



## FLASH NEWS

Special edition  
no 1/2021

# COVID-19

## OVERVIEW OF DECISIONS IN THE PERIOD APRIL - SEPTEMBER

### CONFINEMENT MEASURES



#### **Slovakia – Constitutional Court**

***Fundamental rights – Public health – COVID-19 – Protection of personal data – Collection of identification and location data – Suspension of the provisions in question***

By its order, the Constitutional Court, inter alia, granted the application to suspend certain provisions of the Electronic Communications Act on the grounds of their non-compliance with the rights to privacy and protection of personal data. The high court ruled that the provisions establishing a system for the collection of identification and location data by telephone operators without the prior authorisation of the persons concerned and their transmission to the Office for Public Health as part of the fight against COVID-19, constituted a particularly serious interference with the rights of individuals and that, given their imprecision, they did not offer adequate guarantees against the possible misuse of such data by the public authorities.

Ústavný súd Slovenskej republiky, [order of 13/05/2020, No PL, ÚS 13/2020-103 \(SK\)](#)  
[Press release \(SK\)](#)



#### **Romania – Constitutional Court**

***Fundamental rights – Public health – COVID-19 – Government decision declaring a state of alert – Respect for the injured party's right of access to justice – Non-compliance with the Constitution of the provisions in question***

The Constitutional Court, upon referral by the People's Advocate, ruled that certain provisions of a law aimed at preventing and combating the effects of the COVID-19 pandemic were unconstitutional. According to the latter, the government's decision to declare a state of alert did not require parliamentary approval unless more than half of the country's administrative territorial units were concerned. However, judicial review is guaranteed by the Basic Law to all administrative acts with the exception of acts relating to relations with the Parliament.

The high court considered that, in a situation in which less than half of the said units were concerned, the legal arrangements applying to the government's decision that did not require parliamentary approval would be distorted. Such an act could escape administrative judicial review and therefore violate the right of access to justice of the person aggrieved by the public authority.

Courtea Constituțională, [Decision of 25/06/2020 No 457 \(RO\)](#)



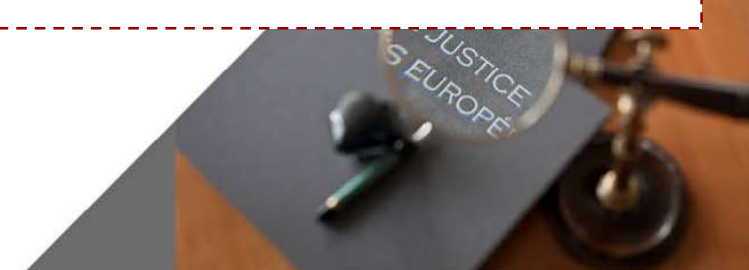
#### **Lithuania – Constitutional Court**

***Fundamental rights – Public health – COVID-19 – National measures restricting the freedom of movement of citizens – Inadmissibility of the action – Dismissal***

In its decision, the Constitutional Court ruled on an appeal lodged by a natural person requesting an assessment of the constitutionality of national measures restricting the freedom of movement of citizens, imposed by the national authorities in the context of the fight against COVID-19.

The high court found that the applicant had lodged a general application which did not seek to defend her constitutional rights and freedoms that might have been violated by the measures in question. Consequently, it dismissed the application as inadmissible.

Lietuvos Respublikos Konstitucinis Teismas, [judgment of 2/07/2020, KT116-A-S108/2020 \(LT\)](#)





### France – Council of State

#### ***Fundamental rights – Public health – COVID-19 – Freedom to demonstrate – Suspension of the ban at issue***

The interim relief judge suspended the provisions of the Decree of 31 May 2020 prohibiting any demonstration not previously authorised by the prefect, who verifies whether the ‘protective measures’ can be respected. This decree did not provide for a time limit for the prefect to issue a decision. In the absence of such a decision, the event remained banned without the organisers being able to refer the matter to the judge in good time. The interim relief judge therefore considered that there was serious doubt as to whether this procedure did not disproportionately infringe the freedom to demonstrate.

