

# PUBLIC LAW ISSUES AND STATES OF EMERGENCY IN RESPONSE TO CORONA VIRUS CRISIS IN CROATIA AND SOME MEMBER STATES OF THE EU

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## 1. Introduction

The far-reaching socio-economic consequences brought about by the covid-19 pandemic certainly represent a crisis of historic proportions. From the moment of the first cases and the outbreak of the infection at the end of 2019, the World Health Organization (WHO) declared covid-19 a ‘public health crisis of international concern’ on January 31 and the only state that reacted was Italy. Only a few weeks later, most of the other member states ruled in such a way that they hastily started adopting measures that were quite legally questionable. That period, from 11 March 2020, was declared a pandemic by the WHO and until today, its short-term consequences were devastating and required urgent intervention and numerous and different measures that the public authorities of each country sought to protect society. The measures taken at the same time opened up many problematic issues, i.e. exposed weak points within the crisis management mechanism, which included serious restrictions on human rights and fundamental freedoms. Considering the need for urgent action, the answers that in regular situations should be dealt with the laws were resolved by government decrees or decisions of administrations. Likewise, the constitutional and legal foundations for the measures were often unclear or non-existent.

States typically include clauses in their constitutions that, in the event of a crisis situation that jeopardizes the state’s security, the operation of its

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institutions, as well as the population's physical survival. Crises scenarios are typically thought of as armed battles, terrorist attacks, significant natural catastrophes, or other comparable situations that allow for the implementation of protective measures for the state and its population. Constitutional provisions relating to a state of emergency grant exceptional powers to specific institutions, interrupting the customary system of power division regardless of whether they specifically refer to a state of emergency or state various states of emergency or danger. In other words, the executive holds a disproportionate amount of the decision-making power in this situation, and the so-called crisis management mechanism is engaged, which leads to an attack on state institutions and, as a result, puts the lives of citizens in danger. So, the state of emergency is the result of a declaration made by one of the political power structures, usually the executive branch, in response to an emergency situation that at a certain point poses a grave threat to the state. The existence of an extreme risk must therefore be true, and the emergency measures implemented by states in response to recently developed circumstances must be of a temporary nature. The most significant current constitutional democracies have significant constitutional provisions regarding exceptional powers.

In the fight against the Covid19 pandemic, some nations have proclaimed a state of emergency; however, other nations have chosen not to do so and instead have chosen to act in accordance with and within the confines of existing normative acts that primarily govern public health issues and already have some mechanisms in place for dealing with crisis situations.

This article includes an analysis of three countries of the European Union in the fight of Covid19 crisis. First, the Republic of Croatia undertook a series of anti-pandemic measures which, of course, as with other countries of the European Union, opened up a number of issues of constitutional importance, starting with respect for democracy and fundamental human rights, both due to the types of measures taken and to the issue of authorization to adopt them by a specially formed body of the government for that purpose, and which at the end the Constitutional Court of the Republic of Croatia evaluated in its decisions.

The second analyzed country of the European Union is Belgium, where the political situation has been very unfavorable since the beginning of the covid crisis, given that the government crisis occurred at the same time. However, Belgium's main political forces formed a minority government for a period of six months, and despite the tense political situation, the interim government won public support to manage the crisis. The interesting thing about Belgium is

the fact that it also stood out as the ‘champion’ in terms of the number of deaths from covid-19 in relation to the number of inhabitants.

The third analyzed country is Sweden which had a very soft approach to the measures. Sweden’s response to the coronavirus pandemic was to take the right measures at the right time, as different measures were deemed effective at different points in time. The country’s response was partly based on voluntary action. For example, instead of implementing nationwide isolation (quarantine), the authorities have issued recommendations: stay at home if you have symptoms, keep your distance from others, avoid public transport if possible, etc.

## **2. The Republic of Croatia in a state of emergency and public law issues**

As one of the ex-socialist countries at the beginning of the 1990s, Croatia began its complete economic and political transformation with radical constitutional changes. The adoption of the first democratic Constitution of the Republic of Croatia was on December 21, 1990.<sup>1</sup> The next day, on December 22, the Croatian parliament (*Hrvatski sabor*) passed the Decision on the Promulgation of the Constitution of the Republic of Croatia. The original version of the Constitution is frequently referred to as the “Christmas Constitution” because it was adopted and promulgated right before Christmas. Five times since then, there have been amendments to the Constitution, each with a unique set of significant goals.

