

CONSTITUTIONALITY AND LEGALITY OF THE CURFEW AS A MEASURE TO CONTAIN INFECTIOUS DISEASES: THE CASE OF COVID-19

Accepted

11. 7. 2025

Revised

21. 12. 2025

Published

1. 4. 2026

SERGEJA OŠTIR

Advocate of the Principle of Equality, Ljubljana, Slovenia
sergeja.ostir@zagovornik-rs.si

CORRESPONDING AUTHOR

sergeja.ostir@zagovornik-rs.si

Abstract The state must protect public health and prevent the spread of infectious diseases, often by limiting certain human rights. While quick action is crucial, it must align with constitutional safeguards. During the COVID-19 epidemic, Slovenia introduced a curfew that lasted 174 consecutive days. However, the Constitutional Court of the Republic of Slovenia did not assess its constitutionality, as it dismissed the related initiatives. This article examines the curfew's legal basis, the constitutional standards governing such measure, and whether the ordinances met the requirements of legality, necessity, and proportionality in a democratic society. The findings show that the curfew in Slovenia was introduced on an unconstitutional legal basis, and the constitutional-law analysis conducted in this article further confirms its incompatibility with the Constitution of the Republic of Slovenia.

Keywords

curfew,
human rights,
restriction of movement,
infectious disease,
epidemic,
COVID-19

1 Introduction

Mass outbreaks of infectious diseases are not a new phenomenon. History records several pandemics in which tens of millions of lives were lost.¹ However, past pandemics occurred under different circumstances, and therefore their impact on individual lives – and, more importantly, on the limitation of human rights for the purpose of containing pandemics – was entirely different. It was only in the post-industrial era that the world truly became globalized. With the advent of faster means of transport, the time required to traverse distances decreased, increasing the likelihood of pandemic-scale transmission of infectious diseases. For this reason, the reach and rapid spread of pandemics today are incomparable to the conditions of just 100 or 200 years ago. Intensive animal farming, environmental disruption, climate change, increased risk of intentional biological agent releases due to technological and informational advances in biological weapons development, and other sources of infectious disease transmission have all raised the likelihood of new pandemics emerging (Smith, 2021).²

In this regard, the state bears a clear constitutional duty to protect public health and life during outbreaks of infectious disease. Article 5, paragraph 1 of the Constitution of the Republic of Slovenia (Ustava Republike Slovenije – the Constitution)³ stipulates that the state must protect human rights and fundamental freedoms within its territory. This represents a positive obligation of the state and is also grounded in the International Covenant on Economic, Social and Cultural Rights (Mednarodni pakt o ekonomskih, socialnih in kulturnih pravicah),⁴ which recognizes everyone's right to the highest attainable standard of physical and mental health, and obliges states to actively prevent, treat, and control epidemics. The Constitutional Court of the Republic of Slovenia has already clearly held that a mass outbreak of infectious disease – even if an epidemic has not been officially declared – constitutes a natural disaster, requiring the state to respond in a timely and appropriate manner to protect

¹ For example, the plague epidemic in the 14th century known as the Black Death, the Spanish flu, HIV/AIDS, and others.

² In the article, Professor Máire Connolly, coordinator of the EU-funded PANDEM-2 project, explains about the possibility of a new pandemic.

³ Ustava Republike Slovenije (The Constitution of the Republic of Slovenia, the Constitution), Official Gazette of the RS, Nos. 33/91-I, 42/97 - UZS68, 66/00 - UZ80, 24/03 - UZ3a, 47, 68, 69/04 - UZ14, 69/04 - UZ43, 69/04 - UZ50, 68/06 - UZ121,140,143, 47/13, 47/13, 75/16 - UZ70a, 92/21 - UZ62a.

⁴ Mednarodni pakt o ekonomskih, socialnih in kulturnih pravicah (International Covenant on Economic, Social and Cultural Rights), Official Gazette of the SFRY, no. 7/71, and Official Gazette of the Republic of Slovenia, no. 35/92 - MP, no. 9/92.

public health.⁵ This position was especially relevant in Slovenia in the context of public debates surrounding the introduction of COVID-19 measures. There were claims that the state ought to have declared a state of emergency before introducing such measures and that, since no state of emergency was declared, the state in fact lacked a proper legal basis for action.

At the start of the pandemic, numerous organizations stressed the importance of respecting human rights when adopting measures. In April 2020, the World Health Organization (WHO) called for balancing health protection with minimizing social disruption and safeguarding rights, especially for vulnerable groups. It emphasized that a rights-based approach would be essential in future health crises.⁶

In times of crisis, such as the COVID-19 pandemic, it is vital that states act quickly and implement measures as effectively as possible. At the same time, it is equally important that such measures are adopted with due regard for the protection of human rights and fundamental freedoms. For millions of people, measures like curfews may represent a more immediate threat to their dignity and well-being than the virus itself.⁷

During the epidemic, the state adopted numerous non-pharmaceutical interventions to slow the spread of COVID-19. It restricted movement within the country and across borders, mandated the use of facemasks, closed hospitality venues, schools, and cultural institutions, banned sports activities and gatherings, and introduced a curfew. These measures limited people's rights and freedoms, prompting many to seek a constitutional review of their constitutionality and legality by the Constitutional Court. While the Court has ruled on some of these measures, it has

⁵The Constitutional Court of Slovenia has held that the state must actively and promptly protect public health and human life (Decision of the Constitutional Court of the Republic of Slovenia of 27 August 2020, U-I-83/20-36, ECLI:SI:USRS:2020:U.I.83.20, para. 42 and Decision of the Constitutional Court of the Republic of Slovenia of 12 February 2004, U-I-127/01-27, ECLI:SI:USRS:2004:U.I.127.01, para. 13). It has also confirmed that COVID-19 constitutes a natural disaster (Decision of the Constitutional Court of the Republic of Slovenia of 11 March 2021, U-I-480/20-17, ECLI:SI:USRS:2021:U.I.480.20, para. 33 and Decision of the Constitutional Court of the Republic of Slovenia of 17 March 2022, U-I-25/22-15, ECLI:SI:USRS:2022:U.I.25.22, para. 26).

⁶World Health Organization, *Addressing Human Rights as Key to the COVID-19 Response*. Retrieved from: <https://www.who.int/publications-detail-redirect/addressing-human-rights-as-key-to-the-covid-19-response> (accessed: May 8, 2025).

⁷Office of the High Commissioner for Human Rights, *#Covid19 Human Rights Dispatch Number 1: Police and Military Use of Force in a State of Emergency*. Retrieved from: <https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/HumanRightsDispatch1.pdf> (accessed: May 8, 2025).

not substantively addressed the curfew, despite receiving several petitions. Instead, it dismissed them.⁸

In its review of the curfew, the Constitutional Court did not apply the same criteria it had used in other cases related to anti-COVID measures.⁹ Specifically, it failed to apply the doctrine of exception to the need for legal protection, which it had used in comparable cases.¹⁰ Constitutional Court Judge Dr. Neža Kogovšek Šalamon also pointed out that the court should have admitted the petition insofar as it pertained to the curfew.¹¹

By dismissing the petitions, the Constitutional Court – though solely competent to assess such measures – did not rule on the constitutionality of the curfew or set guiding constitutional standards. As a result, fundamental questions remain open, and curfews have yet to be meaningfully addressed in constitutional jurisprudence. This article therefore explores how the Slovenian government introduced and extended the curfew, whether decisions were based on expert advice or made arbitrarily, and to what extent the measure aligned with constitutional requirements. It also assesses whether the Communicable Diseases Act (*Zakon o nalezljivih boleznih, ZNB*) offers an adequate legal basis.¹² These questions remain pertinent, as future epidemics are not a question of if, but when (Smith, 2021).

