proceeded to review the ordinance, bypassing the evaluation of the conformity of the law (on which the ordinance was based) with the Constitution. This was despite many of the petitions for constitutional review, including arguments that the legal basis itself was unconstitutional. This deficiency of the approach was highlighted by the minority of constitutional judges who were outvoted, as evidenced in the dissenting opinions.¹¹

Today, we can conclude that this CCtRS decision demonstrated an overly deferential approach towards government actions, meaning that it can be seen as constructive and not disruptive. Early on, the government was broadly trusted by CCtRS to make decisions based on scientific expertise, to act cautiously with respect to other rights and freedoms of the population (the right to life, the right to health), while also ensuring a balance that would allow the economy to continue functioning despite some encroachments on individual freedoms. From today's perspective, understanding that the legal system was in a severe crisis at the time the anti-epidemic ordinances were adopted, the decision appears as a naive endorsement of the practices of the authorities. It was only later that CCtRS acknowledged the presence of serious systemic flaws in the governance. The excessive leniency of the Court was criticized in separate opinions by judges who dissented, warning that facilitating the executive's governance through these ordinances would lead to

⁹ Ibid.

¹⁰ Republic of Slovenia (2006) Communicable Diseases Act. Official Gazette RS, No. 33/06, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4833>.

¹¹ Mežnar, Š. (2020) Dissenting separate opinion of judge Dr Špelca Mežnar to Decision No. U-I-83/20 of 27 August 2020 of the Constitutional Court RS.

further encroachments on rights and freedoms.¹² This situation showed us that, under challenging conditions, the CCtRS majority was prepared to permit clearly unconstitutional measures if they could potentially contribute to curbing the spread of infections (Flander, 2021, p. 61).

Early in the epidemic, CCtRS imposed one significant limitation on the executive. In April 2020, before deciding on the merits concerning the prohibition of leaving one's own municipality, CCtRS temporarily suspended the enforcement of the ordinance provision that prohibited the crossing of municipal borders until explicitly revoked. Upon this temporary suspension, the Court mandated that the government must *"check every seven days, based on expert opinion, whether epidemiological measures are still necessary to achieve the goal of preventing the spread of COVID-19, and that it must accordingly extend, modify, or eliminate these measures, and must inform the public about its decisions"*.¹³ This mandate signified that the government was instructed not to establish measures as permanent fixtures to be lifted at its discretion, but rather to initially set them as temporary, with a possibility of extension. This decision was significant as it established the rules relatively early in the epidemic and was in this sense disruptive for the authoritarian aspirations of the authorities. It curbed the tendency for governmental measures to become indefinite, thereby facilitating easier judicial review and limiting the potential for prolonged, unchecked governmental rule by decree.

3.2 The Importance of Official Publication of General Legal Acts

The CCtRS acknowledged in its next important decision that the legal system was becoming chaotic. This recognition came through a decision in which CCtRS declared the closure of schools for children with special needs unconstitutional.¹⁴ This decision was issued nine months after the declaration of the epidemic, when schools were closed already for a second extended period. When CCtRS evaluated the constitutionality of school closures, it noted that the initial decision on school closure was based on an ordinance that had been duly adopted and published in the Official Gazette. However, subsequent ministerial decisions to extend the

¹² Čeferin, R. (2020) Dissenting separate opinion of judge Dr Rok Čeferin to Decision U-I-83/20 of 27 August 2020 of the Constitutional Court RS.

¹³ CCtRS, Decision No. U-I-83/20-10, 16 April 2020.

¹⁴ CCtRS, Partial Decision and decision No. U-I-445/20-13, 3 December 2020.

ordinance's validity were not published in the Gazette. The Court determined that these decisions were general legal acts that affected an unspecified group of individuals, thereby permitting an abstract review of their conformity with the Constitution. CCtRS emphasised that the absence of publication of the acts prevented their entry into force and, consequently, their conformity with the rule of law principles. In this decision, CCtRS reiterated:

*"The regulations must be published prior to entering into force. A regulation enters into force on the fifteenth day after its publication unless otherwise determined in the regulation itself. State regulations are published in the official gazette of the state (see Article 154 of the Constitution). Since the Government decisions in question were not published in the Official Gazette of the Republic of Slovenia, they could not enter into force."*¹⁵

Therefore, the ministerial decisions on the grounds of which the schools were closed could no longer be applied, and there was no legal basis for closing schools beyond the initial seven days. Concurrently, it needs to be recalled that the Minister of Education also issued a decision to introduce distance learning, which, however, was also not published in the Official Gazette, despite being a general legal act. Since this decision by the Minister was not published, it legally did not come into effect and should not have been enforced. A few weeks later, in a subsequent ruling on the same case, CCtRS also suspended the ordinance regarding the closure of educational facilities for children with special needs. It ordered that these institutions must reopen immediately.¹⁶ The constitutionality of closing schools in general was, however, never adjudicated by CCtRS, because by the time the discussion on the merits concerning school closures was raised, the relevant ordinances had already expired. It could be assessed that, concerning the closure of schools in general, CCtRS was constructive, while its ruling regarding the schools for children with special needs was disruptive.

Decision-making in the case of closed schools for children with special needs carries dual significance. First, the CCtRS decision facilitated the reopening of schools with programmes adapted for the most vulnerable groups of children. Second, it exposed the authorities' dismissive attitude towards utilising the instruments of normative

¹⁵ Ibid.

