SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS

Report on the Observance of Human Rights

Including the Principle of Equal Treatment in the Slovak Republic for the Year 2020

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List of Abbreviations

Act on the Centre – Act of the National Council of the Slovak Republic No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights

Act on the Creation of Legal Regulations – Act No. 400/2015 Coll. on the Creation of Legal Regulations and the Collection of Laws of the Slovak Republic and the Amendment to Certain Acts, as amended

Act on Civil Protection of the Population – Act of the National Council of the Slovak Republic No. 42/1994 Coll. on Civil Protection of the Population as Amended

Act on the Protection of Public Health – Act No. 355/2007 Coll. on the Protection, Promotion and Development of Public Health and Amendment of Certain Acts

Act No. 56/2020 Coll. – Act No. 56/2020 Coll., Supplementing Act No. 245/2008 Coll. on Education and Training (Education Act) and Amendments to Certain Acts, as amended
Act No. 62/2020 Coll – Act No. 62/2020 Coll. on certain extraordinary measures in relation to the spreading of the dangerous contagious human disease COVID-19 and justice area, amending and supplementing certain acts

Act No. 119/2020 Coll. – Act No. 119/2020 Coll., which amended and supplemented the Act No. 355/2007 Coll. on Protection, Support and Development of Public Health and amending and supplementing certain acts as well as the Telecommunication Act

Anti-Discrimination Act – Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on amending and supplementing certain laws (the Anti-Discrimination Act)

Centre – Slovak National Centre for Human Rights

Constitution of the Slovak Republic – Constitutional Act No. 460/1992 Coll. Constitution of the Slovak Republic

Constitutional Act on the Security of State – Constitutional Act No. 227/2002 Coll. on the Security of State in Time of War, a War State, an Exceptional State, and an Emergency State, as amended

Constitutional Court – Constitutional Court of the Slovak Republic

Convention 108 – Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

Court of Justice – Court of Justice of the European Union

Data Protection Act – Act No. 18/2018 Coll. on Personal Data Protection as Amended

Data Protection Board – European Data Protection Board

ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR – European Court of Human Rights

Education Act – Act No. 245/2008 Coll. on Education and Training (Education Act) and on Amendments to Certain Acts, as amended

EU – European Union

European Supervisor – European Data Protection Supervisor

Fundamental Rights Charter – Charter of Fundamental Rights of the European Union

GDPR – Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personsal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EU (General Data Protection Regulation)

Healthcare Act – Act No. 576/2004 Coll. on Healthcare and Services Related to the Provision of Healthcare and on Amendments to Certain Acts, as Amended

International Covenant – International Covenant on Economic, Social and Cultural Rights

Labour Code – Act No. 311/2001 Labour Code, as Amended

Measure of the Ministry of Health of the Slovak Republic - Measure No. S08174-2020-ONAPP

Minister of Education – Minister of Education, Science, Research and Sport of the Slovak Republic

Ministry of Health – Ministry of Health of the Slovak Republic

Office for Personal Data Protection – Office for Personal Data Protection of the Slovak Republic

Regulation 2018/1725 – Regulation of the European Parliament and the Council 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bo-

dies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC

Report on Human Rights – Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic

Social Insurance Act – Act No. 461/2003 Coll. on Social Insurance, as Amended, and Supplementing Certain Act

Telecommunication Act – Act No. 351/2011 Coll. on Electronic Communications

TEU – Treaty on the European Union

TFEU – Treaty on the Functioning of the European Union

Introduction

Slovak National Centre for Human Rights (hereinafter the "Centre") is a national human rights institution for the promotion and protection of human rights, including the principle of equal treatment in the Slovak Republic (hereinafter the "SR"). The Centre was established by the Act of the National Council of the Slovak Republic No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights (hereinafter the "Act on the Centre") with effect from 1 January 1994, based on the Agreement between the Government of the Slovak Republic and the United Nations on the Establishment of the Slovak National Centre for Human Rights, published by the Ministry of Affairs of the Slovak Republic No. 29/1995 Coll.

Institutionally, it has a special and unique position, operating in two important areas of social and legal relations. The first is defined by its mission to protect and promote human rights and fundamental freedoms. The second is stipulated, in addition to Act on the Centre, in particular the provisions of Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on amending and supplementing certain laws (the Anti-Discrimination Act) (hereinafter the "Anti-Discrimination Act"). In accordance with its mandate, it monitors and evaluates the observance of human rights, fundamental freedoms, and the principle of equal treatment. Every year, by 30 April of the relevant calendar year, it prepares and publishes on its website a Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic (hereinafter the „Report on Human Rights").

The Report on Human Rights for 2020 provides a comprehensive assessment of the exercise of selected human rights and fundamental freedoms in Slovakia during the pandemic of COVID-19. Its content is determined by several criteria. Firstly, these criteria include legislative processes, the results of which have had a direct impact on the degree of exercise of human rights and fundamen-

tal freedoms. Secondly, the content of the presented Report on Human Rights was determined mainly by social discourse, and thus by how the exercise of selected human rights resonated in civil society, in the media or on social networks. It also does not omit topics which the Centre has been addressing systematically and on a long-term basis, fulfilling its legal mandate and mission.

The year 2020 was marked by the COVID-19 pandemic, which had a major impact on the exercise of human rights and fundamental freedoms. It has had a particularly negative impact on the most vulnerable groups of society. Although the pandemic has changed the way of life of each individual, persons from marginalized Roma communities, persons with disabilities, the homeless, women, children and many others felt the impacts of the measures taken much more sensitively. The COVID-19 pandemic has further exacerbated the vulnerability of these groups. While the protection of the life and health of citizens is the primary responsibility of the State, the exercise of other rights, especially the right to equal treatment, the right to privacy or the right to work, or the degree of their protection and preservation must also not be ignored by the State.

The present Report can be divided into two important parts. The idea behind the breakdown is part of the Centre's legal mandate, consisting of its mission to monitor and evaluate both observance of human rights and fundamental freedoms and the observance of the principle of equal treatment. The first section consists of four so-called evaluation chapters, in which the Centre does not avoid the inevitable and necessary degree of description, but rather evaluates it alongside it. It evaluates primary legislative processes in selected areas, the selection of which is not arbitrary, but it is the result of client complaints, suggestions from the media field, professional discourse, or decision-making practice of the Constitutional Court of the Slovak Republic. These are four particularly resonant topics in which the Centre presents its evaluation, supported by legal arguments.

The second part presents the summary output of the Centre's monitoring activities. It complements the monitored and evaluated legislation from the first part, but due to the absence of the so-called evaluation basis, it cannot currently be enriched with the ultimate evaluative opinions of the impact of the so-called COVID legislation for the exercise of the rights and obligations of subjects of legal relations. It is too early for that. The reason for incorporating the monitoring part is the intention to submit a comprehensive Report. The areas assessed thus complement the other three thematic legislative areas. Specifically, this is the area of employment, social security, and housing.

The role of the Report on Human Rights for 2020 is not only to inform the professional and lay public about the impacts of selected regulations, measures, guidelines, or recommendations on the exercise of selected human rights and fundamental freedoms. Its specific purpose is to evaluate the activities

of the relevant responsible entities during the COVID-19 pandemic in the context of the promotion and protection of human rights and fundamental freedoms. The presented Report aims to provide an objective, true and up-to-date picture of the observance of human rights in the territory of the Slovak Republic during the pandemic of the COVID-19 disease. Its secondary, but no less important aim, is to address recommendations to responsible legal entities whose actions impact the level of protection and promotion of human rights and fundamental freedoms, including the principle of equal treatment
Already at the outset of this Report, the Centre emphasizes that even during the pandemic of the COVID-19 disease, it is not possible to forget or neglect the problems of minorities living in the territory of the Slovak Republic. Even the large workload of the legislator with preventing the spread of a pandemic shall not be an excuse in relation to its commitment to take an active approach to legislative protection and support of foreigners, national, ethnic, sexual, and other important minorities. The Centre not only draws particular attention to the critical level of protection of their rights and legally protected interests but also calls upon the legislator to take a responsible approach.

1. Personal liberty and freedom of movement and residence

The Constitutional Act on the security of state does not define the concept of an emergency state, nor does it explicitly define the form of the declaration of an emergency state and the form in which fundamental rights and freedoms are to be restricted in an emergency state. The question, therefore, arises as to whether it is possible to impose restrictions on fundamental rights and freedoms in an emergency state in the form of a resolution of the Government, as has been the case throughout 2020.

In connection with the spread of COVID-19, the Government of the Slovak Republic (hereinafter the "Government of the Slovak Republic") declared by Resolution No. 111 of 11 March 2020 an emergency situation. It entered into force in accordance with the Act of the National Council of the Slovak Republic No. 42/1994 Coll. on civil protection of the population (hereinafter the "Act on civil protection of the population") on 12 March 2020 from 6.00 am. throughout the territory of the Slovak Republic (hereinafter the "SR"). According to the Government of the Slovak Republic, an emergency situation was declared to create conditions for the adoption of necessary measures to prevent and mitigate the consequences of an emergency event of a threat to public health due to the spread of COVID-19 disease in the Slovak Republic.[1]

Pursuant to the Act on civil protection of the population, an emergency situation means a period of danger or a period of effect of the consequences of an extraordinary event on life, health or property, which is declared pursuant to this Act; during it, measures are taken to save lives, health or property, to reduce the risks of hazards or the activities necessary to prevent the spread and effects of the emergency. If, after the declaration of an emergency situation, an exceptional state or an emergency state has been declared, the procedure shall be in accordance with the Constitutional Act No. 227/2002 Coll. on the security of state in time of war, a war state, an exceptional state and an emergency state (hereinafter the "Constitutional Act on security of state").

Apprehensive of the fact that when adopting measures, regulations and recommendations for state and private entities, a significant intervention in certain human rights and fundamental freedoms will be necessary, on 15 March 2020, the Government of the Slovak Republic adopted Resolution No. 144, published in the Collection of Laws under No. 45/2020, which declared an emergency state in accordance with Article 5 of the Constitutional Act on the security of state.

The definition of an emergency state is not stipulated by law. Pursuant to the Constitutional Act on the security of state, the Government may declare an emergency state only if there is a threat or an imminent danger or threat to the life and health of people, including in a causal nexus with a pandemic, a threat to the environment or a considerable threat to property due to a natural disaster, catastrophe, industrial, traffic or other operational accident; an emergency state may only be declared in the affected or in an imminently threatened area, which can also be the entire territory of the Slovak Republic. An emergency situation may only be declared to the necessary extent and for the necessary time, for no longer than 90 days.

Amendment No. 414/2020 Coll. of

1 Government of the Slovak Republic: "The Government has declared an emergency situation in the whole territory of the Slovak Republic since Thursday" („*Vláda vyhlásila od štvrtka na celom území SR mimoriadnu situáciu*") of 11 March 2020, available in Slovak language at: https://www.vlada.gov.sk/vlada-vyhlasila-od-stvrtka-na-celom-uzemi-sr-mimoriadnu-situaciu/.

the Constitutional Act on the Security of State of 28 December 2020, introduced a new amendment according to which an emergency state declared due to a threat to life and health of persons in a causal nexus with a pandemic may be extended to a necessary extent and for a necessary period for no longer than 40 days, even repeatedly. The National Council of the Slovak Republic must approve the extension of the emergency state within 20 days from the first day of the extended emergency state.[2] If the National Council of the Slovak Republic does not express its consent, the extended emergency state shall expire on the day of non-approval of the proposal of the Government of the Slovak Republic to express consent to extend the emergency state, otherwise upon expiry of the period for expressing such consent. The consent of the National Council of the Slovak Republic is also required in the case of re-declaration of an emergency state if 90 days have not elapsed since the end of the previous emergency state declared for the same reasons.

According to the explanatory memorandum to the amendment to Constitutional Act on the security of state, it *"responds to the findings of current experience with its implementation, when it is not objectively possible to resolve the situation caused by a respiratory disease pandemic in a maximum of 90 days. The need for the consent of the National Council of the Slovak Republic to extend the emergency state pursues the goal of creating a constitutional check within the division of powers and the system of checks and balances in a parliamentary republic. The same check is provided for declaring an emergency state again. The check in the form of the verification of the extension of the emergency state within the constitutional judiciary also remains."*

It should be emphasized that the Amendment to Constitutional Act on the security of state regulates restrictions and obligations separately in the case of declaring an emergency state due to threat to life and health in causal nexus with a pandemic, resulting in a more restrictive scope of restrictions and obligations that can be imposed in a pandemic emergency state.

As mentioned above, the declaration of an emergency state is, among others, published in the Collection of Laws of the Slovak Republic. The Government of the Slovak Republic declared an emergency state by the following resolutions:

2 This is a standard procedure initiated based on a proposal, i. e. the Government will send the adopted resolution to the National Council of the Slovak Republic on the day of the adoption of the relevant Government resolution and will request (propose) its consent. The authorized member of the Government in the National Council of the Slovak Republic justifies the proposal, participates in the debate in the committees and also in the plenary of the National Council of the Slovak Republic.

- Resolution No. 114 of 15 March 2020 - the emergency state was effective from 16 March 2020 from 6:00 a.m. for state providers of inpatient healthcare,
- Resolution No. 115 of 18 March 2020 - extended emergency state was effective from 19 March 2020 from 6.00 am also for the private sector providing inpatient healthcare,
- Resolution No. 169 of 27 March 2020 - extended state of emergency was effective from 28 March 2020 from 6:00 a.m. also for the provision of nursing care in social services,
- Resolution No. 366 of 10 June 2020 - the state of emergency was terminated on 13 June 2020, i.e. ended at midnight from Saturday 13 June 2020 to Sunday 14 June 2020,
- Resolution No. 587 of 30 September 2020 - the state of emergency was effective from 01 October 2020 in the affected territory of the Slovak Republic for a period of 45 days,
- Resolution No. 718 of 11 November 2020 - extended the duration of the emergency state to 90 days,
- Resolution No. 807 of 29 December 2020 - extended the duration of the emergency state for another 40 days

The Constitutional Act on the security of state does not define the concept of an emergency state, nor does it explicitly define the form of the declaration of an emergency state and the form in which fundamental rights and freedoms are to be restricted in an emergency state. The question, therefore, arises as to whether it is possible to impose restrictions on fundamental rights and freedoms in an emergency state in the form of a resolution of the Government, as has been the case throughout 2020.

According to Section 1aa of Act No. 575/2001 Coll. on the organization of the Government and the organization of the central state administration, the Government, as a rule, decides in the form of a government resolution; the resolution of the Government is not subject to judicial review.[3] If the Government of the Slovak Republic has the power to decide on the restriction of fundamental rights and freedoms

3 According to the Constitutional Court of the Slovak Republic, a government resolution is generally only an act of internal management addressed to a member of the Government and other central state administration bodies or subordinate state administration bodies (resolution of the Constitutional Court of the Slovak Republic of 22 November 2012, Case No. II. 2012). In another finding, the Constitutional Court of the Slovak Republic stated that the government resolution is not published pursuant to Act No. 1/1993 Coll. on the Collection of Laws of the Slovak Republic, therefore it does not have the nature of a generally binding legal regulation. The government resolution is an internal normative instruction which cannot extend the powers of a state body beyond the competencies determined by the Constitution (resolution of the Constitutional Court of the Slovak Republic of 13 May 1997, Case No. II. ÚS 30/97).

in an emergency state, it may do so by a resolution or government regulation. The constitutional basis for issuing government regulations is provided by Article 120 of the Constitution of the Slovak Republic, according to which the Government may issue regulations for the implementation of the law and within its limits. Pursuant to the legislative rules of the Government of the Slovak Republic, it is not possible to impose obligations, amend or supplement legal regulations beyond the scope of the law, or regulate social relations not regulated by law by government regulation.[4] The legal basis for the Slovak government's action in an emergency state is the Constitutional Act on the security of state as mentioned several times. In 2020, Article 5 of the Constitutional Act on the security of state in connection with the COVID-19 pandemic was applied seven times, all of which were exclusively government resolutions.[5] In 2020, the Constitutional Court of the Slovak Republic (hereinafter the "Constitutional Court") ruled on the compliance of a government resolution issued in connection with an emergency state only once - in the finding of 14 October 2020, Case No. PL- ÚS 22/2020.[6]

The Constitutional Court at a closed plenary session on 14 October 2020 in proceedings pursuant to Article 129(6) of the Constitution of the Slovak Republic on the compliance of the decision on the declaration of an emergency state and other subsequent decisions with the Constitution of the Slovak Republic or the Constitutional Act on the security of state decided that the contested Resolution of the Government of the Slovak Republic on the declaration of an emergency state and Regulation of the Government of the Slovak Republic No. 269/2020 Coll. of 30 September 2020 comply with the relevant provisions of the Constitution of the Slovak Republic and Constitutional Act on the security of state.

The Attorney General and a group of Members of Parliament objected to the formal and factual shortcomings of the Resolution of the Government of the Slovak Republic on the declaration of an emergency state. In particular, the reason for issuing a state of emergency is not clear from the Resolution on the declaration of an emergency state, and at the same time, the territory in which it is to be effective is not precisely defined. The Constitutional Court emphasized that even in the event of an emergency it is necessary to respect the principles of the rule of law and stated that it must always be suspicious towards the declaration of an emergency state from the point of view of the Constitution of the Slovak Republic and Constitutional Act on the security of state. An emergency state may be declared only if *"there is a threat or an imminent danger or threat to the life and health of people,*

4 This does not apply in the case of a government regulation under Article 120(2) of the Constitution of the Slovak Republic.

5 Resolutions published in the Collection of Laws of the Slovak Republic under No. 386/2020, 315/2020, 306/2020, 298/2020, 290/2020, 284/2020 and 84/2020.

6 Finding of the Constitutional Court Case No. PL. ÚS 22/2020, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DmsSearchView.

including in a causal nexus with a pandemic, a threat to the environment or a considerable threat to property due to a natural disaster, catastrophe, industrial, traffic or other operational accident"(Article 5(1) of the Constitutional Act on the security of state). Thus, an emergency state may be declared only based on statutory reasons, and the assessment of whether these reasons have occurred and whether they require the declaration of a state of emergency requires expert, conceptual and ultimately political consideration. The Constitutional Court declared that the Government of the Slovak Republic is in a better position to assess such circumstances and is also democratically responsible for this assessment.

The Constitutional Court criticized the resolution of the Government of the Slovak Republic declaring an emergency state for some shortcomings, which, however, did not have an impact on its constitutionality. The Constitutional Court interpreted those provisions of the Constitutional Act on the security of state which required guidance to remove some ambiguities in declaring an emergency state and in deciding on the restriction of fundamental rights and the imposition of obligations by the Government of the Slovak Republic. At the same time, the Constitutional Court accepted the reason for declaring an emergency state and confirmed the declaration for the entire territory of the Slovak Republic.

It further follows from the finding of the Constitutional Court that the Government of the Slovak Republic did not declare an emergency state without having a base for fulfilling the conditions pursuant to Article 5(1) of the Constitutional Act on the security of state and did not declare it on grounds other than those permitted by this provision. The Government of the Slovak Republic has also met the formal conditions for declaring an emergency state. The petitioners did not provide any facts and arguments that would indicate a clear excess of the emergency state or the possibility of its abuse, nor did the Constitutional Court noted that. By declaring an emergency state of emergency, the Government of the Slovak Republic did not violate the relevant articles of the Constitution of the Slovak Republic and Constitutional Act on the security of state, and the contested Government Resolution is in accordance with the Constitution of the Slovak Republic and Constitutional Act on the security of state.

According to the interpretation of the Constitutional Court: *"From Article 5(3) and Article 11(1) of Constitutional Act on the security of state, it follows that the Government may restrict fundamental rights during an emergency state, as was the case based on Resolution No. 114/2020, but is not obliged to do so. ... based on an emergency state, fundamental rights may be directly restricted or obligations may be imposed by a government resolution."* This provides an answer to the introductory question - the Constitutional Court explicitly recognizes the power of the Government of the Slovak Republic to restrict fundamental rights in an emergency state by a resolution.

Since March 2020, the Government of the Slovak Republic, individual

ministries and other central state administration bodies of the Slovak Republic have adopted a wide range of regulations, measures, guidelines and recommendations, which on the one hand, contributed to slowing the spread of the COVID-19 disease in the Slovak Republic, on the other hand, however, resulted in serious interference with the exercise of human rights and fundamental freedoms, often balancing on the edge of constitutionality. As part of the handling of complaints, the Center also dealt with the nature of measures imposed by the Public Health Authority of the Slovak Republic in the event of a threat to public health, issued to prevent the spread of the COVID-19 disease.

In society, the ambiguity of the legal nature of the measures of the Public Health Authority resonated. The Public Health Authority imposes measures based on Sections 12 and 48 of Act No. 355/2007 Coll. on the protection, promotion and development of public health and amendment of certain acts (hereinafter referred to as the "Act on the protection of public health"). Section 48 of the Act on the protection of public health was amended four times, while the fundamental change in its content was brought by Act No. 172/2011 Coll. and Act No. 286/2020 Coll.

Act No. 172/2011 Coll. amended the wording of Section 48 of the Act on the protection of public health to a form, in which a distinction is made between a threat to public health and a threat to public health of II. degree and, depending on that, the specific competencies of the Public Health Authority are applied. The explanatory memorandum to Act No. 172/2011 Coll. is also devoted to the question of whether the Public Health Authority is entitled to issue measures pursuant to Section 48(4) of the Act on the protection of public health, in the event of an emergency situation or an emergency state: *"If the threat to public health cannot be eliminated through measures of public health authorities pursuant to Act No. 355/2007 Coll. and this situation requires cooperation with the components of civil protection, it is within the competence of the regional public health authority or the Public Health Authority of the Slovak Republic to submit to the competent authority a proposal for a declaration of an emergency situation and a proposal for the implementation of measures. Since the submission of the proposal for the declaration of an emergency situation, the exclusive decision-making authority in this matter has been taken over by the competent authorities pursuant to the Act of the National Council of the Slovak Republic No. 42/1994 Coll."*

The first measures of the Public Health Authority of the Slovak Republic were in the form of decisions issued in administrative proceedings under the Administrative Code.[7] The form of measures issued later was not clear and therefore, the so-called hybrid legal acts come into question. However, it should be noted that the legal order of the Slovak Republic does not

7 Act No. 71/1967 Coll. on administrative proceedings (Administrative Code).

formally define hybrid legal acts.[8] The Centre notes that the COVID-19 pandemic has clearly revealed shortcomings in the formal provisions concerning the issuance of measures by public health authorities.

The General Prosecutor's Office of the Slovak Republic reviewed the legality of the actions of the Public Health Authority of the Slovak Republic in issuing measures in the event of a threat to public health, finding violations of the law related primarily to the lack of material scope of competence of the Public Health Authority of the Slovak Republic to issue measures after declaring an emergency situation and declaring an emergency state, as well as with the legal nature of these measures. Therefore, the General Prosecutor's Office of the Slovak Republic according to Section 48(1) and Section 28 of Act No. 153/2001 Coll. on the Public Prosecution Service, filed a warning Case No. VI / 3 Gd 174/20/1000 of 22 September 2020 to the Public Health Authority concerning the procedure for issuing measures in the event of a threat to public health at the time of a declared emergency situation and at the time of a declared emergency state.

In the context of the above, the earlier-mentioned Amendment No. 286/2020 Coll. of the Act on the protection of public health was adopted, effective from 15 October 2020. The explanatory memorandum to the amendment in question states: "*The greatest ambiguity is the legal nature of the measures of the Public Health Authority, the method of their preparation and, in particular, their promulgation. An essential feature of the rule of law, by which the Slovak Republic is governed according to Article 1(1) of the Constitution of the Slovak Republic, is the availability of sources of law. The addressees of the law must therefore be able to know the content of the law by which their conduct is to be governed, and that law must be properly published. The Public Health Authority of the Slovak Republic, with its "measures" according to Section 12 of the Act on the protection of public health, significantly interferes with everyday life, and even restricts fundamental rights and freedoms. Nevertheless, the applicable law does not in any way regulate the conditions for the entry into force of these measures, nor the conditions for their publication, i.e. it does not regulate how the addressees of the restrictions set out therein may become acquainted with their subject matter. In addition, the current regulation does not regulate in more detail the legal form of these measures, as a result of which the Constitutional Court of the Slovak Republic - in the absence of such regulation - concluded that it should be the so-called hybrid acts. The proposed regulation aims to eliminate all these deficits of legal certainty and to regulate in a proper and clear manner both the legal form of these measures and the manner of their publication. The proposed amendment ensures that the rule of law is upheld even in times of a pandemic. On the one hand, a clear legal classification of*

8 Hybrid legal acts are known by the Czech legal order (these are the so-called measures of municipal nature pursuant to Section 171 et seq. of Act No. 500/2004 Coll., Administrative Code).

these legal acts as generally binding legal regulations will clarify their position in the legal order, as they will be able to become the legal basis for the action of all state bodies. In addition, the procedure and scope of their examination will be clarified, as it will be possible to examine them under Article 125(1) (d) of the Constitution of the Slovak Republic for non-compliance with the Constitution, constitutional acts, international treaties and other superior legal regulations, based on the motion submitted by the entities regulated in Article 130 of the Constitution of the Slovak Republic. "

Amendment No. 286/2020 Coll. of the Act on the protection of public health added to Section 48(4) inter alia, the possibility to order:

- the use of preventive and other protective equipment,
- making access to the premises of service providers and employers conditional on the registration of personal data of persons entering, for the purpose of an epidemiological inquiry,
- registration of persons upon entry into the territory of the Slovak Republic by filling in an electronic form on the website operated by the Ministry of Investment, Regional Development and Informatization of the Slovak Republic,
- isolation or quarantine of persons entering the territory of the Slovak Republic,
- transport of a person suffering from a communicable disease or a person suspected of having a communicable disease and determining the conditions of such transport,
- performing mechanical cleaning, disinfection or sterilization of objects or premises,
- imposing an obligation on employers to take hygienic measures at workplaces, including a prohibition on employees or other persons from entering workplaces or other premises of the employer,
- the observance of the specified distance between persons,
- other necessary measures to protect public health, by which it may prohibit or prescribe further activities to the extent and for the time necessary.

Selected measures may be imposed by the Public Health Authority of the Slovak Republic or the regional public health authority only in the event of a crisis situation (emergency state, exceptional state, war state, war)[9]. Individual regional public health authorities may, based on measures issued by the Public Health Authority of the Slovak Republic for the territorial districts of several regional public

9 For more information, please see, Section 48(8) of the Act on the protection of public health.

health authorities, order stricter or more lenient measures within their territorial district if so determined by the Public Health Authority of the Slovak Republic.

The amendment to the Act on the protection of public health also deals with the form in which the measures are ordered. If the measures concern the entire Slovak Republic, a certain part of its territory or a group other than individually designated persons, they are ordered by the Ministry of Health of the Slovak Republic, Public Health Authority of the Slovak Republic or regional public health authorities by a generally binding legal regulation.

At this point, the Centre would like to point out that Act No. 400/2015 Coll. on the Creation of Legal Regulations and the Collection of Laws of the Slovak Republic and the amendment to certain acts. as amended (hereinafter referred to as the "Act on the creation of legal regulations") is applied to the generally binding legal regulations issued by the Ministry of Health of the Slovak Republic. It will therefore be a regulation published in the Collection of Laws of the Slovak Republic. The Act on the creation of legal regulations does not apply to generally binding legal regulations issued by the Public Health Authority of the Slovak Republic and regional public health authorities. Decrees of the Public Health Authority of the Slovak Republic and regional public health authorities shall enter into force and effect on the day of their promulgation in the Official Gazette of the Government of the Slovak Republic unless a later day of entry into force is stipulated in the decree itself[10]. The amendment to the Act on the protection of public health thus explicitly declares the generally binding nature of the decrees of regional public health authorities. If necessary, the regional public health authority may decide whether to order measures pursuant to Section 48(4) of the Act on the protection of public health or through an individualized decision according to the Administrative Code. If it is necessary to impose such measures in a certain part of the territory on a group of persons other than individually designated persons, the decree of the regional public health authority has a generally binding character and the regional public health authority does not proceed in accordance with the Administrative Code.

In the context of the proportionality of the interference with human rights, the Centre emphasizes that no act regulates the competence of the Public Health Authority of the Slovak Republic and the regional public health authorities to interfere with fundamental human rights and freedoms to the extent that they acted. In the following chapters, the Centre evaluates, among other things, the content of specific measures of the Public Health Authority of the Slovak Republic and regional public health authorities with regard to the constitutional principle of proportionality.

10 The official Gazette of the Government of the Slovak Republic is available on the website of the Ministry of Interior of the Slovak Republic.

1.1 Quarantine of Roma settlements

The Atlas of Roma communities from 2019 names 819 municipalities in Slovakia, in which marginalized Roma communities are present.[11] From the human-rights based approach, the Centre considers the situation related to the quarantines of entire Roma settlements in which cases of COVID-19 have been confirmed to be problematic. Protecting health from the uncontrollable spread of COVID-19 is a legitimate goal for adopting measures. However, widespread quarantine in the form of a prohibition of contact with the rest of the population could unduly restrict the personal freedom of the inhabitants of the settlements concerned and go beyond the permissible restriction on freedom of movement. The Centre has previously pointed out that marginalized Roma Communities represent a specific group in terms of prevention and protection of the population against the spread of COVID-19, due to the higher risk of this group (poor hygiene and access to water, health, access to health services, higher population density).[12]

During 2020, the Centre repeatedly pointed to the inadequacy and lack of sufficient justification for measures related to the isolation of Roma persons, as well as to priority testing for COVID-19 in marginalized Roma communities and the growing unrest in isolated settlements.[13] At the same time, it guided helping professions and sought to raise awareness through its social networks. Last but not least, the Centre addressed the negative health and socio-economic impact on the life of the marginalized Rome communities through thematic working groups of the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities in the preparation of the Strategy for Equality, Inclusion and Participation of Roma until 2030.

During the first wave of the COVID-19 pandemic, the widespread quarantine of entire Roma settlements involved e.g. the municipalities of Bystrany, Žehra and the town of Krompachy.[14] During the second wave e.g. the municipality of Rat-

11 The Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities: Atlas of Roma Communities (2019), available in Slovak language at: https://www.minv.sk/?atlas-romskych-komunit-2019.

12 For more information, please see: Slovak National Centre for Human Rights: Report on the observance of human rights including the principle of equal treatment for the year 2019 (2020), available in Slovak language at: http://www.snslp.sk/wp-content/uploads/Sprava-o-LP-v-SR-za-rok-2019.pdf.

13 For more information, please see, for example: *"Slovak Republic fails – Roma persons are again victims of police violence?" ("Slovenská republika zlyháva - Rómovia opätovne obeťami policajného násilia?"*)available in Slovak language at: http://www.snslp.sk/wp-content/uploads/TS-%E2%80%93-Romovia-opatovne-obetami-policajneho-nasilia.pdf.

14 Measure of the Regional Public Health Authority with the seat in Spišská Nová Ves, available in Slovak language at: https://www.ruvzsn.sk/OPATRENIE_uzatvorenie%20obci_2020.pdf.

novce[15] and the town of Bánovce nad Bebravou.[16] In the context of the quarantine of Roma settlements, the Centre communicated with the Public Health Authority of the Slovak Republic, selected regional public health authorities and mayors of towns and municipalities.[17] The Public Defender of Rights also drew attention to the dispute over the quarantine of entire settlements or areas in which marginalized Roma communities live. After examining the cases of closure of settlements in Žehra, Krompachy and Bystrany, the Public Defender of Rights found that the fundamental rights and freedoms of the inhabitants of these areas had been violated.[18] The Centre agrees with the above-mentioned opinion of the Public Defender of Rights in full. In an open letter to the Council of Europe, Amnesty International stated that the Government of the Slovak Republic *"had targeted Roma settlements with specific measures, including mandatory mass quarantine, which were not imposed on any other population groups. This raised questions about the compliance of such practices with the requirement of equal treatment under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the EU Racial Equality Directive."*[19] According to the European Union Agency for Fundamental Rights (FRA), during the second wave of the pandemic, the Slovak Republic is the only country in which the entire Roma communities continue to be quarantined.[20]

According to the opinion of the Centre, there was no doubt that the right to freedom of movement and residence of the inhabitants living in the quarantined Roma settlements was violated, as the Centre pointed out several times during 2020. The autonomy of expressions of will and human dignity is an integral part of human freedom and enjoy special constitutional protection. The starting points are Articles 12 and 13 of the Constitution of the Slovak Republic and, in a broader sense, also Article 23 et seq. Personal liberty ensures a person's freedom from external obstacles and restrictions in life. It cannot be

15 Decree of the Regional Public Health Authority with the seat in Trnava, available in Slovak language at: https://www.ratnovce.sk/evt_file.php?file=1728&original=Reg.%C3%BArad%20vyhl.%C4%8D.46.pdf,

16 Decision of the Regional Public Health Authority with the seat in Trenčín, available in Slovak language at: https://www.ruvztn.sk/Mesto%20Tren%C4%8D%C3%ADn-%20opatrenie.pdf

17 For example, with the Regional Public Health Authority with the seat in Nitra, the Regional Public Health Authority with the seat in Spišská Nová Ves, mayor of towns Krompachy and Gelnica.

18 Press release of the Public Defender of Rights, available in Slovak language at: https://www.vop.gov.sk/files/2020_XX_TS_Ombudsmanka_sa_obracia_na_hlavneho_hygienika_ohladom_karantenizacie_MRK.pdf.

19 Open letter to the Council of Europe, available in Slovak language at: https://www.amnesty.sk/otvoreny-list-rade-europy-karanteny-romskych-osad-v-bulharsku-a-na-slovensku-si-vyzaduju-na-liehavu-pozornost/

20 Implications of COVID-19 pandemic on Roma and Travellers communities Country: Slovakia, available at: https://fra.europa.eu/sites/default/files/fra_uploads/sk_report_-_covid-19_impact_on_roma_en.pdf.

denied that a person deprived of or restricted in his or her personal liberty automatically suffers an interference with other rights and freedoms, such as exercising his or her right to free movement and residence.

Personal liberty, as well as freedom of movement and residence, is also guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the ECHR").[21] The case-law of the European Court of Human Rights (hereinafter the "ECtHR") shows that the possibility of leaving a restricted zone, the extent of control over a person's movement, the degree of isolation from the outside world and the availability of social contacts are the relevant factors when deciding, whether there was a violation of the personal rights and the freedom of movement.[22] However, in the context of assessing the legitimacy of interference with the right to freedom of movement and residence, the Centre will in the next part deal exclusively with the constitutional law.

The Constitution of the Slovak Republic allows for the restriction of freedom of movement and residence under the conditions set out in Article 23(3). The conditions for restricting freedom of movement and residence are composed of one formal and two material conditions.

The formal condition is the condition of the law. Restrictions on freedom of movement and residence must be provided for by law.[23]

The quarantine of Roma settlements during the first and second waves of the COVID-19 pandemic took place based on measures issued by the regional public health authorities. During the first wave, they justified the adopted measures also by the Resolution of the Government of the Slovak Republic No. 196/2020 of 02 April 2020, which laid down the conditions for quarantine of settlements.

According to the resolution, *"if there are more than 10% of people who test positive for COVID-19 in a settlement, it does not make sense to quarantine people in accommodation facilities, but it is necessary to quarantine the settlement as a whole. However, individuals who have had the COVID-19 disease confirmed by laboratory and whose body temperature is above 38 °C and other symptoms such as shortness of breath and cough are present will be transported to a designated medical facility for hospitalization. In this case, it only makes sense to test healed people. During the quarantine of the settlement, it is necessary to close the settlement, ensure information and communication, security, ensure special monitoring of close*

21 Article 5 (Right to liberty and security) of ECHR, Article 2 of Protocol No. 4 (Freedom of movement) of ECHR guaranteeing certain rights and freedoms other than those, which are mentioned in the ECHR and Protocol No. 1.

