

**EUROPEAN COURT OF HUMAN RIGHTS**

**FIRST SECTION**

**APPLICATION NUMBER: 12131/21**

**Ján Figel'**

**v.**

**Slovakia**

**Applicant's Reply to the Observations of the Government of the Slovak  
Republic on Admissibility and Merits**

**Filed on  
27 July 2023**

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## 1. Introductory Remarks

1. The Applicant's complaint concerns the legal measures (also the subject matter of this case) introduced by the Government of the Slovak Republic ('Government') in February of 2021 - Resolution No. 77 of 5 February 2021 ('Resolution'), followed by Decree No. 45 of 5 February 2021 (effective as of 8 February 2021) of the Public Health Office ('Decree'). These measures were introduced to address the spread of the respiratory disease during the pandemic caused by the COVID-19 pathogen, declared as such by the World Health Organization ('WHO') on 11 March 2020.<sup>1</sup>
2. The Applicant, Mr. Ján Figel', was informed, by letter dated 23 May 2023, of the Observations of the Government of the Slovak Republic in relation to Application Number 12131/21, against the Slovak Republic, pending before the European Court of Human Rights ('Court').
3. By a letter dated 2 June 2023, the Court invited the Applicant to respond to the Government's Observations on the applicability and merits of this Application by 17 July 2023.
4. By way of letter dated 6 July 2023, the Applicant sought an extension from the Court which was granted until 31 July 2023.
5. Consequently, the Applicant submits the following response to the Government's Observations, arguing that the mentioned Resolution and Decree violated the right to freedom of religion enshrined in Article 9 of the European Convention on Human Rights ('ECHR').
6. Additionally:
  - a) The Applicant tackles the ruling of the Constitutional Court of the Slovak Republic PL. ÚS 2/2021 of 31 March 2021, invoked in the Government's Observations. It is argued that freedom of religion as a ground of limitation during public health emergencies cannot be

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<sup>1</sup> WHO, 'WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020', available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, accessed on 15 June 2023.

inferred from this decision and that such an inference does not meet the requirement of being 'adequately prescribed by law'.

- b) The Applicant takes note of the Third-Party Interventions of the *European Centre for Law and Justice (ECLJ)*, dated 5 April 2023), *Ordo Iuris* (dated 27 April 2023) and the *Free University of Tbilisi* (dated 30 May 2023). With regards to the interventions of *ECLJ* and *Ordo Iuris*, the Applicant agrees with the intervenors on the lack of proportionality in the Slovak Government's limitations of freedom of religion. With regards to the intervention by the *Free University of Tbilisi*, the Applicant agrees that the State should not overlook the doctrinal specificities of the involved religion and the impact limitations will have on the Applicant because of these specificities (p. 14 of Intervention). In other words, the Government cannot overlook the fact that the communal aspect of Mass and Communion is an essential part of the doctrine of the Catholic Church and hence the Applicant's deeply held belief.

## **2. Facts**

7. The Applicant notes that the Respondent Government generally agrees with the facts as set out in the Application and does not 'maintain any reservations in this regard' as stated in par. 4 of the Government Observations.

## **3. Domestic Law and Practice**

8. By way of Resolution No. 587 of 30 September 2020 ('Resolution No. 587'), the Government declared, in accordance with Article 5(1) of Constitutional Act No. 227/2002 Coll. on State Security in Times of War, State of War, State of Emergency and State of Emergency, as amended ('Constitutional Act No 227/2002 Coll.'), a state of emergency in the Slovak Republic during the second wave of the pandemic (effective of 1 October 2020).
9. According to Article 51(2) of the Constitution of the Slovak Republic: 'The conditions and extent of restrictions on fundamental rights and freedoms and the extent of obligations in times of war, martial law, state of

emergency and state of emergency shall be laid down by constitutional act.’<sup>2</sup>

10. Constitutional Act No. 227/2002 Coll. is a constitutional act within the meaning of Article 51(2) of the Constitution of the Slovak Republic and states:

‘The Government may declare a state of emergency only if there is or is imminent danger to the life and health of persons, including in causal connection with the occurrence of a pandemic, to the environment or to significant property values as a result of a natural disaster, catastrophe, industrial, transport or other operational accident; a state of emergency may be declared only in the affected or imminently threatened area.’<sup>3</sup>

11. Based on the amendment to the Constitutional Act no. 277/2002 Coll. (Constitutional Act No. 414/2020 Coll. of 28 December 2020) it was possible to, even repeatedly, extend the state of emergency due to the threat to the life and health of persons in causal connection with the emergence of the pandemic for the extent and time necessary, for a maximum 40 days. The state of emergency was therefore extended several times and lasted eight months. It constituted a severe restriction on religious services.

12. Although this case is about the prolonged *blanket ban* on religious worship for 40 days from 8 February 2021 to 19 March 2021, it should be seen within the context that, by then, the Applicant was severely restricted in attending Catholic services.

13. Even though the state of emergency was extended several times, Article 5(4) of Constitutional act Nr. 277/2002 Coll. stated that *only* the following

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<sup>2</sup> In Slovak: ‘Podmienky a rozsah obmedzenia základných práv a slobôd a rozsah povinností v čase vojny, vojnového stavu, výnimočného stavu a núdzového stavu ustanoví ústavný zákon.’

<sup>3</sup> In Slovak: ‘Núdzový stav môže vláda vyhlásiť len za podmienky, že došlo alebo bezprostredne hrozí, že dôjde k ohrozeniu života a zdravia osôb, a to aj v príčinnej súvislosti so vznikom pandémie, životného prostredia alebo k ohrozeniu značných majetkových hodnôt v dôsledku živelnnej pohromy, katastrofy, priemyselnej, dopravnej alebo inej prevádzkovej havárie; núdzový stav možno vyhlásiť len na postihnutom alebo na bezprostredne ohrozenom území.’

fundamental rights and freedoms could be limited (*which excludes the right to freedom of religion*):

'a) inviolability of a person and his or her privacy by forcing him or her to stay in the dwelling or by evacuating him or her to a designated place, b) the imposition of labour obligations to ensure the supply, maintenance of roads and railways, the provision of transport, the operation of water supply and sewerage systems, the production and distribution of electricity, gas and heat, the provision of health care, the provision of social services, the implementation of measures for the social protection of children and social welfare, the maintenance of public order, or the repair of damage caused, c) restrictions on the inviolability of the dwelling to accommodate evacuees, d) restrictions on freedom of movement and residence, e) make the restriction or prohibition of the exercise of the right to assemble peacefully or to assemble in public subject to authorisation, f) providing input to radio and television broadcasts associated with appeals and information for the population.'<sup>4</sup>

14. Furthermore, in accordance with the Slovak legal system, any legislation of lower legal force should be interpreted in accordance with legislation of higher legal force — the highest legal force being the Constitution and the Constitutional Act. The second highest legal force are the basic acts approved by the National Council of the Slovak Republic. The legal

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<sup>4</sup> In Slovak: 'Zároveň sa v čl. 5 ods. 4 Ústavného zákona č. 227/2002 Z. z. stanovilo, že v prípade núdzového stavu vyhláseného z dôvodu, že došlo alebo bezprostredne hrozí, že dôjde k ohrozeniu života a zdravia osôb v príčinnej súvislosti so vznikom pandémie možno základné práva a slobody obmedziť alebo uložiť povinnosti najviac v rozsahu:

- (a) nedotknuteľnosti osoby a jej súkromia núteným pobytom v obydlí alebo evakuáciou na určené miesto,
- (b) uložením pracovnej povinnosti na zabezpečenie zásobovania, udržiavania pozemných komunikácií železníc, vykonávania dopravy, prevádzkovania vodovodov a kanalizácií, výroby a rozvodu elektriny, plynu a tepla, výkonu zdravotnej starostlivosti, poskytovania sociálnych služieb, vykonávania opatrení sociálnoprávnej ochrany detí a sociálnej kurately, udržiavania verejného poriadku alebo na odstraňovanie vzniknutých škôd,
- (c) obmedzenia nedotknuteľnosti obydlia na ubytovanie evakuovaných osôb,
- (d) obmedzenia slobody pohybu a pobytu,
- (e) obmedzenia alebo zakázania uplatňovania práva pokojne sa zhromažďovať alebo zhromažďovať na verejnosti podmieniť povolením,
- (f) zabezpečenia vstupu do vysielania rozhlasu a televízie spojeným s výzvami a informáciami pre obyvateľstvo.'

instruments with the third highest legal force in Slovakia are decrees of Ministries and other central bodies of state administration (the Public Health Office of the Slovak Republic included).<sup>5</sup>

15. Under Slovak law, therefore, the Decree and Resolution under question must be interpreted in line with the Constitutional Act as not including the right to freedom of religion as a right that can be limited during (repeated) states of emergencies.
16. The specific measures under question were passed during the second wave of the pandemic, hence eighteen months after the WHO declared it as such. Based on Resolution No. 587, the Public Health Office of the Slovak Republic issued the Decree prohibiting all natural persons, entrepreneurs and legal entities from organising mass events, also applying to religious (including Catholic) services. The Decree did not apply to wedding or baptism ceremonies limited to six persons. The Resolution in question imposed a curfew on citizens without an exception to attend religious services and religious worship.
17. The Government's reference to the applicability of the ruling of the Constitutional Court of the Slovak Republic PL. ÚS 2/2021 of 31 March 2021 (see reference thereto in paras. 5 and 21 of the Government's Observations) is noted. For reasons provided below, the Applicant argues, firstly, that the Constitutional Court's view that the Government should be flexible and effective during emergency situations is not in line with Article 9(2) of the ECHR and, secondly, that it is not a legitimate basis for the restrictions by the Government (paras. 60-67 below).

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<sup>5</sup> See Articles 120(1) and 152(4) of the Constitution of the Slovak Republic.

## 4. Complaints – Admissibility and Merits

### 4.1 Response to Preliminary Objection on Admissibility: The Applicant Holds Victim Status

18. Under Article 34 of the ECHR, the Applicant must be ‘the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto’.
19. According to the case law of the Court, the interpretation of the term ‘victim’ is liable to evolve in the light of conditions in contemporary society and it must be applied without excessive formalism.<sup>6</sup> The term ‘victim’ is autonomously interpreted by the Court and irrespective of domestic rules concerning interest in or capacity to take action.<sup>7</sup>
20. The Government contends (par. 6 of its Observations) that the Applicant does not have ‘victim status’ under the ECHR even though the Application Form to this Court describes how the restrictions personally affected him. In the Application it is stated that: ‘In the current legal situation, the Applicant cannot (as a result of the Resolution and the Decree) attend church services, which means that he is prevented from expressing his religion or beliefs as a result of the designated legal acts.’<sup>8</sup> The Government also refers to this statement in its Observations (par. 13).
21. The Government cites *Magdić v. Croatia*,<sup>9</sup> which this Court declared inadmissible due to the applicant’s lack of ‘victim status’. In *Magdić* (par. 10) the applicant did not provide any information about his personal situation beyond his identity and occupation, nor did he substantiate how restrictions affected him directly.

