

**CENTRAL OR REGIONAL CORONA-MANAGEMENT? A
JOURNEY THROUGH TIME IN THE JUNGLE OF ORDINANCES**

ANNUAL REPORT - 2020 - AUSTRIA

Peter BUßJÄGER,

Mathias ELLER,

Alice MEIER*

INDEX

1. INTRODUCTION

2. THE LEGAL FRAMEWORK OF COMPETENCES IN CRISIS MANAGEMENT

**3. AT A GLANCE CHRONOLOGY OF THE LEGAL BASIS FOR THE FIRST “CORONA
WAVE”**

3.1 The federal level

3.2 The regional level

3.3 Assessment

* This paper is a modified version of Peter Bußjäger/Mathias Eller, Zentrale oder regionalisierte Corona-Bekämpfung? Eine Zeitreise durch den Verordnungsdschungel, in: Österreichisches Jahrbuch für Politik 2020 (in preparation).

**4. THE LEADING DECISIONS OF THE CONSTITUTIONAL COURT
(VERFASSUNGSGERICHTSHOF - VfGH)**

5. REGIONALIZED CORONA-MANAGEMENT THERE AND BACK

5.1 Visualization and evaluation of the corona virus traffic-light system

5.2 At a glance chronology of the Corona-Ordinances in Autumn 2020

5.3 Assessment

**5. IMPACTS ON THE LEGAL SYSTEM OF A LACKING LONG-TERM
STRATEGY**

6. SUMMARY: CHAOS! WHICH CHAOS?

1. INTRODUCTION

Times of crisis naturally put the rule of law to a severe test. The legislator and the regulator are both particularly challenged in this regard: the measures anticipated by the policy-makers need to be translated into legislative text as quickly as possible, whereas fundamental rights and freedoms (such as the right to liberty, the freedom of movement or the freedom of assembly and association) need to be specifically accounted for. In fulfilling this task, clear and simple language is key to allow the addressees to comprehend and ultimately adhere to the measures. This is all the more difficult when the measures change nearly on a weekly basis. Hence, individuals cannot be expected to maintain an overview of the measures currently (and barely still) in force or (just recently) expired. A certain degree of persistence and predictability of the law is notoriously indispensable for the acceptance of and the adherence to legal norms.² In an ideal scenario the legal framework would already

² Not however for a flood of laws and its negative consequences. Cf. in this respect Adamovich, Die Gesetzesflut (1994), in VfGH (Supreme Constitutional Court) (ed.), *Ausgewählte Werke – FS Ludwig Adamovich* (2012) 151

have been set and preceded the outbreak of the public health emergency. This conclusion could not apply to Austria, as will be further illustrated herein. The present contribution elucidates and critically analyses the legislative efforts undertaken at federal and provincial level throughout the COVID-19 crisis.

2. THE LEGAL FRAMEWORK OF COMPETENCES IN CRISIS MANAGEMENT

One would only vainly attempt to find emergency law in the Austrian federal Constitution. There is also no specific field of competence comparable to that existing with regard to disaster control or disaster relief. Nonetheless, linkages to disaster prevention, contrast and recovery can be found in several existing subject matters. In terms of the constitutional allocation of competences, following picture emerges in relation to the COVID-19 pandemic: Pursuant to Art. 10, par. 1, sub-par. 12, the Federation has statutory and executive powers in the subject matter of public health, albeit “*with the exception of burial and disposal of the dead, municipal sanitation and first aid services, but only sanitary supervision with respect to hospitals, nursing homes, health resorts and natural curative resources*”³. Thus, the statutory basis to contrast emerging pandemics and epidemics needs to be introduced at the federal level. In the absence of dedicated federal authorities, the enforcement of the measures is carried out by the district administrative authorities of the Provinces. Indirect federal administration represents an important instrument in the Austrian federal system for bringing together federal and provincial enforcement segmentation and

ff.; Bußjäger, Gehorsam und Gesetzesflut, ÖJZ 1993, 185 ff; Bußjäger, Der Rückzug des Rechts aus dem Gesetzesstaat (1996).

