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Defending against crisis measures of Czech government in connection with COVID-19 pandemic

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Abstract: The COVID-19 pandemic required a number of emergency measures in the Czech Republic, which included crisis measures of the Czech government. These measures have often significantly affected a number of constitutionally guaranteed rights and freedoms of individuals and legal entities, who did not always agree with the government measures, especially with their content, scope and duration. The article therefore deals with the basic question of whether these persons (affected by the government crisis measures) can or could defend themselves directly against these measures, and if so, by what legal means and under what conditions? The author also addresses the question of what the legal form of these government crisis measures is. Determining the legal form of a certain activity is the primary precondition for us to be able to correctly determine the appropriate means of defence. Unfortunately, the law does not regulate this subject matter. It is therefore necessary to rely primarily on the findings of legal science and relevant case law (especially of the Constitutional Court of the Czech Republic and the Supreme Administrative Court).

Keywords: state of emergency, pandemic, government, crisis measures, judicial review

1. INTRODUCTION

The ongoing coronavirus SARS-CoV-2 pandemic has significantly changed the Czech Republic and the whole world in the last two years. The pandemic markedly affected both the course of the state and the daily lives of all its inhabitants. Perhaps all areas of life in society and in the state were significantly affected – health care, education, economy, travel, culture, etc. Even for Czech law, the judiciary and public administration, resolving the pandemic was and still is a huge challenge. Resolving situations as serious and extensive as the COVID-19 pandemic is envisaged primarily by the Constitutional Act on the Security of the Czech Republic.[1] Depending on the intensity, territorial scope and nature of the situation, this law makes it possible to declare a state of emergency, a state of threat to the State, or a state of war (see Article 2).[2] It was the *state of emergency* that was declared several times in the Czech Republic[3] in response to the pandemic, as a pandemic represented, in the sense of Article 5 of this Constitutional Act "*another danger which endangers lives and health to a considerable extent*."

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A state of emergency *can be declared by the government of the Czech Republic for a maximum of 30 days*. Reasons must always be given and the territory for which it is declared must be defined (in all cases related to the pandemic, it was the whole of the Czech Republic). At the same time as declaring a state of emergency, the government *must define which rights and to what extent they are restricted, what the obligations are and to what extent they are imposed*. The specific rights that can be restricted by the government (and the obligations imposed) are further regulated by another key law, namely the Crisis Management Act.[4] The government may restrict freedom of movement and residence, the right to do business, the right to assemble, and many others.[5] The government used this power, and in the form of "government crisis measures" really limited a number of rights and freedoms (for example, schools or shops and services were closed, leaving homes was restricted, travel within the Czech Republic and abroad was limited, etc.).

It is clear that a pandemic is an exceptional situation that requires emergency measures. The goal of various interventions and restrictions by the state was primarily to protect the lives and health of the population. On the other hand, the government crisis measures have often significantly affected a number of constitutionally guaranteed rights and freedoms of individuals and legal entities, who did not always agree with the government measures, especially with their content, scope and duration. The basic issue that this article will focus on is therefore whether these natural and legal persons (affected by the government crisis measures) can, or could, defend themselves against these measures directly, and if so, by what legal means and under what conditions? Another related research question will be what the legal form of the government crisis measures is? Determining the legal form of a certain activity is the primary precondition for us to be able to correctly determine the appropriate means of defence. The primary precondition for issuing government crisis measures is, of course, declaring a state of emergency. Therefore, this act will also be analysed in terms of its form and the possibilities of defending against it.

From the point of view of a comprehensive concept, it should be noted that the government and the government crisis measures were not the only significant means that contributed to resolving the pandemic in the Czech Republic. Another important factor, of course, was the Parliament of the Czech Republic, which responded to the situation in the form of laws or their amendments. The Ministry of Health of the Czech Republic and the so-called extraordinary measures issued by it under the Public Health Protection Act[6] also played a significant part in this process. However, given the scope of this article, the author will not focus more on these aspects of pandemic resolution in the Czech Republic.[7]

2. DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNMENT AND THE POSSIBILITIES FOR REVISING THIS ACT

As mentioned above, crisis measures that restrict the rights and freedoms of citizens can only be issued by the government if a so-called state of emergency is properly declared. The government of the Czech Republic has the power to declare a state of emergency (Article 5 of the Constitutional Act on the Security of the Czech Republic). The government declares it in *the form of a government resolution declaring a state of emergency*. The declaration of a state of emergency is connected to the power of the government to restrict the rights and freedoms of citizens or to impose obligations on citizens. We should therefore note the relatively *strong position of the government* in this respect. However, the Constitutional Act on the Security of the Czech Republic seeks to limit this power and at the same time subject it to *control by legislative power* (i.e. by the Assembly of Deputies). The declaration of a state of emergency must be immediately notified by the government to the Assembly of Deputies, which can cancel the state of emer-

gency. The government can only declare a state of emergency for 30 days. The government can extend the state of emergency beyond 30 days only with the consent of the Assembly of Deputies. The law thus provides certain parliamentary control over the government's powers, but it should be pointed out that the government is usually supported by the Assembly of Deputies (it has a decision-making majority there).

The declaration of a state of emergency is a basic precondition for the government to restrict the rights and freedoms of citizens or to impose obligations on them. The practice of the Czech government in this respect was that it always declared a state of emergency in a separate act, and the restriction of rights and freedoms was then the subject of the subsequent crisis measures of the government. Although the government was originally expected to do everything in one act, the Constitutional Court did not find such a government action unconstitutional. In this part of the article, we will therefore focus only on the legal form of the act declaring a state of emergency and the possibility of any subsequent defence against this act. The following part of the article will be devoted to an analysis of the follow-up crisis measures of the government.

If we want to analyse what defence options (especially judicial) can be used in relation to the declaration of a state of emergency by the government, *it is first necessary to determine the legal form of this act*.

There is no doubt that declaring a state of emergency *cannot be considered one of the ways to realise public administration*. In a situation where it declares a state of emergency, the government cannot be considered an administrative body in the sense of the Administrative Procedure Code (Article 1). The government declares a state of emergency on the basis of a constitutional law, and does so within the framework of its executive function, which *is not administrative in nature, but constitutional*.[8] The decision on a state of emergency is not primarily aimed at individual natural or legal persons, as the mere declaration of this state is not a binding act for them that would impose, change or cancel their rights and obligations.[9] Only the specific crisis measures of the government, issued based on the decision to declare a state of emergency, contain enforceable rules of conduct. Therefore, there is no need for any further development of the considerations that this act of government could be an administrative decision, a measure of a general nature or another act under the Administrative Procedure Code.[10] For these reasons, *it is not even possible to consider the option for reviewing this act of government within the administrative judiciary.*

The government's decision on a state of emergency *cannot be considered another legal regulation* within the meaning of Article 87 para. 1 lit. b) of the Constitution of the Czech Republic and Article 64 para. 2 of the Constitutional Court Act.[11] Any acts that are not legal regulations in terms of form (title, procedure), content (do not contain legal norms) or function (do not regulate behaviour) cannot be considered legal acts.[12] The declaration of a state of emergency is an *ad hoc* specific act (decision) – it concerns an individual case of an emergency situation and does not contain any repeatable rule of conduct. The government's decision to declare a state of emergency also has no legal normative content, as a result of which it does not fulfil the function of a legal regulation.[13] It therefore follows that this government act *cannot be reviewed by the Constitutional Court* in the context of proceedings for repealing laws and other legal regulations pursuant to the Constitutional Court Act. V. Sládeček is critical of this view, pointing out that the decision to declare a state of emergency "activates" the application of certain laws and also has direct legal effects on the status of natural and legal persons.[14]

Legal doctrine and case law therefore agree that a government decision to declare a state of emergency *is a specific act applying a constitutional law.*[15] It is *a constitutional "act of governance"* issued in situations where lives and health are at significant risk. It cannot therefore be reviewed within the administrative judiciary and is not subject to control by the Constitutional Court.[16] In other words, the declaration of a state of emergency by the gov-

ernment *is not subject to judicial review*. This act of government *is "reviewable" only by a democratically elected political* ("non-judicial") *body, which is the Assembly of Deputies*. This represents both political and legal control. The Assembly of Deputies may cancel the government's decision to declare a state of emergency (Article 5 of the Constitutional Act on the Security of the Czech Republic). Doctrine and case law find this exclusion of a judicial review constitutionally comfortable.[17] Neither the Constitution of the Czech Republic nor the Constitutional Act on the Security of the Czech Republic provide for a judicial review in this case either.