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<sup>6</sup> *Monnat v. Switzerland*, App. No. 73604/01, 21 September 2006, paras. 30-33; *Gorraiz Lizarraga and Others v. Spain*, App. No. 62543/00, 10 November 2004, par. 38; *Stukus and Others v. Poland*, App. No. 12534/03, 1 July 2008, par. 35; *Ziętal v. Poland*, App. No. 64972/01, 12 August 2009, paras. 54-59.

<sup>7</sup> *Gorraiz Lizarraga and Others v. Spain*, par. 35.

<sup>8</sup> *Ján Figel’ v. Slovakia*, App. No. 12131/21, Application Form, Statement of the Facts, p. 6.

<sup>9</sup> *Magdić v. Croatia*, App. No. 17578/20, 5 July 2022.



22. On the contrary, in this pending case, the Applicant clearly describes his Catholic faith and how the measures influenced him directly.
23. The Applicant is a well-known public political figure in the Respondent State, a founding member of the Christian-Democratic Movement (KDH). He was its elected chairman in Slovakia between 2009 until 15 March 2016,<sup>10</sup> and for three years he held the position of Special Envoy for the promotion of freedom of religion or belief outside the European Union.<sup>11</sup>
24. The Applicant's deeply held, firm and actively practiced Christian beliefs cannot be contested. A devoted Catholic, he has been outspoken about his Christian identity and the importance of faith both for him individually and collectively, as a societal cornerstone. In a very recent interview, the Applicant described his growing up as a Christian in a communist state and spoke extensively about the importance of his faith and Christian identity, stating: 'For me faith means everything'.<sup>12</sup> For the Catholic faithful, as the Applicant, participating in Holy Mass and Holy Communion is not merely a minor collective or individual spiritual event but a sacrament. The absence of a collective setting influences the individual's ability to exercise essential doctrinal aspects of Catholicism.<sup>13</sup> Prior to (and after) the imposition of the pandemic restrictions, the Applicant attended and is attending religious

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<sup>10</sup> Ján Figel', <https://www.janfigel.eu/aboutjf>, accessed 27 June 2023.

<sup>11</sup> European Commission, President Juncker appoints the first Special Envoy for the promotion of freedom of religion or belief outside the European Union, European Commission, 6 May 2016, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_1670](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1670), accessed 5 July 2023.

<sup>12</sup> A very recent interview, describing the Applicant growing up as a Christian in a communist state, the importance of his faith and Christian identity to him and him standing at the origins of Christian democracy in Slovakia, <https://iti.ac.at/news-events/news/news-detail-page/?news=233>, accessed 5 July 2023.

<sup>13</sup> The Catechism of the Catholic Church confirms this by stating that 'Holy Communion, because by this sacrament we unite ourselves to Christ, who makes us sharers in his Body and Blood to form a single body. We also call it: the holy things (ta hagia; sancta)—the first meaning of the phrase "communion of saints" in the Apostles' Creed—the bread of angels, bread from heaven, medicine of immortality, viaticum'. See Catechism of the Catholic Church, par. 1331, [https://www.vatican.va/archive/ENG0015/\\_P3Y.HTM](https://www.vatican.va/archive/ENG0015/_P3Y.HTM), accessed 5 July 2023. Also see, James Coriden, Thomas Green and Donald Heintschel, eds., *The Code of Canon Law: A Text and Commentary* (New York: Paulist Press, 1985), 1248.2 and Catechism of the Catholic Church, 2181; Regarding the absence of a collective setting, see Jason Goroncy, 'Holy Communion and COVID-19', *ABC Religion and Ethics*, 7 April 2020, <https://www.abc.net.au/religion/jason-goroncy-holy-communion-and-covid-19/12129848>, accessed 5 July 2023.

services three times per week as a practicing Catholic, as can be attested by Father Lukas Uvacik.

25. According to the case law of this Court, it is open to the Applicant to contend that a law violates his or her rights, in the absence of an individual measure of implementation, if he or she is required to modify his or her conduct.<sup>14</sup> The Applicant can undoubtedly be considered personally and 'directly affected' by the measures at issue, being a Slovak national and falling within the jurisdiction of the Respondent State and thus within the scope of the contested measures. The Applicant was prohibited from attending religious services, and thus from exercising his rights under Article 9 of the ECHR, through the measures applied at the time, and argues that his Application to this honourable Court cannot be viewed as *actio popularis*.

26. Based on the above arguments, the Applicant is a victim of the challenged national measures.

#### **4.2 Response to Preliminary Objection on Admissibility: The Application is not Manifestly Ill-founded.**

27. The Applicant respectfully submits that the complaint is admissible and cannot be considered manifestly ill-founded for reasons relating to the examination on the merits, as alleged by the Government on p. 5 of its Observations. It is submitted that even a preliminary examination of the complaint's substance discloses a clear violation of the Applicant's rights guaranteed by Article 9 of the ECHR. A violation of the collective aspect of the Applicant's right to freedom of religion during the stated period is well substantiated in the application form and further explained below. The blanket ban on attending public religious services, an important aspect of the manifestation of the Applicant's faith, constituted a disproportionate interference with his Convention rights, the reasons for which are detailed in the following paragraphs.

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<sup>14</sup> *Tănase v. Moldova*, App. No. 7/08, 27 April 2010, par. 104; *Michaud v. France*, App. No. 12323/11, 6 March 2013, paras. 51-52; *Sejdić and Finci v. Bosnia and Herzegovina*, App. No. 27996/06 and 34836/06, 22 December 2009, par. 28.

28. Henceforth, Article 9(1) of the ECHR states, similar to Article 18 of the International Covenant on Civil and Political Rights ('ICCPR'), that: 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, *either alone or in community* with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance' (emphasis added).
29. It is clear from the ECHR and the ICCPR that the right to freedom of religion and belief includes the right to practice those beliefs in community with others (and individually) and manifest them publicly and privately.<sup>15</sup> This is also confirmed in the case of *Güler and Uğur v. Turkey*<sup>16</sup> where this Court stated that the right to freedom of religion also 'implies freedom to manifest one's religion not only alone and in private but also in community with others, in public and within the circle of those whose faith one shares'.
30. The Government claims in its Observations (paras. 13-17) that there was no violation of freedom of religion as individual pastoral meetings were never banned. This argument is a factually incorrect interpretation of the scope of Article 9 and reduces it to the individual exercise of religion, whereas international and European law, including the jurisprudence of this Court, clearly describe the right to freedom of religion or belief as covering the gathering together for a church service to manifest religion collectively in 'worship and observance'.
31. Therefore, even if individual Communion was allowed under very restrictive conditions, there was a complete limitation of the collective component of the Applicant's right to religious freedom.
32. Furthermore, by arguing that there was no violation of freedom of religion as individual Communion was available to some extent, the Government

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<sup>15</sup> For a non-exhaustive list of what is included in freedom of religion, see UN HRC, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, par. 4, <https://www.refworld.org/docid/453883fb22.html>, accessed 5 July 2023.

<sup>16</sup> App. Nos. 31706/10 and 33088/10, 2 December 2014, par. 35. Also see, *The Church of Jesus Christ of the Latter-Day Saints v. The United Kingdom*, App. No. 7552/09, 4 March 2014, par. 41.

assumes it has the discretion to decide on the legitimacy and importance of the manifestation of religion. As stated by this Court, 'but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate'.<sup>17</sup> As stated in academic literature, in order to assess the content of freedom of worship, 'it is indispensable to consider the self-understanding of the religious community concerned'.<sup>18</sup>

33. Also, as recommended by the Organization for Security and Co-operation in Europe ('OSCE'),<sup>19</sup> authorities should tread with caution and sensitivity when taking measures limiting freedom of religion as what may seem trivial to them is not necessarily so for the religious believers of a religion. For example, in October 2020 (also during the second wave), the Belgian Government imposed a general ban on worship and religious celebrations, with an exception for religious funerals and weddings with a limited number of guests. The Jewish representative of a Synagogue, as well as an engaged Jewish couple, challenged those restrictions. The *Conseil d'État* ruled<sup>20</sup> that the restrictions constituted a severe interference by the State on the right to freedom of worship, failing to consider the unique rites of different religions. The Belgian Government failed to tread with caution and sensitivity.
34. Furthermore, even if the representatives of the Catholic Church in the Slovak Republic stated that members should respect the blanket bans on religious services (as argued in par. 42 of Government Observations), it does not mean that the Government acted in accordance with the ECHR in protecting the Applicant's right to freedom of religion. As stated by this Court, it is not up to the religious or belief adherent to show that the religious manifestation was mandated by the religion or belief in question.<sup>21</sup>

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<sup>17</sup> *Church of Jesus Christ of Latter-Day Saints*, par. 29.

<sup>18</sup> Marcos Keel Pereira, 'A Pandemia COVID-19 e a Liberdade Religiosa em Portugal e na Alemanha', *Studia FC* XVII/1 (2021), 45.

<sup>19</sup> OSCE, 'OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic,' 1 March 2021, <https://www.osce.org/odihr/480014>, accessed on 5 July 2023, 119.

<sup>20</sup> *Conseil d'État*, C.E., n°249.1778, December 2020.

<sup>21</sup> *Leyla Şahin v. Turkey*, App. No. 44774/98, 10 November 2005, par. 78. Also see *Hamidović v. Bosnia and Herzegovina*, App. No. 57792/15, 5 December 2017, par. 30.

35. In what concerns online broadcasts or other ‘work-arounds’ during the pandemic, which the Government consider a substitute to communal worship, it was accepted by the Court of Session of Scotland in a decision challenging church closures that ‘these are best viewed as an alternative to worship, rather than worship itself’, and that physical gathering together of Christians for prayer in one place is a condition set down by for the public corporate worship by the Canon law.<sup>22</sup> It was thus accepted that participation in a live streaming on a computer screen from the solitude of one’s own home does not amount to collective worship. It was clear to the court that, due to the closure of the places of worship, the petitioners were effectively prevented from practicing or manifesting their religion ‘however many broadcasts or internet platforms may exist’.<sup>23</sup>

36. In a similar vein, the Government references Decree No. 45/2021 of 8 February 2021 in their Observations (par. 18) exempting ‘single mass gatherings’ from the restrictions (with excessive requirements and restrictions surrounding such a gathering). This measure was exceptional in nature and cannot be viewed as a reasonable, justifiable and sensible replacement for daily Catholic Mass attended by the Applicant three times per week. As explained in par. 64 below, it should be noted that there is a difference between opening ‘places of worship’ compared to other singular ‘mass events’ open to public, such as a show at a theatre or a musical concert, noting that the activities carried out there are not of the same nature and the fundamental freedoms at stake are not the same.<sup>24</sup>

#### **4.3 Limitations are Contrary to Article 9(2) and not Proportional**

37. The Applicant submits that the restrictions on public gatherings did pursue a legitimate aim of protecting public health but that these restrictions were not in accordance with law and not proportionate to the aim pursued under Article 9 of the ECHR.

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<sup>22</sup> *Reverend Dr William J U Philip and Others* [2021] CSOH 32 at paras. 60-61.

<sup>23</sup> *Ibid.*, paras. 61 and 63.

<sup>24</sup> *Conseil d'État*, 440366, 18 May 2020, par. 32 and *Conseil d'État*, Ordonnance of 29 November 2020, par. 19.

