

The Impacts of Executive Responses on Democracy During the Coronavirus Crisis in Croatia, Slovenia and Austria

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ABSTRACT

In Croatia, Slovenia and Austria, the coronavirus crisis raised pre-existing deficiencies in the democratic orders to the surface, i.e., issues in functioning according to democratic principles in the circumstances of a public health crisis. In Austria, the strained executive-legislative relations were already visible in April 2020, when the opposition parties refused to support the second wave of crisis legislation without the appraisal process that would justify its urgency. In Croatia and Slovenia, the governments decided not to declare a state of emergency, arguably in order to avoid cooperation with the opposition and other state institutions in drafting and passing crisis legislation. Finally, in Slovenia, the government used the crisis as a pretext to install its people into leading positions in several key state and public institutions.

KEYWORDS

coronavirus crisis, democracy, executive-legislative relations, authoritarian style of governance, Austria, Croatia, Slovenia

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The coronavirus crisis measures that governments implemented around the world constitute a considerable risk for democracy. Firstly, these measures severely restricted several fundamental civil rights, such as freedom of assembly, freedom of speech and the right to privacy. While there was a consensus between governments and most citizens that such restrictions were necessary, it relied upon the assumption that they should be based on law and proportional to the risk. Secondly, these measures were implemented during a time of crisis, when the ordinary system of checks and balances between the executive, legislative and judiciary branch was disrupted. As in other historic examples of a great crisis, the coronavirus has broadened the reach of the state and strengthened the power of the executive (OBRINGER ET AL. 2018).

Recent research indicates the substantial willingness of citizens, faced with this ongoing health emergency, to change parts of the existing constitutional balance in favour of the executive (TEPE ET AL. 2020). This is in line with the notion of a regulative credit, i.e., social support for limitations placed upon a democratic order, including the system of checks and balances, human rights and freedoms in times of great crisis (BRZECHCZYN 2020). However, the problem with this situation is that it creates fertile ground for the consolidation of an authoritarian style of governance and practices within democratic countries. It strengthens the drive towards centralizing state power, using the public health crisis as a pretext. Therefore, political forces interested in furthering democracy need to raise awareness of these developments. They should popularize reforms that make democracy more resilient to crisis and, ultimately, better connected with the citizens. The problems for the democratic and liberal order emerging from a complex background of a public health crisis are both short- and long-term. In the short term, they point towards the need to repair the pre-existing deficiencies in the balance of power system in a crisis situation. In the long term, as argued by Oliver Nay (2020), they indicate the risk that certain exceptional measures might, in the future, fall within the scope of ordinary legislation, and that governments could take advantage of existing technological solutions to establish a permanent citizen surveillance – in other words, that this drift towards a more authoritarian style of governance will become permanent (MAATI – ŠVEDKAUSKAS 2020).

This article seeks to explore how executive responses to the coronavirus crisis impacted the democratic political systems of Croatia, Slovenia and Austria in the period between March and October 2020. Croatia and Slovenia are a frequently selected pair in comparative research due to their shared legacies of functioning within the political system of the former socialist Yugoslavia. After the breakup of Yugoslavia, the democratic developments in both countries went their own way. However, due to historic, economic and political reasons, the governments of both countries pay close attention to all developments across the border. This was particularly true of Croatia, whose progress towards integration into Euro-Atlantic structures was postponed by the Homeland War in the 1990s, and the country frequently looked upon Slovenia as an example in that respect. Austria was brought into the comparison due to the fact that the leading political forces in both Slovenia and Croatia, throughout the transition, considered this country an exemplary example of Western democracy. Therefore, the solutions of the Austrian political system were particularly closely observed. This relationship was further conditioned upon the geographic proximity and economic ties that predated the transition.

Methodologically, the paper uses comparison as a fundamental tool of analysis. While relying on secondary data concerning crisis-related legislation, elections, opinion polls, etc., the article provides an overview of the most important measures and political developments in the observed period. It will use comparison to bring suggestive similarities and contrasts between the cases into focus. Based on the results, it will proceed with conclusions regarding observable patterns and trends that could be useful for research of political systems in times of crisis beyond the narrow scope of the three selected countries. The main research question is how to explain variations in the quality of executive-legislative relations observed during the coronavirus crisis in the three selected countries. The starting hypothesis is that more populist and illiberal governments create more elevated tensions in executive-legislative relations. In countries with such governments, challenges to the established democratic standards are greater, but so is the willingness of legislatives to oversee executive activities.

The article starts with a theoretical section in order to secure a better understanding of the analysis that follows. It starts with the definitions of some basic concepts in political science such as democracy, liberal

democracy, authoritarianism and populism. The section then continues by explaining conceptual and procedural issues related to the notion of executive-legislative relations and the role of the judiciary, which are of key importance in this article. The main section of the article presents various important aspects of the coronavirus crisis in the three countries. It starts with some basic assessments concerning the three political systems. It then indulges in an in-depth analysis of the course of the crisis. The focus is placed upon the types of response measures, crisis-related institutional adaptations and the choice of a legal framework. The following subsections on executive-legislative relations and government popularity are closely related. The core issue in this part is the use of parliamentary oversight tools, which is subsequently correlated with the government's popularity. The main section also assesses the position of the courts. The article ends with a discussion and conclusions section, which is based upon the comparative analysis bringing forward various conclusions and recommendations.

THEORETICAL BACKGROUND

The term democracy is understood as a form of government in which the supreme power is held by the people, and exercised by the people directly or indirectly through a system of representation usually involving periodically held free elections (SEE MERRIAM-WEBSTER 2021). The logic of the democratic model assumes that public officials are responsible for their conduct and accountable to citizens, and that present policies can be challenged (TERCHEK – CONTE 2001). In the article, this term will be used broadly in the sense of including institutions, political parties, civil society, elections, etc. However, a particular focus will be placed upon shifts in executive-legislative relations and balance.

