

CONSTITUTIONAL COURTS IN STATES OF EMERGENCY: EXPERIENCES FROM THE VISEGRÁD COUNTRIES

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This article examines the operation of constitutional courts in Hungary, Poland, the Czech Republic, and Slovakia – the Visegrád countries – during states of emergency, with a special focus on the COVID-19 pandemic. It investigates how these courts interpreted their constitutional roles under ‘special legal orders’ and whether their competencies and jurisprudential standards changed under exceptional circumstances. Although the constitutions of all four states maintain the continuous operation of constitutional review during emergencies, the courts’ performance and impact varied considerably. The analysis shows that the strength and independence of constitutional adjudication under normal conditions determine its capacity to function as a guardian of constitutionality in emergencies. The article concludes that constitutional courts that do not effectively protect constitutionalism in ordinary times are unlikely to do so during crises, emphasizing the continuing importance of institutional integrity, judicial independence, and rule-of-law standards in exceptional legal orders.

1 INTRODUCTION

What happens to constitutional courts and constitutional adjudication when an emergency occurs? The global crises that have erupted since the turn of the millennium, such as the international financial and debt crisis,¹ terrorism,² the often so-called migration crisis,³ and other country-specific or regional problems, such as the Russo-Ukrainian war and the Hamas-Israel conflict,⁴ as well as the extraordinary new rules introduced on the basis of constitutions or normal legislation, have raised and continue to raise numerous questions about the function and nature of constitutional review in these exceptional circumstances. Furthermore, what is the role of the constitutional courts as autonomous state institutions

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¹ Xenophon Contiades and Alkmene Fotiaou, ‘How Constitutions Reacted to the Financial Crisis’ in Xenophon Contiades (ed), *Constitutions in the Global Financial Crisis. A Comparative Analysis* (Ashgate 2013); Pablo Iglesias-Rodríguez, Anna Triandafyllidou, and Ruby Gropas (eds), *After the Financial Crisis – Shifting Legal, Economic and Political Paradigms* (Palgrave MacMillan 2016); Fred L Morrison (ed), *Fiscal Rules – Limits on Governmental Deficits and Debt* (Springer 2016).

² Christian Kaunert and Sarah Léonard (eds), *European Security, Terrorism and Intelligence Tackling New Security Challenges in Europe* (Palgrave MacMillan 2013); Anthony Richards, *Conceptualizing Terrorism* (Oxford University Press 2015).

³ Ali Bilgic, *Rethinking Security in the Age of Migration: Trust and Emancipation in Europe* (Routledge 2013).

⁴ Some researchers have already dubbed the 21st century the ‘century of crises’. For example, Norma C Noonan and Vidya Nadkarni, ‘Introduction: A Century of Challenges’ in Norma C Noonan and Vidya Nadkarni (eds), *Challenge and Change. Global Threats and the State in Twenty-first Century International Politics* (Palgrave Macmillan 2016). These crises are of various kinds, Alan Greene, ‘Types and Effects of Emergency’ in Rainer Grote, Frauke Lachenmann, and Rüdiger Wolfrum (eds), *Max Planck Encyclopaedia of Comparative Constitutional Law* (Oxford University Press 2019).

in protecting constitutional justice and the rule of law in these situations? In such situations, the constituent power and the legislator determine the constitutional court's function when drafting constitutional legislation prior to the emergency; therefore, constitutional courts are inevitably forced to reconsider their previous case law, developed over decades of constitutional disputes under normal circumstances. However, it is the task and the duty of the constitutional courts to interpret the exceptional rules both in terms of their own competencies and in relation to the new separation of powers.

The above-mentioned problems have a major impact not only on public policy and people's everyday lives, but also on old and established constitutional norms and constructions of judicial interpretation, and may, in many cases, change the function of the constitutional court. In new situations, the courts must address the constitutionality of legal responses to unprecedented social, economic, and political problems. What is more, in the Member States of the European Union, all answers must be in line with EU and international law. Finally, in some cases, constitutional courts may act not only as a counterweight or constraint on public power but also as supporters of the acting state institution in order to identify effective solutions to particular problems in line with the rule of law.

In an edited volume published in 2019, Zoltán Sente and I examined how these challenges have generally affected the case law of the constitutional courts of certain European countries and of the European courts (CJEU, ECtHR).⁵ We also examined the states of emergency, specifically in the Visegrád countries, with regard to the protection of fundamental rights⁶ and to the general capacity of the emergency constitutional law to meet rule-of-law requirements by evaluating the experiences of the practice of recent years.⁷

The goal of this study is now limited to special situations in which the proclamation of an emergency as a 'special legal order' regulated by the constitution may arise and/or has occurred in recent years. In the study, the role of the Visegrád Constitutional Courts is examined in these special legal situations. The Hungarian, Polish, Czech, and Slovak Constitutional Courts have played an important role in state life since the democratic transitions. All four countries transitioned from state socialism to constitutional democracy through a complex process after 1989 and joined the EU together in 2004. All four jurisdictions have rules in their constitutions about emergency-type 'special legal orders', and they uphold the operation of the Constitutional Courts in these situations.

I examine the functions the constitution assigns to them under a special legal order, the powers and tasks it defines for them, and how the institutions have functioned within that framework. In all four Visegrád countries, this is essentially a constitutional problem linked to the experience of the COVID-19 pandemic of recent years.

We can learn a lot about the specific characteristics of constitutional institutions by testing their stability and viability under strong external pressure. Constitutional courts survive from crisis to crisis.⁸ One of the most frequently discussed topics in comparative

⁵ Zoltán Sente and Fruzsina Gárdos-Orosz (eds), *New Challenges to Constitutional Adjudication in Europe – A Comparative Perspective* (Routledge 2018).

⁶ Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malír, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

⁷ Zoltán Sente and Fruzsina Gárdos-Orosz, 'Constitutional Risk Management in the V4 Countries – Diverging Practices and the Need for Convergence' (2025) 16(2) *European Journal of Risk Regulation* 460.