38. It is therefore necessary to assess whether the stated measures were: (a) Prescribed by law (in accordance with established legal procedures, transparent, accessible, predictable, foreseeable - with precision - and accountable);<sup>25</sup> (b) Appropriate (with a relationship between the ban on religious services and delaying the spread and minimising the effects); (c) Necessary to achieve the intended purposes and not merely 'suitable'; (d) Proportionate (the burden placed upon the religious freedom rights of the Applicant must not be excessive relative to the objective of delaying or minimising the effects of the pandemic);<sup>26</sup> and (d) The least restrictive means available to achieve the said purpose.<sup>27</sup>

*a) Limitations not 'Prescribed by Law' in Accordance with Article 9(2)*

39. To establish whether limitations were 'prescribed by law', the Siracusa principles indicate that the limitation must be 'provided for by national law of general application'.<sup>28</sup> Besides the fact that any limitation must have a legitimate basis in law, this also refers to the *quality of the law*, which means that the law must be sufficiently accessible and foreseeable (predictable) as to its effects (formulated with sufficient precision).<sup>29</sup>

40. The requirement of predictability is not met if the application or interpretation of the legislation was unexpected, too broad or bordering on

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<sup>25</sup> *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles)*, 28 September 1984, E/CN.4/1985/4, par. 15, <https://www.refworld.org/docid/4672bc122.html>, accessed on 5 July 2023.

<sup>26</sup> Human Rights Committee, *General Comment 22*, Article 18, <https://www.hrw.org/en/story/1993/general-comment-22-article-18>, par. 8, accessed on 15 July 2023, and UN, *Resolution 2005/40 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, par. 12.

<sup>27</sup> *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01, par. 116 and *General Comment 22*, par. 8. These requirements are reiterated in the European Parliament, 'Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences', 17 April 2020, [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.pdf), accessed on 5 July 2023.

<sup>28</sup> *Siracusa Principles*, par. 15.

<sup>29</sup> *Svyato-Mykhaylivska Parafiya v. Ukraine*, par. 115, *Larissis v. Greece*, App. Nos. 23372/94, 1998, par. 40. See, *mutatis mutandis*, *Rotaru v. Romania*, App. No. 28341/95, 2000, par. 52, *Rekvényi v. Hungary*, App. No. 25390/94, 1999, par. 34, and *Ukrainian Media Group v. Ukraine*, App. No. 72713/01, 2005, par. 48.

arbitrariness. The requirement of predictability is often intertwined with the requirement of procedural guarantees. This Court decided that a general prohibition on a certain conduct is a radical measure which requires a solid justification and a particularly serious review by the courts authorised to weigh up the relevant interests at stake.<sup>30</sup> The Court also declared a violation of Article 9 of the ECHR where procedural guarantees were absent.<sup>31</sup>

41. Accordingly, the Applicant argues that the measures used to limit the right to freedom of religion were not, on the one hand, prescribed by law and, on the other, they were not sufficiently precise, certain and predictable (lacking sufficient procedural guarantees).

*b) Limitations not 'Certain' as Derogation was without Official Declaration by the Government and not Permissible under International Law*

42. According to Article 15(1) of the ECHR, in the event of 'war or of any other public threat to the existence of the State, any High Contracting Party may take measures to derogate from the obligations...' This is qualified by Article 15(3) stating that parties should, in exercising its right of withdrawal, keep the Secretary General of the Council of Europe 'fully informed of the measures it has taken and the reasons therefore...'

43. According to the Opinion of the Venice Commission, human rights can only be derogated from after an 'official declaration'.<sup>32</sup> On legal certainty, foreseeability, and clarity during crisis situations, the 'rule of law...implies that the organs of government must act within the limits of the law and that

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<sup>30</sup> *Hirst v. United Kingdom* (no. 2) [GC], App. No. 74025/01, 6 October 2005, par. 82 and *Schlumpf v. Switzerland*, App. No. 29002/06, 8 January 2009, par. 115.

<sup>31</sup> *Hasan and Chaush v. Bulgaria*, App. No. 30985/96, 26 October 2000, par. 85.

<sup>32</sup> Interim Opinion on the Draft Constitution of Montenegro adopted by the Venice Commission at its 71st Plenary Session (Venice, 1 - 2 June 2007), CDL-AD(2007)017-e, Council of Europe: Venice Commission, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)017-e), accessed on 5 July 2023.

their actions must be subject to review by independent courts. Legal certainty...must be guaranteed'.<sup>33</sup>

44. According to Kmeca *et al.* (2012), if a Council of Europe Member State did not notify of the derogation but subsequently argued before the ECtHR that it was an extraordinary measure at a time of public danger, such an argument would not be successful – a 'State must notify a derogation under Article 15(3) if it wishes to rely on it later. The absence of notification could be an indicator of bad faith on the part of the State'.<sup>34</sup>

45. The Slovak Republic, as a party to the ECHR, did not exercise this right to derogate from its obligations under Article 15 of the ECHR and did not keep the Secretary General of the Council of Europe fully informed.<sup>35</sup> Therefore, the human rights and fundamental freedoms guaranteed by the ECHR were in force during the pandemic in the territory of the Slovak Republic.

46. Furthermore, as a party to the ICCPR, the Slovak Republic is not allowed to derogate from the right to freedom of religion during public emergencies as this is prohibited in Article 4(2) of the ICCPR. The ICCPR contains a broader enumeration of non-derogable rights than the ECHR, including the right to freedom of thought, conscience, and religion. Article 15(1) of the ECHR states that any derogation under the Convention cannot be inconsistent with obligations under international law (hence, for example, the ICCPR). This condition of compatibility in the ECHR, together with the right to freedom of religion being declared a non-derogable right under international law, prohibits the Slovak Government to derogate from this right during public emergencies.

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<sup>33</sup> Opinion on the draft law on the legal regime of the state of emergency of Armenia adopted by the Venice Commission at its 89th Plenary Session (Venice, 16-17 December 2011), CDL-AD(2011)049-e, Council of Europe: Venice Commission, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)049-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)049-e), accessed on 5 July 2023.

<sup>34</sup> Kmec, J., Kosar, D., Dratochvil, J., Bobek, M. 2012. European Convention on Human Rights. Commentary. 1st edition (Prague: C. H. Beck), 67.

<sup>35</sup> Council of Europe, Derogations Covid-19, <https://www.coe.int/en/web/conventions/derogations-covid-19>, accessed on 5 July 2023.



*c) Restrictions had no Sufficient Legal Basis*

47. The Applicant argues that the measures restricting his right to freedom of religion not only had no legal basis but were also expressly contrary to the law and therefore not 'prescribed by law' (within the meaning of Article 9(2) of the ECHR).
48. The Government of the Slovak Republic, by way of Resolution No. 587, declared, in accordance with Article 5(1) of Constitutional Act No 227/2002 Coll. a state of emergency for a period of 45 days as from 1 October 2020.
49. Both the Resolution and the Decree (the legal measures challenged by the Applicant) were issued under the legal status of validity and effectiveness of Constitutional Act No. 227/2002 Coll. as amended by the above-mentioned Constitutional Act No. 414/2020 Coll.
50. According to Article 51(2) of the Constitution of the Slovak Republic: 'The conditions and extent of restrictions on fundamental rights and freedoms and the extent of obligations in times of war, martial law, state of emergency and state of emergency shall be laid down by constitutional law.'<sup>36</sup>
51. Constitutional Act No. 227/2002 Coll. is a constitutional act within the meaning of Article 51(2) of the Constitution of the Slovak Republic.
52. Pursuant to Article 5(1) of Constitutional Act No. 227/2002 Coll., in force at the time of the issuance of Resolution No. 587: 'The Government may declare a state of emergency only if there is imminent danger to the life and health of persons, including in causal connection with the occurrence of a pandemic...a state of emergency may be declared only in the affected or imminently threatened area.'<sup>37</sup>

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<sup>36</sup> In Slovak: 'Podmienky a rozsah obmedzenia základných práv a slobôd a rozsah povinností v čase vojny, vojnového stavu, výnimočného stavu a núdzového stavu ustanoví ústavný zákon.'

<sup>37</sup> In Slovak: 'Núdzový stav môže vláda vyhlásiť len za podmienky, že došlo alebo bezprostredne hrozí, že dôjde k ohrozeniu života a zdravia osôb, a to aj v príčinnej súvislosti so vznikom pandémie, k ohrozeniu životného prostredia alebo k ohrozeniu značných

53. Constitutional Act No 227/2002 Coll., (and also Constitutional Act No 227/2002 Coll., as amended by Constitutional Act No. 414/2020 Coll. (from 29 December 2020)), *did not allow for the restriction of religious freedom* during the state of emergency, stating in Article 5(4) that in the event of such a declared state of emergency, fundamental rights and freedoms may be curtailed or obligations may be imposed to a 'maximum extent' of those stated rights and freedoms. In practice, this meant that only the rights and freedoms specified in par. 13 above (which excluded the right to freedom of religion) could have been subjected to limitations.

54. As was stated by the Applicant in the filed Application, the Resolution under question imposed a curfew. However, as mentioned above (paras. 13 and 56), since it was not possible to limit the right to freedom of religion under Article 5(4) of the Constitutional Act No. 227/2002 Coll.<sup>38</sup> the Resolution was not justified in imposing a curfew without providing exceptions that would respect the right of everyone to manifest his or her religious beliefs along with others in public worship.

55. The Decree in question was adopted under Section 48(4)(d) of Act No. 355/2007 Coll. on the Protection, Promotion and Development of Public Health and on Amendments and Additions to Certain Acts (Act No 355/2007 Coll.), according to which: 'The public health authority or the regional public health authority shall, in the event of a threat to public health, order measures which include the prohibition or restriction of mass events'.<sup>39</sup>

56. Constitutional Act No. 227/2002 Coll. did not entitle any Government entity (including the Public Health Office as in the case of the Decree) to restrict

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majetkových hodnôt v dôsledku živeľnej pohromy, katastrofy, priemyselnej, dopravnej alebo inej prevádzkovej havárie; núdzový stav možno vyhlásiť len na postihnutom alebo na bezprostredne ohrozenom území, ktorým môže byť aj celé územie Slovenskej republiky.'

<sup>38</sup> NOÉ, G.: *K nemožnosti obmedzovať práva a ukladať povinnosti v núdzovom stave nad rámec ústavného zákona o bezpečnosti štátu*, <http://www.pravnelisty.sk/clanky/a1222-k-nemoznosti-obmedzovat-prava-a-ukladat-povinnosti-v-nudzovom-stave-nad-ramec-ustavneho-zakona-o-bezpecnosti-statu>, accessed on 25 July 2023.

<sup>39</sup> In Slovak: 'Úrad verejného zdravotníctva alebo regionálny úrad verejného zdravotníctva pri ohrození verejného zdravia nariaďuje opatrenia, ktorými sú zákaz alebo obmedzenie hromadných podujatí.'

fundamental rights and freedoms during the state of emergency. It means that, considering Article 51(2) of the Constitution of the Slovak Republic, the Decree was issued contrary to the Constitution and contrary to Constitutional Act No. 227/2002 Coll.<sup>40</sup>

57. Additionally, the Decree should have provided for the prohibition of mass events in a manner respectful of religious freedom. The Decree, as a lower legal regulation (see paras. 14-15 above), should have complied with higher legal regulations, i.e., also with Constitutional Act No. 227/2002 Coll. as amended by Constitutional Act No. 414/2020 Coll.