³ See for example “*Österreichischer Pandemieplan wird derzeit überarbeitet*“, in: Kurier of 30. 01.2020, available at: https://www.kleinezeitung.at/oesterreich/5761121/Coronavirus_Oesterreichischer-Pandemieplan-wird-derzeit-ueberarbeitet (17.03.2021).

can prove to be an advantage not to be underestimated, especially in response to a pandemic. Ultimately, the competences in epidemic and pandemic control are therefore clearly defined and do not, in principle, stand in the way of an efficient and rapid response to public health crises.

Therefore, in light of the illustrated allocation of competences, the federation would have been responsible for developing a pandemic plan before the outbreak of the COVID-19 crisis. And yet, even months after its outbreak, the aforementioned plan was not in sight, even though, at same time, the development of the 'influenza pandemic plan' had already been envisaged at the end of January 2020. Austria was just as unprepared for a health crisis of this proportion also with reference to the legal framework of March 2020. The Epidemic Diseases Act of 1950, which is essentially based on the Prevention and Control of Communicable Diseases Act of 1913, proved to necessitate a reform and to be unsuitable to contrast the COVID-19 crisis. The intent of the COVID-19 Measures Act, BGBl I⁴ 12/2020 et seq. 23/2020, hastily approved by the Parliament, was to introduce a statutory basis for the management of the crisis. A first round of ordinances based on this Act were to enforce the first “lockdown” in Austria.

3. AT A GLANCE CHRONOLOGY OF THE LEGAL BASIS FOR THE FIRST “CORONA WAVE”

3.1 The federal level

The COVID-19 Measures Act was the starting point of a sequence of countless *ad hoc* laws and ordinances, that were either newly adopted or amended at the federal level in

⁴ Federal Law Gazette I.

response to the COVID-19 pandemic. The most important corona-provisions at the federal level, chronologically ordered according to their entry into force, are illustrated below. It should be noted that the majority of the below-mentioned legal provisions either only remained in force for a short period of time or were amended shortly after their legal validity - in some cases even several times. The numerous COVID- 19 laws also lead to a partial adjustment of the existing federal laws to the new conditions (e.g.: suspension of deadlines; legislative anchoring of video conferences, ordinance on short-time work; ordinance on compensation etc.).

Legal Provision	Federal Law Gazette	Entry into force
COVID-19-FondsG (Crisis Management Fund Act)	BGBI I 12/2020	16.03.2020
COVID-19-Measures Act	BGBI I 12/2020	16.03.2020
COVID-19-Measures-Ordinance-96 (prohibition to enter certain establishments)	BGBI II 96/2020	16.03.2020
Ordinance pursuant to § 2 sub-par. 1 of COVID-Measures Act (ban on entering public places)	BGBI II 98/2020	16.03.2020
COVID-19-Funds-Ordinance (guidelines for the granting of financial resources)	BGBI II 100/2020	16.03.2020
Ordinance on the Entry into Austria by Air	BGBI II 105/2020	19.03.2020
2. COVID-19-Act (in this context also amendment of the Epidemics Act of 1950)	BGBI I 16/2020	22.03.2020

3. COVID-19-Act	BGBI I 23/2020	05.04.2020
4. COVID-19-Act	BGBI I 24/2020	05.04.2020
5. COVID-19-Act	BGBI I 25/2020	05.04.2020
COVID-Short-time working- Maximum limits-Ordinance	BGBI I 132/2020	07.04.2020
COVID-19-Loosening Ordinance	BGBI II 197/2020	01.05.2020
6. COVID-19-Act	BGBI I 28/2020	06.05.2020
7. COVID-19-Act	BGBI I 29/2020	06.05.2020
8. COVID-19-Act	BGBI I 30/2020	06.05.2020
9. COVID-19-Act	BGBI I 31/2020	06.05.2020
10. COVID-19-Act	BGBI I 32/2020	06.05.2020
11. COVID-19-Act	BGBI I 33/2020	06.05.2020
12. COVID-19-Act	BGBI I 34/2020	06.05.2020
13. COVID-19-Act	BGBI I 35/2020	06.05.2020
14. COVID-19-Act	BGBI I 36/2020	06.05.2020
15. COVID-19-Act	BGBI I 41/2020	15.05.2020

16. COVID-19-Act	BGBI I 42/2020	15.05.2020
17. COVID-19-Act	BGBI I 43/2020	15.05.2020
18. COVID-19-Act	BGBI I 44/2020	15.05.2020

3.2 The regional level

A wide variety of measures were also introduced at the regional level in the form of provincial statutory laws and governmental ordinances, in order to minimize, as much as possible, the impact of the public health crisis and to continuously adapt to the varying epidemiological situation.