Many provisions governing emergency situations were included in the Constitution’s initial language in 1990, however, there are still many similarities between those provisions and the present constitutional provisions. The current emergency regulations in the Croatian constitutional framework were initially based on the French and Spanish constitutions, but generally follow the pattern by which governments integrate provisions that provide resort to a state of emergency in their constitutional texts.<sup>2</sup>

<sup>1</sup> See Constitution of the Republic of Croatia. *Official Gazette Narodne Novine* No. 56/1990.

<sup>2</sup> Procedure for amending the constitution, that follows croatian parliament is stipulated in its part IX, Art. 147–150, but also procedure for amending the constitution in a referendum is laid down in its Art. 87. The article prescribes that a referendum may be called by the Croatian parliament and by the president of the republic (albeit only at the proposal of the governemnt and with the counter-signature of the prime minister). When a referendum is on a proposal for the amendment of the Constitution it may be called by the Croatian parliament or by the president of republic. There is also possibility for constitutional and legislative referendum to be

## 2.1. The Constitution of the Republic of Croatia and regulation of the state of emergency

According to Article 17 of the Croatian Constitution, there are three types of emergency situation in which constitutionally guaranteed human rights and freedom may be restricted: *the state of war (ratno stanje)*, *immediate threat to the independence and unity of the Republic of Croatia (neposredna ugroženost neovisnosti i jedinstvenosti države)* and *severe natural disasters (velike prirodne nepogode)*, even though the Croatian constitution does not use the exact term of ‘state of emergency’ (*izvanredno stanje*). The text of Art. 17 stipulates as the following:

- “(1) Individual constitutionally guaranteed freedoms and rights may be restricted during a state of war or any clear and present danger to the independence and unity of the Republic of Croatia or in the event of any disaster. Such restriction shall be decided upon by Croatian parliament (Hrvatski Sabor) by a two-thirds majority of all members of parliament or, if the Croatian parliament is unable to convene, at the proposal of the government and with the counter signature of the prime minister, by the President of the Republic.
- (2) The extent of such restrictions must be appropriate to the nature of the threat, and may not result in the inequality of citizens with respect to race, color, gender, language, religion, or national or social origin.
- (3) Even in cases of clear and present danger to the existence of the state, no restrictions may be imposed upon the provisions of this Constitution stipulating the right to life, prohibition of torture, cruel or degrading treatment or punishment, and concerning the legal definitions of criminal offences and punishment, and the freedom of thought, conscience, and religion.”<sup>3</sup>

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initiated through the institute of citizens’ initiative, but it was not part of original Constitution, it was introduced much later.

These revisions included strengthening the constitutional guarantees of human right, altering a semi-presidential system of government with a parliamentary one, creating a basis for Croatia’s membership in the European Union, etc.

<sup>3</sup> Consolidated text of the Constitution of the Republic of Croatia is available on English at the official website of the Croatian Parliament. See page: <https://tinyurl.com/ypzaypc5> (accessed: 10.02.2023)

Apart than war, there are only two emergencies that do not require a formal declaration. As a result, determining whether a war has occurred requires following a specific procedure. As stated in Article 81 of the Constitution, the Croatian parliament makes war and peace decisions, and the president of the republic must declare war and reach peace in accordance with Article 101, paragraph 3. Hence, if one of these events takes place, certain rights and liberties guaranteed by the Croatian Constitution may be restricted in certain situations.

In connection with Art. 101, in its par. 2 it is stipulated the fourth type of extraordinary situation, this type of extraordinary situation is refers to the event in which the government bodies are prevented from regular performing of their constitutional duties (*tijela državne vlasti su onemogućena redovno obavljati svoje ustavne dužnosti*).<sup>4</sup>

Article 101 par. 2 stipulates like following: “In the event of a clear and present danger to the independence, integrity and existence of the state, or when the government bodies are prevented from performing their constitutional duties, the President of the Republic may, at the proposal of the Prime Minister and subject to his/her countersignature, issue decrees with the force of law”.<sup>5</sup>