In one of its judgments, however, the Czech Constitutional Court took its reasoning further, and admitted the possibility of a judicial review (by the Constitutional Court) in exceptional circumstances. The Constitutional Court stated: "*The absence of a judicial review of the declaration of a state of emergency is not absolute and it is possible to imagine the circumstances in which the Constitutional Court itself could (and should) review, especially on the basis of a political minority proposal, whether the state of emergency was correctly declared, whether it had the intended constitutional effects, and subsequently decide on the legality or constitutionality of subsequent implementing acts. (...) The act of declaring a state of emergency could be cancelled by the Constitutional Court if it were in conflict with the basic principles of a democratic state governed by the rule of law and if it meant a change in the essentials of a democratic state governed by the rule of law.*"[18] However, it was a one-off statement that the Constitutional Court did not repeat in other decisions.

3. GOVERNMENT CRISIS MEASURES ADOPTED IN A STATE OF EMERGENCY AND THE POSSIBILITIES FOR REVIEW

If a state of emergency is declared, *the government has the power to order restrictions on the exercise of certain rights and freedoms* (freedom of movement and residence, freedom of assembly, a right to do business, and others). It does so *in the form of so-called government crisis measures*, which are adopted based on the Crisis Management Act (Articles 5 and 6). It is through these government measures that there is significant interference with the rights and freedoms of natural and legal persons. For example, the closure of schools interferes with the right to education, the closure of shops and services interferes with the right to do business and conduct economic activity, and the ban on leaving the Czech Republic restricts freedom of movement.

The question is therefore whether the persons affected by such government measures can defend themselves against the measures and their effects, and by what means. However, answering this question is subject first to determining the legal nature of the government's crisis measures, and it can be stated in advance that this is a very complicated issue.

Unfortunately, *the legal form of the crisis measures cannot be deduced from the relevant legislation*. The Constitutional Act on the Security of the Czech Republic and the Crisis Management Act do not stipulate in what form the government should adopt the crisis measures.[19] Judicial practice has therefore tried to define their nature. In a series of plenary decisions, *the Constitutional Court concluded that a government crisis measure is not a measure of a general nature* within the meaning of the Administrative Procedure Code (Article 171).[20]

A measure of a general nature is regulated in the Administrative Procedure Code (Article 171 et seq.), which stipulates that a measure of a general nature is neither a decision nor legislation (a negative legal definition). Its basic features are the specificity of the subject of the regulation and the generality of the addressees. From a formal point of view, government crisis measures cannot be considered measures of a general nature because the law does not explicitly label them as such. Therefore, it remains to be assessed whether they are measures of a general nature from a material point of view. However, even from the material point of

view, according to the Constitutional Court these are not measures of a general nature as the crisis measures have a relatively general subject of regulation in terms of territory and matter.[21] There is therefore no feature or specificity that is a typical feature of a measure of a general nature.[22] Thus, government crisis measures are not measures of a general nature according to the Administrative Procedure Code (neither from a formal nor from a material point of view).

There is relative agreement on this negative definition. However, in relation to the possibilities for reviewing government crisis measures, this means *they cannot be reviewed in proceedings to annul measures of a general nature within the administrative judiciary* (Article 101a et seq. of the Code of Administrative Justice). The Code of Administrative Justice provides a very wide locus standi to bring an action before the court, as it provides that an application to annul a measure of a general nature may be filed by a person who claims that their rights have been curtailed by a measure of a general nature issued by an administrative body. Unfortunately, in view of the above conclusions, the natural or legal persons affected by a crisis measure of the Czech government cannot use this procedure.

However, the positive definition of government crisis measures is much more problematic. It is therefore very difficult to determine which kind of legal act is a crisis measure. In assessing their form, *it is necessary to evaluate each measure of the government separately, according to its content and the features it exhibits*. This is a basic rule of approach to solving this problem. It was on this basis that the Constitutional Court concluded that *the government's crisis measures may, according to their content, have the legal form of*:

- *sui generis* legislation (for example, judgment of the Constitutional Court of 5 May 2020, file no. Pl. ÚS 10/20; or judgment of the Constitutional Court of 11 May 2021, file no. Pl. ÚS 23/21),[23]
- an individual administrative act – a decision (judgment of the Constitutional Court of 12 May 2020, file no. Pl. ÚS 11/20), or
- an internal act (judgment of the Constitutional Court of 26 January 2021, file no. Pl. ÚS 113/20).

Probably *most of the government crisis measures have been classified as sui generis legislation*.[24] These were cases where the government crisis measures applied to the whole territory of the Czech Republic and at the same time covered an unlimited number of entities (persons). Typical examples included the government crisis measure that prohibited Czech citizens from traveling abroad, or the government crisis measure that closed schools and switched to online teaching, and many more. The Constitutional Court, which assessed the nature of such measures, always relied primarily on the content of each crisis measure. The above examples of measures represented general regulations, which regulate their subject and entities with generic features and apply to the whole territory of the Czech Republic and to an unlimited number of subjects. These government measures were also promulgated in the same way as the law in the Collection of Laws. In view of these facts, the Constitutional Court concluded that this is *sui generis* legislation.[25]

If a government crisis measure is evaluated as legislation, it is also necessary to examine on this basis how natural and legal persons can defend against the measures.

Let us first consider the defence within the administrative judiciary. If a crisis measure is legislation (sui generis), *it cannot be directly challenged by an action in the administrative judiciary*. The Code of Administrative Justice[26] does not provide for such a type of action. Administrative courts may review other legislation *only in connection with its application in individual and specific cases (incidentally)*. Therefore, a government crisis measure must be applied in a specific case. If a crisis measure has been used in a decision of an administrative body, the compliance of the crisis measure with the law or constitutional order will be assessed in proceedings on an action against a decision of an administrative body (Article 65 et seq. of the Code of Administrative Justice).[27] Similarly, if a crisis measure caused an unlawful intervention of an administrative body, it will be reviewed within the proceedings on an intervention action (Article 82 et seq. of the Code of Administrative Justice).[28]

Article 95 para. 1 of the Constitution of the Czech Republic is important here for the administrative courts because it provides that a judge is bound by law and an international agreement – which is part of the Czech legal order – when making decisions; they are entitled to assess the compliance of another legal regulation with the law or with such international agreement. Thus, in the proceedings on an action against a decision or in the proceedings on an action for protection against unlawful interference, the judge will also assess the constitutionality and legality of the crisis measure based on which the decision was issued (or an intervention was made). If the judge concludes that the crisis measure was issued in violation of the law or the Constitution, *they do not annul it, they only do not apply it in a specific case or proceedings*.[29]

Let us now turn to the possibilities of defence within the *constitutional judiciary*. In the Czech Republic, natural and legal persons are not entitled to file a separate proposal for the repeal of legislation. Therefore, in cases where we consider government crisis measures to be legal regulations, *the addressees cannot defend themselves directly against them by proposing their annulment at the Constitutional Court*. Natural and legal persons may demand the annulment of a legal regulation *only together with a constitutional complaint* challenged by a specific decision or intervention of a public authority (Article 74 of the Constitutional Court Act). Therefore, a crisis measure would have to be applied in practice again and a specific decision or intervention would be issued, which the person would subsequently challenge with a constitutional complaint. And only together with this complaint can a/an (accessory) proposal to repeal the crisis measure be attached. The condition for this is that the application of the crisis measure interfered with the constitutionally guaranteed rights or freedoms of the person. An "*actio popularis*" *is not permitted by Czech law.*

Czech legislation contains the powers of the Constitutional Court to repeal legal regulations, i.e. government crisis measures too. The Constitutional Court may do so within the framework of proceedings on repealing laws or other legal regulations (Article 64 et seq. of the Constitutional Court Act). However, *a proposal to repeal a legal regulation may only be submitted by the statutory range of entities*,[30] which does not include natural and legal persons. They can only demand the repeal of a legal regulation together with a constitutional complaint, as mentioned above. However, it should be added that the filing of a constitutional complaint is preceded by the obligation to exhaust all previous means of defence (e.g. an appeal must be lodged against the decision, then an action against the decision and a cassation complaint within the administrative judiciary). The person concerned therefore faces a relatively lengthy legal process before reaching the Constitutional Court.

