**Seminar report**

**July 27, 2021**

On July 27, 2021, a seminar on “Models of States of Emergency in V4 Countries” was held via MS Teams as a summary of the first stage of the research project “Protection of human rights in emergency. Theory and practice of the Visegrad Group countries”. The seminar were joined by members of the research team (Monika Florczak-Wątor and Michał Ziółkowski from Poland, Fruzsina Gardos-Orosz form Hungary, Jan Malíř from the Czech Republic, Max Steuer from the Slovak Republic and Polish PhD Students Magdalena Michalska-Guzik and Jacek Karakulski) as well as by guest participants:

1. From Slovakia, constitutional expert Kamil Baraník (Associate Professor and Head of the Department of Constitutional Law at Matej Bel University in Banská Bystrica) and administrative law expert Ján Škrobák (Associate Professor and Vice Dean for Legislation at the Comenius University in Bratislava, Faculty of Law)
2. From the Czech Republic, constitutional expert Jan Glinc (Lecturer at the Department of Constitutional Law of the Faculty of Law, Charles University in Prague and an advisor to the Committee on EU Affairs of the Senate of Parliament of the Czech Republic)
3. From Hungary constitutional expert Zoltan Szente (Professor of Law at the Department of Constitutional Law, National University of Public Service and at the Institute for Legal Studies, Centre for Social Sciences of the Hungarian Academy of Sciences, Hungary)
4. From Poland constitutional expert Barbara Grabowska-Moroz (Research fellow at CEU Democracy Institute, Budapest, Hungary, PhD in constitutional law, Warsaw University)

At the beginning of the seminar Prof. Monika Florczak-Wątor, who is the principal investigator of the mentioned research project, welcomed all participants.

Then the first paper was presented by Prof. Jan Malíř and was concerned with states of emergency in the Czech Republic. He emphasized that the constitutional regulation in the Czech Republic regarding states of emergency is very limited. The Constitution of 1993 does not contain one complex regulation referring to states of emergency (only the scarce mention of the State of War). Constitutional Act on Security of the Czech Republic of 1998 (CAS) is a constitutional response to severe floods in 1997. It is not based on any particular model and contains mainly procedural regulations. Most of the measures are provided for at the statutory level, e.g. the 2000 Crisis Management Act. In Czech Republic there are three basic types of emergencies: state of emergency (CAS), threat to the state (CAS) and martial law (Constitution). There is also fourth type and it is state of danger (regulated by the 2000 Crisis Management Act). Control over introduction of states of emergency is exercised by the political factor. However, control over the legality of measures introduced due to the epidemic is mainly exercised by administrative courts. Prof. Malíř pointed out following doubts as to the imposition of a state of emergency in the Czech Republic:

- state of emergency was introduced in response to a threat of a disease, not a natural disaster (March-May 2020 and October 2020-April 2021);

- extended to the whole territory and unusually long;

- extraordinary measures – lockdown etc.;

- lack of coordination on the political level;

- extensive judicialization;

- disputes over the legal basis for introducing extraordinary measures;

- since March, 2021 the Supreme Administrative Court has annulled a lot of extraordinary measures taken by the Ministry of Health under the Pandemic Act.

Then Prof. Fruzsina Gardos-Orosz presented the Hungarian provisions concerning states of emergency. There are three types of special legal orders in Hungarian constitutional system: martial law, state of national crisis, state of emergency. What is more, they have many various regulations on statutory level for many different emergency situations. In March 2020, when the pandemic started, the government declared the state of danger (special legal order for industrial catastrophes and natural disasters). Members of the Parliament did not question treating the pandemic as a natural disaster, even though it has not been a tradition to treat the pandemic as such. It was connected with the fact that there was no other regulation that would be sufficient. In Hungary there are three special legal orders declared at the same time during the COVID-19 pandemic. The problem with the Hungarian regulations is that, although they are detailed, they have proven unable to guide the handling of a pandemic outbreak.

Next, Ph.D. Michał Ziółkowski and Prof. Monika Florczak-Wątor presented Polish model of states of emergency. Historically (before the communist period) there was only martial law. Communists also provided only one state of emergency. In 1983, a regulation about the state of natural disaster was introduced. The completed regulation of extraordinary measures appeared with its adoption in 1997, as part of a new Constitution. There are three types of states of emergency listed: state of martial law, state of extraordinary situation and state of natural disaster. They are regulated in one of the chapters of Polish Constitution. What is more, each of states of emergency is regulated by a separate statute. State of epidemic was introduced in Poland in March 2020. The executive power did not use its competences to implement the state of emergency. Instead, the government referred to the statutory norms regarding infections and diseases. Furthermore, speakers highlighted the constitutional grounds for limiting human rights and freedoms.

The last draft presented by Prof. Max Steuer was concerned with the issue of states of emergency in the Slovak Republic. He pointed out the existence of a trend towards emphasizing the role of the executive branch in crisis management. In Slovak Republic there are not many regulations regarding emergencies at the constitutional level. There are four types of emergencies in the Constitution: war, state of war, state of emergency and state of crisis (the last two terms sometimes being translated as state of exception and state of emergency instead). The first three of these states of emergency have a common feature – they are collaborative because more than one constitutional actor is required to introduce them. However, the state of crisis may be declared by the executive alone, granting it a wide discretion in the context of the COVID-19 pandemic. Prof. Steuer suggested that before the COVID-19 pandemic only one state of crisis was introduced in Slovak Republic. It was during the medical professionals’ strike in 2011. In Slovak Republic during the COVID-19 pandemic, the state of crisis was declared from March to June 2020 (90 days – maximum period) and from October 2020 to May 2021. The 90-day limit expired in December 2020, as a result of which the parliament amended the relevant constitutional legislation and introduced a subtype for the state of crisis called „pandemic state of crisis”. The Slovak Constitutional Court has reviewed the declarations of the state of crisis twice, in Fall 2020 and Spring 2021, but on both occasions it found these to be compatible with constitutional principles.

The seminar ended with a very interesting discussion during which the following issues were raised: judicial control; possible ways of perceiving and understanding the principle of proportionality and necessity; exceeding the limits of restricting rights and freedoms beyond the powers provided for in the constitution and statutes; parliamentary control of government activities in the management of states of emergency.

During the discussion, it was determined that there was a common tendency in all four analyzed states. They are looking for ways to solve crisis situations (dangers to life, public health etc.) by means that are different to the constitutional regime with regard to states of emergency. Speakers also questioned whether there are any fundamental rights that cannot be restricted under any circumstances. Furthermore, the discussion effected with some hypotheses that could be further analyzed. For example, it is a relatively new practice to deal with extraordinary situations without using constitutional regulations. Another conclusion was that courts may not have sufficient knowledge to assess whether the legislator or the government had the power to introduce the state of emergency. The pandemic also drew attention to the fact that there is no effective legislative control over executive authorities. The two main problems are that legal regulations are not detailed enough and that parliaments are not able to operate normally in a state of emergency.

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