The Republic of Croatia really divides the authority to take emergency measures between the legislative and executive branches of government, as evidenced by the constitutional provisions in Article 17 and Article 101. The Croatian parliament has the sole authority to adopt laws restricting specific constitutionally granted freedoms and rights, and this authority rests with a two-thirds majority of all members of the legislature. Additionally, the president of the republic is empowered to take action in the event that parliament cannot meet, on a previous government. While the president of the republic is permitted to issue decrees that have the force of law in accordance with Article 101, on the ground, within the scope of the delegation granted by the parliament, and only when the parliament is not in session, the president is only permitted to regulate matters necessitated by the state of war.<sup>6</sup>

<sup>4</sup> Here is obviously that Art. 101 differentiates between three extraordinary situations and in par. 2 puts these two situations as alternative conditions. Basically, that means that situations as the existence of clear and present danger to the state does not necessarily mean that government bodies are prevented from performing their constitutional duties. Here is important to highlight that government bodies does not imply only to the Croatian parliament but also includes all bodies of government.

<sup>5</sup> <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text> (accessed: 10.02.2023)

<sup>6</sup> Petar BAČIĆ – Marko IVKOŠIĆ: The Croatian “Emergency Constitution” on Test. In: Zoltán NAGY – Atilla HORVATH (eds.): *Emergency Powers in Central and Easter Europe, From Martial*

In connection to state of emergency, there is also important Article 16 of Constitution, which stipulates the following: “(1) Freedoms and rights can only be limited by law in order to protect the freedom and rights of other people as well as legal order, public morals and health. (2) Any limitation of freedom or right must be proportionate to the nature of the need for the limitation in each individual case”.

Therefore, the Croatian Parliament must have a two-thirds majority of all members to decide whether to limit constitutional rights and freedoms in emergency situations. If the Parliament cannot convene due to a proposal from the Government, the President of the Republic must make the decision with the co-signatures of the Prime Minister and Prime Minister.<sup>7</sup> Lastly, the parliament alone has the authority to decide whether Article 17 or Article 16 should be applied because the Constitution transfers this authority to the parliament.<sup>8</sup>

Also, the same conclusion was given by the Constitutional Court of the Republic of Croatia. Thus, the Constitutional Court claimed that the activation of Article 17 of the Constitution by the Parliament, that is, the decision of the Parliament whether to treat the pandemic as a major natural disaster (as an emergency situation) as provided for the specified article or such measures will be taken under the application of Article 16 (that allows restrictions of freedoms and rights in normal times) depends solely on the decision of the Parliament, and therefore it is not the Constitutional Court to evaluate it.<sup>9</sup>

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*Law to COVID-19.* (Studies of the Ferenc MÁDL Institute 1) Budapest–Miskolc, Ferenc Mádl Institute of comparative Law – Central European Academic publishing, 2022. 102.

<sup>7</sup> Naja BENTZEN et al.: *States of emergency in response to coronavirus crises: Situation in certain Member States III*, European Parliamentary Research service (EPRS). European Parliament, June 2020. 2; (also available on web site of European Parliament: [www.europarl.europa.eu](http://www.europarl.europa.eu), accessed: 09.02.2023)

<sup>8</sup> There are two more constitutional provisions that are of particular importance for situations of emergency measures that could be applied, namely Art. 7 and Art. 100. Thus, Article 100 in paragraph 1 stipulates that the president of the republic is the supreme commander of the armed forces and, in accordance with paragraph 2 of the same article, he has the power to appoint and dismiss military commanders. Whereas, in paragraph 4 of the same article, it is prescribed that in the event of an immediate threat to the independence, unity and existence of the state, the President of the Republic may, with the co-signature of the Prime Minister, order the use of armed forces, even though a state of war has not been declared. Furthermore, article 7 prescribes the position and role of the armed forces in cases of natural threats and similar situations, so in paragraph 10 it prescribes that in the cases of articles 17 and 101 of the constitution, the armed forces, if required by the nature of the disaster, should be used to assist the police and other bodies. Article 7 paragraph 11 stipulates that the armed forces may be engaged to assist in firefighting and rescue as well as to monitor and protect the rights of the Republic of Croatia at sea.