22 Judgment of the ECtHR in the case of *H. M. v. Switzerland*, App. No. 39187/98, available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-5463%22]}

23 At the same time, the extraordinary constitutional regime for the protection of freedom of movement and residence cannot be neglected, when freedom of residence may be restricted in all situations regulated by this the Constitutional act on security of state; freedom of movement cannot be restricted in the time of war state.

contacts, ensure the supply of food and water to the settlement, provide medical assistance and, if necessary, consider setting up an improvised kitchen and hospital."[24]

During the second wave of the COVID-19 pandemic, the regional public health authorities in the vast majority of cases based their authority on the provisions of Section 6(3)(e), Section 12(2)(b),(e) and Section 48(4)(c),(o) of the Act on the protection of public health. It is important to focus attention especially on the provision of Section 48(4)(c) of the Act on the protection of public health, according to which the regional public health authorities, in the event of a threat to public health, impose measures which prohibit or restrict the contact of a part of the population with the rest of the population in the event of a mass occurrence of serious disease. In the context of the above, the Public Defender of Rights pointed out that in times of a crisis situation, the power of the regional public health authorities to issue measures under the Act on the protection of public health is limited and they act beyond the material scope of competence when quarantining Roma settlements. According to the legal opinion of the Centre, the material scope of competence of the regional public health authorities to issue regulations pursuant to the provisions of Section 48(4) during a threat to public health of the II. degree is at least questionable.

At the same time, the Centre points to the fact that the regional public health authorities either did not substantiate the wide quarantine of entire settlements at all (e.g. Decree of the Regional public health authority with the seat in Trnava, which imposes the measures in the event of a threat to public health for the municipality of Ratnovce)[25] or substantiated them only very superficially (e.g. Measures of the Regional public health authority with the seat in Spišská Nová Ves in case of a threat to public health).[26] At the same time, the Constitutional Court has repeatedly stated that decisions which are not substantiated are, in principle, unreviewable. Through a decree, the regional public health authority imposes measures pursuant to Section 48(4) of the Act on the protection of public health. The regional public health authority may issue such a measure as an individual decision binding exclusively on a specific addressee (one or several individually identified addressees)[27] or as a generally binding rule (a larger group of unspecified addressees), used in the case of quarantine of Roma settlements. The austere legal reg-

24 Proposal to proposal of the Plan for the resolution of the COVID-19 disease in marginalized Roma communities, available in Slovak language at: https://rokovania.gov.sk/RVL/Material/24697/1.

25 Decree of the Regional public health authority with the seat in Trnava, available in Slovak language at: evt_file.php (ratnovce.sk)

26 Measure of the Regional public health authority with the seat in Spišská Nová Ves in case of a threat to public health, available in Slovak language at: OPATRENIE_uzatvorenie obci_2020.pdf (ruvzsn.sk).

27 The individualized decision of the regional public health authority is subject to the Administrative Code, which establishes the proper substantiation of the decision as one of the essential requirements of the decision.

ulation of the issuance of decrees of the regional public health authorities allows a measure addressed to a larger group of unspecified addressees not to be substantiated. In the legal opinion of the Centre, a strict grammatical interpretation of the adoption of decrees by regional public health authorities is inappropriate. For a larger group of unspecified addressees, it represents a significantly greater interference with fundamental rights and freedoms than in the case of an individual, or several individually identified addressees. The Center emphasizes that if the decree of the regional public health authority is not substantiated, it conflicts with the constitutional requirement of justification of interference with fundamental rights and freedoms, as it is not subject to review by the court.

The first material condition for restricting freedom of movement and residence is the protection of one of the interests expressly recognized by the Constitution of the Slovak Republic if such an interest collides with freedom of residence or movement. The Constitution of the Slovak Republic in Article 23(3) grants protection to a different range of interests for which freedom of movement and residence may be restricted, as it determines as a ground for restriction under other fundamental rights and freedoms.[28] The Constitution of the Slovak Republic exhaustively lists five reasons justifying the restriction of freedoms in Article 23, while in the context of the quarantine of Roma settlements, the decisive reason is the protection of health. This reason can be considered legitimate, as the protection of life and health is a legitimate interest of society as a whole.[29] However, in the context of the assessment of the interference with the right to freedom of movement and residence, the second material condition is essential.

The second material condition is the condition that the restriction must be necessary. According to the Constitutional Court, a restriction of fundamental rights and freedoms is necessary if the goal of the restriction cannot be achieved otherwise.[30] A restriction on a fundamental right or freedom is not necessary if the purpose of the restriction introduced to strike a fair balance between the fundamental rights and freedoms that come into conflict with each other can be achieved in another way that could avoid the introduction of the restriction.[31] The crucial question is therefore whether the quarantine of Roma settlements was necessary, and thus whether the

28 DRGONEC, J.: *Constituion of the Slovak Republic. Theory and practice) ("Ústava Slovenskej republiky. Teória a prax").* 2nd edition. Bratislava: C. H. Beck, 2019.

29 According to Article 15(1) first sentence of the Constitution of the Slovak Republic: "Everyone has the right to life." According to Article 40 first sentence of the Constitution of the Slovak Republic: "Everyone shall have the right to protection of his or her health."

30 Finding of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 19/98 of 15 October 1998, available in Slovak language at: https://www.slov-lex.sk/judikaty/-/spisova-znacka/PL%252E%2B%25C3%259AS%2B19%252F98.

31 DRGONEC, J.: *Constituion of the Slovak Republic. Theory and practice) ("Ústava Slovenskej republiky. Teória a prax").* 2. edition. Bratislava: C. H. Beck, 2019.

goal which was to be achieved by restricting fundamental human rights and freedoms could not be achieved without this restriction, or through the use of more lenient means.

In assessing the necessity of the measures of the Public Health Authority of the Slovak Republic, the Centre observes insufficient substantiation of these measures. As we stated above, by not substantiating the decrees, the regional public health authorities violate the constitutional requirement of justification of interference with fundamental rights and freedoms, as they are not subject to judicial review. From a constitutional law point of view and the requirements arising from the protection of the constitutionality, scope and manner of judicial review of administrative acts, decisions must be given due attention, as must be sufficiently and in a convincing way justified.[32] At the same time, the absence of substantiation of a decree makes it impossible to assess the constitutionality and legality of the adopted decree. It is also not possible to identify from the wording of the individual decrees of the regional public health authorities the basic parameters necessary to assess their proportionality, which requires that the restriction of a fundamental right is carried out by law, that there is a sufficiently specific aim of this restriction, that the aim of the protection of fundamental rights cannot be achieved by any other means than by restricting another fundamental right and that the restriction does no go beyond what is necessary to achieve the aim pursued.[33] In assessing the measures taken, it is only possible to consider why the regional public health authorities imposed a quarantine in selected settlements.

At the same time, the time constraint, more precisely, the indefinite nature of the measures issued by the regional public health authorities also appears to be problematic. Although the quarantine in the Roma settlements had a clearly defined beginning, it was in no way limited in time, and thus the date of its termination was not known in advance. As the measures or decrees of the regional public health authorities did not at the same time stipulate the maximum duration of the quarantine, its duration depended exclusively on the decision of the regional public health authorities. The Centre also considers the absence of setting conditions or criteria for a possible extension of the quarantine as a shortcoming.

In conclusion, the Centre notes that the measures and decrees of the regional public health authorities, which imposed the quarantine in Roma settlements, had several

32 Finding of the Constitutional Court of the Slovak Republic, Case No. I. ÚS 269/05 of 20 December 2006, available in Slovak language at: https://www.slov-lex.sk/judikaty/-/spisova-znacka/IV%252E%2B%25C3%259AS%2B253%252F05

33 LYSINA, R.: *Quarantine of Roma settlements – fast and furious ride of the Regional public health authorities? ("Karantenizácia rómskych osád – rýchla a zbesilá jazda Regionálnych úradov verejného zdravotníctva?")* available in Slovak language at:https://comeniusblog.flaw.uniba.sk/2021/02/26/karantenizacia-romskych-osad-rychla-a-zbesila-jazda-regionalnych-uradov-verejneho-zdravotnictva/#_ftn1

major shortcomings. We consider the absence of substantiation of the measures and decrees of the regional public health authorities and the related nonreviewability by the court to be the most serious shortcoming. The second most serious shortcoming of the measures and decrees of the regional public health authorities is the absence of predetermined conditions for the duration of the restriction of personal liberty of the inhabitants of quarantined settlements.

1.2 Mandatory State Isolation

Public Health Authority of the Slovak Republic as a competent authority according to Section 5(4)(h) of the Act on the protection of public health issued on 04 April 2020 a measured file no.: OLP / 3012/2020, which imposed pursuant to Section 12(2)(b) and (f) and Section 48 (4)(l) of the Act on the protection of public health to all persons who, from 06 April 2020 from 7.00 am enter the territory of the Slovak Republic, isolation in facilities designated by the state (hereinafter referred to as "mandatory state isolation") for the time necessary to perform the laboratory diagnostics of COVID-19 and subsequently after obtaining a negative result, home isolation for 14 days. At the same time, the Public Health Authority of the Slovak Republic established exceptions from the mandatory state isolation for a specifically defined group of persons to whom, after entering the territory of the Slovak Republic, it imposed isolation in the home environment for 14 days. Mandatory state isolation for persons entering the territory of the Slovak Republic, with certain exceptions, was subsequently re-imposed by the measures of the Public Health Authority of the Slovak Republic file. no. OLP / 3172/2020 of 17 April 2020, file no. OLP / 3353/2020 of 29.04.2020, file no. OLP / 3992/2020 of 15 May 2020 and file no. OLP / 4203/2020 of 20 May 2020.

Measure file. no. OLP / 4203/2020 of 25 May 2020, with effect from 26 May 2020, introduced the possibility for persons in mandatory state isolation to replace this isolation by activating a mobile application to monitor the observance of mandatory state isolation and by performing this isolation in the home environment. Mandatory state isolation was subsequently completely abolished by the measure file no. OLP / 4739/2020 of 09 June 2020 and replaced by other measures.

The obligation to be subject to mandatory state isolation after entering the territory of the Slovak Republic represented a significant interference with personal liberty, which is protected by the Constitution of the Slovak Republic and international treaties on human rights and fundamental freedoms. For this reason, mandatory state isolation has been repeatedly criticized by the Public Defender of Rights for its inadequacy as well as by persons who have undergone mandatory state isolation. The Centre has actively addressed this issue. It received several complaints, whether by telephone or in writing, in which the persons concerned inquired whether the mandatory state quarantine complied with the constitutional guarantees for the protection of their human rights and freedoms. The Centre, as a national human rights institution, also monitored this issue in the course of fulfilling its legal mandate. In monitoring this issue and addressing complaints, it concluded that, in addition to the question of the legitimacy of the restriction of personal liberty itself by the obligation to subject to mandatory state isolation, the method of its implementation was also problematic.

Personal liberty is guaranteed in Article 17(1) of the Constitution of

the Slovak Republic[34] as well as in many international treaties on human rights and fundamental freedoms,[35] of which the Centre will deal exclusively with its amendment in the Convention[36] in the next part of the Report.

Personal liberty means the free, unrestricted movement of persons who, at their discretion, may reside in a particular place or leave that place freely.[37] Similarly to other fundamental rights and freedoms, personal liberty may be restricted in certain circumstances. Article 13 of the Constitution of the Slovak Republic enshrines general formal and material conditions that must be met for fundamental rights and freedoms to be restricted. The Constitution of the Slovak Republic requires that such a restriction made by law, proportionate and respect the principle of equality.[38]

The provisions guaranteeing personal liberty in the Constitution of the Slovak Republic and the Convention contain, in addition to the general conditions, other special conditions that must be observed when restricting this right. While the Constitution of the Slovak Republic[39] is brief in this respect and extends the general conditions only by the requirement that personal liberty is restricted only for reasons and in the manner regulated by law, the Convention directly in Article 5(1) exhaustively sets out the reasons why personal liberty may be restricted. The Convention expressly allows restrictions on personal liberty also to prevent the spread of a contagious disease.[40]

The ECtHR has repeatedly addressed in its decisions the conditions under which personal liberty may be restricted. Although the ECtHR considered cases of restriction of personal liberty to prevent the spread of an

34 According to Article 17 of the Constitution of the Slovak Republic: "Personal liberty of every individual shall be guaranteed."

35 For example, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights.

36 According to Article 5(1) of the Convention: "Everyone has the right to liberty and security of person."

37 Finding of the Constitutional Court of the Slovak Republic, Case No. III. ÚS 204/02 from 22 January 2004, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DmsSearchView.

38 According to Article 13(2),(3),(4) of the Constitution of the Slovak Republic: „Limitations of fundamental rights and freedoms shall be regulated only by alaw and under the conditions set in this Constitution. Legal restrictions of fundamental rights and freedoms shall be applied equally in all cases fulfilling the specified conditions. When imposing restrictions on fundamental rights and freedoms, respect must be given to the essence and meaning of these rights and freedoms and such restrictions shall be used only for the specified purpose."

39 According to Article 17(2) first sentence of the Constitution of the Slovak Republic: "No one shall be prosecuted or deprived of liberty save for reasons and by means laid down by a law."

40 Article 5(1)(e) second sentence of the Convention: "No one shall be deprived of his liberty save the following cases and in accordance with a procedure prescribed by law: the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

infectious disease to a minimum, in other cases of assessment of the lawfulness of a restriction of personal liberty, it clearly set out the general criteria that must be met. According to the case-law of the ECtHR, the absence of arbitrariness is a necessary element of the lawfulness of a restriction of personal liberty. Detention of an individual is such a serious measure that is only justifiable where other, less severe measures have been considered insufficient. This means that it is not enough for the deprivation of liberty to be carried out in accordance with national law, but it must also be necessary for the circumstances.[41] Depriving an infected person of his or her personal liberty must be the last resort to prevent the spreading of the disease, as other less severe measures have been considered insufficient to safeguard the public interest.[42]

The Constitutional Court, as far as the Centre is aware, has not dealt with the merits of the restriction of personal liberty in order to prevent the spread of an infectious disease. The Constitutional Court received several complaints from natural persons objecting to the violation of their fundamental rights and freedoms by undergoing mandatory state isolation. However, due to the subsidiarity of its competence and the non-exercise of the right to bring an administrative motion, the Constitutional Court rejected all constitutional complaints received as inadmissible.[43]

The subject of this subchapter of the Report on Human Rights will be the assessment of whether mandatory state isolation met the above-mentioned constitutional and international legal requirements for the restriction of fundamental rights and freedoms and the proposal of recommendations to eliminate possible shortcomings.

The Act on the protection of public health is the legal basis for the restriction of personal liberty in order to prevent the spread of an infectious disease. In the provision of Section 5(4)(h), this Act grants the power to take measures for this purpose to the Public Health Authority of the Slovak Republic, which in the first instance performs state administration in matters that exceed the boundaries of the territorial district of the regional public health authorities.

The Act on the protection of public health, as amended at the time of the issuance of measures imposing mandatory state isolation, allowed for the restriction of personal liberty by several measures. In the provision of Section 12(2)(f) these are measures ordering isolation in the

41 ECtHR, Witold Litwa v. Poland, App. No. 26629/95, available at: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2226629/95%22],%22itemid%22:[%22001-58537%22]}

42 ECtHR, Enhorn v. Sweden, App. No. 56529/00, available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22enhorn%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-68077%22]}.

43 Rulings of the Constitutional Court of the Slovak Republic on the inadmissibility of the complaints available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView after entering the key word “state quarantine”.

home environment or a medical facility or other designated facility, increased health surveillance, medical surveillance, quarantine measures; in the provision of Section 48(4)(n), it was a measure imposed the forced isolation of persons suffering from an infectious disease who refuse the imposed measure pursuant to Section 12(2)(f). While the measures under Section 12(2)(f) of the Act on the protection of public health are general measures taken to prevent the emergence and spread of infectious diseases, for ordering measures pursuant to Section 48(4)(n) the Act on the protection of public health requires the fulfilment of the substantive condition, which is the existence of a threat to public health. This condition was undoubtedly fulfilled at the time of the issuance of measures ordering mandatory state isolation, as the threat to public health of the 2nd degree was a precondition for declaring an emergency situation, to which the Public Health Authority of the Slovak Republic itself refers in its measures.

The Act on the protection of public health, therefore, regulates several measures aimed at separating healthy people from those who are ill or suspected of having an infectious disease. Although all these measures constitute an interference with personal liberty as a result, they differ in their intensity as well as in the legal substantive and procedural preconditions of their regulation.

For the Centre to be able to analyze the individual measures enabling the restriction of personal liberty, it is first necessary to become acquainted with the definition of basic terms, in particular the definition of isolation and quarantine measures. According to Section 2(1)(m) of the Act on the protection of public health, isolation is the separation of persons suffering from infectious disease during their infectiousness from other persons to prevent the spread of an infectious disease. It is clear from the grammatical interpretation of this provision that isolation can only be imposed on persons who have already been diagnosed with an infectious disease. Quarantine measures are defined in Section 2(1)(n) of the Act on the protection of public health. According to this provision, they are quarantine, enhanced health surveillance and medical surveillance. Unlike the definition of isolation, the definition of quarantine measures does not determine the range of persons to whom such measures may be imposed. It follows that quarantine measures can be imposed on a wider range of people.

The statutory method of carrying out isolation and quarantine measures is also different. Restriction of personal liberty by placing a person in an otherwise designated facility (hereinafter referred to as a "state facility") is permitted by this Act in Section 12(2)(f) and Section 48(4)(n) of the Act on the protection of public health, and only in the case of persons who have already been diagnosed with an infectious disease. What measure, then, did the Act on the protection of public health allow to be imposed on persons entering the territory of the Slovak Republic who have only a suspicion of an infectious disease?

The aim of the Act on the protection

of public health was undoubtedly to distinguish between persons who have already been diagnosed with a communicable disease and persons who have only a suspicion of this disease, and, depending on this fact, to choose a permissible interference with their liberty. This approach of the legislator also corresponds with the constitutional requirements for the restriction of fundamental rights and freedoms and reflects the principle of proportionality.

The Public Health Authority of the Slovak Republic in this situation correctly applied Section 12(2)(f) of the Act on the protection of public health. However, the Public Health Authority of the Slovak Republic opted for a measure to prevent the emergence and spread of infectious diseases (of those listed in this provision) which constituted a manifest excess of its legal powers. By its measures, the Public Health Authority of the Slovak Republic imposed the mandatory state isolation on all persons entering the territory of the Slovak Republic, with certain exceptions, while also including in this group persons where there was only suspicion of COVID-19 disease. Thus, the Public Health Authority of the Slovak Republic exceeded its competence in the case of these persons, as it was entitled to impose isolation in a state institution only on persons with confirmed COVID-19 disease. According to the Act on public health protection, the imposition of quarantine measures could be the maximum interference with the personal liberty of persons with a suspicion of an infectious disease. However, the enforcement of quarantine measures in a state facility is not permitted by law.

At the end of this part, the Centre states that the condition of the legality of the measures of the Public Health Authority imposing mandatory state isolation for all persons entering the territory of the Slovak Republic, with certain exceptions, was not fulfilled, as the restriction of personal liberty did not occur for reasons and in the manner stipulated by law. When dealing with the entry of persons into the territory of the Slovak Republic, the Public Health Authority of the Slovak Republic chose a comprehensive approach, which, however, is not permitted by the Act on the protection of public health. In its provisions, the Act on the protection of public health clearly distinguishes between persons who have already been diagnosed with an infectious disease and persons who have only a suspicion of this disease. Depending on this fact, the Act regulates individual permissible interferences with personal liberty. The Act allowed the imposition of isolation in a state institution exclusively to persons who had already been diagnosed with an infectious disease. The Act allowed to impose only one of the quarantine measures on people with a suspected infectious disease - quarantine, increased health surveillance and medical supervision, but not with the performance of a state institution.

In addition to evaluating the legality of the restriction of personal liberty by the obligation to undergo mandatory state isolation, it is also necessary to assess its proportionality. For any restriction of fundamental rights and freedoms to be proportionate, it must cumulatively

fulfil 3 attributes - legitimacy, adequacy and necessity.

In assessing the legitimacy of a restriction on fundamental rights and freedoms, it is necessary to know the aim which is to be achieved by that restriction. It is then necessary to assess whether this aim is legitimate. The substantiation of the measures of the Public Health Authority of the Slovak Republic imposing mandatory state isolation of persons entering the territory of the Slovak Republic shows that in connection with the current epidemic situation in the world and the European Union, the Public Health Authority of the Slovak Republic adopted these measures to protect the Slovak Republic from hauling the infectious disease COVID-19 into the Slovak Republic. That aim can be regarded as legitimate since it sought to protect the constitutionally guaranteed right to life [44] and health. [45]

In assessing the adequacy of mandatory state isolation, it is necessary to take into account whether the interference with individual fundamental rights and freedoms resulting from the implementation of mandatory state isolation was proportionate to the benefits that this intervention had for the protection of life and public health. At this point, it should be noted that, given how state isolation was carried out, interference with personal liberty was not the only interference with the fundamental rights and freedoms of the persons concerned.

Persons entering the territory of the Slovak Republic (hereinafter referred to as "repatriates") were placed in large-capacity tents after crossing the border. There, they waited for the designation of a state facility in which they would undergo mandatory isolation, and for transport to this facility if their own transport was not used. Due to the insufficient capacity of state facilities, repatriates were often placed in facilities that were at a great distance from their place of residence. Repatriates were transported to state facilities by buses. The basic safety distance requirements were not observed during transport. In accommodation facilities, strangers who did not come to the state border together were nevertheless often placed together in rooms and cells. All these factors posed an increased risk to the individual health of repatriates and also, in some cases, they constituted an interference with their right to privacy and dignity.

The Centre is aware that among the repatriates are also persons who were diagnosed with COVID-19 during the performance of mandatory state isolation. However, this does not in itself mean that, if these persons were not placed in mandatory state isolation, they would spread the COVID-19 disease in the society and pose a risk to life and public health. On the other hand, there are known cases of repatriates who came healthy to mandatory state isolation and contracted the COVID-19 disease precisely be-

44 According to Article 15(1) first sentence of the Constitution of the Slovak Republic: "Everyone has the right to life."

45 According to Article 40 first sentence of the Constitution of the Slovak Republic: "Everyone shall have the right to protection of his or her health."

cause of their placement there.

Pointing to the above, where mandatory state isolation constituted a significant restriction on the repatriates' right to personal liberty, they may in some cases also interfered with other fundamental rights and freedoms, while there was no benefit of this measure for the protection of life and public health of persons with a negative test result for the COVID -19 disease and in the case of persons who tested positive, the protection of life and public health could be provided in other ways, as this must be careful as inappropriate.

Another essential part of assessing any restriction on fundamental rights and freedoms from the point of view of its compliance with the principle of proportionality is its necessity. In this step, it is necessary to examine whether the aim that was to be achieved by the restriction could not be achieved without it, or whether this aim could not be achieved by more modest means.

Any restriction of personal liberty should be a means of ultima ratio, the last resort, in a democratic society that respects fundamental rights and freedoms. Restrictions on personal liberty are thus permissible only if other, less restrictive measures do not achieve the desired effect.

There is no doubt that due to the pandemic of COVID-19 and the need to protect life and public health, it was necessary to take measures to protect the Slovak Republic from the entry of the infectious disease of COVID-19 into its territory. Such a procedure is also envisaged by the Act on the protection of public health.[46] However, the Act in question also provides various options which are capable of achieving that aim and which differ in the intensity of their interference with fundamental rights and freedoms.

As was stated in the part focused on the legality of the mandatory state isolation, the Act regulates different measures, which can be imposed to separate persons diagnosed for commonable disease or persons with suspicion for this disease from healthy persons. One of these can be the imposition of isolation and quarantine in the home environment.

The Public Health Authority of the Slovak Republic also used this form of restriction of personal liberty of persons entering the territory of the Slovak Republic before the imposition of mandatory state isolation. Measure File No.: OLP/2640/2020 of 18 March 2020 imposed pursuant to Section 12(2)(f) of the Act on the protection of public health to all persons with temporary and permanent residence in the Slovak Republic living in the territory of the Slovak Republic over 90 days or employed in the territory of the Slovak Republic, who in the period from 13 March 2020 from 7.00 am. returned from abroad, isolation in the home environment for 14 days (The Centre will not deal with the legality of this measure, as it is not subject to the evaluation).

46 According to Section 12(2) of the Act on the protection of public health: *"Measures to prevent the emergence and spread of communicable diseases are measures to protect the Slovak Republic from the introduction of communicable diseases."*

Subsequently, after 17 days, the Public Health Authority of the Slovak Republic proceeded to tighten the regime for persons entering the territory of the Slovak Republic, when it issued the Measure File No.: OLP / 3012/2020 of 04 April 2020, which for the first time imposed mandatory state isolation for these persons. It is not known to the Centre that the tightening of the regime for persons entering the territory of the Slovak Republic would be preceded by a thorough evaluation of the effectiveness and efficiency of the imposed isolation in the home environment by the Public Health Authority of the Slovak Republic or other competent authorities. The reasons for the tightening of the regime do not follow from the substantiation of the measures imposing mandatory state isolation. Given the insufficient substantiation for the introduction of mandatory state isolation and the lack of an evaluation of the effectiveness of a more lenient measure imposing isolation at home, the regulation of compulsory state isolation seems arbitrary and not necessary.

1.3 Restrictions on freedom of movement in the context of nation-wide testing

Due to the deteriorating situation with the spread of the COVID-19 disease in the Slovak Republic, the Government of the Slovak Republic decided in October 2020 to carry out a nationwide and subsequently area-wide testing of the Slovak population for COVID-19 (hereinafter "testing for COVID-19"). In this context, the Government of the Slovak Republic proceeded to restrict the freedom of movement and residence of the inhabitants of the Slovak Republic by a curfew. It also established a different regime for the population who tested negative for COVID-19 and for those who did not. The Government of the Slovak Republic described participation in the testing as voluntary.[47]

The Government of the Slovak Republic decided on the restriction of freedom of movement and residence by a curfew in connection with the testing of the population for COVID-19 in the form of resolutions issued pursuant to Article 5(3) (g) of the Constitutional Act on the security of state. These were the resolutions:

1. Resolution of the Government of the Slovak Republic No. 693 of 28 October 2020, published in the Collection of Laws of the Slovak Republic under No. 298/2020 Coll.,

2. Resolution of the Government of the Slovak Republic No. 704 of 04 November 2020, published in the Collection of Laws of the Slovak Republic under No. 306/2020 Coll.

With these resolutions, the Government of the Slovak Republic decided on a general curfew from 05.00 a.m. until 01.00 a.m. the following day in the period from 02 November 2020 to 08 November 2020 and from 09 November 2020 to 14 November 2020, laying down exceptions to this curfew. The different curfew regimes for those who tested negative for COVID-19 and for those who did not or could not take part in COVID-19 testing consisted in the number and type of exemptions that applied to them. It was the conditionality of the application of certain exemptions on the participation in testing for COVID-19 with a negative test result that created legal uncertainty. This uncertainty and concern about the application of the curfew were accentuated by the fact that the mere restriction of freedom of movement and residence by the curfew also affected the exercise of other fundamental rights and freedoms, such as the right to education and the right to work. For this reason, the Centre has actively addressed this issue in its work. Through the social network, it provided widely available legal advice, which was shared by 179 organizations or individuals on their profiles, with a total reach of 42,024 users. It was also taken over by some media. Regarding the exemption from the curfew to go to and from primary school for pupils in the first to the fourth year of primary school, the Centre communicated with the Ministry of Education, Science, Research and Sport of the Slovak Republic. This was originally incorrect in its guidance to link this exception to the

47 Information on testing of the population of the Slovak Republic for the COVID-19 disease available in Slovak language at: https://korona.gov.sk/celoplosne-plosne-testovanie-na-covid-19/.

age of the pupil.[48] Following the Centre's notification, it extended this exception to all first- to fourth-year primary school pupils, regardless of age, in accordance with government resolutions.[49]

The Centre has focused on the general definition of the freedom of movement and residence and its regulation in the Constitution of the Slovak Republic and international treaties on human rights and fundamental freedoms in subchapter 1.1 of the Report on Human Rights. In this next subchapter, the Centre will therefore exclusively evaluate the legal basis of the restrictions on freedom of movement and residence in the time of declared emergency state and fulfilment of conditions for such a restriction.

The legal basis for the restriction of freedom of movement and residence during the declared emergency state is the Constitutional Act on the security of state. This act is lex specialis to the Constitution of the Slovak Republic in the scope of fundamental rights and freedoms, which it allows to restriction.[50] The adoption of the Constitutional Act on the security of state is foreseen by the Constitution of the Slovak Republic in Article 51(2) according to which the conditions and extent of restrictions of fundamental rights and freedoms and the extent of obligations in the event of a war, a war state, an exceptional state or an emergency state shall be provided by the Constitutional act.

The Constitutional Act on the security of state contains an exhaustive enumeration of fundamental rights and freedoms that can be restricted in the event of a declared state of emergency. The Constitutional Act explicitly includes the freedom of movement and residence among their rights.[51]

Constitutional Act on the security of state also laid down the formal and material conditions that must be met when restricting fundamental rights and freedoms at the time of a declared state of emergency. The formal condition is the declaration of a state of emergency by the Gov-

48 Guidelines for the procedure by nursery schools and primary schools during the validity of the Resolution of the Government of the Slovak Republic No. 678 of 22 October 2020 (pilot testing in selected districts), para 10, available in Slovak language at: https://www.minedu.sk/usmernenie-k-postupu-ms-a-zs-27-10-2020-platne-do-1-11-2020/

49 Guidelines for measures resulting from the nation-wide testing „Shared responsibility", para 8(b), available in Slovak language at: https://www.minedu.sk/usmernenie-k-opatreniam-vyplyva-jucim-z-celoplosneho-testovania-spolocna-zodpovednost-1-11-2020/.

50 DRGONEC, J.: *Constituion of the Slovak Republic. Theory and practice) ("Ústava Slovenskej republiky. Teória a prax"*). 2. edition. Bratislava: C. H. Beck, 2019, p. 1025.

51 According to Article 5(3)(g) of the Constitutional act on the security of state, as amended until 28 December 2020, "During a state of emergency, fundamental rights and freedoms may be restricted to the extent necessary and for the time necessary to that extent: restrict fundamental rights and freedoms and impose obligation on the affected or directly endangered territory depending on the seriousness of the threat, to the maximum extent: to restrict freedom of movement and residence by a curfew for a specified period and entry into the affected or directly endangered territory."

ernment of the Slovak Republic.[52] The material conditions are a threat to the life and health of persons, the need to restrict fundamental rights and freedoms in terms of scope and time, and the adequacy of this restriction concerning the seriousness of the threat.

The formal condition for declaring an emergency state was fulfilled by the adoption of the Government Resolution of the Slovak Republic No. 587 of 30 September 2020, published in the Collection of Laws of the Slovak Republic under No. 268/2020 Coll. This resolution, in line with Article 5(1) of the Constitutional Act on security of state, on 1 October 2020, declared an emergency state for 45 days in the affected territory of the Slovak Republic. At the same time, the adoption of the resolution on the declaration of an emergency state meant the fulfilment of the material condition for the restriction of fundamental rights and freedoms, which is a threat to life and health. The declaration of an emergency state by the Resolution of the Government No. 587 was also assessed by the Constitutional Court of the Slovak Republic, which in its finding case no. PL. ÚS 22/2020 of 14 October 2020 expressed its compliance with the relevant provisions of the Constitution of the Slovak Republic and the Constitutional Act on security of state.[53]

Other conditions that must be met in order for a restriction of fundamental rights and freedoms to be considered constitutionally compliant at the time of a declared emergency state are their restriction to the extent and time necessary and adequate to the seriousness of the threat.

The duration of the restriction of freedom of movement and residence by the curfew in connection with the testing of the population of the Slovak Republic was determined by the exact time range, namely from 02 November 2020 to 08 November 20 and from 9 November 2020 to 14 November 2020 from 05.00 a.m. until 01.00 a.m. the following day. From the point of view of the need to achieve a positive effect of the curfew on the development of the epidemic situation in the Slovak Republic, this duration of the curfew can be considered necessary.[54]

Assessing the fulfilment of other conditions, such as the necessity of the scope and adequacy in relation to the seriousness of the threat, re-

52 According to Article 5(1) of Constitutional act on security of state, as amended until 28 December 2020: "The government may declare an emergency state only if there is a threat or an imminent danger to life and health of people, including in a causal nexus with a pandemic, threat to the environment or a considerable threat to property due to a natural disaster, catastrophe, industrial, traffic or other operational accident; a state of emergency may be declared only in the affected or in the endangered territory."

53 Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 22/2020, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DmsSearchView.

54 The Centre assessed the necessity of the duration of the curfew according to the incubation period of the COVID-19 disease, which can be up to 14 days, source https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html, https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19.

quires a more detailed analysis of the exceptions provided for in the general curfew. These exceptions can be divided into those which have been determined on a personal scale - they have identified persons who are not covered by the curfew and the exceptions which have been determined on a substantive scale - have defined the journeys not covered by the curfew. The criterion for determining the material scope of exceptions, i.e. individual journeys was whether these journeys were necessary due to their urgency and the need to ensure basic living needs. Journeys that met these criteria were subsequently modified as exceptions for all individuals without the condition of having a negative test result for COVID-19. The criteria for determining the personal scope of the exemptions were whether a person posed a risk given the possible spread of COVID-19 and whether participation in testing was possible and safe for all persons, or whether some were prevented from participating by an objective barrier.

Exceptions to the curfew, which were set out in substance, were e.g. a trip to buy groceries, drugs, hygiene goods, a trip to a medical facility, a trip to the funeral of a relative, a trip to care for a relative, a trip with a dog, a cat within 100 meters of the place of residence and a trip to care for livestock. [55]

Exceptions, which were set on a personal scale, applied to persons who tested negative for COVID-19 within the set deadline, persons who could not take part in the testing due to health, age or other objective reasons, and persons who have already overcome COVID-19.

The analysis of the determined exceptions from the curfew shows that the Government of the Slovak Republic when deciding on them, took into account the different situations of individual inhabitants of the Slovak Republic. Exceptions were defined so that a certain degree of freedom of movement and residence was maintained for all persons, including those who decided not to participate in testing for COVID-19, in accordance with the risk they posed to the health and life of other inhabitants of the Slovak Republic. The Government of the Slovak Republic also took into account that some persons could not participate in the testing for objective reasons and exempted these persons from the curfew without the condition of having a negative test result for COVID-19. Given these facts and concerning the connection of the curfew to testing of the population of the Slovak Republic, it is possible to consider the related scope of restriction of movement and residence as necessary.

The assessment of necessity is closely linked to the assessment of the adequacy of the restriction. As mentioned above, including exceptions to the curfew took into account the different situations of individual inhabitants of the Slovak Republic and the exceptions were set taking into account the real possibility of participation of individuals in testing and the level of risk they posed to life and

55 The exact wording of the exceptions is regulated in individual resolutions of the Government, which are available at: https://www.slov-lex.sk/domov.

health. The curfew was not limited indefinitely, but exceptions to it also allowed those who did not participate in testing for COVID-19 to secure basic necessities and perform urgent actions. It is the differentiated approach in this case that has contributed to the fact that the curfew imposed in connection with testing of the population for COVID-19 can be considered adequate.

Based on the above-mentioned facts, the Centre states that the restriction of freedom of movement and residence by the curfew adopted in connection with the testing of the population for COVID-19 was in accordance with the Constitutional Act on security of state. Restricting freedom of movement and residence by a curfew was lawful. The formal condition for the declaration of an emergency state by the Government of the Slovak Republic as well as the material conditions consisting in the existence of a threat to human life and health, the necessity of restricting fundamental rights and freedoms in terms of scope and time and adequacy of the restriction in relation to the seriousness of the threat were fulfilled.

Although the restriction of freedom of movement and residence by the curfew was in line with the Constitutional Act on security of state, the Centre considers it necessary to assess the impact of this restriction on the exercise of other fundamental rights and freedoms, in particular the right to education and the right to work. A critical assessment of the interference with these rights is required, in particular, by the fact that, despite the declared voluntary testing for COVID-19, the exceptions to the curfew have been set in such a way that some people were not free to decide whether or not to participate in testing.

In the field of education, the Government of the Slovak Republic, while restricting freedom of movement and residence by a curfew, included among the exceptions the journey of a child to and from a childcare facility up to three years of age and nursery schools and the journey back; the journey of a zero-grade pupil, a first-year to a fourth-year primary school pupil and a pupil from primary school for pupils with special educational needs in all grades to and from primary school, they did not address the way of these children to and from the childcare facility or to and from primary school if their legal representatives do not take part in testing for COVID-19 and will not be covered by any other exemption from the curfew. At the time when the curfew adopted in connection with testing for COVID-19 was effective, primary school and nursery schools were still conducting in-person education. Thus, children did not have the opportunity to attend distance education if they did not attend in-person teaching. The curfew, therefore, had a serious impact on the realization of the right of some children to education. For this reason, the Centre draws attention to this problem and leaves it to the discretion of the competent authorities to include accompanying a child to and from a childcare facility or primary school in the event of a similar restriction on freedom of movement and residence by a curfew. A similar exception was provided by the Government of the Slovak Republic in

the case of accompanying a close person or relative on the way to and from a medical facility. The Centre sees no reason why accompanying a child to and from the above facilities cannot be resolved similarly.