⁸ Sente and Gárdos-Orosz (eds), *New Challenges* (n 5); Zoltán Sente and Fruzsina Gárdos-Orosz (eds), *Populist Challenges to Constitutional Interpretation in Europe and Beyond* (Routledge 2021); Fruzsina Gárdos-Orosz,

constitutional law is constitutional adjudication, including its institutional aspects⁹ and the methodology of jurisprudence.¹⁰ The starting point of this Article is that constitutional review and relevant, well-functioning constitutional courts are essential elements of a constitutional democracy, no matter what the borders are between normalcy and emergency. The aim of this contribution is to complement existing research with a fresh comparative analysis of contemporary European challenges that have not yet been examined with this methodology in the context of the Visegrád countries.

2 THE VISEGRÁD CONTEXT

The Visegrád Four (V4) – Hungary, Poland, the Czech Republic,¹¹ and Slovakia – share a common history dating back to well before the establishment of the Habsburg Empire and their experience of becoming part of the Soviet bloc after the Second World War.¹² In 1989, following the political and economic transformation that followed the collapse of the state socialist system, they decided to deepen their cooperation and promote their common interests within the framework of the Visegrád Group, which was established for this purpose in 1991.¹³

Although there are differences between the four constitutional systems,¹⁴ they are fundamentally similar, all four being parliamentary republics. Their place in European integration, historical experience, physical proximity, and similar legal culture¹⁵ nevertheless, make it possible to compare how the respective legal systems respond to identical phenomena and similar problems. One area where this is particularly worthwhile is in the development of regulations for emergency situations, as the constitutional framers were motivated by very similar historical experiences, and the region was similarly affected by

Constitutional Justice under Populism: The Transformation of Constitutional Jurisprudence in Hungary since 2010 (Wolters Kluwer – Akadémiai Kiadó 2024).

⁹ Andrew Harding and Peter Leyland (eds), *Constitutional Courts. A Comparative Study* (Wildy, Simmonds & Hill Publishing 2009); Víctor Ferreres Comella, *Constitutional Courts and Democratic Values* (Yale University Press 2009); Allan R Brewer-Carías (ed), *Constitutional Courts as Positive Legislators. A Comparative Law Study* (Cambridge University Press 2011); Patricia Popelier, Werner Vandenbruwaene, and Armen Mazmanyan (eds), *The Role of Constitutional Courts in Multilevel Governance* (Intersentia, 2012); Maartje De Visser, *Constitutional Review in Europe: A Comparative Analysis* (Bloomsbury 2014).

¹⁰ Diana Kapiszewski, Gordon Silverstein, and Robert A Kagan (eds), *Consequential Courts: Judicial Roles in Global Perspective* (Cambridge University Press 2013); Tania Groppi and Marie-Claire Ponthoreau (eds), *The Use of Foreign Precedents by Constitutional Judges* (Hart 2014). See the new wave of comparative constitutional law literature; Ran Hirschl, *Towards Juristocracy. The Origins and Consequences of New Constitutionalism* (Harvard University Press 2007); Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar 2014).

¹¹ The official names of the countries are Hungary, the Slovak Republic, the Republic of Poland, and the Czech Republic/Czechia.

¹² Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer, 'States of emergency and fundamental rights in books and in action: The Visegrad countries and the COVID19 pandemic' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

¹³ Michal Kopeček, 'Sovereignty, "Return to Europe" and Democratic Distrust in the East After 1989 in the Light of Brexit' (2019) 28(1) *Contemporary European History* 73.

¹⁴ Iván Halász, *Az államszervezet fejlődése a közép-európai államokban 1989 után (Államfő, parlament, kormány). [The development of state organisation after 1989 in Central and Eastern Europe]* (Lucidus 2014).

¹⁵ Zoltán Tóth J, 'Interpretation of Fundamental Rights in Central and Eastern Europe: Methodology and Summary' in Zoltán Tóth J (ed), *Constitutional Reasoning and Constitutional Interpretation: Analysis on Certain Central European Countries* (CEA Publishing 2021).

dangerous situations, such as the COVID-19 pandemic, during the period under review.

The analysis of legal issues arising from the pandemic sheds light on the functioning of special legal regimes and shows that, although the special legal regimes in all four countries were developed along similar principles, they operated differently in exceptional situations.¹⁶ Although the rules differ in their detail, during the COVID-19 pandemic, for example, the constitutions of all the countries provided for the possibility of introducing special legal orders. Since, following the democratic transitions, the Constitutional Courts were also established in a similar manner, following the centralised, so-called Kelsen model, and they have played a similarly important role in interpreting and monitoring the rules of constitutional democracy, it is also possible to compare how this original function has changed over the years and how the special legal orders have affected the former. Have these bodies retained their constitutional protection function under the special legal orders, and if so, based on normative regulations, how do they exercise their powers, what decisions do they take, and in what cases do they declare that they lack jurisdiction?¹⁷

With the global pandemic, emergency situations became a central constitutional issue worldwide, and constitutional lawyers in the Visegrád countries also began paying increasing attention to the topic. While in other countries the literature had already begun to address the phenomenon of the special legal order in the wake of the 'war on terrorism' or similar events, the tragic COVID-19 pandemic provided researchers of the constitutional systems of the Visegrád countries with an opportunity and empirical research material for an intensive examination.¹⁸ The joint discussion of these four jurisdictions is therefore justified by the constitutional, political, historical, and cultural similarities between the V4 countries, as well as their proximity and planned cooperation.

Despite all the above-mentioned similarities, the history and the presence of the four Visegrád Constitutional Courts are fundamentally divergent. The Polish Constitutional Court has been in a state of crisis since 2015 because it has been unable to perform its original function.¹⁹ The Hungarian Constitutional Court has also suffered from a legitimacy crisis since 2010.²⁰ The constitutional and legislative powers have shaped the special legal order regulations into an ideal type of constitutional adjudication across all four countries, but when assessing the practice of the Constitutional Courts, one cannot avoid noticing differences. Apart from the specific problems related to COVID-19, there are general difficulties that exist independently of the special legal orders, but also within them.²¹

The four constitutional regulations are similar in that they establish a special legal order at the normative constitutional level within the framework of the constitutional state. They reject the Schmittian approach to the state of exception. Consequently, the constitutional systems of all four countries accept that their Constitutional Courts shall continue to function

¹⁶ Zoltán Nagy and Attila Horváth (eds), *Emergency Powers in Central and Eastern Europe. From Martial Law to COVID-19* (Central European Academic Publishing 2022).