<sup>9</sup> BAČIĆ–IVKOŠIĆ (2022) op.cit. 97-126, p. 111

## 2.2. Main measures adopted to address the coronavirus pandemic

The Republic of Croatia is one of the nations whose governments decided to take action rather than declare a state of emergency, relying instead on the existing legal framework for infectious disease prevention and civil protection, with certain modifications. However, on March 11, when the extensive powers granted to the Minister of Health by the Law on the Protection of the People from Infectious Diseases went into effect, the Croatian government instead declared a coronavirus pandemic.<sup>10</sup> The Law on Civil Protection System and the Civil Protection Headquarters of the Republic of Croatia<sup>11</sup>, which were established by the Croatian Government on February 20 with the primary goal of coordinating all services in the event that Covid19 occurred in Croatia, served as the legal framework for the civil protection system of country.<sup>12</sup> The Croatian government adopted a number of pandemic preventative measures, such as the proposal to establish a special central body with the goal of coordinating all public services in the case of a coronavirus outbreak.<sup>13</sup>

Because the newly added Article 22a basically fits the definition of disaster that already existed in the Law, changes made to the Law on Civil Protection System have received public criticism from a variety of legal professionals. The ruling majority in parliament has come under particular fire for purposefully avoiding adhering to constitutional and legal norms in order to manage the crisis by passing laws with a simple majority rather than the two-thirds majority required by Article 17 of the Constitution, which is required if the state declares a state of emergency. While Article 22a of the Law of Civil Protection System served as the basis for such a decision, the public discourse questioned not only why the government did not proclaim a state of emergency but also the constitutionality of the actions authorized by the civil protection headquarters. Furthermore, urgent revisions to the Law on the Protection of the Population from Infectious Diseases have been initiated in order to give legal standing to the actions taken by the Civil Protection Headquarters so that both the Civil

<sup>10</sup> <https://tinyurl.com/29b4sypc> (accessed: 12.02.2023)

<sup>11</sup> Law on the Protection of the People from Infectious Diseases – Zakon o zaštiti pučanstva od zaraznih bolesti. *Official Gazette of Republic of Croatia, Narodne novine*, No. 79/07, 113/08, 43/09, 130/17, 114/18, 47/20, 134/20, 143/21.

<sup>12</sup> Law on Civil Protection System – Zakon o sustavu civilne zaštite. *OG* 82/15, 118/18, 21/20.

<sup>13</sup> Webpage of the Croatian government: <https://vlada.gov.hr/vijesti/ministarstvo-zdravstva-osniva-se-nacionalni-krizni-stozer-zbog-koronavirusa/28676>. To see more decisions that the Civil Protection Headquarters and Ministry of health which adopted during epidemic are available on webpage: <https://tinyurl.com/2jr4nbhc> (accessed: 12.02.2023)

Protection Headquarters and the Minister of Health may issue special security orders.<sup>14</sup> The experts emphasize that the purpose of such revisions was not to grant national headquarters unfettered authority but rather to establish a hierarchy of conduct between national and local headquarters.

Also, the law's attempt to govern cases that had already occurred drew criticism from the public. They underlined that this constituted retroactivity of the law, which is typically forbidden by Article 90 of the Constitution of the Republic of Croatia. The Constitution specifically states in Article 90, paragraph 4, "Laws and other regulations of state bodies and bodies with public authorities cannot have retroactive effect". In paragraph 5 of the same article, the exceptional retroactivity of certain provisions of the law is stated as follows: "For highly justified reasons, only some legal provisions can have retroactive effect". In this particular instance, the Government did not make explicit why it wanted the Headquarters to take retroactive action, so it was unclear why the Headquarters and not the Ministry of Health had originally ordered the actions. However, the ruling parliamentary majority notes that there was no retroactive application of the aforementioned law in this specific situation, and as a result, there was no breach of Article 90 of the Constitution, with relation to the passage of the amendment. They use the Law's achievement of the so-called 'apparent' or 'quasi' retroactivity, which the Constitutional Court ruled was constitutionally permitted in Croatian law, to justify the aforementioned position. They came to the conclusion that the aforementioned institution had been inherited as an established one from the Court of Justice of the European Union's practice.<sup>15</sup>