Extracts of the most important provisions are presented in the below table, whereby there is a visible tendency to particularly emphasize the protection of more vulnerable groups in the population (children, elderly, care-dependent individuals). Deviating from the measures adopted in other Provinces, Tyrol has notably attempted to overcome the public health crisis by imposing partially stricter traffic movement restriction measures (municipal quarantine). Similarly, also with regard to these legal provisions, it should be noted that in the meanwhile they either are no longer in force or were amended, in some cases recurrently.

Province	Publication	Content	Inkrafttreten
Vorarlberg	LGBI ⁵ 19/2020	COVID-19- <i>Ombibus</i> Amendment	16.03.2020

⁵ Provincial Law Gazette.

	LGBI 22/2020	Ban on entering cableways	14.04.2020
	LGBI 23/2020	Restriction on the operation of kindergartens etc.	14.04.2020
Tyrol	LGBI 33/2020, 34/2020, 35/2020, 41/2020, 44/2020	Quarantine – entire provincial territory	originally 19.03.2020 and ff. amendments
	ao. “Bote für Tirol” 128/2020, 155/2020, 163/2020, 166/2020, 186/2020, 195/2020 etc.	Quarantine – single municipalities	varying (between 13.03.2020 and 28.03.2020)
	„Bote für Tirol“ 116/2020, 204/2020, 222/2020	Ban on gatherings – all districts	12.03.2020 resp. 04.04.2020
Salzburg	LGBI 26/2020	Playground access ban Ordinance	24.03.2020
	LGBI 37/2020	S. KBBG ⁶ – Covid-Ordinance	04.04.2020
Upper Austria	LGBI 35/2020	UA COVID-19-Act	25.04.2020
	LGBI 40/2020	Restriction on the operation of childcare facilities	25.04.2020
Lower Austria	LGBI 34/2020	LA COVID-19-Gesetz	18.04.2020
	LGBI 36/2020	Restriction on the operation of childcare facilities	26.04.2020
Carinthia	LGBI 17/2020	Coronavirus – Curfew Ordinance	16.03.2020

⁶ Ordinance ensuring adequate child education and care in times of epidemic spread of SARS-CoV 2.

	LGBI 29/2020	Carinthia COVID-19-Law	11.04.2020
Styria	LGBI 34/2020	COVID19 – Styr. Municipal Law Amendment Act	08.04.2020
	LGBI 35/2020	COVID-19-Omnibus Act	08.04.2020
	LGBI 39/2020	Corona-Data - Ordinance	17.04.2020
Burgenland	LGBI 8/2020	Curfew for the hospitality sector	16.03.2020
	LGBI 25/2020	Adaptation of the Provincial legal system due to the corona-pandemic	17.04.2020
Vienna	LGBI 18/2020	Ban to enter certain care facilities	14.04.2020
	Offical Gazette of the City of Vienna 13/2020	Restriction on the operation of childcare facilities	18.03.2020

3.3 Assessment

Throughout the first "lockdown", the statutory laws passed by the National and the Federal Council, as well as the ordinances enacted mostly by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection for the entire federal territory, were generally well accepted by the population. Indeed, the striking images from the city of Bergamo in northern Italy left a significant mark on the perception of Austrian citizens. Further, as the scientific knowledge of the novel SARS-CoV-2 pathogen was also more than scanty at that time, the limitations of fundamental rights and freedoms associated with the restrictive measures, introduced for the sake of society and public health, were widely supported by each individual addressee. However, as it became manifest only few months later, the initial legal basis proved to be insufficient in certain cases (see hereafter Section IV.). This is to be attributed to the high time constraint, on one hand, but also to the scarcity of personnel in the Health Department at the federal level on the other. At the regional level, the preferred

approach was to respond to the temporary need for adaptation at the legislative lever through the adoption of separate provincial COVID-19-laws. As far as can be detected, only Salzburg has refrained from issuing its own COVID-Act and rather proceeded with the necessary adjustments in the relevant legislative subject matters. All in all, the first “high-corona-phase” has determined a significant statutory activity, with the introduction of new laws and ordinances, as well as the amendment of existing legal provisions at both the federal and regional level. This, against the backdrop of norms that were partially only valid for a few days or amended several times, so that most probably even jurists accustomed with the single subject matters struggled to maintain a general overview.

