



July 5 @ 09:30 - 11:00 Wrocław (CEST)

**BUILDING R, 2.5**

Institute of Romance Studies

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50-140 Wrocław

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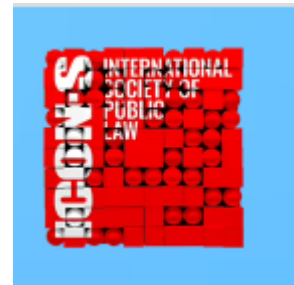
## States of emergency in times of COVID-19. Theory and practice of the V4 countries

The COVID-19 pandemic is a global challenge that all affected countries have had to face over the past two years. This includes the V4 countries, which have had to develop their own strategies for tackling the pandemic. In all these countries, states of emergency were introduced, allowing power to be concentrated in the hands of the executive, which in turn weakened the ability of the legislature to exercise control over the government. Individual rights and freedoms were restricted to an unprecedented degree. The introduction of states of emergency raised serious constitutional questions, which will be presented and discussed during this panel. Additionally, the pandemic coincided with constitutional crises in Poland and Hungary. In both these countries, under the pretext of fighting a pandemic, the government is violating the rule of law, democracy and constitutional rights. The question of how to protect these values in the face of the threat posed by a pandemic has become topical.

### Fruzsina Gárdos-Orosz

#### Constitutional review and rights protection in Covid-19 crisis management in Hungary

In my presentation I will provide a quick overview of the introduction of the special legal order related to the pandemic, called a state of danger in Hungary, and I will discuss the role of constitutional review and especially the protection of human rights by the Constitutional Court (CC) in the state of danger. I will discuss the relevant case studies in the light of the (former) proportionality standards and conclude with some remarks about the effectiveness of this protection and the assessment of the proportionality review developed by the CC. Two years of constitutional jurisprudence has contributed neither to the limitation of the Government's power, nor to the clear understanding of the constitutional scope of state of danger rights limitation. The CC operation had very similar effectiveness and attributes than in the times of normalcy before the special legal order, already subject to scholarly criticism for being a weak instrument to balance the governing majority power.



### Jan Maliř

#### Emergencies, Fundamental Rights and Covid-19: Czech Experience

Covid-19 has thoroughly tested emergencies in the Czech law. The Cabinet repeatedly took a recourse to state of emergency, including the introduction of unprecedented limitations of fundamental rights and freedoms. The Cabinet also attempted to deal with the pandemic under The Public Health Act 2000. As a lower administrative court held such approach to be inadmissible, in 2021, The Pandemic Act was adopted. It requires i. a. to provide the reasoning for anti-pandemic measures, including the assessment of their proportionality. Since then, judicial scrutiny has led to striking down many of these measures. Prima facie, Czech experience might appear as a case in support of the individualistic theory of fundamental rights and freedoms and of strong judicial control. At closer look, however, there are good reasons to enquire whether common good constitutionalism shall not provide a feasible alternative to traditional concepts.

## Max Steuer

### Slovakia's States of Emergency and the COVID-19 Pan(dem)ic



This paper examines how repeated declarations of states of emergency (SsoE) in response to the same emergency may combine with executive overreach and underreach within a single jurisdiction. It does so via the case of Slovakia, celebrated for its response to the pandemic in the first wave, but castigated for its failure to contain the virus in the subsequent waves. During both periods, the executive utilized SsoE with the continuous support of the legislative and the Slovak Constitutional Court (SCC) majorities. Via analysis of the legal framework of the SsoE, the justifications for particular SoE declarations and the SCC's responses, the paper shows that the instances of executive overreach during the first wave of the pandemic undermined the credibility of the SsoE and facilitated their combination with executive underreach during the subsequent waves. Thus, SsoE can go both with underreach and overreach, when a government is in panic.

## Michał Ziółkowski

### The emergency, human rights and COVID-19 in Poland



When referring to the COVID-19, Poland may be easily misleading from the comparative perspective. The Constitution had not been amended. The parliament proceeded regularly on (partially) online sessions. The judiciary was attacked and captured by the government before the pandemic started. This paper is doctrinal and interpretive. It unpacks details of the emergency in Poland to sketch how the COVID-19 boosted the rule of law crisis. I will discuss the scope of human rights limitations and compare them with the limitations during the state of emergency in 2021. The conclusion is that the government cynically started to act like Caesar's wife. It would like not to be suspected of any illiberal aspirations so much that it did not want to use the constitutional power to declare a state of emergency when it was necessary. At the same time, the government unconstitutionally introduced human rights limitations due to the pandemic and introduced the state of emergency when it was unnecessary.

## Zoltán Szente

Discussant



## Marta Kłopočka-Jasińska

Discussant



Chair(s): **Monika Florczak-Wątor**