¹⁷ Joelle Grogan, 'COVID19, The Rule of Law and Democracy. Analysis of Legal Responses to a Global Health Crisis' (2022) 14(2-3) *Hague Journal on the Rule of Law* 349.

¹⁸ Florczak-Wątor, Gárdos-Orosz, Malíř, and Steuer (eds) (n 6).

¹⁹ Monika Kawczyńska, 'Combating the constitutional crisis in Poland – Can the European Union provide an effective remedy?' (2021) 61(2) *Hungarian Journal of Legal Studies* 229.

²⁰ Gárdos-Orosz, *Constitutional Justice under Populism* (n 8).

²¹ Tímea Drinóczi and Agnieszka Bień-Kacała, 'COVID19 in Hungary and Poland: Extraordinary Situation and Illiberal Constitutionalism' (2020) 8(1-2) *The Theory and Practice of Legislation* 171, 187-188.

unchanged and do not lay down separate rules for their functioning. On the other hand, the four Constitutional Courts have different competencies with regard to, e.g. general *ex post facto* abstract review, constitutional complaint procedures, and constitutional complaints.

In sum, with regard to constitutional emergencies, there has been no change in the fundamental competencies of any of the Constitutional Courts, either in terms of who can bring cases before them or the legal consequences of their decisions. All four constitutional systems structure their emergency rules in a similar way, categorizing them according to specific dangers and exceptional situations, and do not distinguish between different special legal situations with regard to the role of the constitutional court. However, the exercise of competencies is influenced by the fact that emergency situations raise novel constitutional issues, to which constitutional courts may struggle to respond within their original interpretation of the scope of their competencies. The question of jurisdiction over acts related to the promulgation of an emergency is one such problem, and another is the scope of jurisdiction in fundamental rights cases.

In principle, therefore, the Constitutional Courts have the same function in such situations as they do in normal cases (constitutional protection, review of norms, protection of individual rights), but in a special, emergency legal order, the scope of their competencies and the manner in which they are exercised are probably not the same.

Different rules can also be found on the restriction of fundamental rights in constitutions and (in the Czech Republic and Slovakia) in the constitutional acts that form part of the constitutional order.²² These rules, or the binding legislation based on the authorisations provided therein, define the content of constitutional review, the scope of protected fundamental rights, and the criteria for their restriction. However, depending on their level of abstraction, the rules are more or less helpful in establishing the special legal standards, and thus, the Constitutional Courts of the Visegrád countries also vary in how they approach this task. In addition, the different roles are reflected in the development of their criteria. Overall, the exercise of powers in the field of fundamental rights adjudication varies despite the unchanged institutional function.²³

The Constitutional Court of each country is therefore the body that ultimately determines the scope of its review over legislation pertaining to the special legal order: it decides how the latter deviates from the normal legal order when adopting a given decision, whether it reviews the legislative reasoning, and what it takes into account, e.g. in order to assess the constitutionality of the restriction of rights.²⁴ In some cases, the general fundamental rights restriction test applies, in which case the question arises of how judges take into account the special legal circumstances. In these cases, although the fundamental rights restrictions that were introduced were similar in nature everywhere, the four Constitutional Courts assumed different roles in different constitutional regulatory

²² See Chapter V, especially Article 52-54 of the Fundamental Law of Hungary, Chapter XI in the Polish Constitution, especially Articles 229-234. In the Czech constitutional order, the relevant rules for the non-war situations are in the Act with constitutional force about state security 110/1998. In Slovakia the relevant Constitutional provision is 460/1992 of the Constitution of Slovakia, especially 51(2).

²³ Florczak-Wątor, Gárdos-Orosz, Malíř, and Steuer (eds) (n 6).

²⁴ Szente and Gárdos-Orosz, 'Constitutional Risk Management in the V4 countries' (n 7); Zoltán Szente, 'Conceptualising State of Emergency, Constitutional Crisis Management and Their Rule-of-Law Requirements' (2025) 16(2) *European Journal of Risk Regulation* 374.

environments: Of all the courts, the Slovak one was most involved in fundamental constitutional and political controversies, while the Czech court was particularly restrained, rejecting numerous petitions on the grounds of lack of jurisdiction, but nevertheless laying down the basic principles for assessing the constitutionality of fundamental rights restrictions. The Hungarian body did not rule out the possibility of review in some of its decisions, but applied different standards in these decisions and declared the constitutionality of all but one government action. The Polish Constitutional Court, however, was not given a role in developing special legal standards during the COVID-19 pandemic, as no special legal order was declared; only alternative statutory measures were introduced.²⁵

The V4 Constitutional Courts responded to various types of constitutional issues during the COVID-19 pandemic such as whether the acts proclaiming the special legal orders were constitutional; how the special legal orders established at the constitutional level and those established at the legislative level relate to each other; what the legal basis for individual emergency measures was; what types of norms can arise in the legal system; and the extent to which fundamental rights can be restricted.²⁶

Similar motions were submitted in all four jurisprudences in related matters during the COVID-19 pandemic due to similar emergency measures (shop closures, mask wearing, vaccination, curfews, etc.). However, the level of abstraction and the procedural frameworks through which these issues reached the constitutional or high administrative courts depended on the specific characteristics of the respective states' legal systems. The depth of the Constitutional Courts' examination of the constitutionality of the specific legal norms containing the emergency measures depended on their interpretation, which reflected their understanding of their role. Three out of four Constitutional Courts maintained the characteristics of their functioning prior to the COVID-19 pandemic. The Hungarian Constitutional Court was extremely deferential; the Polish court did not function; and the Slovak court was probably the most involved in politically sensitive constitutional controversies, with its deferential position changing slowly.²⁷ Only the Czech Constitutional Court changed its role relative to the normal legal order, as it was notably reserved in its interpretation of its powers during the COVID-19 pandemic.²⁸

During the democratic transitions in the Visegrád countries, constitutional adjudication took the institutional form of independent Constitutional Courts, with the constitution granting these bodies broad powers to protect the constitution. This constitutional court function related to the protection of the constitution and fundamental rights was not fully realised in all four countries, particularly in light of the COVID-19 pandemic-related emergency and the special legal orders issued in recent years. What impact

²⁵ Monika Florczak-Wątor, 'Constitutional Challenges in Emergency Governance: An Analysis of Poland's Reluctance and Regulatory Ambiguities in States of Emergency' (2025) 16(2) *European Journal of Risk Regulation* 433.