The Constitutional Court decided against accepting the proposal to begin the constitutional review process for the disputed provisions of the Law on Civil Protection System and the Law on Amendments to the Law on the Protection of Population from Infectious Diseases based on the arguments presented above. The majority of the ten constitutional judges adopted this ruling, however the remaining three judges submitted separate opinions expressing their severe dissatisfaction with the result and outlining their position on the relevant constitutional problems. Some of their points of contention were already made

<sup>14</sup> European Union Agency for fundamental Rights, Coronavirus pandemic in the EU – Fundamental Rights Implication, Country: Croatia, 4 May 2020, Human Rights House Zagreb, Centre for Peace Studies, p. 3. (Also available on web page: [www.fra.europa.eu](http://www.fra.europa.eu), accessed: 08.02.2023).

<sup>15</sup> Ibid. op. cit. p. 4



during the expert public discussion on constitutional law that began as soon as the modifications were approved in the spring of 2020.<sup>16</sup>

Furthermore, additional requests for legality evaluations included measures like the mandated requirement to wear face protection masks, the requirement to isolate oneself, and a temporary ban on working on Sundays. Except for one, when it decided that the ban on labor on Sundays at the start of the coronavirus pandemic was not in compliance with the Constitution, the Constitutional Court dismissed all requests for constitutional review of decisions made by the Civil Protection Headquarters. Hence, it was determined that the remaining provisions were constitutional.<sup>17</sup>

### **3. State of emergency and public law issues in some Member States (Belgium, Sweden)**

#### **3.1. Belgium**

Belgium's experience with the coronavirus was similar to that in other European countries, however, with two significant differences; first, according to many published data on the number of infections and deaths per capita, it follows that Belgium is often ranked at the very top of the list, which prompted some international media to call Belgium the 'coronavirus champion'. This worrying data is tried to be explained through another peculiarity of Belgium compare to other EU countries. Thus, the explanation of the above comes from the fact that Belgium has complex institutions, but also a special political situation, a minority government in a period of crisis.<sup>18</sup> Health care in Belgium, in recent decades has been characterized by the decentralization of power from the Belgian federal state to the constituent regions and the community, which means that the provision of health insurance and protection is still at the federal level, while long-term care is, for example, nursing homes organized by decentralized

<sup>16</sup> See: [https://narodne-novine.nn.hr/clanci/sluzbeni/full/2020\\_09\\_105\\_1971.html](https://narodne-novine.nn.hr/clanci/sluzbeni/full/2020_09_105_1971.html)

<sup>17</sup> European Union Agency for fundamental Rights, Coronavirus pandemic in the EU – Fundamental Rights Implications, Country: Croatia, 3 November 2020, Human Rights House, Centre for Peace Studies, p.4; Web page: <https://tinyurl.com/cb8n386s>

<sup>18</sup> Jeroen LUYTEN – Eric SCHOKKAERT: Belgium's response to the COVID-19 pandemic. *Health Econ Policy Law*, July 5 2021. 1–11.; also available on web page: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8280466/>; (accessed: 12.02.2023).

communities, but hospital funding is still at the federal level.<sup>19</sup> An extremely complex split of authority between the federal government and decentralized institutions develop from the regulation of medications still falling under federal authority and, for example, the organizing of vaccinations being decentralized. Similar to other states, Belgium does not have a state of emergency statute that would force re-centralization in times of crisis. The Belgian Constitution (1831) also does not contain specific provisions dedicated to ‘the state of emergency’. Moreover, Article 187 of the Constitution stipulates that the Constitution cannot be suspended either in part or in whole, while Article 105a provides for ‘special powers’, i.e. a mechanism enabling the delegation of legislative powers from the Belgian Parliament to the government. However, the legislator provided for a time limit for the use of special powers and, as a necessary precondition for their activation, the existence of compelling reasons. The above is foreseen with the aim of enabling a quick reaction, especially when it would be ineffective to wait for the parliament to pass and adopt all necessary laws in the regular procedure. However, there is also a verification system for the above-mentioned situations, so ordinances that were passed under special powers are verified by the legislator. Likewise, laws passed in such situations are subject to control by the Constitutional Court, while decrees passed in such proceedings are also subject to judicial supervision by the State Council (but only when not ratified by the parliament).<sup>20</sup>