Conseil d'État, juge des référés, [order of 6/07/2020, Nos 441257, 441263 and 441384 \(FR\)](#)



### Bulgaria – Constitutional Court

#### ***Fundamental rights – Public health – COVID-19 – Restrictions to fundamental rights – Conformity with the Constitution with regard to the protection of human life and health***

The Bulgarian Constitutional Court was asked by the President of the Republic to review the constitutionality of certain provisions of the Zakon za zdraveto (Health Act) of 14 May 2020. These allowed restrictions on fundamental rights without setting time limits and transferred to the Council of Ministers the competence to classify an epidemic as a health emergency and to the Ministry of Health the competence to identify the fundamental rights that could be restricted.

According to the high court, given that the fundamental rights in question, namely the right to free movement, economic freedom and the right to work, are not absolute rights, and that their restriction is only temporary, it may be considered proportionate as it pursues the legitimate objective of guaranteeing the life and protecting the health of citizens. The intervention of the State is therefore in conformity with the Constitution, as it is justified by a legitimate aim and in the public interest.

Конституционен съд, [judgment of 23/07/2020 No 10 \(BG\)](#)



### Austria – Constitutional Court

#### ***Fundamental rights – Public health – COVID-19 – National measures restricting the freedom of movement of citizens – Non-compliance of these measures with the law***

Article 2 of the new law on measures relating to COVID-19 provides that the Minister for Health may prohibit people, by regulation, from going to certain places in order to prevent the spread of the virus.

After the minister adopted such a regulation, the Constitutional Court ruled that the general prohibition contained in the regulation was contrary to this law. The Constitutional Court held that the latter only provided for the possibility of prohibiting people, by regulation, from going to certain places and not, in general, to all public places.

Verfassungsgerichtshof, [judgment of 14/07/2020, V363/2020 \(V363/2020-25\) \(DE\)](#)  
[Press release \(DE\)](#)



### Poland – Voivodship Administrative Court in Gliwice

#### ***Fundamental rights – Public health – COVID-19 – National measures restricting citizens' freedom of movement – Quarantine linked to the crossing of the national border***

The Voivodship Administrative Court in Gliwice received an appeal from the National Ombudsman against the decision of the commander of the Polish-Czech border guard post, placing a Polish national in quarantine in connection with his return from the Czech Republic where he was working. Following his quarantine, he lost his job in the Czech Republic. This court ruled that the above-mentioned decision was ineffective in the light of the Polish Constitution, which guarantees freedom of movement within the territory of the state and on departure from it. Furthermore, the administrative court did not grant the applicant's request for a finding of a violation of Article 15(2), read in the light of Articles 51(1) and 52(1) of the Charter of Fundamental Rights of the European Union and Article 45(1) and (3)(b) and (c) TFEU. It held that the contested decision did not concern professional freedom and the right to work within the meaning of those provisions.

Wojewódzki Sąd Administracyjny w Gliwicach, [judgment of 27/07/2020, III SA/GI 319/20 \(PL\)](#)



### **Slovenia – Administrative Court**

#### ***Fundamental rights – Public health – COVID-19 – Administrative decision to quarantine – Insufficient statement of reasons – Infringement of the right to be heard***

In its judgment, the Administrative Court of the Republic of Slovenia found an insufficient statement of reasons for an administrative decision on quarantine. It held that, by failing to state certain decisive facts relating to the applicant, such as the date and time of her entry into Slovenia, the country from which she had come and the reason for imposing a quarantine, the Ministry of Health had breached its duty to state reasons. Moreover, according to the Administrative Court, by failing to comment on the exception to quarantine invoked by the applicant, the Ministry had also violated her right to be heard. Consequently, the Administrative Court annulled the decision to quarantine and ordered the Ministry to establish all the facts decisive for quarantine, as well as to assess all the evidence submitted by the applicant.