58. Furthermore, the Public Health Office should have interpreted Section 48(4)(d) of Act No. 355/2007 Coll. in accordance with Section 5(4) of Constitutional Act No. 227/2002 (therefore that, according to Section 5 of this Constitutional act No. 227/2002, it was not possible to restrict religious freedom during a state of emergency).<sup>41</sup>

59. The Resolution and Decree and their restrictions on religious freedom had no legal basis and were therefore not 'prescribed by law' within the meaning of Article 9(2) of the ECHR. On the contrary, they were expressly contrary to the 'law' in the Slovak Republic.

*d) Legal Basis for Restrictions to the Right to Freedom of Religion was not Sufficiently Precise and hence not 'Prescribed by Law'*

60. In response to the Government's reference to the ruling of the Constitutional Court of the Slovak Republic PL. ÚS 2/2021 of 31 March 2021 (see paras. 5 and 21 of the Government's Observations), the Applicant claims that: (a) the ban on holding religious services (not

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<sup>40</sup> See analogically: Administrative Court of Warsaw, III SA/Kr ECnIII, 6 December 2021 and the decision of the Constitutional court of Bosnia and Herzegovina, AP 3683/20, 22 December 2020, [https://www.ustavnisud.ba/uploads/odluke/\\_bs/AP-3683-20-1262390.pdf](https://www.ustavnisud.ba/uploads/odluke/_bs/AP-3683-20-1262390.pdf), accessed 26 July 2023.

<sup>41</sup> Also see *Berecová v. Slovakia*, App. No. 74400/01, 24 July 2007, par. 52, in which the Court concluded that there was a violation of Article 8 of the ECHR on the grounds that a legal regulation was applied to the applicant's case, which conflicted with the Constitution of the Slovak Republic, according to which the interpretation and application of laws must be in line with the Constitution of the Slovak Republic, which is the basic source of law in Slovakia and with which other legal regulations must align.

provided for under Article 5(4)) could not be inferred from the restriction of other basic rights (allowed under Article 5(4)) and (b) inferences of restrictions to religious freedom in connection with the need to support the flexibility of the state in times of crisis do not meet the threshold of legal precision as per Article 9(2) of the ECHR.

61. In its reasoning, the Constitutional Court stated that, during a state of emergency, situations may arise whereby the Government may restrict a second fundamental right (not included under Articles 5(3) and 5(4) of Constitutional Law No. 227/2002 Coll.) for the Government to be flexible and effective during a (health) crisis.
62. The Government (par. 21 of Government's Observations) extrapolates this decision arguing that a ban on 'religious services' can be inferred from the ban on 'mass events' in Article 48(4)(d) of Act No 355/2007 Coll.
63. The Government's interpretation of the decision is misleading as the Constitutional Court did not include the restriction of religious freedom within the 'restriction of mass events' in Section 48(4)(f) of Act No. 355/2007 Coll. The generic inclusion of such a limitation on religious freedom lacks legal precision, certainty and has no legal basis. Section 48(4)(d) of Act No. 355/2007 Coll. is not worded in such a way that the citizens to whom the legal norms apply could foresee (even with appropriate advice)<sup>42</sup> that religious worship may be restricted or prohibited in the event of a threat to public health.
64. In this regard it should be also noted that there is a difference between opening 'places of worship' compared to other 'mass events' open to public, such as a show at a theatre or a musical concert, noting that the activities carried out there are not of the same nature and the fundamental freedoms at stake are not the same.<sup>43</sup> As stated in par. 81, the Court of Session of Scotland,<sup>44</sup> with regards to restrictions during the second wave

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<sup>42</sup> *Dubská and Krejzová v. Czech Republic*, App. Nos. 28859/11 and 28473/12, 15 November 2016, par. 167.

<sup>43</sup> *Conseil d'État*, 440366, 18 May 2020, par. 32 and *Conseil d'État*, Ordonnance of 29 November 2020, par. 19.

<sup>44</sup> *Reverend Dr William J U Philip and Others* [2021] CSOH 32.

of the pandemic, concluded that it was ‘impossible to measure the effect of those restrictions on those who hold religious beliefs. It goes beyond mere loss of companionship and an inability to attend a lunch club.’<sup>45</sup>

65. Furthermore, the Applicant does not share the opinion of the Constitutional Court (that there is a need to ensure flexible and effective decision-making by the Government during the pandemic at the expense of fundamental human rights) as it contradicts Article 5(4) of Constitutional Act No. 227/2002 Coll., whose text explicitly excludes the possibility of restricting rights other than the exhaustive list of rights and freedoms.
66. It is also submitted that the National Council of the Slovak Republic, as the constitutional body of Slovakia, was not prevented from incorporating into Article 5(3) and (4) of Constitutional Act No. 227/2002 Coll. the possibility of restricting all the fundamental rights and freedoms in the Slovak Constitution following its experience with the measures taken during the first wave of the pandemic. Yet, on the contrary, the National Council of the Slovak Republic did not make use of this option for the purposes of preparing for the second wave, even though it proceeded (with effect as of 29 December 2020) to amend the constitutional rules relating to a state of emergency declared on the grounds of a pandemic by Constitutional Act No 414/2020 Coll.
67. In a similar vein, the Government references Decree No. 45/2021 of 8 February 2021 in its Observations (par. 18) exempting ‘single mass gatherings’ from the restrictions (with excessive requirements and restrictions surrounding such a gathering). This measure was restrictive, exceptional in nature and cannot be viewed as a reasonable, justifiable and sensible replacement for daily Catholic Mass attended by the Applicant three times per week.

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<sup>45</sup> *Ibid.*, par. 212.

*e) Additional Submissions Regarding the Lack of ‘Prescribed Law’*

68. The Constitutional Court decision (PL. ÚS 2/2021) was issued on 31 March 2021, hence after the Applicant lodged his Application with this Court on 18 February 2021. Moreover, the above-mentioned order of the Constitutional Court only considered the constitutionality of the Government Resolution No. 160 of 17 March 2021 on the extension of the state of emergency,<sup>46</sup> which was issued after the contested Resolution. Thus, the subject of the Constitutional Court's review was not the compatibility of the contested Resolution under question in the present Application.
69. The Constitutional Court also did not assess the constitutionality of the subsequent decree of the Office of Public Health (Public Health Authority Decree No. 98 of 2021), which banned the holding of public worship to the same extent as in the case of the Decree (which is the Decree contested by the Applicant).
70. The above-mentioned considerations of the Constitutional Court of the Slovak Republic are also irrelevant because of the Slovak Republic's failure to apply the temporary derogation under Article 15 of the ECHR, thereby rendering all human rights and freedoms as provided for by the ECHR fully intact. Furthermore, such derogation to the right to freedom of religion during a public emergency would have been contrary to international law (ICCPR) (paras. 42-46 above).

#### **4.4 Proportionality and Least Restrictive Means**

71. In advancing a justification for restricting the right to freedom of religion as held in Article 9 of the ECHR, the onus is on the Government of Slovakia to show that the established proportionality test has been met.<sup>47</sup> Therefore, the Government must show that the blanket ban on religious gatherings

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<sup>46</sup> Resolution of the Government of the Slovak Republic No. 160 of 17 March 2021.

<sup>47</sup> Jim Murdoch, Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights, Council of Europe, 2012, p. 40, [https://www.echr.coe.int/documents/d/echr/Murdoch2012\\_EN](https://www.echr.coe.int/documents/d/echr/Murdoch2012_EN), accessed on 5 July 2023.

were necessary, appropriate, proportionate and the least restrictive means available.

*(a) The Restrictions taken by the Government were not Proportional, Appropriate, and Necessary*

72. With regards to the requirement of ‘necessity’, the Slovak Government had to show that the blanket ban was not merely a useful or desirable means of addressing the public health crisis, but that it was the *most* useful and desirable means of doing so.<sup>48</sup>

73. In this case, it is argued that the Slovak Government’s ‘blanket ban’ on religious worship during the second wave of the pandemic, where more scientific evidence became available, was, at best, a mere ‘useful’ form of restrictions but not the most useful and ‘necessary’.

74. Naturally, such a judgment of necessity will be based on scientific and technical criteria. In considering scientific evidence, such as that provided by the Slovak Government in Annex A of its Observations, the Applicant reiterates the following:

- When considering scientific evidence, the time factor makes a difference. Extremely limiting measures during the second wave of the pandemic will be less acceptable than during the first due to the emerging availability of knowledge regarding the cause and spread of the virus causing the pandemic. This is especially relevant against the background that domestic courts in several European countries have, by the second wave (similar to the timeline of the contested restrictions in this case), declared blanket bans on meetings in places of worship as excessive and disproportionate to the aim of achieving public health (see Annex A to this Reply).<sup>49</sup> Such blanket bans ignored the possibility

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<sup>48</sup> *Svyato-Mykhaylivska Parafiya v. Ukraine*, par. 116 and *General Comment 22*, par. 8.

<sup>49</sup> Annex A contains a list of countries declaring the blanket ban on religious gatherings as unjustifiable. For example, see the decisions of the domestic courts in Belgium, Cyprus, France, Germany, Greece, Montenegro, Romania, Scotland, and Spain.

of social distancing methods and other measures suggested by the WHO to religious organisations as early as 7 April 2020.<sup>50</sup>

- Blanket bans ignored the central role that religion plays in the lives of believers. The WHO defines 'health' broadly as 'the state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity'.<sup>51</sup> Within this definition, religions and beliefs have a role to play in the achievement of physical, mental and social well-being.<sup>52</sup> An absolutist approach endorsing blanket bans on religious worship and gatherings does not take into account the fact that religion and belief also have a role to play in the achievement of physical, mental and social well-being during times of crisis such as the pandemic. Some authors refer to this as 'spiritual capital' and say that religious freedom 'may have also empowered communities of faith to fight the pandemic by unleashing their "spiritual capital"'.<sup>53</sup>

*(b) The Government did not take the Least Restrictive Measures.*

75. Flowing from the requirement of 'necessity' is the fact that any limitation to religious freedom must be the 'least restrictive' option. This means that there must be no other less restrictive means of achieving the legitimate aim.<sup>54</sup> For example, in the Grand Chamber judgment of *Bayatyan*,<sup>55</sup> this

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<sup>50</sup> WHO, 'Practical Considerations and Recommendations for Religious Leaders', available at <https://www.who.int/publications/i/item/practical-considerations-and-recommendations-for-religious-leaders-and-faith-based-communities-in-the-context-of-covid-19>, accessed on 1 October 2021.

<sup>51</sup> WHO, 'WHO Constitution', <https://www.who.int/about/governance/constitution>, accessed on 5 July 2023.

<sup>52</sup> Ahmed Shaheed states that religious actors also play a vital role in the provision of healthcare. See Ahmed Shaheed, 'A Conversation with UN Special Rapporteur Ahmed Shaheed: COVID-19 and Freedom of Belief', <https://www.justsecurity.org/70843/a-conversation-with-u-n-special-rapporteur-ahmed-shaheed-covid-19-and-freedom-of-belief/>, accessed on 5 July 2023.