In summary therefore, *if the government crisis measure is considered a legal regulation in a specific case, the defence options of natural and legal persons are very limited*. In substance, the possibility of direct, immediate defence is not enshrined in Czech law for these persons. They can only defend themselves if they are specifically affected by the application of a crisis measure (e.g. a decision has been issued imposing a sanction for non-compliance of the measure). Within the administrative judiciary, based on an action and subsequently a cassation complaint, the court also reviews the legality and constitutionality of the crisis measure and, if necessary, it does not apply it. However, the court cannot cancel it.[31] Within the constitutional judiciary, after exhausting all previous means of defence a constitutional complaint can be filed, together with a proposal for repealing a government crisis measure. If the Constitutional Court finds the crisis measure unlawful or unconstitutional, it will annul it. Therefore, the direct defence options for natural and legal persons were very aptly expressed by the Constitutional Court. It stated that government resolutions on the adoption of a crisis measure, if they are in the form of a normative act, cannot be challenged by a person "without being applied to him or her."[32]

In some cases, *a government crisis measure may be considered a decision* (an individual administrative act). The Crisis Management Act (Article 8) stipulates that the government issues the crisis

measures in a decision. In this way it exercises its powers pursuant to Article 6 para. 1 of the Constitutional Act on the Security of the Czech Republic, which assumes that the government, at the same time as declaring a state of emergency, defines which rights and to what extent they are restricted and which obligations and to what extent they are imposed. However, the notion of a "decision" used in crisis law can be confusing. The mere designation of a government act as a "decision" does not yet make it an individual administrative act. It is not possible to proceed from the formal designation of the act, but from a material point of view. It is therefore always necessary to primarily explore the content of the act. As mentioned above, crisis measures will typically take the form of legislation due to their abstract and general nature. However, it cannot be ruled out that a crisis measure may only concern a certain specific matter or affect a certain specifically defined group of people. After all, Article 2 lit. c) of the Crisis Management Act defines a crisis measure as an organisational or technical measure intended to resolve a crisis situation and eliminate its consequences, including measures that interfere with the rights and obligations of the persons. A crisis measure can therefore also take the form of a decision (individual administrative act).[33]

In such a case, the Czech legal system already *allows a direct means of defence for natural and legal persons too*. Such a decision could be reviewed both within the administrative judiciary (an action against the decision and subsequently a cassation complaint) and within the constitutional judiciary (a constitutional complaint of a natural or a legal person). In practice, however, crisis measures do not occur in this form.

Finally, case law has concluded that *crisis measures may in some cases take the form of an internal act*. These were, for example, a government resolution by which the government had given its prior consent to the Ministry of Health's intention to issue some protective measures in connection with COVID-19,[34] or a government resolution by which the government agreed to extend the state of emergency and obliged the Prime Minister to submit its request to the Assembly of Deputies.[35] Such government resolutions cannot be considered legislation or individual decisions. In both cases they are only acts of an internal nature.[36] These acts are not generally binding and do not interfere with the rights and obligations of natural and legal persons, or the rights and obligations of such persons may not be affected by these acts.

From the point of view of a legal defence against these acts, *they are not open to challenge either within the administrative judiciary or within the constitutional judiciary*. However, this is a logical consequence of the fact that they do not or cannot interfere in any way with the rights and obligations of natural and legal persons. At the same time, they do not even represent a means of a generally binding regulation for social behaviour, so they are not legal regulations.