¹⁶ CCtRS, Decision No. U-I-83/20-36, 27 August 2020.

activity, contrary to the procedures foreseen within the constitutional legal framework. The revelation that ordinances were not published in the Official Gazette, and that modifications to the content of these ordinances were only posted on government websites—a practice some authority representatives deemed entirely sufficient, as evidenced by their public statements in reaction to the CCtRS decision—highlighted a startling lack of awareness among political actors about basic constitutional norms (G.C., L.Š., 2021). At that moment, the perception of both the crisis of the law and the crisis of governance was profoundly palpable.

3.3 The Importance of an Appropriate Legal Basis for Adopting By-Laws

As we have shown, in the first year of the epidemic (2020), CCtRS exhibited some degree of deference towards the executive and legislative branches, considering the sudden outbreak of an unknown disease for which the authorities had no time to prepare. However, as time progressed, this deference began to wane, and CCtRS became less tolerant towards the executive and more disruptive. With the substantial influx of petitions to review the constitutionality of the ordinances and the increasing scrutiny over the legal bases for their adoption, critical questions emerged: Was the Slovenian Communicable Diseases Act, which was intended to provide the legal basis for *all* anti-COVID-19 measures, even consistent with the Constitution? And, consequently, was it still legally permissible to adopt ordinances and decrees that interfered with freedom of movement and access to goods and services, with new information showing that COVID-19 was no longer viewed as a novel and hazardous disease? A negative answer to these questions in the early phase of the epidemic could lead to additional dimensions of the rule-of-law crisis, if CCtRS abrogated the only law that allowed for adopting measures to combat the virus. It is therefore unsurprising that the time to assess these questions came only in the second year of the epidemic.

That is when CCtRS held that the main provisions of the Communicable Diseases Act, which defined the measures that the government can take in the event of an epidemic, were inconsistent with the Constitution.¹⁷ The provisions granted the executive a broad authority to implement measures to prevent the spread of communicable diseases, including restrictions on movement and prohibitions on

¹⁷ CCtRS, Decision No. U-I-79/20-24, 13 May 2021.

assembly and association. However, the level of discretion given to the government for drafting the measures was deemed excessively vague, giving the government the discretion to "select at its own discretion the methods (types), extent, and duration of restrictions that could (even very intensively) interfere with the freedom of movement of (potentially all) residents" as well as freedoms of assembly and association. This provision allowed for arbitrary interference with individual rights through ordinances, fundamentally conflicting with the principle of legality and the constitutional principles of predictability and legal certainty. Consequently, CCtRS ruled that ordinances based on these unconstitutional provisions were themselves inconsistent with the Constitution.¹⁸ This was the point of a decisive and disruptive constitutional response to the dangers to the rule of law caused by the executive's negligent adoption of decrees and their instrumentalization.

Despite finding certain legal provisions of the Communicable Diseases Act unconstitutional, CCtRS did not opt for its abrogation, and the problematic legal provisions continued to be applied. This decision was made to ensure that there is at least *some* legal basis for further adoption of ordinances, as opposed to none. Indeed, it is never entirely certain whether the legislature will respond in a timely manner and enact appropriate regulations following the guidelines set by CCtRS within the timeframe specified in its decision. Thus, abrogating parts of Article 39 of the Communicable Diseases Act could have exacerbated the existing legal crisis.

The decision established a precedent suggesting that additional measures contained in the ordinances were likewise susceptible to invalidation, a development that was later confirmed by subsequent CCtRS decisions. Among the more significant measures were those in which the executive interfered with the freedom of assembly and association guaranteed by Article 42 of the Constitution. Namely, the ordinances prohibited gatherings during certain periods of the epidemics. In this context, CCtRS effectively fulfilled its role as the guardian of the Constitution. On 15 April 2021, it first temporarily suspended the implementation of the ordinance that temporarily prohibited events, meetings, and gatherings,¹⁹ and in June 2021, it also found that the part of the government ordinances on the restriction of movement and assembly to prevent the spread of COVID-19 that prohibited gatherings or limited them to

¹⁸ Ibid.

¹⁹ CCtRS, Decision No. U-I-50/21-19, 15 April 2021.

up to ten participants was inconsistent with the Constitution. The Court held that there was insufficient evidence that such a restriction was necessary.²⁰ In this landmark decision, CCtRS, for the first time, defined the content of the right to assembly and association under Article 42 of the Constitution, rendering the decision historic. This ruling not only clarified the constitutional rights during emergency measures but also set a significant precedent for future governance and legal interpretations in times of crisis.

3.4 Failure to Decide on the Conformity of Curfew with the Constitution

As of now, CCtRS has not yet issued a ruling on the constitutionality of the ordinances that imposed a curfew, i.e., restrictions of free movement in public spaces during nighttime. The COVID-19 curfew, lasting 174 days or approximately six months, was among the longest in Europe (Demšar, 2021). Notably, curfew was reintroduced for the first time since World War II occupation. CCtRS had its first opportunity to deliberate on this matter just a few weeks after the curfew ordinance was implemented. However, initially, it dismissed²¹ the motion for a temporary suspension of the relevant ordinance without any explanation (G.C. & L.Š., 2021). In September 2022, the Court also rejected a petition for a constitutional review of the curfew on the merits.²² CCtRS acknowledged that the introduction of curfew and its alignment with the Constitution represented a particularly significant constitutional question with precedential value. However, following the abolition of curfew, CCtRS perceived it as unlikely that such measures would be reintroduced in the future. In March 2023, CCtRS once again rejected a petition challenging the constitutionality of the ordinances that had established and maintained curfew.²³ It could be assessed that on the issue of curfew, the Court was constructive and not disruptive.