4. THE LEADING DECISIONS OF THE CONSTITUTIONAL COURT (VERFASSUNGSGERICHTSHOF - VfGH)

In its June/July session, the VfGH was confronted with some of the so-called „Corona-Ordinances”, which were enacted under the COVID-19-Measures Act. In particular, the Ordinances of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection, which normed the prohibition to access public spaces and customer dedicated sections of commercial establishments of a certain size, were found to be unlawful by the Court⁷, since lacking a clear legal authorization for a far-reaching interference with the right of free movement. Conversely, the highly controversial compensation schemes in case of closing business facilities, pursuant to the COVID-19-Measures Act, resisted the constitutional scrutiny. The Court highlighted that the legislator holds a wide margin of discretion in the matter under scrutiny when combating the economic consequences of the pandemic. Along those lines, numerous legislative measures were set to mitigate the economic consequences for affected companies (fixed cost subsidies; hardship funds; short-

⁷ Vf 14. July 2020, V 363/2020 and V 411/2020.

time). This also compensated the compression of the right to property associated with the closing of businesses.

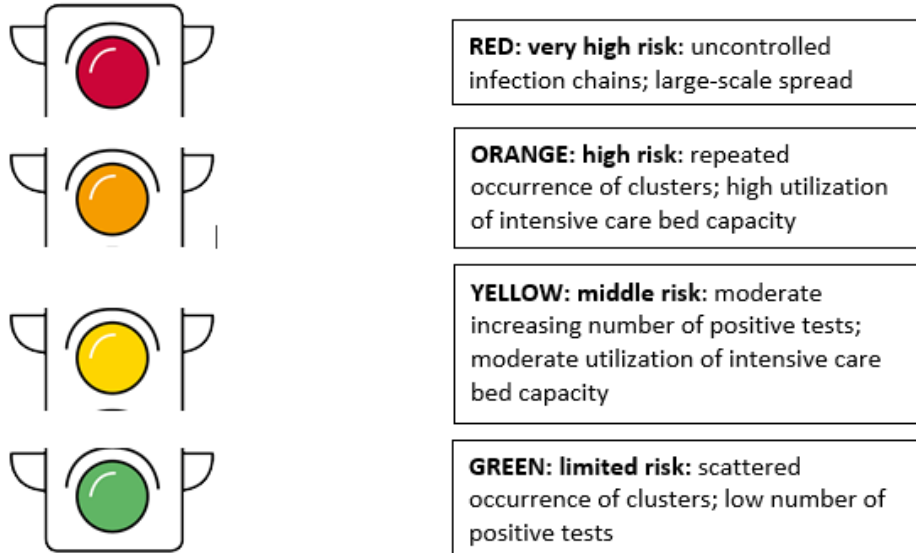
Although the COVID 19 Measures Act withstood the constitutional scrutiny, a comprehensive revision of the regulatory framework, with the aim of providing clearer guidance to the regulator, was unavoidable.

5. REGIONALIZED CORONA-MANAGEMENT THERE AND BACK

In summer 2020, during the easing phase in the spread of the virus, as the numbers of infections largely settled at a lower rate, the attention was fully drawn to developing an effective strategy to face the approaching autumn and winter. The key stakeholders all knew that with the forthcoming decrease of temperatures a renewed aggravation of the situation was only a matter of time. Ultimately, in the attempt to provide a unified response to the crisis, the political front introduced the so called “corona traffic-light system”. This system links specific preventive and behavioral measures to the color attributed, from time to time, to each region on the basis of the detected transmission rate. It is hence clear that Austria provisionally opted for a mix of federal-wide and regional regulations to contain the spread of the pandemic. However – as will be further illustrated herein – the contrary trend towards a recentralization in the COVID-19 management could already be detected just a few months later.

5.1 Visualization and evaluation of the corona virus traffic-light system

Following graphic is intended to illustrate the corona traffic-light:



A 20-member commission, composed of representatives of the federation, the provinces and experts of the federation, meets weekly on the basis of different criteria for evaluation – transmissibility, search for sources, resources, tests - to propose recommendations for action based on the current epidemiological situation⁸. From the beginning, on September 3. 2020, except the federal capital Vienna, only Linz, Graz and one Tyrolean district were attributed a yellow color, while the rest of Austria was shaded green. Since 5 November 2020, the entire federal territory has been switched to "red" – the situation remained unchanged over the last two months.

The illustrated corona traffic light system is based on an amendment of the COVID 19 Measures Act, BGBl I 104/2020, which entered into force on 26 September 2020. Thus, the legal basis of the system, and in particular the establishment of the "corona commission",

⁸ In this regard see in detail: <https://corona-ampel.gv.at/> (21.12.2020).

was only generated weeks after the start of the system's operativity. This circumstance is extremely regrettable from the perspective of the rule of law, especially since there would have been sufficient time to initiate the legislative preparatory work already in the summer. The possibility to introduce regionally differentiated measures resulted from a so-called "cascade regulation". Accordingly, additional measures for each provincial territory, or a region thereof, can be stipulated by means of ordinances of the governor or the competent district administrative authority. This strategy has both advantages and disadvantages: The greatest advantage lies in the option to offer a quick and targeted response to different epidemiological conditions encountered at the regional level. As a result, scattered occurring clusters or infection hotspots could be counteracted with more rigid and effective measures. However, on the other hand, differentiated regulations at provincial and district level further complicated the efforts to maintain a general overview of the existing and applicable measures. Indeed, in line with this regional differentiation, what would apply in the neighboring district not necessarily applies in one's own district. Regardless, in our opinion, regional diversification still seems to be the better alternative, if compared to the approach of centralized states such as France, where restrictive packages of measures had to be implemented uniformly even in regions with a low infection rate.

5.2 At a glance chronology of the Corona-Ordinances in Autumn 2020

As an output of the federal government's preferred strategy towards an intertwined conglomerate of federal-wide and regional regulations, the following represents an overview of the most important COVID-19 laws and ordinances at the federal, provincial and the district levels - ranked by chronological order.

21.08.2020: Due to the rising of the infection figures, the ordinance on the entry into Austria is amended in no time for the purpose of containing SARS-CoV-2 (BGBl II 372/2020). The result is an unprecedented traffic chaos at the border between Carinthia and Slovenia.

29.09.2020: The COVID-19 Measures Act, BGBl I 104/2020, enters into force.

End of September: the western Provinces Tyrol, Vorarlberg and Salzburg agree to introduce an anticipation of the curfew to 22:00 pm. In Tyrol, the associated ordinance enters into force on 29. September (LGBI 100/2020).

16.10.2020: In Salzburg, in addition to stricter regulations regarding educational institutions etc., a province-wide ordinance by the governor (LGBI 97/2020), imposes even stricter measures for the political district of Hallein and imposes a 14-day "municipal quarantine" on the municipality of Kuchl.

16./17./19.10.2020: Tyrol sets further measures to contain the spread of the virus (registration of guests and customers in the hospitality sector; events; activities of associations; visiting regulations for certain premises) by means of provincial ordinance (LGBI 106/2020).

23.10.2020: Mandatory safe distance obligation of minimum one meter and obligatory mouth-nose protection when entering public places is (re)introduced nationally. At the same time, sport activities and sport events in Burgenland are linked to the compliance with stricter regulations (LGBI 67/2020).

14.11.2020: Carinthia introduces additional restrictive measures to prevent the spread of COVID-19 in long-term nursing and retirement homes (LGBI 94/2020).

17.11.2020: The second lockdown in Austria is regulated by the COVID-19 Emergency Measures Ordinance (BGBI II 479/2020). The measures were originally designed to expire on the 6th of December 2020.

05.12.2020: Styria introduces a prohibition for external individuals to enter child care and education facilities for the purpose of combating the spread of COVID-19 (LGBI 108/2020).

07.12.2020: Upper Austria imposes additional provisions to mitigate the transmission of COVID-19 in nursing and retirement homes by means of a COVID-Measures Ordinance.

21.12.2020: The Lower Austrian COVID-19-Act is published (LGBI 107/2020).

22.12./24.12.2020: Introduction by ordinance of the Governors of additional measures to combat the spread of COVID-19 in Ski-Resorts in Vorarlberg⁹, Tyrol¹⁰, Salzburg¹¹, Styria¹², Upper Austria¹³ and Carinthia¹⁴.

28.12.2020: Following the example of other Provinces, Styria imposes an entry ban for external individuals and further requirements and conditions for the operation of child education and care facilities to avoid further spread of COVID-19 (LGBI 132/2020).

⁹ LGBI 92/2020.

¹⁰ LGBI 142/2020.

¹¹ LGBI 135/2020.

¹² LGBI 130/2020.

¹³ LGBI 141/2020.

¹⁴ LGBI 115/2020

5.3 Assessment

The introduction of the coronavirus traffic-light system determined a significant shift of responsibility in the management of the corona crisis towards the Provinces.¹⁵ Considering that the Provinces have extensively made use of their possibility to adopt regionally differentiated provisions, they surely cannot be accused of having abdicated their responsibility. Contact tracing, implemented by the district administrative authorities since the spring, ultimately proved to be a stumbling block in the regional response to corona. This, however, does not come as a surprise, considering the enormous increase of the work-load due to the spread of the virus and increase of the infection rate. The authorities simply reached their capacity limits.

In turn, the no longer retraceable infection hotspots, which emerged in the course of the autumn lead to the adoption of nationally applicable measures and to a re-centralization of the corona-management. This trend became the more evident with the COVID 19 Emergency Measures Ordinance, which came into force on 17 November 2020 and regulated the second "lockdown" in Austria. It therefore proved true, as hypothesized herein, that the regional scope for decision-making in the pandemic-management decreases proportionally to an equal extent of the increase of the number of infections.

6. IMPACTS ON THE LEGAL SYSTEM OF A LACKING LONG-TERM STRATEGY

¹⁵ See for example „Corona: Wie die Regierung die Verantwortung an die Länder abgibt“, in: Kurier of 10.07.2020, available at: <https://kurier.at/politik/inland/corona-wie-die-regierung-die-verantwortung-an-die-laender-abgibt/400968314> (22.12.2020).

The COVID 19 Emergency Measure Ordinance, which originally contained a sunset clause of three weeks, was lastly extended until the 6th of January 2021, as the epidemiological situation had only marginally changed over time. The operation of restaurants and hotels was supposed to be allowed to resume only after the expiration of the aforementioned term. Retailers and service providers, on the other hand, were allowed to operate their businesses under restrictions, starting from 7 December 2020, and in compliance with a curfew between 20:00 pm and 06:00 am. Exemption regulations were also issued over the Christmas holidays and for New Year's Eve. All the mentioned measures were legally anchored in numerous ordinances at the federal level.

Just two weeks later, most of the measures planned for the Christmas holidays were already "old news". Indeed, as of 26 December 2020, curfew restrictions were normed around the clock once again and larger gatherings of people were no longer permitted. Apart from the (now) usual exceptions, shops were not to reopen until 18 January 2021 - as it later turned out, this deadline could not be met either. The associated ordinances¹⁶ to be followingly amended came into force shortly before Christmas.

Currently, the "4th COVID-19 Protection Measures Ordinance"¹⁷, which came into force on the 8th of February 2021, regulates the COVID-19 determined social distancing in Austria. Attempts to prevent, or better mitigate, the spread of the virus were once more pursued with stricter rules, for example by introducing a 2-meter minimum distance regulation in all public places and closed spaces. The newly emerged coronavirus mutations represent the current threat and the new turning point in the evolution of the ongoing pandemic.

¹⁶ This regards the 3. COVID-19-Protection-Measures-Ordinance and the 2. COVID-19-Emergency-Measures-Ordinance.

