

# Slovakia's Democracy and the COVID-19 Pandemic: When Executive Communication Fails

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In spring 2020, Slovakia was praised for minimizing the instances of the COVID-19 pandemic. By early 2021, however, with Slovakia among the top five countries with the highest increase of COVID-19-induced death cases, a very different picture has emerged, highlighting the costs of neglecting democracy considerations (encompassing human rights and the rule of law) by the executive in particular.

The perceived success of Slovakia in containing the early wave of the pandemic in spring 2020 was credited to a combination of factors, including an early response by the outgoing cabinet, compliance by the bulk of the population and the role of key public figures in setting best practices. The swift executive action, making use of the 'state of crisis' (*núdzový stav*) as stipulated in a constitutional act dealing with emergency situations (*krízové situácie*), resulted in restrictions of fundamental rights such as the freedom of movement, the right to assembly or the right to education. Illustratively, in spring 2020, Slovakia scored worse than Hungary and Poland with respect to adopting discriminatory measures in the Pandemic Backsliding Index by the Varieties of Democracy Institute.

This post takes stock of the key Slovak responses to the pandemic since June 2020 until February 2021. It argues that deliberation and justification of the key choices were missing in the legal policies. Coupled with the technocratic turn of the populist Slovak government and the ensuing lack of accountability, the Slovak 'journey from the top to the bottom' in terms of effectiveness of containing COVID-19 illustrates the mismatch between a rhetorical and substantive commitment to the rule of law by the Slovak executive, that was only mildly mitigated via judicial, and to a lesser extent, legislative oversight.

## **Executive Governance: Excluding the Public and Disconnect with Local Governments**

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After the gradual removal of the restrictions in May and June 2020, the state of crisis expired without prolongation, and the Prime Minister Igor Matovič declared a victory over the pandemic. The Permanent Crisis Group, established via an executive regulation according to the Act on Governing the State in Emergency Situations Except the Time of

War and the State of War (387/2002 Coll, Art. 4 Sec. 5), was by default disbanded, and a period when the executive presented an overwhelming reliance on expert judgments (such as from the Permanent Crisis Group and the Public Health Authority) ended.

The summer returned an ‘illusion of normalcy’, with little executive action in place. The cabinet updated the statute of the Pandemic Commission, another expert body operating under the auspices of the Ministry of Health (and established according to the Act on the Organization of Executive Action and Central State Administration [No. 575/2001 Coll., § 2 Sec. 7]), adding to the cacophony of expert commissions remote from public scrutiny and understanding. Significant doubts remained, however, over the execution of the competences of the Public Health Authority (and its Director, the Chief Hygiene Officer). For example, the prohibition of sales on Sundays (allegedly to leave sufficient time for stores for sanitation measures) as issued by the Officer remained in place even after the lifting of the state of crisis, raising concerns over a creeping ‘hygiene dictatorship’ in Slovakia (the restriction was lifted in response to public pressure).

The increase of infections in August and September motivated the declaration of a new state of crisis on 1 October. The restrictions were nowhere near those in spring; in particular, the executive appeared responsive to the concerns over human rights violations associated with the state quarantine and the cordoning off of Roma settlements. Yet, the decisions (such as on closing schools before churches) remained without justification and continued to be issued formally by the Public Health Authority.

The steady increase in cases resulted in PM Matovič declaring to ‘take back control’ of the ‘fight against the pandemic’ in September. Subsequently, Matovič introduced the idea of a mandatory nationwide testing as an alternative to the lockdown. The first round of testing on 31 October – 1 November was executed with the help of the army (operation ‘Joint Responsibility’, the largest one in Slovakia’s military history), and local governments. However, municipalities were not involved in the decision making, despite the fact that the nationwide testing was not supported by notable experts on Slovak public health. Furthermore, the executive (referring to the Permanent Crisis Group) decided that a second round of testing would take place in municipalities which passed the positivity rate of at least 0,7 %. The threshold was not publicly justified, and given the organization of the testing (for example, citizens did not have to get tested in the district of their residence or work), it appeared as arbitrary.

The PM’s commitment to nationwide testing did not waver, and the procedure was carried out in a similar vein in January, this time under stricter lockdown conditions (including the closure of churches and ski centres). The situation has not improved, quite the contrary: the chaotic nature of the measures and the lack of perception of the executive deciding on the basis of scientific evidence has not been conducive to public compliance, and local governments have voiced concerns over the lack of clarity and comprehensiveness of the measures due to their frequent changes and limited executive communication.

On 3 March, new restrictions came into effect, further limiting the freedom of movement. In addition, the PM's unilateral move to purchase the unregistered Sputnik V vaccines without consulting with EU institutions has triggered a government crisis, with strengthening voices in support of the PM's resignation. The purchase of the vaccines amidst continuing lack of success in reducing the number of cases signals the return of 'state panic', where the public is in the dark as to the precise scope of the restrictions in place and the strategies for moving ahead.