<sup>53</sup> Smidt C., Ed., 2003. *Religion as social capital: Producing the common good*. Baylor University Press and Nilay Saiya, Stuti Manchanda and Rahmat Wadidi, 'Did Religious Freedom Exacerbate COVID-19? A Global Analysis', *Journal of Religion and Health*, April 2023, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10072800/pdf/10943\\_2023\\_Article\\_1810.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10072800/pdf/10943_2023_Article_1810.pdf), accessed on 26 June 2023.

<sup>54</sup> *General Comment 22*, par. 8 and *Biblical Centre of the Chuvash Republic v. Russia*, App. No. 33203/08, 12 June 2014, par. 58.

<sup>55</sup> *Bayatyan v. Armenia*, App. No. 23459/03, 7 July 2011, par. 124.



Court obliged Armenia to create a civilian alternative to military service for conscientious objectors noting the existence of less restrictive measures that were ‘viable and effective alternatives capable of accommodating the competing interests’.

76. The burden is on the Government to prove that no less restrictive option was available. Applying the concept of ‘least restrictive means’ in a Bulgarian case<sup>56</sup> concerning the placement of a divided Muslim community under a single leadership, this Court held that ‘the Government have not stated why in the present case their aim to restore legality and remedy injustices could not be achieved by other means’, thereby putting the burden of proof on the Government in this case.<sup>57</sup>

77. The Government has failed to do so since, by merely providing information on the evolution of the pandemic (Annex A to its Observations), it only shows that the blanket ban on freedom of religion was *one way* of mitigating the pandemic. However, it has *failed to show and argue that it was the least restrictive way to do so* and has not indicated that a less restrictive approach (such as allowing a limited number of attendees, 1.5 meters of distancing and other measures) would not have been equally effective.

78. Furthermore, the Government has failed to make its own analysis of a variety of scientific evidence. In considering the justifications for restricting Article 9 rights, this Court, in the case of *Ibragim Ibragimov and Others v. Russia*,<sup>58</sup> held that the domestic authorities cannot simply endorse expert analysis without considering countervailing opinion and evidence specifically related to safety measures that can be taken in places of worship. This Court criticised the Russian court’s failure to inquire into the substance of reports by domestic experts in a case concerning Article 9 rights and found that the domestic court had merely endorsed the overall findings of an expert report carried out by linguists and psychologists, without making their own analysis or, most notably, ‘they had summarily

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<sup>56</sup> *Supreme Holy Council of the Muslim Community v. Bulgaria*, App. No. 39023/97, 16 December 2004, par. 97.

<sup>57</sup> Julian Rivers, ‘Proportionality and Variable Intensity of Review’, *Cambridge Law Journal* 65 (2006), 205.

<sup>58</sup> *Ibragim Ibragimov and Others v. Russia*, App. Nos. 1413/08 and 28621/11, paras. 106-107.

rejected all the applicants' evidence explaining that [the prohibited] books belonged to moderate, mainstream Islam.'

79. The foregoing is readily applicable to the pandemic response, wherein domestic decision makers only considered some scientific statements without consulting whether scientific data was available regarding a less restrictive means to facilitate the opening of places of worship, such as the guidance from the WHO referenced above. Also, for example, the fact that there was no certainty as to the necessity and efficiency of blanket bans as opposed to a more 'targeted approach' during the pandemic has also been recorded by expert academic journals such as *BMJ*.<sup>59</sup> The *Journal of Religion and Health* published a scientific article which found that countries which maintained their levels of religious freedom throughout the pandemic were not more likely to witness higher rates of cases and deaths from COVID-19 (the results being robust to a number of different model specifications).<sup>60</sup>

80. Several domestic courts (Annex A to this Reply) decided that less restrictive means and options to a blanket ban on religious worship (especially during the second lockdown) were available. Many such courts overturned worship restrictions which were blanket in nature, discriminatory and not as minimally restrictive on ECHR rights as possible.<sup>61</sup>

81. For example, the Court of Session of Scotland,<sup>62</sup> with regards to restrictions during the second wave of the pandemic, concluded that the respondents had failed to show that no less intrusive means existed, noting that it was 'impossible to measure the effect of those restrictions on those who hold religious beliefs. It goes beyond mere loss of companionship and an inability to attend a lunch club.'<sup>63</sup>

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<sup>59</sup> 'Covid-19: Experts divide into two camps of action—shielding versus blanket policies', *BMJ* 2020, <https://doi.org/10.1136/bmj.m3702>, accessed on 26 July 2023.

<sup>60</sup> Saiya *et al.*, 'Did Religious Freedom Exacerbate COVID-19? A Global Analysis'.

<sup>61</sup> Evan Criddle and Evan Fox-Decent, 'Human Rights, Emergencies, and the Rule of Law', *Human Rights Quarterly* 34 (2012), 39-40.

<sup>62</sup> *Reverend Dr William J U Philip and Others* [2021] CSOH 32.

<sup>63</sup> *Ibid.*, par. 121.

82. In April 2020 the German Federal Constitutional Court<sup>64</sup> suspended a blanket ban on religious worship as it did not allow consideration of any exceptions to the ban in individual cases. The Court noted that the ban was an 'extremely serious interference with the freedom of belief' and that it 'does not open up the possibility for an exceptional approval of such services in individual cases...'<sup>65</sup>

83. In France, the *Conseil d'État*<sup>66</sup> ordered the French Government to modify the COVID-19 health regulation,<sup>67</sup> which banned the gathering for worship of groups of more than 30 people for a set time. The *Conseil d'État* underscored the lack of proportionality between the stated purpose of the regulations and the measures taken by recalling the fundamental nature of religious freedom and the high bar to limiting such rights. The arbitrary cap on attendance numbers was replaced by a scheme whereby social distancing was to be maintained between persons seated in a church.

84. In Romania, the Court of Appeal of Bucharest issued a decision<sup>68</sup> in December 2020, overturning a regulation<sup>69</sup> which prohibited individuals from taking part in religious celebrations / pilgrimages in cities other than those of their residence. The decision had been taken just prior to a major Orthodox Christian pilgrimage. The Court of Appeal ruled that the measure taken by the authorities should have taken into consideration less restrictive means with objective evidence.

85. Additional to the fact that jurisprudence shows that there were less restrictive alternative measures available, the severity of the blanket ban was exacerbated by the fact that the Slovak Republic chose a very

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<sup>64</sup> *Forum Recht & Islam e.V. v. Federal State Lower Saxony*, 2nd Chamber of the 1st Senate dated 29 April 2020, 1 BvQ 44/20.

<sup>65</sup> *Ibid.*, par. 14.

<sup>66</sup> *Conseil d'État*, N°s 446930, 446941 (2020).

<sup>67</sup> Article 47 of the décret n° 2020-1310 dated 29 October 2020.

<sup>68</sup> Court of Appeal, Bucharest, 887/2/2020, decision 1328, issued on 14-Dec-2020.

<sup>69</sup> Art 2 of Decision 47/2020 of the National Committee for Situations of Emergency.

restrictive legal regime during the pandemic by making it impossible for the courts to review the restrictions.<sup>70</sup>

86. Based on the above, the Applicant submits that the Government's restrictions to freedom of religion were not the least restrictive means to limit the effects of the pandemic and made even worse by the fact that the restrictive measures could not be challenged in the Slovak courts. Therefore, the restrictions were disproportionate, as per Article 9(2) of the ECHR.

## **5. Conclusion**

87. It is submitted that:

- The Applicant holds the 'victim status' as he has proven to be an active and practising Catholic believer, and his conduct had to be severely restricted because of the measures;
- The right to freedom of religion is not limited to the individual aspects of religion but includes religious worship in community with others. For that reason, there was a clear interference of this right by the Government;
- The restrictive measures did not have a sufficient legal basis, were not adequately precise, clear and predictable and were not proportional for the following reasons: (a) the Government did not meet its obligations concerning the derogation from rights in the ECHR, (b) 'freedom of religion' is not included in Article 5(4) of Constitutional Act No 227/2002 Coll. as one of the freedoms that can be limited during the state of emergency, (c) the Constitutional Court decision (PL. ÚS 2/2021 of 31 March 2021) cannot be interpreted to include limitations to freedom of religion as such extrapolation by the Government would violate the

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<sup>70</sup> See the decision of Constitutional Court of the Slovak Republic Nr. IV. ÚS 249/2021 from 11.5.2021 (paras. 12 – 16 and 20 – 23). See also Pirošiková M. *Zásahy štátu do výkonu podnikateľskej činnosti počas krízy COVID-19 a ich riešenie*. In: *Zo súdnej praxe*, 1/2022. Until the amendment of Act No.355/2007 Z. z. by Act No. 286/2020 Z. z. (effective since 15 October 2020) anyone could challenge the pandemic-related measures of the Office of Public Health with administrative lawsuits. By requalifying the measures of the Office of Public Health into decrees, which was brought about by Act No. 286/2020 Z. z., it became impossible for individual to challenge such pandemic-related measures in the courts.

principles of certainty, precision and legality, (d) the said Constitutional Court decision did not concern the restrictive measures under consideration and (e) there is no indication that scientific evidence conclusively provides for a blanket ban to be the least restrictive means available.

88. For these reasons, the Applicant contends that the said ban on religious worship was disproportionate and cannot be regarded as a legitimate limitation as per Article 9(2) of the ECHR. The challenged measures therefore amount to a violation of the right to freedom of religion, Article 9(1) of the ECHR.