The article touches upon differences between liberal and illiberal concepts of democracy. Therefore, it is necessary to clarify them. In both cases the authorities are elected by the citizens and there is a division into the executive, legislative and judicial branches of power. Nevertheless, in liberal democracy the influence of the executive is limited by the increasing prerogatives of the judicial branch, which can block executive decisions if they violate the rights of various minorities (LILLA 2017: 136). In illiberal democracy the power of the executive branch is greater than the power of the legislative and judicial branches. While liberal democracy puts the individual in its focus, illiberal democracy emphasizes communality at the expense of individual rights and interests (BRZEHCZYN 2020: 86).

Another important terminological distinction for the analysis in this article is that between the authoritarian type of government and the authoritarian style of governance. The common feature of governments belonging to the authoritarian type of government is the enforcement of obedience to a central authority at the expense of personal freedoms, rule of law and other constitutional values and principles (LINZ 2000: 57). The authoritarian type of government is different from a dictatorship that forcibly silences the opposition with fear and repression. In a country with the authoritarian type of government, the democratic majority itself renounces the right to protest and dissent, while people holding minority opinions are isolated and persecuted (RODIN 2008: 235). In contrast, the authoritarian style of governance represents a milder form of democratic backsliding that could be described as the rulers' lack of attention to the variety of existing views (SEE HESLOP 2021).

The term populism should also be addressed. According to Cas Mudde populism represents a thin-centred ideology that considers society to be separated into two homogeneous and antagonistic groups, 'the pure people' and 'the corrupt elite'. The populists argue that politics should be an expression of the general will of the people (2004: 543). Somewhere along this line of thinking Jan-Werner Müller claims that the most important defining feature of populism is its anti-pluralism because populists act as the only true representatives of the people (2016). Populism is closely related to illiberal democracy because populist leaders try to use the democratic aspect of liberal democracies to undermine liberalism (ZAKARIA 1997).

Since the end of the 17th century, the term 'separation of powers' has designated a core element of a democratic constitutional state. It refers to the institutional and functional differentiation of state power and its distribution among several authorities that are more or less independent in terms of their legitimation and their competences. As a rule, a distinction is made between three powers in this concept: the legislative, executive and judicial branches (STAMMEN 2013). The separation of power represents a relatively open constitutional principle with constants and variants. The necessity to apply it stems from the historic experience which indicates that people in power have a tendency to abuse it (HÄBERLE 2004: 141). The most common understanding of the separation of power is that of a horizontal division between the branches of state power. However, complementary to that core notion is a vertical distinction between state, regional and local

government (STAMMEN 2013). According to Peter Häberle (2013: 142), the fact that free media are sometimes referred to as the ‘fourth power’ shows that the canon of powers and their functions remains open as the constitutional state develops.

The separation of power in its pure form is often not assessed as a sufficient precaution against the abuse of power because an institution has a monopoly in exercising state authority and is not subject to any real control of power by another institution. The concept of the functional separation of power appears more beneficial, as in it, the exercise of the state authority or function always depends on the interaction of two or more institutions (STAMMEN 2013). The strong functional separation of power with multiple intersections between the legislative and the executive is a characteristic of parliamentary democracies, while presidential systems in general apply a looser form of the functional separation of power (HÄBERLE 2004: 143). To prevent the abuse of power by the legislative, two-chamber parliaments were established in many countries. The two chambers should compete with each other in terms of the exercise of legislative power through finely coordinated competencies (STAMMEN 2013).

Within the presidential system of the United States, the separation of power principle was upgraded by the system of ‘checks and balances’, which emphasizes the creation of the balance of power through the mutual supervision and restraint of different authorities. In essence, the powers are shared between different holders, whose functions are limited in time (SMERDEL 2013: 16).

Intersections between the legislative and the executive are rooted in the very nature of the legislative process, representing a collaborative exercise between these two branches of power (OLSON 1994). Therefore, the incentive to coordinate these two branches of power, rather than have them confront each other, is inherent in the democratic political framework (CHEIBUB – LIMONGI 2010). This coordination starts with the pre-legislative stage, i.e., the period before a law is proposed to the legislature. Within this phase, governments often form a commission that issues a report that is then widely commented on by the opposition and other interested actors. Subsequently, the legislation is initiated by the executive branch. MPs can also initiate legislation, though this rarely happens in practice because they spend most of their time examining executive proposals. The initiated

legislation can be amended by MPs in both committee and plenary sessions, although the rules of parliamentary procedure can significantly restrict the use of this option. Finally, once the proposed law secures legislative approval, the executive enacts it.

Apart from the legislative process, another prominent task of assemblies is their oversight of executive bodies. Here it is important to note that parliaments represent the plurality of social interests, where political positions of the society as a whole are represented (HÄBERLE 2004: 147). There are various oversight tools available to MPs, but one broad distinction is temporal, i.e., whether the oversight happens in anticipation of a government decision (*ex ante*) or as a mere reaction to it (*ex post*). Research has shown that parliaments can play a better strategic role when they act in the *ex ante* stage rather than the *ex post* stage (PELIZZO – STAPENHURST 2014). With the oversight mechanisms such as inquiries, questions, interpellations, votes on declarations, etc. assemblies can make sure that governments are politically accountable. However, they can also require the government to explain the choices it proposes, the appropriateness of the allocated resources, possible malfunctions, etc. (RIDARD – FOURMONT 2020: 12).

The theory of the ‘decline of legislatures’ was elaborated by Lord Bryce after the First World War. From his liberal perspective, the 19th century was considered a golden period for parliaments. In the 20th century, with mass democracy and further development of parties, parliaments entered into a decline. Public policy has increasingly been initiated and formulated by the executive (SANCHEZ DE DIOS 2014: 3). In recent decades, the trend of marginalizing representative assemblies has intensified, and the executive-legislative balance has further tilted towards the executive. The reasons for this are numerous and complex: from the increased technical complexity of decision-making to the collapse of the traditional architecture of the separation of powers and transformations ensuing from globalization (GRIGLIO 2020). However, the executive has not reduced the power of the parliament as in the zero-sum game process. Assemblies have also increased their activities, though at a slower pace than executives (SANCHEZ DE DIOS 2014: 3). This development is not without problems from the perspective of legitimacy, as it is only through elections that the legislative sovereignty is transferred from the people to the parliament as the second-order sovereign. The parliament then elects the executive as the third-order sovereign. Therefore, the executive derives its sovereignty only indirectly through this graded process (MERKEL 2020; SCHARPF 1975).

The disruption of the executive-legislative balance in favour of the executive is further heightened in times of crisis. Such situations create a sense of emergency which allows the executive to assert greater authority at the expense of the legislature (BAR-SIMAN-TOV 2020). Moreover, because of their deliberative nature, the legislative and judicial branches tend to play a reactive role in times of crisis (SELIN 2020). The coronavirus crisis measures, in particular, have made it difficult for legislatures to operate, as they run contrary to the basic principles of their work, which is based on the assembly of many people together (BAR-SIMAN-TOV 2020). It is within this broader context that the oversight role of the parliament, ranging from accountability to investigations, becomes crucial. First, legislative control over actions of emergency authorities is important for safeguarding the rule of law and due to infringements in respect of individual freedoms. Second, parliaments need to examine the emergency actions for their compliance with the standards of accountability, transparency and inclusiveness. Third, the legal quality of the emergency legislation needs to be proofed (GRIGLIO 2020). Last but not least, the proportionality of the adopted measures also needs checking because of the possible danger that leaders could use the crisis as an excuse for political power-grabbing motivations. In all of this, the leading role of the opposition is crucial because in times of crisis, oversight responses tend to strive for a cross-party consensus that may dilute the oversight outcomes (SEE GRIGLIO 2020).

The intersections and interdependences between the legislative and the executive underline the importance of having an independent judiciary. It is of key importance to assure the independence of judges, and these must be irremovable and independent from possible guidelines sent by representatives of the other two branches (HÄBERLE 2004: 143). It is also important that judges stay away from the influence of political parties. They must work within the framework of a rationally secured methodological canon, considering all cases according to the ultimate and penultimate standards of fairness. The judiciary, as such, must be separated from other state functions (IBID.: 153-154). Nevertheless, in an emergency situation, judges tend to exercise restraint, and legal texts that guarantee the rights of individuals in a democracy are often not respected to the letter. Representatives of the people in the legislative assemblies are generally considered better equipped to control changes in the rule of law and executive actions (RIDARD - FOURMONT 2020: 5).

THE CORONAVIRUS CRISIS IN CROATIA, SLOVENIA AND AUSTRIA

Three political systems

All three of these countries are parliamentary democracies. They all directly elect their presidents but in all three, the institution of the president is mostly ceremonial and limited in terms of its powers. All three countries have proportional electoral systems. Croatia has a unicameral parliament, while the parliaments of Slovenia and Austria are bicameral. However, the upper chambers of the Slovenian and Austrian parliament enjoy only limited powers such as the power to delay legislation, and they are indirectly elected. Austria is a federal state composed of nine federal provinces that elect their regional parliaments. Both Slovenia and Croatia could be described as unitary states. Where Slovenia does not have a regional level of government, Croatia is divided into 21 regional units, though their powers are mostly administrative. All three countries have adopted the possibility of preferential voting, meaning that citizens, in addition to the possibility of voting for a specific ballot, have the right to select a certain candidate from that list. Nevertheless, in Slovenia preferential voting is currently allowed only at the EP elections. Preferential voting has, arguably to some extent, reduced the power that was concentrated in the hands of the political party leaders. In all three countries, there is some experience with direct democracy at national and lower levels. Slovenia used to have one of the most liberal direct democracy regimes in the world. However, since the constitutional changes introduced in 2013 this institution has been weakened and does not play that important a role. The introduced changes allowed the referendum only to be proposed by voters, limited the scope of the referendum's content and introduced further limitations through the establishment of a quorum of rejection (ŽUBER – KAUČIČ 2019: 140). All three countries have constitutional courts that rule on whether the laws that are challenged are in fact unconstitutional.

The coronavirus crisis struck Croatia in the last year of the mandate of the coalition government of the centre-right HDZ party and the liberal HNS party. In Slovenia, the crisis struck in a delicate political situation. The centre-left coalition government led by Prime Minister Marjan Šarec declared an epidemic on 12 March 2020. However, just one day later, on 13 March, the new coalition government led by Janez Janša, was sworn in.

Janša managed to obtain the support of the parties on the right side of the political spectrum. Finally, in Austria, the crisis happened at the beginning of the mandate of the centrist coalition of the centre-right ÖVP and centre-left Green Party. The Freedom House ‘Freedom in the World 2019’ report views all three countries as ‘Free’, and notes that all three countries respect civil and political rights. However, while Austria (93/100) and Slovenia (94/100) obtained relatively high scores for this variable, the score for Croatia was somewhat lower (85/100), which was due mostly to the corruption in the public sector and the existence of patronage networks around civil servants. The difference between Slovenia and Croatia is also corroborated by the Bertelsmann Transformation Index (BTI), which in the year 2020 gave Slovenia the high score of 9.27/10.0, while Croatia was rated 7.91/10.0 (BTI, 2020). Nevertheless, some other institutional quality ratings such as the Transparency International Corruption Perception Index (CPI) place Slovenia much lower than Austria (see Table 1).

TABLE 1: TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTION INDEX

Country	Score	Rank
Austria	76/100	15/180
Slovenia	60/100	35/180
Croatia	47/100	63/180

Source: Transparency International 2020.

The course of the crisis

The epidemic in Croatia, Slovenia and Austria unfolded in three principal phases. The first acute phase, starting in early March and ending in early May, was characterized by a rapid growth of infections and strict implementation of response measures. During this period there were mobility restrictions for persons who were sent into self-isolation. Moreover, citizens were not allowed to leave their place of residence. Freedom of assembly was temporarily suspended. Lastly, between mid-March and mid-May substantial restrictions on business and education activities were imposed (see Table 2). In the second phase, between early May and late June, the spread of the disease was contained. Most of the restrictions were abandoned and the countries opened their borders to travel. In the third phase, since the end of June, the epidemic has returned to its initial power. Mandatory wearing of protective masks in shops and public transport was preserved along with some other measures, but the governments were unwilling to

re-introduce a total lockdown. The national approach in containing the epidemic was replaced with a more regional and local approach. In Austria, a four-color coronavirus traffic-light system was introduced in September 2020 to help avoid further pandemic waves. In this system the colours green (low risk), yellow (medium risk), orange (high risk) and red (acute situation) are used to indicate epidemiological situations down to the district level.

TABLE 2: TYPES OF RESPONSE MEASURES DURING THE ACUTE PHASE OF THE CRISIS

Type of measure	Austria	Croatia	Slovenia
Closure of educational institutions	✓	✓	✓
Closure of hotels/places of accommodation	✓	✓	✓
Closure of gyms/sports centres	✓	✓	✓
Closure of public transport		✓	✓
Closures of non-essential shops	✓	✓	✓
Closure of entertainment venues	✓	✓	✓
Closure of restaurants and cafes/bars	✓	✓	✓
Limited mass/public gatherings	✓	✓	✓
Teleworking recommendation	NA	✓	NA
Closures of workplaces			✓
Stay-at-home orders for the general population	✓	✓	✓
Mask mandatory in closed spaces	✓	✓	✓
Restrictions on private gatherings	✓	✓	✓

Source: Author's compilation based on ECDC 2021, NA = Not Available.

Already in February 2020, both Croatia and Slovenia established a National Civil Protection Headquarters as a special body composed of experts and politicians in charge of handling the coronavirus epidemic. In Croatia, this body was headed by the Minister of the Interior and operated in close cooperation with the Minister of Health, who appeared at press conferences. In Slovenia, the National Headquarters lasted only about a month and on 24 March, this body was dismissed due to public outcry concerning its legality. This in turn strengthened the institutional role of the Ministry of Health and the National Institute of Public Health. Placing the National Headquarters in Croatia and the National Institute of Public Health in Slovenia at the forefront of anti-epidemic efforts allowed the national governments to focus primarily on measures aimed at helping the economy. In Austria, the role of experts in managing the crisis was less exposed (TRAXLER ET AL. 2020). On the one hand, the Ministry of Health

established the Coronavirus Taskforce as an advisory group consisting of ten people from the ministry. On the other hand, the ministry also organized an external advisory group consisting of 17 experts, half of whom were scientists, mostly virologists, from Austrian universities and research institutes. The problem with such a broad network of consulted experts was that it was not always clear who was advising the minister and on what grounds.

The parliaments in all three countries continued sitting without interruption throughout the crisis. In Croatia, a special regime was implemented in March and April whereby discussions during plenary sittings were attended only by two MPs from each party club (28 MPs of 151) in order to comply with the generally prescribed distancing rules. Furthermore, a significant portion of the work of parliamentary committees was performed on-line, mostly relying on e-mail communication. In May, changes to the rules of procedure of the parliament which took into account its functioning in the epidemic circumstances, were adopted. Similar measures were implemented in both Austria and Slovenia. The Slovenian parliament enabled sessions from a distance due to the coronavirus (EURACTIV 2020). In Austria during the acute phase of the crisis, the number of MPs in the lower house was reduced from 183 to 96 and in the upper house from 61 to 31. This, in theory, allowed even for the making of constitutional changes (BERLIZ ET AL. 2020). Nevertheless, technical and procedural difficulties hampered the proper conduct of the debate (RIDARD – FOURMONT 2020: 9). Furthermore, they limited the possibilities for effective oversight of the executive during the acute phase of the crisis (see Table 3).

TABLE 3: STANDARD NUMBERS OF MPS AND REDUCTIONS/ CHANGES DURING THE ACUTE PHASE OF THE CRISIS

Type of chamber	Austria		Croatia		Slovenia	
	standard	crisis	standard	crisis	standard	crisis
Upper chamber	61	31	/	/	40	distance sessions
Lower chamber	183	96	151	28	90	distance sessions

Source: Author's compilation.

A state of emergency was not declared by the governing coalitions in any of the three countries (see Table 4). In Croatia, if the government were to declare a state of emergency, all restrictions of civil rights and freedoms would require the support of a two-thirds majority in the parliament. Moreover, the duration of the state of emergency would have to be clearly defined and its prolongation would equally require a two-thirds majority,

i.e., cooperation with the opposition (ČULAR 2020; ZAKOŠEK 2020). Instead of taking this expected route, the government proceeded with its regular *modus operandi* of enacting decisions which are often backed by a simple parliamentary majority. The restrictive measures enacted by the National Headquarters were based on the Act on Protection of the Populace from Infectious Diseases, the Civil Defence System Act and several other laws. Subsequently, in April 2020, the Act on Protection of the Populace from Infectious Diseases was amended to retroactively legalize the measures that had been previously implemented. The proposal was initially discussed at the Committee on Health and Social Policy of the Croatian Parliament. There it barely passed because six members voted for the proposed changes while five abstained (HS 2020A). Afterwards the amendments to the act were voted on with 80 votes in favour, 21 against and 16 abstentions (HS 2020B). The strategy of not declaring a state of emergency was criticized by the opposition Social Democrats, the president of the republic and one judge of the Constitutional Court. It seems clear that declaring a state of emergency would have left the Croatian government much more dependent on the positions of its parliament, which was something that the government successfully avoided.

TABLE 4: GOVERNING COALITIONS AND MAIN OPPOSITION PARTIES DURING THE ACUTE PHASE OF THE CRISIS

Country	Governing coalition	Main opposition parties
Austria	ÖVP (centre right) and the Green Party	SPÖ (Social Democrats) and the right-wing Freedom Party
Slovenia	SDS (right-wing) and various other parties on the right	SD (Social Democrats) and various other parties on the left
Croatia	HDZ (centre right), the liberals and national minority MPs	SDP (Social Democrats) and the right-wing Bridge Party

Source: Author's compilation.

In Slovenia, a state of emergency was not declared, likely due to the fact that in such circumstances, the Slovenian Constitution prescribes a transfer of power from the government to the president. Therefore, as the basis for the implementation of restrictions, the government relied on the Communicable Diseases Act and a series of anti-Corona laws. Finally, in Austria, a state of emergency was not declared because the Constitution does not envisage such an option. Not declaring a state of emergency, regardless of the constitutional possibility of doing so, is not specific only to Slovenia and Croatia. A similar situation was recorded in Germany, where a state of emergency was not declared despite the fact that the Basic Law provides for it. It was

argued that the effects associated with these constitutional provisions would not allow for a meaningful response to the public health crisis. Instead, through amendments to the Infection Protection Act, a tendency towards centralization started to emerge, both from the states to the federal government and from the federal parliament to the federal government (RIDARD – FOURMONT 2020).

Executive-legislative relations

At the beginning of the crisis in Croatia, Prime Minister Andrej Plenković attempted to activate a legislative derogation which would have allowed the government to take over certain functions of the parliament by issuing decrees with legal force. This corroborates the insight that in times of crisis a sense of emergency is created, allowing the executive to assert greater authority at the expense of the legislature (SEE BAR-SIMAN-TOV 2020). However, after resistance from the opposition parties, the proposal was abandoned and it was never included on the parliamentary agenda.

In Slovenia, the new Prime Minister Janez Janša increasingly spoke about the need to establish the ‘second republic’, which would imply majoritarian electoral rules, a strengthening of the executive and changes in the judiciary (FINK-HAFNER 2020: 25). Therefore, it is not surprising that the government used the crisis to consolidate its power and push Slovenia towards a more illiberal type of regime and a more authoritarian style of governance. In the weeks after his coming to power, Janša replaced the leadership of the criminal police, the director of the National Institute for Public Health and members of the Public Broadcasting Programme Council. Later on, he even replaced the director of the Statistical Office, who refused to pass data to a member of the government group for the preparation of anti-Corona measures. The authoritarian style of the new Slovenian government also came to the forefront from its strained relations with most of the media (FINK-HAFNER 2020; LUKŠIĆ 2020B).

The opposition resisted the new authoritarian style of governance through tireless work, primarily in the National Assembly. In late April 2020, the opposition parties filed an interpellation concerning the Minister of Economy, who was accused of tolerating non-transparent procurement of medical equipment. After much debate, however, there was not a sufficient amount of MP support to organize a vote of no-confidence against the minister. The opposition also intended to initiate an inquiry commission in the National Assembly to investigate the public procurement of medical

equipment. The government MPs anticipated this and immediately initiated their own inquiry commission to look into the matter, which disabled the opposition in presiding over the inquiry. Nevertheless, by the end of June, opposition pressure over the medical equipment scandal led to the resignations of both the General Director of Police and the Minister of Home Affairs. All of this indicates that in the crisis, Slovenian MPs were very active in exercising the oversight role of the parliament. They were not satisfied with mere information on the government's crisis-related conduct. Instead, they reached for non-deliberative oversight mechanisms, such as interpellations, which envisage multiple relational patterns between government representatives and MPs. They also reached for deliberative oversight mechanisms, which require a vote in the plenary, such as an inquiry commission, to combat irregularities rooted in the more assertive role of the executive

(SEE GRIGLIO 2020: 15–17).

In Austria, the opposition missed the opportunity to take a more active role in managing the crisis through proper oversight of government actions. That became impossible in mid-March after the parliament unanimously agreed to the Covid-19 Measures Act, which marginalized its role by giving the government the authority to issue ordinances (EHS 2020: 16). The validity of most measures issued under the Covid-19 Measures Act was set to expire on 31 December 2020, which represented a very broad time frame and discouraged parliamentary debate on the measures in the meantime (MATZKA 2020). Moreover, at the beginning of the crisis, the opposition in the Parliament missed the opportunity to request a launching of a Corona commission, a deliberative oversight mechanism which would subject the government's anti-Corona measures to supplementary critical reflection. A united opposition arguably could have pushed this through in exchange for their general support for the government (EHS 2020: 16). Faced with their failure, at the end of April the opposition parties cancelled their support for the second wave of crisis related legislation without an appraisal process to explain its urgency. They justified their actions by pointing to the low quality of the proposed legislation and the unwillingness of the government to accept their ideas.

Government popularity

Legislative changes that would allow governments to trace infected persons, or even healthy individuals under special circumstances, via a mobile

phone application were attempted in all three states. However, in all the cases, the governments were not successful and the proposals were abandoned. In Croatia, the government attempted to introduce tracking apps via changes to the Electronic Communications Act. This was heavily criticized by the opposition, civil society and the media. In late March, 46 civil society associations signed a petition asking the government to withdraw the draft law (UDRUGA LET 2020). In response to this massive outcry, the government sent these legislative changes into the regular instead of the urgent parliamentary procedure, which sealed its fate as the parliament was dissolved in May 2020.

In Austria a geo-location mobile phone application was launched on 25 March 2020 and became the first tracking app in operation released in the EU. Among other things it provides its users with a possibility to report a ‘suspicion of COVID-19 infection’. Nevertheless, with only 15% of the population using the app, its utilization remained low. The reason behind this is probably the political debate about people potentially being forced to download the app, which has negatively resonated with the public (STEHLIKOVÁ 2021: 53–55).

In Slovenia, at the very beginning of the crisis, the government wanted to give the police special health crisis-related powers that would enable them to track mobile phones, use facial recognition technology and enter homes. The concept was put aside only after it failed to gain sufficient support in the National Assembly and after the Commissioner for Information, as an independent body, warned against it. Months later, the idea was resurrected but experienced the same fate (STOLTON 2020).

At the end of April 2020, a governing majority in the lower house of the Austrian parliament-initiated amendments to the Epidemic Disease Act that would allow further limitations on public gatherings. It prescribed that in the future, such gatherings could be limited to certain groups of people. The opposition protested strongly, fearing that this could lead to discrimination of Corona risk groups or those who refuse to install tracking devices on their mobile phones (EHS 2020: 70; STEHLIKOVÁ 2021: 56). In the parliamentary committee in charge of health, the opposition requested a review process of this proposal, which was rejected by the opposition MPs, who argued that it would take too much time. The opposition MPs then vetoed the proposal in the parliament’s upper house. Due to the limited powers

of the upper house, this merely prolonged the process of adopting the law. However, the prolonged period was useful as it allowed for corrections to the original proposal (IBID: 71). This corroborates the insight that in times of crisis, second chambers could be useful in mitigating the negative impacts of emergency legislation (SEE STAMMEN 2013).

In Croatia, despite a failed attempt at installing tracking apps on mobile phones, the citizens' overall perception of the emergency management was positive. This is visible from the April 2020 polling results, which indicated a lead for the ruling HDZ party (CRO DEMOSKOP 2020). Therefore, the government decided to capitalize on its popularity and, in May, called for early parliamentary elections to be held in July, two months earlier than when the regular elections were supposed to be held. Despite the fact that the Croatian Constitution provides the parliamentary majority with the power to dissolve the parliament at will and thereby call for early elections, a great majority of the opposition MPs also supported this move. The elections held on 5 July proved victorious for the ruling HDZ party, which took 37.3% of the votes (66 mandates) and came out as the relative winner (see Table 5). Shortly afterwards, HDZ was able to form a ruling majority supported by two small liberal parties and national minority representatives. The timing of the elections after the harsh but arguably successful management of the pandemic worked in favour of the ruling HDZ. Similar patterns of voter behaviour were observed in other countries which held national elections in 2020, such as Georgia (SEE MACHITIDZE – TEMIROV 2020: 89). The main opposition party, the Social Democratic Party (SDP), and its coalition suffered a strong electoral defeat, receiving only 24.9% of the vote (41 mandates). One part of the problem for the SDP was the fragmentation on the left because some of their traditional voters voted for other left-wing parties which appeared in these elections. The other part arguably had to do with the narrative of the SDP election campaign, which overwhelmingly focussed on general themes such as inequality and corruption. The more current debate about whether the restrictions were proportional to the threat, whether the costs of the lockdown were too high and whether the chosen legal framework for dealing with the crisis was appropriate has been ignored. Also, some shadow on the legitimacy of the elections was cast by the fact that the turnout was only 46.9%, making this the lowest turnout in the national elections since 1990 (DIP 2020).

TABLE 5: RESULTS OF THE NATIONAL ELECTIONS TO THE CROATIAN PARLIAMENT IN JULY 2020

Party	Number of votes	Percentage of votes	Number of MPs	Compared to previously
HDZ	621,008	37.3	66	↑
SDP	414,615	24.9	41	↓
Homeland Movement	181,492	10.9	16	NEW
Bridge Party	123,194	7.4	8	↓
We Can!	116,480	7.0	7	NEW
PFLN led coalition	66,399	4.0	3	↓
HNS	21,725	1.3	1	↓
Reformers	11,425	1.0	1	NEW
National minorities	30,722	1.84	8	=

Source: DIP 2020.

In Slovenia, the public confidence that the government was making the right decisions in dealing with the epidemic increased from 58 to 76% from mid-March to mid-April. Likewise, support for the government increased from 42% to 64% (LUKŠIĆ 2000A). However, the opinion poll implemented in mid-June indicated that if elections were to be held then, Janša's ruling coalition would come in second with 40 MPs while the centre-left opposition parties would come in first with 48 MPs (RTV SLO 2020). This shift in the popular sentiment reflected the growing dissatisfaction among many citizens with the severity of the taken measures, and a concern that the government was using the crisis as a pretext to consolidate its own power. This dissatisfaction was articulated by the 'Friday protests', which started as cyclists' protests, since cycling was permitted while pedestrian gatherings were not. The largest of these protests took place in Ljubljana on 8 May, when more than 10,000 cyclists gathered around the Parliament. Simultaneously, cyclists' protests also took place in other larger Slovenian cities. These protests were organized by 24 different NGOs and all were mostly peaceful (FINK-HAFNER 2020). Nevertheless, there were also some instances where violent anti-protestors tried to confront the protestors.

In Austria, the popularity of the government parties increased under the crisis circumstances. According to a poll implemented in early April, the support for the centre-right ÖVP led by the Prime Minister Sebastian Kurz increased from 38 to 43%, while the approval of its coalition partner, the Green Party, increased from 14 to 19%. Simultaneously, the strongest opposition parties, the centre-left SPÖ and the right-wing Freedom Party,

lost some support ^(VIENNA ONLINE 2020B). This trend was later confirmed in the Styrian regional elections at the end of June ^(ORF – STEIERMARK 2020).