²⁶ Sente and Gárdos-Orosz, 'Constitutional Risk Management in the V4 countries' (n 7), and Florczak-Wątor, Gárdos-Orosz, Malíř, and Steuer (n 6).

²⁷ Tomáš Gábrš and Max Steuer, 'The Consequences of COVID-19 Emergency Risk Mismanagement: The Rise of Anti-Evidence Decision Making in Slovakia' (2025) 16(2) *European Journal of Risk Regulation* 446, 455.

²⁸ Zdenek Kühn, 'Emergencies under Czech Law' (2025) 16(2) *European Journal of Risk Regulation* 405; Jan Malíř and Jan Grinc, 'States of emergency and COVID19: Czech Republic' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

have the special legal orders themselves had on the function of these Constitutional Courts? In other words, how do the rules of the special emergency legal orders determine the competencies and functioning of the Constitutional Courts? If the Constitutional Courts are not restricted by the constitution in an emergency, what criteria determine how they function?

3 THE VISEGRÁD CONSTITUTIONAL COURTS AND THEIR POLITICAL ENVIRONMENT

During the democratic transitions, the Hungarian, Polish, Czech, and Slovak Constitutional Courts established Kelsenian-style constitutional adjudication under different historical circumstances. Czechoslovakia had one of Europe's first constitutional courts before World War II, which, although not as famous as its Austrian counterpart, issued several decisions until 1939 that typically did not fall within the scope of constitutional court jurisdiction as we know it today.²⁹ Even before its peaceful separation, Czechoslovakia re-established the institution of the constitutional court, which was then retained in the legal systems of both the Czech Republic and Slovakia.³⁰ The Polish Constitutional Court began its work in 1986 at a time when socialism was already demanding reforms, and the first elements of its legal practice remained part of the living law even after the democratic transition.³¹ In Hungary, an independent, centralised constitutional body separate from the courts has been in operation since 1 January 1990.³²

Despite the fact that, in Poland, the Sejm could override the decisions of the Constitutional Court until 1997 some in the Slovak Republic contested the legitimacy of the Constitutional Court's decisions even in the 1990s, overall, constitutional courts with stable and similar powers have been established. With the exception of Poland, constitutional complaints seeking review of ordinary court decisions (the German type of constitutional complaint) emerged slowly in all countries, with the main task of the Constitutional Courts during the COVID-19 pandemic being dominated by constitutional complaint proceedings rather than ex post abstract review of norms, as they often received thousands of submissions. In Poland, 2015 marked a turning point,³³ when a constitutional crisis culminated in the appointment of constitutional judges in an unlawful manner, and the legitimacy of some judges was called into question, disrupting the functioning of the entire body.³⁴ As a result, the ordinary courts also took a different, more active position on the protection of the constitution and fundamental rights.³⁵

²⁹ Jiri Priban, 'Judicial Power vs. Democratic Representation: the Culture of Constitutionalism and Human Rights in the Czech Legal System' in Wojciech Sadurski (ed), *Constitutional Justice, East and West: Democratic Legitimacy and Constitutional Courts in Post-Communist Europe in a Comparative Perspective* (Kluwer 2003).

³⁰ Max Steuer, 'The Slovak Constitutional Court' in Rainer Grote, Frauke Lachenmann, and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (Oxford University Press 2019).

³¹ Mirosław Granat and Katarzyna Granat, *The Constitution of Poland: A Contextual Analysis* (Bloomsbury 2021) 105–130.

³² Fruzsina Gárdos-Orosz and Kinga Zakariás, 'Organisational, functional and procedural changes of the Hungarian Constitutional Court 1990–2020' in Fruzsina Gárdos-Orosz and Kinga Zakariás (eds), *The Main Lines of the Jurisprudence of the Hungarian Constitutional Court: 30 Case Studies from the 30 Years of the Constitutional Court (1990 to 2020)* (Nomos 2022).

³³ Wojciech Sadurski, *Poland's Constitutional Breakdown* (Oxford University Press 2019).

³⁴ *ibid.*

³⁵ Michał Ziolkowski, 'States of emergency in Poland: A model under construction' in Monika Florczak-

In Hungary, the formal legality of the Constitutional Court's functioning in the strict sense is hardly disputed, and in this sense, no constitutional crisis similar to that in Poland developed. However, the competence and practice of the Constitutional Court have changed significantly within the so-called populist constitutional environment.³⁶ Hungary has had a new Fundamental Law since 2011, which has been amended fifteen times by the almost permanent two-thirds parliamentary majority of the Fidesz-KDNP party coalition since 2010, in several cases precisely in order to override or prevent decisions of the Constitutional Court.³⁷

The four Constitutional Courts of the Visegrád countries do not operate in the same constitutional environment.³⁸ The differences are not only due to their partly different historical, jurisdictional and procedural characteristics. As highlighted already, the legitimacy and lawful functioning of the Polish Constitutional Tribunal has been in doubt, while in Hungary the function of the Constitutional Court has fundamentally changed since 2011: instead of deciding on the constitutionality of legislation in the strict sense, it now mostly formulates soft-law type constitutional requirements that serve as guidelines of constitutionality, or decides on the constitutionality of individual court decisions.³⁹ This phenomenon is explainable by the populist political environment. In contrast, in the Czech Republic and Slovakia, before the COVID-19 pandemic, experiences related to the election and appointment of judges and their respective powers dominated the discourse, while these states faced ongoing constitutional challenges but fundamentally respected the rules of constitutional democracy during the COVID-19 pandemic.⁴⁰

Although it has been suggested in Poland that constitutional review is conceivable in a constitutional democracy even without a constitutional court,⁴¹ great emphasis is still being placed on restoring the legitimate functioning of this institution. Similarly, in Hungary, there are serious professional debates about the need to restore the competence of the Constitutional Court and ensure its professional independence and autonomy.⁴² Despite the legitimacy problems, constitutional courts are (potentially) important actors in the functioning of the constitutional system in all four countries, in accordance with the

Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

³⁶ Fruzsina Gárdos-Orosz, 'Constitutional review, Constitutional Courts and the institutional challenges of the 21st century in Europe' in Fruzsina Gárdos-Orosz, *Constitutional Justice under Populism: The Transformation of Constitutional Jurisprudence in Hungary since 2010* (Wolters Kluwer – Akadémiai Kiadó 2024). See also Roger Eatwell and Matthew Goodwin, *National populism: The revolt against liberal democracy* (Penguin UK 2018) xxv, xxviii; Zoltán Szente, 'The myth of populist constitutionalism in Hungary and Poland: Populist or authoritarian constitutionalism?' (2023) 21(1) *International Journal of Constitutional Law* 127.

