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ARTICLE

The Consequences of COVID-19 Emergency Risk Mismanagement: The Rise of Anti-Evidence Decision Making in Slovakia

Tomáš Gábriš[1] and Max Steuer[2,3]

[1]Department of Historical Law and Legal Methodology, Faculty of Law, Trnava University, Trnava, Slovakia, [2]Jindal Global Law School, O.P. Jindal Global University, Sonipat, Haryana, India, [3]Department of Political Science, Faculty of Arts, Comenius University in Bratislava, Bratislava, EU/Slovakia

Corresponding author: Tomáš Gábriš; Email: gabris.tomas@gmail.com

Abstract

This article contributes to understanding how inexperience and lack of commitment to evidence-based decision making may undermine an otherwise broadly functional framework for constitutional risk management. As part of a focus on the "Visegrád Four" countries, it also helps understand regional dynamics since the COVID-19 pandemic as the most visible emergency after 1989. The article starts with a brief elucidation of the political contexts that have shaped Slovakia's constitutional risk management, focusing on the developments from 2020 through early 2025. An analysis of mechanisms of emergency risk management in the constitutional framework follows, that helps identify key state authorities attempting to make decisions under serious time pressures. The implementation of the constitutional framework during the COVID-19 pandemic demonstrates the creation of new avenues for restricting rights and bolstering executive competence, with the formally powerful constitutional review mechanisms struggling to challenge these decisions. Ultimately, political context emerges as key: Slovakia entered the COVID-19 pandemic with a governing coalition enjoying constitutional majority and an aura of reform and hope. The emergency mismanagement not only facilitated the breakup of this coalition and early elections, but also a rise in emergency conspiracies openly hostile to institutions and actors committed to evidence-based decision making.

Keywords: anti-evidence decision making; COVID-19 pandemic; mismanagement; states of emergency

I. Introduction

Emergency risk management entails an inherent tension: in so far as "management" alludes to rational decisions,[1] in situations of emergency, "rational decision making" itself gets under strain.[2] Scholarship on emergency risk management mostly assumes rationality, at least as far as the decision makers in the executive, legislature and

[1] MR Rutgers, "Be Rational! But What Does It Mean? A History of the Idea of Rationality and Its Relation to Management Thought" (1999) 5 Journal of Management History 17.

[2] A Alemanno, *Governing Disasters: The Challenges of Emergency Risk Regulation* (Edward Elgar Publishing 2011) xix–xx.

judiciaries as well as accompanying "fourth-branch institutions"[3] are concerned.[4] That assumption is, however, not always correct – (not only)[5] in a situation of emergency, short-term emotional judgments might prevail. This is where emergency law could, in principle, help. Regulatory frameworks developed before the emergency occurs could reduce strain on decision makers at those pivotal moments, and encourage evidence-based decision making in the interest of addressing the situation. Furthermore, such frameworks can contribute to advancing constitutional values[6] and vice versa, prevent the rise of anti-constitutionalist practices.[7]

Against this backdrop, our article explores how emergency risk mismanagement may drive emergency conspiracies and boost decision making that disregards scientific evidence and expertise. Applying a developmental approach on the case of emergency risk management Slovakia[8], this article begins by outlining the political context of Slovakia's framework for constitutional risk management (Section II). Subsequently (Section III), it analyses the formal legal instruments pertaining to the states of emergency and changes introduced to them due to the COVID-19 outbreak in preventing emergency mismanagement by decision makers. Focusing on examples identified as significant in previous local scholarly debates on these instruments, this analysis shows the limitations of the formal legal framework if not accompanied by actors committed to rational decision making and to constitutional values.

In the case of Slovakia, the results (Section IV) point to the association between the situational bolstering of emergency powers and the governmental narratives opposing evidentiary decision making. This not only generates obstacles for positive policy impact, but, in the Slovak political context, raises questions about the presence and drivers of anti-evidentiary decision making beyond measures typically considered in the contexts of emergencies. Thus, the article concludes by pointing to novel research puzzles, notably on the linkages between the constitutional framework and actors' behavior. The latter include the possibility of using emergencies to de-sensitise the public towards anti-evidence decision making.

II. Basic overview of the political context of constitutional risk management in Slovakia

The analysis of the regulatory framework to follow centres on the developments between the outbreak of the COVID-19 pandemic and early 2025. Slovakia entered 2020 with a constitutional framework that explicitly accounted for (some) emergencies, although with little experience of applying the framework. The constitutional regulation of the states of emergency was shaped by the state socialist legacies, characterised by the readiness to transfer power to an unaccountable executive, but also by Slovakia's post-1993 desire to integrate in European and transatlantic formations, notably NATO and the

[3] M Tushnet, "Institutions Protecting Constitutional Democracy: Some Conceptual and Methodological Preliminaries" (2020) 70 University of Toronto Law Journal 95.

[4] E.g. H Kassim, "The European Commission and the COVID-19 Pandemic: A Pluri-Institutional Approach" (2023) 30 Journal of European Public Policy 612; JK Wardman, "Recalibrating Pandemic Risk Leadership: Thirteen Crisis Ready Strategies for COVID-19" (2020) 23 Journal of Risk Research 1092.

[5] See, more broadly, A Sajó, "Constitutional Sentiments" (2006) 47 Acta Juridica Hungarica 1.

[6] E.g. Z Szente, "How to Assess Rule-of-Law Violations in a State of Emergency? Towards a General Analytical Framework" (2025) 17 Hague Journal on the Rule of Law 117.

[7] M Krygier, "Introduction: Anti-Constitutional Populism" in A Czarnota, M Krygier and W Sadurski (eds), *Anti-Constitutional Populism* (Cambridge: Cambridge University Press 2022) 1–24.

[8] See, generally, K Orren and S Skowronek, *The Search for American Political Development* (Cambridge: Cambridge University Press 2004); D Wincott, "European Political Development, Regulatory Governance, and the European Social Model: The Challenge of Substantive Legitimacy" (2006) 12 European Law Journal 743.