In my opinion, the primary contention was that the assumption underpinning the original measures, that their reintroduction could be reasonably anticipated, was not convincingly repudiated. This assumption is questionable, given that the probability of reintroducing such measures persists considering past, present, and anticipated

²⁰ Ibid.

²¹ CCtRS, Decision No. U-I-427/20-21, 5 November 2020.

²² CCtRS, Decision No. U-I-426/20-57, 15 September 2022.

²³ CCtRS, Decision No. U-I-178/22, 16 March 2023.

future crises, particularly in an era characterised by the strengthening of authoritarianism and the illiberal tendencies of authorities (cf. Pap, 2018; Sajó, 2021; Sajó et al., 2022). Therefore, in my view, a judicial review of these measures would be prudent and justified. By contrast, the German Federal Constitutional Court delivered a ruling on the constitutionality of curfew in May 2021,²⁴ affirming its compliance with the Constitution. This decision considered factors such as the German legal framework, established case law, the legislator's thorough justification supported by scientific research, a comprehensive range of exceptions to curfew, the restriction of curfew to specific regions, and the linking of the prohibition of nighttime movement to the infection growth rate within the community (Gračar, 2021). In Slovenia, however, where none of these elements were provided for during curfew, there remains a legitimate concern regarding whether the ordinances imposing curfew were consistent with the Constitution. This is particularly pertinent given that the Article upon which they were based was later found to be inconsistent with the Constitution. Moreover, several legal experts have raised alarms about its unconstitutionality (Flander, 2021; Teršek, 2020).²⁵ Curfew in Slovenia was not only protracted but also imposed extensive daily restrictions, lasting up to nine hours at its peak, two hours longer than curfew in Germany. Additionally, it allowed for only a very limited set of exceptions, which excluded contacts with loved ones, such as non-married partners, and completely barred harmless outdoor recreational activities. Moreover, these measures contradicted the recommendations of epidemiologists (G.C. & L.Š., 2021).

Implementing curfew also prompts a range of significant constitutional and legal questions, such as the legality of imposing it without first declaring a state of emergency, as envisaged by Article 16 of the Constitution. This article stipulates the conditions under which it is permissible to temporarily suspend or restrict rights and freedoms, specifying that such actions are only constitutional in the event of war or a declared state of emergency, and even then, only to the extent required by such circumstances. Moreover, there is the question of whether an epidemic justifies the

²⁴ Constitutional Court of the Federal Republic of Germany (2021), BvR Decision No. 781/21 of 5 May 2021.

²⁵ The Constitutional Court judge Špelca Mežnar, in her separate opinion accompanying the decisions U-I-426/20 and U-I-427/20 to reject the petition evaluating curfew's compliance with the Constitution, stated unequivocally that curfew contravened the Constitution. This ruling was based on ordinances that stemmed from an unconstitutional legal provision within the Communicable Diseases Act (2006), as previously determined by CCtRS in decision No. U-I-79/20-24. Mežnar, Š. (2022) Dissenting separate opinion of Judge Špelca Mežnar to decisions U-I-426/20 and U-I-427/20 of the Constitutional Court RS.

declaration of a state of emergency and whether such a declaration might inadvertently open "Pandora's box," enhancing the potential for authorities with authoritarian inclinations to misuse the state of emergency framework in the future (Haack, 2022, p. 87). From the perspective of the continuous development of democratic standards in the country, as well as in law and politics, and to prevent future crises of law, it becomes imperative to address these issues at the constitutional level.

3.5 Encroachment Upon General Freedom of Conduct – Masks and Hand Disinfection

During the final phase of the epidemic in 2022, CCtRS annulled measures mandating hand disinfection and the wearing of masks. The annulment was not because these measures were deemed pointless, but because the legislature had failed to establish an adequate legislative basis for these measures throughout the two years of the epidemic.²⁶ CCtRS specifically (and constructively) deferred the decision on the legal bases for the mandatory wearing of masks and hand disinfection to a later date, choosing not to address these issues when it was evaluating the adequacy and precision of the definitions within the Communicable Diseases Act in general.²⁷

In its decision, the court relied on the fundamental principle of legality, as outlined in Article 120 of the Constitution.²⁸ The principle of legality means that by-laws and individual acts of the executive power, including those of both the government and administrative bodies, can only be adopted based on the law (a legislative act adopted by the parliament). This requires that they have a sufficiently specific substantive *basis within the law*. Additionally, the content of these acts must remain *within the framework of the law*, ensuring they do not exceed its possible meaning.²⁹ In this context, CCtRS asserted that the obligation to disinfect hands and wear masks in enclosed public spaces infringes upon the general individual's freedom of conduct enshrined in Article 35 of the Slovenian Constitution. By extension, this provision

²⁶ CCtRS, Decision No. U-I-132/21-25, 2 June 2022. The omission shows particularly serious negligence on the part of the authorities, which are obliged to protect the rule of law, and to respect its key constituent element, the principle of legality.

²⁷ CCtRS, Decision No. U-I-132/21-25, 2 June 2022, paragraph 40.