At the end of March 2020, two laws were passed that enabled the king and the government to adopt measures for the purpose of maximum control of the spread of the coronavirus within a period of three months from the entry into force of the law (they are related to issues from Article 74 and 78 of the Constitution). Likewise, they prescribe measures that the government can take in terms of health, but also to promote economic activity as well as the orderly functioning of the court. In cases of violation of the measures taken, the government has the authority to determine certain sanctions, whether administrative, civil or

<sup>19</sup> Belgium is a parliamentary, constitutional and hereditary monarchy. The first constitution was adopted on February 7, 1831 and was amended several times (1970, 1971, 1974 and 1980). While in 1993 was a significant change of the Constitution, when according to Article 1 of the Belgium Constitution, it became a federal state composed of three autonomous regions. Thus, joint jurisdiction belonged to the army, monetary and foreign policy, while everything else is transferred to the regions.

<sup>20</sup> Krisztina BINDEN et. al.: *States of emergency in response to coronavirus crises: Situation in certain Member States*, European Parliamentary Research service (EPRS). European Parliament, June 2020, p.10.; also available on web site of European Parliament: [www.europarl.europa.eu](http://www.europarl.europa.eu) (accessed: 14.02.2023).

criminal. For the measures adopted by decrees in the Council of Ministers, an extremely retroactive effect is prescribed, but with the prescription of a series of restrictions on when and how they can be applied. A ministerial decree in the middle of March 2020 signed by the Minister of the Interior closed schools and restaurants and banned a number of recreational, cultural and sports activities, but even stricter measures followed with the adoption of ministerial decrees containing social distancing measures, distance learning, etc. Also, some additional measures were taken at the community level, as well as at the regional level, given that Belgium is a federal state, so management is not limited to the exclusive competence of only one instance. The special powers clause stipulates that decrees must be ratified by law within a specific time frame. The decrees must be converted in the specific instance of a pandemic within a year of their taking effect. They will be void in the absence of such confirmation. Additionally, the House of Representatives established a new parliamentary committee with the express purpose of requesting information from and supervising the members of federal government with regards to actions taken under the ‘special powers’ provision. In 2009, when the N1H1 pandemic was a threat, the Belgium government invoked the exceptional powers for a sanitary emergency. At the time, the King of Belgium was also given special powers, albeit they were more constrained.<sup>21</sup>

### 3.2. Sweden

The Instrument of Government (*Regeringformen*, further: RF), one of the four fundamental laws of the Constitution of Sweden, is a manifestation of the core values of Swedish democracy. The phrase ‘state of emergency’ is not specifically used in the RF. A framework for the allocation of legislative authority in times of war, the administration is required to carry out the responsibilities of the Swedish Parliament (*the Riksdag*) to the extent necessary to safeguard the nation and end the conflict. At times of peace, the government is required to handle civil crises, such as the spread of diseases like Covid19, within the parameters of the legal system.<sup>22</sup> Only the Riksdag has the authority to temporarily impose limits on people’s constitutionality guaranteed freedom of movement, and it takes a five-sixths majority of those voting to do so. However, if a motion to that

<sup>21</sup> Ibid. 11

<sup>22</sup> BENTZEN et al. op. cit. 10

effect is made by at least ten members, a draft bill of this nature shall be tabled for a minimum of 12 months, unless rejected by the Riksdag. Nonetheless, in accordance with RF 2:24, the right to assemble may be curtailed in order to stop the spread of an epidemic. The instrument of Government also provides a quicker and more adaptable legislative process, which is advantageous when managing a crisis involving the general public. The RF chapter 8 contains several passages that discuss how the government may subdivide legislative authority to its administrative agencies from the Riksdag.

Compared to other countries of the EU, Sweden differs primarily in that it used a milder approach, that is, in connection with the protection measures taken, it acted in such a way that it did not declare a complete lockdown and all institutions remained open. The aforementioned Swedish, defined by some authors as a ‘nudge’ strategy, is intended to adapt certain behaviors of citizens without prohibiting or limiting the fundamental rights (freedoms) of individuals. So, the Swedish Government and the Public Health Agency have given certain strong recommendations regarding behavior, for example avoiding non-essential travel, maintaining basic hygiene habits as washing hands, avoiding going to work in case of symptoms, working and studying from home if possible, etc. However, citizens are left free that they act according to their own choice, whereby the focus is left on the responsibility of the individual to act in accordance with the recommendations, but a high level of trust in Swedish society is also clearly expressed.<sup>23</sup>