European Union.[9] The latter prompted significant alterations to the constitutional framework, as part of the amendment of the Slovak Constitution in 2001[10] and the adoption of a dedicated constitutional act.[11]

The desire to integrate, however, began to decline after the EU accession in 2004 and especially the series of what was perceived as 'crises' of the EU.[12] Robert Fico, a four-time PM of Slovakia (as of 2025) and his party Smer-SD, the only political party with sufficient support to build a single-party cabinet (2012–2016) in Slovakia's post-1993 history, identified and shaped this trend of reduction of ideational affinity to EU membership in Slovakia.[13] In 2018, Fico's third cabinet ended prematurely due to a massive protest movement in the wake of a murder of a journalist and his fiancée that amplified indications of corruption linkages between several partisan elites, including in Smer-SD, and oligarchs.[14] Still, Fico managed to restructure the cabinet which continued until 2020.

The timing of the general elections on February 29, 2020, just before the COVID-19 pandemic outbreak in Slovakia, could in principle have benefitted Slovakia's emergency response. As a result of the frustration with Fico's rule,[15] the opposition together received a three-fifth majority of legislative mandates, sufficient to enact changes to the Slovak Constitution in a unicameral parliament. Thus, the new government entered the pandemic with a legitimacy boost. As the formation of the new coalition took a few weeks, the first emergency measures had still to be decided upon by the outgoing cabinet led by Smer-SD, but this party soon thereafter embraced the role of an oppositional critic of the incoming cabinet and its decision making.

Despite the sweeping victory in the 2020 elections thanks to largely an anti-corruption narrative, the "pandemic coalition" in Slovakia was unable to complete the regular electoral term. This coalition is considered to have largely failed to manage the COVID-19 pandemic,[16] chiefly because of the frequent absence of rational justification of political decisions.[17] The mismanagement is considered to have aided the return of Robert Fico in the 2023 early elections.[18] The post-2023 electoral term saw the rise of the consequences of pandemic emergency risk mismanagement. As of early 2025, the fourth Fico cabinet was in the process of implementing its narrative of not only critiquing the mismanagement of the pandemic in 2020–2023, but also revisiting the fact of its severity, including medical evidence. Notably,

[9] M Steuer, "Models of States of Emergency in Slovakia and Their Political Context: "We Will Manage … Somehow?"" in M Florczak-Wątor et al. (eds), *States of Emergency and Human Rights Protection: The Theory and Practice of the Visegrad Countries* (London: Routledge 2024) 81–6.

[10] Constitutional Act No. 90/2001 Coll.

[11] See Section 1.

[12] E.g. M Riddervold, J Trondal and A Newsome, "European Union Crisis: An Introduction' in Marianne Riddervold" J Trondal and A Newsome (eds), *The Palgrave Handbook of EU Crises* (Cham: Springer 2021) 3–47.

[13] D Malová and B Dolný, "Economy and Democracy in Slovakia during the Crisis: From a Laggard to the EU Core" (2016) 63 Problems of Post-Communism 300.

[14] Bertelsmann Stiftung, "BTI 2020 Country Report: Slovakia" (2020) <https://bti-project.org/content/en/downloads/reports/country_report_2020_SVK.pdf>; I Mrvová and M Turček, "In the Heart of Europe: The Murder of the Slovak Journalist Ján Kuciak" (2018) 58 Südosteuropa Mitteilungen 6.

[15] A Liebich, *The Politics of a Disillusioned Europe: East Central Europe After the Fall of Communism* (Cham: Springer 2022) 67–81.

[16] A Sagan et al., "A Reversal of Fortune: Comparison of Health System Responses to COVID-19 in the Visegrad Group during the Early Phases of the Pandemic" (2022) 126 Health Policy 446.

[17] K Staroňová, N Lacková and M Sloboda, "Post-Crisis Emergency Legislation Consolidation: Regulatory Quality Principles for Good Times Only?" (2024) 15 European Journal of Risk Regulation 637; M Steuer, "States of Emergency, Simultaneous Overreach and Underreach and the COVID-19 Pan(Dem)Ic" (2024) 15 European Journal of Risk Regulation 87.

[18] T Haughton and D Malová, "The Return of Robert Fico" (*Journal of Democracy (online exclusive)*, 2023) <https://www.journalofdemocracy.org/online-exclusive/the-return-of-robert-fico/>; on the concept of anti-constitutionalism, see Krygier (n 7).

Slovakia distanced itself from the revisions to the WHO International Health Regulations.[19] In 2025, Slovak authorities cancelled the planned representation of the country in negotiations on the global pandemic treaty, and Slovakia's official position was approved by the executive in a classified regime.[20] Neither of these developments, however, are due to the absence of "black-letter law" on emergency risk management. We analyse this framework to understand how, despite the formal legal framework, the mismanagement contributed to an overall backlash against evidence-based decision making in emergency risk management.

III. The institutional framework for emergency risk management in Slovakia and its application: Belated discoveries of a *terra incognita*

While underscoring the caveat of the constraints on rationality during emergency decision making as presented in the Introduction, this Section reviews the formal regulatory framework at constitutional, ordinary statutory and adjudicative levels. Such a review helps understand the degree of centralisation of decision making power during the COVID-19 pandemic, as well as its justification and subsequent implications. The analysis is conducted via making accessible scholarly debates otherwise concealed in Slovak-language scholarship.[21]

1. The text of the Slovak Constitution

The Constitution of the Slovak Republic[22] is an "emergency constitution"[23] as it explicitly enacts four states of emergency[24] with diverging legal consequences: war, state of war, state of exception and state of emergency.[25] The regulation is specified in a constitutional act,[26] i.e., a constitutional majority is required for amending the specifications as well.

The logic of having four states of emergency is to account for the differences in societal realities. Various emergencies require various degrees of interference with human rights which, in turn, necessitate various degrees of consensus needed to activate the respective state of emergency. "War" has the highest threshold for declaration, but also enables the most extensive set of rights restrictions, and is followed by the "state of war" and the "state

[19] F Áč, "Leading Slovak Politician Denies Slovakia's Pandemic, as Health Ministry Rejects Revised WHO Regulations" (*Euractiv*, 26 June 2024) <https://www.euractiv.com/section/health-consumers/news/leading-slovak-politician-denies-slovakias-pandemic-as-health-ministry-rejects-revised-who-regulations/>.

[20] Slovak Spectator, "Slovakia Sent No Health Experts to WHO Pandemic Treaty Talks — Classified Its Position Beforehand" (10 April 2025). All online sources were accessed as of 26 April 2025 <https://spectator.sme.sk/politics-and-society/c/slovakia-sent-no-health-experts-to-who-pandemic-treaty-talks-classified-its-position-beforehand>.