Another significant interference with fundamental human rights and freedoms, which was directly related to the curfew, was the interference with the right to work. The exceptions determined by the material scope did not include the journey to and from work and the journey to conduct a business or other similar activity. If the employee was absent from work for this reason during the curfew, the employer was obliged to provide him with time off work in accordance with the Labour Code,[56] but without wage compensation. This resulted in the loss of regular monthly income for those employees who did not agree with the employer to provide time off from work on other terms.

The right to work is guaranteed by the Constitution of the Slovak Republic in Article 35(3) first sentence. In the second sentence of this article, the Constitution of the Slovak Republic imposes on the state the obligation to guarantee, to an appropriate extent, the material welfare of those who cannot enjoy this right without their fault. To this end, the State should adopt appropriate legal regulations. The legitimate question, therefore, is whether the State should not have compensated for the absence of the regular monthly income for persons who have decided not to take part in the testing for COVID-19. Absence from work due to a curfew was not caused by the employee's fault. Participation in testing for COVID-19 was determined to be voluntary and not mandatory. Thus, by not participating in the testing, the employee could not breach any of his/her obligations. Employees who were absent from work during the curfew, on the other hand, fulfilled their duty. Therefore, the competent authorities should also take this fact into account and adopt such compensation mechanisms that would minimize the economic impact of the obligations imposed in connection with the COVID-19 pandemic on the inhabitants of the Slovak Republic.

56 According to Section 136(1) in conjunction with Section 137(4)(d) of the Labour Code: "An employer shall provide an employee with time off from work for a necessary period of time for performance of public functions, civil duties, and other activities of general interest, if this activity cannot be performed outside working time. An employer shall provide the time-off from work without wage compensation unless this Act, special regulation or the collective agreement stipulates otherwise, or unless the employer and the employee agree otherwise." "*Civil duty is in particular an activity of measures against infectious diseases.*"

Recommendations

The Centre recommends:

1. To regional public health authorities to justify the decrees ordering the quarantine clearly and comprehensibly in Roma settlements.
2. To regional public health authorities to determine the conditions for the duration of quarantine in Roma settlements for the date of its termination to be determined in advance.
3. To the Public Health Authority of the Slovak Republic to proceed solely in accordance with their competencies regulated in the Act on the protection of public health when ordering measures for persons entering the territory of the Slovak Republic.
4. To the Public Health Authority of the Slovak Republic, when ordering measures for persons entering the territory of the Slovak Republic, to consistently distinguish between persons suffering from a communicable disease and persons with a suspected communicable disease and, depending on this fact, to choose such measures that are necessary to protect public health and appropriate in relation to the protection of individual rights and freedoms.
5. To the Government of the Slovak Republic to establish exceptions to the restriction of residence and movement by a curfew so that the protection of other fundamental rights and freedoms is preserved to the highest extent.
6. To the Government of the Slovak Republic to adopt compensatory instruments that minimize the economic impacts of restrictions on fundamental rights and freedoms adopted in connection with the COVID-19 pandemic.

2. Legislative implementation of human rights standards and data protection guarantees during the COVID-19 pandemic

The Centre concludes that the monitored COVID legislation only partially reflects the applicable fundamental human rights standards

The question of an inadequate restriction or violation of the right to the protection of personal data in relation to measures adopted to prevent the spreading of the COVID-19 disease was a much-debated issue throughout the year. In a wider context, the issue can be subsumed under the constitutional protection of personal freedom.[57] The issue is clearly relevant not only in relation to legislative activities but also with regard to topics debated by the wider society and media. Consequently, it is justifiably relevant to assess personal data protection during the COVID-19 pandemic in this report. National legislators of EU Member States adopted numerous laws and regulations delegating particular entities with the right to process personal data to fight the spread of the COVID-19 disease.

Dozens of clients reached the Centre with a request for legal aid, claiming legal opinion concerning the justification of personal data collection. They also sought information on the authorisation of employers to see the result of the COVID-19 tests. The Centre provided the client's legal aid and relevant information; however, it did not find human rights violations in any of the alleged inadequate interferences into the right to the protection of personal data.

Any assessment of justification of interference into the right to the protection of personal data requires deep knowledge of the scope of the constitutional right to every individual to "the protection from unauthorised collection, disclosure or other misuses of his or her personal data".[58] The basic human rights framework for the protection of personal data is further complemented by Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention"). Rules of interpretation of the content of the right to the protection of personal data in its constitutional and human rights context are covered by the jurisprudence of the Constitutional Court and the European Court of Human Rights. In terms of evaluating possible unjustified or inadequate interferences into human rights and fundamental freedoms, special attention should be paid also to personal data protection of individuals under the primary and secondary legislative acts of the European Union and their interpretation in the jurisprudence of the Court of Justice of the European Union (hereinafter referred to as the "Court of Justice"). Article 8 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as the "Fundamental Rights Charter"), Articles 6 and 39 of the Treaty on the European Union (hereinafter

57 DRGONEC, J.: *Constitution of the Slovak Republic. Theory and practice) ("Ústava Slovenskej republiky. Teória a prax").* 2nd edition. Bratislava: C. H. Beck, 2019. p. 509.

58 Article 19 para. 3 of the Act No. 460/1992 Coll. Constitution of the Slovak Republic, available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20210101.html. It is the aim of the authors not to refer to constitutional protection under the Charter of the Fundamental Rights and Freedoms. Article 19 para. 3 of the Constitution is identical with Article 10 para. 3 of the Constitutional Act No. 23/1991 Coll. adopting the Charter of the Fundamental Rights and Freedoms as constitutional act of the Federal Assembly of the Czech and Slovak Federative Republic.

referred to as "TEU") and Article 6 of the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU") are also crucial. Secondary legislation includes mainly the Regulation of the European Parliament and the Council 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter referred to as the "GDPR") and the Regulation of the European Parliament and the Council 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (hereinafter referred to as the "Regulation 2018/1725"). The list of legislation relevant for this chapter further includes the Directive of the European Parliament and the Council 2006/24/EC of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. The international legal framework for personal data protection is completed by the Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (hereinafter referred to as the "Convention 108"), including its Additional Protocol.[59] Legal assessment of the legislation adopted with an aim to prevent further spreading of the COVID-19 disease in terms of compliance with human rights standards requires deep knowledge and great sensitivity when interpreting the limits of acceptability of interferences into enjoyment of human rights and fundamental freedoms. The legislative framework is complemented by provisions of the Act No. 18/2018 Coll. on personal data protection as amended (hereinafter referred to as the "Data Protection Act") and the relevant secondary legislation. This framework is strongly affected by the group of legislation which can be referred to as the "COVID-19 legislation".

Act No. 62/2020 Coll. on certain extraordinary measures in relation to the spreading of the dangerous contagious human disease COVID-19 and justice area, amending and supplementing certain acts (hereinafter referred to as the "Act No. 62/2020 Coll.") is the first example of such legislation. As of 27 Match 2020, provisions of the Act No. 62/2020 Coll. entered into force together with new provisions of the Act No. 351/2011 Coll. on electronic communications (hereinafter referred to as the "Telecommunication Act") as amended by further laws and the Finding of the Constitutional Court of the Slovak Republic No. 139/2015 Coll. As an indirect amendment, this cannot be assessed positively, since it is considered a regulation limiting human rights and freedoms.

The issue of personal data protection was current also in the second half of 2020. As of 2 November 2020, the Public Health Authority

59 Available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/20/20050126.

conditionally prohibited employees the entry at the workplace or other premises of their employer. The conditional prohibition of entry was extended also to artists and performers in relation to the so-called areas of artistic activities. In December, the Public Health Authorities conditioned entry of students and pedagogic employees to premises of primary and secondary schools by a negative result of a COVID-19 test. It authorised employers, providers of public and private buildings or other facilities, theatre, musical, film or other artistic performance premises, legal representatives of schools or other persons entitled by them to see the result of the test. The prohibition of entry was not only conditioned by "showing" a negative result of a COVID-19 test but also by the entitlement of the abovementioned entities to measure the body temperature of individuals and by setting the body temperature height for entry.[60]

Several clients asked the Centre about the interference into their right to the protection of personal data particularly in relation to the entitlement of employers and service providers to see the result of the COVID-19 test. The Centre provided them with legal aid within the scope of its mandate, however, it did not find grounds to conclude that such limitation was unacceptable under the constitutional human rights standards for personal data protection. Despite this, the acceptability of legislative interferences into the right to the protection of personal data represents a legitimate issue that must be monitored and regularly assessed in times of the fight against the spreading of the COVID-19 disease.

60 Decree of the Public Health Authority No. 16 regulating measures in relation to endangerment of public health concerning the regime for entry into facilities and premises of employers, Decree No. 24 and Decree No. 27 of the Public Health Authority regulating measures in relation to endangerment of public health limiting facilities and public events and Decree of the Public Health Authority No. 39 regulating measures in relation to endangerment of public health concerning presenting of a negative result of the COVID-19 test prior entering school premises; available at: https://www.uvzsr.sk/docs/info/ut/ciastka_12_2020.pdf; https://www.uvzsr.sk/docs/info/ut/ciastka_16_2020.pdf; https://www.uvzsr.sk/docs/info/ut/ciastka_17_2020.pdf; https://www.uvzsr.sk/docs/info/ut/ciastka_23_2020.pdf.

2.1 The disposal of personal data in telecommunication by the state

When assessing the principles of legality, legibility, and adequacy of any interference into fundamental human rights, the utmost relevance is in respecting the established legal interpretations supported by reasonable legal argumentation that reflects the established rules of interpretation.

The legality of collection, storage or other use of personal data shall be interpreted in line with the respected legal opinion pursuant to which *"the Constitution does not preclude all collection of personal data... Data legally collected must be stored by the public authority in a manner that protects them from illegitimate access by other public bodies and any other individuals and legal entities."*[61] The Constitutional Court further considers legal data collection that has been approved by an individual or legal entity or prescribed by law.[62] The legal effect of law presumes the legality of personal data collected by public authorities.

The right to privacy of individuals can be limited by law even without the explicit consent of persons concerned. Under Article 8 of the Convention, any such limitation of the right to personal data protection must follow an explicit and legitimate aim. The requirement of a legally stipulated aim for data procession has also been underlined by the Court of Justice of the European Union (hereinafter referred to as the "Court of Justice").[63] Apart from that, each legislative limitation of the right to privacy in terms of personal data protection must consider the principles and guarantees established by the Constitutional Court and the Court of Justice in order to secure due protection of personal data. These principles include the principle of subsidiarity of use of the collected data, independent and qualified supervision over the protection of such data, technical securement of necessary safety level, time-bound deletion of the data processed, and due information provided to the subjects of limitation. The listed principles were considered by the Constitutional Court also when handling the proposal of the group of parliamentarians who contested the compliance of amended provisions of the Telecommunication Act with constitutional human rights standards.[64]

By the amendment of the Telecommunication Act, the National Council of the Slovak Republic obliged operators to process localisation and operating data (hereinafter referred to as the "data") under a particular aim to fight the spreading of the COVID-19 disease. The op-

61 DRGONEC, J.: *Ochrana osobných údajov o osobe.* In: Zo súdnej praxe, 2015, No. 5, p. 196.
62 Finding of the Constitutional Court of the Slovak Republic No. III. ÚS 204/02. Available at: Collection of Findings and Resolutions of the Constitutional Court of 2004 (1. term), p. 133 – 134.
63 Judgement of the Court of Justice (Grand Chamber) of 8 April 2014 in joined cases C-293/12 Digital Rights Ireland Ltd. V. Seitlinger and others; and C-594/12 Digital Rights Ireland Ltd. v. Minister for Communications, Marine and Natural Resources and others and Kärntner Landesregierung and others; available at: http://curia.europa.eu/juris/liste.jsf?num=C-293/12&language=SK.
64 Resolution of the Constitutional Court of the Slovak Republic PL. ÚS 13/2020-103, available at: https://www.ustavnysud.sk/documents/10182/1270838/PL_+US+13_2020+-+Rozhodnutie+-+Uznesenie+z+predbezneho+prerokovania.pdf/464a47b6-66b4-4545-9a9f-eb0f10b4bd80

erators should provide these data upon request to the Public Health Authority of the Slovak Republic. The legislator did not condition the provision of these data by the approval of individuals concerned. In respect to individuals, the data included name, surname, title, residence, and phone number. Data concerning legal entities included the name or legal name and seat and in the case of entrepreneurs their business address. Localisation data of end-user covered information on the geographic locality of a device and the time when the localisation data was recorded.

Personal data processing by public authorities without the approval of persons concerned undoubtedly constitutes an interference into the right to privacy. Such interference can either be justified or not as the right to the protection of personal data is a relative right. Any interference therein, however, shall respect basic principles and human rights guarantees. In assessing their observance in the COVID-19 legislation, the Centre will consider the reasoning of the Resolution of the Constitutional Court of the Slovak Republic[65], which decided on the issue upon a proposal of a group of parliamentarians.

The Centre sides with the Constitutional Court´s criticism about the lack of sufficiently clear legal definition of the aim of the legislation in question. Despite the lack of mandate to do so, the Centre also criticises the Constitutional Court for clear inaccuracies of certain parts of the resolution´s reasoning. To a great extent, the Constitutional Court refers to the Court of Justice interpretation in its Judgement in joined cases C-293/12 and C-594/12 (hereinafter referred to as the "judgement"). Within interpretation of the principle of a sufficiently explicit definition of the purpose of legal norms, it refers for example to paragraph 61. of the judgement. The listed paragraph, however, does not refer to such a principle. It primarily elaborates on the issue of diverse purposes of processing personal data by the state. Nevertheless, the Centre fully agrees with the legal opinion of the Constitutional Court. The purpose of the legal norm as set by the legislator must be incorporated in the legal norm itself when it concerns personal data processing under law. The requirement of an explicit legislative definition of the aim of interference into the right to the protection of personal data is also stated in Convention 108. The Constitutional Court correctly reflected the scope of Article 23 para. 2 of GDPR, which requires that every legislative act also included the purpose or categories of personal data processing. The principle of an explicit definition of the purpose of personal data processing is at the national level reconfirmed in Section 7 of the Data Protection Act. In this context, the Centre draws attention also to the Joint statement on the right to data protection in the context of the COVID-19 pandemic by the Chair of the Committee of Convention 108 and Data Protection Commissioner of the Council of Europe of 30 March 2020.[66]

65 Ibid, p. 33 and following.

66 Statement available at: https://www.coe.int/en/web/data-protection/statement-by-alessandra-pierucci-and-jean-philippe-walter

In general, the purpose of telecommunication data processing is the prevention from spreading the COVID-19 diseases. The legitimate aim is the protection of public health. This purpose is legitimate also according to articles 6 and 9 of GDPR. Processing of personal data shall be lawful if it is necessary in order to protect the vital interests of the data subject or another natural person.[67] Article 6 relates to recital no. 46. of GDPR. Processing of personal data of individuals shall be considered lawful if it is necessary to protect an interest that is essential for the life of the data subject or that of another natural person. The Centre identifies the purpose of the law with the legitimate aim to protect vital interests, however, it sides with the Constitutional Court in that the legislator has been considerably uncertain particularly in reference to Section 63 subsection 18, para. c) of the Telecommunication Act. In the case of Section 63 subsection 18 par. b) of the Telecommunication Act, the legislator observed the principle better. The purpose was set as the protection of life and health and the law aims to inform persons concerned with adopted measures through their end telecommunication devices. The law concerned thus have two different areas of personal data processing. At one level, it concerns data processing and disposal of personal data by public authorities or public bodies in order to inform the public about the measures adopted and at another level, it concerns controlling whether the measures adopted are being observed by using operational and localisation data. The legislator did not sufficiently define the purpose of personal data processing in any of the listed areas.

One of the conditions for state interference into the right to the protection of personal data to be lawful is the requirement of a state to secure independent supervision over the data processing. In this context, the Constitutional Court refers to its established interpretation and decision-making practice.[68] Independent supervision is institutionalised through court or the National Council of the Slovak Republic.[69] Independent supervision over processing personal data and strict control of the purpose of their disposal is crucial to fulfilling the principle of transparency of interference into the right to the protection of personal data. The key role of implementation of this principle in protecting personal data was underlined on 21 April 2020 also by the European Data Protec-

67 Compare wording of Article 6 para. 1, subpar. d) of the Regulation of the European Parliament and the Council (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) available at: https://eur-lex.europa.eu/legal-content/SK/TXT/?uri=CELEX:32016R0679

68 Finding of the Constitutional Court of the Slovak Republic Pl. ÚS 10/2014, available at: https://www.ustavnysud.sk/docDownload/6c439346-cdfa-442d-86e7-5f616e2cf9f4/%C4%8D.%201%20-%20PL.%20%C3%9AS%2010_2014.pdf

69 See also Judgement of the European Court for Human Rights in Case *Iordachi and others versus Moldova,* application no. 25188/02, available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-91245%22]}

tion Board (hereinafter referred to as the "Data Protection Board"). The Data Protection Board highlighted the importance of respecting the very nature of fundamental principles of processing personal data, which is based on emerging jurisprudence of the European Court of Justice interpreting the relevant provision of the Charter of Fundamental Rights.[70] The Centre believes that the National Council of the Slovak Republic failed to secure independent supervision over the processing of the personal data gathered, hence, the basic human rights guarantees and justifications of the related interferences into privacy have not been observed.

The requirement of providing appropriate safeguards for the protection of data gathered is particularly important in cases when data processing is done without the approval of the persons concerned. Its assessment is rather a technical or technological problem than a legal issue. Despite that, the general rule applies that the more sensitive are the data collected, the stronger emphasis shall be on the level of security of their protection.[71] The Centre, however, draws attention to an "incorrect" language used by the legislator that refers to the necessary level of security of data processed equally with the term appropriateness.[72] This affects the legislative definition of the provision of an appropriate or extraordinary level of security of data processed by the public bodies. The reason can be found in the official translation of national legislation that is inaccurate. GDPR refers to the term *"appropriate safeguards"* in several provisions that cannot be interpreted in isolation and only by the use of linguistic rules. By analysing the relevant provisions of the Telecommunication Act and Explanatory note to Act No. 62, the Centre cannot conclude that suitable (not appropriate) safeguards would be secured. Their relevance is underlined by interpretation of the Constitutional Court according to which safeguards against misuses of rights do not serve to diminish the interferences into rights but as a requirement for them to be constitutionally accepted.[73]

The requirement of appropriate safeguards is further supplemented by the requirement of time-bound limits for data storing and processing, which is directly linked to achieving the purpose of data processing. This principle has an accessory nature. Considering the unpredictability of the duration of the COVID-19 pandemic, the legis-

70 Guidelines for processing data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak, available at: https://edpb.europa.eu/our-work-tools/our-documents/ohjeet/guidelines-032020-processing-data-concerning-health-purpose_en

71 Resolution of the Constitutional Court of the Slovak Republic PL. ÚS 13/2020-103, available at: https://www.ustavnysud.sk/documents/10182/1270838/PL_+US+13_2020+-+Rozhodnutie+-+Uznesenie+z+predbezneho+prerokovania.pdf/464a47b6-66b4-4545-9a9f-eb0f10b4bd80

72 Section 11 of the Data Protection Act, available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/18/20190901.html

73 Resolution of the Constitutional Court of the Slovak Republic PL. ÚS 13/2020-103, available at: https://www.ustavnysud.sk/documents/10182/1270838/PL_+US+13_2020+-+Rozhodnutie+-+Uznesenie+z+predbezneho+prerokovania.pdf/464a47b6-66b4-4545-9a9f-eb0f10b4bd80; p. 38.

lator faces a difficult legislative task as the period for processing personal data can only be determined in general and hypothetic terms. The need for legislative determination of limiting the period for data procession is accented also in the Joint Statement of the Chair of the Committee of Convention 108 and Data Protection Commissioner of the Council of Europe.[74] The national legislator failed to implement this principle in the amendment of the Telecommunication Act. The Centre hereby sides with the Constitutional Court that found this to constitute an important legislative deficiency that undoubtedly affects the assessment of the lawfulness of processing the so-called telecommunication data.

The requirement to inform the persons concerned about the scale of legislative interference into free enjoyment of the right to the protection of personal data and the means of disposal with the data gathered is another important indicator of the lawfulness of the legislative measure. Despite the fact that the interference into the human right in question is done pursuant to a legislative act, one shall bear in mind the barriers faced by individuals subjects to it caused by the complexity of legislative norms. The implementation of the principle of awareness about the content of the interference into the right to the protection of personal data is even more relevant in the case of the amendment of the Telecommunication Act as it concerns personal data processing without the prior consent of individuals who are subjected to the relevant legal norms. The Centre hereby assesses only the legislation in question and not political presentation and interpretation of the alleged norms.

The lack of legal mechanisms and mechanisms of legal defence for the individuals concerned, i.e., the absence of effective remedies in case of unlawful interference into the right to the protection of personal data, is a critical problem with regards to fundamental principles and international human rights standards in the area of personal data protection.

The Centre does not object to the Constitutional Court´s decision to suspend the effectivity of the Section 63 subsection 18 paras. b) and c), as well as the Section 63 subsections 19 and 20 to the extent that they apply to the Section 63 subsection 18 paras. b) and c) of the Telecommunication Act due to significant legislative and material defects of norms concerning the processing of telecommunication personal data under the purpose to prevent spreading of the COVID-19 disease. The undesirable inappropriate interference into the right of the protection of personal data would remain if the legal effectiveness of the alleged provisions was not suspended.

74 Statement is available at: https://www.coe.int/en/web/data-protection/statement-by-alessandra-pierucci-and-jean-philippe-walter.

2.2 Protection of personal data processed by mobile applications in relation to the supervision of the observance of the measures adopted

The amendment to the Public Health Protection Act by the Act No. 119/2020 Coll., which amended and supplemented the Act No. 355/2007 Coll. on Protection, Support and Development of Public Health and amending and supplementing certain acts as well as the Telecommunication Act (hereinafter referred to as the "Act No. 119/2020 Coll."), is also subject to compliance assessment in terms of legal safeguards for personal data protection.

The new provisions of Sections 60a to 60e of the Public Health Protection Act entered into force as of 18 May 2020, headlined as *"Mobile application for monitoring of the ordered isolation and mobile application to monitor contacts with other devices"*.[75] Human rights standards for personal data processing by public bodies have been better observed in this legislation and the legislator also reflected the objections of the Constitutional Court to the previous amendment of the Telecommunication Act. Such provisional finding can already be based on the heading of Section 60d – *"Safeguards of the rights and freedoms of individuals"*.

The legislator set the purpose of data processing sufficiently clear. Section 60a subsection 1 set the Public Health Authority as a provider of the mobile application in question and entitled it to secure personal data processing *"for the purpose of protection of life and health with respect to spreading of the COVID-19 disease"*. Explicit determination of the purpose of the legal norm is a crucial indicator for assessing the lawfulness of personal data collection. Contrary to the assessed provision of the Telecommunication Act amendment, the amendment of the Public Health Protection Act requires prior approval of individuals concerned with the processing of their personal data. The legislator hence properly reflected the guidance of the Data Protection Board, which underlines the necessity to precondition personal data processing by prior approval of individuals concerning the seriousness of the related interference into the privacy.[76]

The legal safeguard of independent supervision over personal data processing in line with its purpose and aim is provided by Section 60d subsection 9 of the Public Health Protection Act. This task has been given to the Office for Personal Data Protection of the Slovak Republic (hereinafter referred to as the "Office for Personal Data Protection").

The requirement of time limits for the processing of relevant data is due to its accessory nature unpredictable by legislation and is closely linked to the fulfilment of the purpose of legal regulation. Consequently, the legal safeguard of a minimum of one control of the

75 Act No. 119/2020 Coll. on Protection, Support and Development of Public Health and amending and supplementing certain acts as amended and amending and supplementing the Act No. 351/2011 Coll. on Electronic Communications as amended, available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/119/20200518.html.

76 Current documentation concerning projects of applications to tackle the COVID-19 disease, available at: https://dataprotection.gov.sk/uoou/sk/content/aktualne-dokumenty-k-projektom-aplikacii-na-boj-s-ochorenim-covid-19

observance of the requirement for data processing seems insufficient. Supervision by an independent supervisor must be regular and preliminary. Despite this objection, in comparison to the amendment of the Telecommunication Act, the legislation in question is far ahead in terms of observance of fundamental principles and human rights standards for the lawfulness of interferences into the right to the protection of personal data. The Centre draws attention due to the implementation of Article 5 para. 1. subpar. e) of GDPR pursuant to which the European Union Member States are obliged to keep the personal data gathered for no longer than is necessary for the purposes for which the personal data are processed while respecting legal exceptions such as archiving, public interest, research, or statistical purposes. This represents independent supervision of the requirement for personal data to be stored for a limited period only.[77] The national legislator regulated this requirement also in Section 10 of the Data Protection Act; however, it fails to sufficiently observe it in its legislative activities.[78]

Legal safeguards to provide appropriate security to personal data gathered by a mobile application refer to the level of appropriateness and information and technological standards applied in public administration under Articles 32 to 36 of GDPR. In comparison to the legislation concerning the security of the processing of localisation and operating data, the Centre positively assesses the legislation concerned when it comes to state safeguards. It welcomes mainly the wording of Section 60d subsection 5 of the Public Health Protection Act. The legislator provides the natural persons with a safeguard of storing the selected information only in their mobile device, without being accessible to a third party, thereby implementing the European Commission Recommendation on decentralised storage of the selected sensitive data.[79] In particular, it includes data concerning *"face images of the user of the mobile application" and "information on the exact location of the mobile device"*[80].

A sufficient level of reflection can be seen also in terms of implementation of the principle of minimising the period for processing personal data. Section 60d subsection 3 of the Public Health Protection Act provides a legal framework for the operation of mobile application and a safeguard of immediate deletion of all personal data recorded upon discovering of another mean

77 Article 5 (1), subpar. e) GDPR and Article 89 (1) GDPR, available at: https://eur-lex.europa.eu/legal-content/sk/ALL/?uri=CELEX:32016R0679.

78 Compare provision of Section 10 of the Data Protection Act, available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/18/20190901.html

79 Commission Recommendation (EU) 2020/518 of 8 April 2020 on a common Union toolbox for the use of technology and data to combat and exit from the COVID-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data, available at: https://eur-lex.europa.eu/legal-content/SK/TXT/HTML/?uri=CELEX:32020H0518&from=EN

80 Section 60d subsection 5 of the Telecommunication Act, available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2007/355/

to achieve the purpose of the legislative regulation in question. It refers to such a mean that is comparably feasible and constitutes a less restrictive limitation to the right to the protection of personal data. Despite the general nature of the requirement concerned, the Centre finds the defined limitation sufficient as it is actually uncertain when the purpose can be achieved. Concerning that the data concerned are highly sensitive, the Centre welcomes the legal requirement to automatically delate particular categories of personal data within 30 days from their collection. It includes personal data concerning isolation functionality and monitoring of the contact as well as visualisation of persons concerned.

As was the case with the amendment of the Telecommunication Act, in order to inform the persons concerned the legislator published the new provisions of the Public Health Protection Act in the Collection of Laws of the Slovak Republic. In comparison to the amendment of the Telecommunication Act, the legislator was clearer and more specific in listing particular rights and obligations, safeguards for safety and protection of personal data, the scale of gathered data, means of their processing, the extent of collecting of personal data and the purpose and legitimate aim of their processing. Sections 60a to 60e show a high level of eurocomform interpretation and it is obvious that the legislator was more ready to amend the Public Health Protection Act in observance with human rights standards for the protection of personal data. The level of transparency is increased by the requirement of prior consent of persons concerned with data processing. The Centre welcomes the positive approach of the National Council of the Slovak Republic to the Recommendation of the Data Protection Board which highlights the need for clear, precise, and publicly accessible rules of personal data processing by referring to the case-law of the Court of Justice and provisions of the Charter of Fundamental Rights.[81]

81 European Data Protection Board, Recommendations 02/2020 on the European Essential Guarantees for surveillance measures of 10 November 2020, available at: https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_recommendations_202002_europeanessentialguaranteessurveillance_en.pdf

2.3 Lawfulness of processing documents on undertaking the COVID-19 test

Contrary to the previous parts of this chapter, in this subchapter, the Centre does not primarily assess the appropriateness of interference to the right to protection of personal data in relation to their collection and processing. The Centre hereby assesses entitlements to see personal documents of natural persons and the related requirements to present such documents including personal data. While the previous parts elaborated on generally binding legislative acts, this chapter concerns actions of the Public Health Authority that "regulated" certain rights and duties of natural persons by secondary legal acts - resolutions[82], particularly in relation to access to the workplace or other facilities concerned, based on resolutions of the Slovak Government and the Public Health Protection Act. The Centre underlines that it is not assessing the legislative process nor the implementation of Article 13 para. 2 of the Constitution.

The Office for Protection of Personal Data issued a provisional statement concerning the issue of presenting a negative result of the COVID-19 test or a certificate from flat testing of the population. Therein, it pointed at the specificity of personal data concerning a negative test result and a need for a relevant legal base necessary in order for their processing to be lawful. When the provisional statement was issued, legislative acts referring to Resolutions of the Government of the Slovak Republic No. 678[83] and 693[84] had yet not entered into force. The Office for Protection of Personal Data addressed specific and necessary recommendations to the Public Health Authority, which were considered crucial to secure the fundamental framework for lawful processing of personal data. It required a sufficiently specific enumeration of persons entitled and duty bearers, respect for the principle of minimisation of a period for data processing and explicit purpose of the data processing itself.[85] The Data Protection Board also accepted the need to observe the basic principles of appropriateness and minimisation of the scale of personal data collected in national legislation.

The Centre finds the issue of personal data processing in this context contradictory, in relation to the content of this term. In terms of presenting a result from the COVID-19 test (hereinafter referred to as the "test"), it is not possible to refer to the collection, processing, or unlawful use of personal data, notwithstanding the explicit legal entitlements of the subjects entitled. The meaning of "processing" of personal data is determined in Article 4 para. 2 of GDPR, which defines it as *"any operation or set of operations which is performed on*

82 Links to the relevant resolutions are listed in the introduction to this chapter.

83 Resolution of the Government of the Slovak Republic No. 678 of 22 October 2020, available at: https://korona.gov.sk/wp-content/uploads/2020/10/zakaz-vychadzania-678_2020.pdf.

84 Resolution of the Government of the Slovak Republic No. 693 of 28 October 2020, available at: https://korona.gov.sk/wp-content/uploads/2020/10/zaka-vychadzania-2.11.-693_2020.pdf

85 Preliminary statement of the authority concerning presenting negative test result/certificate from flat testing, available at: https://dataprotection.gov.sk/uoou/sk/content/predbezne-stanovisko-uradu-k-preukazovaniu-sa-negativnym-vysledkom-testu-certifikatom-z

personal data or sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction."[86] The lawfulness of viewing the document on the test result, i.e. acknowledging oneself with a health state information of an obliged person, shall be assessed in relation to the content of the provision concerned. The mechanisms regulated in the alleged resolutions cannot be subsumed under the enumerated form of operations with personal data, irrespective of the publicly presented legal opinion presented.[87]

The legal justification of „processing" documents on the negative test result and the obligation to present such document shall be interpreted through relevant provisions of the Public Health Protection Act and in relation to workplace or premises of employers also pursuant to the Act No. 124/2006 Coll. on Safety and Health Protection at Work and amending and supplementing certain acts. According to Section 48 subsection 4 paras. x) of the Public Health Protection Act, the Public Health Authority or its regional offices can order employers the so-called hygienic measures applicable at the workplace or other premises of the employer that is subjected to conditional access for employees and other persons.

Pursuant to Section 48 subsection 4 paras. e) of the Public Health Protection Act, the Public Health Authority or regional public health authorities is entitled to prohibit or limit the operation of such facilities where people gather. Respectively, under para. s) of the alleged provision, it can condition the entry into service facilities and facilities of employers by registration of personal data of entering persons for the purposes of epidemiologic tracking, in particular name and surname, date of birth, permanent residence, phone number or email address. Under this purpose, the service providers and employers process and store the personal data and upon written request, they are obliged to provide them to the Public Health Authority and regional public health offices.[88]

The resolutions of the Public Health Authority regulate specificities of entitlements to view documents on the negative test results and the related duty to present such documents by persons obliged in respect to personal data processing when entering the workplace or other premises of employers or when accessing other service facilities. It is clear, that basic principles of personal data protection

86 Article 4 para. 2 GDPR, available at: https://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex%3A32016R0679

87 See e.g.: "Showing negative COVID-19 test when entering facilities of a provider in terms of GDPR", article available at: https://www.legalfirm.sk/en/stranky/clanok/preukazovanie-sa-negativnym-testom-covid-z-pohladu-gdpr

88 Section 48 subsection 4 para. e) of the Public Health Protection Act, available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2007/355/20201114.html

have been observed in terms of the scope of the data collected. The Centre finds the extent of the data processed to be sufficiently appropriate considering the purpose of processing. The purpose is defined as prevention from spreading of the COVID-19 disease, which follows a legitimate aim – the protection of public health. The Centre, on the other hand, criticises the abstention of legislative safeguards for due security of the data processed and their protection from misuse by either entitled subject or the third parties. Observance of the principle of a limited time period for processing a specific category of personal data is also questionable. The abovementioned objections, however, do not prevent the conclusion that the personal data in question are being processed lawfully.

2.4 Lawfulness of processing data concerning body temperature of individuals

Measuring the body temperature of employees and other persons accessing the workplace and recording the information can be subsumed under personal data processing pursuant to Article 4 para. 2 of GDPR. In this respect, the Office for Protection of Personal Data draws attention to Articles 6 and 9 of GDPR. The Centre finds the wording of the alleged provisions key to assess the principles of legality and lawfulness of processing of the personal data in question. It further refers to the Joint Statement of the Chair of the Committee of Convention 108 and Data Protection Commissioner of the Council of Europe concerning personal data processing in relation to the COVID-19 pandemic. In line with this statement, the respect for the principles of necessity, proportionality, liability and minimising risks in relation to the enjoyment of rights by employees and respecting their right to protection of personal data to an acceptable extent is crucial.[89] In September 2020, the European Data Protection Supervisor (hereinafter referred to as the "European Supervisor") issued a statement concerning issues related to the protection of measured body temperature data of the persons concerned, which is highly relevant for proper assessment of the lawfulness of processing body temperature data. The mandate of the European Supervisor is limited by the institutional framework under Regulation 2018. The relation of this regulation to GDPR in terms of personal data processing is determined by Article 5 which refers to the jurisprudence of the Court of Justice according to which the interpretation of principles defined in both legislative acts shall be unified.[90]

Increased body temperature is common and one of the most frequent symptoms of the COVID-19 disease.[91] Due to the insufficient efficiency of the COVID-19 tests, measuring the body temperature of persons in relation to the performance of their work or job represents another effective tool to prevent the spreading of the disease. According to the Centre as well as the relevant authorities, measuring and recording body temperature for preventive purposes does not itself constitute an unlawful interference into the right to protection of personal data. Fundamental principles of personal data protection as established in the EU legislation and the relevant jurisprudence of the Court of Justice must be duly observed.

The Centre finds that the European Supervisor correctly refers to the necessary scope of processing data on body temperature. Particular operations cannot be subjected to special registration, documentation or other processing of the

89 Statement available at: https://www.coe.int/en/web/data-protection/statement-by-alessandra-pierucci-and-jean-philippe-walter

90 Orientations from the European Data Protection Supervisor: Body temperature checks by EU institutions in the context of the COVID-19 crisis, available at: https://edps.europa.eu/sites/edp/files/publication/01-09-20_edps_orientations_on_body_temperature_checks_in_the_context_of_euis_en.pdf

91 Symptoms of the COVID-19 disease according to the World Health Organisation; available at: https://www.who.int/health-topics/coronavirus#tab=tab_3

health data collected. In case they would be processed by automated means, they should be recorded by a special information system provided by an entitled entity. The principle of informing the public about the measure presumes that information on measuring the body temperature is provided already before entering the facility. Provisional assessment of the necessity of measuring body temperature and its appropriateness must be secured by independent supervision. In this context, the Centre detects Certain legislative defects, as the relevant provisions do not duly reflect the requirement to implement the relevant standards for the lawfulness of processing specific categories of personal data. The issue of the lawfulness of processing data on body temperature depends not only on the legislative wording but also on the implementation of the legislation in question in practice. Each provision regulating the processing of specific categories of personal data concerning the health state of individuals, including measuring, and recording body temperature shall hence be interpreted through eurocomform and national human rights principles for personal data protection.