¹⁷ BGBl II 58/2020

The COVID-19 Virus-Variations-Ordinance, Federal Law Gazette II 63/2021, which came into force on 12 February 2021, also specifically tackled the Tyrolean situation, in light of the significant increase of recorded cases of the virus strain commonly referred to as the "South Africa variant". With the exception of the district of East Tyrol and the Tyrolean municipalities of Jungholz and the Rißtal, in the municipal area of Vomp and Eben am Achensee, the Tyrolean population was isolated until the beginning of March in order to prevent the further spread of the virus mutation. Meanwhile the COVID-19 Virus-Variations-Ordinance of the 12th of February has expired, while special restrictions to contrast the spread of the disease in the Province are still in place at district level, limitedly to the district of Schwaz and in selected municipalities (municipality of Haiming, Roppen, Virgen, Matrei and Arzl im Pitztal).

In general, it should be emphasized that policy-makers so far conclusively lacked a rigorous strategy for combating the pandemic, whilst *ad hoc* decisions are announced almost at weekly intervals. This naturally also affects the corpus of the existing laws, which needs to react flexibly to the ever-changing framework conditions. This dynamic conceals some dangers to the rule of law, which have already been anticipated in the introduction. Indeed, it becomes very challenging for the individual to distinguish between the provisions currently in force and the provisions that have just expired. A lower acceptance of the measures is hence the logical consequence.

As the pandemic continues in its course, it must also be critically questioned whether the massive interference with the fundamental rights and freedoms of citizens, which have persisted for months now, can still be justified. On one hand, from a legal perspective, a distinction between recovered or vaccinated individuals and those who have not yet been infected is impending. The differentiation would rest on the circumstance that the former no longer pose a risk to the general public, being no longer at risk of infection. Measures restricting personal freedoms therefore seem to lack any justification for this - progressively expanding - group. Further, on the other hand, the appropriateness of lockdown-measures to contain the infection rate may also be questioned. Indeed, their suitability mostly depends on the willingness of the population to adhere to the freedom restricting measures. Considering

the recently crowded shopping centers and the circulation on the very populated streets, that is by no means comparable to the situation existing in March 2020, the readiness to adhere to further limitations can be expected to be very low. Again, it will be up to the decision-makers at federal and provincial level to provide the necessary and adequate solutions. At least, with the existing vaccines, there is a glimmer of hope for an upcoming return to the usual "normality".

7. SUMMARY: CHAOS! WHICH CHAOS?

The fight against this public health crisis, which started in mid-March 2020, challenges since then policy-makers and the enforcement authorities at all levels. While the first "lockdown" was regulated through nationally applicable measures, the introduction of the coronavirus traffic-light system has subsequently determined a perceptible shift towards a regional pandemic control. In light of the rapidly increasing infection numbers and the associated overload of the health authorities in the provinces, during the past autumn 2020, we assisted to a recentralization of the corona management. This tendency persisted nearly unaltered in 2021.

From a legal perspective, with regard to the allocation of competences in the context of the management of a health crisis, one could hardly define the situation in terms of chaos. Pursuant to the Austrian Constitution the Federation is to be held accountable for a statutory response to the crisis. The Federation should provide clear guidelines to be then enacted by the Provinces through the mechanism of indirect administration. The division of tasks is surprisingly clearly defined in this subject matter.

Further, there is no sign of chaos in the statutory provisions and ordinances at federal and provincial level. Whether there has been an "overproduction" of laws and ordinances, with threatening effects on the rule of law, is ultimately a matter of dispute that cannot be conclusively resolved. In any case, it should be emphasized that a regional pandemic response naturally requires "more" provisions due to the quite diverging epidemiological

situations. This diversification may occur at the expense of overall clarity; however, it enables the design of goal-oriented measures.

The lack of a long-term strategy to combat the pandemic so far has negatively reflected on the corpus of existing law. This is now characterized by a tremendous mechanism which is hardly comprehensible for the layman citizen. As an unwanted consequence of the fluctuating easing and tightening of the measures and of the infection rate, the underpinning legal provisions must also be constantly adapted. Conclusively, although the orientation through this jungle of regulations is becoming increasingly arduous, there is no evidence of a complete disorder.