[21] See *Ústavné orgány a ústavná ochrana základných práv v krízových situáciách [Constitutional Bodies and Constitutional Protection of Fundamental Rights during Special Situations]*. Bratislavské právnické fórum (Bratislava: Právnická fakulta UK, 2021) <https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/BPF/2021/Zbornik_BPF_2021_sekcia_5_Ustavne_pravo_FINAL.pdf>

[22] Act No. 460/1992 Coll.

[23] C Bjørnskov and S Voigt, "The Architecture of Emergency Constitutions' (2018) 16 International Journal of Constitutional Law 101; see also Z Szente, "Conceptualising State of Emergency, Constitutional Crisis Management and Their Rule-of-Law Requirements" (2025) European Journal of Risk Regulation 1.

[24] Art 51 (2).

[25] Although the terminology of "state of emergency" as one type of the four "states of emergency" can be confusing, it is preferable as a translation from Slovak and helps avoid using the normatively more loaded term "crisis." Steuer, "Models of States of Emergency in Slovakia and Their Political Context" (n 9) 89–90; see also M Steuer, S Kneip and CW Clayton, "Courting Constitutional Crises: Crisis Mitigation by Constitutional Courts as Democratic Institutions" (2025) 13 European Journal of Futures Research 7.

[26] Constitutional Act on State Security, Act No. 227/2002 Coll.

of exception." However, in post-1993 Slovakia, these states of emergency were never invoked and, to the extent local scholarship tends to be reactive to ongoing events, the absence of experience limited scholarly reflection on the regulation as well. Before the COVID-19 pandemic, a state of emergency was activated in Slovakia only once, limited to sixteen hospitals where medical doctors had terminated their employment in protest against the low salaries.[27] In specific hospitals with danger of complete breakdown of the local health infrastructure, physicians were forced to provide medical assistance to patients.

The inexperience and lack of scholarly reflection facilitated the COVID-19 pandemic to become a "perfect storm" for Slovakia's regulatory framework. Nevertheless, the constitutional text proved relevance in that it provided an institutionalised avenue for the state authorities to act by activating the "emergency constitution," once the severity of the situation became obvious. The activation unfolded by declaring the suitable state of emergency out of the four, called (in English translation) "state of emergency," in mid-March 2020.[28] However, the limits of the lawmakers' foresight became obvious in the mandatory sunset provision for the "state of emergency": a single declaration could last maximum 90 days, without clarity whether a new declaration for the same reason can immediately follow if necessitated by the situation.

Despite the presence of this textual regulatory issue since the outbreak of the pandemic, and that the cabinet was backed by a constitutional majority and hence could easily specify the constitutional provisions (subject to potential constitutional review, see III.3 below), no action was taken in the short run. The temporary improvement of the public health situation in the summer encouraged the executive to allow the "spring" state of emergency to lapse, though the subsequent rapid worsening due to missing precautionary measures prompted a new state of emergency declaration in the fall. The 90-day limit for this one was to be reached just before the end of 2020, with improvements in the public health situation nowhere in sight. In this last moment, the time limit became an imminent concern, resulting in an amendment, adopted in accelerated procedure, to the constitutional act specifying the states of emergency. The enacted solution was a "pandemic state of emergency" as a new subtype of the "regular" state of emergency.

Although enacted in haste, this amendment offered an avenue to prolong the state of emergency with less controversy while reducing the extent of permissible rights restrictions during these prolongations. In "exchange" for the possibility to prolong the state of emergency for reasons of a pandemic after the initial 90 days for further maximum 40-day periods by the executive, the parliament (National Council) received the competence to review the cabinet's decision, whereby a negative or no decision would have automatically amounted to the termination of the pandemic state of emergency. The prolongations could also be subjected to constitutional review. Hence, this amendment retained the state of emergency as the "mildest" of the four states of emergency without generating major shifts in the separation of powers.[29] Overall, the skeleton provided by the text of the Constitution and the relevant constitutional act appears to have held – but the muscles on it are the ordinary legislation and the Constitutional Court practice.

[27] See <https://www.health.gov.sk/Clanok?vyhlasenie-nudzoveho-stavu-v-zdravotnickych-zariadeniach>.

[28] See Table 4.2 in Steuer, "Models of States of Emergency in Slovakia and Their Political Context" (n 9) 94.

[29] The state of emergency even retains the option to dissolve Parliament if necessary, and to organise democratic elections. See D Krošlák and T Gábriš, "Electoral System and COVID-19 Pandemics in the Slovak Republic" (2023) 11 ARSBONI 71.

2. Ordinary legislation and executive authorities

In reviewing ordinary legislation, the idiosyncrasies of frequent changes to "patch up" the Slovak legal order so that it works in the short run become apparent. Firstly, the matrix of the four states of emergency enshrined in the Constitution is supplemented by a fifth type, the extraordinary situation.[30] Slovakia has relatively more experience with extraordinary situations declared, although limited to certain territories, mostly due to natural disasters, accidents or local health threats (such as measles infections). The extraordinary situation has its logic in offering the least leeway at power concentration, and it has been used as such also when, before the state of emergency was declared for the first time due to COVID-19, the government first opted for declaring an extraordinary situation. Extraordinary situations may run simultaneously to states of emergency, and more than one can simultaneously be declared for divergent reasons. When the COVID-19-induced extraordinary situation was abolished in mid-September 2023, another one, on grounds of the consequences of Putin's invasion of Ukraine, had already been in place for more than 18 months. In March 2025, another extraordinary situation was declared due to a highly contagious virus spreading among some farming animal species.[31]

Under extraordinary situations, mostly organisational tasks are imposed on state institutions, rather than private persons. However, this logic was altered by a 2021 amendment to the Act on economic mobilisation,[32] where, even under extraordinary situation, measures of economic mobilisation can be applied in order to facilitate coping with the pandemic.[33] This alone does not meet the threshold of creating new emergencies under false pretexts, unlike in Hungary;[34] yet, the absence of the extraordinary situation from the constitutionally enumerated states of emergency may prompt commentators to subject them to less scrutiny.

The Slovak case during the COVID-19 pandemic shows that emergencies may also show a face of care and nurturing, at least for selected constituencies. Measures geared at protection, support and compensation included postponing deadlines and prolonging time periods in favour of citizens, e.g., regarding the postponement of the payment of rent, debt and related executions (enforcement of debts). They also provided tax benefits and financial support to those in need. Similarly, organisers of public events such as concerts, or travel agencies, were allowed to prolong the validity of tickets. Undertakings that were required to pay rent associated with closed-down facilities received subsidies to help pay their leases. Even unemployed persons were helped in a way that prolonged their period of support. During the second state of emergency, in addition, protection against bankruptcy proceedings was introduced to safeguard undertakings, and VAT was reduced for certain industry sectors in early 2021.