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Continent	Country	Court	Date of judgment	Name of case	Citation	Background Facts	Decision protecting the right to freedom of religion or belief	Link 1	Link 2	Link 3
Americas	Chile	Supreme Court	26-Mar-21	Vargas v. Paris	Corte Suprema, Vargas c. Paris, Rol No. 19062-2021	In the latest round of COVID-19 measures, the Government had decreed that for those locations classified as phase 1 (full quarantine in place) or phase 2 (weekend quarantine orders), in-person attendance at church, and various kinds of public religious ceremonies were prohibited, either every day of the week, or during the weekends, respectively. Legal challenges were filed all across Chile. This case was the first to reach the Supreme Court.	The Court ruled unanimously that religious freedom may be subject to restrictions but can never be suspended. Worshipping in person is a fundamental right. When imposing legitimate restrictions, the State has a duty to act in a non-discriminatory manner. Forbidding church services during weekends, even during the pandemic, is a violation of religious freedom. States may only impose restrictions with respect to capacity that are reasonable and necessary in light of public health needs.	<a href="https://www.pjud.cl/prensa-y-comunicaciones/noticias-del-poder-judicial/53967">https://www.pjud.cl/prensa-y-comunicaciones/noticias-del-poder-judicial/53967</a>		
Americas	United States of America	Supreme Court  Court of Appeals for the Sixth Circuit  Supreme Court	Various	Roman Catholic Diocese of Brooklyn v. Cuomo  Roberts v. Neace  Tandon v. Newsom	U.S. 141 S. Ct. 63 (2020)  958 F.3d 409 (6th Cir. 2020)  U.S. S. Ct. 2021 WL 1328507 (Apr. 9, 2021)	<p>The challenges to restrictions on worship in the United States during the COVID-19 pandemic resulted in many court decisions in the District Courts, Circuit Courts of Appeals, and Supreme Court (SCOTUS) since April 2020.</p> <p>The outcome of the cases almost always depends on the level of scrutiny applied.</p>	<p><i>Roman Catholic Dioceses</i> and <i>Roberts</i> contain elements incorporated into <i>Tandon</i> which identified three questions:</p> <p>First, <i>Tandon</i> clarified the appropriate comparator approach by embracing Justice Kavanaugh's analysis in his <i>Roman Catholic Diocese</i> concurring opinion, namely that <b>regulations trigger strict scrutiny whenever they treat any comparable secular activity more favourably than religious exercise</b>. California therefore failed to defend its law at SCOTUS as it was 'permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time' while prohibiting at-home religious exercise.</p> <p>Second, <i>Tandon</i> clarified that <b>the reason people gather is irrelevant</b>. What matters is what risk various activities pose.</p> <p>Third, <b>it is for the Government to discharge the burden of the strict scrutiny standard</b>. The Court built on <i>Roman Catholic Diocese</i>, in which Justice Gorsuch said, 'So, at least...it may be unsafe to go to church, but it is always fine to pick up another bottle of wine, shop for a new bike, or spend the afternoon exploring your distal points and meridians. Who knew public health would so perfectly align with secular convenience?' (p. 69) with <i>Tandon</i> reiterating, 'Where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied. Otherwise, precautions that suffice for other activities suffice for religious exercise too.'</p>	<a href="https://www.supremecourt.gov/opinions/20pdf/20a87_4g15.pdf">https://www.supremecourt.gov/opinions/20pdf/20a87_4g15.pdf</a>	<a href="https://law.justia.com/cas/supremes/federal/appellate-courts/cas/5465/20a5465-2020-10-19.html">https://law.justia.com/cas/supremes/federal/appellate-courts/cas/5465/20a5465-2020-10-19.html</a>	<a href="https://www.supremecourt.gov/opinions/20pdf/20a151_4g15.pdf">https://www.supremecourt.gov/opinions/20pdf/20a151_4g15.pdf</a>

Continent	Country	Court	Date of judgment	Name of case	Citation	Background Facts	Decision protecting the right to freedom of religion or belief	Link 1	Link 2	Link 3
Europe	Belgium	Conseil d'État	8-Dec-20	N/A	N° 249.177	In October 2020, the Belgian Government imposed a general ban on worshipping and religious celebrations, with an exception being made for religious funerals and weddings, and livestreaming of celebrations (with a limited number of attendees). Regarding weddings, only the engaged couple, their witnesses, and the minister leading the wedding ceremony were allowed to attend. The representative of a Synagogue, as well as an engaged couple of Jewish faith that was about to get married, challenged those restrictions before the Conseil d'État (Administrative Tribunal), claiming the restrictions constituted a violation of their freedom of worship as guaranteed by both the Belgian Constitution and the European Convention of Human Rights. Applicants asked for the ban to be lifted and for the Government to be ordered to take the appropriate measures 'in order to allow collective religious celebrations and weddings in a way that would be in accordance with faith prescriptions'.	The Conseil d'État ruled that the restrictions constituted a severe interference by the State in the right to freedom of worship, of which 'one of the core aspects appeared to be' ( <i>prima facie</i> analysis) the ability to hold collective worship services. The Conseil d'État furthermore ruled that the State, while it had foreseen strict exceptions for religious funerals and weddings to take place, failed to take into account the point of view of the various recognised religions in Belgium – each of which were better placed than the Government to determine what the religious celebrations of fundamental importance were to them. Looking into those exceptions, the Conseil d'État followed the Applicants' point of view: the Applicants (an engaged couple about to get married) adhered to the Jewish tradition according to which 'at least ten Jewish men must be present at the wedding ceremony'. It was furthermore noted by the Conseil d'État that religious celebrations and, in particular praying people inside a Synagogue, could not, according to Jewish faith, be filmed and livestreamed. The Conseil d'État concluded that the said restrictions were disproportionate, and had to be urgently lifted. In the following days, the Government modified the restrictions and exceptions, allowing <i>all</i> religious celebrations to take place, with however a maximum of 15 attendees per celebration, regardless of the size of the building.	<a href="http://www.raadvstc-conseilat.be/arr.php?nr=249177">http://www.raadvstc-conseilat.be/arr.php?nr=249177</a>		
Europe	Cyprus	District Court of Nicosia	1-Apr-23	N/A	N/A	Hundreds gathered with His Eminence Metropolitan Neophytos of Morphou for the blessing of the Karkotis river on the feast of Theophany, 6 January 2021. Metropolitan Neophytos was issued a fine on the day of the 'incident'.	The Court acquitted Metropolitan Neophytos of the charges of having violated COVID-19 restrictions, in particular that he incited the faithful to commit criminal offenses by participating in public assemblies.	<a href="https://orthochristian.com/152922.html">https://orthochristian.com/152922.html</a>		
Europe	France	Conseil d'État	18-May-20	N/A	440361	At the beginning of the first lockdown (23 March 2020), religious services were completely banned for 40 days except for funerals (while the buildings were allowed to remain open). On 18 May 2020, several associations and individuals appealed to have the ban on any gathering or meeting within places of worship suspended.	The Conseil d'État decided in favor of the Applicants and ordered that the Decree of 11 May 2020 be modified. The Conseil d'État recalled that freedom of worship is a fundamental freedom that must be reconciled with the constitutional value of protecting health. The court noted that less strict measures, other than a total ban on gatherings in places of worship, existed because gatherings of a maximum of ten people in other places open to the public were possible per the same decree. The absolute ban was hence disproportionate. Particularly noteworthy is the fact that a complete ban on religious services was deemed disproportionate during the first wave of restrictions.	No link available		
Europe	France	Conseil d'État	29-Nov-20	French Republic v. Association Civitas & Others	N°s 446930, 446941, 446968, 446975	Article 47 of Décret N° 2020-1310 dated 29 October 2020, which purported to put in place COVID-19 safety measures in France, banned the gathering for worship of groups of more than 30 people for a set time. 30 Catholic and Protestant associations and individuals filed a complaint before the Conseil d'État to challenge this cap on number of people allowed to worship due to its lack of proportionality.	The Conseil d'État ordered the Government to remove the cap on 30 people and adapt it to the size of the building in order to make it proportional within three days of its hearing. The Government implemented the following: church-goers must fill only one seat out of three and be separated by one empty row. In its decision, the Conseil d'État underscored the lack of proportionality between the stated purpose and the measures taken by the Government to restrict religious gatherings and recalled the fundamental nature of religious freedom and the high bar to limiting such rights.	<a href="https://www.conseil-etat.fr/actualites/limit-de-30-personnes-dans-les-etablissements-de-culte-decision-en-refere-du-29-novembre">https://www.conseil-etat.fr/actualites/limit-de-30-personnes-dans-les-etablissements-de-culte-decision-en-refere-du-29-novembre</a>		

Continent	Country	Court	Date of judgment	Name of case	Citation	Background Facts	Decision protecting the right to freedom of religion or belief	Link 1	Link 2	Link 3
Europe	Germany	Federal Constitutional Court of Germany (BVerfG)	29-Apr-20	Forum Recht&Islam e.V. v. Federal State Lower Saxony	BVerfG, Decision of the 2nd Chamber of the 1st Senate dated 29 April 2020 - 1 BvQ 44/20 -	The case was brought by a Muslim lawyers' association, intending to conduct Friday prayers in a Mosque under a self-imposed, strict sanitary concept. The then ordinance of the Federal State of Lower Saxony put a blanket ban on religious worship services of any kind and did not afford any exceptions. The Applicant argued that this was disproportionate and, hence, unconstitutional.	The BVerfG ruled that 'the prohibition of gatherings in churches, mosques and synagogues as well as the prohibition of gatherings of other faith communities for the common practice of religion...is provisionally suspended insofar as it does not allow consideration of any exceptions to the ban upon application made in individual cases' (court's own head note).  The BVerfG held the blanket ban to be an 'extremely serious interference with the freedom of belief' [13]. However, the BVerfG saw no justification 'that the ordinance does not open up the possibility for an exceptional approval of such services in individual cases in which a relevant increase in the risk of infection can reliably be denied after a comprehensive assessment of the specific circumstances - possibly with the help of the responsible health authority. It is not evident that such a case-by-case positive assessment cannot be made in any case' [4].  In two decisions just 20 days earlier (10 April 2020, 1 BvQ 28/20 and 1 BvQ 31/20), the BVerfG still held that a blanket ban was justified, but only because the ban was limited in time. The court made it clear that any subsequent bans would have to be scrutinised under the principle of strict proportionality. The ban which was the subject of the instant decision did not stand the test.	<a href="https://www.fri-core.eu/fc/content/germany-any-federal-constitutional-court-29-april-2020-1-bvq-4420">https://www.fri-core.eu/fc/content/germany-any-federal-constitutional-court-29-april-2020-1-bvq-4420</a>		
Europe	Germany	Bavarian Administrative Court	4-Oct-21	N/A	20 N 20.767	In 2020, Bavaria's Prime Minister Markus Söder, announced strict orders that Bavarians were to 'stay at home' and 'only go outside in exceptional cases', meaning citizens could only leave their homes for 'essential reasons', defined according to work and sustenance.  According to the 'Bavarian Ordinance on Protective Measures Against Infectious Diseases in Response to the Corona Pandemic', the police were required 'to check compliance with the stay-at-home restrictions' with citizens being forced to provide a 'credible reason' for being outside when approached by the police.  The temporary order demanded that '[e]very individual...reduce all physical and social contacts with other persons, except for family members living in the same household, to the absolute minimum extent possible', as well as introducing a mandatory five feet physical distancing rule.	The Court declared that the restrictions, imposed between 1 and 19 April 2020, were 'ineffective' and violated 'the prohibition of excess from higher-ranking law'.  In essence, the restrictions constituted a violation of principles in German law which forbid the introduction of any law that, no matter its intentions, disproportionately disadvantages those it affects. It was determined that the Government had 'defined the valid reasons that entitle you to leave your own home so narrowly' that this principle had been violated.  The Court thus declared that the restriction on movement, imposed as a strategy for mitigating the spread of COVID-19, was 'not a necessary measure'. Additionally, the Court ruled that the Government was careless to 'choose the less burdensome of the basic rights ... when selecting measures from several equally suitable means'.  The Court noted that the Government's supposition that 'the more restrictive measure is always the more suitable measure ... is incorrect in this generality'.	<a href="https://www.gesetz-e-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2021-N-29086">https://www.gesetz-e-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2021-N-29086</a>		
Europe	Germany	Administrative Court in Minden	1-Dec-20	N/A	N/A	In March 2021, the local Government of the city in North Rhine-Westphalia banned all congregations from meeting for public worship following a COVID-19 outbreak in one church.  A legal challenge from the Bible Congregation Lage was initially rejected. Subsequently, the Administrative Court in Minden upheld the case.	The Court criticised the ban for not providing exceptions in the case of churches which introduced suitable measures for tackling the spread of COVID-19. It therefore declared the measures disproportionate and in violation of the right to freedom of religion or belief.	<a href="https://www.christian.org.uk/news/german-court-rules-local-ban-on-public-worship-due-to-covid-illegal/">https://www.christian.org.uk/news/german-court-rules-local-ban-on-public-worship-due-to-covid-illegal/</a>		