²⁸ Article 120 (2) of the Constitution reads: "*Administrative authorities perform their work independently within the framework and on the basis of the Constitution and laws.*"

²⁹ CCtRS, Decision No. U-I-132/21-25, 2 June 2022, paragraph 20.

reasonably allows individuals to decide whether to protect themselves from infection. The general freedom of conduct, like any other human right or freedom, may only be encroached upon if it is legally mandated and if such encroachment satisfies a strict proportionality test. CCtRS found that the Communicable Diseases Act, which the executive authority cited when formulating the measures, lacks clear legal provisions that could serve as a basis for mandating hand disinfection and mask-wearing. CCtRS also clarified that the government, while allowed to restrict movement in public places during an epidemic based on legal provisions, cannot implement measures unrelated to movement restrictions, such as mask mandates.³⁰

The principle of legality, which the CCtRS employed in its adjudication, is a fundamental constitutional principle mandating that executive actions must always have a legal basis. This principle is universally recognized within the legal profession as central and foundational; without it, a hierarchical structure of legal norms in a rule-of-law-based country would be inconceivable. To safeguard the legal system, which has been thrust into crisis by the issuance of ordinances lacking a legal basis—an action that cannot remain without consequences—CCtRS utilized its primary tool: the principle of legality. This was despite the possibility of also assessing the constitutional conformity of the ordinances on other grounds, given that they impinged on individual human rights and freedoms.

It is also noteworthy that by delaying its decision on this issue, CCtRS provided the authorities with sufficient time to legally justify basic non-invasive measures, such as mask mandates and mandatory hand disinfection. The decision was issued more than two years after the declaration of the epidemic, despite individuals having raised objections to these measures from the outset. In its deliberations, CCtRS avoided a formalistic approach that would have ignored real social needs. Instead, it took into consideration the actual health risks and the social context, recognizing the epidemiological value of preventive measures like hand disinfection and indoor mask-wearing. CCtRS acknowledged that the legislative and executive branches had not acted with the intent to provide a legal basis for their actions, despite the long-standing clarity about the absence of such bases. In its decision, CCtRS also constructively avoided instigating new levels of legal crisis by not invalidating the existing legal foundations for epidemiological measures within the law. Instead, by

³⁰ Ibid., paragraph 32.

issuing its decision after the ordinances mandating hand disinfection and mask mandates had expired, it provided the legislative and executive branches with clear guidance on how to amend the legal framework for any future measures, without dismantling the existing ones.

The role of CCtRS during this period is characterised by its recognition of the public health risks posed by a new infectious disease. While granting the authorities flexibility and time to respond, CCtRS made it clear that they were expected to establish appropriate legal foundations for their measures. Another noteworthy aspect of this specific assessment of regulatory compliance with the Constitution, and of other constitutional evaluations, is the CCtRS' broad acknowledgment of petitioners' legal interests.³¹ This acknowledgment of their legal interest (which is a procedural precondition for abstract review of conformity) allowed petitioners to challenge the substance of the regulations they contested. In assessing legal interest, CCtRS normally verifies whether a regulation directly impacts individuals' legal standing and whether they have exhausted all other available legal avenues. However, in the case of the obligation to wear masks, this scenario would only arise if petitioners violated the ordinance's rules and were fined for the minor offence. Only then could they pursue legal remedies, including a constitutional complaint. For such cases, CCtRS determined that compelling individuals to commit minor offences to demonstrate legal interest before CCtRS was inappropriate, and that their legal interest should be recognised even if the law did not yet affect them directly. This rationale can be assessed as adequate for the recognition of petitioners' legal interests in the case of mask mandates.

3.6 The Importance of the Principle of Legality for Determining New Types of Compulsory Vaccination

With the widespread availability of COVID-19 vaccination, access to goods and services became contingent upon adherence to the "recovered/vaccinated/tested" requirement (also known as COVID-pass). This rule mandated that individuals possess a certificate demonstrating recovery from COVID-19, vaccination against it, or a negative result from a rapid antigen test to access most goods and service providers, as well as workplaces. Towards the end of the epidemic, discussions

³¹ CCtRS, Decision No. U-I-427/20-64, 15 September 2022.

intensified regarding the potential necessity of implementing vaccination mandates for certain professions or types of employment. These discussions culminated in the adoption of an ordinance stipulating that civil servants could only access their workplace with a medical certificate confirming recovery or vaccination.³² For civil servants unable to demonstrate recovery from COVID-19 and whose work could not be conducted remotely, this ordinance effectively amounted to mandatory vaccination. Consequently, it became imperative to assess the compliance of this ordinance with the legislation governing mandatory vaccination under national law. A trade union challenged the provision of the ordinance before CCtRS, resulting initially in a temporary suspension of its enforcement. Subsequently, CCtRS concluded that the relevant provision of the ordinance was inconsistent with the Constitution.³³ CCtRS again revisited the fundamental principle of legality when deliberating on the issue and examined whether a legal basis existed for such an obligation. It determined that this was not the case, as the vaccination programme applicable to employees, adopted under the Communicable Diseases Act (2006), did not designate mandatory vaccination against COVID-19. Although these conclusions may seem self-evident today, they highlight the extent of the legal and institutional crisis faced by the country during the epidemic. The fact that there were plans to introduce compulsory vaccination for a specific group of people without legal grounds underscores the gravity of the situation.³⁴ It could be assessed that on this issue CCtRS acted in a way that was disruptive for the authorities.