Some of the measures issued by the Swedish Ministry of Foreign Affairs include the recommendation not to travel abroad unless absolutely necessary, while the Riksdag, the government and the Public Health Agency decided to adopt some legislative measures. Thus, in the second half of March, the Riksdag adopted the Law (2020:148) on the temporary closure of activities in the field of education during extraordinary events in peacetime, according to which the government has the option to temporarily close preschool institutions and schools in the event of need for this. However, the possibilities provided by this law have not been used so far. The Swedish legal system allows for the potential of transferring legislative authority from the Riksdag to the government in the specific instance of the transfer of authority to resolve crisis situations, which is the topic of parliamentary oversight over the approval of measures. Hence, in accordance with RF 8:4, the Riksdag has jurisdiction over and oversight

<sup>23</sup> Bo YAN – Xiaomin ZHANG et al.: Why do countries respond differently to COVID-19? A comparative study of Sweden, China, France and Japan. *American Review of Public Administration*, 2020. 765.

over all laws passed by the government. However, temporary amendments to the Infectious Diseases Act that were approved by the Riksdag included a clarification from the Riksdag addendum that stated the government had the authority to make additional provisions in exceptional circumstances when a decision couldn't wait for the Riksdag's approval. Likewise, the RF's chapter 15 contains a special article that stipulates when the government should assume control over the legislative branch, such as when there is a state of war or threat of war. Finally, the government is not allowed to implement, amend, or abolish a fundamental law, the Riksdag Act (2014:801), or the Elections Act (2005:837) in cases where the Riksdag or the War Delegation cannot carry out their task. It's also interesting to note that the Riksdag has the authority to establish a new government (RF 15:4) in circumstances where the government is unable to carry out its duties because of war.<sup>24</sup>

## 4. Conclusion

The appearance of the coronavirus and its rapid spread at the world level showed significant differences between countries in the way of combating it, both in terms of the preparedness of their health systems and their reactions or responses to the state of the crisis. Natural reflexes in the form of extraordinary measures taken by the competent authorities in an attempt to protect against the coronavirus, in most countries under normal circumstances, would be very constitutionally questionable, so it is not surprising that numerous objections to the legality of the actions of the authorities as well as their problematic constitutionality were highlighted. According to the basics of the principle of legality says that a temporary suspension of some human rights and an unusual division of powers may be necessary to maintain the security of the State, the functioning of its democratic institutions, the safety of its officials, and the wellbeing of its populace. Nonetheless, authoritarian administrations have exploited their emergency powers to maintain control, muzzle the opposition, and generally limit human rights. Thus, strict restrictions on the length, circumstances, and reach of such authorities are crucial. Only a democracy that completely upholds the Rule of Law can effectively protect state security and public safety. In order to prevent abuse, this calls for a parliamentary and judicial assessment of the existence and duration of a declared emergency situation.

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<sup>24</sup> BENTZEN et al. op. cit. 11.

About named countries it can summarize the following: regarding the adopted measures at the national level, Croatia had amendments of two laws, the Civil Protection System Act and Infectious Diseases Protection Act, while in the case of Sweden, there were expressed authorization for the government to adopt provisional amendments in the Communicable Diseases Act (2004:168), in case of Belgium there were special powers according to Article 105 of the Constitution. In the question of the temporary measures, in Croatia, the legislation does not directly prescribe any time limitations for the duration of measures but the Civil Protection Authority is authorized to introduce measures only in case of 'special circumstances' endangering the lives and health of citizens. All the measures were introduced with an incorporated time limit (mostly 30 days) and prolonged once, while in the case of Belgium as well as in the case of Sweden there is prescribed temporality of measures. In a question of parliamentary oversight which includes a set of tools to hold the Government accountable, one of which is the duty of the institution concerned to provide Parliament with information on the measures adopted, in all three countries there is existing oversight. Finally, regarding the previous use of measures, only in Belgium these measures were used earlier (during the N1H1 pandemic). This article shows different approaches of all three countries to the fight with a corona crisis situation, but at the same time, it has shown how functional they have been and where possible problems may occur in situations of threatening public health and state security.