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# ACCESS TO JUSTICE IN TIMES OF PANDEMIC

*THE SPECIFIC ROLE OF ADMINISTRATIVE COURTS PROTECTING FUNDAMENTAL RIGHTS*

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ETJN 2020 WEBINAR SERIES

- I. Access to justice as a fundamental right and «states of exception»
- II. Sanitary crisis and the functioning of judiciary systems
- III. The specific role of Administrative Courts: protecting fundamental rights *vis-à-vis* public responses to the pandemic

## 1. [SPAIN] *TRIBUNAL SUPREMO* 25.03.2020

### Is medical protection material at the hospitals sufficient?

- Confederation of Medical Unions vs. Spanish Government
  - The Court recognizes the Government's obligation to provide sufficient and effective protection material, as well the duty of public bodies to take "all the possible efforts"
  - But, at the same time, recognizes that there are no evidence of these efforts are not being pursued by Spanish authorities
  - By the contrary, the stance of public bodies proves that "all kind of initiatives are being deployed to satisfy it"
  - In other words, is not for the Courts to control the exact sufficiency of public measures regarding the purchase of medical protection material
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## 2. [FRANCE] *CONSEIL D'ÉTAT* 30.04.2020

### Freedom of movements by bicycle

- French federation of bicycle users vs. Prime-Minister/Local bodies
  - It was not clear, by the legislative and administrative measures adopted during the lockdown, if the authorized movements/physical activities can be made by bike
  - The Court recognizes that freedom of movement, as well as personal freedom, were at stake
  - So, condemns the French Government to make public notice of the exact rules concerning the use of bikes
  - In other words, the real problem was the lack of public information regarding the use of bikes in public spaces (and not properly the restrictive rules on it)
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### 3. [FRANCE] *CONSEIL D'ÉTAT* 18.05.2020

#### Freedom of worship/reunion in worship buildings

- Many French religious associations vs. Government
  - After the general lockdown, reunion at worship buildings was still very restricted (as compared to restrictions imposed on other activities)
  - The Court recognizes that freedom of worship/religion, in its collective dimension, was at stake
  - The Court recognizes the key role of proportionality
  - So, condemns the French government to repeal the restrictive measures and to adopt other more proportionate (not specifying however its precise extent)
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## 4. [FRANCE] *CONSEIL D'ÉTAT* 13.07.2020

### Freedom of economic activity/prohibition of opening nightclubs

- Many nightclubs owners vs. Government
- The Court recognizes that freedom of economic activity was at stake
- But, having in account all scientific evidence (as provided by scientific bodies), it was not possible to conclude that the closure of nightclubs was “manifestly illegal” *vis-à-vis* the duty to protect public health
- A traditional application of the “*erreur manifeste d’appréciation*” theory

## 5. [FRANCE] *CONSEIL D'ÉTAT* 16.10.2020

### Freedom of economic activity/prohibition of opening gyms

- Many gyms owners vs. local bodies
  - The Court recognizes that freedom of economic activity was at stake
  - But, having in account all scientific evidence (as provided by scientific bodies), it was not possible to conclude that the closure of gyms was “manifestly illegal” *vis-à-vis* the duty to protect public health
  - Another traditional application of the “*erreur manifeste d’appréciation*” theory
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## 6. [ITALY] *CONSIGLIO DI STATO* 21.07.2020

### Freedom of economic activity/prohibition of opening swimming pools

- Swimming pool owner vs. Government
  - The Court recognizes a generic preference of public health protection over economic interests
  - The Court considers the increasing number of infections all over the country
  - So, simply rejects the interim measure
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## 7. [SPAIN] *TRIBUNAL SUPERIOR DE JUSTICIA DE MADRID* 08.10.2020

### Regional confinement measures in Madrid

- The Court does not approve the measures adopted by Public Health authorities
  - The main issue: the (in)sufficiency of ordinary laws to provide public powers on the restriction of numerous fundamental rights (in the case, freedom of movement was the main right at stake)
  - Obligations derived from the principle of legality *vis-à-vis* the restriction of fundamental rights: it is necessary that ordinary laws *expressely* and *specifically* provides public authorities the power to limit fundamental rights
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## 8. [PORTUGAL] *SUPREMO TRIBUNAL ADMINISTRATIVO* 10.09.2020

### Freedom of reunion

- The main issue: again, the (in)sufficiency of ordinary laws to provide public powers on the restriction of numerous fundamental rights (in the case, freedom of reunion was the main right at stake)
  - Unlike the Spanish Court, the Portuguese Supreme Court recognizes that ordinary laws (Health Protection Laws) provide sufficient legal basis to restrict fundamental rights (... even if these restrictions are not fully specified by law)
  - The Court also recognizes the relevance of international recommendations (WHO regulations)
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