3.7 The Principle of Protection of Legal Certainty and the Principle of Separation of Powers

In 2024, CCtRS continued to consider issues related to epidemic control and management. Two primary factors contributed to this ongoing process. The first one was the protracted duration of judicial decision-making within CCtRS. Second, the effect of certain measures from COVID times continued to resonate in various regular court proceedings due to judicial actions filed against them.

³² Republic of Slovenia (2021) Ordinance on the Method of Meeting the Recovered/Vaccinated/Tested Rule to Contain the Spread of the SARS-CoV-2 Virus Infections, adopted by the Government of the Republic of Slovenia, in force since 15 September 2021, <http://pisrs.si/Pis.web/pregledPredpisa?id=ODLO2600>.

³³ In the meantime, the ordinance ceased to be valid, as it was replaced by another ordinance, which did not contain this provision. Republic of Slovenia (2021), Ordinance on Temporary Measures for the Prevention and Control of Infections with the Infectious Disease COVID-19, adopted by Government of the Republic of Slovenia, in force since 8 November 2021, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ODLO2622>.

³⁴ CCtRS, Decision No. U-I-210/21-25, 29 November 2021.

In response to these ongoing issues, CCtRS addressed the question of whether it was permissible to reduce the salaries of prosecutors to allocate funds necessary for state epidemic control. Specifically, one of the intervention laws adopted by the parliament mandated a 30% reduction in the salaries of certain officials, including prosecutors, over a period of one and a half months in 2020.³⁵ The salaries of prosecutors were reduced without any consultation with the prosecutors themselves.³⁶ Furthermore, the salaries of officials in all independent bodies, except for judges and CCtRS judges, were lowered as well. Prosecutors objected to this reduction, and some initiated individual labour disputes, challenging the constitutionality of the law upon which the reduction was based. CCtRS determined that the arbitrary reduction of salaries was unconstitutional. The regulation was evaluated through the lens of the principle of legal certainty, which emanates from the broader principle of the rule of law as outlined in Article 2 of the Constitution. The principle of legal certainty ensures that individuals are protected from arbitrary detriment to their legal position by the state. Such detriment must be based on genuine reasons rooted in the prevailing and constitutionally permissible public interest.³⁷ The explanatory notes accompanying the draft law made it evident that the purpose of the salary reduction was to generate funds to address the repercussions of the epidemic, which were unforeseen during the budget preparation. However, due to the National Assembly's lack of response to the request for a constitutional review, CCtRS had no concrete information regarding the amount allocated and its expenditure. In the absence of a clear demonstration of the necessity for these funds, CCtRS determined that the interference with the rights of prosecutors was unjustified.³⁸

It is essential to note that the measure also impacted chief officials of independent state bodies, including the Ombudsperson, the Court of Auditors, the Commission for the Prevention of Corruption, the Information Commissioner, the National Commission for Auditing Public Procurement, the Advocate of the Principle of Equality, and others. These bodies are autonomous and independent, occupying a

³⁵ Republic of Slovenia (2020) Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy, OGRS, No. 49/20 and 61/20, 30 April 2020, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8190>.

³⁶ Concurrently, the legislature also reduced its own salaries, as well as those of government representatives, who then increased their salaries back.

³⁷ CCtRS, Decision No. U-I-432/20-10, 2 February 2023.

³⁸ *Ibid.*, paragraphs 15 and 16.

distinct position within the system of separation of powers. They do not fall neatly within any of the three branches of government, legislative, executive, or judicial. Indeed, while these bodies perform certain executive functions such as inspection or minor offense procedures, they also wield a range of other specific powers not typically associated with any of the three main branches of government. These include drafting opinions on issues within their mandates, investigating human rights violations, and representing clients before courts. Therefore, unilateral interference with their salaries, lacking detailed justification, raises questions from the perspective of the principle of separation of powers as outlined in Article 3 of the Constitution. Moreover, such actions could be interpreted as attempts at intimidation, potentially leading to the subordination of these bodies to ensure approval from the legislative and executive branches of government. Notably, these branches already exert significant influence over the determination of their powers, working conditions, and budgetary allocations.

4 Discussion

A review of key CCtRS decisions on the conformity of epidemiological regulations with the Constitution reveals a stark reality: the response of authorities to the epidemic disrupted several fundamental constitutional principles, many of which were unconstitutionally violated. The state practices observed during the epidemic precipitated a rule-of-law crisis, arguably unparalleled since the country's independence. Throughout its existence, CCtRS encountered various violations of constitutional principles and human rights and freedoms. However, what distinguishes this crisis is the profound nature of these violations of fundamental legal principles and their systemic dimensions, affecting all parts of society. These violations ranged from the failure to publish regulations in the official gazette to the continuous breaches of the principle of legality through the successive adoption of ordinances without a proper legal basis. All these actions disproportionately encroached upon the freedoms of individuals, particularly the general freedom of conduct, freedom of movement, the right to peaceful assembly and association, access to goods and services, and the right to education, among others. In my opinion, the way in which the authorities handled the epidemic profoundly destabilized the existing system of constitutional democracy in Slovenia. Some violations were fundamental, and the reactions to CCtRS invalidations were so surprisingly dismissive that it is difficult to think otherwise.