³⁷ Tímea Drinóczi, Fruzsina Gárdos-Orosz, and Zoltán Pozsár-Szentmiklósy, 'Formal and Informal Constitutional Amendment in Hungary' (2019, MTA Law Working Paper 18) <<https://jog.tk.elte.hu/mtalwp/formal-and-informal-constitutional-amendment-in-hungary>> accessed 20 December 2025.

³⁸ Max Steuer, 'Models of states of emergency in Slovakia and their political context: "We'll manage ... somehow?"' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

³⁹ Gárdos-Orosz, 'Constitutional review, Constitutional Courts and the institutional challenges of the 21st century in Europe' (n 36).

⁴⁰ Steuer, 'The Slovak Constitutional Court' (n 30).

⁴¹ Mirosław Granat, 'Constitutionality of law without a constitutional court in the Polish setting' in Mirosław Granat (ed), *Constitutionality of Law without a Constitutional Court: A View from Europe* (Routledge 2024).

⁴² Gárdos-Orosz, 'Constitutional review, Constitutional Courts and the institutional challenges of the 21st century in Europe' (n 36).

relevant regulations.⁴³

4 THE NORMATIVE FUNCTION OF THE CONSTITUTIONAL COURTS UNDER THE SPECIAL LEGAL ORDERS OF THE V4 COUNTRIES

The constitutional systems of the four countries established during democratic transitions from state socialism after 1989 are similar in that they define, in their constitutions, special legal regulations for emergencies by specifying qualifying conditions.⁴⁴ Based on the classification of foreseeable exceptional situations, the constitutions have thus created special legal situations that define the conditions for the exercise of public power and set out special rules for the protection of fundamental rights.⁴⁵

Although the special legal orders involve sets of provisions in the constitutions that allow for derogations from fundamental rules, the Constitutional Courts in all four states are still entitled to review the constitutionality of normative rules adopted under these orders.⁴⁶

Another similarity is that the legal systems of all four states contain statutory regulations in the form of legislative acts, regulations, and other legal provisions on defence, public safety, health, disaster management, and other security and emergency matters.⁴⁷ Similar to constitutional rules and the statutory provisions implementing them, these autonomous legislative acts also allow for deviations from the normal legal order in a number of areas concerning the exercise of public authority and fundamental rights restrictions in order to facilitate the handling of challenging situations. In terms of their legal classification, they are quasi-constitutional emergency rules, but in many cases, the legislator has ordered their application at the statutory level rather than, or in parallel with, the constitutional level. This has created a special, emergency legal regime that thus blurs the two categories of rules and causes several constitutional problems.⁴⁸ Regarding the relevance of this fact to the normative function of the Constitutional Courts, it must be emphasized that although the Constitutional Courts operate in the V4 countries regardless of whether the legal order shifts from normalcy to emergency, the competencies remain the same, as explained above. However, the assessment of the rights restrictions and extensions of state power is different.

This situation thus makes the position of the Constitutional Courts unstable when

⁴³ Wojciech Sadurski, *Rights Before Courts. A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (Springer 2014); Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (University of Chicago Press 2000); Radosław Procházka, *Mission Accomplished: On Founding Constitutional Adjudication in Central Europe* (CEU Press 2002).

⁴⁴ See more on this in the form of a comparative analysis in Attila Horváth, 'Emergency Regimes in the European Constitutions – A Comparative Overview' (2025) 16(2) *European Journal of Risk Regulation* 388.

⁴⁵ Dávid Hojnyák and Álmos Ungvári, 'A visegrádi együttműködés országainak koronavírus járványra adott válasza, különös tekintettel a vizsgált államok által bevezetett különleges jogrendi szabályozásra' [The response of the Visegrad countries to the coronavirus pandemic – the regulation] (2021) 17(1) *Iustum Aequum Salutare* 305.

⁴⁶ Lóránt Csink, 'Comparative Constitutionalism in Central Europe: Summary' in Lóránt Csink and László Trócsányi (eds), *Comparative Constitutionalism in Central Europe Analysis on Certain Central and Eastern European Countries* (CEA Publishing 2022).

⁴⁷ Florczak-Wątor, Gárdos-Orosz, Malíř, and Steuer, 'States of emergency and fundamental rights in books and in action: The Visegrad countries and the COVID19 pandemic' (n 12).

⁴⁸ On Slovak case law, Gábris and Steuer (n 27). On the Hungarian issues see Fruzsina Gárdos-Orosz and Evelin Burján, 'From Constitutional Risk Management to Constitutional Risk Management (Emergency Law Misuse) in Hungary' (2025) 16(2) *European Journal of Risk Regulation* 421.

dealing with the same factual matters.⁴⁹ Although in theory the state can respond to exceptional situations with effective measures while preserving the characteristic features of constitutional democracy, there are significant differences in the practical implementation of constitutional rules. The law in action creates gaps among the experiences of the four jurisdictions.

In the Czech Republic, parliamentary control plays a key role under the special legal order in the review of constitutionality, which certainly diminishes the role of the Constitutional Court.⁵⁰ This may be supplemented by the review solution provided by the Pandemic Act that came into force in 2021,⁵¹ as this transferred the competence of reviewing the applicable legislative acts and regulatory measures in individual cases to the Supreme Administrative Court. Previously, during regional states of emergency declared due to floods, the Supreme Administrative Court was also given a substantive role in exercising control. The Czech Constitutional Court can therefore rule on the constitutionality of legislation under the special legal order, as well as on constitutional complaints or at the initiative of judges, but this has not become widespread practice. Furthermore, the act declaring the special legal order was not considered a normative act subject to review by the Constitutional Court even before the COVID-19 pandemic.⁵²