Upravno sodišče Republike Slovenije, [judgment of 2/09/2020, II U 261/2020-18 \(SI\)](#)

## **MEASURES INVOLVING DEPRIVATION OF LIBERTY**



### **Germany – Federal Constitutional Court**

#### ***Fundamental rights – Public health – COVID-19 – Prohibition of religious meetings – Constitutional guarantee of the free exercise of religion – Rejection of the application***

The Federal Constitutional Court rejected an application to suspend temporarily the application of a provision of the Hessian state regulation against COVID-19 prohibiting religious denominations from holding meetings to worship together.

While confirming this prohibition in the specific circumstances of the case, the Federal Constitutional Court stressed, having regard to the importance of the fundamental right of freedom of belief and, in particular, the guarantee of the free exercise of religion, that the need for such a prohibition must be strictly assessed in each individual case in the light of the principle of proportionality, taking into account the development of the pandemic and scientific knowledge in this area.

Bundesverfassungsgericht, [order of 10/04/2020, 1 BvQ 28/20 \(DE\)](#)  
[Press release \(DE\)](#)



### **Germany – Federal Constitutional Court**

#### ***Fundamental rights – Public health – COVID-19 – Ban on demonstrations – Freedom of assembly – Lifting of the ban at issue***

The Federal Constitutional Court, by way of an interim order, lifted the ban on a demonstration and ordered the municipality that had banned it to examine the possibility of authorising it subject to conditions aimed at preventing infection, on the grounds that the ban in question violated the fundamental right to freedom of assembly.

Bundesverfassungsgericht, [order of 15/04/2020, 1 BvR 828/20 \(DE\)](#)  
[Press release \(DE\)](#)

This order is the first of a series of three decisions handed down by this court in 2020 temporarily suspending a measure concerning the fight against COVID-19. In 2020, 239 constitutional appeals and 241 summary applications relating to measures against COVID-19 were brought before this Court. Of these appeals, 194 were rejected or dismissed without consideration of the merits. A further 45 were still pending in 2021.

As for applications for summary proceedings, in addition to the three granted, 212 were rejected or dismissed, with 26 still pending in 2021.

See [press article \(DE\)](#)



### Germany – Federal Constitutional Court

#### ***Fundamental rights – Public health – COVID-19 – Ban on demonstrations – Freedom of assembly – Lifting of the ban at issue***

By way of an interim order, the Federal Constitutional Court instructed a municipality to authorise a demonstration in a public square located in that municipality, provided that the demonstration in question met certain requirements relating to the prevention of infections.

The high court considered that the ban in question, enacted without examining the possibility of authorising the disputed demonstration by requiring that precautions be taken to minimise the risk of infection, resulted de facto in a general ban on all demonstrations and therefore ran the risk of violating the fundamental right to freedom of assembly.

*Bundesverfassungsgericht, [order of 17/04/2020, 1 BvO 37/20 \(DE\)](#)*



### Germany – Federal Constitutional Court

#### ***Fundamental rights – Public health – COVID-19 – Prohibition of religious meetings – Constitutional guarantee of the free exercise of religion – Suspension of the prohibition at issue***

By means of an interim order, the Federal Constitutional Court temporarily suspended a provision of the regulation concerning the fight against COVID-19 of the State of Lower Saxony prohibiting religious denominations from holding meetings to worship together, insofar as this provision did not allow for any exception to this prohibition. Such a total prohibition would risk seriously undermining the fundamental right to freedom of belief and, in particular, the guarantee of the free exercise of religion.

The court stressed that it had ordered the suspension in view of the specific circumstances of the case and, in particular, the evolution of the pandemic and the fact that the religious community concerned had taken adequate measures to prevent the transmission of the coronavirus.

*Bundesverfassungsgericht, [order of 29/04/2020, 1 BvO 44/20 \(DE\)](#)  
[Press release \(DE\)](#)*



### Romania – Constitutional Court

#### ***Fundamental rights – Public health – COVID-19 – Restrictive measures – Requirements – Necessity of a law – Non-compliance with the Constitution of the provisions at issue***

The Constitutional Court, on a referral from the People's Advocate, judged unconstitutional the combined provisions of a law in the field of health and an emergency order of the government. In order to prevent the spread of communicable diseases, the latter empowered the Minister for Health to put in place certain measures restricting fundamental rights, such as forced hospitalisation and quarantine.