Furthermore, the content of many adopted ordinances, with their disproportionate and unlawful interference with fundamental rights, not only reflected the low level of democratic culture in the country but also revealed alarming authoritarian tendencies within the authorities. My assessment is that such measures were not mere excesses or oversights but, under the pretext of handling epidemics, deliberate steps towards illiberalism that would undermine the foundations of a constitutional republic (Pap, 2018, Chapter 3). Examples of the escalating and ultimately excessive use of police powers (Flander, 2021, p. 54), including the use of force, which in later official analysis turned out to be excessive and unprofessional (Ministry of the Interior of the Republic of Slovenia, 2022), also indicate this. Other examples that showed authoritarian tendencies are almost complete prohibition of public gatherings and protests, which resulted in arrests of people who were reading the Constitution out loud on one of the main squares (24ur.com, 2021) and arrests of people who peacefully expressed dissent to governmental infringement of rights (PMVD, 2021, 2021a, 2022, 2022a).

Indeed, it cannot be argued that the epidemiological measures were not at least partly meaningful and needed with a view to protecting the constitutional right to health care and inviolability of human life. At the onset of the epidemic, there was deep uncertainty regarding the functionality of the unknown virus. The experiences of certain countries underscored the profound threat the virus posed to people's lives and health, as well as the repercussions of inaction, ineffective measures, or the absence of stringent enforcement of protocols. However, what stood out as an executive's and legislature's act of defiance against the CCtRS decisions was their prolonged inaction in terms of preparation of the new legislation that would be suitably tailored to the evolving circumstances and the unique nature of the epidemic. While it was entirely understandable at the outset that an appropriate legal framework might not exist, given that other types of viruses and diseases primarily informed the expertise of the epidemiological profession, it became increasingly evident over time, especially following the abrogation of the Communicable Diseases Act in May 2021, that the inertia in implementing suitable legal foundations was intentional. Moreover, it became apparent that the CCtRS ruling declaring the Communicable Diseases Act unconstitutional was intentionally disregarded, thereby deliberately precipitating a legal crisis. By contrast, in Germany, for instance, the legislation governing responses to outbreaks of communicable diseases was amended as early as March 2020, facilitating more effective management of the

epidemic (Gračar, 2021, p. 31). However, such proactive measures were not undertaken in Slovenia. Following the CCtRS' declaration of the law's unconstitutionality, a two-month deadline was set for the legislative branch to rectify the identified flaws. However, this deadline was significantly surpassed due to delays in the amendment process. The amendment to the Communicable Diseases Act was adopted only on 27 September 2022,³⁹ a year and two months after the stipulated deadline. In a nation founded on the tenets of constitutional democracy, authorities entrusted with upholding constitutional principles should have prioritized the formulation of appropriate legal frameworks for implementing measures much earlier, ideally at the outset of the epidemic, but no later than the deadline set by CCtRS. For the future, it is hoped that the new international legal framework – namely the Pandemic Agreement adopted by the member states of the World Health Organization – will provide for additional guidelines for a more constitutionally acceptable approach.

5 Conclusions

As I have shown in my analysis, the management of the COVID-19 epidemic in Slovenia amounted to a rule-of-law crisis, which was evident from a systematic dismantling of the legal framework by eroding the hierarchy of legal acts. Decrees imposing anti-COVID measures became the main governing tool while the legislature was sidelined and passive. Most of these decrees, as well as the law on which the decrees were based, were declared unconstitutional by the CCtRS. The hastily and unpredictably way in which the decrees were adopted and announced, the (occasional) lack of their official publication, the tendency to establish decrees with permanent and not temporary validity, and the extent to which the executive branch went to punish and intimidate other state bodies and individuals point to the authoritarian tendencies. The experience of constitutional challenges during COVID-19 showcases that constitutional courts must be vigilant regarding such authoritarian inclinations that threaten the rule of law. Constitutional courts must be particularly mindful of this, as they are often targeted for dissolution, court-packing, or other attacks in the event of the proliferation of illiberal democracy and authoritarianism (Sajó, 2021, p. 66). Authoritarianism is not exclusive to foreign

³⁹ Republic of Slovenia (2022), Act on Amendments to the Communicable Diseases Act – ZNB-D, Official Gazette RS, No. 125/22, <https://pisrs.si/pregledPredpisa?id=ZAKO433>.

countries (Sajó, 2021, p. 4); it can emerge anywhere. The fact that the judiciary may not always be fully cognizant of this reality is exemplified by certain instances, including some lenient and constructive rulings by CCtRS. In this regard, CCtRS has rightfully faced criticism for appearing overly "restrained" (G.C. & L.Š., 2021). While it is understandable that CCtRS may not have fully accounted for the realities of the epidemic, which likely influenced its leniency, it failed to fully recognize the potential misuse of legal mechanisms to realize authoritarian ambitions for increased social control, a phenomenon not unfamiliar even in "mature democracies" (Sajó, 2021, p. 1). Authorities exploited the epidemic to instigate, initially perhaps inadvertently, and later intentionally, a rule-of-law crisis, consequently bolstering authoritarian elements within the political and legal framework. Amidst the rapid spread of a novel and unfamiliar virus, detecting these trends was sometimes challenging, compounded by the dense fog created by an array of intervention laws and ordinances. In such tumultuous periods, the paramount importance of the system of checks and balances, as well as the separation of powers, becomes apparent. Each branch of government bears its responsibility, and by honouring the decisions of other branches, constitutional democracy operates in a manner that closely aligns with the ideal.