Yet, these measures did not cater to everybody's fundamental rights equally, and were "outweighed" by a chaotic mass of various legislative and administrative measures, introduced rapidly and with frequently contradictory and unclear wording.[35] At the procedural level, the Public Health Authority (PHA) emerged as a central political actor,

[30] Steuer, Models of States of Emergency in Slovakia and Their Political Context (n 9) 91.

[31] See Ministry of Interior, available at <https://www.minv.sk/?mimoriadna_situacia_cele_uzemie_sr>. For the foot-and-mouth disease, see Government of the Slovak Republic, Resolution 148/2025, available at <https://rokovania.gov.sk/RVL/Resolution/22343/1>.

[32] Act no 179/2011 Coll. on economic mobilisation.

[33] Following the declaration of such a situation, certain tasks and measures can be ordered, such as rescue work or evacuation. This mostly means restricting economic and social rights.

[34] F Gárdos-Orosz and E Burján, "From Constitutional Risk Management to Constitutional Risk Management (Emergency Law Misuse) in Hungary" (2025) European Journal of Risk Regulation 1.

[35] See M Steuer, "Slovakia's Democracy and the COVID-19 Pandemic: When Executive Communication Fails" (*Verfassungsblog*, 26 February 2021) <https://verfassungsblog.de/slovakias-democracy-and-the-covid-19-pandemic-when-executive-communication-fails/>.

despite typically remaining far from public spotlight, supporting the executive with specialised expertise in public health. In 2020, the PHA appeared to have replaced the elected authorities in making decisions directly affecting peoples' lives. The parliament and the cabinet did implement some measures directly – such as the freedom of undertaking in the market associated with sanitary equipment including face masks and respirators already in March 2020, or border controls and travel bans from one district to another, alongside an overall prohibition to leave home when a curfew had been imposed.[36] Still, impactful measures for daily routines were unilaterally enacted by the PHA.[37] For example, on March 12, a PHA measure shut down all premises where commerce and services were being provided. At the same time, obligatory quarantine for 14 days was introduced for those who arrived in Slovakia from abroad.[38] Subsequent measures of the PHA from March 2020 prohibited any public events, while the use of face masks and respirators was made a requirement for leaving home. Grocery stores were to be shut down on Sundays – considered "sanitary days." In April 2020, the PHA prohibited persons older than 65 years from entering grocery stores outside of the morning hours which were, in turn, reserved for them only. Due to immediate stark criticism and accusations of discrimination, this particular measure was amended a couple of days later. Yet, "senior hours" remained in force, limiting access for younger persons during these morning hours. The owners of the grocery stores claimed that seniors were not using this option but were shopping mostly after "senior hours," together with the rest of the population.

The PHA then repeatedly and, in fact, almost daily changed the rules for opening and closing premises such as shopping malls, bathhouses, open-air sporting facilities, and churches, as well as rules for organising weddings and funerals. Obligatory quarantine for those entering the country from abroad was subsequently abolished but only to those returning from selected neighbouring countries (Austria, Czechia, Hungary).

The mounting criticism of the PHA exceeding its competences, instead of prompting more parliamentary and cabinet interference,[39] induced decision makers to enhance the PHA's competences. An amendment to the Act on Public Health was introduced in October 2020, authorising the PHA to issue decrees. While sub-statutory decree-issuing powers existed in the Slovak legal system before, such decrees by the PHA which appeared to be able to directly restrict fundamental rights were previously unknown as a category in Slovak administrative law, causing considerable headaches for attempts to classify them in domestic legal doctrine.

At a later point, the PHA decrees were classified to be of "hybrid normative nature,"[40] which also buttressed the claim in support of their reviewability by the Slovak Constitutional Court. Before that, however, enboldened by the formal endorsement of the practice it had been engaged with before anyway, the PHA enthusiastically applied the new

[36] K Baraník, "Disproportionate Restrictions on Freedom of Movement: The Slovak Republic during the COVID-19 Pandemic" in M Florczak-Wątor et al (eds), *States of Emergency and Human Rights Protection: The Theory and Practice of the Visegrad Countries* (London: Routledge 2024) 218–234.

[37] The vacuum between the two cabinets (the new cabinet after the February 29 elections was only sworn in on March 21) may have facilitated this tendency.

[38] M Steuer, "Slovak Constitutionalism and the COVID-19 Pandemic: The Implications of State Panic" (*IACL-IADC Blog*, 9 April 2020) <https://blog-iacl-aidc.org/2020-posts/2020/4/9/slovak-constitutionalism-and-the-covid-19-pandemic-the-implications-of-state-panic>.

[39] G Dobrovičová, "Niekoľko poznámok k opatreniam Úradu verejného zdravotníctva Slovenskej republiky [Some Notes on the Measures of the Public Health Authority of the Slovak Republic]" (*Comenius Blog*, 9 November 2020) <https://comeniusblog.flaw.uniba.sk/2020/11/09/niekolko-poznamok-k-opatreniam-uradu-verejneho-zdravotnictva-slovenskej-republiky/>.

[40] Cf S Košičiarová, "Právna povaha hybridných správnych aktov [Legal Nature of Hybrid Administrative Acts]" (2022) 105 Právny obzor 34.

competence; from mid-October 2020, it closed service and commerce facilities again and re-introduced the obligation of quarantine for all those arriving to Slovakia, albeit this time allowing it to be undertaken at home.[41] Schools were left open, but only to those who had tested negative.[42] In December 2021, most public events were again forbidden, and most non-essential shops and services were closed again. However, it was allowed to participate at religious ceremonies.[43] Still, in early 2025 there was a pending case before the European Court of Human Rights, where Slovakia faced claims of unduly restricting religious rights during the COVID-19 pandemic.[44] After the peak of the third wave of the pandemic, employers were required to allow entry into the workplace only to those who had been vaccinated, tested negative, or could prove they had already overcome COVID-19.