⁸ Order of the Constitutional Court of the Republic of Slovenia of 15 September 2022, U-I-426/20-57, ECLI:SI:USRS:2022:U.I.426.20, Order of the Constitutional Court of the Republic of Slovenia of 15 September 2022, U-I-427/20-64, ECLI:SI:USRS:2022:U.I.427.20 and Order of the Constitutional Court of the Republic of Slovenia of 16 March 2023, U-I-178/22-11, ECLI:SI:USRS:2023:U.I.178.22.

⁹ The Constitutional Court of the Republic of Slovenia applied this rule in the assessment of constitutionality and legality in cases Nos. U-I-83/20, U-I-79/20, U-I-50/21, U-I-445/20, U-I-210/21, U-I-132/21, U-I-8/21 and U-I-427/20.

¹⁰ This constitutes an exception to the usual rule that a legal need must exist for a constitutional review (pursuant to Article 47(2) of the Constitutional Court Act (ZUstS), Official Gazette of the RS, Nos. 64/07 – official consolidated version, 109/12, 23/20, 92/21 and 22/25). The Constitutional Court may nevertheless decide on already invalid regulations if they were limited in time and if the initiative raises particularly important precedential constitutional questions of a systemic nature that could reasonably be expected to arise in the future. It justified this approach in Decision of the Constitutional Court of the Republic of Slovenia of 27 August 2020, U-I-129/19-26, ECLI:SI:USRS:2020:U.I.129.19, para. 43 and confirmed it in Decision of the Constitutional Court of the Republic of Slovenia of 27 August 2020, U-I-83/20-36, ECLI:SI:USRS:2020:U.I.83.20, para. 27.

¹¹ Partially Dissenting Opinion of Constitutional Court Judge Dr. Neža Kogovšek Šalamon to the ruling no. U-I-178/22 of 16 March 2023, joined by Constitutional Court Judge Dr. Katja Šugman Stubbs, ECLI:SI:USRS:2023:U.I.178.22, para. 11.

¹² *Zakon o nalezljivih boleznih* (Communicable Diseases Act, ZNB), Official Gazette of the Republic of Slovenia, Nos. 33/06 - consolidated text, 49/20 - ZIUZEOP, 61/20 - ZIUZEOP-A, 80/20 - ZIUOOPE, 152/20 - ZZUOOP, 142/20, 175/20 - ZIUOPDVE, 203/20 - ZIUPOPdVE, 15/21 - ZDUOP, 82/21, 88/21 - Constitutional Court ruling, 178/21 - Constitutional Court ruling, 206/21 - ZDUPŠOP, 125/22, 141/22 - ZNUNBZ.

Curfews have predominantly been studied in contexts related to maintaining public order, preventing unrest, or as a form of house arrest or youth curfew. Literature addressing curfews as a public health measure is more limited and tends to focus on the description of curfew regimes in specific countries or regions. Although many states and regions implemented curfews at some point, surprisingly little research has been conducted on whether nighttime curfews are effective in controlling the spread of COVID-19, and existing studies provide mixed evidence (Apel et al., 2023). In Slovenia, there are few academic articles on curfews. One such article highlights that the number of legal experts who promptly and publicly expressed their opinions on the introduction of the curfew could be counted on one hand. Once again, it became evident that legal opinions on the limitation of fundamental rights during the epidemic varied greatly (Flander, 2021).

Various methods were used in this research. The dogmatic method was employed to a limited extent as an auxiliary tool to identify which regulations governed the curfew during the COVID-19 epidemic. The axiological (deontological) method served to evaluate the admissibility of the limitation of the constitutional right to freedom of movement (Article 32 of the Constitution) under crisis conditions. The key methods were analysis and synthesis. Pursuant to the Public Information Access Act (Zakon o dostopu do informacij javnega značaja, ZDIJZ)¹³ documents from the government and the Expert Advisory Group to the Minister of Health for the Containment and Management of the COVID-19 Epidemic (the expert group) were obtained. These documents served as the basis for enacting and extending the curfew. The analysis of these documents aimed to determine whether the government's decisions were based on expert justification or were arbitrary. The findings of this analysis were evaluated through synthesis. As a case study, the curfew regime enacted in the Republic of Slovenia during the COVID-19 epidemic was analyzed to examine how public health and human rights legislation were implemented in practice under crisis conditions.

¹³ Zakon o dostopu do informacij javnega značaja (Public Information Access Act, ZDIJZ), Official Gazette of the RS, Nos. 51/06 - official consolidated version, 117/06, 23/14, 50/14, 19/15 - Constitutional Court Decision, 102/15, 7/18, and 141/22.

The results of the research indicate that the curfew imposed in Slovenia during the COVID-19 epidemic was inconsistent with constitutional standards. Based on these findings, certain recommendations can be made for the state's future conduct in similar crisis situations.

2 The Concept of Curfew

One of the most controversial and publicly least accepted measures during the COVID-19 epidemic in Slovenia was undoubtedly the curfew.¹⁴ The government deliberately avoided using this term, instead preferring expressions such as "restriction of movement during nighttime" or "epidemiological hour," though these did not gain traction in the public discourse. Government representatives insisted that the measure did not constitute a curfew, a position publicly articulated by Prime Minister Janez Janša and State Secretary Vinko Gorenak.¹⁵ In contrast, experts such as epidemiologist Mario Fafangel and security expert Branko Lobnikar emphasized that the measure did, in fact, constitute a curfew, both in terms of its content and purpose – namely, restricting movement to ensure safety (Uredništvo Mladina, 2021; Demšar, 2021).

As Zalar explains, the term "curfew" is a direct translation of the German word *Polizeistunde*, which in the 19th-century legal terminology of the Habsburg Monarchy referred to the time after which establishment owners had to close their premises, cease alcohol service, and end dances and other public events. In the 20th century, due to measures imposed by German and Italian occupying forces, the term "curfew" took on a new meaning – namely, a prohibition on public movement – which displaced its older usage related to closing hours of public venues. The English term *curfew*, translated into Slovene as *policijska ura*, originally did not denote

¹⁴ Nacionalni inštitut za javno zdravje, Pandemija COVID-19 v Sloveniji: Izsledki panelne spletne raziskave o vplivu pandemije na življenje (SI-PANDA), 8. val. Retrieved from:

https://nijz.si/wp-content/uploads/2021/05/panda_porocilo_po_8_valu_koncno_1.pdf (May 12, 2025). Respondents expressed the least support for the restriction of movement outdoors between 9 p.m. and 6 a.m. - only just under one-third of individuals (24.0%) supported this measure, see p. 9.

¹⁵ Janša, J. (@JJansaSDS), "Spodobilo bi se, da @RTV_Slovenija popravi neresnično navedbo in špekulacijo. Ni ok, če javni medij ignorira tako dejstva kot ustavo. Dokaz spodaj. Omejitev gibanja zaradi #COVID19 ni policijska ura, če pa jo že tako poimenujete, ni prva po 2SV. Prva se je začela 1. dan po 2SV." Twitter (now X), October 20, 2020. Retrieved from: <https://x.com/JJansaSDS/status/1320084914730160135> (accessed: December 12, 2025) and [vinkogorenak.net](https://www.vinkogorenak.net), Butalci in policijska ura. Retrieved from: <https://www.vinkogorenak.net/2020/10/19/butalci-in-policijska-ura/> (accessed: May 8, 2025).

a restriction on movement, but referred to a bell-ringing that alerted the population to extinguish fires in their homes at night (Demšar, 2021).

One of the earliest cases in Slovenia concerning restrictions on freedom of movement is the 1967 “Maribor case,” in which a municipal regulation introduced a juvenile curfew by limiting the evening presence of children and minors under 16 in public spaces without adult supervision. The regulation prohibited their presence in public places after 8:00 p.m. (November–March) and 9:00 p.m. (April–October), restricted access to cultural and entertainment venues, and banned “unnecessary loitering” during late hours. Although initially upheld by the Slovenian Constitutional Court, the Federal Constitutional Court of Yugoslavia annulled the key provisions, holding that the regulation violated Article 51 of the SFRY Constitution by imposing coercive restrictions on freedom of movement without the statutory basis required for such limitations (permissible only for criminal proceedings, the prevention of contagious diseases, the protection of public order, or national defence). The Court stressed that the municipality lacked the competence to enact such measures and that – even assuming minors posed a threat to public order – such restrictions could be introduced only by law, not by a municipal decree; that minors, as equal rights-holders, could not be subjected to broader limitations on movement than adults; and that the punitive aspects of the regulation contravened the principle of legality. It further emphasised that the social issues cited by the municipality required coherent educational and social policies, not repressive prohibitions (Kulic, 1973). A more severe curfew was later enforced during the Italian occupation of Ljubljana in World War II, when residents were forbidden to leave the barbed-wire-enclosed city (Sandor, 2020). The most recent case occurred during the COVID-19 pandemic, when a government-imposed curfew served as a public health protection measure.

Although the term curfew is widely used and generally understood in both legal and public discourse, it lacks a precise and universally accepted definition. The term *curfew* is not explicitly defined in the Slovene legal system, and no universally accepted or recognized definition of curfew exists in international law either. Curfews are primarily used to maintain and restore public order and to prevent civil unrest and violence and are generally regarded as either desirable and necessary or, at worst, as a necessary evil. Brass also warns that curfews are often not used to establish order, but rather to victimize specific social groups (Brass, 2006).

During the pandemic, curfews were introduced in many regions around the world. However, a report by the Office of the United Nations High Commissioner for Human Rights indicates that excessive force was used in enforcing curfews and social distancing rules. Experts have pointed out that such actions could constitute torture or inhuman or degrading treatment.¹⁶

3 Legal Regulation of the Curfew

The measure restricting the movement of people between 9:00 p.m. and 6:00 a.m., and later between 10:00 p.m. and 5:00 a.m. (commonly referred to as a curfew), was introduced in Slovenia on 20 October 2020 and remained in effect until 11 April 2021, lasting uninterrupted for 174 days. The government enacted and extended the curfew through eight ordinances and eighteen amendments.¹⁷

In the government's ordinances, the curfew was defined as a temporary (partial) restriction of movement between 9:00 p.m. and 6:00 a.m., and later between 10:00 p.m. and 5:00 a.m., except for narrowly defined and exhaustively listed exceptions:¹⁸

1. To eliminate an immediate danger to health, life, and property;
2. For commuting to and from work and performing urgent work tasks;
3. For accessing and providing emergency services;
4. For delivering food or medication;
5. For the travel of persons entering the Republic of Slovenia in transit to a neighboring country or their residence within Slovenia.

¹⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR), Compilation of statements by human rights treaty bodies in the context of COVID-19. Retrieved from: https://www.ohchr.org/sites/default/files/Documents/HRBodies/TB/COVID19/External_TB_statements_C_OVID19.pdf (accessed: May 8, 2025), p. 45.

¹⁷ *Odloki o (začasni) delni omejitvi gibanja ljudi in (omejitvi oziroma) prepovedi zbiranja ljudi zaradi preprečevanja okužb s SARS-CoV-2 (Decrees on Temporary (Partial) Restriction of People's Movement and (Restriction or) Prohibition of Gatherings of People to Prevent SARS-CoV-2 Infections)* were published in the Official Gazette of the Republic of Slovenia in the following Nos. 147/20, 151/20, 155/20, 159/20, 163/20, 181/20, 182/20, 186/20, 190/20, 192/20, 193/20, 196/20, 204/20, 2/21, 5/21, 9/21, 12/21, 15/21, 20/21, 25/21, 27/21, 30/21, 35/21, 40/21, 43/21, 47/21.

¹⁸ At the time the curfew was enacted, from 20 October 2020 to 23 October 2020, only the exceptions listed under points 1, 2, and 3 were in effect. On 23 October 2020, exceptions under points 4 and 5 were added, so that these five exceptions remained in force until the end of the curfew.

Before addressing whether the curfew was based on an appropriate legal foundation and whether it complied with the Constitution, it is necessary to highlight certain legal deficiencies and violations.

The ordinances did not clearly define what exactly was meant by the "restriction of movement". They did not explicitly state whether this implied a prohibition on outdoor movement or an obligation to remain at home. In practice, the measure meant that people were not allowed to move outdoors during curfew hours (which lasted 9 hours a day for most of the restriction period), effectively prohibiting them from leaving their homes – if they had one. The content of the ordinances was, in fact, communicated to the public only through its interpretation.

Furthermore, the so-called "restriction of movement" effectively amounted to a ban on outdoor movement within a specified time frame, subject only to narrow exceptions. This is not equivalent to a restriction on movement as phrased in the government ordinances. A restriction of movement implies that individuals cannot travel freely across the territory of the Republic of Slovenia or leave it; by contrast, a ban on movement means individuals are not permitted to be outdoors at all. Even the government's spokesperson, Jelko Kacin, described the measure at the press conference where it was first introduced as a "ban on nighttime movement."¹⁹

On the very day the curfew took effect, 20 October 2020, the Ministry of the Interior (MNZ) issued an initial interpretation indicating that walking a dog was considered an urgent necessity and thus an exception allowing movement during the "epidemiological" curfew between 9:00 p.m. and 6:00 a.m. However, in adopting the measure, the government completely ignored a particularly vulnerable group – homeless individuals without a home to return to. Such an omission contravenes Article 2 of the Protection Against Discrimination Act (*Zakon o varstvu pred diskriminacijo*, ZVarD),²⁰ which obliges the government to ensure equal treatment of all persons regardless of their personal circumstances. It also violates international standards on the protection of human rights. The following day, the MNZ

¹⁹ See Republika Slovenija (gov.si), *Omejitev gibanja med statističnimi regijami in ponoči ter omejitev zbiranj nad 6 oseb*. Retrieved from: <https://www.gov.si/novice/2020-10-19-omejitev-gibanja-med-statisticnimi-regijami-in-ponoci-ter-omejitev-zbiranj-nad-6-oseb/> (accessed: May 9, 2025), where the recording of the press conference of 19 October 2020 is available from minute 10:08 onwards.

²⁰ *Zakon o varstvu pred diskriminacijo* (Protection Against Discrimination Act, ZVarD), Official Gazette of the Republic of Slovenia, Nos. 33/16 and 21/18 – ZNOrg.

responded to inquiries regarding the status of homeless persons by stating that the ordinance should be interpreted "pragmatically," meaning that homelessness could qualify as an exception. Despite this, in practice, police issued fines to homeless individuals for violating the ordinance.²¹

Compounding these issues, Bardutzky highlighted that the measures were frequently and rapidly amended, leaving the judiciary with insufficient time and space to develop a consistent interpretation of the legal norms in the ordinances. As a result, the general public turned to executive officials, who explained the measures during press conferences or through media statements. In his view, this disrupted the traditional balance of powers within the constitutional system (Bardutzky, 2021).

This situation raises fundamental concerns about the constitutional principles underlying the rule of law. Limiting human rights through such indeterminate provisions is not consistent with the Constitution. A fundamental principle of the rule of law is legal certainty, which requires that regulations be clear, understandable, and semantically determinate. If the government alters the meaning of regulations through interpretation or adjusts them in real time according to the situation, it creates legal uncertainty. A regulation is problematic under the principle of clarity and semantic determinability (Article 2 of the Constitution) when its meaning cannot be clearly established through the rules of legal interpretation.²² The executive branch cannot remedy these deficiencies by retroactively interpreting the regulation. Such conduct also violates the principle of separation of powers (Article 3 of the Constitution), since the executive branch is authorized to implement laws and ordinances, but not to interpret them in a manner that alters their substance.

²¹ This contribution does not address the permissibility and legality of such conduct from the perspective of misdemeanor law; however, it would certainly be interesting to examine the legislation in more detail to determine whether an individual without a home can be held liable for an offense, given that neither intent nor negligence can reasonably be attributed to them.

²² See Decision of the Constitutional Court of the Republic of Slovenia of 10 July 2003, U-I-32/02-19, ECLI:SI:USRS:2003:U.I.32.02, para. 11.

4 Analysis of Materials Used as the Basis for Introducing and Extending the Curfew

4.1 Analysis of Government Materials

Pursuant to Article 12 of the ZDIJZ, a request was submitted to the government for access to documents on which it based the introduction and extension of the curfew. The government provided 332 pages of material. Among the documents received were proposals for ordinances and their amendments, draft government decisions, consolidated texts of acts following government sessions, meeting minutes of the expert group, emails, and other materials related to the regulation of the curfew.

Despite the fact that the curfew remained in place for nearly six continuous months, the documents contain no record of the expert group proposing or substantiating the measure's introduction. Despite the obligation to periodically reassess the justification for measures based on expert opinions, only three email messages were found that contain records of decisions by the expert group specifically related to the curfew.

An email dated 9 March 2021 states that the expert group discussed the extension of the curfew on 8 March 2021 and decided to revisit the matter in 14 days. Most members supported the extension of the measure, but some expressed concerns about its disproportionality, the lack of evidence of its effectiveness, and its prolonged duration. They also pointed out that other restrictive measures – such as bans on gatherings – were still in place, making the curfew potentially counterproductive by encouraging riskier social behavior. The measure was said to have low public support (62.6% opposed) and to be eroding trust in other measures and decision-makers.

Another email dated 16 March 2021 shows that the expert group resolved on 15 March 2021 to reassess the restriction of movement at its next meeting on 22 March 2021, pursuant to its previous decision of 8 March.

An email dated 23 March 2021 states that, during its 22 March 2021 meeting, the expert group concluded that nighttime movement restrictions were still necessary, though the curfew should be adjusted to the hours between 10:00 p.m. and 5:00

a.m., with existing exceptions remaining in force. The rationale noted that evidence on the curfew's effectiveness was limited, but that lifting the curfew would send a poor signal regarding the importance of and compliance with other epidemic control measures. Some members, however, considered the measure unnecessary and called for its termination.

Cross-checking the expert group's minutes, obtained from the Ministry of Health under ZDIJZ, revealed that the version of the 22 March 2021 minutes acquired later contained additions absent from the earlier version. The newer version indicates that the group had initially proposed ending the curfew due to its excessive duration. Yet, in a note under the heading "Miscellaneous," a contradictory position appears, recommending a revised curfew from 10:00 p.m. to 5:00 a.m., with only a statement that members were informed of the proposal.

The government materials contain several decisions referring to expert assessments, yet these assessments were not attached. These decisions pertain to the extensions of the ordinances on the curfew, but they were not published in the Official Gazette of the Republic of Slovenia.²³ Instead, they were communicated to the public through the government spokesperson via the media, meaning the decisions did not formally enter into force. The Constitutional Court had previously warned about such legal deficiencies in the case of remote schooling.²⁴ After that ruling, the government began extending measures by adopting new ordinances and publishing them in the Official Gazette.

4.2 Analysis of Materials from the Ministry of Health

Under Article 12 of ZDIJZ, a request was also submitted to the Ministry of Health to obtain all expert assessments, emails, and documents of the expert group that were provided to the government or served as the basis for introducing and extending the restriction of movement between 9:00 p.m. and 6:00 a.m., and later between 10:00 p.m. and 5:00 a.m. (i.e., the curfew).

²³ Pursuant to Article 154 of the Constitution of the Republic of Slovenia, state regulations must be published in the Official Gazette of the Republic of Slovenia.

²⁴ Partial decision and order of the Constitutional Court of the Republic of Slovenia of 3 December 2020, No. U-I-445/20-13, ECLI:SI:USRS:2021:U.I.445.20.

The Ministry of Health provided three sets of minutes from the expert group's meetings held on 8 March 2021, 22 March 2021, and 5 April 2021. Summaries of the first two were also provided by the government as public information. The third set of minutes, dated 5 April 2021, was prepared during the validity of the final curfew ordinance. It included a decision in which the expert group recommended that, during the red phase, the ordinance be amended to allow members of the same household to move and gather between 10:00 p.m. and 5:00 a.m. In the orange phase, movement and gatherings of members from two households or up to ten persons should be permitted during curfew hours, and in the yellow phase, the restriction should be lifted entirely. One member proposed the immediate nationwide abolition of the curfew.

Again, cross-checking the minutes obtained from the Ministry of Health under ZDIJZ revealed that the 5 April 2021 version later received contained additions not found in the previous version. The new version indicates that the same advisory group member who had proposed abolishing the curfew nationwide also suggested ending the lockdown. He explained that the lockdown no longer met the criteria established by epidemiologists and the expert group, and that he had disagreed with the measure from the outset. He further noted that it had become evident that the state was unprepared to implement an epidemiologically justified lockdown, and he believed that the public would no longer accept such measures. These details shed light on the broader context and reveal a gap between expert recommendations and the government's actions, raising the legitimate question of whether expert epidemiological advice was truly considered – or possibly even disregarded – when measures were adopted.

5 Constitutional Review of the Curfew

5.1 Legal Basis and Initial Constitutional Concerns

All ordinances introducing the curfew were based on points 2 and 3 of paragraph one of Article 39 of the then-valid ZNB. In Decision No. U-I-79/20, dated 13 May 2021, the Constitutional Court determined that these provisions – granting the government the authority to adopt measures that inherently constitute violations of the Constitution – were inconsistent with the Constitution. Specifically, they did not provide a sufficiently clear substantive basis for limitations of the constitutional right

to freedom of movement (Article 32 of the Constitution) and the right to assembly and association (Article 42 of the Constitution). This means that the provisions were contrary to the principle of legality, and, as a result, all ordinances based on them were unconstitutional – including the entire duration of the curfew measure.

Given that the legal basis itself was unconstitutional, further assessment of additional potential violations of human rights would not have been necessary. However, since the Constitutional Court did not directly rule on the constitutionality of the curfew, the following analysis, modelled after the Court's reasoning in decisions concerning the prohibition of public gatherings, offers an assessment of the curfew's constitutional conformity. Due to the limited scope of this scholarly article, the analysis is presented in condensed form.

Building on this premise, it is important to note that, because no state of emergency was declared in Slovenia during the pandemic, the constitutionality and legality of COVID-19 measures must be assessed according to the criteria for constitutional review applicable in ordinary (non-emergency) circumstances, as set forth in Article 15 of the Constitution.²⁵

5.2 Assessment of the Curfew Based on the Model of Constitutional Court Review

Freedom of movement is a constitutionally protected human right, guaranteed to everyone. It is regulated by Article 32 of the Constitution, which states that everyone has the right to move freely, choose their residence, leave the country, and return to it at any time. This right encompasses the freedom of movement within the territory of Slovenia, meaning individuals may move freely without needing prior approvals or permits and may choose their place of residence – either permanent or temporary. It is also part of the broader general freedom of an individual²⁶ protected under Article 35 of the Constitution (Čebulj, 2002, p. 337).

²⁵ Decision of the Constitutional Court of the Republic of Slovenia of 18 September 2020, U-I-59/17-27, ECLI:SI:USRS:2019:U.I.59.17, para 60 and Partial decision of the Constitutional Court of the Republic of Slovenia of 2 April 2025, U-I-52/22-15, U-I-202/23-12, ECLI:SI:USRS:2025:U.I.52.22, para. 102.

²⁶ In constitutional law, the general freedom of action means that individuals are free to act as they choose unless a lawful restriction explicitly prohibits such conduct.

Limitations of freedom of movement are addressed in the second and third paragraphs of Article 32 of the Constitution. While the third paragraph applies only to foreigners, the second paragraph allows for restrictions applicable to everyone. According to it, freedom of movement may be limited by law but only for one of four constitutionally admissible reasons: to ensure the conduct of criminal proceedings, to prevent the spread of infectious diseases, to protect public order, or in the interest of national defense.

Similarly, freedom of movement is regulated under Article 2 of Protocol No. 4 to the European Convention on Human Rights (Konvencija o varstvu človekovih pravic in temeljnih svoboščin - ECHR).²⁷ This provision guarantees that everyone lawfully within the territory of a state shall have the right to liberty of movement and to choose their residence freely. It also allows everyone to leave any country, including their own. The right is not absolute; limitations are permitted if prescribed by law and necessary in a democratic society for national or public security, the maintenance of public order, the prevention of crime, the protection of health or morals, or the rights and freedoms of others.²⁸ The rights set forth in the first paragraph may be subject to limitations in certain areas which must be in accordance with the law and justified in a democratic society on grounds of public interest.²⁹

Therefore, preventing the spread of infectious diseases is a constitutionally legitimate goal for restricting the right to freedom of movement. The Constitutional Court has held that a mass outbreak of infectious disease – even in the absence of an officially declared epidemic – constitutes a natural disaster to which the state must respond promptly and appropriately to protect public health.

²⁷ Konvencija o varstvu človekovih pravic in temeljnih svoboščin (European Convention on Human Rights), Official Gazette of the Republic of Slovenia, Nos. 33/94 - MP, 7/94.

²⁸ It refers to a higher standard of "necessity in a democratic society" when assessing whether the limitations on rights and freedoms guaranteed by the European Convention on Human Rights (ECHR) are "necessary in a democratic society." The contracting states have a certain, but not unlimited, margin of appreciation. See Judgment of the ECHR of 15 November 2007, 26986/03, *Galstyan v. Armenia*, ECLI:CE:ECHR:2007:1115JUD002698603, para. 114.

²⁹ It refers to a lower standard of "justification in a democratic society".

In its case law, the Constitutional Court has emphasized that measures adopted to prevent the spread of infectious diseases must conform to the general principle of proportionality. They must be time-limited, and the longer a measure remains in force, the more invasive it becomes as a violation of the Constitution.³⁰

In Slovenia, the curfew lasted continuously for 174 days. In effect, it constituted a ban on outdoor movement for nine hours each day.³¹ It is relevant to note that during the remaining part of each day, further restrictions were in place – such as limitations on movement within municipalities or statistical regions, bans on gatherings, and temporary prohibitions on events, demonstrations, celebrations, weddings, and religious services.

According to established constitutional review methodology, a human right may be limited only if the restriction pursues a constitutionally legitimate goal and is consistent with the principles of the rule of law (Article 2 of the Constitution), especially the prohibition against excessive state interference (the general principle of proportionality). The Constitutional Court performs this assessment using a strict test of proportionality, which includes evaluating appropriateness, necessity, and proportionality in the stricter sense.³²

As stated in the ordinances, the curfew was introduced to contain and control the spread of COVID-19.

A measure is appropriate if it can achieve the intended goal, or if it can contribute to achieving the goal in conjunction with other measures. Given that COVID-19 spreads via infectious droplets, including aerosols generated by coughing, sneezing, talking, or rapid breathing, and can also spread indirectly through contaminated surfaces or objects,³³ any reduction in interpersonal contact is a suitable measure for limiting transmission.

³⁰ Decision of the Constitutional Court of the Republic of Slovenia of 27 August 2020, U-I-83/20-36, ECLI:SI:USRS:2020:U.I.83.20, paras. 37 and 56.

³¹ With the exception of the period from 23 March to 11 April 2021, during which the curfew was in force from 10:00 p.m. to 5:00 a.m.

³² Decision of the Constitutional Court of the Republic of Slovenia of 17 June 2021, U-I-50/21-39, ECLI:SI:USRS:2021:U.I.50.21, para. 33.

³³ See Nacionalni inštitut za javno zdravje, Covid-19. Retrieved from: <https://nijz.si/nalezljive-bolezni/nalezljive-bolezni-od-a-do-z/covid-19/> (accessed: May 9, 2025).

From the perspective of necessity, the question is whether the curfew was truly necessary to achieve the stated goal, or whether that goal could have been achieved through milder measures or without it altogether. Legally relevant is the fact that the curfew was not the only measure in place – other restrictions (e.g., bans on gatherings, closed restaurants) were already significantly limiting interpersonal contact. The curfew remained in force even as activities such as retail and personal care services were reopened. The necessity of the measure must be assessed in the context of the combined effect of all restrictions. The analysis of government documents revealed no expert rationale for introducing the curfew. In fact, some members of the expert group explicitly opposed extending the measure, calling it disproportionate, lacking evidence of effectiveness, excessively long in duration, and even unnecessary.

The introduction of the curfew was therefore not based on concrete expert evidence or proof of effectiveness and must be considered arbitrary. According to the Constitutional Court, a restriction on freedom of movement is permissible only if there were reasonable grounds to believe the measure would be effective at the time of its adoption.³⁴ Such justification was not demonstrated for the curfew, and therefore, the measure cannot be considered necessary for preventing the spread of infection.

Since the necessity of the curfew was not established in government documentation, a full analysis of proportionality in the stricter sense would not even be required. Nonetheless, it is appropriate to consider this aspect. A violation of a human right is proportionate in the stricter sense if the severity of the restriction (in this case, the restriction on freedom of movement) is balanced against the value of the goal pursued and the expected benefits arising from the measure (in this case, protecting public health and saving lives).

It is important to highlight that the exceptions to the curfew were extremely narrowly defined. Although the stated goal of the curfew was to limit interpersonal contact, activities such as individual exercise or walking a dog were not permitted, even though such activities, with appropriate physical distancing, would not have

³⁴ Decision of the Constitutional Court of the Republic of Slovenia of 27 August 2020, U-I-83/20-36, ECLI:SI:USRS:2020:U.I.83.20, para. 49.

posed an epidemiological risk. It remains unclear why movement restrictions were stricter at night than during the day. As Professor Bardutzky pointed out, the Minister of the Interior justified the curfew by citing the prevalence of nighttime private gatherings as infection sources. However, such gatherings involving more than six people were already banned when the curfew was introduced (Bardutzky, 2020, p. 26). Even though nighttime curfews are less restrictive than full 24-hour curfews, they nonetheless significantly constrain affected individuals. Moreover, because they do not affect daytime activities, there is a possibility that they are ineffective in curbing the spread of COVID-19 – or even counterproductive, if they increase contact density during other parts of the day (Apel et al., 2023).

Based on the foregoing, it can be concluded that at the time the curfew was enacted, there was no substantiation of its appropriateness and necessity, nor was there any evidence that the curfew would significantly reduce infection rates. Even five months after its introduction, members of the expert group remained uncertain about its effectiveness, indicating that the measure was not proportionate to its presumed benefits – if any existed at all.

6 Standards for Declaring a Curfew

Because the Constitutional Court has not ruled on curfews as a measure for preventing the spread of infectious diseases, constitutional standards in this area have not yet been developed. In the case of a collective curfew measure, such as the one enforced during the pandemic – when the measure was imposed by a general act in an abstract manner and applied to all residents of Slovenia – the first step in establishing constitutionally relevant standards is to determine whether such a measure interferes with individuals' personal liberty or “merely” with their freedom of movement.

This question is particularly important because the two rights differ both in the scope of their protection and in the level of permissible limitation. The right to personal liberty, protected by Article 19 of the Constitution and by Article 5(1) of the ECHR, may be limited only in cases determined by law and according to the procedures determined by law, which requires an individualised procedure against a specific person and respect for the special procedural safeguards under Article 19(3) of the Constitution. The right to freedom of movement, which is guaranteed as a

constitutional right in Article 32 of the Constitution and in Article 2 of Protocol No. 4 to the ECHR, allows statutory limitations, including those adopted for the purpose of preventing the spread of infectious diseases. Because of these important differences, properly determining the legal nature of a curfew is a crucial first step in developing constitutional standards regarding its permissibility.

Based on the foregoing, a curfew as a collective measure for containing infectious diseases may be prescribed by law only if it limits freedom of movement alone. Any limitations must be appropriate, necessary, and proportionate in the strict sense, and the measure must be strictly temporary and lifted immediately when it is no longer required. Before introducing such a measure, the authorities must demonstrate a relevant degree of likelihood that it will reduce or slow the spread of the infectious disease, and must consider the situation of vulnerable groups in its formulation and implementation. However, if a curfew were also to interfere with personal liberty, such a measure would be unconstitutional, as it would not satisfy the constitutional guarantees applicable to deprivation of liberty, including the requirement of an individualised procedure.³⁵ It is therefore essential, when assessing the legality of a curfew, to rely on the criteria arising from the constitutional framework, the case-law of the Constitutional Court, and the standards of the European Court of Human Rights (ECtHR), as only their comprehensive application enables an adequate evaluation of the permissibility of such an intensive interference with human rights.

At this point, the key question becomes how to distinguish between a limitation on freedom of movement and an interference with personal liberty, as the correct classification determines the applicable legal regime and the permissible level of limitation. The boundaries between the two rights are not sharply defined, since the concepts are substantively intertwined. To differentiate between them, one may rely on the criteria developed in the ECtHR's case-law, which examines the individual's specific situation and analyses the duration and intensity of the measure, the scope of permitted movement, the degree of social isolation, and other factual effects in order to determine whether the measure amounts to a limitation of movement or a deprivation of personal liberty. Central to this distinction is the ruling in *Guzzardi v.*

³⁵ Decision of the Constitutional Court of the Republic of Slovenia of 10 October 2012, Up-21/11-12, ECLI:SI:USRS:2012:Up.21.11, para. 11.

Italy, in which the ECtHR established the fundamental criteria for differentiating between the two types of interferences.³⁶

That these criteria are also relevant in the context of the COVID-19 pandemic is confirmed by *Terbeş v. Romania*, in which the ECtHR for the first time directly reviewed the measure of a nationwide lockdown and, consequently, characteristics comparable to a curfew. The measure included a prohibition on leaving one's home between 24 March and 14 May 2020, and the applicant alleged an interference with his personal liberty under Article 5 of the ECHR. Applying the criteria from *Guzzardi* and *De Tommaso*, the Court emphasised that the applicant had not been subjected to individualised supervision, that he could leave his home for reasons defined by law, and that the measure did not have effects characteristic of house arrest; therefore, in terms of its intensity, it did not reach the level of a deprivation of liberty. Since the applicant also failed to demonstrate any specific impact of the measure on his personal situation, the Court declared the application inadmissible. The ECtHR further noted that, upon declaring the lockdown, Romania lodged a derogation from Article 2 of Protocol No. 4, which additionally illustrates the exceptional nature and constitutional sensitivity of such measure.³⁷

The Constitutional Court has also examined the criteria for distinguishing between a deprivation of liberty and a limitation on freedom of movement in its constitutional case-law, although not in the context of measures aimed at containing the spread of infectious diseases.³⁸ The question of the legal nature of a curfew has therefore remained open even within the scholarly debate, which in Slovenia has developed only to a limited extent.

³⁶ Judgement of the ECHR of 6 November 1980, 7367/76, *Guzzardi v. Italy*, ECLI:CE:ECHR:1980:1106JUD000736776. See also Judgement of the ECHR of 23 February 2017, 43395/09, *De Tommaso v. Italy*, ECLI:CE:ECHR:2017:0223JUD004339509, Judgement of the ECHR of 23 February 2012, 29226/03, *Creangă v. Romania*, ECLI:CE:ECHR:2012:0223JUD002922603, Judgement of the ECHR of 6 November 1980, 7367/76, *Guzzardi v. Italy*, ECLI:CE:ECHR:1980:1106JUD000736776, Judgement of the ECHR of 17 January 2012, 36760/06, *Stanev v. Bulgaria*, ECLI:CE:ECHR:2012:0117JUD003676006.

³⁷ Judgement of the ECHR of 13 April 2021, 49933/20, *Terbeş v. Romania*, ECLI:CE:ECHR:2021:0413DEC004993320, para. 36 and para. 43.

³⁸ In the Decision of the Constitutional Court of the Republic of Slovenia of 11 December 2003, Up-286/01-26, ECLI:SI:USRS:2003:Up.286.01, the Court relied on the criteria from *Guzzardi v. Italy*. See also Decision of the Constitutional Court of the Republic of Slovenia of 3 March 2011, Up-1116/09-22, ECLI:SI:USRS:2011:Up.1116.09, and Decision of the Constitutional Court of the Republic of Slovenia of 10 October 2012, Up-21/11-12, ECLI:SI:USRS:2012:Up.21.11.

In Slovenia, there has been no broader academic debate on whether the curfew constituted a limitation on freedom of movement or an interference with individuals' personal liberty, and the few expert opinions that do exist are not uniform. Constitutional Judge Dr. Špelca Mežnar, in her dissenting opinion, emphasised that the curfew introduced by the Government amounted to an interference with personal liberty, not merely a limitation on movement. Among the constitutionally relevant circumstances, she lists its mass and collective nature, the nine-hour prohibition on leaving one's homes, the restriction of movement to one's own municipality, the very narrow exceptions without the possibility of walks, the temporal intensity of the measure, and the fact that people experienced it as a prohibition on leaving their homes.³⁹ By contrast, constitutional scholar Dr. Samo Bardutzky considers that the ECtHR, applying the criteria from *De Tommaso*, would likely classify the curfew as implemented in Slovenia as a limitation on freedom of movement rather than an interference with personal liberty (Bardutzky, 2024, p. 39). Mežnar also warns that curfews cannot be directly compared across States: they differ in their legal bases, states of emergency, and scope of exceptions, meaning that a measure may amount to an interference with personal liberty in one country but only a limitation on movement in another. Precisely because of these differences, constitutional assessments from one country cannot be automatically transposed to another.⁴⁰

Various international bodies likewise warned both about the risks posed by emergency measures and the need to implement them in accordance with international human rights standards during the COVID-19 pandemic. This was stated particularly clearly by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, who stressed that states of emergency must always be understood as exceptional and that their duration must be strictly limited. In her Guidance on the use of force by law-enforcement personnel in time of COVID-19 emergency, she emphasises that the right to life is non-derogable and cannot be compromised even in a state of emergency. Measures taken by law-enforcement authorities must always be guided by the principles of legality, necessity, proportionality, precaution, and non-discrimination, which are binding principles of

³⁹ Dissenting Opinion of Judge Dr. Špelca Mežnar to Orders U-I-426/20 and U-I-427/20 of 5 November 2020, ECLI:SI:USRS:2022:U.I.427.20, para. 4.

⁴⁰ Dissenting Opinion of Judge Dr. Špelca Mežnar to Orders U-I-426/20 and U-I-427/20 of 5 November 2020, ECLI:SI:USRS:2022:U.I.427.20, para. 5.

international human rights law. Particular attention must be paid to vulnerable groups – the poor, migrants, the homeless – who are already disproportionately affected by the pandemic; they must not become additional victims as a result of the strict enforcement of a curfew. The police must therefore exercise heightened caution when using force, assess the necessity of force in each particular situation, and, as a primary approach, rely on discussion, instruction, consultation and community engagement rather than force-first policing.⁴¹

In assessing curfews, the Venice Commission focuses on key constitutional requirements such as a clear and foreseeable legal foundation, the existence of a state of emergency situation, the necessity and proportionality of the measure, and the provision of democratic and judicial oversight. In its Opinion on the curfew in Turkey, the Commission emphasises that a curfew is an exceptional measure, permissible only in clearly defined circumstances, generally in the context of a declared state of emergency, whereas in “ordinary” circumstances it must comply with the limitation clauses contained in international instruments. The measure must have a clear legal foundation, be limited in time and territory, be justified by genuine security or public health reasons, and be equipped with safeguards against abuse, since it may also interfere with personal liberty. The Commission noted that Turkish legislation does allow curfews to be imposed, but assessed the relevant legal framework as overly broad, as it does not set out sufficiently precise substantive and procedural conditions for one to be introduced.⁴²

The constitutional and international law analysis presented demonstrates that a curfew, as one of the most intrusive interferences with human rights, requires exceptionally rigorous scrutiny. Since the Constitutional Court has not yet adjudicated on such a measure in the context of infectious diseases, it is essential to determine correctly whether a curfew amounts to a limitation of personal liberty or of freedom of movement, as this distinction determines the permissible level of

⁴¹ Office of the High Commissioner for Human Rights, #Covid19 Human Rights Dispatch Number 1: Police and Military Use of Force in a State of Emergency. Retrieved from: <https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/HumanRightsDispatch1.pdf> (accessed: May 8, 2025).

⁴² Council of Europe: European Commission for Democracy through Law (Venice Commission), Opinion on the Legal Framework Governing Curfews, Opinion No. 842/2016. Retrieved from: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)010](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)010) (accessed: May 9, 2025).

limitation and the required procedural safeguards. The case-law of the ECtHR (in particular *Guzzardi, De Tommaso* and *Terheş*), the positions of United Nations bodies, and the standards of the Venice Commission all consistently underline that such a measure must be exceptional, time-limited, lawful, necessary, proportionate, and equipped with effective safeguards against abuse. These standards therefore constitute an indispensable guide for any future constitutional review of the permissibility of a curfew within the Slovenian legal order.

7 Research on the Effectiveness of Curfews

Although many countries imposed curfews during the COVID-19 pandemic, evidence of their effectiveness remains limited and mixed (Apel et al., 2023). In Greece, earlier curfews did not reduce visits to essential services and may have increased crowding in high-risk areas (Velias et al., 2022). A study in Hesse, Germany, found no measurable impact on infection rates (de Haas et al., 2022), while other research suggested curfews had minimal effect when combined with broader measures like school closures (Sprengel et al., 2021). Simulations also showed that testing and tracing were more effective than movement restrictions (Thompson and Wattam, 2021). Still, some analyses, such as those in Hamburg, did find a decrease in cases linked to nighttime curfews (Apel et al., 2023).

8 Conclusion

During the COVID-19 epidemic in Slovenia, the curfew remained in force for 174 days – nearly six months. Government records do not show that the curfew was introduced based on expert recommendations. Despite the obligation to reassess such measures, the government provided only three emails referencing expert group decisions. Meeting minutes even show that some experts warned against the measure's disproportionality, questionable effectiveness, excessive duration, and lack of necessity.

Moreover, the content of the curfew as set out in the ordinances was unclear and imprecise, resulting in a reliance on media interpretations rather than clear legal provisions. The exceptions were also narrowly defined in the ordinances, with additional exceptions often being "added" through public interpretation. The government failed to account for vulnerable groups who were disproportionately

affected by the same measure due to their personal grounds (e.g., the poor, the homeless). For nearly half a year, people were not allowed to engage in outdoor recreation or walk their dogs during evening hours.

Despite multiple petitions challenging the curfew, the Constitutional Court of the Republic of Slovenia failed to issue a substantive ruling on its constitutionality and instead dismissed the initiatives. The measure was consistently enacted based on legal provisions that the Constitutional Court later declared unconstitutional – namely, points 2 and 3 of the first paragraph of Article 39 of the ZNB. This fact alone rendered the curfew legally questionable. The constitutional review conducted according to the standards of the Constitutional Court further confirmed that the curfew failed to comply with the Constitution.

From the perspective of constitutional order, international legal standards, and existing legislation, Article 39 of the ZNB, in its current form, cannot be considered a suitable legal basis for imposing such an intensive measure as a curfew. The curfew should be explicitly defined in law, and the ZNB should precisely determine the admissible forms or types, scope, and conditions under which the human right to freedom of movement may be limited, along with other safeguards to protect against arbitrary limitations of human rights. The curfew represents an extraordinary and severe restriction that significantly infringes upon an individual's freedom of movement and may also constitute a violation of personal liberty.

It is therefore important to emphasize that a curfew cannot be regarded merely as one variant of "restrictions on movement in a specified area," as outlined in point 3 of paragraph four of Article 39 of the ZNB, but rather as a measure of substantially greater intensity and impact.

For this reason, the curfew –if it is to be used as a distinct measure – must be explicitly and clearly defined in law, with precisely established conditions, scope, duration, oversight procedures regarding its justification, and mechanisms for its potential extension. Only under such conditions can legal certainty and constitutional compliance be ensured in any future application of the measure.⁴³

⁴³ Based on Article 2 of the Constitution of the Republic of Slovenia and respecting the principle of clarity and certainty of regulations (legal certainty).

Acknowledgment

The views and conclusions presented in this article represent the author's personal scholarly opinion and not the views of the institution with which the author is affiliated.

References

- Apel, J., Rohde, N. & Marcus, J. (2023). The Effect of a Nighttime Curfew on the Spread of COVID-19. *Health Policy*, 129, 104712-104712.
- Bardutzky, S. (2020). Limits in Times of Crisis: On Limitations of Human Rights and Fundamental Freedoms in the Slovenian Constitutional Order. *Central European Journal of Comparative Law*, 1(2), 9–31.
- Bardutzky, S. (2021). Slovenia: Second Wave of Challenges to Constitutionalism. *Verfassungsblog: On Matters Constitutional*. Retrieved from: <https://verfassungsblog.de/slovenia-second-wave-of-challenges-to-constitutionalism/> (accessed: May 9, 2025).
- Bardutzky, S. (2024). Ustavni pravici do osebne svobode in svobode gibanja: razločevanje in omejevanje v kontekstu preprečevanja širjenja COVID-19. In Zagorc, S. & Bardutzky, S. (Eds.), *Ustava na robu izrednega stanja: zbornik ob trideseti obletnici Ustave Republike Slovenije: s posebno zbirko esejev v angleškem jeziku "Covid-19 and the Constitution" (Covid-19 in ustava)*. Ljubljana: Univerza v Ljubljani, Pravna fakulteta, 24–44.
- Brass, P. R. (2006). Collective Violence, Human Rights, and the Politics of Curfew. *Journal of Human Rights*, 5(3), 323–340.
- Council of Europe: European Commission for Democracy through Law (Venice Commission), Opinion on the Legal Framework Governing Curfews, Opinion No. 842/2016. Retrieved from: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)010](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)010) (accessed: May 9, 2025).
- Čebulj, J. (2002). (svoboda gibanja) 32. člen. In Šturm, L. (Ed.), *Komentar Ustave Republike Slovenije*. Ljubljana: Fakulteta za podiplomske državne in evropske študije, 337-340.
- de Haas, S., Götz, G. & Heim, S. (2022). Measuring the Effect of COVID-19-Related Night Curfews in a Bundled Intervention within Germany. *Scientific Reports*, 12(1), 19732-19732.
- Demšar, S. (2021). Izraz policijska ura ni "za neke druge čase". *Oštro*. Retrieved from: <https://www.ostro.si/si/razkrinkavanje/objave/izraz-policijska-ura-ni-za-neke-druge-case> (accessed: May 8, 2025).
- Flander, B. (2021). Epidemija in ukrepi za njeno zaježitev: omejitev gibanja na občine in "policijska ura." *Revija za kriminalistiko in kriminologijo*, 72(1), 51–64.
- Kulic, D. (1973). The Constitutional Court of Yugoslavia in the Protection of Basic Human Rights. *Osgoode Hall Law Journal*, 11(2), 275–284.
- Nacionalni inštitut za javno zdravje, Covid-19. Retrieved from: <https://nijz.si/nalezljive-bolezni/nalezljive-bolezni-od-a-do-z/covid-19/> (accessed: May 9, 2025).
- Nacionalni inštitut za javno zdravje, Pandemija COVID-19 v Sloveniji: Izsledki panelne spletne raziskave o vplivu pandemije na življenje (SI-PANDA), 8. val. Retrieved from: https://nijz.si/wp-content/uploads/2021/05/panda_porocilo_po_8_valu_končno_1.pdf (accessed: May 12, 2025).
- Office of the High Commissioner for Human Rights, #Covid19 Human Rights Dispatch Number 1: Police and Military Use of Force in a State of Emergency. Retrieved from: <https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/HumanRightsDispatch1.pdf> (accessed: May 8, 2025).
- Sandor, T. (2020). Prava policijska ura je bila v Ljubljani. *Primorski dnevnik*. Retrieved from: <https://www.primorski.eu/se/prava-policijska-ura-je-bila-v-ljubljani-NB663917> (accessed: June 12, 2025).

- Smith, J. (2021). Q&A: Future Pandemics Are Inevitable, but We Can Reduce the Risk. *Horizon*. Retrieved from: <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/qa-future-pandemics-are-inevitable-we-can-reduce-risk> (accessed: May 8, 2025).
- Sprengholz, P., Siegers, R., Goldhahn, L., Eitze, S. & Betsch, C. (2021). Good Night: Experimental Evidence That Nighttime Curfews May Fuel Disease Dynamics by Increasing Contact Density. *Social Science & Medicine*, 286, 114324-114324.
- Thompson, J. & Wattam, S. (2021). Estimating the Impact of Interventions against COVID-19: From Lockdown to Vaccination. *PLoS ONE*, 16(12), e0261330.
- Office of the United Nations High Commissioner for Human Rights (OHCHR), Compilation of statements by human rights treaty bodies in the context of COVID-19. Retrieved from: https://www.ohchr.org/sites/default/files/Documents/HRBodies/TB/COVID19/External_TB_statements_COVID19.pdf (accessed: May 8, 2025).
- Republika Slovenija (gov.si). Omejitev gibanja med statističnimi regijami in ponoči ter omejitev zbiranj nad 6 oseb. Retrieved from: <https://www.gov.si/novice/2020-10-19-omejitev-gibanja-med-statisticnimi-regijami-in-ponoci-ter-omejitev-zbiranj-nad-6-oseb/> (accessed: May 9, 2025).
- Uredništvo Mladina (2021). Fafangel: "To je policijska in ne epidemiološka ura." *Mladina*. Retrieved from: <https://www.mladina.si/205836/fafangel-to-je-policijska-in-ne-epidemioloska-ura/> (accessed: May 8, 2025).
- Velias, A., Georganas, S., & Vadoros, S. (2022). COVID-19: Early Evening Curfews and Mobility. *Social Science & Medicine*, 292, 114538-114538.
- World Health Organization, Addressing Human Rights as Key to the COVID-19 Response. Retrieved from: <https://www.who.int/publications-detail-redirect/addressing-human-rights-as-key-to-the-covid-19-response> (accessed: May 8, 2025).

Povzetek v slovenskem jeziku

Država mora zagotavljati varstvo javnega zdravja in preprečevati širjenje nalezljivih bolezni, kr lahko v določenih okoliščinah zahteva omejevanje posameznih človekovih pravic. Hitro ukrepanje je sicer ključnega pomena, vendar mora biti v skladu z ustavnimi jamstvi. Med epidemijo COVID-19 je Slovenija uvedla policijsko uro, ki je trajala 174 zaporednih dni. Ustavno sodišče Republike Slovenije ni presojalo njene ustavnosti, saj je s tem povezane pobude zavrnilo. Članek proučuje pravno podlago policijske ure, ustavne standarde, ki urejajo takšen ukrep, in ali so odloki izpolnjevali zahteve zakonitosti, nujnosti in sorazmernosti v demokratični družbi. Ugotovitve kažejo, da je bila policijska ura v Sloveniji uvedena na neustavni pravni podlagi. Ustavno-pravna analiza, opravljena v članku, pa dodatno potrjuje njeno neskladnost z Ustavo Republike Slovenije.