Continent	Country	Court	Date of judgment	Name of case	Citation	Background Facts	Decision protecting the right to freedom of religion or belief	Link 1	Link 2	Link 3
Europe	Greece	Criminal Court of Piraeus	1-Nov-22	N/A	N/A	His Eminence Metropolitan Seraphim of Kythira of the Orthodox Church of Greece was arrested on 20 March 2020, for keeping the doors open of the Holy Cross Cathedral and inviting the faithful to pray at the Salutations to the Mother of God. The State had ordered at that time that all services should be cancelled. Metropolitan Seraphim said several times throughout the pandemic that closing churches only exacerbates the crisis.	The Court found His Eminence Metropolitan Seraphim of Kythira not guilty of violating the COVID-19 lockdown in March 2020.	<a href="https://orthochristian.com/149605.html">https://orthochristian.com/149605.html</a>		
Europe	Greece	Criminal Court of Corfu	October 2020 (first court) and ruling upheld by Criminal Court of Corfu on 4 May 2023	N/A	N/A	His Eminence Metropolitan Nektarios of Corfu was charged after celebrating the Divine Liturgy and holding a procession in honor of St. Spyridon on the feast of Palm Sunday, 12 April 2020, despite the COVID-19 restrictions in place.	On 4 May 2023, the three-member Criminal Court of Corfu acquitted the Greek Orthodox Metropolitan of Corfu of all charges of violating COVID-19 restrictions in 2020. The decision was final, with no possibility of appeal.	<a href="https://orthochristian.com/153475.html">https://orthochristian.com/153475.html</a>		
Europe	Montenegro	Basic Court in Nikšić	2-Feb-23	N/A	Original case not published online K br. 169/20	His Eminence Metropolitan Joanikije of Montenegro, then Bishop of Budimlja and Nikšić, and eight clerics were arrested on 12 May 2020, for participating in a prayer procession with tens of thousands of believers in honor of Saint Basil of Ostrog during the period of COVID-19 quarantine. They were charged with violating the Criminal Code of Montenegro.	All respondents were acquitted of charges, since the act of a criminal offense can only be prescribed by the Criminal Code, which was not the case. A state of emergency had not been introduced in Montenegro when the epidemic was declared, and therefore the measures to suppress the spread of the virus had no legal force.	<a href="https://mitropolija.com/2023/02/02/slobadjaiuca-presuda-mitropolitu-joanikiju-i-svestenicima/">https://mitropolija.com/2023/02/02/slobadjaiuca-presuda-mitropolitu-joanikiju-i-svestenicima/</a>		
Europe	Romania	Court of Appeal, Bucharest	14-Dec-20	N/A	6887/2/2020, decision 1328	Art 2 of Decision 47/2020 of the National Committee for Situations of Emergency prohibited believers from taking part in religious celebrations and pilgrimages in cities other than those of their residence. The decision had been taken just prior to several major Orthodox Christian pilgrimages and led to the situation by which students (who did not have a residence in the city of their studies) or visitors of the city where the pilgrimages took place were not able to manifest religious freedom in public worship, despite all the other COVID-19 measures being respected (distance, sanitary measures, etc.). Art 45 (1) of law 55/2020 stated however that during the period of public emergency due COVID-19, freedom of religion or belief shall be freely manifested, with respect to sanitary measures.	The Court of Appeal, Bucharest, ruled that the measures taken do not meet the 'prescribed by law' requirement, in accordance with the jurisprudence of the ECtHR. It also stated that the limitations to freedom of religion or belief in this situation were: a) discriminatory, as the 'residence condition' did not apply to areas other than religious life; b) not absolutely necessary, as the Government should have taken into consideration less restrictive means, and should have brought objective evidence, and not merely subjective evidence concerning the need for a human rights-limiting measure. The Court also stated that although the infections were objectively on the rise, the Government should have shown evidence that it took into consideration less restrictive means; c) not proportionate with the stated aim of protecting public health (in particular, with the danger presented by COVID-19). The Court concluded that there was a 'disproportionate attention given to religious life by putting additional rules related to pilgrimages, in comparison to other segments of social life, such as weekend trips, practicing sports'.	<a href="https://lujur.ro/statistic/files/2020/decembrie/14/6887-2-2020.pdf">https://lujur.ro/statistic/files/2020/decembrie/14/6887-2-2020.pdf</a>		

Continent	Country	Court	Date of judgment	Name of case	Citation	Background Facts	Decision protecting the right to freedom of religion or belief	Link 1	Link 2	Link 3
Europe	Scotland	Court of Session (Outer House)	24-Mar-21	Reverend Dr William J U Philip and Others for Judicial Review of the Closure of Places of Worship In Scotland	[2021] CSOH 32	<p>27 Protestant church leaders and one Catholic priest sought the judicial review of the Scottish Government's enforced closure of places of worship, including for private prayer.</p> <p>In December 2020, following the emergence of a new variant, the Scottish Government considered the swift closing down of many premises. Churches were closed by Government regulations made on 6 January 2021, which created a criminal offence for opening or assembling in a place of worship.</p> <p>The Court was asked to determine whether the Scottish Government had the constitutional power (as per common law) to restrict the right to worship, and whether the closure was an unjustified infringement of Articles 9 and 11 of the ECHR.</p>	<p>Of relevance to other cases where 'mootness' is argued, the Court considered that 'it is of course now well-known that the respondents have stated an intention to permit public worship with effect from 26 March 2021, and so, at least if that statement of intention is made good, the outcome of this case will have little immediate practical effect in the short term. Nonetheless, the issues raised are of importance, since there have been previous church closures; and...there may be future lockdowns'.</p> <p>The Court contrasted the absolute closure of churches to open premises deemed 'essential' including food retailers, pharmacies, bicycle shops, and cinemas. Considering the impact of the closure, the Court noted that online and alternate means are 'best viewed as an alternative to worship, rather than worship itself...It is not for [the Government] to dictate to the petitioners ...that...worship is to be conducted on-line...At very best for the respondents, in modern parlance, it is worship-lite' [61-62].</p> <p>Resolving the challenge, the Court said the answer to both questions posed would be the same and, while the interference was prescribed by law and pursued a legitimate aim, there were less intrusive measures that could have been used and the measure was disproportionate. Looking to the comparator premises, the Court explained 'there is at the very least an implicit acceptance by the respondents that meeting indoors can be safe if suitable mitigation measures are adopted' [114], going so far as to indicate 'the reasons which were given for that recommendation being insufficient to withstand even the lowest degree of scrutiny' [115].</p>	<a href="https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021cs0h032.pdf?sfvrsn=0">https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021cs0h032.pdf?sfvrsn=0</a>		
Europe	Switzerland	Constitutional Chamber of the Canton of Geneva	6-May-21	Brunisholz & Others v. Board of the State	A/3993/2020-ABST	<p>In an effort to put in place COVID-19 prevention measures, the Geneva canton enacted a complete ban on religious ceremonies and worship services (apart from few exceptions for marriage and funerals). Five Swiss professionals including a doctor, who regularly treated COVID-19 patients, lawyers, and academics filed a complaint to challenge the lack of proportionality of this ban on worship.</p>	<p>On 6 May 2021, the Swiss Constitutional Chamber ruled that the COVID-19 related blanket ban on worship was unlawful. The Swiss Constitutional Chamber found that the local Government had to advance serious arguments justifying such a serious infringement on religious freedom if they wanted to maintain the total ban. The Court reasoned this judgment by stating that the limitation on religious freedom was legitimate for the protection of public health, but that it was unlawful, not necessary, nor proportionate to meet the stated aim. The lack of proportionality rested on the fact that less restrictive means could have been adopted without interference with fundamental rights.</p>	No link available		
Europe	Switzerland	Swiss Federal Tribunal	8-Mar-22	Brunisholz & Others v. Board of the State	2C_471/2021	<p><i>Cf. supra</i> - The Geneva canton filed an appeal against the decision of the Swiss Constitutional Chamber by which the COVID-19 related blanket ban on worship was ruled unlawful.</p>	<p>The Swiss Federal Tribunal considered the appeal to be inadmissible, having observed the Geneva Canton lacked the standing to lodge an appeal against the decision of the Swiss Constitutional Chamber.</p>	<a href="https://www.bger.ch/ext/eurospider/livve/fr/php/aza/http/index.php?lang=fr&amp;type=highlight_simple_query&amp;page=1&amp;from_date=&amp;to_date=&amp;sort=relevance&amp;insertion_date=&amp;top_subcollection_aza=all&amp;query_words=471%2F2021&amp;rank=1&amp;azacdir=aza&amp;highlight_dcid=aza%3A%2F%2F08-03-2022-2C_471-2021&amp;number_of_ranks=101">https://www.bger.ch/ext/eurospider/livve/fr/php/aza/http/index.php?lang=fr&amp;type=highlight_simple_query&amp;page=1&amp;from_date=&amp;to_date=&amp;sort=relevance&amp;insertion_date=&amp;top_subcollection_aza=all&amp;query_words=471%2F2021&amp;rank=1&amp;azacdir=aza&amp;highlight_dcid=aza%3A%2F%2F08-03-2022-2C_471-2021&amp;number_of_ranks=101</a>		

Continent	Country	Court	Date of judgment	Name of case	Citation	Background Facts	Decision protecting the right to freedom of religion or belief	Link 1	Link 2	Link 3
Europe	Spain	Supreme Court of Spain - Tribunal Supremo	22-Feb-21	Spanish Association of Christian Lawyers v. Government of Castile and León		By January 2021, the regional Government approved a series of restrictions for the province of Castile and León, including a limit of church attendance to 30%, with a maximum of 25 people, regardless of the size of the building. The region has a wide variety of churches, from small hospital chapels to the Cathedral of Burgos, which can host more than 1,200 people. The Spanish Association of Christian lawyers asked the Supreme Court to take precautionary measures and revoke the 25-people limit. An appeal was made in January (Rec. Ordinario (c/d)-13/2021) which was rejected, but then successfully won before the Supreme Court in February 2021.	On 22 February 2021, the Supreme Court of Spain granted the measures sought by the Spanish Association of Christian Lawyers and revoked the regional Government's measures restricting church attendance to 25 people. The Court highlighted that 'the extension of 25-people maximum capacity, regardless the place, characteristics and size of the establishment, even if it is a meeting or outdoors or indoors, is manifestly disproportionate'. Moreover, the Court underlined that this restriction 'is, without a doubt, burdensome for Catholic religion collective worship, affecting a fundamental right, and its proportionality is clearly insufficient'. The restriction was revoked after the Court's decision, and church-attendance limit was increased to 30% of the capacity of churches, without a specific cap on numbers.	No link available		

**EUROPEAN COURT OF HUMAN RIGHTS**

**FIRST SECTION**

**APPLICATION NUMBER: 12131/21**

**Ján Figel'**

**v.**

**Slovakia**

**APPLICANT'S CLAIM FOR JUST SATISFACTION**

**Filed on**

**27 July 2023**

**(a) Introduction**

1. Pursuant to Article 41 of the Convention and Rule 60 of the Rules of Court the Applicant herein respectfully submits the following Claim for Just Satisfaction against the Respondent Government in Application 12131/21.
2. The Applicant does not submit any claim for a monetary award based on non-pecuniary damage. He has no desire to profit from this case and looks only to the Court to make a finding of a violation of his rights under Article 9 of the Convention.