In the normal legal order, the Czech Constitutional Court imposes important limits on the exercise of public power. In contrast, during a special legal order, parliamentary protection of the constitution is strengthened while maintaining the importance of norm control, but Constitutional Court proceedings are limited to a narrow range of cases. The situation makes constitutional court review less effective in remedying urgent constitutional issues, and decisions are more likely to be of particular importance concerning the objective protection of the constitutional order. Therefore, despite the very high number of constitutional complaints under the normal legal order, in an emergency, the Constitutional Court is clearly not the most important institution for reviewing legislation and answering constitutional questions relating to individual rights violations.⁵³

Slovakia can be considered the opposite pole in terms of the role of parliament and the Constitutional Court in constitutional review. The Slovak constitutional regulation defines a modest role for parliament in decisions relating to the special legal order, placing greater emphasis on judicial and constitutional review; however, the declaration and prolongation of the emergency are decided first by Parliament.⁵⁴ The Slovak Constitution allows the Constitutional Court to review the legality of this proclamation of a special legal order, which is difficult to separate from the examination of its necessity, since the proclamation is lawful if its conditions are met. The key point of the set of conditions is that the situation cannot be addressed in any other way, as the normal legal order is not adequate to ensure the constitutional (i.e. constitutionally restricted) exercise of public power

⁴⁹ Malíř and Grinc, 'States of emergency and COVID19: Czech Republic' (n 28); Tomáš Palík, Kamil Baraník, and Šimon Drugda, 'Slovakia' in Richard Albert, David Landau, Pietro Faraguna, and Šimon Drugda (eds), *The I-CONnect-Clough Center 2020 Global Review of Constitutional Law* (October 14, 2021) <<https://ssrn.com/abstract=3942876>> accessed 20 December 2025.

⁵⁰ Kühn (n 28); Malíř and Grinc, 'States of emergency and COVID19: Czech Republic' (n 28).

⁵¹ Act 94/2021 on the protection against the pandemic.

⁵² Malíř and Grinc, 'States of emergency and COVID19: Czech Republic' (n 28).

⁵³ Kühn (n 28).

⁵⁴ Steuer, 'Models of states of emergency in Slovakia' (n 38).

while protecting fundamental rights, enabling the state to return to the normal legal order as soon as possible.

The Slovak Constitution maintains the normal functioning of the Constitutional Court, and this exercise of review power demonstrates that even in the most delicate matters of emergency, the Constitutional Court must review whether the proclamation/prolongation of the state of emergency is constitutional.⁵⁵ In this constitutional system, this leads to the Constitutional Court playing a very important role in reviewing the constitutionality of the exercise of public power; the Parliament, in general, does not play as significant a role in this as in the Czech Republic, where the Parliament and the ordinary courts perform more important tasks under special legal orders.⁵⁶

The Polish special legal order is also unique because both the Parliament and the Constitutional Court play prominent roles in controlling government actions in accordance with the provisions of normative constitutional regulations.⁵⁷ The Hungarian and Polish constitutions stipulate that the Parliament can review the proclamation of a special legal order, but the constitutional doctrine of both states suggests that the Constitutional Court may also be entitled to do so. It is also true of the constitutional systems of both countries that, while the Constitutional Court has never stated that it has the power to review acts promulgating a special legal order, it has not stated the opposite.

In the Polish and Hungarian special legal orders, government decrees concerning individual measures may be subject to constitutional review on the basis of a relevant motion, but they should also be subject to continuous review by Parliament, and their extension requires parliamentary approval.⁵⁸ It is necessary to add that this has remained a doctrinal issue in Poland and Hungary, as Poland did not declare a special legal order during the COVID-19 pandemic, and in Hungary, there was no motion on this constitutional issue.

In sum, the decision concerning the special legal order in the Czech Republic cannot therefore be subject to constitutional review, while in Slovakia it can, and in Hungary and Poland, the text of the constitution does not clarify this. All decrees and other normative regulations issued under the special legal order can be reviewed from a constitutional perspective by the Constitutional Courts in all four countries.⁵⁹

5 THE ROLE OF THE CONSTITUTIONAL COURTS IN ESTABLISHING STANDARDS FOR THE RESTRICTION OF FUNDAMENTAL RIGHTS UNDER A SPECIAL LEGAL ORDER

As regards constitutional standards for the restriction of fundamental rights, the regulations

⁵⁵ Gábriš and Steuer (n 27).

⁵⁶ With the constitutional amendment of 2020, Parliament was given a more significant role in declaring a pandemic emergency, but this constitutional amendment was highly controversial.

⁵⁷ Monika Florczak-Wątor, 'States of Emergency in Poland and Their Impact on the Protection of Human Rights in Times of Covid-19 Pandemic' (2021) 12 *Romanian Journal of Comparative Law* 287.

⁵⁸ Zoltán Szenté, 'Emergency as a pretext to restrict political rights: The Hungarian autocratic regime at work' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

⁵⁹ Florczak-Wątor, Gárdos-Orosz, Malíř, and Steuer (eds) (n 6).

of the four countries differ in this respect.⁶⁰

In Hungary, the Constitutional Court took charge of defining the constitutional possibility in the Fundamental Law of deviating from the general standard of fundamental rights restrictions,⁶¹ while in Poland, only the scholarly literature dealt with the issue in relation to COVID-19, as no special legal order was declared. In Hungary, while the text of the Fundamental Law allows for the suspension of almost all fundamental rights, with exceptions that differ from the general rule, the Constitutional Court has formulated a number of approaches to the constitutional review of emergency regulation. At one extreme, legislative acts cannot be reviewed at all from the point of view of necessity and proportionality,⁶² while at the other extreme, the Constitutional Court may also assess the necessity and proportionality of decrees in the context of its constitutional review.⁶³ Looking at the arguments on both sides, it is clear that the only thing the court agrees on is that special legal norms are temporary and need to be reviewed regularly.⁶⁴

In Poland, the problem was that the constitutional standard for declaring a special legal order can only be applied in exceptional situations. In this case, pursuant to the provisions of the Constitution, a law specifying the rules of the special legal order in detail defines the fundamental rights that may be restricted in the given special legal situation, while ensuring that their essential content cannot be revoked even in such cases. It posed a constitutional problem for ordinary judicial practice that, during the COVID-19 pandemic, the legislature invoked the state of emergency to restrict fundamental rights differently than under the normal legal order and granted broader powers to administrative authorities.⁶⁵

The Czech constitutional regulation is concise, but the constitutional law on the protection of public security, which supplements the constitution and forms part of the constitutional order, allows for greater restrictions on fundamental rights under a special legal order.⁶⁶ It does not provide any guidelines that deviate from the normal legal order for assessing restrictions or for determining the specific rights that may be restricted at the legislative level.⁶⁷ The Slovak constitutional regulation is similar: the Constitutional Court has not been provided with any special standards for the special legal order defined in the Constitution, and must instead apply the general test for restricting fundamental rights in such cases.⁶⁸

Since the special legal order is laid down in the Constitution and the general principles of the rule of law also apply to this regulation, the Czech and Slovak Constitutional Court

⁶⁰ See Florczak-Wątor, Gárdos-Orosz, Malíř, and Steuer (eds) (n 6), four studies in Chapter II.

⁶¹ Article 53 of the Fundamental Law.

⁶² 3152/2022. (IV. 12.) AB decision. See Szente, 'Emergency as a pretext to restrict political rights' (n 58).

⁶³ 3537/2021. (XII. 22.) AB decision.

⁶⁴ However, this is the only clear constitutional requirement that cannot be enforced.

⁶⁵ Monika Florczak-Wątor, 'Human Rights in States of Emergency: Constitutional Principles and Their Application in the Republic of Poland' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

⁶⁶ Max Steuer and Radka Vicensova, 'A widening gap? Fundamental rights and states of emergency in Slovakia' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

⁶⁷ Jan Malíř and Jan Grinc, 'Fundamental rights limitations in states of emergency' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds), *States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries* (Routledge 2024).

⁶⁸ Steuer and Vicensova (n 66).

decisions are also based on the doctrine that if there is no rule in the Constitution regarding the deviation, then the necessity and proportionality test must be applied during constitutional review.⁶⁹ The practice of these Constitutional Courts differs in the extent to which they undertake to develop the criteria of necessity and proportionality in specific cases. While the Czech jurisprudence emphasizes that the court can assess the reasonableness of the justification provided by the legislature in the context of recognizing the necessity of a greater fundamental right restriction,⁷⁰ the Slovak Constitutional Court goes further and, in addition to adequate justification, also takes into account publicly known scientific facts when reviewing necessity.

There is therefore a significant difference in the constitutional regulations of the Visegrád countries in that the standard for restricting fundamental rights is defined differently, and the Constitutional Courts have assigned different functions to their interpretation. In Poland, different fundamental rights may be restricted under specific legal orders, but their restriction is subject to the general test for restricting fundamental rights, taking into account the circumstances, and in the absence of constitutional or statutory provisions to the contrary. As the rules on restrictions are defined in the constitution for the special legal order, it was an even greater problem that this did not apply during the COVID-19 pandemic because a special legal order was not declared.⁷¹

In the Czech Republic and Slovakia, the restriction of fundamental rights and their review are governed by general rules. The constitutional question before the Constitutional Courts was how the test could be adapted to the circumstances of a special legal order and whether such a legal order entails a different quality of fundamental rights protection.⁷² In Hungary, different rules apply under the special legal order, both concerning the scope of fundamental rights that can be restricted and the applicable standard for restricting fundamental rights, which the Constitutional Court has attempted to interpret in several decisions, with contradictory results.⁷³

6 CONSTITUTIONAL ISSUES ADJUDICATED BY V4 CONSTITUTIONAL COURTS DURING THE COVID-19 PANDEMIC – A SUMMARY

The closing question is: which cases were finally found admissible by the Constitutional Courts, and when did the court refer to a lack of jurisdiction?

In Poland, due to the constitutional crisis, the Constitutional Court did not perform its function effectively. As a result, the ordinary courts performed constitutional protection tasks in individual cases, which primarily involved assessing the legality and, in some cases, the constitutionality of measures taken by decree or administrative decisions. Accordingly, the ordinary courts did not apply laws which were regarded as unconstitutional and even established the state's liability for damage caused by unconstitutional legislation in some

⁶⁹ Pavel Ondřejek and Filip Horák, 'Proportionality during Times of Crisis: Precautionary Application of Proportionality Analysis in the Judicial Review of Emergency Measures' (2024) 20(1) *European Journal of Constitutional Law* 27.

⁷⁰ Kühn (n 28).

⁷¹ Florczak-Wątor, 'Constitutional Challenges in Emergency Governance' (n 25).

⁷² Ondřejek and Horák, 'Proportionality during Times of Crisis' (n 69).

⁷³ Gárdos-Orosz and Burján (n 48).

cases. This debate took the form of motions from the president and the speaker of the Sejm to the Constitutional Tribunal. The motions concerned one of the most fundamental issues connected to the Polish legal system during the COVID-19 pandemic: the powers of ordinary courts to interpret and enforce the constitution in relation to the Constitutional Court.

In Hungary, it is important to emphasize the original function of the Constitutional Court and compare it with the changes that took place after 2010.⁷⁴ In this situation, during the pandemic, the court mainly received motions concerning fundamental rights instead of politically sensitive legislative matters. Despite the continuous operation of the Constitutional Court, special legal order standards were not developed and/or enforced. The decisions taken in connection with the COVID-19 pandemic failed to establish a consistent standard, and as a result, the Constitutional Court ultimately found all but one of the regulations issued by the Government to be constitutional.⁷⁵

In the Czech Republic, the Constitutional Court issued a number of decisions, but in most of them, it emphasized the supervisory powers of parliament and that some of the issues relating to the special legal order were political in nature and therefore could not be reviewed by the Constitutional Court. At the same time, it stated that it would only rule on restrictions on fundamental rights in exceptional cases where the issue of fundamental constitutional importance affected a large number of other legal disputes and caused widespread violations of fundamental rights within the Czech legal system. In the normal course of their work, the courts and the Supreme Administrative Court are responsible for adjudicating individual cases of the infringement of rights and providing guidance on questions of illegality.⁷⁶ The Czech Constitutional Court therefore ruled on many of the motions brought before it, but took the position that it plays only a minor role in crisis management. However, it established that the fundamental test for restricting fundamental rights under the Constitution is the necessity and proportionality test, which must be applied by both legislators and law enforcement authorities. It found the special restrictions on fundamental rights and the criteria set out in the pandemic law to be constitutional and did not raise any objections to the establishment of a quasi-statutory special legal order.⁷⁷

The Slovak Constitutional Court issues numerous decisions in which it clarified its jurisdiction in many matters relating to the special legal order. It expressed its position not only in individual decisions aimed at the abstract ex post review of regulation and legislation, but also in the detailed review of other normative measures (provisions of general application) taken by the authorities in response to the COVID-19 pandemic. In addition to emphasizing the requirement for justification, it also placed great emphasis on the enforcement of the principle of equality. However, the Slovak Constitutional Court also approved a significant proportion of the reviewed state decisions and rejected many constitutional complaints on the basis of procedural inadmissibility.⁷⁸

⁷⁴ Gárdos-Orosz and Zakariás (n 32).