## Judicial and Legislative Scrutiny

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Both the legislature and the courts remained operational during the pandemic. While parliamentary debates over the executive measures remained minimal, three legislative or judicial actions should be highlighted. Firstly, a controversy arose when the executive reintroduced a state of crisis on 1 October 2020. The acting attorney general challenged the decision before the Constitutional Court, referring to the lack of justification for reintroducing the state of crisis in that point of time. This was the historically first proceeding according to Art. 129 sec. 6 of the Constitution, which allows the Constitutional Court to review declarations of emergency situations. The Court delivered a unanimous verdict (with one concurring opinion) on 14 October, supporting the leeway for the executive. Still, the Court (PL. ÚS 22/2020, § 70) signalled its openness to reviewing further measures, in case doubts about their constitutionality arise.

Secondly, the legislature, despite the Constitutional Court's suspension of the effectiveness of an earlier amendment of the Act on Electronic Communications that gave the public health authority access to location tracking data (the 'strongest weapon' against the pandemic according to the PM), amended this Act in the summer in a very similar vein. Moreover, the parliamentary majority overrode the subsequent veto of Slovak President Čaputová in early September. While the executive gave up implementing a tracking app in October 2020 for logistical and practical reasons, the case does not shed the best light on the capacity of the legislative majority to scrutinize executive initiatives questioned by the Constitutional Court.

Thirdly, the executive prolonged the state of crisis, declared on 1 October for 45 days, for another 45 days on 11 November. Thus, the state of crisis was about to end on 29 December, despite the continued increase of cases, given that the act on Act on Governing the State in Emergency Situations limited (Art. 5 sec. 2) the maximum length of the state of crisis to 90 days. The easy way out was to amend that Act so that the executive could continue to prolong the state of crisis, subject to *ex post* parliamentary authorization of the individual prolongation. This was a readily available option thanks to the constitutional majority enjoyed by the coalition. A practical problem arose with parliamentary authorization, however: many MPs tested positive for COVID-19, and hence could not participate at the voting scheduled for 17 December. To allow them to cast their votes, the Public Health Authority issued an ordinance that exempted MPs from the lockdown. In other words, an executive agency enabled MPs to meet and approve an amendment of the constitutional act that widened the leeway for executive action. The amendment was approved on 29 December and the legislature subsequently authorized

the prolongation of the state of crisis on 12 January. The most recent prolongation of the state of crisis to date was endorsed by the legislature on 26 February, and it appears that the emergency situation will remain the norm until a notable change in the infection rates.

As a whole, the coalition's constitutional majority (that comfortably allows to pass any ordinary legislation) limited legislative scrutiny in Slovakia. The Constitutional Court appears as a more reliable check on the government, having shown that, at least in some instances, it is capable to decide quickly and substantively scrutinize executive actions.

## **The Right to Assembly and Education: Victims of the Pandemic?**

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While a range of fundamental rights was affected by the pandemic, two rights have particularly suffered due to the lack of executive coordination and clear communication. Firstly, the right to peaceful assembly (Art. 28 of the Constitution) remained restricted by the declaration of the state of crisis, even when, on 16 November, cinemas, churches and theatres were allowed to reopen. The greater risk of assembling in public spaces as opposed to attending cultural or religious events was not demonstrated. Given the ban, pro-democratic gatherings did not take place. In contrast, anti-democratic forces continued to assemble. A protest took place on 17 October, supported by the extreme right and with the participation of ultras. Another round of protests was held on the anniversary of the 1989 demonstrations against state socialism (17 November), this time joined by more opposition actors. The police communicated its effort to intervene proportionately to the seriousness of the situation, with minimizing violence but investigating those who violated the law. As a deterring example, it was reported that a man infected by COVID-19 at the protests had died. The ban on assemblies was not disproportionate on its own, but in juxtaposition to the absence of other, less intrusive restrictions to fundamental rights, also intended to protect public health.

The right to education (Art. 42 of the Constitution) has suffered during the pandemic as well. Similar to the ban on assemblies, schools remained closed when various cultural and religious gatherings were permitted. Children from disadvantaged environments were allowed to return to schools on 16 November, but, as a report of the public defender of rights noted, there was no systematic planning in place that would have thought of the individual circumstances and needs of the students. Specific concerns, expressed also by the Slovak National Centre on Human Rights, arose after the decision of the minister of education from 4 December to make the attendance of pupils from 5<sup>th</sup> to 9<sup>th</sup> grade conditional on showing a negative COVID-19 test result. Considering the centrality of education for understanding democracy and developing pro-democratic attitudes, restrictions on the right to education may have long-lasting effects beyond the pandemic.

## **Towards a 2021 Outlook**

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The general direction of Slovakia's response to COVID-19 does not deviate from international practices, invoking a mixture of existing competences in emergency situations, coupled with amendments of key legislation. The role of the legislature

remained limited, at least in part due to the constitutional majority enjoyed by the coalition. The operational Constitutional Court has displayed some capacity to invalidate measures with a potential to undermine democracy. However, the absence of justification and coherent communication of executive measures casts a shadow on Slovakia's commitment to surviving the pandemic without losing democracy along the way. Judging by the measures adopted in the first two months of 2021, the concerns are likely to remain relevant this year, and may combine with questions (such as on curtailing the competences of the Constitutional Court) on the government's ambitious anti-corruption and rule of law reform that continues despite the pandemic. EU institutions and civil society should subject the government to scrutiny along both lines, rather than constraining themselves to the pandemic-related measures.

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