**(b) Particulars of the Interference with the Applicant's Convention Rights Occasioning Harm to the Applicant**

3. As set out in the application form and the Applicant's reply to the Government's observations, the application concerns legal measures introduced by the Government of the Slovak Republic ('Government') in February and March of 2021 (by way of Resolution No. 77 of 5 February 2021, followed by Decree No. 45 of 2021 of the Public Health Office ('Decree')) to address the spread of the respiratory disease during the pandemic caused by the COVID-19 pathogen and thereby significantly limiting the Applicant's right to manifest his religion under Article 9 of the European Convention on Human Rights ('ECHR').
4. The Applicant argues that the blanket ban on religious services and hence the Catholic mass introduced by the Government as part of the prohibition on mass gatherings, restricted the Applicant's right to attend religious services and observe the Catholic mass and worship collectively with others. The Applicant, a practicing Catholic, was thereby denied the possibility to exercise some of the essential doctrinal aspects of Catholicism requiring worship in communion with other believers. The harsh measures implemented by the Government constituted a disproportionate interference with the Applicant's rights, which requires a finding of a violation of Article 9 of the ECHR, as well as just satisfaction pursuant to Article 41.
5. In the instant case it is submitted that the Respondent Government must recognise that the blanket ban on public religious services constituted a disproportionate interference with the Applicant's rights under Article 9. The Applicant thereby respectfully asks the Court to establish this violation.

### **(c) Non-pecuniary Damage**

6. It is respectfully submitted that Article 41 of the ECHR enables this Court to 'afford just satisfaction' in the form of non-pecuniary damages to an injured party in addition to a finding and declaration of a Convention violation by a Respondent State. The Court does not require any proof of the non-pecuniary damage sustained, the reason being that many forms of non-pecuniary damage, as in the case of the Applicant, are by their nature not amenable to proof.
7. This complaint involves the Respondent's disproportionate interference with the Applicant's right to attend public religious services. The actions of the authorities have had a lengthy and serious impact on the Applicant's enjoyment of his right to attend religious gatherings protected by Article 9. The Applicant experienced continued mental suffering, when he was prohibited from attending public mass, constituting an essential element of the Applicants religious conduct.
8. The Applicant, however, does not seek any financial order, being concerned only with a finding of a violation of Article 9.

### **(d) Costs and Expenses**

9. According to the Practice Direction of 3 June 2022, 'the Court can order the reimbursement to the applicant of costs and expenses which he or she has necessarily, thus unavoidably, incurred – first at the domestic level, and subsequently in the proceedings before the Court itself – in trying to prevent the violation from occurring, or in trying to obtain redress therefor.'
10. The costs which have been necessarily and reasonably incurred in this case are **18,000 EUR**, as evidenced from the documents enclosed.
11. In this case, the Applicant was subjected by the Respondent to a violation of his right to freedom of religion due to the measures constituting the subject of these proceedings. The said violation resulted in the Applicant's efforts to challenge the prohibition to attend public religious services at the national level, as well as before this honorable Court and in the respective legal costs and expenses. The sum claimed is therefore necessary.
12. The Applicant nominates the following bank account for the payment of costs by way of electronic funds transfer to:

IBAN: SK2211000000002920915421  
SWIFT: TATRSKBX

For the Applicant:

Martin Timcsak  
Attorney at law  
MST PARTNERS, s.r.o., Slovakia



## Mandate Agreement

concluded pursuant to Section 566 et seq. of the Law No. 513/1991 Coll. Commercial Code, as amended (hereinafter referred to as the "Commercial Code")

between

1. Ing. Ján Figel', PhD. Dr. h. c. mult.  
Registered adresse: Ľudové námestie 19, 831 03 Bratislava  
Date of birth: 20.1.1960  
(hereinafter referred to as the "**Mandator**")

and

2. **MST PARTNERS, s. r. o.**  
Registered office at: Laurinská 3, 811 01 Bratislava, Slovak Republic  
Company ID No: 36 861 545  
Tax ID No: 2820000084  
VAT ID No: SK2820000084  
Details of Incorporation: Registered in the Commercial Register of the District Court in Bratislava I, Section: Sro, Insert No. 56105/B  
Represented by: JUDr. Martin Timcsák, Attorney at law and Executive  
Bank Details: Tatra banka, a.s.  
Bank Account No. (IBAN): SK2211000000002920915421  
BIC / SWIFT: TATRSKBX

(hereinafter referred to as the "**Mandatory**")

(the Mandator and the Mandatory are hereinafter referred to as the "**Contracting Parties**")

(the whole Agreement is hereinafter referred to as the "**Agreement**")

### Article I Object of the Agreement

1. Upon concluding the Agreement, the Contracting Parties agree that the Mandatory shall provide legal services specified in the third Paragraph of this Article on behalf and for the account of the Mandator, and shall be entitled to receive remuneration specified in the Article III of the Agreement from the Mandator for the services provided.



2. The Mandator authorizes the Mandatary to all legal acts which fall within the scope of provision of services on behalf and for the account of the Mandator upon this Agreement.
3. The Mandatary shall represent the Mandator in the court proceedings at the European court of Human rights in case Nr. 12131/21.

## **Article II**

### **Term and Termination of the Agreement**

1. This Agreement is entered into for an indefinite period of time.
2. Any Party may terminate the Agreement by sending a written notice to the other Party. The notice period shall be 2 (two) months and shall commence on the first day of the calendar month following the service of the notice.
3. In case of notice of the Agreement by the Mandatary, the Mandatary shall perform actions which are necessary to prevent any loss or damage to the Mandator.

## **Article III**

### **Remuneration of the Mandatary**

1. The Contracting Parties agreed that the Mandatary shall be entitled to the fee (remuneration) for the legal services provided to the Mandator in amount 15.000,- Eur without VAT (18.000,- EUR with the VAT).
2. The Contracting Parties agreed that the fee specified in the preceding Paragraph shall be calculated excluding VAT and excluding the court fees, notary fees, executor fees and other administrative fees, fees for translation and other additional costs related to the legal services upon the Agreement. The fee does not include travel expenses and compensation for loss of time related to the legal representation of the Mandator outside the district of the registered seat of the Mandatary. The Contracting Parties agreed that the fees and compensation referred to in this Paragraph shall be borne by the Mandator separately from the fee specified in the preceding Paragraph.
3. In addition to the remuneration specified in the preceding Paragraphs, the Mandatary shall be, in case of success (in full or in part) in the court proceedings, entitled to the compensation of the costs of legal representation awarded by the relevant court.
4. The Mandatary shall be entitled to reimbursement specified in the Paragraphs 1 and 2 in 15 days after the court will decide in case mentioned in article I paragraph 3. The mandatary is entitled to issue advance payment in full amount of fee after to court will ask Slovak government to send its observations in case.

5. The payment of the reimbursement specified in this Article shall be performed on the basis of invoices sent from the Mandatary to the Mandator.
6. The Mandator shall compensate the Mandatary for all costs which are necessarily or reasonably spent while complying with the obligations arising from the Agreement or which arise from following the orders or instructions of the Mandator. The Contracting Parties agreed that the court fees, notary fees, executor fees and other administrative fees, fees for translation and other similar fees shall be paid by the Mandator upon notification by the Mandatary.

#### **Article IV** **Obligations of the Contracting Parties**

1. The Mandatary shall perform all legal acts and further actions which were agreed to be performed on the basis of the Agreement and which are in the best interest and in accordance with the orders and instructions of the Mandator.
2. The Mandatary, while providing legal services on behalf and for the account of the Mandator, shall at all times remind the Mandator should any of his orders or instructions be manifestly improper if by following such order or instruction a loss or damage to the Mandator might arise. Should the Mandator insist on such order or instruction, the Mandatary shall not be liable for any loss or damage resulting therefrom.
3. The Mandatary may deviate from the orders or instructions of the Mandator, should this be urgently necessary for the best interest of the Mandator provided it is not possible to receive the approval of the Mandator prior to the performance of action in question. The Mandatary shall immediately notify the Mandator on such course of action in writing.
4. The Mandatary shall keep the Mandator informed of any circumstances which came to the knowledge of the Mandatary while providing legal services provided such circumstances might affect the orders or instructions of the Mandator.
5. The Mandator shall perform all actions which might be necessary for the Mandatary to perform his obligations under the Agreement. In particular, the Mandator shall provide any objects or information (including deeds, documents, legal or technical documentation, etc.) necessary for compliance of obligations of the Mandatary, unless agreed that the Mandatary shall obtain any such object or information on his own.

#### **Article V** **Final Provisions**

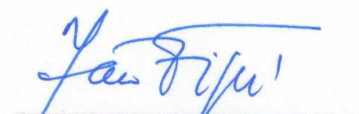
1. Unless stated otherwise, the legal relations which are subject to the Agreement shall be governed by the relevant provisions of the Commercial Code and other applicable laws of



the Slovak Republic. Any provision of this Agreement shall be interpreted and applied in accordance with the laws of the Slovak republic.

2. The Contracting Parties agreed that the Agreement can only be modified or amended by written amendments which shall be signed by both Contracting Parties.
3. This Agreement shall enter into force and become effective on the day of its signature by both Contracting Parties.
4. This Agreement is executed in four originals – each Party shall receive two originals.


In Bratislava on 1.6.2021



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Ing. Ján Figel, PhD. Dr. h. c. mult.

In Bratislava, on 1.6.2021



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**MST PARTNERS, s. r. o.**  
JUDr. Martin Timcsák  
Attorney at Law and Executive



**MST PARTNERS, s.r.o., advokátska kancelária**  
Laurinská 3, 811 01 Bratislava, Slovenská republika  
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**PRO FORMA INVOICE No. MSTPF20230701**

<b>Supplier:</b>	<b>MST PARTNERS, s.r.o.</b> <b>Laurinská 3</b> <b>811 01 Bratislava</b> <b>Slovenská Republika</b>	Variable symbol:	<b>20230701</b>
		Constant symbol:	0308
		Specified symbol:	

Company ID: 36861545  
TAX ID: 2820000084  
VAT ID: SK2820000084  
Registration: Municipal court Bratislava III,  
section Sro, Nr. 56105/B

Bank: Tatra Banka, a.s.  
Account No. **2920915421/1100**  
IBAN: **SK2211000000002920915421**  
Payment method: Bank Transfer  
BIC/SWIFT: **TATRSKBX**

**Customer:**

**Ing. Ján Figel', PhD.**  
**Ľudové námestie 19**  
**831 03 Bratislava**

Date of issue:	3.4.2023
Maturity day:	18.4.2023
Date of taxable fulfilment	3.4.2023

**Rate**

We invoice you provided legal services

legal services associated with representing the Mandator in the court  
proceedings at the European court of Human rights in case Nr. 12131/2

18.000,- Eur

<b>Rate EUR for Payment</b>	18.000,- Eur
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Issued by: Martin Timcsák

Recapitulation: 18.000,- Eur

Signature:

