**Seminar report**

**November 20, 2021**

On November 20, 2021, a seminar on “Models of States of Emergency in V4 Countries” was held in hybrid form via Webex and in the Faculty of Law and Administration building of the Jagiellonian University. It was a summary of the second stage of the research project “Human Rights in States of Emergency. Constitutional Models and Political Reality of V4 countries”. Team members from all countries participating in the project and guests joined the seminar.At the beginning of the seminar Prof. Monika Florczak-Wątor, who is the principal investigator of the mentioned research project, welcomed all the participants and presented the agenda for the event.

The first paper was presented by Prof. Jan Malíř and was concerned with the principles of human rights’ limitation in time of emergencies in Czech Republic. The co-author of this study is Jan Grinc, PhD. First, he outlined the principles of restricting the rights and freedoms in the Czech Republic based on general principles. He pointed out that the principle of proportionality is not expressed in the Constitution and is a result of case law. Then he pointed out that the Czech Constitution and the Charter of Fundamental Rights and Freedoms (with the exception of Article 9(2)(c)) do not contain special regulations on the restriction of rights and freedoms during states of emergency. Prof. Malíř also pointed out the regulations of The Czech Republic Security Act of 1999 and The Crisis Management Act of 2000. Later in the speech, he emphasized that COVID-19 proportionality will rather be used instead of necessity by courts. In Czech Republic there is no case in which the test of necessity would be outlined. There is also a debate whether the proportionality is good measure in states of emergency. He pointed out that the declaration of a state of emergency cannot be the subject to the judicial review. Finally, the issue of compensation for damages caused by restrictions on rights and freedoms during states of emergency was presented, including, for example, Article 36 of the Charter of Fundamental Rights and Freedoms.

Then Prof. Fruzsina Gardos-Orosz presented the draft entitled “Permissible Limitations on Human Rights in Hungary”. Many of the principles concerning human rights limitations rights and freedoms are contained in Fundamental Law, e.g. the necessity and proportionality test incorporated into Article I (3) of the Fundamental Law. She also mentioned that the Hungarian constitutional court should also take into account the "financial balance" when examining the limitations of constitutional rights and freedoms. Then Prof. Gardos-Orosz emphasized that in the special legal order, according to the official justification of Article 54 (1) of the Fundamental Law, the exercising of fundamental rights can be suspended or restricted rather than prescribed in Article I proportionality clause. In the third part of the speech, she discussed the restriction of rights and freedoms in connection with the COVID-19 pandemic in Hungary. She first pointed out that the restrictions put in place were not and are not questioned by the public. Moreover, the Hungarian constitutional court has examined only four cases on this issue so far, including, among others, restrictions on freedom of assembly during the pandemic and the obligation to show a COVID-19 vaccine certification.

Next, Prof. Max Steuer gave a speech titled "Tempting Executive Overreach: An Introduction to Restrictions on Human Rights during States of Emergency in Slovakia”. He explained the constitutional regulations on restriction of rights and freedoms - Article 12 sec.1, Article 13 sec. 2 and Article 13 sec. 4 of the Constitution of the Slovak Republic. Later he discussed the regulations on the restriction of rights and freedoms in states of emergency (including Article 51 sec. 2 of the Constitution of the Slovak Republic) and **Constitutional Act No. 227/2002 Coll. on State Security at the Time of War, State of War, State of Emergency, and State of Crisis. Later in the presentation, Prof. Steuer discussed the following** review and appeal options in parallel to violations of human rights in Slovakia**: general court reviews; an individual complaint to the Constitutional Court; an *a posteriori* review of executive decisions; an administrative mechanism. The next part of the presentation dealt with the possibility of compensation for damages suffered as a result of the restrictions imposed on rights and freedoms during the COVID-19 pandemic. The basis for seeking such compensation may be Article 46 sec. 3 of the Constitution** of the Slovak Republic. Finally, the role of EU law and ECHR rulings in reviewing restrictions on rights and freedoms introduced during a pandemic was emphasized.

Prof. Monika Florczak-Wątor's speech concerned constitutional grounds for imposing restrictions on human rights in Poland. First, she discussed the grounds for human rights restrictions under ordinary circumstances. The general clause in Article 31 sec. 3 of the Constitution of the Republic of Poland and four types of specific human rights limitation clauses were analyzed. Attention was also drawn to the relationship between these clauses. In the next part of the speech, Prof. Florczak-Wątor discussed the issue of limitation of rights and freedoms during states of emergency. In situations of particular danger, if ordinary constitutional measures are inadequate, any of the following extraordinary measures, included in the Constitution of the Republic of Poland, may be introduced: martial law, a state of extraordinary situation and a state of natural disaster. Extraordinary measures may be introduced only to a degree, issued upon the basis of statute, and shall additionally require to be publicly announced. The extent to which human rights and freedoms may be restricted during states of emergency is set in three laws corresponding to the states of emergency recognized in the Polish legal system. They are detailed description of the constitutional regulations. Additionally, there is an Act of 22 November 2002 on compensation of property loss resulting from restriction of freedom and rights of man and citizen in states of emergency. Prof. Florczak-Wątor also pointed out that the procedure for seeking compensation laid down in the 2002 Act does not preclude a claim for additional compensation for unlawful action by public authorities based on the Civil Code. Finally, the issue of the possibilities of controlling the legality of human rights restrictions was introduced: 1. Constitutional Tribunal; 2. Common and administrative courts.

The last speech was given by Michał Ziółkowski, PhD, and was entitled “The evidence of unlawfulness: human rights and the extraordinary situation in Poland 2021”. He began his presentation by describing the procedure for imposing an extraordinary state in Poland. For this purpose, the constitutional regulations were presented (e.g. Article 230) as well as the Act of June 21, 2002 on the state of extraordinary situation. The presentation also discusses a catalog of rights and freedoms whose essence cannot be restricted in an extraordinary situation (Article 233 sec. 1 of the Constitution of the Republic of Poland). Attention was also drawn to a group of rights and freedoms in Article 16 of the Act on the state of extraordinary situation that may be suspended during this state of emergency. The next part of the speech concerned the issue of introducing a state of emergency in Poland in 2021 due to the following threats: migration crisis and hybrid war. Council of Ministers' executive regulation of September 2, 2021 introduced among others: a general and absolute prohibition of public assemblies, mass entertainment and cultural events in areas where the state of the extraordinary situation was instituted; the obligation for citizens to move with the ID-cards in areas where the state of the extraordinary situation was in force. Finally, PhD Ziółkowski highlighted the following problems: 1. Lack of proper justification for the state of extraordinary situation; 2. Unproportionally multi-level limitation of rights; 3. Simplistic understanding of public order and safety of citizens; 4. Violation of the essence of freedom of assemblies and freedom of the press; 5.Weak form of parliamentary scrutiny over the government's actions.

The seminar ended with a very interesting discussion. During the discussion, the following issues were raised: the importance of ECtHR jurisprudence, including the ECtHR judgment in Vavricka and Others v. Czech Republic, which dealt with mandatory vaccinations; restrictions on the right to privacy in various countries during states of emergency; the short *vacatio legis* of legal acts introducing restrictions on rights and freedoms during the COVID-19 pandemic and the high rate at which these acts are being published, resulting in the inability of courts to correct these regulations (particularly in Poland and Slovakia); the scope of review by ordinary, administrative and constitutional courts of the restrictions introduced.

At the end of the seminar, Prof. Florczak-Wątor thanked the participants for their interesting presentations and participation in the event. She also invited them to the next event organized as part of the ongoing project, i.e. a scientific conference, which will probably take place in March 2022.