2.5 Determinant of the lawfulness of personal data protection - implementation of fundamental principles and legal safeguards

The Centre concludes that the monitored COVID legislation only partially reflects the applicable fundamental human rights standards. Assessment of the issue of the appropriateness of the provisions in question depends mainly on their implementation in practice. It is now too early to answer the crucial question of proportionality of the measures adopted. The utmost problem can be seen in the unpreparedness of the legislator when adopting the indirect amendment of the Telecommunication Act. On the other hand, the Centre welcomes the ability of self-reflection in response to the Resolution of the Constitutional Court which suspended applicability of the contested provisions. This key ruling was mirrored in the amendment of the Public Health Protection Act. The National Council of the Slovak Republic adopted a sufficient legal framework for the provision of mobile applications that will serve a sufficiently defined purpose following the legitimate aim of public health protection. It is generally known that the right to the protection of personal data is not of an absolute nature. The lawfulness of an interference therein is regulated by basic principles and safeguards for personal data protection, determined by vast supranational legislation and further defined by interpretation of supranational judicial authorities. The lawfulness of personal data protection and observance of relevant human rights standards can only be achieved when respecting and implementing these principles and safeguards when executing legislative powers at the national level.

Recommendations

The Centre recommends:

1. To the National Council of the Slovak Republic to duly implement all fundamental principles and guarantees of personal data protection when responding to the COVID-19 pandemic.
2. To the Constitutional Court of the Slovak Republic to refer to relevant parts of selected case-law when reasoning its decisions by interpreting the Court of Justice of the European Union or the European Court of Human Rights.

3. Exercise of the right to education in the context of measures adopted to prevent the spread of COVID-19

The COVID-19 pandemic has brought new challenges not only in terms of access to education but has greatly exacerbated existing inequalities, especially for pupils from vulnerable populations.

The first case of COVID-19 in Slovakia resulted in the closure of primary and secondary schools. Based on the decision of the Crisis Staff of the City of Malacky, the nursery schools, primary schools and school facilities in the founding competence of the City of Malacky were closed first.[92] The Bratislava self-governing region reacted just as quickly to the presence and spread of COVID-19 in the Slovak Republic, deciding to tighten preventive measures to prevent the spread of COVID-19 and from 8 March 2020, it suspended education at all secondary schools in its founding competence.[93] The closure of primary and secondary schools has been seen from the outset as an effective preventive measure that reduces the mobility of the population and thus prevents the community-based spread of COVID-19.

On 11 March 2020, the Government of the Slovak Republic declared an extraordinary situation effective for the entire territory of the Slovak Republic in relation to the risk of spreading COVID-19, and ordered members of the Government of the Slovak Republic *"to take measures for the civil protection of the population and to implement such measures for resolving a crisis situation within its competence aimed at preventing a threat to life, health, property, mitigating the consequences of an extraordinary situation."*[94] In accordance with the conclusions of the Central Crisis Staff of the Slovak Republic,[95] the Minister of Education, Science, Research and Sport of the Slovak Republic issued guidelines suspending education at schools and school facilities in the period from 16 March 2020 to 29 March 2020."[96] Even before the expiry of the effectiveness of the guideline of 12 March 2020, the new Minister of Education, Science, Research and Sport of the Slovak Republic (hereinafter referred to as the "Minister of Education")[97] decided on 24 March 2020 that primary and secondary schools will remain closed

92 The city of Malacky, "Malacky responds preventively: closed schools, ban on mass events" (*„Malacky preventívne reagujú: zatvorené školy, zákaz hromadných podujatí"*) (07 March 2020), available in Slovak language at: https://bit.ly/3cE1oVv.

93 Bratislava Self-governing region, "Bratislava County suspends education at secondary schools due to coronavirus" ("*Bratislavská župa kvôli koronavírusu prerušuje vyučovanie na stredných školách*") (08 March 2020), available in Slovak language at: https://bit.ly/3fvm7Ni.

94 Government of the Slovak Republic, Resolution of the Government of the Slovak Republic No. 111 of 11 March 2020.

95 Public Health Office of the Slovak Republic, "COVID-19: The Central Crisis Staff introduces further measures, schools and airports are closed, quarantine applies to all those returning from abroad" (*„COVID-19: Ústredný krízový štáb zavádza ďalšie opatrenia, zatvoria sa školy i letiská, karanténa platí pre všetkých, ktorí sa vrátia zo zahraničia"*) (12 March 2020), available in Slovak language at: https://bit.ly/3dkYJze.

96 Ministry of Education, Science, Research and Sport of the Slovak Republic, Guideline of the Minister of Education, Science, Research and Sport of the Slovak Republic on the suspension of education in schools and school facilities of 12 March 2020, available in Slovak language at: https://bit.ly/3rBVXur.

97 Branislav Gröhling was appointed as Minister of Education, Science, Research and Sport of the Slovak Republic on 21 March 2020.

throughout the Slovak Republic until further notice.[98] Primary and secondary schools, as well as other school facilities, remained closed and education at primary and secondary schools took place remotely, despite the favourable epidemic situation in the period from 16 March 2020 to 15 June 2020 (hereinafter referred to as the "first wave of the pandemic").

The introduction of distance education was problematic for many pupils. More than 53% of parents had to buy household appliances in order for their children could be educated remotely. 40% of pupils used shared devices to connect to online lessons. As many as 24% of pupils joined online education by telephone.[99] Pupils from socially disadvantaged backgrounds had significantly limited access to learning. Some large families had a problem providing each child with access to appropriate technical equipment at the time of learning, or throughout its duration.[100]

According to a survey issued by the Educational Policy Institute, *"52,000 primary and secondary school pupils were not involved in distance education, as calculated by principals and teachers' estimates."* More than 18% of the pupil's population was not educated via the Internet, which may be due to the fact that another form of distance education was chosen during the instruction (e.g., through worksheets), or they did not participate in the educational process at all (e.g., they did not join the teaching and/or did not respond to the assigned tasks). 32,000 primary school students did not have access to the Internet. *"The situation was critical especially in schools with a high representation of pupils from socially disadvantaged backgrounds and in special primary schools. The proportion of uninvolved and non-online children in these schools was several times higher than the average for other schools."*[101] 44% of pupils from socially disadvantaged backgrounds aged 6 to 11 live in overcrowded households with limited learning opportunities and more than 110,000 pupils are addicted to public school meals. Compared to ordinary households, pupils from the poor majority and Roma households have not only significantly worse access to appropriate technology but also worse digital skills.[102]

98 Ministry of Education, Science, Research and Sport of the Slovak Republic, Order of the Minister of Education, Youth and Sports of 24 March 2020, available in Slovak language at: https://www.minedu.sk/opatrenia-msvvas-sr-z-24-marca-2020/.

99 Poll of Focus Agency for Political Party SPOLU - The impacts of distance learning on families, 30 November 2020, available in Slovak language at: https://bit.ly/2QUUenz.

100 SME.sk: "Distance learning: Not all students have access to a computer" (*„Dištančné vzdelávanie: Nie všetci žiaci majú prístup k počítaču*"), 05 November 2020, available in Slovak language at: https://bit.ly/2PgMcoG

101 Educational Policy Institute: Main Findings from the Questionnaire Survey at Primary and Secondary Schools on the Course of Distance Education in the School Year 2019/2020 (2/2020) available in Slovak language at: https://bit.ly/3fpQC7g.

102 DEBNÁRIK, J., ČOKYNA, J., OSTERTÁGOVÁ, A. a REHÚŠ, M.: "How to ensure access to education for all children in times of crisis" (*"Ako v čase krízy zabezpečiť prístup k vzdelávaniu pre všetky deti*") (Educational Policy Institute, 2020) available in Slovak language at: https://bit.ly/3uazYN8.

According to the civic association eduRoma, the most common barrier for students from marginalized Roma communities in access to distance education is the low level of education of parents, which is subsequently reflected in the distance education of their children, as well as lack of social contacts, interactions and role models, or increased demands on the organization of teaching, special education and training needs, or language barriers.[103]

The COVID-19 pandemic has brought new challenges not only in terms of access to education but has greatly exacerbated existing inequalities, especially for pupils from vulnerable populations. The closure of all primary and secondary schools and the transition to distance education in times of a relatively favourable epidemic situation, considering the lack of technical equipment on the part of schools and pupils and their digital skills,[104] has resulted in deteriorating access to education in the context of the principle of equal treatment. When changing the in-person teaching to distance education, strict measures, and the lack of support (e.g., in the form of providing appropriate information and communication technology, professional assistance, material provision of other special educational aids) represented new obstacles in the area of access to education. At the same time, they also pointed to long-overlooked problems. Restricting access to quality and inclusive education has been marked by further negative effects on pupils and their parents. These include in particular those related to isolation in the home environment, such as deterioration of pupils' mental health,[105] possible sexual abuse on the Internet (e.g., in the form of grooming and sexting)[106] or domestic violence. For this reason, the Centre decided to monitor access to education in primary and secondary schools in the context of measures taken to prevent the spread of COVID-19.

The Centre pays due attention to the long-term monitoring of access

103 KREJČÍKOVÁ, K. a RAFAEL, V.: „How to stay close during the distance" (*"Ako zostať blízko na diaľku")* (eduRoma, 2020), available in Slovak language at: https://bit.ly/3cE91vj.

104 Results from the 2018 Teaching and Learning International Survey (TALIS) before the pandemic show that In the Slovak Republic, 47% of lower-secondary school teachers reported letting students use information and communication technologies "frequently" or "always" often or always, which is lower than the average of OECD countries participating in TALIS. At the same time, according to an international survey, only about 45% of teachers reported to feel very well or well prepared to use information and communication technology skills in their teaching. However, as many as a quarter of principals also said that the lack of information and communication technologies limits their school and school facilities in providing quality education. (Organization Economic Cooperation and Development, School education during Covid-19 – were teachers and students ready? Country note: Slovak Republic, available at: https://bit.ly/3wgdAne.

105 From information found by a survey conducted by the Slovak National Centre for Human Rights on a sample of 1363 pupils aged 15 to 17 in September 2020.

106 Teraz.sk "Prosecutor General's Office registered 145% increase in violence," (*"Generálna prokuratúra zaregistrovala 145 percentný nárast násilia"*) 29 June 2020, available in Slovak language at: https://www.teraz.sk/slovensko/gp-sr-sexualne-nasilie-na-detoch-po/477124-clanok.html.

to education, especially for pupils from vulnerable groups of the population (e.g., pupils from marginalized Roma communities or pupils with disabilities). Since the declaration of the state of emergency, it has monitored the impacts of government measures, measures taken by the Ministry of Education, Science, Research and Sport of the Slovak Republic, the Chief Public Health Officer of the Slovak Republic, or the Public Health Authority on access to education. The Centre focused specifically on access to education within the marginalized Roma communities.[107] It contacted the "affected" schools[108] and asked them about how they provide education. It found that distance learning affected maintaining the required quality and quantity of the curriculum. The thematic selection was limited.[109] Lack of social contact between pupils reduced motivation to learn.[110] Some pupils did not attend classes; others have rather paid attention to family matters during the class or had an inadequate internet connection. The result was a loss of learning habits.[111] This situation was followed by the requirement of schools to educate parents about the importance of education and teaching methods in the home environment.[112] Schools could not include the teaching of some thematic units in distance learning, so they postponed their teaching to later years. As a result, there is a situation where some pupils did not even get the chance to learn selected topics.[113] Many children from socially disadvantaged backgrounds were educated by using worksheets.[114] The Centre recognizes the addressed schools for providing distance education in the first wave of the pandemic. It emphasizes in particular their responsible attitude towards ensuring pupils' access to education.

Due to the deteriorating epidemic situation, the Government of the Slovak Republic has again declared a state of emergency for 45 days, effective from 1 October 2020.[115] For this reason, the Minister of Education with the decision no. 2020/17294: 1-A1810 of 11 October 2020 effective from 12 October 2020 decided on an extraordinary suspension of school education in the 5th - 9th grade of primary schools, in the 5th - 10th grade of special primary schools, secondary

107 For an analysis of the compulsory quarantine of Roma Communities please see the Report on Respecting Human Rights, including the principle of equal treatment in the Slovak Report, Chapter 1, p. 23.

108 Spojená internátna škola Prakovce, Základná škola Krompachy, Gymnázium Krompachy, Gymnázium Gelnica, Špeciálna základná škola Krompachy, Základná škola Gelnica, Základná škola Bystrany, Spojená škola Švabinského v Bratislave, letter from 01 July 2020.

109 According to the answer of Základná škola Bystrany from 13 July 2020.

110 According to the answer of Základná škola Gelnica from 14 July 2020.

111 According to the answer of Gymnázium Gelnica from 15 July 2020.

112 According to the answer of Základná škola Bystrany from 13 July 2020.

113 According to the answer of Gymnázium Gelnica from 15 July 2020.

114 According to the answer of Spojená škola internátna Prakovce from 16 July 2020.

115 Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020, published in the Collection of Laws of the Slovak Republic under No. 268/2020 Coll.

schools, special secondary schools, language schools and primary art schools.

The Centre together with non-governmental organizations - Community Organization Centre *(Centrum komunitného organizovania)*, Slovak Youth Council (*Rada mládeže Slovenska),* REACH Institute, Youth Street *(Mládež ulice),* civic association PDCS *(občianske združenie PDCS),* KASPIAN and Centre for the Research of Ethnicity and Culture *(Centrum pre výskum etnicity a kultúry)*, responded to the situation and called on the Slovak Government and the Ministry of Education, Science, Research and Sport of the Slovak Republic to reintroduce the in-person form of education at the second stage of primary schools and secondary schools. In conjunction with the Give the Children initiative (Dajme deťom hlas), it issued a statement in which it highlighted that *"we do not consider it appropriate to close schools across the state, given the serious risks it entails. Many children are unable to fully exercise their right to free, high-quality, and inclusive education (e.g., due to the unavailability of internet connection and technical support). And distance education for pupils and students does not reach the same quality as in-person education in schools.* "[116]

The Office of the Commissioner for Children also dealt with the issue of nationwide school closure and organized a roundtable at the beginning of December 2020 aimed at ensuring access to education for children during the COVID-19 pandemic, which was attended by the Centre, the Office of the Commissioner for Persons with Disabilities and the Association of Slovak Towns and Municipalities.[117] At the same time, the Public Defender of Rights also examined the controversial decisions of the Minister of Education on the extraordinary suspension and renewal of school education. In her legal analysis regarding the extraordinary suspension of in-person school education within the framework of compulsory school attendance during the so-called second wave of the pandemic, assessed that, although the extraordinary suspension of in-person school education pursued a legitimate aim, it did not reflect the regional development of the epidemic situation and was, therefore, neither necessary nor proportionate. At the same time, in her conclusion, she stated that individual decisions could have violated the right to education also in connection with the prohibition of discrim-

116 DenníkN.sk: "Lawyers: The way schools are closed is not adequate and the legality is questionable. To open only selected schools is discrimination" (*„Právnici a právničky: Spôsob, akým sú zatvorené školy, nie je primeraný a zákonnosť je otázna. Otvoriť len vybrané školy je diskriminácia")* from 03 December 2020, available in Slovak language at: https://bit.ly/31EKdwl.

117 Office of the Commissioner for Children, "Open call for expeditious opening of schools and school facilities" (*"Otvorená výzva na urýchlené otvorenie škôl a školských zariadení"*), available in Slovak language at: https://komisarpredeti.sk/otvorena-vyzva-na-urychlene-otvorenie-skol-a-skolskych-zariadeni/.

ination.[118]

On 08 December 2020, the Centre received a request to issue an expert opinion by a trade union operating in the education sector. The trade union objected to discrimination against school staff, pupils, and their parents. The alleged reason was the discriminatory conditions for the resumption of education in schools. The conditional renewal of education was regulated by the Resolution of the Government of the Slovak Republic no. 760, dated 04 December 2020, as well as subsequent legal acts.[119] On 16 December 2020, the Centre issued an expert opinion in this matter,[120] in which it assessed the conditions for the renewal of the in-person form of education in schools and their compliance with the Constitution of the Slovak Republic, and the Constitutional Act on security of state.

3.1 General legal framework for access to education

Protecting the right to education and ensuring access to education is a fundamental duty and responsibility of every state. The constitutional guarantees of the right to education are contained in Article 42 of the Constitution of the Slovak Republic. In 2014, the Constitutional Court stated that *"the right to education, a key part of which is the right to access education, does not have the character of an absolute right, the legislator may restrict it, but only on condition that it is a restriction which respects its essence and meaning and is applied only to the established (legitimate) purpose (Article 13 (4) of the Constitution)."*[121] The content of the right to education consists of in particular access to education itself. In addition to access to education, the content of the right to education also includes access to a certain level of education and quality education.[122] The primary purpose of the right to education is primarily to provide education to individuals, i.e. the opportunity to acquire knowledge and skills that are the content of education.[123] The exercise of the fundamental right to education, therefore, aims at the continuous fulfilment of its purpose, which is the acquisition and deepening of practical and theoretical knowledge, the acquisition of skills and various habits. The tool to ensure the right to education and access to education is, above all, participation in school attendance, which is formulated as an obligation.[124] Article 42 of the Constitution of the Slovak Republic does not define education and does not stipulate its qualitative components. These can be found especially in the implementing regulations of Article 42 of the Constitution of the Slovak Republic, especially in Act no. 245/2008 Coll. on Education and Training (Education Act) and on Amendments to Certain Acts, as amended (hereinafter referred to as the "Education Act").

One of the key implementing legal regulations of Article 42 of the Constitution of the Slovak Republic is the Education Act, which defines the concepts and basic principles of education. The rights to education in primary and secondary schools can therefore be claimed within the limits of the Education Act, which also sets limits on its application. According to the Centre, one of the key provisions in the exercise of the right to education during the COVID-19 pandemic is Section 150(8) of the Education Act, which regulates the possibility of suspending school education and states: *"If an exceptional state, an emergency state or emergency situation is declared, if a ban on the operation of schools and school facilities is ordered under special reg-*

121 Finding of the Constitutional Court of the Slovak Republic, Case No. PL ÚS 11/2013, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView.

122 ČIČ, M. a kol.: Commentary to the Constitution of the Slovak Republic. ("*Komentár k Ústave Slovenskej republiky*"). Žilina: Eurokódex, 2012, p. 306.

123 DRGONEC, J.: Constitution of the Slovak Republic – Big Commentary. Theory and practice ("*Ústava Slovenskej republiky – Veľký komentár. Teória a prax*"). Bratislava: C. H. Beck, 2015, p. 821.

124 Article 42(1) of Constitution of the Slovak Republic: "School attendance is compulsory."

ulation[125] *or in an event in which the life or health of children, pupils or employees of schools and school facilities may be endangered, the Minister of Education may decide on (a) extraordinary suspension of school education in schools, (b) extraordinary suspension of school facilities, (c) other deadlines decisive for the organization of the school year ...* "[126]

The right to education and its regulation contained in Article 42 of the Constitution of the Slovak Republic largely reflects the international regulation contained in the basic human rights conventions, which have also been ratified by the Slovak Republic. The right to education falls within the group of economic, social and cultural rights set out in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights ("the International Covenant"), Article 28 of the Convention on the Rights of the Child and other international conventions taking into account the specific needs of vulnerable groups in society.[127] Pursuant to Article 13 of the International Covenant, the right to education is defined as the right of everyone to education which will lead to the full development of the human personality and the sense of its dignity, and the strengthening of respect for human rights and fundamental freedoms.[128]

According to Article 13(2)(a) of the International Covenant as well as Article 28(1)(a) of the Convention on the Rights of the Child, primary education shall be compulsory. At the same time, education shall be free, at least in the pre-school[129] and primary stages.[130] Unlike primary education, secondary and tertiary education shall be made generally available and accessible to everyone, in different forms, considering innovative approaches to education in different social and cultural contexts.[131] However, secondary and higher education neither have to be compulsory nor free.

Similar legislation on the right to education is included in Article 14 of the Charter of Fundamental Rights of the European Union, which also provides that the right to education includes free compulsory schooling. The right to education at the European level is also regulated in Article 2 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Article

125 Section 24(1) and Section 48(4)(e) of Act No. 355/2007 Coll. On protection, encouragement, and development of public health, and on amendments and supplements to certain acts, as amended.
126 Act No. 245/2008 Coll. on Education and Training (Education act) and on amendments to certain acts, as amended.
127 At international level, it is namely the Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of Persons with Disabilities (2006), International Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention Relating to the Status of Refugees (1951), Convention against Discrimination in Education (1960).
128 International Covenant on Economic, Social and Cultural Rights (1966), Article 13(1).
129 For example, education in pre-school facilities.
130 For example, education in primary schools.
131 Committee on Economic, Social and Cultural Rights, „General Comment No. 13: The right to education (Article 13 of the Covenant) from 08 December 1999, available at: https://bit.ly/2R14kn3.

7(3) (right of children and young persons to protection), Article 10(1) (right to vocational training), Article 15(1) (the right of persons with disabilities to independence, social inclusion and participation in the life of the community) and in Article 17(1)(a) and (2) (the right of children and young persons to social, legal and economic protection) of the European Social Charter (revised).

3.2 Unconstitutionality of measures to prevent the spread of COVID-19 in the field of access to education

According to Article 13 of the Constitution of the Slovak Republic, *"limitations of fundamental rights and freedoms shall be regulated only by a law and under the conditions set in this Constitution."*[132] At the same time, Article 13 of the Constitution of the Slovak Republic specifies that *"legal restrictions of fundamental rights and freedoms shall be applied equally in all cases fulfilling the specified conditions"*[133] and *"when imposing restrictions on fundamental rights and freedoms, respect must be given the essence and meaning of these rights and freedoms and such restrictions shall be used only for the specified purpose.* "[134]

In the case of war, a war state, an exceptional state and an emergency state, the Constitution of the Slovak Republic regulates the regime of restriction of human rights and fundamental freedoms differently from the regime contained in Article 13 of the Constitution of the Slovak Republic. The Constitution of the Slovak Republic in Article 51(2) introduces a regime of restriction of human rights and freedoms in the so-called crisis situation, i.e. in the period *"during which the security of the state is immediately endangered or disturbed and the constitutional authorities may [...] in order to resolve it declare war, declare a war state, an exceptional state, or an emergency state."*[135] According to Article 51(2) of the Constitution of the Slovak Republic *"the conditions and extent of restrictions of the fundamental rights and freedoms and the extent of duties in time of war, a war state, an exceptional state and an emergency shall be laid down by a constitutional act."*[136] This constitutional act is in this case the Constitutional Act on security of state.

The Constitutional Act on Security of State foresees the possibility of restricting the right to education separately for individual crisis situations. While in times of war the right to education can be restricted by restricting school education,[137] but in no other crisis situation can the right to education be restricted. The above-mentioned also applies to the emergency situation. The Constitutional Act on Security of State in Article 5(4) contains an exhaustive enumeration of fundamental rights and freedoms, which can be restricted to the extent necessary during an emergency state declared due to a threat to the life and health of persons directly related to a pandemic, but the right to education is not among those rights.[138] In determining the extent

132 Constitution of the Slovak Republic No. 460/1992 Coll., as amended, Article 13(2).
133 Constitution of the Slovak Republic No. 460/1992 Coll., as amended, Article 13(3).
134 Constitution of the Slovak Republic No. 460/1992 Coll., as amended, Article 13(4).
135 Constitutional Act No. 227/2002 Coll. On Security of State in time of War, a War State, an Exceptional State, and an Emergency State, as amended, Article 1(4).
136 Constitution of the Slovak Republic No. 460/1992 Coll., as amended, Article 51(2).
137 Constitutional Act No. 227/2002 Coll. on security of state in time of war, a war state, an exceptional state, and an emergency state, as amended, Article 2(3)(p).
138 For an analysis of the declaration of a state of emergency in the territory of the Slovak Republic in 2020, please see the Report on Respecting Human Rights, including the principle of equal treatment in the Slovak Republic for 2020, Chapter 1.

and conditions of the restriction of human rights and fundamental freedoms, the legislator relies on Article 13(4) of the Constitution of the Slovak Republic. *"The generic composition of the restrictions and obligations imposed is based on historical experience and, in the vast majority of cases, is in line with the restrictions used in wars, exceptional and emergency states in history and currently in democracies."*[139] The Centre infers that the legislator was not interested in restricting the right to education in times of emergency state, as such a restriction in an emergency state is not common in democracies given the historical and current experience of the legislator.

On 22 May 2020 the National Council of the Slovak Republic approved Act No. 56/2020 Coll., Supplementing Act No. 245/2008 Coll. on Education and Training (Education Act) and Amendments to Certain Acts, as amended (hereinafter referred to as "Act No. 56/2020 Coll."). Act no. 56/2020 Coll. supplemented the provision of Section 150 with new subparagraphs no. 8 and 9 and vested the Minister of Education with the power to decide during an emergency state on an extraordinary suspension of school education in schools, as well as to decide on an extraordinary suspension of the operation of school facilities.[140] Pursuant to this enabling provision, the Minister of Education issued several decisions[141] restricting the right to education, by extraordinarily suspending school education or setting conditions for its renewal. From the explanatory memorandum to Act No. 56/2020 Coll. it is not clear whether the legislator intended to restrict the right to education. The legislator further states in the explanatory memorandum that *"the proposal [Act no. 56/2020 Coll.] is in accordance with the Constitution of the Slovak Republic, constitutional acts, findings of the Constitutional Court of the Slovak Republic, other acts of the Slovak Republic, international treaties and other international documents by which the Slovak Republic is bound, and the European Union law."* However, according to the Centre, the Constitutional Act on Security of State does not allow for the restriction of the right to education in an emergency state (by suspending school education). The provision of Section 150(8) to the extent that it authorizes the Minister of Education to decide on the restriction of the right to education by extraordinary suspension of school education, appears to be in conflict with the Constitutional Act on security of state and Article 51(2) of the Constitution of the Slo-

139 Explanatory Memorandum to the Draft Constitutional Act on security of state in time of war, a war state, an exceptional state and an emergency state, No. UV-8359/2001 of 11 January 2002 available at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=407373.

140 Act No. 56/2020 Coll. supplementing Act No. 245/2008 Coll. on Education and Training (Education Act) and on Amendments to Certain Acts, as amended.

141 Decision of the Minister of Education No. 2020/17294: 1-A1810 of 11 October 2020; Decision of the Minister of Education No. 2020/17949: 1-A1810 of 23 October 2020; Decision of the Minister of Education No. 2020/18259: 1-A1810 of 02 November 2020; Decision of the Minister of Education No. 2020/18259: 2-A1810 of 12 November 2020; Decision of the Minister of Education No. 2020/18259: 3-A1810 of 04 December 2020.

vak Republic.

According to the Centre, until the decision of the Constitutional Court on the non-compliance of Section 150(8) of the Education Act to the extent to which the Minister of Education may restrict the right to education in times of emergency state with the Constitutional Act on security of state and with Article 51(2) of the Constitution of the Slovak Republic, the principle of presumption of constitutionality of legal regulations applies. The Centre notes that two principles collide – the principle of constitutionality and the principle of legal certainty. The principle of preserving constitutionality is implemented through proceedings on compliance of legal regulations with the Constitution of the Slovak Republic and constitutional acts pursuant to Article 125 of the Constitution of the Slovak Republic, while the principle of legal certainty is based on the presumption of constitutionality of legal regulations.[142]

3.2.1 Adjustment of the conditions for education for pupils from socially disadvantaged environments during the COVID-19 pandemic

The measures contained in the decisions of the Minister of Education, taken in the period from 11 October 2020 to 04 December 2020, are problematic in terms of compliance with the principle of equal treatment. The extraordinary suspension of education in schools and the sudden change from in-person teaching to distance education, largely taking place online during the first wave of the pandemic, have shown that there are several barriers for pupils belonging to vulnerable groups (e.g., pupils from socially disadvantaged backgrounds, pupils with health disadvantages or pupils from marginalized Roma communities). Due to obstacles such as limited access to information and communications technology, internet connection or insufficient digital literacy of some pupils, on 12 November 2020, the Minister of Education adopted a measure[143] to alleviate the lack of access to education for these pupils by renewing school education in special secondary schools, vocational schools and practical schools and primary schools and secondary schools for pupils from socially disadvantaged backgrounds in small groups, by the founders of these schools, provided that the conditions do not allow access to distance education and the operating conditions allow the renewal of education in schools. As follows from the decision of the Minister of Education, a small group means a group of up to five pupils and one pedagogical employee.[144]

The right to education, the essence of which also includes the right of access to education, must also be interpreted in the context of the principle of general equality laid down in Article 12(1) of the Constitution of the Slovak Republic and the context of the prohibition of discrimination laid down in Article 12(2) of the Constitution of the Slovak Republic. The education and training of all pupils is therefore based on the principles of equal access to education and training, taking into account the educational needs of the individuals and their co-responsibility for their education and the prohibition of all forms of discrimination, especially segregation.[145] The principle of equal treatment and the prohibition of discrimination in education are also regulated by the Anti-Discrimination Act, which in Section 3 imposes an obligation on everyone to observe the principle of equal treatment in the field of education.

The decision of the Minister of Education No. 2020/18259: 2-A1810 of 12 November 2020 allowed the founders of schools to decide on the renewal of school education for selected groups of students, but this decision also obliged them to take a temporary equalizing measure in accordance with Section 8a of the Anti-Discrimination Act, i.e. *"a measure taken by state administrative bodies or other legal person targeted to eliminate disadvantages imposed on the grounds of racial or ethnic origin, belonging to a national minority or ethnic*

143 Decision of the Minister of Education No. 2020/18259: 2-A1810 of 12 November 2020.
144 Decision of the Minister of Education No. 2020/18259: 2-A1810 of 12 November 2020.
145 Act No. 245/2008 Coll. On Education and Training (Education Act) and on Amendments to Certain Acts, as Amended, Section 3.

group, gender or sex, age or disability, with the aim of ensuring equal opportunities in practice". In this context, we can consider as a temporary equalizing measure a measure that consists in promoting the interest of members of disadvantaged groups in education. In other words, if, on the basis of the decision of the Minister of Education in question, the founders of schools decided to resume in-person education in selected cases, they could do so only under the conditions of the simultaneous adoption of a temporary equalizing measure.

The decision of the Minister of Education No. 2020/18259: 2-A1810 of 12 November 2020 renewing education in schools only for students from socially disadvantaged backgrounds, i.e. *"a child from a socially disadvantaged background or a pupil from a socially disadvantaged background is a child or a pupil living in an environment which, due to social, family, economic and cultural conditions, does not sufficiently encourage the development of mental, will, emotional qualities, does not support their socialization and does not provide them with sufficient appropriate stimuli for the development of their personality."*[146] Due to the obligations of school founders arising from Section 8a of the Anti-Discrimination Act, school founders could decide to renew education in school in person only for those children from socially disadvantaged backgrounds who also meet the defining characteristics of grounds protected by law such as race, belonging to a national minority or ethnic group, gender, sex, age or disability. The Centre notes that the decision of the Minister of Education No. 2020/18259: 2-A1810 of 12 November 2020 was not enforceable for all children from socially disadvantaged backgrounds in the sense of Section 2(p) of the Education Act. In addition, in accordance with Section 8a(2)(3) of the Anti-Discrimination Act, temporary equalizing measures must meet a number of requirements, including that they must be appropriate and essential to the achievement of the set aim, last only until the inequality is eliminated, and must be continuously monitored and evaluated. At the same time, according to Section 8a(4) of the Anti-Discrimination Act, the authorities that adopt temporary compensatory measures, in this case, school founders, must notify such measures to the Centre. The Centre notes that as of 31 December 2020, it had not received any such notification or report of the adoption of such a temporary equalizing measure.

146 Act No. 245/2008 Coll. On Education and Training (Education Act) and on Amendments to Certain Acts, as Amended, Section 2(p).

3.2.2 Different conditions for exercising the right to education in the renewal of education in schools

School education was extraordinarily suspended first for secondary schools with effect from 12 October 2020[147] and later, from 26 October 2020 also for selected grades of primary and secondary schools on the basis of the decision of the Minister of Education No. 2020/17949: 1-A1810 dated 23 October 2020. Thus, a situation arose where one group of pupils (pupils of the 1st - 4th grade of primary schools) had access to school education in the in-person form and the other two groups (pupils of the 5th - 9th grade of primary schools and pupils of secondary school) had access to school education in distance form.[148] Interpreting the right to education regulated by Article 42 of the Constitution of the Slovak Republic in the light of the basic principles of the right to education regulated in Articles 13 and 14 of the International Covenant, it can be stated that education should be available, accessible, acceptable and adaptable.[149] When taking measures to prevent the spread of COVID-19 disease, which have or could have had an impact on the right to education, the state is obliged to take into account the best interests of students in the first place.[150]

However, as follows from the constitutional guarantees, state authorities are obliged to ensure that the exercise of pupils' right to education is within the meaning of Article 12(1) and (2) of the Constitution of the Slovak Republic in accordance with the general principle of equality and the prohibition of discrimination. The purpose of Article 12(1) and (2) of the Constitution of the Slovak Republic *"is the protection of persons (legal and natural) against discrimination by public authorities."*[151] On the other hand, the Constitutional Court confirmed that violation of the principle of equality and non-discrimination under Article 12(2) of the Constitution of the Slovak Republic *"can in principle occur only in connection with the violation of a certain specific fundamental right or freedom, i.e. its violation can in principle be invoked only in connection with a violation of a certain fundamental right and freedom or a human right or fundamental freedom resulting from a qualified international treaty on human rights and*

147 Decision of the Minister of Education, Science, Research and Sport of the Slovak Republic No. 2020/17294: 1-A1810 of 11 October 2020.

148 From 12 November 2020, an exception was introduced for pupils from socially disadvantaged backgrounds by a decision of the Minister of Education, on the basis of which they could attend school and participate in in-person education in small groups if the operating conditions of the school's founder allowed it. For more information, see. 3.2.1 Adjustment of the educational conditions for pupils from socially disadvantaged backgrounds during the COVID-19 pandemic.

149 UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The right to education (Article 13 of the Covenant) from 08 December 1999, available at: https://bit.ly/2R14kn3.

150 Ibid.

151 Finding of the Constitutional Court of the Slovak Republic of 18 October 2005, Case No. PL. ÚS 8/04, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView.

fundamental freedoms."[152] In the opinion of the Constitutional Court, which is largely based on the case-law of the ECtHR,[153] **"***a discriminatory arrangement may be such regulation (...) which addresses the same or analogous situations differently, and the legislator cannot or is not able to reasonably justify such an approach by a legitimate aim and by the fact that such aim must be achieved by the legislative solution chosen."*[154]

The principle of equality and non-discrimination, therefore, means that persons in a comparable situation should be treated in the same way and persons in a different situation should be treated differently. The decisive factor is not only the treatment in the formal sense of the word but also in the material one. It is therefore not enough to ensure formally the same exercise of the right, but it is necessary to ensure its same exercise in terms of the material side - quality. From the information on the course of school education in the distance form, it is clear that the quality of education for these students did not reach the level of quality of in-person form. According to a study by the Organization for Economic Co-operation and Development, the effective education of pupils outside the school environment places increased demands on autonomy, capacity for independent learning, executive functioning, self-monitoring, and the capacity to learn online. More than 51% of children have learned less than they would have learned in school.[155]

In direct connection with the suspension of education in school for primary and secondary school pupils, 2 groups of pupils were created who did not have the same access to education. The resolution of the Government of the Slovak Republic[156] and the decision of the Minister of Education[157] created a situation in which primary and secondary school pupils could participate in education in schools, but under different conditions. These conditions have had a major impact on the accessibility as well as the quality of pupils' education. The only different criteria were what school or class the pupils attended. In other

152 Finding of the Constitutional Court of the Slovak Republic of 3 July 2013, Reference No. PL. ÚS 1/2012, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView.

153 ECtHR, Pretty v. The United Kingdom, Judgment, App. No. 2346/02, available: http://hudoc.echr.coe.int/eng?i=001-60448.

154 Finding of the Constitutional Court of the Slovak Republic of 15. November 2000, Reference No. PL. ÚS 21/00, available at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView.

155 Organization for Economic Cooperation and Development: „Schooling disrupted, schooling retaught" (2020) available at: https://read.oecd-ilibrary.org/view/?ref=133_133390-1rtuknc0hi&title=Schooling-disruptedschooling-rethought-How-the-Covid-19-pandemic-is-changing-education.

156 Resolution of the Government of the Slovak Republic No. 678 of 22 October 2020.

157 Decision of the Minister of Education, Science, Research and Sport of the Slovak Republic No. 2020/17949: 1-A1810 of 23 October 2020.

words, the decisions of the Minister of Education[158] created a situation in the field of education where children in nursery schools and pupils of the 1st - 4th grade of primary schools could continue to participate in education in person from 12 October 2020, while secondary school pupils[159] and subsequently also pupils in the 5th - 9th grade of primary schools[160] were forced to switch to the distance form of education.

The grounds on which no one may be harmed, favoured or disadvantaged, are specified in Article 12(2) of the Constitution of the Slovak Republic. These grounds are sex, race, colour, language, religion and belief, political affiliation, or other convictions, national or social origin, nationality or ethnic origin, property, descent, or any other status. In determining the reason on the basis of which individual groups of pupils are treated differently, it is necessary to consider all the facts that led to an extraordinary suspension of education in secondary schools and subsequently in the 5th - 9th grade of primary schools.

In the case of the decisions of the Minister of Education on extraordinary suspension of education first at secondary schools and then also for pupils in the 5th - 9th grade of primary schools, the distinguishing criterion for different treatment was their inclusion in the relevant educational program according to Section 16(3) of the Education Act, i.e. for pupils in the process of obtaining primary education, which the pupil obtains at the first stage of primary schools, for pupils in the process of obtaining lower secondary education, which the pupil obtains at the second stage of primary schools or in the first year of secondary schools with five-year curriculum or in the first to fourth grade of secondary schools with an eight-year educational program, and the associated ability to implement distance education. This distinguishing criterion in relation to the process of obtaining primary or lower secondary education, i.e., attending a specific class or school can be subordinated to the protected ground of "other status". The term "other status" must be interpreted extensively, it cannot be identified with any clearly defined value or interest, because it has the nature of the so-called constitutional delegation to extend the grounds for protection against discrimination beyond the exhaustive calculation of the grounds referred to in Article 12(2) of the Constitution of the Slovak Republic.[161] Such an extensive interpretation of the term "other status" is also used in its decision-making practice by the ECtHR, which has previously stated that the list of grounds for discrimination in Article 14 of the Convention for the Protection of Human Rights and Fundamental

158 Decision of the Minister of Education, Science, Research and Sport of the Slovak Republic no. 2020/17294: 1-A1810 dated 11 October 2020 and No. 2020/17949: 1-A1810 of 23 October 2020.

159 Since 12 October 2020.

160 Since 26 October 2020.

161 DRGONEC, J.: *Constitution of the Slovak Republic. Theory and practice ("Ústava Slovenskej republiky. Teória a prax").* 2nd revised and supplemented edition. Bratislava: C. H. Beck, 2019, p. 386.

Freedoms is merely illustrative.[162]

At the same time, the age of students, i.e., what class of primary school they attend shall not be omitted. The age limit of 10 years, which is usually reached by pupils in the 4th grade of primary school, was also included as the exception for the obligation to have a negative test for COVID-19 when going out in connection with nation-wide testing. The same criterion was chosen by the Government of the Slovak Republic when determining the conditions for entering school premises - participation in education in person. Due to age, the Government of the Slovak Republic set a prerequisite for participation in education in person in the form of a compulsory negative test for COVID-19 disease exclusively for students from the 5th grade of primary school upwards. The above-mentioned facts indicate that, considering the age and the associated ability to implement distance education, the Minister of Education decided to suspend education first in secondary schools and then in the 5th -9th grade of primary school.

In addition to identifying the protected ground and the manner of treatment that is disadvantageous, favourable, or detrimental, it is necessary to identify the comparator - a person or a group of persons in a comparable situation - in order to draw a reasonable conclusion about the difference in treatment. In the case of pupils in the 5th – 9th grade of primary school and pupils from secondary school who are educated in the first grade of the five-year educational program and the 1st – 4th grade of the eight-year educational program, the pupils of the 1st – 4th grade of primary school are suitable comparators. As the Minister of Education intended to take such a measure in the event of an extraordinary suspension of education in school, which prevents the spread of COVID-19, the Centre considers that in comparison with pupils of the 1st – 4th grade of primary schools, the Minister of Education considers pupils of 5th - 9th grade of primary schools and selected secondary school grades to be of higher epidemic risk.

However, despite the findings of unequal treatment of pupils in the 5th – 9th grade of primary schools and selected grades of secondary schools in comparison with pupils in the 1st – 4th grade of primary schools, it is not possible to automatically consider this unequal treatment as violating the principle of equality. In certain cases, unequal treatment may be "justified". In assessing whether the conditions of a "justifiable" interference with fundamental rights and freedoms are met in a particular case, it is necessary to apply the proportionality test, which, as stated by the Constitutional Court in its judgment of 10 December 2014, consists of three steps/tests:

a) A test of sufficient importance of the aim, which consists of (i) a suitability test (whether the interven-

162 ECtHR, Clift v. The United Kingdom, Judgment, App. No. 7205/07, available at: http://hudoc.echr.coe.int/eng?i=001-99913; ECtHR, Engel and Others v. The Netherlands, Judgment, App. Nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, available at: http://hudoc.echr.coe.int/eng?i=001-57478; ECtHR, Carson and Others v. The United Kingdom [GC], Judgment, App. No. 42184/05, available at: http://hudoc.echr.coe.int/eng?i=001-97704.

tion is directed towards a target that is important enough to justify an intervention), and (ii) a test of the rational link between the intervention and the aim of the intervention, i.e. whether the given means (in the present case by restricting the right to privacy) can achieve an acceptable aim (protection of the public against the emergence and spread of communicable fatal diseases);

b) Necessity test, whether it was necessary to use the selected means or whether it was possible to use a gentler intervention;

c) Proportionality test in the stricter sense, which includes (i) practical concordance (practical consistency), i.e., a test of preserving the maximum of both fundamental rights, and on the other hand (ii) the so-called Alexy's Weight Formula,[163] a weighted formula that operates with a three-point scale of values: "low", "medium", and "substantial." The intensity of the interference with one fundamental right is weighted with the degree of satisfaction of the other right in conflict.[164]

During a period of worsening epidemical situation, the goal that the relevant state authorities want to achieve appears to be legitimate. From publicly available data,[165] it is clear that the spread of COVID-19 threatens the lives and health of the population of the Slovak Republic. Although the course of the disease does not require hospitalization in all patients suffering from the disease, it has the potential to significantly reduce the availability of health care, especially at the regional level. For these reasons, it is necessary to take measures to prevent the spread of COVID-19, and thus protect the fundamental rights to life and health of the population of the Slovak Republic. Due to the nature of the spread of COVID-19 (larger groups are at particular risk) and its possible consequences, according to the Centre, the extraordinary suspension of education in person pursues a legitimate goal, namely the protection of life and health of people in the Slovak Republic, including the protection of life and health of pupils during education in-person. However, even the legitimacy of the goal does not in itself justify interference with fundamental rights and freedoms. Public authorities must choose the means to achieve the goal which is capable of achieving that goal. Thus, a rational link between the means and the goal is needed. However, according to available studies, the incidence of COVID-19 in the school setting is affected by levels of community transmission. Transmission in schools, as a reason for the spread of COVID-19, represents only a minority of all cases of transmission and spread of COVID-19 in each

163 Compare. ALEXY, R .: Balancing, constitutional review, and representation, I.CON, Volume 3, Number 4, 2005. p. 572 et seq., Especially p. 575; Kosař, D. Conflict of Fundamental Rights in the Case Law of the Constitutional Court of the Czech Republic. Jurisprudence 1/2008, p. 3 et seq.

164 Finding of the Constitutional Court of the Slovak Republic of 10 December 2014, Reference No. PL. ÚS 10/2013, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView.

165 Available at, for example, https://covid-19.nczisk.sk/sk.

country studied.[166] Thus, it cannot be concluded that the extraordinary suspension of in-person education is a measure on the basis of which a significant cessation or slowdown of the community-based spread of COVID-19 can be reasonably expected.

It is an indisputable fact that, in order to protect the fundamental right to life and human health, it is necessary to take measures that constitute an interference with other fundamental rights and freedoms. However, such measures may interfere with fundamental rights and freedoms only in so far as is necessary in the light of the facts of the case. It is, therefore, necessary to assess this intervention in the context of all the measures taken. Not all measures must lead to a restriction of rights and freedoms, which are guaranteed by the Constitution of the Slovak Republic. Therefore, when implementing measures for combatting the COVID-19 disease, public authorities should proceed from restricting the rights protected by acts of lower authority to restrict the rights protected by overriding acts, while maintaining the principles of legality, legal certainty, and proportionality.

With the growing number of infected persons with the COVID-19 diseases, the epidemic situation in the territory of the Slovak Republic worsened unevenly due to the different number of infected persons across regions and districts of the Slovak Republic. However, the decisions of the Minister of Education on the extraordinary suspension of education in all secondary schools from 12 October 2020, with effect from 26 October 2020 also for pupils of the 5th - 9th grade of primary schools, did not reflect the existing regional differences. The Centre makes these conclusions also on the basis of individual decisions of the Minister of Education.

According to the recommendations of the World Health Organization, the United Nations International Children's Emergency Fund (UNICEF) and United Nations Educational, Scientific and Cultural Organization (UNESCO), it is necessary to ensure the continuation of safe, adequate, and appropriate education, social learning, and development of children. Decisions to close or reopen schools should be guided by a risk-based approach considering the epidemic situation at the local level. Closing schools and school facilities should only be considered as a last resort when no other alternatives are available.[167] Although the World Health Organization and the UN agencies deal in this document with the issue of closing and reopening schools and not with the issue of restricting access to the in-person form of education, there is a clear emphasis on the protection of the right to

166 European Centre for Disease Prevention and Control, 'Covid-19 in children and the role of school settling transmission – first update,' 23 December 2020, available at: https://www.ecdc.europa.eu/en/publications-data/children-and-school-settings-covid-19-transmission.

167 World Health Organization, United Nations Children's Fund (UNICEF) and United Nations Educational, Scientific and Cultural Organization (UNESCO), available at: https://www.who.int/publications/i/item/considerations-for-school-related-public-health-measures-in- the-context-of-covid-19.

education. The obligation to act in the best interests of children also follows from Article 3(1) of the Convention on the Rights of the Child, which in this case can be considered as having full access to quality and inclusive education. In the given situation, there were other alternatives for measures to prevent the spread of the COVID-19 disease, including preventive measures or targeted local measures, responding to different ways of spreading the disease across the country.

In the test of proportionality in the stricter sense, the right to life and health and the right to education and protection against discrimination stand against each other. It is therefore necessary to address the question of how important the introduction of a distance form of education can be for the protection of the right to life and health of pupils in selected grades of primary and secondary schools. It has not been proven that schools and participation in in-person education contribute to increasing the spread of COVID-19 in society. In the current state of knowledge, it cannot be stated with certainty that there is a demonstrable causal link between the protection of the right to life and health and the restriction of the right of access to education, hence it is not possible to proceed to the proportionality test in the stricter sense.

Due to the impossibility of "justifying" the different treatment of pupils in the 5th - 9th grade of primary schools and the 1st grade of the five-year educational program and the 1st - 4th grade of the eight-year secondary school curriculum in comparison with the 1st - 4th grade of primary school pupils, the Centre considers that the relevant resolution of the Government of the Slovak Republic and the decisions of the Minister of Education as violating the principle of equality and the prohibition of discrimination pursuant to Article12 of the Constitution of the Slovak Republic in connection with the fundamental right to education according to Article 1 of the Constitution of the Slovak Republic.

3.3 Conclusion and recommendations

Protecting the right to education and ensuring access to full-fledged education is the responsibility and duty of every state. Extremely strict measures adopted in the education field, not reflecting regional disparities in the spread of the COVID-19 disease and the widespread closure of primary, secondary schools and school facilities as a result of the pandemic, have not only created new barriers to accessing education but have exacerbated some long-standing challenges.

According to the conclusions of the Centre, the procedure of the Minister of Education was unconstitutional, when by his decisions, proceeding according to Section 150(8) of the Education Act, several times and repeatedly extraordinarily suspended education in school. The conditions and scope of the restriction of fundamental rights and freedoms and the scope of obligations in times of an emergency state are determined primarily by the Constitutional Act on security of state, which in Article 5(4) contains an exhaustive calculation of fundamental rights and freedoms, which can be restricted in times of an emergency state. Article 5(4) of the Constitutional Act on security of state, however, does not make it possible to restrict the right to education. Restricting the right to education by restricting education is possible only in times of war within the meaning of Article 2(3)(p) of this Constitutional Act. According to the legal opinion of the Centre, the provision of Section 150(8) of the Education Act is in conflict with the Constitution of the Slovak Republic and the Constitutional Act on security of state. The Centre concluded that despite the presented intent of the Minister of Education, the adoption of strict and insufficiently justified measures could have exacerbated existing inequalities in the field of access to education. The decision of the Minister of Education of 12 November 2020 to renew education in schools, could serve as an example. The aim was to renew education in small groups, which was not feasible for all students from socially disadvantaged backgrounds in the sense of Section 2(p) of the Education Act.

The decisions of the Minister of Education also created several educational regimes, which created different conditions for participation in education. In particular, while children in nursery schools and pupils in the 1st - 4th grade of primary schools could continue to participate in education in-person from 12 October 2020, secondary school pupils and subsequently also pupils in the 5th - 9th grade of primary schools (with effect from 26 October 2020), were forced, as in the first wave of the pandemic, to switch to distance education. In the light of the above assessments of specific decisions of the Minister of Education, the Centre finds that these decisions on extraordinary suspension of education were contrary to the principle of general equality and non-discrimination in access to education within the meaning of Article 12(1) of the Constitution of the Slovak Republic and Article 12(2) of the Constitution of the Slovak Republic in conjunction with Article 42 of the Constitution of the Slovak Republic.

Recommendations

The Centre recommends:

1. To the Prosecutor General of the Slovak Republic, without undue delay, to turn to the Constitutional Court of the Slovak Republic with a proposal to remove any doubts about the compliance of Section150(8) of Act No. 245/2008 Coll. on Training and Education (Education Act) and on Amendments to Certain Acts with Constitutional Act No. 227/2002 Coll. on the Security of State in Time of War, a War State, an Exceptional State, and an Emergency State, as amended.
2. To the Ministry of Education, Science, Research and Sport of the Slovak Republic, without undue delay, in cooperation with stakeholders and representatives of vulnerable groups, to take measures to maintain access to quality and inclusive education in primary and secondary schools focusing on the specific educational needs of pupils from socially disadvantaged environments during the entire period of an emergency state in the territory of the Slovak Republic.
3. To the Ministry of Education, Science, Research and Sport of the Slovak Republic to regularly monitor and evaluate the epidemic situation within the regions and differences in the manner of the spread of the COVID-19 disease.
4. To consider the recommendations of the World Health Organization, UNICEF, and UNESCO on the need to decide on the closure or reopening of schools employing a risk-based approach considering the epidemic situation at the local level.
5. To the Ministry of Education, Science, Research and Sports of the Slovak Republic, without undue delay, in cooperation with the Centre and interested stakeholders and representatives of vulnerable groups, to prepare a study on the negative impacts of the extraordinary suspension of education on human rights and fundamental freedoms of of pupils from primary and secondary school and in compliance with the findings of the study to draw up a plan to eliminate these negative impacts.

4. Exercising the right to health in the context of access to healthcare

Due to the COVID-19 pandemic, many people in the Slovak Republic have lost access to timely and quality healthcare. The measure of the Ministry of Health of the Slovak Republic and the decrees of the Chief Public Health Officer of the Slovak Republic, by which it imposed on healthcare providers the obligation to take such measures by which the provision of healthcare for the population of the Slovak Republic was restricted, were unconstitutional.

COVID-19 disease was first confirmed in the Slovak Republic on 6 March 2020 in a 52-year-old man from the Bratislava region. On 15 March 2020, when the Government of the Slovak Republic imposed a work obligation to ensure the provision of healthcare and prohibited the exercise of the right to strike in relation to employees of selected providers of institutional healthcare,[168] 44 cases of COVID-19 were confirmed in the Slovak Republic.[169] Subsequently, on 18 March 2020, the Government of the Slovak Republic extended by Resolution No. 115 published in the Collection of Laws under No. 49/2020 work obligation to ensure the provision of healthcare and the prohibition of work obligation on all providers of institutional healthcare, operators of emergency medical services, operators of outpatient transport services and other key actors in the provision of healthcare.[170]

The justification for the adoption of the above measures by the Government of the Slovak Republic was to ensure the readiness of the healthcare system for the increased number of patients with COVID-19.

The professional guidance of the general public, public administration bodies and providers of outpatient and institutional healthcare was provided by the Chief Public Health Officer of the Slovak Republic by issuing guidelines, in particular, *"Guidelines of the Chief Public Health Officer of the Slovak Republic in connection with COVID-19 caused by coronavirus SARS-CoV-2"*.[171] From the confirmation of the first case of COVID-19 disease on the territory of the Slovak Republic to the first declaration of an emergency state, the above-mentioned guideline of the Chief Public Health Officer of the Slovak Republic was amended up to four times. The

168 Resolution of the Government of the Slovak Republic No. 114, published in the Collection of Laws under No. 45/2020 on the proposal for a declaration of an emergency state pursuant to Article 5 of the Constitutional Act No. 227/2002 Coll. on the security of state in time of war, a war state, an exceptional state and an emergency state, as amended, to impose an employment obligation to ensure the provision of healthcare and to prohibit the exercise of the right to strike by certain workers of 15 March 2020 available at: https://bit.ly/2Fr13YM

169 World Health Organization, "Coronavirus disease 2019 (COVID-19) Situation Report – 55" (15 March 2020), available at: https://bit.ly/3vOWnRA.

170 Resolution of the Government of the Slovak Republic No. 115 published in the Collection of Laws under No. 49/2020 on the proposal to extend the emergency state pursuant to Article 5 of the Constitutional Act No. 227/2002 Coll. on the security of state in time of war, a war state, an exceptional state and an emergency state, as amended, and to extend the imposition of employment obligation to ensure the provision of healthcare and the prohibition on exercising the right to strike by certain workers declared by Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020, dated 19 March 2020 available in Slovak language at: https://bit.ly/33zRFtz.

171 Guidelines of the Chief Public Health Officer of the Slovak Republic in connection with coronavirus 2019-nCov (first update) of 06 February 2020; Guidelines of the Chief Public Health Officer of the Slovak Republic in connection with the COVID-19 disease caused by the coronavirus SARS-CoV-2 No. OE/791/83321/2020 of 03 March 2020, No. OE/791/84737/2020 of 09 March 2020, No. OE/79185521/2020 of 13 March 2020, No. OE/791/86125/2020 of 18 March 2020, No. OE/791/86973/2020 of 30 March 2020, No. OE/791/89586/2020 of 20 March 2020 available in Slovak language at: https://bit.ly/3rCJy9S.

fourth update of the guideline, published on 13 March 2020 under No. OE / 791/85521/2020, for the first time, instructed healthcare providers to take operational measures to limit or suspend planned surgical procedures, planned hospitalizations, or delayed diagnostic procedures in patients who do not require acute medical care. The intention was to reduce the operational, material and personnel burden on medical facilities, which could limit the provision of acute medical care.[172]

Subsequently, to ensure the implementation of the above-mentioned resolutions of the Government of the Slovak Republic, the Ministry of Health of the Slovak Republic adopted on 17 March 2020 order No. S08174-2020-ONAPP (hereinafter referred to as the "order of the Ministry of Health of the Slovak Republic"), which ordered all healthcare providers, including also providers of inpatient and outpatient healthcare to *"take steps directed to limit the planned surgical procedures, the non-performance or postponement of which will not endanger the life and health of persons."*[173]

The first prognoses of the Health Policy Institute[174] predicted the culmination of the prevalence of COVID-19 on the 110th day from 15 March 2020 at the level of 10% of the population of the Slovak Republic.[175] If this prognosis is met, the capacity of healthcare providers would not be sufficient to properly provide acute healthcare for all people with COVID-19. This prognosis was not fulfilled and thanks to several measures and discipline of the population, the Slovak Republic remained on the list of successful countries in the fight against COVID-19 during the first wave of the pandemic.[176]

Despite the favourable epidemic situation, the Government of the Slovak Republic has not taken measures to ensure the continuity of the provision of quality primary, secondary and tertiary healthcare for all inhabitants of the Slovak Republic without distinction. Failure to take such measures has led to several serious interferences by the state with the right to health, especially in the context of access

172 Guidelines of the Chief Public Health Officer of the Slovak Republic in connection with COVID-19 disease caused by coronavirus SARS-CoV-2 No. OE/791/85521/2020 of 13 March 2020 available in Slovak language at: https://bit.ly/3cZLofK.

173 Measure of the Ministry of Health of the Slovak Republic of 17 March 2020, No. S08147-2020-ONAPP, available in Slovak language at: https://bit.ly/2FDZypR.

174 From 1 July 202, the Institute for Healthcare Analyses was established as a successor to the Health Policy Institute. More information available in Slovak language at: https://bit.ly/315w2AF.

175 Health Policy Institute: "Prediction of the spread of COVID-19 from 17 March 2020" („Predikcia šírenia ochorenia COVID-19 zo dňa 17.03.2020"), available at: https://bit.ly/3hBjdUz (until 03 August 2020, the official webpage of the Health Policy Institute was inoperative).

176 The Atlantic: Lessons from Slovakia – Where Leaders Wear Masks from 13 May 2020, available at: https://bit.ly/3mulgMu; The Guardian: Why has Eastern Europe suffered less from coronavirus than west? from 05 May 2020, available at: https://bit.ly/35GtuMR, The Wall Street Journal: Poorer Nations in Europe´s East Could Teach the West a Lesson on Coronavirus, from 12 April 202, available at: http://on.wsj.com/3safJ1p; Bloomberg: European Nation with Fewest Virus Deaths Proves a Speed is Key, from 28 April 2020, available at: http://bloom.bg/3cRfKAS.

to healthcare. For this reason, the Centre decided to monitor the situation closely and focused in particular on the availability of healthcare for patients belonging to vulnerable groups and the deepening of existing inequalities in the provision of healthcare.

The Centre identified a number of cases where patients were not provided with healthcare due to measures taken to prevent the spread of COVID-19 or due to measures taken to prepare healthcare providers for the increasing number of patients with COVID-19. As part of its monitoring activities, it identified shortcomings in the provision of preventive healthcare (e.g. regular preventive examinations, preventive examinations related to the health condition or chronic illness of patients), as well as healthcare that did not meet the defining features of acute healthcare in accordance with Act No. 576/2004 Coll. on Healthcare and Services Related to the Provision of Healthcare and on Amendments to Certain Acts, as amended (hereinafter referred to as the "Healthcare Act"). As the Centre assessed the situation in the field of healthcare provision as unfavourable and in conflict with valid legislation at the national level and also with the international obligations of the Slovak Republic in the field of protection and promotion of human rights, it notified the Ministry of Health of the Slovak Republic about the situation by letter dated 28 April 2020.

On 4 May 2020, a client whose health care provider refused to provide preventive health care in the form of radiological examination (mammography), which is part of breast cancer screening, turned to the Centre due to the suspension of providing preventive healthcare for repurposing the assignment of beds based on the guidance of the Chief Public Health Officer of the Slovak Republic No. OE / 791/85521/2020 of 13 March 2020 (fourth update). The provider instructed the client to undergo a mammographic examination in another medical facility. The client, therefore, contacted another healthcare provider, who also refused and instructed her to visit the facility where she was to undergo the examination in the first place.

All patients aged 50 to 69 years are entitled to a mammographic examination at two-year intervals at the invitation of the health insurance company or patients aged 40 to 69 years on the recommendation of a general practitioner or gynaecologist. At present, this examination is the only method that can detect the early stage of breast cancer, when breast cancer is still very treatable without major surgery, usually without chemotherapy or radiotherapy.[177] In 2018, the incidence of breast cancer in the Slovak Republic was 10.3% with a mortality rate of 6.6%.[178] The suspension of the breast cancer screening program in the period from 18 March 2020 to 15 June 2020 also results from the first evaluation of mammographic screening

177 Ministry of Health of the Slovak Republic, "Breast Cancer Screening" („*Skríning rakoviny prsníka*"), available in Slovak language at: https://bit.ly/3165PIx.

178 World Health Organization: Slovakia: Cancer Country Profile from the year 2018 (2020), available at: https://bit.ly/3IFAYFU.

of women aged 50 to 69[179] as well as from information published by the National Cancer Institute.[180] In the period from September 2019 to June 2020,[181] out of the total number of 57,833 invited women, only 13% of women participated in the mammographic examination.[182] Similarly to the breast cancer screening program, the colon cancer screening program was also suspended, the pilot operation[183] of which was planned for the beginning of 2020.[184] Only one insurance company providing public health insurance continued the colon cancer screening program - Dôvera zdravotná poisťovňa, a. s., which returned to the implementation of the screening program only in December 2020.[185] In addition to colon cancer, lung cancer, is one of the most common causes of death from cancer in the Slovak Republic.[186] In 2018, the incidence of colon cancer in the Slovak Republic was 15.8% with a mortality rate of 15.4%.[187] The deteriorating healthcare situation for cancer patients and the deteriorating access

179 National Oncology Institute, "First evaluation of mammographic screening of women aged 50 to 69 in the period of September 2019 to June 2020" („*Prvé vyhodnotenie mamografického skríningu žien vo veku 50 až 69 rokov v časovom období september 2019 až jún 2020*") (Bratislava, 2020), p. 12, available in Slovak language at: https://bit.ly/2OVKIzT.

180 National Oncology Institute, „Breast Cancer Screening: Front Page" available in Slovak language: https://bit.ly/3f7tMB9.

181 Period from June 2019 to September 2020.

182 National Oncology Institute, "First evaluation of mammographic screening of women aged 50 to 69 in the period of September 2019 to June 2020" (Bratislava, 2020), p. 12, available at: https://bit.ly/2OVKIzT.

183 The pilot operation of the colon cancer screening program took place in 2019 with the participation of all health insurance companies providing public health insurance.

184 MUDr. Rudolf Hrčka CSc., "Preventive colonoscopy as an effective weapon in the fight against colorectal cancer in Slovakia in 2020" („*Preventívne kolonoskopie ako účinná zbraň v boji s kolorektálnym karcinómom na Slovensku v roku 2020*"), (29 January 2021), available in Slovak language at: https://bit.ly/3w2we1T.

185 Dôvera zdravotná poisťovňa a. s.: We launched a large screening programme for colorectal cancer ("*Spustili sme veľký skríning rakoviny hrubého čreva a konečníka*"), from 01 December 2020, available in Slovak language at: http://bit.ly/2P94TdM.

186 European Observatory on Health Systems and Policies, „Slovakia: Country Health Profile 2019", available at: https://bit.ly/2PunZei.

187 World Health Organization: Slovakia: Cancer Country Profile from the year 2018 (2020), available at: https://bit.ly/3lFAYFU.

to preventive care during the first wave of the pandemic[188] have been highlighted by several patient organizations[189] as well as by experts who have pointed out the serious consequences of postponing preventive care.[190]

Due to the inactivity of the Ministry of Health of the Slovak Republic,[191] as well as complaints and information from the inhabitants of the Slovak Republic, the Centre also addressed the providers of inpatient healthcare on 6 May 2020 with a call to eliminate the illegal situation and restore proper healthcare for all patients without distinction. The Centre appreciated the work commitment of their employees in the fight against COVID-19, yet warned the respective providers of inpatient healthcare, which cannot arbitrarily, even on the basis of recommendations and measures of the Ministry of Health or organizations within its competence, decide that they will provide only acute healthcare to the patients.

188 Call of the alliance No to Cancer (Nie Rakovine) from 27 March 2020, available at: http://bit.ly/397IYKL; Bratislavské noviny: In Slovakia, it currently looks as if other diseases than COVID-19 did not exist. At the same time, we have a cancer epidemic! ("*Na Slovensku to aktuálne vyzerá, akoby iné choroby okrem COVID-19 neexistovali. Pritom tu máme epidémiu rakoviny!*") from 29 April 2020, available in Slovak language at: http://bit.ly/3tEip7Q; noviny.sk: Are we in danger of a cancer pandemic? For Covid-19, the screenings were stopped screenings, early diagnosis fails ("*Hrozí nám pandémia rakoviny? Pre Covid-19 stopli skríningy, zlyháva aj včasná diagnostika*") from 07 February 2021, available in Slovak language at: https://bit.ly/39gu0Ca.

189 Patient Organization No to Cancer (Nie rakovine) and League against Cancer (Liga proti rakovine).

190 MUDr. Ladislav Kužela: Postponement of colon cancer screening during COVID-19 may lead to up to 12 % increase in deaths in the next 5 years, ("*Odklad skríningu rakoviny hrubého čreva počas Covid-19 môže viesť až k 12 % nárastu úmrtí v ďalších 5 rokoch*") from 25 November 2020, available in Slovak language at: http://bit.ly/3w5NZgD.

191 Aktuality: "Coronavirus: Those patients not infected with COVID-19 are also paying for it" („*Koronavírus: Na COVID-19 doplácajú aj pacienti, ktorí ním nie sú nakazení*") from 10 April 2020, available in Slovak language at: http://bit.ly/3f1DZ23; Aktuality: "Healthcare during the coronavirus: The number of surgeries was decreased by half, patients suffering from cancer had significant problems" („*Zdravotníctvo v čase koronakrízy: Počet operácií sa znížil aj o polovicu, značné problémy mali onkopacienti*") from 14 May 2020, available in Slovak language at: https://bit.ly/39oOysg.

4.1 General framework of the provision of healthcare

The basic legal framework of the right to health consists of taking on the obligation to implement the right to health contained in key international and European conventions[192] and anchoring the right to health in a broader sense in the Constitution of the Slovak Republic. Undoubtedly, it was important to adopt implementing legislation that regulates the right to health to a sufficient extent.[193]

A legally binding definition of the right to health at the international level is defined in the International Covenant, which defines the right to health in Article 12(1) as *"the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"*.[194] Pursuant to the article, states are to adopt and implement measures that create *"conditions which would assure to all medical service and medical attention in the event of sickness."*[195]

The exercise of the right to health is defined by several fundamental features. These features are independent of each other, and their implementation depends on the state of development in the country in which the right to health is or is to be exercised. These features include accessibility, accessibility (including non-discrimination, physical, economic, information accessibility), acceptability and quality.[196] According to the UN Committee on Economic, Social and Cultural Rights, a functioning system of public health and healthcare facilities, goods and services, as well as programs, have to be available in a sufficient quantity within a State Party to the International Covenant.[197] The Slovak Republic is therefore obliged, in accordance with the principle of equal treatment, to ensure timely access to basic preventive, curative and rehabilitative healthcare and education, including regular screening programs, appropriate treatment of common diseases, illnesses and injuries, especially at the community level.[198] In the first wave of the pandemic, it was precisely the availability of healthcare that was insufficient at the regional level, but also in relation to selected patients.

192 International Covenant on Economic, Social and Cultural Rights (Article 12), International Convention on the Elimination of All Forms of Racial Discrimination (Article 5), Convention on the Rights of the Child (Article 24), Convention on the Elimination of All Forms of Discrimination against Women (Article 12), Convention on the Rights of Persons with Disabilities (Article 25), European Social Charter (revised, Article 11).

193 Slovak National Centre for Human Rights: Report on the observance of human rights, including the principle of equal treatment in the Slovak Republic for the year 2020, (Bratislava, 2020), p. 141 available in Slovak language at: https://bit.ly/39gyxEA.

194 International Covenant on Economic, Social and Cultural Rights (1966), Article 12(1).

195 International Covenant on Economic, Social and Cultural Rights (1966), Article 12(2).

196 UN Committee on Economic, Social and Cultural Rights, General comment no. 14(2000): The right to the highest attainable standard of health (article 12), 11 August 2000, E/C.12/2000/4, p. 5, available at: https://digitallibrary.un.org/record/425041.

197 Ibid.

198 UN Committee on Economic, Social and Cultural Rights, General comment no. 14(2000): The right to the highest attainable standard of health (article 12), 11 August 2000, E/C.12/2000/4, p. 10, available at: https://digitallibrary.un.org/record/425041.

When evaluating the exercise of the right to health in the context of access to healthcare during the first wave of the pandemic, it is also necessary to evaluate the measures and steps taken by the Slovak Republic to achieve the maximum level of protection of the right to health at the national level. It is therefore inevitable to deal with whether the Slovak Republic has done its utmost to eliminate systematic shortcomings in the provision of healthcare in accordance with Article 2(1) of the International Covenant, which can be largely attributed to the need to adopt strict measures of the Ministry of Health of the Slovak Republic and the guidelines of the Chief Public Health Officer of the Slovak Republic in a still very favourable epidemic situation.

When implementing the obligations arising from the International Covenant in the Slovak Republic, the so-called principle of progressive realization of rights will be employed.[199] Unlike the obligations of States Parties under the International Covenant on Civil and Political Rights, Parties to the International Covenant may implement their obligations under it gradually (even over several years). This principle is reflected in Article 2(1) of this Covenant, according to which the Contracting Party *"undertakes to take steps, individually or through international assistance and co-operation progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."*[200] The fact that the Slovak Republic is not fulfilling its obligations in the area of the right to health pursuant to Article 12(1) of the International Covenant, sufficiently drew the attention of the UN Committee on Economic, Social and Cultural Rights in 2019. In its concluding observations, it states that it is *"concerned that there are systematic weaknesses in health-care provisions. These include infrastructure of poor quality due to a lack of investment, limit-*

199 International Covenant allows for the possibility to restrict the right to health, according to Article 4 of the International Covenant, State Parties to the Covenant recognize that, "in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society." According to the UN Committee for Economic, Social and Cultural Rights, however, emphasizes that the Covenant's limitation clause, article 4, is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States. It is also important to take into account the fact that while the Covenant provides for the progressive realization of economic, social and cultural rights under the International Covenant at the national level, the UN Committee on Economic, Social and Cultural Rights in its General comment No. 14(2000):The right to the highest attainable standard of health (article 12), 11 August 2000 confirms that States Parties have a core obligation to ensure the satisfaction of at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In relation to the right to health, among these are the guarantee of the access to healthcare facilities, goods, and services in accordance with the principle of equal treatment; the provision of essential drugs in accordance with the WHO Action Programme on Essential Drugs.

200 International Covenant on Economic, Social and Cultural Rights (1966), Article 2(1).

ed screening facilities, gaps in the geographical coverage of some healthcare services and a low number of physicians and nurses in some regions."[201] The lack of investment in the provision of health care was also pointed out by the Organization for Economic Cooperation and Development, according to which the Slovak Republic *"spends much less on health than the EU average, both in absolute numbers and as a share of gross domestic product."*[202] The situation is all the more serious given that the total amount of funds invested by the Slovak Republic in the healthcare provisions in relation to the domestic gross product has been declining since 2016.

In addition to the lack of investment in healthcare provision, the Slovak Republic can also be criticized for the inefficiency of the provision of healthcare. According to the Ministry of Finance of the Slovak Republic and its "Value for Money" department, *"the Slovak Republic spends more on healthcare than the surrounding countries but falls behind in the results. The Czech Republic, Poland and Hungary achieve, on average, 18% lower mortality avoidable by the healthcare system. One of the reasons for the lag is the low efficiency of the Slovak healthcare system."*[203] The number of avoidable and treatable deaths in the Slovak Republic is alarming. While the EU average accounts for approximately 163 avoidable deaths per 100,000 inhabitants, in the Slovak Republic there are up to 244 avoidable deaths per 100,000 inhabitants, which represents more than 11,463 patients whose deaths could be averted.[204] The situation in the Slovak Republic is even worse with treatable mortality, where the number of treatable deaths per 100,000 inhabitants is up to 80% higher than the EU average.[205] The European Committee for Social Rights also considers the situation to be alarming, stating that *"the Slovak Republic has not complied with Article 11(1) of the European Social Charter"* as it has not shown that it has taken sufficient measures to prevent premature deaths.[206] According to Article 11(1) of the revised European Social Charter *"to ensure the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia to re-*

201 Concluding observations on the 3rd period report of Slovakia, the UN Committee for Economic, Social and Cultural, 14 November 2019, E/C.12/SVK/CO/3, available at: https://bit.ly/2PfHnMe.