The absence of rationally justifiable approach in fundamental rights restrictions[45] prompted strong resentment, both among those who were craving for justified decisions of the public power that, in a democracy, is supposed to answer to the public, and those who were displeased with the 2020 election results. The latter increasingly entailed the supporters of extreme right who did not make it to the parliament[46], and of former PM Robert Fico, who continued to radicalise its rhetoric and played blame games against the governing majority while using the narrative of fundamental rights protection.[47] As shown in Section IV, this narrative could be conveniently combined with undermining evidence-based decision making. Yet, the PHA could only become able to unilaterally impose rights restrictions with tacit consent of another institution – the Slovak Constitutional Court. The context of the Court's operations during the COVID-19 pandemic is essential in understanding why it could raise justified hopes to be the "voice of reason," and in what respects it succeeded – or failed – in doing so.

3. *Adjudicative practice: The Slovak Constitutional Court*

The Slovak Constitutional Court (SCC) is formally a comparatively strong adjudicative institution, including with review powers of state of emergency declarations.[48] The SCC can also suspend the effectiveness of particular legal provisions before delivering a

[41] This was prompted by a signal from the Slovak Constitutional Court, see Section 3.

[42] Slovakia is a country where the schools were closed for longer than in other countries, thus interfering strongly with the right to education: M Steuer and R Vicenová, "A Widening Gap? Fundamental Rights and States of Emergency in Slovakia" in M Florczak-Wątor et al (eds), *States of Emergency and Human Rights Protection: The Theory and Practice of the Visegrad Countries* (London: Routledge 2024) 166.

[43] <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2021/476/20211214>. See also <https://www.minv.sk/?tlacove-spravy&sprava=od-piatka-17-decembra-sa-uvolnia-opatrenia-zakaz-vychadzania-bude-platit-v-noci>.

[44] Figeľ v Slovakia, see A. Portaru, "*Figel v Slovakia*: Potential Landmark ECtHR Decision on COVID-19 Related Restrictions to Religious Freedom" (*Oxford Human Rights Hub*, 11 August 2023) <https://ohrh.law.ox.ac.uk/figel-v-slovakia-potential-landmark-ecthr-decision-on-covid-19-related-restrictions-to-religious-freedom/> and references therein. Another ongoing ECtHR litigation concerned the right to property, in the case Scheffer and others v Slovakia. <https://hudoc.echr.coe.int/?i=001-223238>, <https://www.echr.coe.int/documents/d/echr/fs_covid_eng>.

[45] T Ľalík, 'Leaving the Rule of Law Behind: How Slovakia Is Fighting against COVID-19 without Legality' (*I·CONnect*, 9 December 2021) <https://www.iconnectblog.com/leaving-the-rule-of-law-behind-how-slovakia-is-fighting-against-covid-19-without-legality/>.

[46] See A Krunková and G Dobrovičová, "Political Rights during the COVID-19 Pandemic in the Slovak Republic" (2022) 27 Białostockie Studia Prawnicze 91.

[47] M Kovanič and M Steuer, "Fighting against COVID-19: With or without Politics?" (2023) 337 Social Science & Medicine 116297.

[48] On the position of the Constitutional Court and its powers see P Čuroš, "The Constitutional Court of the Slovak Republic: A Strong Political Player with Controversial Landmark Judgments" in A Lorenz and D Dalberg (eds), *Das politische System der Slowakei: Konstante Kurswechsel in der Mitte Europas* (Berlin: Springer Fachmedien 2023) 185–204.; M Steuer, "Constitutional Court of the Slovak Republic" in Rainer Grote, F Lachenmann and R Wolfrum (eds), *Max*

judgment on the merits, thus both buying time to deliberate and signalling to the state authorities defending the provisions that there are potentially serious concerns with them. This may offer the opportunity for the questionable provisions to be repealed or to be changed before a decision on the merits. History offers positive legacy elements, too; it was asserted that an "independent and professional Constitutional Court remains Slovak democracy's greatest institutional asset."[49] Additionally, the SCC was in no shortage of cases shortly after the outbreak of COVID-19[50] and, due to context-specific developments, most mandates at the Court were renewed just shortly before the pandemic for a non-renewable twelve-year term. These specifics placed the Court into a comparatively secure position as an important asset for emergency risk management in Slovakia.[51]

The SCC showed awareness of these advantages only to a limited extent and was generally reluctant to accept its strong position and to scrutinise the whirlwind of executive decisions. In the first half of 2020, the SCC used its competence to suspend the effectiveness of selected provisions of a statutory amendment that would have obliged private companies to transmit even sensitive personal data to the PHA.[52] The legislature subsequently amended the provisions, meaning that the SCC did not have to consider whether it would ultimately declare the measure unconstitutional.[53] However, this early decision in favour of more robust scrutiny was rarely replicated in subsequent case law and did not become part of a broader pattern. The SCC refused to review the ordinances of the PHA because it did not consider them to be generally binding legal regulations but rather administrative acts to be reviewed by administrative courts.[54] The ongoing hyperactivity of the PHA prompted a further challenge due to the lack of an official publication channel,[55] an evident requirement of legality.[56] Still, it was only after an amendment to the Act of Public Health which "turned" the PHA measures into decrees to be published in the Governmental Gazette,[57] that the Court felt encouraged to

Planck Encyclopedia of Comparative Constitutional Law (Revised Edition, Oxford: Oxford University Press 2024) <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e803>.

[49] A Seleny, "Communism's Many Legacies in East-Central Europe" (2007) 18 Journal of Democracy 156, 168. With this, Seleny refers specifically to the judges of the Constitutional Court who resisted the semi-authoritarian regime in the 1990s. The paraphrase here is more general, implying that the Court is such an asset if, indeed, it is "independent and professional." On the oligarchic implications of the legacies, see also L Bokros, "The Fight between Oligarchy and Democracy in Transitional Societies" [2005] The Analyst – Central and Eastern European Review 5.

[50] See also T Ľalík, K Baraník and Š Drugda, "Slovakia" in R Albert et al (eds), *The I·CONnect-Clough Center 2020 Global Review of Constitutional Law* (Chestnut Hill: I•CONnect and the Clough Center 2021) 269–273.

[51] Of course, the latter also brings some challenges, including in the extent to which the judges are used to work together, and with their teams, and the relatively more limited experience with constitutional decision making and its public repercussions.

[52] PL. ÚS 13/2020-103, available at <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2020/144/>. See also T Birmontiene, "The Main Trends in Constitutional Jurisprudence Developed by Constitutional Courts During the COVID-19 Pandemic" in R Arnold and J Cremades (eds), *Rule of Law and the Challenges Posed by the Pandemic* (Cham: Springer 2023) 91; Steuer and Vicenová (n 42) 170–1.

[53] PL. ÚS 13/2020-252, available at <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2022/214/>.

[54] See I. ÚS 438/2020, available at <https://www.ustavnysud.sk/docDownload/9acb4043-b89a-466b-9e8e-5c642a6aaa4f>, II. ÚS 454/2020, available at <https://www.ustavnysud.sk/docDownload/0bf3ed58-92ab-4c48-9005-ebdadcf0fe12>, III. ÚS 397/2020, available at <https://www.ustavnysud.sk/docDownload/0762647b-a7c9-4c73-afa8-c49568f78e84>, IV. ÚS 459/2020, available at <https://www.ustavnysud.sk/docDownload/566e7d51-6cd6-4516-915f-c14149ac6e09>.

[55] See P Kukliš, "Vyhlášky úradov verejného zdravotníctva ako právny predpis [The Ordinances of Public Health Authorities as Generally Binding Legal Act]" (2021) 104 Právny obzor 141.

[56] LL Fuller, *The Morality of Law* (Revised edition, New Haven: Yale University Press 1977).

[57] This technically "made them" into normative (legislative) acts, and thus unquestionably within the purview of the SCC's review powers.

review them.[58] This shows the extent to which the Court felt in need of external validation by legislation and legal scholars.[59] With the doubts around review powers of the SCC addressed, the Court reviewed individual rights restrictions by the PHA, but prevailingly affirmed their constitutionality.

The Court's deference was visible when reviewing some of the declarations and promulgations of the state of emergency. The opposition MPs alongside the attorney general (AG) buttressed their arguments with evidence of the mismanagement and associated human rights violations.[60] The Court refused the arguments and considered the pandemic to be present in the whole territory of Slovakia.[61] Prompted by the same type of petitioners, the SCC could then review the prolongation of the state of emergency. Besides objecting against the curfew imposed against leaving one's home,[62] this petition placed centre-stage another highly unconventional idea of the Slovak PM Igor Matovič: regular mandatory antigen testing for COVID-19 incidences, which was criticised also for interference with the bodily integrity of a person, and for the consequences it carried for fundamental rights.[63] The SCC did not see an issue with the proportionality the measures. It also considered as constitutionally sustainable the globally unconventional COVID-19 testing processes. While the Court accepted the claim that the testing of persons, in fact, had become an obligation, it viewed testing as legitimate to ensure public health and safety.

The generally deferential direction of the SCC decisions changed only slowly as the pandemic unfolded. When the AG again turned to the Court, challenging the nature of the decrees issued by the PHA[64] on the ground of its publication through a separate, unsupervised publication tool as opposed to the Governmental Gazette, the Court did not see a constitutional problem in the multiplicity of official publication tools. The judges dismissed concerns pertaining to the fragmentation of the legal order,[65] and did not accept the petitioner's argument that the legislator unexpectedly and without justification had introduced "parallel structures of the legal order."

The CC's deference, especially to the extent it was supported by arguments of the primacy of executive power during emergencies, began to make it seem as insignificant for those

[58] PL. ÚS 8/2021-143, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/550/>.

[59] In yet another decision, the Court recognised the decrees of the PHA as generally binding legal regulations again. IV. ÚS 249/2021, available at <https://www.ustavnysud.sk/docDownload/aab0fbdb-0ddb-42c5-b653-980b2e0d8b43>. On the contrary, in the decision III. ÚS 291/2021 (available at <https://www.ustavnysud.sk/docDownload/0bd18408-3d12-4c9e-9e35-86c44561bc09>), another SCC senate rejected the constitutional complaint regarding the decrees of the PHA, stating that the complainant had not exhausted the means of redress, since the person affected by them was entitled to challenge them by a general administrative action.

[60] The opposition claimed that the resolution proclaiming the state of emergency lacked an explicit reason for doing so, and its territorial scope (whole or part of Slovakia) was unspecified. The AG also claimed that the extent of rights restrictions was not sufficiently detailed. He also challenged an executive ordinance on economic mobilisation, arguing that the invalidity of the state of emergency extends to the invalidity of the economic mobilisation. The MPs additionally claimed that there was no actual reason for the state of emergency since COVID-19 did not spread widely across the country yet.

[61] PL. ÚS 22/2020, available at <https://www.ustavnysud.sk/docDownload/0b9eb070-33a2-44a3-b12b-3d4ba443dfc2>.

[62] The AG objected to excessive restrictions of the freedom of movement and residence in Slovakia by prohibiting both travelling outside Slovakia and leaving one's home from 5:00 a.m. to 1:00 a.m. the following day until further notice, with some exceptions. The AG pointed also to the intersection between the ban on freedom of movement and its impact on other fundamental rights, such as the right to property, freedom of religion, the freedom of association, and the right to start a business and carry out other gainful activities.

[63] For instance, under some circumstances, disagreeing with being tested may have caused a job loss. See M Kovanič, "New Means of Surveillance in the Fight against the Pandemic in Slovakia: Population-Wide Testing and Its Costs" in SK Ivkovich et al (eds), *Policing during the COVID-19 Pandemic* (London: Routledge 2024) 45–64.

[64] PL. ÚS 8/2021, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/550/>.

[65] M Gajdošová, "Coronavirus-Delegated" Law-Making and the Official Publication Instruments – A Review of the Latest Decision of the Slovakian Constitutional Court" (2022) 68 OER Osteuropa Recht 235.

turning to it to defend their rights, despite all formal powers and independent status. However, the elite petitioners – opposition MPs and the AG – did not give up.[66] Thirty opposition deputies challenged the Act on Public Health again. The petitioners argued that the authorisation of an executive authority to define limits of fundamental rights and freedoms by decree violated the separation of powers. The distinction between vaccinated and unvaccinated individuals was claimed to be unconstitutional discrimination, while the focus specifically on COVID-19 instead of diseases generally raised concerns over adhering to the principle of generality of legal norms. The SCC, however, was satisfied with the competence delimitation of the PHA. The focus on COVID-19 did not undermine generality because the regulation continued to apply to an indefinite number of persons,[67] while the differentiation between restrictions of selected rights for vaccinated and unvaccinated[68] persons was justified by the medical evidence of the latter exposed to the risk of a more severe course of the disease compared to vaccinated persons and persons who have overcome COVID-19.[69]

