



Statement of the Public Defender of Rights on certain adopted measures of the government (the Public Health Authority) during the COVID-19 pandemic

As a citizen of the Slovak Republic, I am monitoring with understanding the steps of the government, which seek to minimize the negative impact of the COVID-19 pandemic on the citizens of this country. However, as a Public Defender of Rights, I have to express some concerns regarding the constitutional legality of some of the measures that have been adopted recently.

I mean not only the form of the adopted measures, but also the extent of limitation on the exercise of the fundamental rights and freedoms of certain groups of citizens of the Slovak Republic and the possible imposition of sanctions for violations of the adopted restrictions.

On 25 April 2020 the Public Health Authority adopted a measure relating to the prohibition to enter for all persons over 65 years of age to the outlets from Monday to Friday at the time from 9:00 am until 11:00. At other time or other days is not for them enabling to supply these services.

In addition, non-compliance with the provisions of this measure is defined as a tort pursuant to Section 57, paragraph 33(a) of the Act Number 355/2007 Collection of Laws. Compliance with the rules is monitored by the regional offices of the Public Health Authority which is competent to fine up to 20 000 € pursuant to Section 57, paragraph 41(a) of the Act number 355/2007 collection of Laws.

The relevant question is whether in times of emergency the fundamental rights and freedoms can be restricted by the Slovak government in terms of constitutional law and also by a budgetary organization, which is the Public Health Authority. This raises the question of whether the Public Health Authority according to measure of 21 April 2020 also restricted our fundamental rights and freedoms (specifically freedom of movement) in an acceptable way.

The acceptable way in context of principle of maintaining proportionality, which includes the requirement of suitability / adequacy of the intervention (adequacy in term of able to achieve the desired goal) and the necessity of intervention.

Legislation must be in accordance with respect for fundamental rights. Therefore, if there is another legislation which achieves the same objective with less interference with the law, it is necessary to apply such an arrangement.

I am therefore convinced that the measure of the Public Health Authority of 21 April 2020 exceeds the permissible limits and absent the requirements of proportionality. This measure is inapplicable, and consequently unenforceable against individuals.



This conclusion is evident when we answer the questions: Who and how will be entitled to control the actual age of persons entering to the outlets? On the basis of what data will the regional office of the Public Health Authority impose sanctions? What should do working retirees who are and must be at a limited time in the workplace (e.g. doctors)? What is the point of an absolute ban of visiting outlets on Saturdays and Sundays for people over the age of 65?

As the Public Defender of Rights, I urge the Government of the Slovak Republic to start to act in this matter as soon as possible. I suggest to the government to consider the constitutionality, necessity and appropriateness certain adopted measures during the COVID-19 pandemic.