⁷⁵ Gárdos-Orosz and Burján (n 48).

⁷⁶ Kühn (n 28).

⁷⁷ Pavel Ondřejek, 'Threshold of Justification of Emergency Regulations: On Coherentism Requirement for the Justification of Measures Adopted in the Czech Republic during the COVID-19 Pandemic' (2021) 27(2) *Archiwum Filozofii Prawa i Filozofii Społecznej* 41.

⁷⁸ Kamil Baraník, 'Disproportionate restrictions on the freedom of movement: The Slovak Republic during the Covid19 pandemic' in Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, and Max Steuer (eds),

In Hungarian, Polish, Czech and Slovak constitutional practice, the practice of the Constitutional Courts has thus been organised around three fundamental issues. The first issue was the reviewability and review of the proclamation and extension of a special, emergency legal order. The second issue concerned the hierarchy of legal sources, the problem of regulations of different levels promulgated in parallel, and their justification. In connection with this, the third issue concerned the legal basis of state decisions. These were supplemented by classic constitutional jurisprudence on the protection of fundamental rights, i.e. the assessment of the constitutionality of restrictions on fundamental rights.

While in Poland, the most important constitutional issue brought before the Constitutional Tribunal concerned the relationship between the latter and ordinary courts in the enforcement of fundamental rights and the protection of the constitution, in the Czech Republic, the review focused on the legal basis for emergency measures and the possibility of the constitutional review of their promulgation.

In Slovakia, in addition to these and fundamental rights issues, questions of legal sources arose, as a completely new source of law was ultimately recognised by the Constitutional Court in connection with crisis management, a provision of general application which the Constitutional Court recognised as a source of law that it is competent to review within the scope of its powers to review legislation.

In Hungary, the most important issues brought before the Constitutional Court were classic cases of fundamental rights restrictions related to the right of assembly, compulsory vaccination and the protection of data of public interest.

The Constitutional Courts of the Visegrád countries have therefore dealt with (or established their lack of jurisdiction over) various issues of state organisation and sources of law and procedure, in addition to classical cases of fundamental rights restrictions such as shop closures, curfews, restrictions on religious freedom, mask wearing and dilemmas related to immunity certificates.⁷⁹ The differing assessments of the motions, the definition of the jurisdiction of the Constitutional Courts, and the review criteria highlight the different roles of the V4 Constitutional Courts.

7 CONCLUSION

In the Visegrád countries, constitutional adjudication has taken the form of independent constitutional courts, which are vested with significant powers by the constitution. However, not all countries have fully realized the original function of these institutions, as they face serious problems in Poland and Hungary. The role of constitutional review and its institutional and procedural arrangements were not specifically adjusted in the constitutional legislation related to emergency or special legal orders and therefore remained the same as in the normal legal order. In some countries with explicit constitutional guarantees, the constitutional courts' acts did not specify any special legal order procedures, and normal functioning was maintained. However, during the COVID-19 pandemic, the constitutional courts exercised their powers differently among the Visegrád countries.

States of Emergency and Human Rights Protection. The Theory and Practice of the Visegrad Countries (Routledge 2024).

⁷⁹ New perspective of comparative constitutional law. A global database from constitutional case law delivered in the shadow of the pandemic. <<https://covid-and-constitutionalism.tk.hu/en>> accessed 20 December 2025.

Although the Czech Republic made few, rather restrained decisions, and Slovakia made more detailed ones, both Constitutional Courts provided clear guidance on issues relating to state organisation or fundamental rights standards in emergency situations, based on their interpretations of the constitution. The Polish Constitutional Tribunal did not issue any relevant decisions on the standard of review for normal and special legal orders during the COVID-19 pandemic, whereas in Hungary, the special legal order test enshrined in the Fundamental Law was interpreted in countless ways, and the permanent special legal order was not subject to constitutional review.

This article has provided a broad picture of how the V4 Constitutional Courts operated under the emergency situation related to the COVID-19 pandemic. The results of the inquiry show that, in situations of danger, constitutional courts should act as guardians and institutional guarantors of constitutionality in accordance with the black-letter law. However, in Poland and Hungary the original institutional function of the Constitutional Court had already been seriously undermined under normal conditions.

The special legal order itself, by its very nature, allows for the further strengthening of an already powerful executive, making constitutional review particularly important under this regime. Although the constitutions of all four states consider the institution of constitutional review to be of paramount importance even under a special legal order, they do not reinforce it, nor provide for additional powers, procedural safeguards, rights of initiative, the possibility of ex officio proceedings or other solutions to ensure the effectiveness of review and the exercise of powers. The practice of the Constitutional Courts, therefore, is, in most cases, restrained and hesitant.

The functioning of the Constitutional Courts is (or should be) an important institutional guarantee of the rule of law in all Visegrád constitutional democracies, even in times of a special legal order. This article has highlighted that this well-established constitutional function is nevertheless under threat both in times of normalcy and in emergencies. Constitutional courts that do not operate properly in normalcy do not fulfil their full functions in an emergency either (Poland and Hungary). While constitutional courts may operate according to their constitutional function in normal times, their role might become uncertain in an emergency (Czechia) or the role of executive decision-making might become uncertain (Slovakia).

All in all, the big picture of the V4 Constitutional Courts in emergencies suggests that well-functioning constitutional courts should operate equally well in times of normalcy and in emergencies, in accordance with valid constitutional standards. However, without strong, decisive institutional operations and impact in normal times, they are unlikely to succeed in providing relevant and independent guidance on matters of constitutionality in an emergency. However, in some V4 jurisdictions, constitutional courts took important steps in some decisions to clarify the standards for the future.

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