The positions of the courts

The Croatian legal framework does not envisage any alternative to voting in person, such as mail-in or online voting. Therefore, at the end of June, the State Election Commission announced that infected citizens would not be permitted to vote in the general elections in July, as this could pose a threat to others. However, at the request of an opposition MP, the Constitutional Court issued an opinion urging the State Election Commission to determine a procedure that would allow infected people to vote ^(USRH 2020A). Shortly afterwards, this was achieved through the instrument of a ‘trusted person’. In mid-September, the Constitutional Court issued a decision indicating that all measures implemented in the course of the coronavirus crisis were in accordance with the Constitution. The only exception was the measure prohibiting work on Sunday in the retail sector. The decision was not unanimous; it was supported by nine of twelve judges, while the three remaining judges voted against it, providing their dissenting opinions ^(USRH 2020B). These dissenting opinions have legal significance because in future decisions on this or similar matters, they could even become majority opinions. One of the main objections of the three judges was that harsh measures such as the national lockdown were not proportionate to the level of the posed threat ^(IBID.).

In Slovenia, the Constitutional Court also played a role in limiting the government’s desire to reduce civil rights due to the public health crisis. Acting upon an anonymous initiative, it started a constitutional review procedure for the decree on the temporary prohibition of movement and gathering in public places. As a consequence, the government needed to water down that decree. It was obliged to periodically check, based on the opinions of experts, whether the adopted measures were still proportionate to the posed threat ^(FINK-HAFNER 2020). In August 2020, the Constitutional Court of Slovenia assessed the constitutionality of two government decrees adopted to combat and control the epidemic, namely the decrees on the temporary general ban on movement and gathering in public places and on movement outside municipalities. In its decision, the court ruled that there were no unconstitutional elements in the regulations, which had ceased to be valid in the meantime. However, as in Croatia, the decision was not

unanimous but supported by six of nine judges, while the remaining three judges provided their dissenting opinions (USRS 2020).

The role of the courts was arguably most important in Austria. In the acute phase of the coronavirus crisis, Austrian authorities issued around 30,000 fines to individuals who breached restrictions on the freedom of movement and assembly. These fines were issued for breaches of a regulation published by the Minister of Health that prohibited entrance to all public places, with several exceptions (supermarkets, pharmacies, etc.). However, already in May, the Provincial Administrative Court in Lower Austria ruled in favour of an individual that all restrictions based on the purpose of entering a public place are against the law (EHS 2020: 35). Therefore, at the end of May, opposition MPs requested a general refund for all collected fines, but it was refused by the ruling majority. In July, all fines collected in Lower Austria were paid back, but it remains open whether other federal states will follow that example (IBID: 36). In its decision of 22 July 2020, the Austrian Constitutional Court also noted that the ordinance prohibiting entry into public places was partly illegal. The Court stressed that based on the Covid-19 Measures Act, entering certain places may be prohibited, but people cannot be ordered to stay at a certain location, in particular at their home (VFGH 2020).

A particularly unfortunate legal episode in the course of the coronavirus crisis in Austria was the 'Easter Decree'. On 1 April, the Minister of Health issued a decree to limit visits in private homes during the Easter holidays. Gatherings of more than five people not sharing the same household were prohibited. The outcry of the opposition parties and many lawyers was great, mostly because of the vague language in the decree, which could have implied house searches aimed at determining abidance by the decree (JELENKO-BENEDIKT 2020). Finally, on 6 April, the decree was withdrawn as it had no legal grounds, though the government continued communicating as though its content was still legally valid, which created great confusion and an increased sense of legal uncertainty. In numerous cases, administrative criminal proceedings were incorrectly initiated by police, and such proceedings were only prevented if those affected defended themselves through legal action (EHS 2020: 32–33).

DISCUSSION AND CONCLUSIONS

It is historically well-documented that crisis circumstances strengthen the executive and upset the pre-existing executive-legislative balance. Therefore, within every crisis lies the potential for establishing a more authoritarian style of governance and longer-term destabilization of a political system. In such a context, the legislative and judiciary are called to double down on their efforts. The legislative, and opposition MPs in particular, need to strengthen their oversight of the executive to control and improve both the content and the proportionality of the emergency legislation ^(SEE GRIGLIO 2020). This is easier said than done, however, because during a crisis, governments feel pressured to act quickly, which may be at odds with established democratic practices. Furthermore, during such times, the executives are strengthened by regulative credit, i.e., social support for limitations placed upon the democratic order ^(BRZECHCZYN 2020).

With that in mind, this article chronologically examined the coronavirus crisis responses in Croatia, Slovenia and Austria to determine if there were variations and, if so, why they occurred. What was apparent is that in all three countries, a tendency of the executive was observed to pursue a more authoritarian style of governance that pertains to containing the role of the legislative. Moreover, at the very beginning of the crisis, the parliaments in all three countries allowed the respective governments to concentrate power concerning crisis management. In Croatia, the parliament rejected the option of activating a legislative derogation that would allow the government to take over certain functions of the parliament by issuing decrees with legal force. However, in both Croatia and Slovenia, the parliaments hardly protested in reaction to the fact that the respective governments avoided declaring a state of the emergency. This would have arguably constrained these governments by binding them to a more complicated decision-making process, where a lot of power would be shared with the assemblies and the institution of the president. In all three countries, legislation enacted for the management of the public health crisis marginalized the role of the parliament, but the parliament itself approved of this.

After this initial miss, pressure for oversight of the executive increased and tensions in the executive-legislative relations became observable. However, this tendency was more intense in Slovenia than in Croatia

or Austria. This confirms our starting hypothesis: that more populist and illiberal governments, such as the Slovene government under Janša's leadership, cause more elevated tensions with the legislative. This leads to greater challenges in maintaining democratic standards, but also a greater willingness of the legislatures to oversee executive activities. In all three countries, opposition MPs together with civil society groups disabled government proposals for introducing tracking apps. Nevertheless, in Croatia, their overall attitude could be described as insufficiently active and this transferred into the July 2020 general elections, where the opportunity to confront the government with alternative solutions concerning the management of the crisis, was missed. In Austria, opposition MPs tried to compensate for failing to mobilize against the March Covid-19 Measures Act through their work in parliamentary committees and the plenary aimed at improving the crisis legislation. Still, the results of the Styrian elections show that their overall behaviour in the crisis did not leave a lasting impression on most voters. Part of the problem in Austria was that the two largest opposition parties, SPÖ and the Freedom Party, have very different ideological backgrounds, markedly hindering their cooperation.

In Croatia and Austria, the oversight activities of the parliament were limited to questioning of government officials in the plenary and committees. The oversight activities of the Slovenian MPs were on a different scale. First, they filed an interpellation against the Minister of Economy, who was accused of tolerating non-transparent procurement of medical equipment. Second, they intended to initiate an inquiry commission in the parliament to comprehensively investigate the public procurement. Third, the pressure of the opposition during plenary sittings and in committees concerning the medical equipment scandal ultimately led to resignations of senior government officials. Fourth, they publicly unmasked numerous government attempts to take over institutions by placing those loyal to them in leading positions in these institutions. In some cases, these take-overs were slowed or even disabled by the MPs. In the area of legislative activities, as in the other two countries, Slovenian MPs managed to improve the crisis-related legislative proposals. Also, the efforts of Slovenian opposition MPs were rewarded with the growing popularity of their parties, but such a development was not recorded in either Austria or Croatia.

However, when evaluating the successes of the Slovenian MPs, one should not lose sight of the fact that the pressure on independent intuitions

and the rule of law by the PM Janez Janša was not comparable to the reality of the political situations in Austria and Croatia, which were more conventional. Therefore, the success of the Slovenian MPs may rather be attributed to a political crisis caused by Janša's exceptionally authoritarian style of governance and his efforts to move Slovenia towards illiberal democracy, rather than to superior institutional and legislative solutions during the public health crisis. As in Austria and Croatia, Slovenian MPs essentially played a reactive role. In other words, instead of using *ex ante* oversight tools, as the most advanced forms of parliamentary oversight (SEE PELIZZO – STAPENHURST 2014), they settled for *ex post* ones.

The role of the judiciary in correcting actions approved by the other two branches was also important during the crisis. In Slovenia, the intervention of the Constitutional Court started a review process that obliged the government to periodically check the proportionality of adopted measures. In Croatia, the Constitutional Court contributed to the rapid establishment of a procedure allowing infected people to cast their vote during the elections. In both countries, the Constitutional Courts ruled that there were no serious unconstitutional elements in the emergency legislation that limited freedom of movement during the acute phase of the crisis. Nevertheless, in both countries, these decisions were not unanimous, which is not without significance for further legal handling of this topic. In Austria, the Constitutional Court arguably contributed the most towards containing or even reversing the consequences of certain government actions. The fact that the Constitutional Courts in Slovenia and Croatia, for the time being, refrained from such drastic decisions corroborates the insight that in a time of crisis, judges tend to exercise restraint (SEE RIDARD – FOURMONT 2020). Nevertheless, this is likely also a result of the better legal grounds for emergency measures in these countries. It should also be noted that the core preoccupation in the critical decision of the Austrian Constitutional Court was the fining of citizens for not conforming to emergency measures. While widespread in Austria, that practice was rare in Slovenia and Croatia, where it was mostly applied to cases of breaching the rules of self-isolation.

There are many similarities in the approaches and measures implemented by the three governments and three parliaments in managing the coronavirus crisis. In the acute phase of the crisis the types of response measures were almost identical and there were many similarities in how

the work of the MPs was reorganized. Likewise, all three countries heavily relied on the work of experts to justify some of the implemented measures. This could partly be attributed to the fact that the pandemic is a global phenomenon as well as to learning spillovers stemming from debates and coordination at the EU level. Nevertheless, these similarities could partly rather be attributed to the aforementioned geographic proximity and strong economic and political ties between the three countries. For example, the process of moving away from the national towards a more regional approach in containing the epidemic was initiated in Austria in late summer 2020, and soon after that, it was accepted as a model in Slovenia and Croatia as well. Another example refers to the issue of declaring the state of emergency, as the approaches taken in Croatia and Slovenia in this regard were very similar.

The coronavirus crisis highlighted the pre-existing deficiencies of the political and legal systems in all three countries ^(SEE NAY 2020). First, it has raised the need to adopt an unequivocal constitutional definition of a state of emergency. The fact that the governments in Slovenia and Croatia decided to bypass this topic means that the existing legislation on a state of emergency there is in need of review. Second, it has pointed towards a need for institutional strengthening of the oversight function of the legislative in times of a public health crisis. One proposition here could be making a parliamentary inquiry commission run by the opposition a mandatory requirement. The leading role of the opposition in this and similar efforts is of key importance because party discipline usually restrains the parliamentary majority from taking more independent actions. Third, the Corona crisis has called for a clearer legislative determination of the role of science in a public health crisis in terms of decision-making processes. It needs to be clearly emphasized that this role is purely advisory, as the responsibility for decisions made should always lie with the elected officials. Fourth, the crisis underlined the necessity of assuring that elections could be implemented under such circumstances. This would imply practical and legal development of trusted alternatives to voting in person, which are underdeveloped in Croatia. Fifth, it pointed towards a general need for developing a more pluralistic social climate where alternative opinions and solutions would be valued. The fact that the governments in all three countries showed little readiness for debating opposition proposals speaks on that behalf. A general assessment that stems from the experiences of all three countries is that many of the listed pre-existing deficiencies are

shared by them. Therefore, rather than just nationally, the efforts targeted towards overcoming them should also be coordinated transnationally.

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