However, the opinions above are not accepted without reservation within professional circles. For example, constitutional judge V. Sládeček expressed the opinion that crisis measures are taken based on the Constitutional Act on the Security of the Czech Republic, as well as the decision itself to declare a state of emergency. They therefore have the same legal nature, and so in his opinion, they can only be reviewed by the Assembly of Deputies (as in the case of declaring a state of emergency).[37] He considers that the government crisis measures are not *sui generis* legislation and points out that they can certainly not be by-laws, as they interfere with constitutionally guaranteed rights and freedoms. He believes they should have a similar status to laws. Yet he himself considers them to be specific constitutional acts issued in an emergency situation where the lives and health of the population are endangered.[38] On the contrary, Professor J. Wintr considers that government crisis measures, as acts interfering with fundamental rights and freedoms, must be subject to a judicial review. According to him, any other interpretation is unsustainable. At the same time, he considers that if the government measures were to have the nature of a law, such a government power would have to be expressly enshrined in the legal system. Therefore, he is inclined to argue that they are more like

secondary legislation, when he points out that the Constitutional Court also leans towards this conclusion in a number of its decisions.[39]

As pointed out above, *government crisis measures can take various legal forms*. However, the different nature of the crisis measures does not change the fact that these acts may be issued *only based on authorisation and within the limits set by the constitutional order,* and that they must not interfere with fundamental rights and freedoms in violation of the Charter of Fundamental Rights and Freedoms. This fact is also explicitly emphasised in Article 6 para. 1 of the Constitutional Act on the Security of the Czech Republic, according to which the government may only restrict rights "in accordance with the Charter of Fundamental Rights and Freedoms." When restricting rights or setting obligations, the government must always respect the requirement under Article 4 para 4 of the Charter of Fundamental Rights and Freedoms. It stipulates that where fundamental rights and freedoms are restricted, their essence and meaning must be safeguarded, and at the same time such restrictions must not be abused for purposes other than those for which they were imposed. It is also ruled out that constitutionally guaranteed fundamental rights and freedoms, which would be affected by a crisis measure, be excluded from the protection of the judiciary in the sense of Article 4 of the Constitution of the Czech Republic. Such intervention must always be subject to a judicial review, at least by the Constitutional Court. The crisis measures, which (directly or indirectly) interfere with fundamental rights and freedoms, may take on various forms and content, but must always (depending on their content) be reviewable either as legislation or as a decision or other intervention of a public authority.[40]

4. CONCLUSION

It follows from the above that the Czech legal system was not very prepared to deal with the state of the pandemic. Although the Constitutional Act on the Security of the Czech Republic, the Crisis Management Act and the Act on the Protection of Public Health provide for the resolution of emergency situations, in practice it was, and is, clearly visible that these solutions are insufficient.

The very declaration of a state of emergency raises a number of problems and questions. Unfortunately, the laws do not address the legal form of a government decision to declare a state of emergency. At the same time, it is a fundamental issue on which the subsequent control of this government decision and the possibility of its review is derived. The solution was therefore left to case law and legal doctrine, which relatively speaking agreed that it is a specific constitutional act of the government, issued in an emergency situation endangering the lives and health of the population. I agree with this opinion, however, in my opinion *it would be more appropriate for the legal form of the government's decision to declare a state of emergency to be explicitly regulated by law* (specifically by the Constitutional Act on the Security of the Czech Republic).

The conclusions on the form of this act are also reflected in the considerations on the possibilities for reviewing this government decision. The majority conclusion (see more details above) is that the government's decision to declare a state of emergency is not subject to review by a court, not even by the Constitutional Court. The only one who can "control" and repeal the act is the Assembly of Deputies. I believe such a situation is extremely unsatisfactory. The declaration of a state of emergency is a very strong power of the executive and is associated with the possibility of serious interference with the fundamental rights and freedoms of citizens. Therefore, *it should be subject to a review by the Constitutional Court*. *De lege ferenda*, I would recommend that *such a competence of the Constitutional Court be incorporated into the Constitution of the Czech Republic* and then elaborated in more detail in the relevant laws. Criticism of the current situation is also made by the courts and legal doctrine.[41] Although at present the declaration of a state of emergency may be controlled by the Assembly of Deputies, such control can be considered insufficient. The Assembly of Deputies is a political body, and in addition, the

government often has a decision-making majority in the Assembly of Deputies. The minority opposition therefore has little chance of abolishing the declaration of a state of emergency within the Assembly of Deputies. Moreover, the control by the Constitutional Court would undoubtedly be a control carried out by a highly professional body.

Even more problems are associated with government crisis measures issued in an emergency state and which may restrict the exercise of fundamental rights and freedoms. The basic problem again is that there is no consensus on the legal form of these measures. The laws are silent on this aspect, and case law always considers this issue on an *ad hoc* basis. Therefore, they may take on different forms in different situations (legislation, decisions, etc.). A judicial review is already possible in these cases (but always depending on the form of the specific crisis measure). However, there is very limited judicial control. In addition, natural and legal persons do not have the right to seek direct protection against government crisis measures, only subsequently, after such a measure has been applied in practice against them (for example, a sanction is imposed by a decision for violation). Therefore, people are essentially "forced" to violate the government crisis measures to gain access to judicial protection.[42] It is a procedurally risky process and often a lengthy one. I believe *it would therefore be appropriate to consider introducing direct judicial control over these measures*, and I would consider it appropriate *to review them in administrative courts* (similar to the new Pandemic law[43] in relation to emergency measures of the Ministry of Health or regional health stations).

Recently, the so-called Pandemic law was adopted in the Czech Republic (Act on Emergency Measures in the COVID-19 Pandemic). Since it entered into force, the Czech Republic has been on a state of pandemic alert. At the same time, the law regulates the powers of the Ministry of Health and regional hygiene stations to issue extraordinary measures, including their judicial review. Compared to the state of emergency and crisis measures, the possibilities of interfering with human rights and freedoms are lower. The law has limited effectiveness until 28 February 2022. In my opinion, this law only solves problems temporarily and only in relation to the COVID-19 pandemic. The state of emergency and the crisis measures of the government associated with it can be applied at any time when needed in the future (i.e. not only in connection with resolving a pandemic). Therefore, I would strongly recommend eliminating at least the most fundamental shortcomings of the current legal regulation. This means legally defining the legal form of declaring a state of emergency and crisis measures, and clearly enshrining the judicial review of these acts of government.

Notes

1 Ústavní zákon č. 110/1998 Sb, o bezpečnosti České republiky [Constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic], Sbírka zákonů [Czech Official Gazette], https://www.zakonyprolidi.cz/cs/1998-110, (11 September 2021).

2 For more details see Bílková, V., Kysela, J., Šturma, P. (eds.) (2016) *Výjimečné stavy a lidská práva* [*States of emergency and human rights*] (Praha: Auditorium), or Dienstbier, J. (2016) Mimořádné situace a stavy v ústavní historii [Extraordinary situations and states in constitutional history] In: Wintr, J., Antoš, M. (eds.) *Vybrané problémy ústavního práva v historické perspektivě* [*Selected problems of constitutional law in a historical perspective*] (Praha: Univerzita Karlova, Právnická fakulta), 19-31., or Kudrna, J. (2017) Ústavní rámec zajišťování bezpečnosti České republiky – zhodnocení současného stavu a úvahy de lege ferenda [The constitutional framework for ensuring the security of the Czech Republic – an assessment of the current situation and considerations de lege ferenda], Acta Universitatis Carolinae. Iuridica, 63(4), 159-174.

3 There was a state of emergency in the Czech Republic in the following periods: 12 March 2020 to 17 May 2020, 5 October 2020 to 14 February 2021, 15 February 2021 to 26 February 2021, and 27 February 2021 to 11 April 2021.

4 Zákon č. 240/2000 Sb., o krizovém řízení a o změně některých zákonů [Act No. 240/2000 Coll., on Crisis Management and on Amendments to Certain Acts (Crisis Act)], Sbírka zákonů [Czech Official Gazette], https://www.zakonyprolidi.cz/cs/2000-240, (11 September 2021).

5 For more details see Articles 5 and 6 of the Crisis Act.

6 Zákon č. 258/2000 Sb., o ochraně veřejného zdraví [Act No. 258/2000 Coll., on the protection of public health], Sbírka zákonů [Czech Official Gazette], https://www.zakonyprolidi.cz/cs/2000-258, (11 September 2021).

7 For more details see Wintr, J. (2020) K ústavnosti a zákonnosti protiepidemických opatření na jaře 2020 [On the constitutionality and legality of anti-epidemic measures in spring 2020], *Správní právo* [*Administrative Law*] 53(5-6), 282 et seq. Or Dienstbier, J., Derka, V., Horák, F. (2020) Ústavnost mimořádných opatření podle zákona o ochraně veřejného zdraví [Constitutionality of emergency measures under the Public Health Protection Act], *Právník* [*Lawyer*], 159(5), 417-450.

8 Usnesení Ústavního soudu ČR [Judgment of the Constitutional Court of the Czech Republic], 22 April 2020, Pl. ÚS 8/20, https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Pl._US_8_20_vcetne_disentu_na_web.pdf, (11 September 2021).

9 Usnesení Ústavního soudu ČR [Judgment of the Constitutional Court of the Czech Republic], 12 May 2020, Pl. ÚS 11/20, https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Usneseni/Pl._US_11_20_vcetne_disentu_na_web.pdf, (11 September 2021).

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25 Usnesení Ústavního soudu ČR [Judgment of the Constitutional Court of the Czech Republic], 5 May 2020, Pl. ÚS 10/20, https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Usneseni/Pl._US_10_20_vcetne_disentu.pdf, (11 September 2021).

26 Zákon č. 150/2002 Sb., soudní řád správní [Act No. 150/2002 Coll., Code of Administrative Justice], https://www.zakonyprolidi.cz/cs/2002-150, (11 September 2021).

27 For example, a natural person violates an obligation imposed by a crisis measure and, as a result, is fined by a decision.

28 For example, an assembly is prohibited by the crisis measure. The person takes part in the prohibited assembly and is prosecuted by the Police of the Czech Republic.

29 See Usnesení Ústavního soudu ČR [Judgment of the Constitutional Court of the Czech Republic], 12 May 2020, Pl. ÚS 11/20, but also the opposite opinion in the dissent of Judge J. Filip on this decision, https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Usneseni/Pl._US_11_20_vcetne_disentu_na_web.pdf, (11 September 2021).

30 See Article 64 of the Constitutional Court Act.

31 In the same way, Usnesení Ústavního soudu ČR [Judgment of the Constitutional Court of the Czech Republic], 11 May 2021, Pl. ÚS 23/21, https://www.zakonyprolidi.cz/judikat/uscr/pl-us-23-21-1, (11 September 2021).

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34 Usnesení vlády ČR [Resolution of the Government of the Czech Republic], 14 December 2020, No. 1338, https://apps.odok.cz/attachment/-/down/IHOABWDCRS07, (11 September 2021).

35 Usnesení vlády ČR [Resolution of the Government of the Czech Republic], 17 December 2020, No. 1339, https://www.vlada.cz/assets/media-centrum/aktualne/prodlouzeni-nouzoveho-stavu.pdf, (11 September 2021).

36 For more details, see Usnesení Ústavního soudu ČR [Judgment of the Constitutional Court of the Czech Republic], 26 January 2021, Pl. ÚS 113/20, https://www.zakonyprolidi.cz/judikat/uscr/pl-us-113-20-1, (11 September 2021).

37 Sládeček, V. (2020) Vláda a nouzový stav [Government and state of emergency], *Správní právo* [*Administrative Law*] 53(5-6), 272-273.

38 Sládeček, V. (2020) Vláda a nouzový stav [Government and state of emergency], *Správní právo* [*Administrative Law*] 53(5-6), 273 et seq.

39 Wintr, J. (2020) K ústavnosti a zákonnosti protiepidemických opatření na jaře 2020 [On the constitutionality and legality of anti-epidemic measures in spring 2020], *Správní právo* [*Administrative Law*] 53(5-6), 287-288, and the case law of the Constitutional Court of the Czech Republic cited here.

40 Usnesení Ústavního soudu ČR [Judgment of the Constitutional Court of the Czech Republic], 22 April 2020, Pl. ÚS 8/20, https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Pl._US_8_20_vcetne_disentu_na_web.pdf, (11 September 2021).

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43 Zákon č. 94/2021 Sb., o mimořádných opatřeních při epidemii onemocnění COVID-19 [Act No. 94/2021 Coll., On emergency measures in the event of an epidemic of COVID-19], https://www.zakonyprolidi.cz/cs/2021-94, (11 September 2021).