202 Organization for Economic Cooperation and Development/ European Observatory on Health Systems and Policies, „Slovakia: Country Health Profile 2019", available at: https://bit.ly/2PunZei.

203 Ministry of Finance of the Slovak Republic, Ministry of Health of the Slovak Republic, "Revision of healthcare expenditures: final report" („*Revízia výdavkov na zdravotníctvo: záverečná správa*") (2016), p. 5, available in Slovak language at: https://bit.ly/3tXxAZQ.

204 Statistical Office of the European Union (EUROSTAT), „Treatable and preventable mortality of residents by cause and sex" HLTH_CD_APR, (2016) available at: https://bit.ly/3cxi9Sr .

205 Ibid.

206 European Committee of Social Rights, „Conclusions 2017 for Articles 3,11,12,13,14,23 a 30" (2018), p. 1043, available at: https://bit.ly/3u50iIw.

move, as far as possible the causes of ill-health."[207]

In addition to the lack of investment in health in previous years and the inefficiency of the management of the healthcare system, the Slovak Republic has not taken sufficient measures to increase the number of physicians and other health professionals in the healthcare system. According to information from the National Centre for Health Information, 83,896 health workers are working in the Slovak Republic, of which only 22,307 are physicians.[208] Despite the fact that the average number of physicians in the Slovak Republic (3.4 physicians per 1000 inhabitants) is close to the average of the European Union (hereinafter "EU") (3.6 physicians per 1000 inhabitants),[209] the number of nurses per 1000 inhabitants (3, 4) has long been below the EU average (8).[210]

In the context of the COVID-19 pandemic, the inappropriate geographical distribution of the health workforce and the average age of physicians can be considered the most problematic[211]. More than 45% of physicians are over 50 years of age, and therefore, in the context of the COVID-19 pandemic, they can be considered a vulnerable group with regard to their health.[212]

Reflecting on the evaluation of the Slovak Republic by the UN Committee on Economic, Social and Cultural Rights and the European Committee on Social Rights, considering the amount of investment in health and measures[213] taken to eliminate serious deficiencies in healthcare provision, the Centre submits that the Slovak Republic has not properly fulfilled its international[214] and regional[215] commitments on access to healthcare. In the opinion of the Centre, the Government of the Slovak Republic has not taken sufficient economic and technical measures that would gradually aim to ensure the maximum degree of efficiency and protection of the right to health, with full use of its resources and by all appropriate means.

Insufficient implementation of the international human rights obligations of the Slovak Republic contributed to the fact that at the time of the first wave of the pandemic, the system healthcare provision

207 European Social Charter (1996), Article 11(1).

208 National Health Information Centre, "Medical Yearbook of the Slovak Republic for 2019" („*Zdravotnícka ročenka Slovenskej republiky za rok 2019*") (2020), p. 192, available in Slovak language: https://bit.ly/39qEfnr.

209 Organization for Economic Cooperation and Development/ European Observatory on Health Systems and Policies, „Slovakia: Country Health Profile 2019", available at: https://bit.ly/2PunZei.

210 Ibid.

211 Ibid.

212 National Health Information Centre, "Medical Yearbook of the Slovak Republic for 2019" („*Zdravotnícka ročenka Slovenskej republiky za rok 2019*") (2020), p. 192, available in Slovak language: https://bit.ly/39qEfnr.

213 Measures implemented in accordance with the Strategic Framework for Health for 2014-2030.

214 According to Article 12(1) and (2) in conjunction with Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

215 According to Article 11(1) of the European Social Charter.

was not prepared to cope with a critical epidemic situation. The Centre is of the opinion that a state in which preventive, curative and rehabilitative healthcare is provided in a proper and timely manner for all patients in accordance with the principle of equal treatment could be considered as proper management of a critical epidemic situation. The unpreparedness of the state, its institutions, and the healthcare system, as well as the possible collapse of healthcare provision, were also pointed out by several experts,[216] including the Slovak Medical Chamber,[217] the Association for the Protection of Patients' Rights[218] and the Supreme Audit Office of the Slovak Republic.[219]

216 Teraz.sk: "Analyst: New coronavirus did not verify the Slovak healthcare" („*Analytik: Nový koronavírus nepreveril slovenské zdravotníctvo*") of 04 July 2020, available in Slovak language at: https://bit.ly/3m9fXDJ.

217 Lekom.sk: "The President of Slovak medical association evaluated the year 2020 for Zdravotnícke noviny" („*Prezident SLK zhodnotil pre Zdravotnícke noviny rok 2020*") from 18 January 2021, available in Slovak language at: https://bit.ly/3fpbllc.

218 Mediweb: "Stratification was not prepared as a crisis plan" ("*Stratifikácia sa nepripravovala ako krízový plán*") from 07 May 2020, available in Slovak language at: https://bit.ly/3cAXY61.

219 The Supreme Audit Office of the Slovak Republic, "Report on the Results of the Inspection of State Material Reserves of the Slovak Republic in the event of an exceptional situation" (2020) available in Slovak language at: https://bit.ly/3m2NZtf.

4.2 Unconstitutionality of measures on healthcare provision in the first wave of the pandemic

According to Article 40 of the Constitution of the Slovak Republic, *"everyone shall have the right to protection of his or her health. The citizens shall have the right to free health care and medical equipment for disabilities on the basis of medical insurance under the terms to be laid down by law."* A comprehensive definition of the right to health is lacking in the Constitution of the Slovak Republic and by its systematic inclusion in the second chapter, the right to health is classified only as a fundamental right, the Constitution of the Slovak Republic does not recognize it as a human right per se.[220] A comprehensive picture of the applicability of the right to health, in the context of access to healthcare, is further completed by the legal regulation of other human rights contained in the Constitution of the Slovak Republic[221] as well as the rich legislative regulation in the field of healthcare provision.[222]

The scope of fundamental rights and freedoms can only be regulated by law, while *"when imposing restrictions on fundamental rights and freedoms, respect must be given to the essence and meaning of these rights and freedoms and such restrictions shall only be used for the specified purpose."*[223] The right to health, especially in the context of the right to healthcare and access to it, can thus only be restricted by law.

"An emergency state has far-reaching effects in the legal system. On the basis of the Constitutional Act on security of state, it allows the Government to directly restrict the listed fundamental rights or impose obligations by its decision."[224] It is the Constitutional Act on security of state that also contains an exhaustive enumeration of human rights and freedoms that can be restricted in times of emergency. The right to health and the right to and

220 Slovak National Centre for Human Rights: Report on the observance of human rights, including the principle of equal treatment in the Slovak Republic for the year 2019, p. 141.
221 Right to equal treatment (Article 12 of the Constitution of the Slovak Republic), Right to life (Article 15(1) of the Constitution of the Slovak Republic), right to protection from torture or cruel, inhuman or degrading treatment (Article 16(2) of the Constitution of the Slovak Republic), right to maintain and protect one's human dignity (Article19 (1) of the Constitution of the Slovak Republic), right to protection of health and safety at work (Article 36(1)(c) of the Constitution of the Slovak Republic), right to protection of woman during pregnancy (Article 38 of the Constitution of the Slovak Republic) right to favourable environment (Article 44(1) of the Constitution of the Slovak Republic).
222 Healthcare act; Act No. 577/2004 Coll. on the scope of healthcare provided by the public health insurance and on the reimbursements for services related to the provision of healthcare, as amended; Act No. 578/2004 Coll. on healthcare providers, healthcare workers, professional organizations, amending and supplementing certain acts, as amended; Act No. 579/2004 Coll. on the emergency medical service, amending and supplementing certain acts, as amended; Act No. 580/2004 Coll. on health insurance, amending and supplementing Act No. 95/2002 Coll. on Insurance, amending and supplementing certain acts, as amended; Act No. 581/2004 Coll. on health insurance companies, healthcare supervision, amending and supplementing certain acts, as amended.
223 Article 13(4) of the Constitution of the Slovak Republic.
224 Finding of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 22/2020, para 39, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView.

access to healthcare is not among the rights listed. Such a mandate is not included in the basic regulations governing the provision of healthcare, e.g. the Health Care Act; Act No. 577/2004 Coll. on the Scope of Healthcare Covered by Public Health Insurance and on the Reimbursement of Healthcare Related Services, as amended; Act No. 578/2004 Coll. on Healthcare Providers, Healthcare Workers, Professional Organizations in Healthcare and on Amendments to Certain Acts, as amended; Act No. 355/2007 Coll. on the Protection, Promotion and Development of Public Health and Amendments to Certain Acts, etc.

As the exception of the law applies when restricting and determining the conditions under which healthcare is provided to citizens, i.e., the right to health can be restricted and regulated exclusively by law, the Ministry of Health of the Slovak Republic, and the Chief Public Health Officer of the Slovak Republic [225] ordered the providers of inpatient healthcare to take measures restricting the access of the population to health care in violation of the Constitution of the Slovak Republic. Pursuant to Article 2(2) of the Constitution of the Slovak Republic, state bodies may act only on the basis of the Constitution of the Slovak Republic, within its scope and to the extent and in the manner provided by law. The Constitutional Court of the Slovak Republic states that only such a procedure of state bodies that considers the constitutional principles of the cited provision of Article 2(2) of the Constitution of the Slovak Republic, can be recognized as fulfilling the principle of legal certainty as an inseparable part of the rule of law. [226] **"***The executive may not, by their generally binding legislation, restrict fundamental rights and freedoms by imposing an obligation, in any other way***."** [227]

A significant negative side effect of the unconstitutional measures of the Ministry of Health of the Slovak Republic and the decrees of the Chief Public Health Officer of the Slovak Republic was that many institutional providers and outpatient clinics interpreted these measures and guidelines more broadly and restricted access to healthcare even more. The measure of the Ministry of Health of the Slovak Republic ordered all healthcare providers to take *"steps aimed at limiting those planned surgical procedures, whose failure to perform*

225 Guideline of the Chief Public Health Officer of the Slovak Republic in connection with coronavirus 2019-nCoV (first update) from 06 February 2020; Guideline of the Chief Public Health Officer of the Slovak Republic in connection with the COVID-19 disease created by the coronavirus SARS-CoV-2 No. OE/791/83321/2020 from 03 March 2020, No. OE/791/84737/2020 from 09 March 2020, č. OE/79185521/2020 from 13 March 2020, No. OE/791/86125/2020 from 18 March 2020, No. OE/791/86973/2020 from 30 March 2020, No. OE/791/89586/2020 from 20 March 2020.

226 Finding of the Constitutional Court of the Slovak Republic, Case No. I. ÚS 3/98, available in Slovak language at: https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView.

227 Finding of the Constitutional Court of the Slovak Republic, Case No. PL ÚS 16/05, available in Slovak language at: https://www.slov-lex.sk/judikaty/-/spisova-znacka/PL%252E%2B%25C3%259AS%2B16%252F05.

or postponing will not endanger the life and health of persons."[228] It does not emerge from the measure of the Ministry of Health of the Slovak Republic that there was a requirement for a complete cessation of the performance of medical procedures (surgical, diagnostic, and other). On the contrary, this measure precisely defines which actions are to be restricted (planned operations). At the same time, however, it imposes a condition that, even in the case of planned surgical operations, only those whose non-performance or postponement will not endanger the life and health of persons shall be restricted. However, some healthcare providers (especially inpatient healthcare providers) have taken other measures in addition to the implementation of this measure, which has resulted in a reduction in the provision of healthcare only to the provision of acute healthcare.

228 Measure of the Ministry of Health of the Slovak Republic from 17 March 2020, No. S08147-2020-ONAPP, available in Slovak language at: https://bit.ly/2FDZypR.

4.2.1 Impact of unconstitutional measures and guidelines on healthcare provision

Most state healthcare providers have restricted the activities of all inpatient healthcare departments, departments of specialized healthcare and diagnostics, places of one-day care, etc. In order to map the impacts of measures taken by the Ministry of Health of the Slovak Republic and the Public Health Office on the provision of healthcare, the Centre conducted a survey in which it addressed all state providers of inpatient healthcare, except spa treatment providers (a total of 60 providers). Information on restrictions in the provision of healthcare on the basis of a request for access to information pursuant to Act No. 211/2000 Coll. on Free Access to Information and Amendments to Certain Acts (Freedom of Information Act) was provided by a total of 50 respondents. The Centre notes that only 10 providers have not restricted the provision of healthcare in connection with the emergency state. They were only highly specialized medical facilities.[229]

Other providers surveyed (40 in total), along with measures to prevent the spread of COVID-19, also restricted healthcare. All proceeded in accordance with the measures issued by the Ministry of Health of the Slovak Republic and the Public Health Office. However, on the basis of the information made available to it by the interviewed entities, the Centre finds that their approach was different, i.e., the extent of restrictions on the provision of healthcare varied. Some provided exclusively acute healthcare, others, in addition to acute, also comprehensive healthcare for oncology patients, parturient mothers and newborns, patients requiring the provision of rare or long-term healthcare or short-term hospitalization, etc.

According to the Ministry of Health of the Slovak Republic, its measure was an important tool for protecting the life and health of persons in connection with the spread of COVID-19 in the Slovak Republic, taking into account knowledge and experience from other countries, epidemic developments in various regions of the world with a high probability of threat and a possible effect of a large number of people with COVID-19, especially in the groups with the most severe disease progression and mortality.[230] The aim of the issued measure of the Ministry of Health of the Slovak Republic was not to prohibit the implementation of planned surgical procedures, but it was primarily of a preventive and recommendatory nature for healthcare providers, in connection with the crisis situation in the Slovak Republic.[231]

According to several interviewed providers, their basic obligation is to provide healthcare correctly, i.e. *"if all medical procedures are performed to correctly identify the disease with the provision of timely and effective treatment to heal or improve the state of health of*

229 For example, the Institute of Molecular and Nuclear Medicine in Košice, National Institute of Tuberculosis, Lung Diseases and Thoracic Surgery in Vyšné Hágy.

230 From the statement "Call for elimination of an illegal situation in the field of provision of healthcare - response of the Ministry of Health of the Slovak Republic of 22 May 2020 addressed to the Slovak National Centre for Human Rights.

231 Ibid.

a person, taking into account current medical knowledge and in accordance with standard therapeutic procedures taking into account the individual condition of the patient."[232] In case that the patient's condition requires acute healthcare, such care should be provided promptly. In other cases, healthcare must also be provided in a timely manner, but not without delay, i.e., such treatment may be performed several months after diagnosis. In the Centre's view, the above-mentioned statement cannot be applied to the situation arising in connection with the spread of COVID-19, in particular, due to the urgency of providing healthcare within the meaning of Section 2(3) of the Health Care Act, the attending physician decides on the basis of relevant information about the patients' state of health. In some cases, it is possible to properly and timely evaluate the patient's health only on the basis of the results of diagnostic medical procedures (for example, X-ray, MRI, or CT). However, the performance of diagnostic medical procedures was also restricted in the emergency state.

However, the problem of unavailability of healthcare in the emergency state did not only concern providers of inpatient healthcare, but also providers of outpatient healthcare. According to some inpatient healthcare providers, emergency and urgent care providers were overloaded due to outages in the outpatient healthcare sector. Many inpatient healthcare providers had to not only implement individual measures of the Ministry of Health of the Slovak Republic and guidelines of the Chief Public Health Officer of the Slovak Republic but also manage the influx of patients and provide healthcare to patients who came to emergency or urgent care with diseases that belonged to primary or secondary outpatient healthcare.

According to the information collected by the Centre from higher territorial units, it can be stated that the absence of physicians in outpatient clinics differed from one higher territorial unit to another and the regional availability of healthcare was not the same in all regions. The unavailability of outpatient physicians in individual regions ranged up to 20% of all outpatient physicians. Due to the number of physicians per 1,000 inhabitants in some HEIs (for example, Trnava self-governing region, Prešov self-governing region, Banská Bystrica self-governing region, Trenčín self-governing region), the seemingly insignificant outage of outpatient physicians could have caused unavailability of outpatient healthcare at the local or regional level.

However, the absence of outpatient physicians cannot be assessed with complete accuracy, especially since not all outpatient physicians reported their absence from the outpatient clinic. The most common reasons for the absence of outpatient physicians were the care for a child under 11 years of age (quarantine treatment of a member of the family) or preventive quarantine of a physician (most often due to the older age of the physician). While most inpatient healthcare providers began to gradually resume the

232 Act No. 576/2004 Coll. on healthcare and on services related to healthcare, amending, and supplementing certain acts.; Section 4(3).

provision of regular healthcare under strict hygiene measures as early as May 2020, physicians returned to outpatient clinics much later and gradually.[233]

Several higher territorial units have recorded a number of complaints and motions about the activities of the outpatient clinic. Many patients had no access to a physician, neither directly in the outpatient clinic nor by telephone or in writing. Some physicians have decided to provide healthcare in the form of telemedicine - via the Internet or the telephone.[234] According to a survey by the Association for the Protection of Patients' Rights, up to 60% of respondents communicated with their general practitioner or specialist by telephone.[235] The situation was so serious that at the beginning of May 2020, the Ministry of Health of the Slovak Republic called on all outpatient physicians to start providing healthcare and not to neglect patients (including the provision of preventive healthcare).[236] The Centre notes that the situation in the field of outpatient healthcare settled only after the lifting of the state of emergency on 15 June 2020, i.e. one month after inpatient healthcare providers began postponing surgeries, they provided also other healthcare in addition to acute healthcare and made diagnostics available in full.

233 SME.sk: According to Krajčí, the healthcare system is returning to the normal regime („*Zdravotníctvo sa podľa Krajčího vracia do bežného režimu*“) from 28 May 2020, available at: https://bit.ly/3sLmXcm.

234 Trend.sk: “We are also afraid. The State does not pay attention to the problems of outpatient physicians, says the head of the medical association” („*Aj my máme strach. Štát nerieši problémy ambulantných lekárov, tvrdí šéf lekárskej asociácie*“) from 11 October 2020, available in Slovak language at: https://bit.ly/31zer4u.

235 Association for the Protection of Patients§ Rights (Asociácia na ochranu práv pacientov), “Up to a third of Slovaks have experienced a deterioration in the availability of healthcare due to coronavirus („*Zhoršenie dostupnosti zdravotnej starostlivosti v dôsledku koronavírusu pocítila až tretina Slovákov!*)“ from 05 May 2020, available in Slovak language at: https://bit.ly/3wfoWbh.

236 Denník E: Patients sometimes demand examinations or check-ups in vain, the Minister has called upon the physicians to return to work (“*Pacienti sa niekedy márne domáhajú vyšetrenia či prehliadky, minister vyzýval lekárov, aby sa vrátili do práce*”), available in Slovak language at: https://bit.ly/3hwLiw5.

4.2.2 The urgency of execution of abortion and the related restrictions on reproductive rights

During the state of emergency, the difference in the application of Section 2(3) of the Healthcare Act, i.e., in the decision of the attending physician on the urgency of providing healthcare, has manifested. This difference was most visible in relation to abortion, which was seen by some physicians as an acute medical procedure and, on the contrary, some considered abortion to be an act other than acute healthcare. The inconsistent interpretation of the urgency of abortion as a healthcare procedure may have manifested itself in the unavailability of safe abortion at the regional level, especially for women and girls from socially disadvantaged backgrounds.

Access to safe abortion has also deteriorated in other countries during an emergency state. Several NGOs[237] have argued that women do not have access to abortion during an emergency state due to general restrictions on the provision of healthcare, as many healthcare providers consider abortion to be planned medical care. This topic was perceived even more sensitively by society, as since 2019, several members of the National Council of the Slovak Republic have tried to restrict access to safe abortion through their legislative activities. The Ministry of Health of the Slovak Republic has also started the process of amending Decree No. 74/1986 Coll. implementing the Act of the Slovak National Council No. 73/1986 Coll. on Abortion, the aim of which was to exclude the age of over 40 years from the list of health indications for its implementation.

As part of the social discussion on the urgency of abortion, the Ministry of Health of the Slovak Republic also commented on abortion as a healthcare procedure, which claimed that non-execution of abortions during the COVID-19 pandemic protects the health of women, i.e. it prevents a woman from becoming infected with COVID-19 on the premises of a medical facility.[238] The Ministry of Health of the Slovak Republic also described the execution of abortion as the provision of healthcare that is not acute. According to the opinion of the Ministry of Health of the Slovak Republic presented by its spokesperson in Denník N: *"Today, unfortunately, we are in a state where we cannot take clear responsibility for endangering the lives and health of women in procedures that are not among the essential healthcare services."*[239] This opinion of the Ministry of Health of the Slovak Republic was also supported by the statement of the Minister of Health of the Slovak Republic, who did not recommend the execution

237 For example, civil society organization Option to choose (Možnosť voľby).

238 Denník N:" Krajčí does not agree with the Ombudswoman that abortions should be carried out during the epidemic, does not recommend it" („*Krajčí nesúhlasí s ombudsmankou, že interrupcie by sa mali robiť aj počas epidémie, neodporúča ich*") from 28 April 2020, available in Slovak language at: https://bit.ly/3dnpva2 .

239 Ibid.

of abortion due to a bad epidemic situation.[240]

Acute healthcare is defined by the Healthcare Act as *"healthcare provided to a person in the event of a sudden change in his or her state of health, which directly endangers his or her life or one of his basic life functions; or causes sudden changes in her behaviour and actions, under the influence of which she immediately endangers herself or her surroundings. Urgent care is also health care provided during childbirth."*[241] The urgency of healthcare is decided exclusively by the attending physician. For this reason, the Ministry of Health of the Slovak Republic, as the central body of state administration in the field of healthcare,[242] cannot decide whether the provision of any healthcare (including the execution of abortion) will be delayed or not. Therefore, it should also carefully consider its statements, which, although not legally binding, may influence the decision of specific attending physicians to perform this procedure.

In order to remove ambiguities as to whether abortion is an acute medical procedure in accordance with Section 2(3) of the Healthcare Act, the Centre turned to experts in the field of gynaecology and obstetrics (heads of relevant departments and heads of relevant clinics)[243] and the chief expert of the Ministry of Health of the Slovak Republic for gynaecology and obstetrics prof. MUDr. Miroslav Borovský, CSc., who disagreed with the opinion of the Ministry of Health of the Slovak Republic and evaluated abortion as acute healthcare, not only because of the legal time limit for abortion at the request of a woman,[244] but also because of the risk of adverse effects related to the procedure, which increase in direct proportion to the increasing stage of a woman's pregnancy.[245] Given that the assessment of the urgency of healthcare is a strictly technical issue, the Centre will base its assessment solely on the views of experts in the field.

The Centre considers the prevention of women's access to safe

240 Aktuality.sk: "Minister of health wants tougher repercussions for anti-vaxxers. Including reimbursement of treatment" („*Minister zdravotníctva chce tvrdšie postihy pre antivaxerov, vrátane preplácania liečby*") (podcast) from 31 March 2020, available in Slovak language at: https://bit.ly/2O4XStS (beg. 16:08 min.)

241 Act No. 576/2004 Coll. on healthcare and on services related to healthcare, amending, and supplementing certain acts.

242 Act No. 571/2001 Coll. on organisation of activities of the Government and organisation of the central state administration, as amended.

243 Head of the Gynaecology and Obstetrics Clinic at the University Hospital in Nitra, Head of the Gynaecology and Obstetrics Department of the University Hospital with Polyclinics in Skalica, Head of the Gynaecology and Obstetrics Department of the University Hospital in Žilina, Head of the Gynaecology and Obstetrics Department of the University Hospital with Polyclinics in Nové Zámky, Head of the Gynaecology and Obstetrics Clinic at the University Hospital in Trenčín, Chief physician of the 1st Department of Gynaecology and Obstetrics of University Hospital in Bratislava.

244 Pursuant to Section 4 of Act No. 73/1986 Coll. on abortions, as amended, the period for abortion at the request of a women without a medical indication is 12 weeks.

245 From the statement of the Minister of Health of the Slovak Republic from 5 May 2020.

abortion to be a serious interference with women's reproductive rights, which is in conflict not only with the national legislation of the Slovak Republic, but also with its international obligations.[246] Despite the fact that a woman does not have the right to abortion,[247] by preventing access to safe abortion in accordance with the current legislation of the Slovak Republic, there is a restriction on the right to private and family life, which includes the ability of women to decide freely on the number and spacing of their children.[248] Sexual and reproductive health, which undoubtedly includes access to abortion, is also one of the fundamental pillars of the right to health within the meaning of the International Covenant. Provision of healthcare in the field of reproductive health is the duty of every State Party to the International Covenant, including the Slovak Republic.[249]

The need to protect women's fundamental rights and freedoms in connection with abortion was also confirmed by the Constitutional Court of the Slovak Republic in its judgment, in which it assessed the compliance of the legal regulation of abortion with selected provisions of the Constitution of the Slovak Republic. In the opinion of the Constitutional Court of the Slovak Republic, *"[...] the legislator, on the one hand, must not ignore the imperative contained in the wording of Art. 15(1) second sentence of the Constitution - the obligation to protect the unborn human life. On the other hand, it must respect the fact that everyone, including the pregnant woman, has the right to decide on their private life and to protect the realization of their own idea of it from unjustified interference. The possibility for a pregnant woman to apply to the competent institution for abortion is one of the variations by which the constitutional right to privacy and self-determination can be exercised in conjunction with the principle of freedom."*[250]

246 See, for example, Convention on Elimination of All Forms of Discrimination against Women, International Covenant on Economic, Social and Cultural Rights.

247 ECtHR, Silva Monteiro Martins Ribeiro v. Portugal, App. No. 16471/02, Judgment, available at: https://bit.ly/2RtuPhK

248 Convention on Elimination of All Forms of Discrimination against Women (1987), Article 16(1)(e).

249 Committee on Economic, Social and Cultural Rights, General Comment No. 14: Right to health (Article 12) from 11 August 2000, E/C.12/2000/4, p.10, available at: https://digitallibrary.un.org/record/425041.

250 Finding of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 12/01, available in Slovak language at: https://dai.fmph.uniba.sk/~sefranek/cKRR/07_1s.pdf?fbclid=IwAR2fxslxZ73fAumWTlZweVuQ0IrLyuuxN-WGcBLs4Hooobo7tIWTgrJmYYE.

4.3 Conclusion and recommendations

Due to the COVID-19 pandemic, many people in the Slovak Republic have lost access to timely and quality healthcare. The measure of the Ministry of Health of the Slovak Republic and the decrees of the Chief Public Health Officer of the Slovak Republic, by which it imposed on healthcare providers the obligation to take such measures by which the provision of healthcare for the population of the Slovak Republic was restricted, were unconstitutional. In view of the declaration of a state of emergency during the first wave of the pandemic, in accordance with Article 51(2) of the Constitution of the Slovak Republic, the restriction of human rights and fundamental freedoms was subject exclusively to the provisions of the Constitutional Act on security of state. However, it does not include the right to health in the exhaustive enumeration of human rights and fundamental freedoms. The Centre notes that the provisions of the Constitutional Act on security of state defining the regime of restriction of human rights and fundamental freedoms in times of emergency thus act as a *lex specialis* to the general regime of restriction of human rights and fundamental freedoms provided for in Article 13(2) of the Constitution of the Slovak Republic.

The consequences of measures and decrees adopted for the provision of inpatient and outpatient healthcare by the Ministry of Health of the Slovak Republic and organizations in its competence to prevent the spread of COVID-19 have a serious impact not only on the quality of life and health of affected individuals, but also on the society and state of healthcare in the Slovak Republic. The provision of exclusively essential healthcare or the restriction of healthcare exclusively to its provision via telecommunication means could lead to the patient's state of health being underestimated, the severity and extent of his or her illness not being correctly assessed.

With appropriate, timely and effective treatment, which was severely limited, if not suspended, the state could prevent such patients from returning to the healthcare system after the COVID-19 pandemic with advanced diseases characterized by serious complications or persistent consequences. Not only an exhausted health care system but also a social care system will have to deal with these impacts.

Recommendations

The Centre recommends:

1. To the Government of the Slovak Republic, without undue delay, to prepare and implement measures to improve the efficiency and effectiveness of healthcare in the Slovak Republic, so that everyone has access to timely preventive, curative and rehabilitative healthcare that is of quality and education in the area of health, including regular screening programs, appropriate treatment of common diseases, illnesses, injuries, and disabilities, especially at the community level.
2. To the Ministry of Health of the Slovak Republic, without undue delay, to strengthen the preventive healthcare aimed at minimizing avoidable deaths from the most common diseases, through effective screening programs.
3. To the National Council of the Slovak Republic to establish by a legal regulation an independent institution for the protection and promotion of patients' rights as an independent institution with a subsidy from the state budget or as part of the existing mechanism for the protection and promotion of human rights at the national level without undue delay.
4. To the Slovak Ministry of Health of the Slovak Republic to immediately refrain from adopting measures (in the form of laws, other legal regulations, and policies) that result in a deterioration of access to healthcare which is related to the exercise of sexual and reproductive rights of women and girls in the Slovak Republic.
5. To the Ministry of Health of the Slovak Republic, in cooperation with stakeholders, to start the preparation of a National Action Plan for Sexual and Reproductive Health applying a human rights-based approach.

5. An overview of selected topics resonating in Slovak society in 2020 in connection with the COVID-19 pandemic

During 2020, the Slovak legal system expanded by a total of 453 new sources of law published in the Collection of Laws, namely 2 constitutional acts, 124 acts (of which 60 in accelerated legislative proceedings) , 102 decrees, 84 government regulations, 15 resolutions of the Government of the Slovak Republic, 5 findings of the Constitutional Court, 3 resolutions of the Constitutional Court, 4 decisions of the President of the National Council of the Slovak Republic, 100 notifications and 14 measures.

Following the content of other chapters of this year's Report, in an effort to comprehensively map human rights-relevant topics resonating in 2020 in the Slovak pandemic of COVID-19 affected society, the Centre decided to include a chapter on the legislative process in 2020. To this end, it identified a number of key areas where the legislative process was most accelerated by the need for action as a result of the current pandemic. In addition to the topics specifically addressed in the previous chapters, it is appropriate for future evaluation to describe legislative changes in the areas of labour and employment, social security, social services or housing, as these topics specifically address the rights, legitimate interests and obligations of individuals and deserve a summary. Given the number of amendments adopted in 2020, which have often amended each other, this chapter can serve to quickly find acquaint oneself with the issue. The basic sources of information in this section are the official texts of legal regulations and their explanatory memoranda. The presented fifth chapter is dominated by the so-called description with special emphasis on the chronology of the legislative process. To a certain extent, individual parts of the chapter elaborated without connotation and evaluation editing can serve as a memento of a period that required immediate systematic legislative solutions reflecting on unpredictable, threatening, dynamic and hitherto unknown reality. The chronological order of the legislative process reveals the efforts of the legislator as well as the preferred style of law-making, which responds to the stressful pandemic situation in the Slovak Republic during the past year.

During 2020, the Slovak legal system expanded by a total of 453 new sources of law published in the Collection of Laws, namely 2 constitutional acts, 124 acts (of which 60 in accelerated legislative proceedings)[251], 102 decrees, 84 government regulations, 15 resolutions of the Government of the Slovak Republic, 5 findings of the Constitutional Court, 3 resolutions of the Constitutional Court, 4 decisions of the President of the National Council of the Slovak Republic, 100 notifications and 14 measures.[252] Of these, 85 sources of law, were published in the Collection of Laws in 2020 in the context of the COVID-19 disease, in connection with a crisis situation, economic mobilization or in connection with the declaration of a state of emergency pursuant to Article 5 of the Constitutional Act on security of state. These include 1 constitutional act, 30 acts, 3 decrees, 33 regulations of the Government of the Slovak Republic, all 15 resolutions of the Government of the Slovak Republic and 3 resolutions of the Constitutional Court.

The first document published in the Collection of Laws in connection with the COVID-19 pandemic was the Resolution of the Government of the Slovak Republic No.

251 Brief overview of the activities of the National Council of the Slovak Republic during the 8th election period (information available until 31 December 2020), available in Slovak language at https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=492162

252 Processed according to data available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/ until 30 March 2021.

45/2020 Coll. to the proposal for the declaration of an emergency state pursuant to Article 5 of Constitutional Act no. 227/2002 Coll. on the security of the state in time of war, a war state, exceptional state and an emergency state, as amended, to impose work duties on ensuring the provision of healthcare and prohibiting the exercise of the right to strike by certain workers (Government Resolution No. 114 of 15.03.2020).

However, the process of taking measures to combat the pandemic began a few days earlier, on 11 March 2020, when the Government of the Slovak Republic approved a proposal to declare an extraordinary situation pursuant to Section 8 of Act of the National Council of the Slovak Republic No. 42/1994 Coll. on civil protection of the population as amended due to COVID-19 disease in the territory of the Slovak Republic, from 12.03.2020 from 06:00.[253] Along with the declaration of an extraordinary situation, on 11 March 2020, it also approved resolutions on the proposal to allocate members of the Armed Forces of the Slovak Republic to strengthen the Police Force in ensuring public order in connection with measures to combat coronavirus (Government Resolution No. 108) and the Proposal to change the material emergency stocks (Resolution of the Government of the Slovak Republic No. 110).[254] Recognizing that more substantial restrictive interference with certain human rights and fundamental freedoms will also be necessary for the adoption of measures, it has declared a state of emergency relatively quickly with effect from 16 March 2020, in accordance with Article 5 of the Constitutional Act on security of state.

At that time, in connection with the declaration of a state of emergency, the Centre repeatedly drew attention to the basic preconditions and conditions of its application - the existence of a threat to the life and health of persons, even in the causal connection with the pandemic; the possibility of declaring a state of emergency only in the affected or directly endangered area; the limits of the application of the emergency to the extent and for the time necessary, for a maximum of 90 days; the obligation to immediately announce decisions on the declaration of a state of emergency and its termination and on the restriction of fundamental rights and freedoms and the imposition of obligations in the press and broadcasting of radio and television and the obligation to announce their issuance through the Collection of Laws of the Slovak Republic; and in particular an exhaustive definition of the extent of the possible (and proportionate according to the seriousness of the threat) restriction of fundamental rights and freedoms and the imposition of obligations in the affected or directly

253 Resolution of the Government of the Slovak Republic No. 111, 11 March 2020 to the proposal for declaration of an emergency situation in relation to a threat to public health of II. degree due to the COVID-19 disease caused by coronavirus SARS-CoV-2 in the territory of the Slovak Republic and accompanying documentation. Available in Slovak language at: https://rokovania.gov.sk/RVL/Material/24585/1.

254 For more information, see https://rokovania.gov.sk/RVL/Negotiation/1036.

threatened territory. In addition to these conditions, it is also true that even a state of emergency does not give the state a mandate to interfere with human dignity. Fundamental rights and freedoms in the territory of the Slovak Republic continue to apply throughout the declared state of emergency. They belong to and are guaranteed to all people, without exception, regardless of gender, race, colour, language, religion or belief, political or other opinions, national or social origin, nationality or ethnic group, property, gender, or other position. For these reasons, no one can be harmed, favoured, or disadvantaged, even in a situation marked by COVID-19. At this point, it is important to recall that even in a situation of the threat of a pandemic, the state can impose obligations only by law or on the basis of law, within its limits and while preserving fundamental rights and freedoms. Restrictions on fundamental rights and freedoms can only be regulated by law, under the conditions established by the Constitution of the Slovak Republic. They must apply equally to all cases which meet the conditions laid down. In restricting fundamental rights and freedoms, care must be taken to ensure their essence and meaning. Such restrictions can only be applied to the established objective, which is currently the protection of public health, resp. averting the threat to life and health of persons causally linked to a pandemic.[255]

255 Compare with Article 13 of the Constitution of the Slovak Republic.

5.1 The impact of the pandemic on the legislative process in the field of labour law

The pandemic and the measures taken in relation to it had an extraordinary impact on the area of dependent work. Measures that were part of the legislative process in the field of labour law in 2020 were among the most numerous (21 documents published in the Collection of Laws, including 4 regulations of the Government of the Slovak Republic, 14 resolutions of the Government of the Slovak Republic, 3 acts amending Act No. 311/2001 Labour Code, as amended (hereinafter "Labour Code").