According to the high court, the exceptional and unforeseeable nature of a state of affairs does not, in particular, justify non-compliance with the conditions under which the exercise of fundamental rights and freedoms may be restricted. Thus, the two measures at issue should have been based on an act having the force of law, with clear and effective safeguards against abuse or discretionary or unlawful actions.

*Curtea Constituțională, [decision of 25/06/2020 No 458 \(RO\)](#)*



### Cyprus – Supreme Court

#### ***Fundamental rights – Public health – COVID-19 – Government decree establishing a curfew – Violation leading to imprisonment – Manifestly excessive penalty***

The Supreme Court overturned the 45-day prison sentence imposed at first instance on the accused for violating a government decree establishing a curfew.

According to the Supreme Court, the penalty imposed was manifestly excessive, inasmuch as the objective of health protection pursued by it could be achieved by less restrictive measures, such as the imposition of a deterrent fine. Moreover, the sentence of imprisonment was likely to infringe the principle of equal treatment in a broad sense, since many people who had committed offences in circumstances similar to those of the accused had been able to avoid criminal proceedings by paying a fine.

*Ανώτατο Δικαστήριο Κύπρου, [judgment of 31/07/2020, Αντωνίου και Αστυνομία, Appeal No 74/2020 \(GR\)](#)*

## ORGANISATION OF JUSTICE



### Italy – Council of State

**Fundamental rights – Public health – COVID-19 – Disputes to be decided without pleadings – Obligation of interpretation in conformity with the Constitution – Possibility of requesting a postponement**

The Council of State was called upon to rule on a provision derogating from the Code of Administrative Procedure, according to which, during the period between 15 April and 30 June 2020, all disputes scheduled for an oral hearing were to be decided, without pleadings, on the sole basis of the documents filed and the written pleadings. It ruled that this was contrary to Articles 24 and 111 of the Constitution, which provide for the right of access to a judge and the right to a fair trial.

According to the Council of State, this provision should be interpreted in a manner consistent with the Constitution, allowing the parties to request the postponement of the hearing for oral argument, provided, however, that this does not prejudice the rights of the other party, including the right to a reasonable length of the proceedings.

*Consiglio di Stato, [order of 21/04/2020, No 2539 \(IT\)](#)  
[Press release \(IT\)](#)*



### Czech Republic – Administrative Supreme Court

**Fundamental rights – Public health – COVID-19 – Violation of the right to a fair trial – Reasonable time to submit observations**

The Supreme Administrative Court heard an appeal against a decision of a lower court that was issued without giving the person interested in the administrative proceedings – in view of the unprecedented state of emergency declared during the administrative proceedings – a reasonable time to submit written observations. Thus, the high court found a violation of this person's right to a fair trial.

*Nejvyšší správní soud, [judgment of 19/05/2020, No 10 As 136/2020 - 58 \(CS\)](#)*

## ECONOMIC ACTIVITY



### Croatia – Constitutional Court

**Fundamental rights – Public health – COVID-19 – Ban on work on Sundays – Partial non-compliance with the Constitution**

The Constitutional Court ruled on the conformity with the Constitution of the decision adopted by the civil defence service on working hours and the mode of operation of business activities for the duration of the health crisis caused by COVID-19. In particular, it examined the provisions of this decision concerning the prohibition of work on Sundays, which was in force in Croatia from 27 April 2020 to 26 May 2020. In concluding that the decision was partially unconstitutional, the Constitutional Court held that, although the measure pursued a legitimate objective of general interest, namely the protection of human health, it was disproportionate for this purpose and, therefore, did not meet the requirement of proportionality of restrictions to fundamental rights enshrined in Article 16 of the Croatian Constitution.

*Ustavni sud, [decision of 14/09/20, U-II-2379/2020 \(HR\)](#)*