The SCC's deferential standpoint was less present in adjudicating requests for suspensions of effectiveness of legal provisions in preliminary proceedings. In 2020, the judges suspended the effectiveness of a part of the amendment to the Act on Public Health[70] which precluded governmental liability for damage caused by the anti-pandemic interventions. Before a final decision by the Court, the parliament removed this exemption, and the Court terminated its proceedings without deciding on the merits.[71] A similar fate awaited the mandatory quarantine imposed upon those who entered Slovakia from abroad. The PHA replaced this decree before the Court's decision, but did not eliminate mandatory quarantine altogether. Thirty MPs raised a challenge against the new decree[72] on grounds of violating equality and non-discrimination because it discriminated between unvaccinated and vaccinated persons in exercising their constitutional right to freedom of movement and residence, the right to free entry to the territory of Slovakia, as well as their exercise of the fundamental right to work. The Court did not critique mandatory quarantine for returnees from abroad in principle. Instead, it took issue with the decree allowing free cross-border movement to persons who were vaccinated only once instead of twice, which, from the medical standpoint, amounted to being practically not vaccinated at all. Yet, unlike altogether unvaccinated persons, persons vaccinated once could avoid mandatory quarantine by taking an RT-PCR test for COVID-19. The differential treatment without justification necessitated the suspension of effectiveness of the decree – a "nudge" to the regulator to be even more stringent in the name of public health. The regulator listened, and the decree in question was replaced with one extending mandatory quarantine to those vaccinated with only one dose.

Except for this signalling via the preliminary proceedings on suspension of effectiveness, the Court did not appear ready to challenge the executive and the legislature in impactful cases until late 2021. By then, the health consequences of executive emergency risk mismanagement became obvious. In December 2021, the

[66] The AG appointed by PM Fico's executive was replaced in 2020 by the coalition's candidate M Žilinka. However, the new AG soon started to critique his appointers' actions as well, including by petitioning the SCC.

[67] A regulation could have been phrased such that it would discern between various types or levels of severity of communicable diseases and introduce various rules applicable to various situations. Slovak regulators did not take the COVID-19 pandemic as an impetus to think long-term, in view of potential similar future occurrences.

[68] Persons who could not prove that they have overcome the COVID-19 disease, or that they have tested negative for COVID-19 via specific testing forms also faced more stringent restrictions.

[69] PL. ÚS 14/2021, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/118/>.

[70] Resolution 318/2020 Coll., available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/318/>.

[71] PL. ÚS 27/2020, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/303/>.

[72] PL. ÚS 11/2021, available at <https://www.ustavnysud.sk/docDownload/77a17999-10ef-46d4-944c-d37fe95fcc92>. The earlier, replaced decree was handled in proceeding under PL. ÚS 10/2021, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/382/20221124>.

plenum declared the contested provisions of the decrees of the PHA unconstitutional for the first time, on grounds of the overly broad scope of competences of the PHA and quarantine being forced onto those who arrived in Slovakia.[73] This petition was initiated by the Ombudsperson Mária Patakyová, who is also a law professor.[74] In line with the petitioner's constitutional position, human rights arguments, referencing both the Constitution[75] and the European Convention on Human Rights,[76] were prominently featured in the petition. The critique was directed at the missing maximum permissible length of mandatory isolation in the regulation, and at the costs incurred in fulfilling the obligation of quarantine to be paid by the person who was obliged to stay in isolation. The SCC accepted the former argument in so far as it concerned the mandatory isolation of unspecified length in state-sponsored facilities. The latter were often in disastrous conditions and forced strangers to reside in shared spaces for a long time, that in some cases could have caused COVID-19 infections precisely in the facilities. The violations in these cases were so obvious, that the Court would have had a hard time to ignore them; moreover, the declaration of violation was unlikely to cause much partisan distress, as the practice was discontinued by the time the Court delivered the decision. Regarding the obligation to cover the costs of quarantine, the Court shifted the burden to general courts where lawsuits against individuals who refused to pay for the mandatory state quarantine were ongoing. The unfinished litigation served as an opening for the new executive to capitalise on the injustice with its "COVID amnesty" proposal (see below).

Overall, the Constitutional Court did not underestimate the severity of the threat by COVID-19.[77] At the same time, the wide leeway it allowed to the executive despite its flawed practices (Section III.2 above) made it appear less significant. This was particularly so towards the beginning of the pandemic, even in cases where evidence-based or comparative justifications for the choice of measures adopted were missing (such as the globally unconventional population-wide testing). From a normative standpoint, "[e]xecutive expert knowledge and confidentiality interests do not pose insurmountable difficulty for a judge,"[78] but for the Slovak Constitutional Court, they seem to have posed such a difficulty due to the limited willingness to take the risk to bring in more evidence from expert bodies outside the judges' traditional domains of knowledge. By that, the Court fed into the narrative of the opposition which increasingly demanded a change in power[79] due to the mismanagement of the pandemic by blending rational critique with a general advocacy of impunity for acts causing public harm.

[73] PL. ÚS 4/2021, available at <https://www.ustavnysud.sk/docDownload/ac961569-c4a9-4309-b402-be9bcfb826e4/%C4%8D.%207%20-%20PL.%20%C3%9AS%204_2021.pdf>.

[74] The Ombudsperson, firstly, challenged the provisions of the Act on Public Health, which allowed the administrative authorities "to adopt any 'additional measures' that may result in ordering or prohibiting unspecified activities, as long as they consider such measures appropriate, or necessary." Secondly, according to the Act, the PHA or the regional public health office might have ordered the forced isolation of persons suffering from a communicable disease.

[75] Art 17 of the Constitution.

[76] Art 5(1)e) of the ECHR.

[77] M Steuer, "The Extreme Right as a Defender of Human Rights? Parliamentary Debates on COVID-19 Emergency Legislation in Slovakia" (2022) 11 Laws 17.

[78] A Sajó and R Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism* (Oxford: Oxford University Press 2017) 431.

[79] P Baboš, "Slovakia: Anti-Pandemic Fight Victim of Politicization" in K Lynggaard, MD Jensen and M Kluth (eds), *Governments' Responses to the Covid-19 Pandemic in Europe: Navigating the Perfect Storm* (Wiesbaden: Springer 2023) 169–181.