In terms of their nature, it is possible to talk about measures:

- mandatory
  - imposing an employment duty,
  - ordering the obligation of an employee of a designated economic mobilization entity to remain in an employment relationship or similar employment relationship if the employer implements an economic mobilization measure and his/her job in the organisational structure of the entity is necessary to ensure the implementation of the economic mobilization measure,
  - imposing an obligation on employers to require confirmation of a negative test result or a certificate issued by the Ministry of Health of the Slovak Republic with a negative test result certified in the EU for COVID-19 disease performed by an entity participating in nationwide testing "Joint Responsibility" when entering their facilities),
- injunctive
  - prohibiting the exercise of the right to strike,
- introducing rights
  - the right to perform work from home during the effectiveness of a measure to prevent the emergence and spread of communicable diseases or a measure in the case of a threat to public health, if the agreed type of work allows it and there are no serious operational reasons on the part of the employer that does not allow work from home,
- introducing exceptions
  - an exception to the restriction of freedom of movement and residence by a curfew relating to the ordinary journey to and from employment,
- annulling
  - termination of employment obligation,
  - prohibition on exercising the right to strike,
- recommending
  - that the employers enable their employees to perform work in the form of a home office to the maximum extent possible.

Chronologically, the first source of measures that had an impact on labour law is the Resolution of the Government of the Slovak Republic No. 45/2020 Coll. on the motion to declare a state of emergency pursuant to Article 5 of the Constitutional Act on security of state to impose an employment obligation to ensure the provision of healthcare and prohibit the exercise of the right to strike by certain workers.[256] By this resolution effective from 16 March 2020, an emergency state was declared on the affected territory within the territorial competence of 12 district offices, involving 22 providers of inpatient healthcare. In order to ensure the provision of healthcare, an employment obligation was imposed on the employees of these 22 inpatient healthcare providers during the state of emergency. The resolution also prohibited the exercise of the right to strike by persons subject to an employment obligation from the date of the declaration of a state of emergency.

By the Resolution of the Government of the Slovak Republic No. 49/2020 Coll. on the proposal to extend the state of emergency pursuant to Article 5 of the Constitutional Act on security of state to extend the imposition of employment obligation to ensure the provision of healthcare and to extend the prohibition on exercising the right to strike by certain workers announced by Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020,[257] the amendment of the territorial definition of the state of emergency was approved, extending it to the entire territory of the Slovak Republic with effect from 19 March 2020. The imposed employment obligation, as well as the prohibition on exercising the right to strike, was therefore applied to employees of 9 types of entities: holders of permits to operate a medical facility of inpatient healthcare, to operate an ambulance of emergency medical services, to operate an ambulance of patient transport services, Health Care Surveillance Authority, legal entities and natural persons who have concluded a contract with the Health Care Surveillance Authority on the provision of inspections of dead bodies, legal entities and natural persons operating a funeral service, the Operational Centre of the Emergency Medical Service of the Slovak Republic, the Public Health Office of the Slovak Republic and regional public health offices.

The aim of Act No. 63/2020 Coll., amending and supplementing Act No. 461/2003 Coll. on Social Insurance, as amended, and supplementing certain acts[258], was with effect from 27 March 2020 to improve the financial situation of recipients of sickness and nursing care benefit and to help partially mitigate the negative financial impact on employers in relation to COVID-19. In addition to the changes in the Social Insurance Act, the

256 Resolution of the Government of the Slovak Republic No. 114, 15 March 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/45/20200316.
257 Resolution of the Government of the Slovak Republic No. 115, 18 March 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/49/20200319.
258 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/63/20200327.html.

amendment also provides a helping hand to employers so that they do not have to reduce the number of employees during the measures adopted, such as quarantine. In the interest of application practice, Art. II proposes to harmonize the scope of obstacles at work in the sense of the Labour Code and the conditions of entitlement to nursing care benefit (Section 141(1) and Section 144a(3)(d)).[259] The act was approved in an accelerated legislative procedure.

Resolution of the Government of the Slovak Republic No. 64/2020 Coll. on the proposal to extend the state of emergency pursuant to Article 5 of the Constitutional act on security of state, to impose an employment obligation to ensure the provision of healthcare in the scope of nursing care in residential social services facilities, which are facilities for the elderly, nursing services facilities, social service homes, specialized facilities, in facilities for the socio-legal protection of children and social guardianship, which are centres for children and families and the extension of the prohibition on the exercise of the right to strike by some employees announced by Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020 imposed, with effect from 28 March 2020, employment obligations for employees of residential social services facilities (i.e. facilities for the elderly, nursing services facilities, social service homes, specialized facilities), and employees of centres for families (such as facilities for socio-legal protection of children and social guardianship).

Act No. 66/2020 Coll., amending the Labour Code and supplementing certain laws,[260] introduced a set of provisions in new Section 250b into the Labour Code with effect from 04 April 2020. These are special provisions, or deviations from other provisions of the Labour Code, which apply only during an emergency situation, an emergency state, or an exceptional state and for two months after their revocation. The act was approved in an accelerated legislative procedure.

During the effectiveness of the measure to prevent the emergence and spread of communicable diseases or a measure at the time of threat to public health ordered by the competent authority pursuant to a special regulation, the employer is entitled to order work from the employee's home, if the agreed type of work allows it. Likewise, during the effectiveness of such measures, the employee is entitled to perform work from his home, if the agreed type of work allows it and there are no serious operational reasons on the part of the employer that does not allow the performance of work from home.

The Centre points out that the performance of work from home (also known as a home office) must be distinguished from the so-called homework and teleworking. In such cases, the performance of work presupposes its agreement in the employment contract. Rather, the performance of work from home

259 In: Explanatory Memorandum – special part, available in Slovak language at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=476706.
260 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/66/20200404.html.

has the nature of work performed occasionally or in extraordinary circumstances with the consent of the employer or in agreement with him/her at home or in other than usual place of work, provided that the type of work performed by the employee under the employment contract allows it (Section 52(5) of the Labour Code).

Similarly, during the effectiveness of a measure to prevent the emergence and spread of communicable diseases or a threat to public health ordered by the competent authority pursuant to a special regulation, the employer is obliged to notify the employee of work schedules at least two days in advance, unless a shorter agreement is agreed with the employee.

The special provisions introduced by Section 250b include the obligation of the employer to notify the employee of the use of leave at least seven days in advance, and in the case of untaken leave under Section 113 (2), at least two days in advance. This period may be shortened with the consent of the staff member. The employer justifies the employee's absence from work even during his quarantine measure or isolation (an important personal obstacle at work); for this time, the employee is not entitled to compensation of wages, unless a special regulation provides otherwise. An employee who has an important personal obstacle at work is considered to be an employee who is temporarily recognized as incapable of work[261] for the purposes of Section 64 (prohibition of dismissal during the protection period by the employer). An employee who returns to work after the end of isolation, personal and all-day treatment of a sick family member according to a special regulation or personal and all-day care of a natural person according to a special regulation shall, for the purposes of Section 157(3) is considered as an employee who returns to work after the end of temporary incapacity for work[262] and thus the employer is obliged to assign him to the original work and workplace. If assignment to the original job and workplace is not possible, the employer is obliged to assign him to another job corresponding to the employment contract.

An important special provision concerning the inability of an employee to perform work, in whole or in part, for the cessation or restriction of the employer's activity by decision of the competent authority or the cessation or restriction of the employer's activity as a result of a declaration of a state of emergency, emergency or state of emergency is set out in para. 6 of the cited Section 250b. In such a case, it is an obstacle to work on the part of the employer, in which the employee is entitled to compensation of wages in the amount of 80% of his average earnings, but at least in the amount of the minimum wage; provision of

261 Due to quarantine measures, isolation, personal and all-day nursing care of a sick family member according to a special regulation or personal and all-day care of a natural person according to a special regulation.

262 Section 250b(5) of Labour Code.

Section 142(4) is not affected.[263] The provisions of paragraph 6 shall not apply to employees of economic mobilization entities in which a duty of employment has been imposed.[264]

In Article IV, Act No. 66/2020 Coll. Act No. 124/2006 Coll. on safety and health at work. According to the general explanatory memorandum to the proposal,[265] the aim is to relieve employers and entrepreneurs in times of crisis from fulfilling the obligations arising from this law, which objectively, even with regard to measures taken in crisis, cannot be met or would be particularly difficult, whether it is disproportionately burdensome (e.g. due to the ban on mass events, it is not possible to carry out a mass acquaintance of employees in the field of occupational safety and health, the participation of employees in reconditioning stays, etc. is also out of the question).

Resolution of the Government of the Slovak Republic No. 72/2020 Coll. to the proposal for the extension of emergency measures pursuant to Article 5 of the Constitutional Act on security of state promulgated by the Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020 and amended by the Resolution of the Government of the Slovak Republic No. 115 of 18 March 2020 and Resolution of the Government of the Slovak Republic No. 169/2020 of 27 March 2020[266] introduced with effect from 08 April 2020 0:00 a.m. to 13 April 2020 23:59 p.m. (Easter) restriction on freedom of movement and residence by curfew, introducing an exception to this restriction in the scope of the usual journey to and from employment and travel for business or other similar activity.

By Regulation of the Government of the Slovak Republic No. 77/2020 Coll. for the implementation of certain measures of economic mobilization,[267] the Government of the Slovak Republic ordered with effect from 10 April 2020 to 12 May 2020 and after its amendment by the Regulation of the Government of the Slovak Republic No. 117/2020 Coll.[268] with effect from 13 May 2020 to 06 July 2020, the implementation of certain economic mobilization measures and their financing at the time of the declared state of emergency. Among other measures, Section 8 of the Regulation stipulates an employment obligation. The person to whom a written order for the performance of a work duty was delivered during

263 If an employer determined in a written agreement with the employees' representatives substantive operational reasons for which the employer cannot assign work to the employee, this shall constitute an obstacle on the part of the employer for which an employee shall be entitled to wage compensation in the amount stipulated in the agreement, being a minimum of 60% of average earnings. The agreement according to the first sentence may not be substituted by the decision of the employer.

264 Section 250(7) of Labour Code.

265 https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=476879.

266 Resolution of the Government of the Slovak Republic No. 207 from 06 April 2020, available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/72/20200408.

267 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/77/20200410.html.

268 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/117/20200513.html.

this period was obliged to take it over from the person authorized to deliver the written order under the threat of a fine by the district office. When issuing an order to perform an employment duty, the district office cooperated with the relevant subject of economic mobilization, in whose favour the order was issued. According to Section 12(2) of the Regulation, an employee of a designated economic mobilization entity was obliged to remain in an employment or similar employment relationship if his employer carried out an economic mobilization measure and his post in the entity's organizational structure was necessary to ensure the implementation of the economic mobilization measure. Such an employee has not been issued a work order. The Regulation was repealed with effect from 07 July 2020 on the basis of the Regulation of the Government of the Slovak Republic No. 189/2020 Coll., Repealing Regulation of the Government of the Slovak Republic No. 77/2020 Coll. for the implementation of certain measures of economic mobilization as amended by the Regulation of the Government of the Slovak Republic No. 117/2020 Coll.[269]

By Resolution of the Government of the Slovak Republic No. 84/2020 Coll. to the proposal to extend the state of emergency pursuant to Article 5 of the Constitutional Act on security of state, to impose an employment obligation to ensure the provision of healthcare to other holders of permits to operate outpatient healthcare facilities and to extend the prohibition on exercising the right to strike by some workers imposed by Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020,[270] with effect from 18 April 2020,[271] the emergency state in the form of imposing an employment obligation as well as a prohibition on exercising the right to strike was extended to employees of general ambulance license holders and specialized ambulance license holders.

The emergency state which was declared in connection with the so-called first wave of the pandemic of the COVID-19 disease, was ultimately terminated by the Resolution of the Government of the Slovak Republic No. 147/2020 Coll. on the proposal to end the emergency state, repeal the imposition of the employment obligation to secure the provision of healthcare, repeal of the prohibition on the exercise of the right to strike by certain employees and the repeal of the prohibition on the exercise of the right to peaceful assembly declared by the Resolution of the Government of the Slovak Republic No. 114 from 15 March 2020 extended by the Resolution of the Government of the Slovak Republic No. 115 from 18 March 2020, Resolution of the Government of the Slovak Republic No. 169 from 27 March 2020, Resolution of the Government of the Slovak Republic No. 207 from 6 April 2020 and Resolution of the Government

269 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/189/20200707.

270 Resolution of the Government of the Slovak Republic No. 233 from 16 April 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/84/20200418.

271 Resolution of the Government of the Slovak Republic No. 233 from 16 April 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/84/20200418.

of the Slovak Republic No. 233 of 16 April 2020.[272] The Resolution also repealed the employment obligation as well as the prohibition on the exercise of the right to strike resulting from the Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020, No. 115 of 18 March 2020, No. 169 of 27 March 2020 and No. 233 of 16 April 2020. The emergency situation declared by the Resolution of the Government of the Slovak Republic No. 111 of 11 March 2020 remained in duration even after the end of the emergency state.

Act No. 157/2020 Coll. supplementing Act No. 461/2003 Coll. on social insurance, as amended and supplementing Labour Code[273], entered into force on 17 June 2020. In order to maintain employment, a new Section 252o Transitional Provision in the event of an emergency situation, emergency state or exceptional state declared in connection with the COVID-19 disease was introduced into the Labour Code in Article II of the Act, allowing for a transitional period, the extension or renegotiation of a fixed-term employment relationship beyond the existing regulation.[274] [275] The act was adopted in an accelerated legislative procedure.

With effect from 01 October 2020, the adopted Regulation of the Government of the Slovak Republic No. 269/2020 Coll. to implement certain economic mobilization measures in connection with the declaration of an emergency state to ensure the provision of solutions for the second wave of the pandemic of the COVID-19 disease,[276] re-ordered certain economic mobilization measures and their financing at the time of the declared emergency state. The regulation is effective so far and during its effectiveness, it was amended by 3 amendments, of which 2 were adopted during 2020 (291/2020 Coll. with effect from 27 October 2020 to 29 December 2020 and 428/2020 Coll. with effect from 30 December 2020 to 08 January 2021).

In addition to other measures, Section 7 of the Regulation again stipulates the employment obligation, in the same way as in the Regulation of the Government of the Slovak Republic No. 77/2020 Coll. According to Section11(2) of the Regulation, an employee of a designated economic mobilization entity is also obliged to remain in an employment relationship or a similar labour-law relation if the employer implements an economic mobilization measure and his/her job in the organizational structure of the entity is necessary to ensure the implementation of the economic mobilization measure. Such an employee is not issued an employment order.

Following the re-declaration of an emergency state, further measures have been taken in relation

272 Resolution of the Government No. 366 from 10 June 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/147/20200610.

273 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/157/20200617.html

274 Explanatory Memorandum – general, available in Slovak language at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=479439

275 Compare with the wording of Section 48(2) of Labour Code.

276 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/269/20201001.html.

to the mandatory antigen testing for COVID-19. By Resolution of the Government of the Slovak Republic No. 290/2020 Coll. on the proposal for the extension of measures within the declared emergency state pursuant to Article 5 of the Constitutional Act on security of state promulgated by Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020,[277] effective from 23 October 2020, the Government of the Slovak Republic repeatedly restricted freedom of movement and residence by a curfew from 24 October 2020 to 01 November 2020 in the period from 05:00 a.m. until 01:00 a.m. the following day, while distinguishing between a stricter regime in selected districts of the Slovak Republic (Námestovo, Tvrdošín, Dolný Kubín and Bardejov), within which if an employee wanted to apply for an exemption from the restriction to travel to and from work, he/she had to be able to provide a negative result of the RT-PCR test or antigen test certified in the territory of the EU for COVID-19 disease performed no more than 24 hours before the prohibition expires, or carried out during the period of prohibition under this resolution. The more lenient regime applied to territorial districts of other districts of the Slovak Republic, where the restriction of freedom of movement and residence by curfew did not apply to travel to and from work (without the need to prove a negative RT-PCR test or antigen test for COVID-19).

By Resolution of the Government of the Slovak Republic No. 298/2020 Coll. to the proposal for further extension of measures within the declared emergency state pursuant to Article 5 of the Constitutional Act on security of state promulgated by Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020,[278] the restriction of freedom of movement and residence was extended by a curfew from 02 November 2020 to 08 November 2020 from 05.00. until 01.00 hrs the following day. The restriction regime was less strict than in the case of the Resolution of the Government of the Slovak Republic No. 290/2020 Coll. To simplify, the restriction of freedom of movement and residence by a curfew did not apply to those persons who proved a negative result of RT-PCR test or a certificate issued by the Ministry of Health of the Slovak Republic with a negative result of antigen test certified in the EU on the COVID-19 disease performed from 29 October 2020 to 01 November 2020 by subjects participating in the nationwide testing "Joint Responsibility", or proved by confirmation of a negative result of the RT-PCR test performed during the prohibition according to this resolution.

At the same time, the restrictions set by the above-mentioned resolutions of the Government of the Slovak Republic did not apply to persons (employees) who had overcome the COVID-19 disease and had proof of overcoming it not older than three months; persons

277 Resolution of the Government of the Slovak Republic No. 678 of 22 October 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/290/20201023.

278 Resolution of the Government of the Slovak Republic No. 693 z 28 October 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/298/20201029.

whose medical condition or medical contraindication does not allow the COVID-19 test to be performed; persons diagnosed with moderate or severe mental disability; persons with a severe autism spectrum disorder or severe, congenital or acquired immunodeficiency; patients suffering from cancer after chemotherapy or transplantation who have leukopenia or persons on cancer or other treatment affecting the immune system (e.g. biologic therapy) due to the risk of delaying regular administration of treatment, radiotherapy or other planned treatment, e.g. by an oncologist, haematologist or radiologist of the planned treatment; as well as persons who, at the time of nation-wide testing with antigen tests for COVID-19 certified in the EU, are ordered home isolation by a regional public health authority or ordered work incapacity due to quarantine by their general practitioner for adults or general practitioner for children and adolescents.

By adopting Resolution of the Government of the Slovak Republic No. 315/2020 Coll. on the proposal to amend the duration of the emergency state pursuant to Article 5 of the Constitutional Act on security of state declared by Resolution of the Government of the Slovak Republic No. 587 from 30 September 2020,[279] which entered into force on 11 November 2020, there was a de facto extension of the duration of the emergency state and the resulting restrictions until 29 December 2020.

Restrictions of freedom of movement and residence by a curfew during the period of Christmas holidays in 2020, in the period from 19 to 29 December 2020 were adopted by Resolution of the Government of the Slovak Republic No. 386/2020 Coll. as amended by Resolution of the Government of the Slovak Republic No. 718 of 11 November 2020.[280] The restriction did not apply to the usual way to and from work and the trip for the performance of business or other similar activities and the return trip. Through the resolution, the Government of the Slovak Republic recommended to all persons in the territory of the Slovak Republic to allow its employees to perform work in the form of a "home office" (probably by work from home under Section 250b(2) of the Labour Code) as much as possible, from the adoption of this resolution until the epidemiological situation has substantially improved.

By Resolution of the Government of the Slovak Republic No. 427/2020 Coll. on the proposal to extend the duration of the emergency state pursuant to Article 5(2) of Constitutional Act on security of state declared by Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020 and for the adoption of measures pursuant to Article 5(4) of Constitutional Act on security of state,[281] with effect from 29 December 2020 due to endangerment of life and health

279 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/315/20201111.

280 Resolution of the Government of the Slovak Republic No. 804 of 16 December 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/386/20201217.

281 Resolution of the Government of the Slovak Republic No. 807 of 29 December 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/427/20201229.

of persons in causal nexus with the emergence of a pandemic, the emergency state was extended by another 40 days, and at the same time, the Government of the Slovak Republic restricted the freedom of movement and residence in the Slovak Republic by a curfew from 30 December 2020 during the period from 05.00 until 01.00 hrs the following day, the restriction expired on 10 January 2021. The restriction did not apply to the usual way to and from work and the trip for the performance of business or other similar activities and the return trip.

Resolution of the Government of the Slovak Republic No. 453/2020 Coll. on the proposal to amend the measures pursuant to Article 5(4) of the Constitutional Act on security of state adopted by Resolution of the Government of the Slovak Republic No. 807 of 29 December 2020 on the proposal to extend the duration of the emergency state pursuant to Article 5(2) of the Constitutional Act on security of state declared by Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020 and on the adoption of measures pursuant to Article 5(4) of the Constitutional Act on security of state [282] is another document published in 2020 in the Collection of Laws, which contains measures relevant to the area of labour-law relations. By adopting the resolution, the Government of the Slovak Republic restricted freedom of movement and residence in the territory of the Slovak Republic by a curfew from 01 January 2021 from 05.00. until 01.00 hrs the following day, the restriction expired on 24 January 2021. The restriction did not apply to the usual way to and from work of employees who, due to the nature of the work, cannot, according to the employer's decision, perform work in the form of "home office" and return trip, and travel for the performance of business or other similar activities which cannot be performed in the form of "home office" and the return trip. At the same time, the Government of the Slovak Republic recommended that all persons in the territory of the Slovak Republic allow their employees to perform work in the form of "home office" as much as possible.

282 Resolution of the Government of the Slovak Republic No. 808 of 31 December 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/453/20201231.

5.2 Measures in connection with COVID-19 in the area of social security and social services

As in the case of measures introduced in the context of the current pandemic in the area of labour relations, the field of social security is also among the areas in which the State tried to set measures during 2020 with the potential to mitigate the negative effects of the pandemic on Slovak citizens.

Measures that were part of the legislative process in the area of social security in 2020, or that specified the provisions of Act No. 461/2003 Coll. on Social Insurance as amended and supplementing certain acts (hereinafter "Social Insurance Act") were among the most numerous (17 documents published in the Collection of Laws, including 10 regulations of the Government of the Slovak Republic, 1 resolution of the Government of the Slovak Republic, 6 acts, amending the act on social insurance).

Act No. 63/2020 Coll. amending and supplementing Act on social insurance and supplementing certain acts [283] entered into effect on 27 March 2020. The act was adopted in an accelerated legislative process. By declaring the emergency situation by the Resolution of the Government of the Slovak Republic No. 111 of 11 March 2020 pursuant to Section 8 of Act of the National Council of the Slovak Republic No. 42/1994 Coll. on civil protection of the population as amended and declaration of an emergency state by the Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020 due to the COVID-19 disease in the territory of the Slovak Republic, the legal relationships related to the law of social security and employment services have changed to such an extent that trough the earlier regulation in the relevant legislation in this area, it was not possible to effectively secure an adequate level of social security of entities affected by the disease itself, as well as the quarantine measures.

The purpose of the act was, therefore, in the interest of protecting fundamental rights and freedoms, in particular the right to adequate material security during periods of work incapacity, the right to work and the right to fair and satisfactory working conditions, to adjust the conditions of nursing and sick benefits and to adopt tools to eliminate the consequences of the declared crisis situation.

Other measures were aimed at preventing significant economic damage to the State. The restriction of the activities of production facilities and the provision of most services has significantly disrupted the economic mechanism in the Slovak Republic. Restricting business activity has reduced or even forestalled the achievement of income for many business entities. For these reasons, it was necessary to create modified tools for employers in such a way as to prevent, as far as possible, damage on the part of the employer while preserving the fundamental rights and freedoms of the employee. According to the drafters, it was necessary to introduce these measures as soon as possible, given that the negative consequences of quarantine measures in the economic area at that time multiplied from week to week.

Section 33(1), Act on social insur-

283 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/63/.

ance, extended the conditions for entitlement to sickness benefits for an employee and a compulsorily insured self-employed person to cases where the insured was ordered a quarantine measure or ordered to stay in isolation.[284] Entitlement to nursing benefit also arises for persons who in cases where a quarantine measure is imposed on a child, closing the facility the child is visiting, or in cases where the person caring for the child cannot provide this care for objective reasons, will care for children younger than 11 years old, or 18 years old if it is a child with a long-term unfavourable health condition.

The act extended the conditions for entitlement to nursing benefits to cases of childcare, where the person caring for the child was ordered to be isolated. Pursuant to the earlier legislation in force before the COVID-19 situation, entitlement to sickness benefits arose in the case of an employee from the 11th day of the duration of temporary work incapacity. For the first ten days, the employee is entitled to income compensation according to Act No. 462/2003 Coll. on income compensation in the event of temporary work incapacity of an employee and on the amendment of certain laws.

The transitional provisions in Section 293er stipulated that the employee's entitlement to sickness benefits arises during the duration of an emergency situation, emergency state or exceptional state declared in connection with COVID-19 (hereinafter "crisis situation") due to an imposed quarantine measure of isolation, from the first day of the temporary work incapacity; the above began to apply only to those temporary work incapacities that arose after the entry into force of this Act. At the same time, in these cases, the amount of sickness benefit for all insured persons is also adjusted to 55% of the daily assessment basis for the entire duration of the claim, i.e., also for the first three days of sickness benefit. This was proposed in an effort to relieve the employer of costs related to the employee's temporary work incapacity in times of crisis, as well as to increase the income of insured persons in cases of imposed quarantine and isolation measures. In the case of an employee who would be recognized during a crisis situation as having temporary work incapacity due to illness or injury, the regime of Section 34(1) retained, and such an insured person will be entitled to sickness benefits only from the 11th day of the duration of temporary work incapacity.

In order to ensure income throughout the crisis in cases where a child (under 11 years old or 18 years old in the case of a child with a long-term unfavourable health condition) is quarantined and isolated, in cases of closure of a facility which (such) child visits, or in cases where the person caring for (such) child is unable to provide care for objective reasons, as well as in cases of treatment of a child under 16 years old, the period of entitlement to nursing benefit has been extended for the entire period of the duration of the need for treatment/care.

Such "quarantine" nursing benefit will be paid for the same period of personal and full-time care only

284 Pursuant to Section 12(2)(f) of Act on the protection of public health.

once and only to one insured person, regardless of how many children are cared for. Unlike the nursing benefit under Section 39, however, in the case of a "quarantine" nursing benefit, it is possible that in the same case (e.g., on the basis of the same school closure, ordering the same quarantine) it is possible to pay nursing benefit gradually to several insured person's parents, adopters). As nursing benefits can only be paid to one insured person for the same period, an obligation has been introduced for the insured person to whom the nursing benefit is currently paid to request that his payment be terminated. Parents can thus change when caring for a child, e.g., with regard to the need to re-enter employment.

Thanks to the amendment, the insured person, who, during the time of crisis situation, would have met the conditions for entitlement to nursing benefit even before its effectiveness, was also paid nursing benefit for this period.

Due to the extension of the period of entitlement to nursing benefit, the insurance is not interrupted for a new employee, or a compulsorily sickness insured and a compulsorily pension-insured self-employed person during nursing/childcare, according to Section 26 from the 11th day of nursing/care needs. The employee, as well as the self-employed person with compulsorily sickness insurance and the self-employed person with compulsory old-age insurance,[285] are exempt from the payment of insurance premiums for the entire period of care.[286]

In the Resolution of the Government of the Slovak Republic No. 64/2020 Coll. on the proposal to extend the state of emergency,[287] effective from 28 March 2020, the Government of the Slovak Republic approved the imposition of employment obligation to ensure the provision of healthcare in the scope of nursing care in residential social services facilities, which are facilities for the elderly, care services facilities, social services homes, specialized facilities, in facilities for the socio-legal protection of children and social guardianship, which are centres for children and families and the extension of the prohibition on the exercise of the right to strike by some employees declared by the Resolution of the Government of the Slovak Republic No. 114 of 15 March 2020. At the same time, the resolution obliges the Minister of Labour, Social Affairs and Family, in cooperation with the Minister of the Interior and the presidents of higher territorial units, to issue measures to ensure the imposition of employment obligation to ensure the provision of healthcare in residential care services and to identify entities of economic mobilization in the area of social security that carry out their activities within the competence of the municipality or as a non-public provider of

285 But also: persons with voluntary sickness insurance, persons with voluntary old-age insurance, persons with voluntary unemployment insurance.

286 Source: Explanatory memorandum – Special part, available in Slovak language at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=7726.

287 Resolution of the Government of the Slovak Republic No. 169 of 27 March 2020, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/64/.

social services or an entity implementing measures of socio-legal protection of children and social guardianship on the basis of granted accreditation in the territorial districts of district offices.

Act No. 66/2020 Coll. supplementing the Labour Code and supplementing certain acts,[288] effective from 4 April 2020. The act was adopted in an accelerated legislative procedure. In Article II of the Act on social insurance, the support period was extended in unemployment by one month for insured persons who were unable to find work until the end of the initial support period at the time of crisis, in particular, due to the labour market situation caused by the spread of the COVID-19 disease. The measure concerns insured persons, whose support period expires in a time of crisis situation since the entry into force of this Act.

The primary purpose of the adopted legislation is to support insured persons who are unable to find employment due to the crisis situation by extending the unemployment benefit period. Thanks to the amendment, the Act[289] authorizes the Government of the Slovak Republic, if necessary, to issue government regulations that could temporarily adjust the conditions for entitlement to unemployment benefit, the conditions for payment of unemployment benefit, the duration of the unemployment benefit period and the amount of unemployment benefit, throughout the crisis situation and two months after the end of the crisis situation in connection with the spread of the COVID-19 disease. According to the proposer of the draft, the government regulation represents a more operative tool for responding to the changing conditions on the labour market compared to the act, given the length and requirements of the legislative process. However, the use of this non-standard tool must be not only justified but also strictly limited. For this reason, the amendment authorizes the Government of the Slovak Republic to use the regulation to change the defined areas of legislation only during the period of the crisis situation and two months after its end. Two months after the end of the crisis situation represent the period necessary for the preparation and approval of proper legal regulation of unemployment benefits reflecting the post-crisis situation on the labour market.[290]

The act also provided that, at the request of the beneficiary, during a crisis situation, the benefit is transferred to an account at a bank, or a branch of a foreign bank specified by the beneficiary in the application, if the account holder agrees to this method of remittance; the account holder is obliged to return the instalments of the pension, injury annuity benefit and survivor's annuity benefit paid to this account after the date of death of the benefit recipient.

During a crisis situation, a written confirmation is not required for filing in connection with sickness insurance, guarantee insurance benefits and unemployment benefits,

288 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/64/.

289 Section 293et(4) of Act on social insurance.

290 https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=476880.

made by electronic means which is not signed with a guaranteed electronic signature. The conditions for the entitlement to "pandemic" nursing benefits were also added by the act for a natural person who is insured against sickness and who personally cares for a child on a full-time basis.

An insured person who, in a time of crisis, became in need of personal and full-time care before the entry into force of this act and this need lasts after the entry into force of this act, is entitled to nursing benefit under this Act also for the period of personal and full-time care for which the entitlement to nursing benefit did not arise before the entry into force of this act

Act No. 68/2020 Coll., supplementing Act on social insurance and amending and supplementing certain acts[291] entered into force on 06.04.2020. The act was adopted in an accelerated legislative procedure. In Article I of the Act on social insurance, with the inclusion of the new Section 293ew, a mechanism for postponing the payment of insurance premiums for self-employed persons with compulsory sickness insurance and compulsory pension insurance and of insurance premiums paid by the employer for the period of March 2020, until 31 July 2020 was adopted. The employer is still obliged to transfer the premiums paid by the employee and transferred by the employer in the original due date. This exception applied to employers and self-employed persons with compulsory insurance who showed a decrease in net turnover or income from business and other self-employed activities by 40% or more. The method of determining the decrease in net turnover and income from business and other self-employed activities pursuant to a special regulation was established by a regulation of the Government of the Slovak Republic.[292] The Government of the Slovak Republic could thus, by regulation, establish another period to which the original premium due date will not apply pursuant to Section 143 of the Act on social insurance. If the employer or the self-employed person with compulsory insurance does not pay the premium for this period even within the due date specified by the regulation of the Government of the Slovak Republic, the Social Insurance Agency may allow them to pay this premium in instalments without interest. If the employer and the self-employed person pay this premium on the new due date, i.e., on time and in the correct amount, the sanctions (penalties) will not apply to them.[293]

Act No. 95/2020 Coll., supplementing Act on social insurance and amending and supplementing certain acts,[294] was approved in an accelerated legislative procedure with effect from 25 April 2020. In order to mitigate the economic impact on premium payers due to the

291 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/68/.

292 Resolution of the Government of the Slovak Republic No. 76/2020 Coll., available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/76/20210331.

293 Source: Explanatory memorandum Special part - https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=476985.

294 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/95/.

COVID-19 crisis situation, Section 293ex removes the obligation to pay premiums by employers or self-employed persons with compulsory sickness and compulsory pension insurance for April 2020, or possibly for another period, which may be established by the Government of the Slovak Republic by a regulation. The employer is still obliged to transfer the premiums paid by the employee and transferred by the employer in the original due date. This exemption applied to employers or self-employed persons with compulsory insurance who closed operations for at least 15 days in April 2020, e.g., on the basis of the Measure of the Public Health Office of the Slovak Republic in the event of a threat to public health No. OLP/2777/2020 of 29 March 2020. At the same time, the Government of the Slovak Republic could by regulation establish another period for which the employer or the self-employed person with compulsory insurance are not obliged to pay insurance premiums, as well as the conditions under which they are not obliged to pay it. The closure of the operations shall be proved by the employer or the self-employed person with compulsory insurance by a declaration on oath submitted to the Social Insurance Agency no later than the eighth day of the calendar month following the calendar month for which he/she is not obliged to pay premiums, i.e., for April 2020, it was submitted no later than 11 May 2020, as 08 May 2020 was a national holiday.

For the period for which the mandatory contributions to the old-age pension savings will not be paid, due to the proposed exemption of the employer from the obligation to pay insurance and mandatory contributions, there will be no increase in the amount in the personal account of the saver in the relevant pension management company, which may have a negative effect. on the amount of old-age pension from II. pillar. In the period according to Section 293ex(1) and (2), due to the participation of the insured persons in the old-age pension savings, the amount of his old-age pension, early old-age pension and minimum pension is not reduced.[295]

By the Regulation of the Government of the Slovak Republic No. 101/2020 Coll. on the extension of the unemployment benefit period for the duration of an emergency situation, an emergency state or an exceptional state declared in connection with COVID-19, the declared wording of which was effective in the period from 30 April 2020 to 29 May 2020. Pursuant to Section 1(1), the unemployment benefit period was extended by one (next) month, which was extended or began to run again according to Section 293et(1) of the Act on social services,[296] and which would expire during the duration of an emergency situation, an emergency state or an exceptional state declared in connection with the COVID-19 disease. The extension of the unemployment benefit period referred to in paragraph 1 was to expire at the latest one month from the date of the end of an emergency situation, an emergency state or an exceptional state declared in relation to COVID-19.

295 https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=477487.

296 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/101/20200430.html.

Regulation of the Government of the Slovak Republic No. 102/2020 Coll. on certain measures in the field of social affairs, family, and employment services in the time of an emergency situation, an emergency state or an exceptional situation declared in connection with COVID-19[297] was approved with effect from 30 April 2020 to 30 June 2020. By a regulation of the Government of the Slovak Republic, certain measures in the areas of social affairs and family in the area of state social benefits and social benefits (child allowance and child allowance supplement, parental allowance, childcare allowance, birth allowance and allowance for parents upon the birth of more children, allowance for a child in alternative care, compensatory allowance for employees who have ceased employment with a permanent underground worker due to a decline in mining activities, funeral allowance), assistance in material deprivation and a special allowance, compensatory maintenance allowance, compensation of social consequences of severe health impairment as well as in the field of social affairs and family and employment services in the performance of medical assessment activities.

Measures have been adopted to ensure that there are no time limits during the crisis, in particular as regards the fulfilment of the obligations of the recipients of cash compensation allowances. It was possible to make any filing in the matter of state social benefits and social benefits, assistance in material need, compensatory maintenance allowance and compensation for the social consequences of a severe disability electronically, even without a guaranteed electronic signature, via e-mail.

In order to protect natural persons, medical assessment activities during a crisis situation were performed without the presence of the assessed person, unless the medical examiner decides otherwise, and the assessment was performed on the basis of submitted medical findings (i.e., documentary evidence). In the time of crisis, the Regulation provided for the non-reassessment of a child's long-term unfavourable health status for the purposes of child allowance, child allowance supplement, parental allowance, and childcare allowance. The condition of the long-term unfavourable health status of the child is considered to be fulfilled by the end of the calendar month in which the crisis situation ended.