Acknowledgment

The author extends gratitude to Mojca Pajnik, Veronika Bajt and Marko Ribač for comments on the earlier version of this paper, which was published under the title *Križa prava in instrumentalizacija pravnih predpisov za družbeni nadzor v času epidemije* in Jalušič, V., Pajnik, M., Hrženjak, M. (eds.). (Ne)enakost v času krize in vzpona avtoritarizmov. Ljubljana: Peace Institute; 2024. The author also thanks two anonymous reviewers who provided constructive comments to the paper. The analysis was conducted in the framework of the Peace Institute's research program titled "Equality and Human Rights in Times of Global Governance" (P5-0413), headed by dr. Mojca Pajnik and funded by the Slovenian Research and Innovation Agency (ARIS).

References

- Al. Ma., RTVSLO MMC (2021). Pirc Musar: Neznosna erozija prava, državljani naj ne bodo tiho. Retrieved from: <https://www.rtvlo.si/slovenija/pirc-musar-neznosna-erozija-prava-drzavljaninaj-ne-bodo-tiho/571452> (July 17, 2025).
- Bardutzky, S. & Zagorc, S. (2021). Slovenia: Second Wave of Challenges to Constitutionalism. *Verfassungsblog*. Retrieved from: <https://verfassungsblog.de/slovenia-second-wave-of-challenges-to-constitutionalism/> (July 17, 2025).
- Čeferin, R. (2020). Dissenting separate opinion of judge Dr Rok Čeferin to Decision U-I-83/20 of 27 August 2020 of the Constitutional Court RS.
- CCtRS (2020). Annual Report for 2019. Retrieved from: <https://www.us-rs.si/publikacije/> (July 17, 2025).

- CCtRS (2021). Annual Report for 2020. Retrieved from: <https://www.us-rs.si/publikacije/> (July 17, 2025).
- Demšar, S. (2021). Izraz policijska ura ni “za neke druge čase”. *Oštro*. Retrieved from: <https://www.ostro.si/si/razkrinkavanje/objave/izraz-policijska-ura-ni-za-neke-druge-case> (July 17, 2025).
- Dobrovičová, G. (2022). Restrictions of Fundamental Rights and Freedoms During the Pandemic in Slovakia. *Przegľad Prawa Konstytucyjnego*, 67(3), 281–291.
- Flander, B. (2022). "Constitutional Unconstitutionality": Constitutional Review of the Covid-19 Restrictions on Fundamental Rights in Slovenia. *Law, Identity and Values*, 2(1), 25–64.
- Flander, B. (2021). Epidemija in ukrepi za njeno zajezitev: omejitev gibanja na občine in “policijska ura”. *Revija za kriminalistiko in kriminologijo*, 72(1), 51–64.
- Fraenkel, E. (1991) *The Dual State. A Contribution to the Theory of Dictatorship*. Oxford: Oxford University Press.
- G.C. & L.Š., RTVSLO MMC (2021). Čarman: Menimo, da tožba ne bo potrebna. Če jo bo kdo vlagal, je to njegova lastna odločitev. Retrieved from: <https://www.rtvlo.si/gospodarstvo/carman-menimo-da-tozba-ne-bo-potrebna-ce-jo-bo-kdo-vlagal-je-to-njegova-lastna-odlocitev/570145> (July 17, 2025).
- Golia, A., Hering, L., Moser, C. & Sparks, T. (2021). Constitutions and Contagion. European Constitutional Systems and the COVID-19 Pandemic. *Forthcoming, ZaöRV / HJIL*, 81(1), 147–284.
- Gračar, D. (2021). *Ustavnost omejevanja svobode gibanja med epidemijo covid-19 v Sloveniji in Nemčiji*, diploma thesis, University of Ljubljana, Faculty of Administration.
- Haack, S. (2022). Things Will Never be the Same Again: How the Coronavirus Pandemic is Changing the Understanding of Fundamental Rights in Germany. *Białystok Legal Studies*, 27(2), 75–90.
- Iamiceli, P. & Cafaggi, F. (2023). The Courts and effective judicial protection during the Covid-19 pandemic. A comparative analysis. *Forthcoming in Bio Law Journal*. 1, 1–42.
- Jalušič, V., Pajnik, M. & Hrženjak, M. (eds.) (2024). *(Ne)enakost v času krize in vzpona avtoritarizmov*. Ljubljana: Peace Institute.
- Koselleck, R. (2000). *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*. Cambridge: The MIT Press.
- Dnevnik (2020). Dostavljalec hrane kaznovan zaradi bureka, minister brani policijo. Retrieved from: <https://www.dnevnik.si/1042943328> (July 17, 2025).
- Maccaro, A., Audia, C., Stokes, K., Masud, H., Sekalala, S., Pecchia, L. & Piaggio, D. (2023). Pandemic Preparedness: A Scoping Review of Best and Worst Practices from COVID-19, *Healthcare (Basel)*, 11(18), 2572, 1–20.
- Mežnar, Š. (2020). Dissenting separate opinion of judge Dr. Špelca Mežnar to Decision No. U-I-83/20 of 27 August 2020 of the Constitutional Court RS.
- Mežnar, Š. (2022). Dissenting separate opinion of Judge Špelca Mežnar to decisions U-I-426/20 and U-I-427/20 of the Constitutional Court RS.
- Milinković, I. (2021). Extraordinary Measures in Extraordinary Times: Legal Response to the Covid-19 Crisis in Bosnia and Herzegovina. *Medicine, Law & Society*, 14(2), 439–456.
- Ministry of the Interior of the Republic of Slovenia, Ugotovitve izrednega nadzora nad ravnanjem policije pri varovanju protestov. Retrieved from: <https://www.gov.si/novice/2022-12-06-ugotovitve-izrednega-nadzora-nad-ravnanjem-policijske-pri-varovanju-protestov/> (July 17, 2025).
- Pap, A.L. (2018). *Democratic decline in Hungary. Law and society in an illiberal democracy*. New York, NY: Routledge.
- Piotrowski, R. (2024). Between Necessity and Constitutionality. Evaluating Covid-Related Legislation in Poland. In *Polish Entrepreneurial Law in the Era of the COVID-19 Pandemic. Ius Gentium: Comparative Perspectives on Law and Justice*, Hadrowicz, E. (ed.), 114, 21–34. Cham: Springer.