IV. Post-pandemic implications of the emergency mismanagement in Slovakia: need for further research of anti-evidence decision making

The mismanagement of the COVID-19 pandemic despite a broadly functional formal regulatory framework in Slovakia resulted in a trend opposite to the conventional trajectory of "executive self-entrenchment" occurring during an emergency.[80] The majority governing during the emergency was ousted and its opponent began to undertake steps challenging evidence-based decision making altogether. As this article is limited to reviewing emergency risk management with a focus on the COVID-19 pandemic, it does not consider other areas of risk management where such practices occur. With respect to public health and COVID-19, PM Fico's cabinet engaged in post-pandemic revisionism soon after its elevation in late 2023. It created a new position of the "plenipotentiary for the review of the process of governing and managing resources during the COVID-19 pandemic."[81] The position was devoted to review the 2020–2022 period and to recommend measures against the mismanagement and its future prevention.[82] The appointed plenipotentiary, however, was a known conspiracist who undermined efforts of medical authorities to reduce the deaths during the pandemic and who subsequently created an "expert group" that included internationally known COVID-19 conspiracists.[83] The cabinet approved this group's report from late 2024, which questioned the use of vaccines during the pandemic that saved lives, and made other conspiracist claims. The Faculty of Medicine of the Comenius University, in a 2025 public statement, highlighted how the report runs contrary to global scientific consensus without offering credible evidence, and hence undermines "trust in the fundamental principles of evidence-based medicine and medicine as such," with long-term harm infected upon evidence-based decision making, death rates and economic performance in Slovakia.[84] Despite the opposition of experts, the plenipotentiary received enhanced competences and continued to shape the post-pandemic revisionist decision making by the governing majority.[85]

The rhetoric of executive mismanagement of the pandemic was buttressed by the coalition via the idea of the "COVID amnesty," the commitment to compensate all who were financially penalised for violating COVID-19-related restrictions, coupled with the mandatory return of expenses to those who had had to undertake the "obligatory quarantine" upon returning from abroad.[86] The "COVID amnesty" was envisioned to come to terms with two unrelated COVID-19 emergency measures: one is the compensation for the "obligatory quarantine" that was declared unconstitutional by the Constitutional

[80] A Kouroutakis, "Abuse of Power and Self-Entrenchment as a State Response to the COVID-19 Outbreak: The Role of Parliaments, Courts and the People" in MC Kettemann and K Lachmayer (eds), *Pandemocracy in Europe: Power, Parliaments and People in Times of COVID-19* (Oxford: Hart 2021) 33–46.

[81] <https://www.vlada.gov.sk/vlada-sr/splnomocnenci-vlady/>.

[82] <https://www.vlada.gov.sk/site/assets/files/1709/navrh_statutu_splnomocnenec_pre_covid-19.pdf>.

[83] Slovak Spectator, "International Pandemic Deniers Scrutinise Slovakia's Covid-19 Response" (*spectator.sme.sk*, 9 July 2024) <https://spectator.sme.sk/politics-and-society/c/led-by-a-slovak-anti-vaxxer-international-covid-19-doubters-probe-into-slovakias-pandemic-handling>.

[84] Comenius University, Faculty of Medicine, "Press release" (21 January 2025) <https://uniba.sk/spravodajsky-portal/detail-aktuality/back_to_page/aktuality-43/article/stanovisko-lf-uk-k-sprave-splnomocnenca-vlady-sr-pre-preverenie-procesu-riadenia-a-manazovania-zd>.

[85] A Dömeová and K Braxatorová, "Petrovi Kotlárovi dal Ficov úrad väčšie právomoci pri vakcínach na covid [Peter Kotlár Was Granted Enhanced Competences on Vaccines by Fico's Office]" *Aktuality.sk* (26 March 2025) <https://www.aktuality.sk/clanok/49SUqmd/petrovi-kotlarovi-dal-ficov-urad-vacsie-pravomoci-pri-vakcinach-na-covid/>.

[86] F Áč, "Fico Proposes 'COVID Amnesty' and Compensation for Thousands of Slovaks" (*Euractiv*, 10 December 2024) <https://www.euractiv.com/section/health-consumers/news/ficos-proposes-covid-amnesty-and-compensation-for-thousands-of-slovaks/>.

Court, and represents a clear example of mismanagement.[87] The other is a general amnesty for penalties for misdemeanours such as not wearing mandatory masks without valid health-based justification. The latter response is an irresponsible – if not unconstitutional[88] – nudge[89] towards disrespecting even proportionate, evidence-based restrictions that devalues the sacrifices made by many professionals and individual citizens alike during the pandemic.

While the episode of the conspiracist plenipotentiary and pandemic report illustrates the extent to which scientific evidence was disregarded in post-pandemic Slovakia, the "COVID amnesty" offers a tentative explanation to it. The narrative of the "amnesty" rests on executive overreach during the preceding electoral term, which is partially accurate (in relation to the "obligatory quarantines"), but misleading as a whole, as the mismanagement was a combination of executive overreach with executive underreach.[90] If the instances of executive overreach during the COVID-19 pandemic emergency management in Slovakia contributed to the "general de-sensitisation of the Slovak public towards rights restrictions,"[91] their *en bloc* condemnation by the post-pandemic executive weakens state capacities to induce compliance towards measures that may be needed to manage future emergencies – including those triggered by Putin's autocratic assault of Ukraine, a state bordering Slovakia, and by pro-Kremlin electoral manipulation techniques and the spread of disinformation.

In conclusion, the article demonstrates that the Slovak case of emergency risk mismanagement needs to be read in the context of what happened after the pertinent emergency regulatory episode of the COVID-19 pandemic, and how this development prompts rethinking emergency risk management. The developmental approach prompts further research on how emergency mismanagement may trigger backlash against evidence-based decision making and undermine state capacities to manage emergencies.

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[87] Whether the proposed form of "executive amnesty" is the most appropriate to address these violations does not alter the argument, that it aims to redress a practice validly declared as unconstitutional by the Constitutional Court.

[88] Szente (n 6) 135.

[89] See A Alemanno and A Spina, "Nudging Legally: On the Checks and Balances of Behavioral Regulation" (2014) 12 International Journal of Constitutional Law 429.

[90] Steuer, "States of Emergency, Simultaneous Overreach and Underreach and the COVID-19 Pan(Dem)Ic" (n 17).

[91] M Steuer and M Kovanič, "Militarisation of Democracy in Slovakia" in J Rak and R Bäcker (eds), *Neo-Militant Democracies in Post-Communist Member States of the European Union* (London: Routledge 2022) 177.

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