Missing the deadlines for notifying the facts determining the duration of entitlement to child allowance, parental allowance, childcare allowance, allowance for a child in alternative care, compensatory allowance to miners, assistance in material deprivation, special allowance and maintenance allowance resulting from the relevant legislation or at the request of the administrative body, which has elapsed since the declaration of a crisis situation until the entry into force of this government regulation was pardoned.

This applies only in cases where the missed act will be performed within 30 calendar days from the end of the crisis situation, which, according to the proposer, ensures equal

297 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/102/20200430.html.

access to benefits and contributions during the crisis situation.[298]

Regulation of the Government of the Slovak Republic No. 103/2020 Coll. on certain measures in the field of subsidies within the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic at the time of an emergency situation, an emergency state or an exceptional state declared in connection with COVID-19,[299] was effective from 30 April 2020 to 02 October 2020.

For the subsidy to support the education of the child's eating habits (hereinafter the "subsidy for food"), the condition of the child's participation in educational activities in nursery schools or teaching at primary school was waived. Based on the Measure of the Public Health Office of the Slovak Republic in the event of a threat to public health No. OLP/3010/2020 of 02 April 2020 it was made possible from 03 April 2020 in school catering facilities to dispense food by the measure in question to a designated group of children. For this reason, it was expedient to waive the requirement of children's participation in educational activities in nursery school or teaching in primary schools in order to provide a subsidy for food issued to these children in times of crisis. If the food dispensed on the basis of the Measure of the Public Health Office of the Slovak Republic in the event of a threat to public health No. OLP/3010/2020 of 02 April 2020 could not be issued to a child, whose health condition, according to the assessment of the attending physician, requires special meals, in accordance with Section 4(6) second sentence, the provided subsidy for food was paid by the school founder to the parent of such a child or to a natural person to whom this child is entrusted to the care by a court decision.

In order to mitigate the effects of the crisis situation, it was also possible to provide a subsidy to support humanitarian aid to an applicant who is a natural person who from 12 March 2020 stopped performing the activity from which he/she received income before the crisis situation was declared. Eligible applicants are e.g., a natural person who, before the crisis situation, worked on the basis of an out-of-work agreement, the validity of which continued in 2020, or which has been terminated by the employer due to a crisis situation and has no other taxable income. The subsidy can be provided to the applicant in the maximum amount of 1,600 EUR per year, while the subsidy applicant cannot be a recipient of old-age pension, early old-age pension, disability pension, sickness benefit, unemployment benefit, retirement pension, invalidity retirement pension, sickness insurance benefit or similar benefit from abroad, recipients of assistance in material need, recipients of parental allowance or recipients of nursing care allowance.[300]

With effect from 30 May 2020, the Regulation of the Government of the Slovak Republic No. 137/2020 Coll., amending the Regulation of the Government of the Slovak

298 https://rokovania.gov.sk/RVL/Material/24794/1.
299 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/103/.
300 https://rokovania.gov.sk/RVL/Material/24795/1.

Republic No. 101/2020 Coll. on the extension of the unemployment benefit period for the duration of an emergency situation, an emergency state or an exceptional state declared in relation to COVID-19.[301] According to the Regulation, the unemployment benefit period extended under paragraph 1, which would have elapsed during an emergency situation, an emergency state or an exceptional state declared in relation to COVID-19, was again extended by one additional month.[302]

Act No. 157/2020 Coll.,[303] supplementing the Act on social insurance and supplementing the Labour Code was approved in an accelerated legislative procedure with effect from 17 June 2020. The Act stipulated that sickness benefits for which a claim arose due to the order of a quarantine measure or isolation before the end of the crisis situation and, if the claim persists, also on the day of termination of the crisis situation, shall be provided under the conditions specified in Section 293er(1) and (2) (pandemic sickness benefits) even after the end of the crisis situation. An employee who develops temporary work incapacity, e.g. the day before the end of the crisis situation, despite its end, the right to sickness benefits paid by the Social Insurance Agency would continue (by default, for the first 10 days of temporary work incapacity, the employee is entitled to incapacity and on the amendment of certain acts provided by the employer) in the amount of 55% of the daily assessment basis (by default, sickness benefits are provided in the amount of 25% of the daily assessment basis for the first three days).

The act provided that in relation to a child up to the age of 11, or up to the age of 18 in the case of a child with a long-term unfavourable health condition, the pre-school or school attended by the child and closed by the decision of the competent authority, continue to be considered as closed also after their opening on 01 June 2020, if the parents do not show interest in the child's participation in the ongoing educational process due to concerns about his/her health or if the child is unable to participate in the educational process due to capacity reasons. The same fiction was introduced in relation to a child who is provided with care in a social services facility, which was closed by the decision of the competent authority and which, with effect from 1 June, or later opened again. From 01 June 2020, as a result of the measure, childcare facilities up to the age of three were opened.

For the period when the child will not attend a pre-school facility, school, or social services facility even after their opening, the child's parent will be entitled to nursing benefit, provided that the conditions of entitlement are met, even after their opening. The regulation of maintaining the right to nursing benefit applies only to pre-school facilities and schools where the educational process will take place,

301 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/137/.
302 Compare with information about Resolution of the Government of the Slovak Republic No. 101/2020 Coll. on page 78.
303 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/157/.

which means that during the period when the child will not attend school due to school holidays, there is no entitlement to a nursing benefit.

Despite the fact that the decision of the Minister of Education, Science, Research and Sports of the Slovak Republic of 28 May 2020 establishes a similar fiction in relation to the closure of preschool facilities and schools, which is sufficient for the purpose of entitlement to nursing benefit, the fiction is explicitly established also in Act on social insurance. Due to the need to regulate the right to nursing benefit after the opening of social services facilities, in the interest of uniform legal regulation and the same legal quality of the right to nursing benefit, the right to nursing benefit after the opening of preschool facilities and schools is explicitly regulated.

With regard to the gradual opening of social services facilities, the same fiction applies in relation to persons to whom social services are provided in social services facilities on an outpatient or residential basis. In the event of the opening of these facilities, the right to nursing benefit shall arise or continue for those insured persons who take care of a direct relative, sibling, spouse, or parent of a spouse who is provided with social services in an outpatient or residential social service facility, which has been closed by the decision of the competent authority if that person or his/her legal representative after the opening of the facility will not use the provided social service for subjective reasons (health concerns) or if it is not possible to provide the social service for a person for objective reasons (capacity of the facility).

The act stipulated that an insured person who would meet the conditions for entitlement to nursing benefit during the crisis situation before its effectiveness should be paid nursing benefit for this period as well. For the purpose of verifying the fulfilment of the conditions for entitlement to a nursing benefit, the district authorities in the seat of the region and social service providers are obliged to provide the Social Insurance Agency with data on children participating in the ongoing educational process and on persons to whom social services were provided. The district authorities in the seat of the region and the providers of social services are obliged to provide data for the previous month in the scope and manner determined by the Social Insurance Agency by the 10th day of the calendar month. The data provided by the district authorities will no longer have to be provided by pre-school facilities to the Social Insurance Agency.

Section 293fc stipulated that the right to the payment of a nursing benefit lasts and the insurance is not interrupted as usual from the 11th day of the need for treatment/care. In this context, it was also stipulated that an employee, a self-employed person with compulsory sickness and old-age insurance, a person with voluntary sickness insurance, a person with voluntary old-age insurance, a person with voluntary unemployment insurance, should be exempt from premium payment for the entire period of treatment/care under Section

293er(3).[304]

The Regulation of the Government of the Slovak Republic No. 184/2020 Coll., amending the Regulation of the Government of the Slovak Republic No. 102/2020 Coll. on certain measures in the field of social affairs, family and employment services in the event of an emergency situation, an emergency state or an exceptional situation declared in connection with COVID-19[305] extended the negative definition of the conditions for entitlement to parental allowance to include also persons receiving a care allowance for the same child. Entitlement to parental allowance will also continue for those entitled persons who have ceased to fulfil the conditions for entitlement due to the fact that the child's long-term unfavourable state of health does not persist and fulfil the other conditions for entitlement laid down in this Regulation.

The provision according to which, during the crisis situation, the confirmation of a physician in the specialized field of gynaecology that the entitled person participated in preventive examinations from the 4th month of pregnancy for the purpose of childbirth allowance, was replaced by a declaration on oath by the entitled person. Due to the relief of the measures of the Public Health Authority in the event of a threat to public health, physicians operate in the same regime as before the declaration of a crisis situation and therefore there is no reason for the entitled person to have issues with proving the fact in the manner required by the act.

The provision according to which the value and age of a motor vehicle are not considered when assessing material deprivation in the event of a crisis was also eliminated. The measure in question was taken due to the limited availability of experts in the event of a crisis situation. This has been eliminated as this reason is no longer relevant.

At the same time, the provision according to which, in the event of a crisis situation, the possibility of claiming statutory entitlements (e.g., maintenance allowance, social security benefits, employment rights) to household members who are gainfully employed abroad is not considered for the purposes of assessing material deprivation was eliminated. The provision in question was enacted to allow the applicants for material deprivation assistance, who perform a business activity on the basis of a license obtained abroad or work abroad, and who, during a crisis situation, are unable to perform this activity and, at the same time, are not entitled to assistance or social security benefits from a given country, to receive material deprivation assistance in a short time.. Given that travel restrictions have already been lifted, this provision can be considered irrelevant.

The provision stipulating that the provisions on reductions of the benefit in material deprivation do not apply in the event of a crisis situation was also eliminated. This was proposed due to the fact that the performance of activities for 32 hours per month is re-enabled due to the relaxation of the measures

304 https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=479440.
305 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/184/vyhlasene_znenie.html.

of the Public Health Authority of the Slovak Republic in the event of a threat to public health.[306] The Regulation entered into force on 01 July 2020.

With effect from 03 July 2020, the Regulation of the Government of the Slovak Republic No. 186/2020 Coll., amending the Regulation of the Government of the Slovak Republic No. 101/2020 Coll. on the extension of the unemployment benefit period for the duration of an emergency situation, an emergency state or an exceptional state declared in connection with COVID-19, as amended by Regulation of the Government of the Slovak Republic No. 137/2020 Coll.[307]

Under the Regulation, the unemployment benefit period extended under paragraph 2, which would have elapsed during an emergency situation, an emergency state or an exceptional state declared in connection with COVID-19, was extended for the third time by a further month. Extension of the unemployment benefit period according to Section 293et(1) of Act on social insurance and Regulation of the Government of the Slovak Republic No. 101/2020 Coll. according to Section 1(1)-(3) of the Regulation of the Government of the Slovak Republic No. 101/2020 Coll. as amended, expired on 31 August 2020 at the latest.

By the Regulation of the Government of the Slovak Republic No. 196/2020 Coll., supplementing the Regulation of the Government of the Slovak Republic No. 131/2020 Coll. on the maturity of social insurance premiums in the event of an emergency situation, an emergency state or an exceptional state declared in connection with COVID-19, as amended by the Regulation of the Government of the Slovak Republic No. 172/2020 Coll.[308] the maturity of the premium for the month of July 2020 was postponed, which was payable by 31 December 2020. The Regulation entered into force on 21 July 2020.

Act No. 258/2020 Coll., supplementing Act on social insurance,[309] adopted in an accelerated legislative procedure, stipulated that at the time of a properly ongoing educational process, i.e. unrestricted operation of schools and preschool facilities, pandemic nursing benefits do not apply in cases where the child's legal representative would not show interest in the child's participation in the ongoing educational process in the preschool facility or school due to concerns about his health, or in the event that the child cannot be placed in a pre-school facility or school for capacity reasons (such a possibility does not currently exist). The legal representative will continue to be entitled to pandemic nursing benefit according to Section 293er(3)(b) in cases where, during a crisis situation, pre-school facilities, schools, or parts thereof (e.g., specific classes) are closed by a decision of the competent authority.

The system for verifying the conditions for entitlement to pandemic nursing benefits has changed. The

306 https://rokovania.gov.sk/RVL/Material/24987/1.
307 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/186/vyhlasene_znenie.html.
308 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/196/.
309 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/258/.

district office in the seat of the region will provide the Social Insurance Agency with information on children who do not participate in the educational process, as there will be a smaller number of these children and for this reason, it will represent a lower administrative burden for the affected entities (e.g., schools).[310] The act entered into force on 23 September 2020.

With effect from 15 October 2020, the Regulation of the Government of the Slovak Republic No. 273/2020 Coll., amending the Regulation of the Government of the Slovak Republic No. 102/2020 Coll. on certain measures in the field of social affairs, family, and employment services in the event of an emergency situation, an emergency state or an exceptional state declared in connection with COVID-19, as amended by the Regulation Government No. 184/2020 Coll. was approved.[311]

The provision according to which, during the period of an emergency situation, parental allowance is provided to those entitled persons who have lost the right to it on the grounds that the child has reached the age of three, the age of six, or three years have elapsed since the validity of the first decision to entrust the child into care and these persons had no income, or entitlement to nursing benefit which was less than the amount of the parental allowance was eliminated.

In the event of a crisis, the provisions on the reduction of the benefit in material deprivation due to non-participation in the required activities will not apply to a household member who has been quarantined by the competent public health authority. According to the proposer, this is due to the fact that in practice, there have been increasing cases where persons did not participate in smaller municipal services and cited quarantine as a reason. The imposition of a quarantine measure or isolation by the regional public health authority was added as a reason for providing a protective allowance to a member of the household who is unable to perform activities conditional on entitlement to the activation allowance.

The provision according to which, in the event of a crisis situation, the office may grant and pay in the form of an advance on child allowance, child allowance supplement, parental allowance, childcare allowance, allowance for a child in alternative care, assistance in material deprivation, special allowance and substitute maintenance allowance, if, for objective reasons, it cannot assess the fulfilment of the conditions for entitlement was amended. It was provided that, once the objective reasons for granting the advance had ceased to exist, entitlement to the benefit would be reconsidered.[312]

From 01 November 2020, the Regulation of the Government of the Slovak Republic No. 302/2020 Coll., amending the Regulation of the Government of the Slovak Republic No. 102/2020 Coll. on certain measures in the field of social affairs, family and employment services in

310 https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=7926.
311 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/273/.
312 https://rokovania.gov.sk/RVL/Material/25300/1.

the event of an emergency situation, an emergency state or an exceptional state came into effect.[313] The Regulation reintroduced parental allowance during the duration of a crisis situation for those who lost their parental allowance during a crisis situation based on the fact that their child has reached the age of three or the age of six in the case of a child with a long-term unfavourable health condition or a child who is entrusted to care replacing the care of the parents, or if three years have elapsed since the first decision to entrust the child to the care of an entitled person. At the same time, the condition of income must be met, or that these persons have no income. These persons are provided with the parental allowance in the same amount as they were provided, until the end of the crisis situation. In the event that the beneficiary is paid nursing benefit or if the beneficiary is granted leave on entitlement to a salary due to personal and full-time care of a child, the amount of which is lower than the amount of parental allowance, such beneficiary is entitled to a parental allowance, the amount of which is determined as the difference between the amount of parental allowance provided to the person and the amount of nursing benefit or salary. The aim of this measure is to support families who would find themselves in financial distress after the cessation of entitlement to parental allowance, given that the epidemiological situation has worsened.

The grounds for not applying the provisions on the reduction of a benefit in material deprivation for non-participation in activities under Section10 have been extended by an additional reason, namely an obstacle on the part of the organizer or employer for the purposes of providing a protective allowance. These are, for example, situations such as the impossibility of retraining participants in health and safety activities due to the absence of trainers, the impossibility of providing protective equipment for the performance of activities, the closure of the business of the employer where the beneficiary performed gainful activity, etc.

In order to support the protection of the population, the cash allowance for transport is re-granted even when natural persons with severe disabilities are not personally transported for their work, educational, family, or civic activities, but use a delivery service to secure food and other necessities. The cash allowance for transport will be provided in a lump sum amount without the obligation to provide proof of transport costs, which will help to reduce personal contact on the part of natural persons with severe disabilities as well as on the part of the staff in offices.

At the same time, the possibility of "common" provision of a cash allowance in the event of the interest of a natural person with a severe disability remains. The lump-sum monthly amount of allowance is again proposed to be 16.70% of the amount of the subsistence minimum for one adult natural person, which currently amounts to 35,88 EUR. Written decisions will not be issued in the case of a lump sum amount of allowance, so that persons with severe disabilities do not

313 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/302/.

have to take over the official consignment in person while allowing the allowance to be granted immediately (without waiting for the expiry of the time limit for lodging an appeal and for the decision to enter into force).

The aim of the Act was to harmonize the regulation with the currently valid wording of Act No. 447/2008 Coll. on cash allowance for severe disability compensation, amending and supplementing certain acts, as amended by Act on cash allowance for compensation. On 01 July 2020, an amendment to Act on cash allowance (Act No. 391/2019 Coll.) came into force, amending the conditions for providing a cash allowance for attendance service. From that date, in the case of beneficiaries in the 'productive age', it is not considered whether a person with a severe disability being cared for is provided with an outpatient form of social service for more than 20 hours per week, and this fact no longer has any effect on the amount of the cash allowance for attendance service.

Again, in proceedings concerning state social benefits and social benefits, assistance in material deprivation and special allowance, compensatory maintenance allowance and compensation for the social consequences of a severe disability, no acts will be carried out in which there is physical contact between state administration bodies and the client. These include oral hearings, personal inspection of the files, an on-site inspection (household investigation) and examination of evidence, which is proposed to be carried out without the personal participation of a witness or expert. In relation to the service of process, it is proposed to deliver only decisions via personal service. This provision allows the offices of labour, social affairs and family and the Central Office of Labour, Social Affairs and Family to communicate via e-mail, telephone, or regular mail. This ensures the protection of life and health of the population in an event of a crisis situation, to which the restriction of personal contact between office workers and clients or between clients and postal couriers may partially contribute.[314]

Act No. 330/2020 Coll., supplementing Act on social insurance,[315] was approved in an accelerated legislative procedure with effect from 21 November 2020. The act stipulated that if the employer confirms to an employee recognized as temporarily incapable to work due to the COVID-19 disease that the disease arose at work where there is demonstrable contact with this disease or infectious material as part of performing work tasks or work activities, the requirement of recognition of occupational disease for the purposes of entitlement to an accident benefit shall be deemed to be fulfilled. This adjustment will not apply to employees who are diagnosed with a suspected COVID-19 disease - diagnosis U07.2. Entitlement to an accident benefit using this fiction arises provided that the employee is recognized as temporarily incapable of work during a crisis situation. This right will continue for him even after the end of the crisis situation, until the end

314 https://rokovania.gov.sk/RVL/Material/25419/1.
315 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/330/.

of temporary incapacity to work.

If the employer has doubts about the causal connection between the occurrence of COVID-19 and the performance of the employee's employment and thus does not confirm this fact, the decision to meet the occupational disease will be decided by default, i.e. on the basis of the recognition of occupational disease by a specialized workplace, which is a healthcare provider providing healthcare provided by physicians with professional competence to perform specialized work activities in the specialized field of occupational medicine, the specialized field of clinical occupational medicine and clinical toxicology or in the specialized field of dermatovenerology and the subsequent procedure.

Pursuant to the adopted legislation, the factual recognition of an occupational disease is not required for the purposes of the accident benefit. However, fiction alone does not replace such factual recognition of an occupational disease. The amount of the accident benefit, the claim of which is based on fiction, is in the amount of 25% of the employee's daily assessment basis so that together with the sickness benefit according to Section 293er (1) and (2), the employee was provided with 80% of his gross income.[316]

Regulation of the Government of the Slovak Republic No. 380/2020 Coll., amending the Regulation of the Government of the Slovak Republic No. 131/2020 Coll. on the maturity of social insurance premiums in the event of an emergency situation, an emergency state or an exceptional state declared in connection with COVID-19, as amended,[317] postpones the maturity of social insurance premiums from 31 December 2020 to 30 June 2021. At the same time, it supplements the maturity of the premium for December 2020 in the period up to 30 June 2021. The Regulation entered into force on 17 December 2020.

316 https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=7998.
317 https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/380/.

5.3 Protection against loss of housing through the adopted legislation

During the state of emergency, the National Council of the Slovak Republic adopted legal provisions with the intention of protecting the right to housing. The protection of vulnerable groups of the population was to consist of the postponement of the payments of consumer credits, the postponement of the enforcement proceedings and the prohibition of the termination of the lease by the lessor.

With effect from 09 April 2020, the possibility of submitting a request for deferral of consumer credit payments was included in Section 30a-30h of Act No. 67/2020 Coll. on certain emergency financial measures in connection with the spread of the dangerous contagious human disease COVID-19. The new legislation has created room for exceptional conditions under which a creditor (consumer credit provider) who has a claim against a debtor (consumer) from a consumer contract or from a surety to this contract will allow the debtor to defer payments. Under the consumer contract, the legislator means a housing loan agreement or other consumer credit agreement that serves the same purpose as a housing loan agreement and a consumer credit agreement, while it concerns credits repaid in regular pre-determined credit payments. In this context, the debtor is expected to have a formal and active expression of will (request) towards the creditor, from which the interest in deferral of payments (deferral of payments of the credit principal and interest on the credit from the consumer contract) is clear.

The special measure allows debtors to request the creditor to defer payments of the same credit once during the pandemic period, without reducing the debtor's credibility or increasing the total amount of the credit with such a request. Deferral of payments pursuant to Section 30b may be conditionally granted for a maximum of 9 months (if the creditor was a bank) or a maximum of 2 x 3 months (if the creditor was an entity pursuant to Section 20 of Act No. 129/2010 Coll., as amended).[318] The creditor was not obliged to allow deferral of payments to those debtors who were delayed in payment for more than 30 days, or delayed in payment for other credits for more than 30 days, for a total amount exceeding 100 EUR. Moreover, the creditor did not have to grant a deferral if the debtor defaulted at the date of the request for deferral of payments,[319] or did not properly fill in the deferral request, or the deferral request did not contain the terms according to the prescribed model.[320]

Act No. 92/2020 Coll., amending and supplementing Act No. 62/2020 Coll., with effect from 25 April 2020, introduced in Section 3a the possibility of submitting a request for postponement of debt enforcement procedure due to a decrease in income due to the

318 From the date of maturity of the next outstanding credit payment, the maturity of which occurred after the date of submission of the request for deferral of payments.

319 Article 178 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, OJL 176, 27 June 2013.

320 https://www.slov-lex.sk/pravne-predpisy/prilohy/SK/ZZ/2020/67/20210331_5233689-2.pdf.

COVID-19 pandemic, while such a request must contain a declaration of the obligor that urgent debt enforcement procedure could have particularly adverse consequences for the obligor or his/her family. The request must be accompanied by a declaration of assets.

The extraordinary measure only applies to debt enforcement proceedings that did not start before 12 March 2020. At the same time, the legislator listed in the exhaustive enumeration the circumstances for not complying with the request. The request shall not be considered if

a) the request is not complete,

b) the debt enforcement procedure has already been postponed at the request of the debtor,

c) the debtor has already been allowed to repay the enforced claim in payments,

d) the debt enforcement procedure has been stopped,

e) it is a recovery of a maintenance allowance claim,

(f) the right to non-monetary performance is satisfied; or

(g) the enforcement proceedings started before 12 March 2020.[321]

The postponement of enforcement proceedings pursuant to Section 3a of Act No. 62/2020 Coll. could last for 6 months (the longest, however, until 01 December 2020). During the postponement of the enforcement proceedings, the enforcement agents are entitled to perform not only acts with the aim of ascertaining the state of the property but also acts with the aim of securing the property. The measure, therefore, does not preclude acts of securing property that would be aimed at restricting the use of a housing unit.

The protection of the right to housing for households living in a leased property and sublease should also be increased by the provision of Section 3b of Act No. 62/2020 Coll., with effect also from 25 April 2020, in which a prohibition on unilateral termination of the lease by the lessor was introduced due to the lessee's inability to pay the rent if this inability was caused by the COVID-19 pandemic. Even in the case of this protection, a time period for late payment is set, from 01 April 2020 to 30 June 2020. The length of the protection period is also set, until 31 December 2020. As in the case of postponement of enforcement proceedings or payments of consumer credits, in the case of the moratorium on termination of leases, the act specifies that this protection applies only to those lessees who find themselves in a difficult financial situation due to restrictions during a state of emergency and imposes an obligation on the

321 Section 3a(3) of Act No. 62/2020 Coll., available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/62/20210119.

lessee to prove this fact (sufficiently certify). The act explicitly states that the prohibition on unilateral termination of a lease does not apply to other reasons.

All three of these instruments for the protection of the right to housing exclude the right to protect persons who have become insolvent (delays in payments, delays in rent, enforcement proceedings) before the state of emergency. For this purpose, the mentioned legislation contains a definition of claims according to the period of insolvency.

In addition, those persons who became insolvent during a specified period (i.e., during a state of emergency) must prove this fact. While in the case of requests for deferral of payments or enforcement proceedings, the method of proving is predetermined (prescribed declaration on oath, mandatory documents). This is not the case for a prohibition on termination of the lease. Thus, while the act states that *"this reason for the delay must be sufficiently certified by the lessee", it does not regulate what is considered a sufficient certification (i.e., whether a solemn declaration is sufficient, whether the lessor has the right to request information about the change of income, who and on what basis assesses whether "the lessee's delay was due to circumstances stemming from the spread of dangerous contagious human disease COVID-19."* This assessment is left to a mutual agreement, or argumentation between the lessor and the lessee, which may not be reciprocal. An inaccurate definition of what can be considered a sufficient certification makes it difficult for lessees to access justice in the event of a unilateral termination of the lease by the lessor.

The moratorium on the exercise of the lien in the period until 31 May 2020, with effect from 25 April 2020 included in Section 6 of Act No. 62/2020 Coll. also significantly contributed to the protection of the right to housing. Likewise, acts aimed at the exercise of the lien in the period from the effective date of Act No. 62/2020 Coll. (from 27 March 2020) to 31 May 2020 were ineffective.

Another extraordinary measure resulting from Act No. 62/2020 Coll., which has an impact on the protection of the right to housing is the duty of the auctioneer, court bailiffs or trustee in the period until 31 May 2020 (Section 7), or currently in the period until 28 February 2021 (Section 10) to refrain from conducting an auction, entrusting the sale of the auctioneer's property, organizing a bidding process or other competitive process leading to the sale of a property. Any method of monetization of the debtor's property according to the previous sentence performed in the period from the effective date of Act No. 62/2020 Coll. to 31 May 2020, or to 28 February 2021 is invalid. The bailiff is in the period until 31 May 2020, or to 28 February 2021 obliged to refrain from enforcement by the sale of real estate.

Conclusion

The presented Report on Human Rights for the year 2020 is an output that meets the monitoring content requirements following the legislative processes related to the COVID-19 pandemic. Its evaluation character is also exact. Evaluation is of a legal nature and does not deviate from the framework of argumentation and interpretation standards. It provides an objective and up-to-date picture of the state of observance of human rights and fundamental freedoms, i.e., its content is the fulfilment of the primary goal.

The first part emphasizes the need to uphold human rights and constitutional standards, regardless of exceptional social circumstances. In accordance with the evaluative conclusions, there is no act that regulates the competence of the Public Health Authority of the Slovak Republic and regional public health authorities to interfere in the peaceful exercise of human rights and fundamental freedoms to the extent that the analysed interventions regularly took place. The measures and decrees of the regional public health authorities, which ordered the quarantine of Roma settlements, showed fundamental legal shortcomings. The most serious is the absence of a proper factual justification, which results in an undesirable state of the measures not being reviewable by courts. The absence of a predetermined time conditionality of the restriction of personal liberty represents in the context of the so-called quarantine of Roma a serious legislative shortcoming. According to the Centre's legal opinion, the measures of the Public Health Authority of the Slovak Republic ordering the obligatory state isolation of all persons entering the territory of the Slovak Republic, with certain exceptions, do not reflect the principle of legality. There was no restriction of personal liberty for reasons stipulated by law and in the manner prescribed by law. The Public Health Authority of the Slovak Republic resorted to using a comprehensive, nationwide approach, when dealing with the entry of persons into the territory of the Slovak Republic, which, however, is not foreseen by the Act on the pro-

tection of Public Health.

On the contrary, the restriction of freedom of movement and residence by the curfew adopted in respect to the testing of the population for COVID-19 is, in the Centre's legal opinion, compliant with the Constitution of the Slovak Republic and legal. The formal condition of the declaration of a state of emergency by the Government of the Slovak Republic, as well as the material conditions consisting of the existence of a threat to the life and health of persons, the necessity of restricting fundamental rights and freedoms in terms of scope and time and the proportionality of the restriction in relation to the gravity of the threat, were fulfilled.
Special „COVID legislation" on the processing of the so-called telecommunications data for purposes related to the prevention of the spread of the COVID-19 disease reflected the basic human rights standards only to a minimal extent. The Centre is particularly critical of the unpreparedness of the legislator. However, the Centre highlights the legislator's self-reflection, following the Resolution of the Constitutional Court, which suspended the effectiveness of the challenged provisions of the so-called Telecommunications Act. The result is an appropriate legislative framework for the operation of mobile applications, which will serve a sufficiently defined purpose, aimed at achieving a legitimate goal - the protection of public health.
The Centre has come to the legal conclusion that strict measures restricting access to the right to education show signs of unconstitutionality. This sign is also carried by the provision of Section 150(8) of the Education Act to the extent of empowering the Minister of Education to decide on an extraordinary suspension of education. In addition, the Constitutional Act on security of state does not allow for the restriction of access to the right to education in a state of emergency. The adopted measures have only exacerbated the already existing state of inequality in access to the right to education. A significant shortcoming is also the unrealistic implementation of the decisions of the Minister of Education. In the Centre's view, the decisions of the Minister of Education on the extraordinary suspension of education were in breach of Article 12 (1) and (2) of the Constitution of the Slovak Republic, in conjunction with its Article 42.

The spread of the COVID-19 pandemic has significantly limited access to the provision of proper healthcare. The impacts of measures and guidelines of the Ministry of Health of the Slovak Republic and other responsible entities in the field of inpatient and outpatient healthcare will be subject to proper assessment in the near future, including ongoing evaluation of the impact on human rights and fundamental freedoms by the Centre. The constitutional Act on security of state does not allow for the restriction of the right to health regulated in Article 40 of the Constitution of the Slovak Republic. Nevertheless, the Ministry of Health of the Slovak Republic ordered, and the Chief Public Health Officer of the Slovak Republic instructed healthcare providers to take measures restricting access to the provision of proper healthcare. The Centre considers such a situation to be inadmissible

and unconstitutional.

Within the so-called monitoring part, the Centre focused on three key legislative areas, regulated by the legislator in the causal connection with the spread of the COVID-19 pandemic. The performance of dependent work and employment, social assistance, or protection against the possible loss of housing are extremely sensitive areas of the so-called „COVID legislative framework", the implications of which will be a major research challenge in the future. The purpose of the monitoring part of the presented Report is also for the reader to quickly find acquaint oneself with the legislative frameworks of the described areas. It is dominated by a descriptive approach with special emphasis on the chronology of the legislative process. The second part of the Report, elaborated mostly without connotation and evaluation editing, also serves as a memento of a period that required immediate systematic legislative solutions reflecting on unpredictable, threatening, dynamic and hitherto unknown reality. The chronological order of the legislative process reveals the efforts of the legislator as well as his preferred style of law-making, which responds to the stressful pandemic situation in the Slovak Republic during the past year. In the monitored areas, the Centre identified several sets of individual measures. Specifically, these were sets of obliging, prohibiting, repealing, or recommending legislative regulations. Other legal regulations were in the nature of measures introducing authorizations, or exceptions.

The Centre also fulfilled the secondary aim of the presented Report, which was the definition of specific and targeted recommendations to improve the state of protection and promotion of human rights and fundamental freedoms in the Slovak Republic, including the principle of equal treatment. The list of recommendations precedes the reiteration of the Centre's call for the National Council of the Slovak Republic not to ignore the issue of proper promotion and protection of human rights of the most vulnerable groups, including minorities, regardless of its legislative occupation related to the spread of the COVID-19 pandemic.

Personal liberty and freedom of movement and residence

1. To regional public health authorities to justify the decrees ordering the quarantine clearly and comprehensibly in Roma settlements.
2. To regional public health authorities to determine the conditions for the duration of quarantine in Roma settlements for the date of its termination to be determined in advance.
3. To the Public Health Authority of the Slovak Republic to proceed solely in accordance with their competencies regulated in the Act on the protection of public health when ordering measures for persons entering the territory of the Slovak Republic
4. To the Public Health Authority of the Slovak Republic, when ordering measures for persons entering the territory of the Slovak Republic, to consistently distinguish between persons suffering from a communicable disease and persons with a suspected communicable disease and, depending on this fact, to choose such measures that are necessary to protect public health and appropriate in relation to the protection of individual rights and freedoms
5. To the Government of the Slovak Republic to establish exceptions to the restriction of residence and movement by a curfew so that the protection of other fundamental rights and freedoms is preserved to the highest extent.
6. To the Government of the Slovak Republic to adopt compensatory instruments that minimize the economic impacts of restrictions on fundamental rights and freedoms adopted in connection with the COVID-19 pandemic.

Legislative implementation of human rights standards and data protection guarantees during the COVID-19 pandemic

1. To the National Council of the Slovak Republic to duly implement all fundamental principles and guarantees of personal data protection when responding to the COVID-19 pandemic
2. To the Constitutional Court of the Slovak Republic to refer to relevant parts of selected case-law when reasoning its decisions by interpreting the Court of Justice of the European Union or the European Court of Human Rights.démie COVID-19“.

Exercise of the right to education in the context of measures adopted to prevent the spread of COVID-19

1. To the Prosecutor General of the Slovak Republic, without undue delay, to turn to the Constitutional Court of the Slovak Republic with a proposal to remove any doubts about the compliance of Section150(8) of Act No. 245/2008 Coll. on Training and Education (Education Act) and on Amendments to Certain Acts with Constitutional Act No. 227/2002 Coll. on the Security of State in Time of War, a War State, an Exceptional State, and an Emergency State, as amended.

2. To the Ministry of Education, Science, Research and Sport of the Slovak Republic, without undue delay, in cooperation with stakeholders and representatives of vulnerable groups, to take measures to maintain access to quality and inclusive education in primary and secondary schools focusing on the specific educational needs of pupils from socially disadvantaged environments during the entire period of an emergency state in the territory of the Slovak Republic.

3. To the Ministry of Education, Science, Research and Sport of the Slovak Republic to regularly monitor and evaluate the epidemic situation within the regions and differences in the manner of the spread of the COVID-19 disease.

4. To consider the recommendations of the World Health Organization, UNICEF, and UNESCO on the need to decide on the closure or reopening of schools employing a risk-based approach considering the epidemic situation at the local level.

5. To the Ministry of Education, Science, Research and Sports of the Slovak Republic, without undue delay, in cooperation with the Centre and interested stakeholders and representatives of vulnerable groups, to prepare a study on the negative impacts of the extraordinary suspension of education on human rights and fundamental freedoms of of pupils from primary and secondary school and in compliance with the findings of the study to draw up a plan to eliminate these negative impacts.

Exercising the right to health in the context of access to healthcare

1. To the Government of the Slovak Republic, without undue delay, to prepare and implement measures to improve the efficiency and effectiveness of healthcare in the Slovak Republic, so that everyone has access to timely preventive, curative and rehabilitative healthcare that is of quality and education in the area of health, including regular screening programs, appropriate treatment of common diseases, illnesses, injuries, and disabilities, especially at the community level.
2. To the Ministry of Health of the Slovak Republic, without undue delay, to strengthen the preventive healthcare aimed at minimizing avoidable deaths from the most common diseases, through effective screening programs.
3. To the National Council of the Slovak Republic to establish by a legal regulation an independent institution for the protection and promotion of patients' rights as an independent institution with a subsidy from the state budget or as part of the existing mechanism for the protection and promotion of human rights at the national level without undue delay.
4. To the Slovak Ministry of Health of the Slovak Republic to immediately refrain from adopting measures (in the form of laws, other legal regulations, and policies) that result in a deterioration of access to healthcare which is related to the exercise of sexual and reproductive rights of women and girls in the Slovak Republic.
5. To the Ministry of Health of the Slovak Republic, in cooperation with stakeholders, to start the preparation of a National Action Plan for Sexual and Reproductive Health applying a human rights-based approach.