- PMVD – Pravna mreža za varstvo demokracije (2021). Odločno nasprotujemo teptanju ustavne pravice do mirnega zbiranja; protestnikom bomo nudili potrebno pravno pomoč. Retrieved from: <https://pravna-mreza.si/objave/izjava-za-javnost-odlocno-nasprotujemo-teptanju-ustavne-pravice-do-mirnega-zbiranja/> (July 17, 2025).
- PMVD – Pravna mreža za varstvo demokracije (2021a). Nujna parlamentarna preiskava glede ukrepanja policije na protestih. Retrieved from: <https://pravna-mreza.si/objave/izjava-za-javnost-nujna-parlamentarna-preiskava-glede-ukrepanja-policije-na-protestih/> (July 17, 2025).
- PMVD – Pravna mreža za varstvo demokracije (2022). Poziv Vladi RS, da umakne vloženi tožbi in zahtevke za vračilo stroškov mirnih shodov. Retrieved from: <https://pravna-mreza.si/objave/poziv-vladi-rs-da-umakne-vlozeni-tozbi-in-zahtevke-za-vracilo-stroskov-mirnih-shodov/> (July 17, 2025).
- PMVD – Pravna mreža za varstvo demokracije (2022a). Zaradi zlonamernega ravnanja policista smo podali pritožbo na delo policije. Retrieved from: <https://pravna-mreza.si/objave/zaradi-zlonamernega-ravnanja-policista-smo-podali-pritozbo-na-delo-policije/> (July 17, 2025).
- Renders, D. (2021). Belgium—The Council of State's control of measures taken in the context of the COVID-19 pandemic. *Public Law*, 2, 430–432.
- Sajó, A. (2021). *Ruling by Cheating. Governance in Illiberal Democracy*. Cambridge: Cambridge University Press.
- Sajó, A., Uitz, R. & Holmes, S. (eds.) (2022). *Government and Governance, Routledge Handbook of Illiberalism*. New York: Routledge.
- Schupmann, B.A. (2017) *Carl Schmitt's State and Constitutional Theory: A Critical Analysis*. Oxford: Oxford University Press.
- 24ur.com (2021). Sodišče: protestno branje ustave prekršek neznatnega pomena. Retrieved from: <https://www.24ur.com/novice/slovenija/sodisce-protestno-branje-ustave-prekrsek-neznatnega-pomena.html> (July 17, 2025).
- Teršek, A. (2020). Še enkrat o pobudi za presojo ustavnosti 39. člena ZNB in odloka Vlade RS – morda zadnjič. Retrieved from: <https://andraz-tersek.si/se-enkrat-o-pobudi-za-presojo-ustavnosti-39-clena-znb-in-odloka-vlade-rs-morda-zadnjic/> (July 17, 2025).
- Tzifakis, N. (2020). The Western Balkans during the pandemic: Democracy and rule of law in quarantine? *European View*, 19(2), 197–205 (July 17, 2025).
- World Health Organization (2025). World Health Assembly adopts historic Pandemic Agreement to make the world more equitable and safer from future pandemics. Retrieved from: <https://www.who.int/news> (July 17, 2025).
- Završnik, A. & Šarf, P. (2021). Družbeno nadzorstvo v času covida-19. *Revija za kriminalistiko in kriminologijo*, 72(1), 36–50.

Povzetek v slovenskem jeziku

Članek obravnava odločitve Ustavnega sodišča Republike Slovenije glede ukrepov vlade med epidemijo covida-19 v letih 2020–2022. Vlada je sprejela številne odloke, ki so uvedli zaprtje javnega življenja, policijsko uro, prepoved zbiranja, zapiranje šol in podjetij ter pogoj PCT za dostop do storitev. Ti ukrepi so močno posegli v temeljne pravice, kar je sprožilo številne ustavne presoje. Ustavno sodišče je več teh ukrepov razglasilo za neustavne, kar kaže na resne napetosti med varstvom javnega zdravja in načeli ustavne demokracije. Članek zasleduje dva cilja: oceniti obseg posegov v pravice ter preveriti, ali je vladanje z odloki ostalo v okviru demokratičnih načel. Ugotovitve kažejo, da je bila vladavina prava večkrat ogrožena, pravni instrumentarij pa zlorabljen za avtoritarne cilje. Slovenska izkušnja poudarja krhkost demokratičnih institucij v kriznih časih in ključno vlogo ustavnih sodišč pri obrambi ustavne ureditve, zlasti ko postanejo tarča političnih pritiskov v režimih z neliberalnimi elementi.

