



D2 Research Outline

WP3: The Making and Breaking of Rules in crisis situations: The Rule of Law and Democratic Participation



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Research outline

Abstract

The Covid-19 pandemic was a stress test to democracies. LEGITIMULT investigates the political legitimacy of governments' crisis responses in the context of multi-level political decision-making systems. Work package 3 focuses on the role of democratic participation and the rule of law in a politically legitimate crisis governance.

The second deliverable of work package 3 outlines the research design of five empirical studies that investigate the rule of law and democratic participation in the context of multilevel governance. Each of the five studies focuses on a crucial aspect of a legitimate crisis governance. These are the following aspects: 1) the declaration of a state of emergency; 2) parliamentary oversight; 3) judicial oversight; 4) the limitation of electoral participation; and 5) the role and nature of expert advice bodies.

In order to study these five aspects of legitimate crisis governance, we develop a set of hypotheses addressing each of these five aspects of legitimate crisis governance. In addition, we present lists of indicators that allow measure the respective aspect of legitimate crisis governance. The research outline concludes with a discussion of the next task of work package 3.



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1. Introduction

Work package 3 studies Covid-19 crisis governance from the perspective of democratic participation and the rule of law in the context of multilevel governance. The first deliverable of work package 3 reviewed the literature on Covid-19 crisis governance focusing on its democratic performance and political legitimacy in the context of multilevel governance. Based on this literature review, the deliverable outlined and discussed five principles that allow to assess the democratic quality of the processes and outputs of a crisis governance that are: 1) legality, 2) participation, 3) transparency, 4) accountability and 5) the protection of freedoms and rights. The standards have been identified based on the work on political legitimacy of political institutions (Scharpf 1999, Schmidt 2013; 2022; Tallberg and Zürn 2019). In a next step, the deliverable identified and presented an overview of available data sources and indicators that would allow to assess these five democratic principles of Covid-19 crisis governance. Finally, the deliverable discussed case selection for qualitative in-depth analyses.

The second deliverable of work package 3 builds on the insights of the first deliverable and aims to formulate hypotheses to be tested combining a quantitative analysis with in-depth qualitative case studies. The second section of this deliverable includes the research outline of five empirical studies. Each of the five studies focuses on a crucial aspect of a legitimate crisis governance. The first study focus on executives' emergency law-making. It investigates the question why some state- and regional-level authorities have declared a state of emergency. The next two studies address whether and how legislatures and courts checked and constrained executives' power during the pandemic. The second study addresses parliamentary oversight. It studies why in some countries and regions parliaments established Covid-19 inquiry commissions and in others not. The third study examines judicial oversight focusing on the question why judicial review was stronger in some countries and regions than in others. The fourth study focuses on elections during the pandemic and investigates why in some countries various elections have been postponed. Finally, the fifth study addresses the role of expert advice in Covid-19 crisis governance. It investigates why in some countries expert advice bodies have been more influential than in others.

In order to study these aspects of legitimate crisis governance, we develop a set of hypotheses and present indicators to measure the relevant aspect of legitimate crisis governance. Finally, section five concludes by providing an outlook on the future steps.

2. Research outline

2.1 State of emergency

Crisis governance is regarded as the hour of the executive. To describe the increase of the power of the executive branch of government during crisis governance, scholars have used the term “unbound executive” (Posner and Vermuele 2009; 2011) or “executive aggrandizement” (e.g. Bermeo 2006). Often it is the declaration of a state of emergency that lends executive extraordinary powers that considerably weakens checks and balances. There is therefore the risk that executives use a crisis as an opportunity to increase their powers and



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misuse their emergency powers and undermine democracy. Lührmann and Rooney's (2021) investigation provide empirical evidence that supports the thesis that the declaration of a state of emergency correlates with autocratization. The results of their analysis spanning from 1976 to 2006 and including 60 countries show that governments that have declared the state of emergency were more likely to autocratize. Unfortunately, Lührmann and Rooney's study does not consider the role of multilevel governance or federalism.

Against the background of the fear of “executive aggrandizement”, scholars, think tanks and international organizations have closely tracked governments' choices to declare the state of emergency during the Covid-19 pandemic (e.g. Bjørnskov and Voigt 2022; Ginsburg and Versteeg 2021; IDEA 2020). Bjørnskov and Voigt (2022) have undertaken a quantitative analysis of the determinants of the declaration of a state of emergency. Following their results, in countries with a higher level of the rule of law and press freedom, executives declared the state of emergency during the Covid-19 pandemic less likely. Bjørnskov and Voigt's (2022) focused on the national level not considering the regional level of crisis governance. In addition, the study ignored that the state of emergency was in some countries extended or newly declared in the second and third wave of the pandemic.

For these reasons, we readdress the question why authorities have declared a state of emergency and analyze it in the context of multi-level governance relying on Bjørnskov and Voigt's (2018a: 2018b; 2022) previous work. We formulate hypotheses on the declaration of a state of emergency arguing that the severity of the crisis and the capacity of the health system shaped authorities' decision to declare a state of emergency. In addition, authorities were more likely to declare a state of emergency if they were less constrained by the legislature and the judiciary.

Hypothesis 1.1: *In countries and regions with higher infection rates and health systems with weaker capacities, national or regional governments declare or prolong a state of emergency more likely.*

Hypothesis 1.2: *In later stages of the pandemic, national or regional governments declare or prolong a state of emergency less likely.*

Hypothesis 1.3: *In countries and regions with weaker legislatures, national or regional governments declare or prolong a state of emergency more likely.*

Hypothesis 1.4: *In countries and regions with constitutional judicial review, national or regional governments declare or prolong a state of emergency less likely.*



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The final hypothesis addresses the multi-level dynamics of the declaration of a state of emergency and formulates an expectation of a bottom-up dynamic.

Hypothesis 1.5: *The more regions declare a state of emergency, the national government declares or prolongs a state of emergency more likely.*

In addition, we expect that a top-down dynamic is less likely in more decentralized countries as the national government is more cautious in such countries to formulate such a consequential measure.

Hypothesis 1.6: *In more decentralized countries the national government declares or prolongs a state of emergency more likely.*

Table 1 presents indicators that map and classify the constitutional emergency clause in each country and region of federal and highly decentralized countries. To collect data on these indicators, we draw on the Comparative Constitutions Project dataset (Elkins and Ginsburg 2022).

Table 1. The indicators to map the constitutional emergency clause

Indicators	Definition and answer categories
Constitutional emergency clause (con_em)	1: yes; 0: no
Constitutional emergency clause can be activated in case of a health crisis (con_em_health)	1: yes; 0: no
Actor(s) authorizing the state of emergency (con_em_act)	1: Government; 2: President; 3: Parliament
Actor(s) approving the state of emergency (con_em_act_expost)	1: Parliament

In a next step, we map whether governments have declared a state of emergency and if yes which types of states of emergency they declared. We draw on International IDEA's dataset (IDEA 2020) on the state of declaration and complement it with data on the regional level, the legal basis of the decisions, the identification of the actors who took the decisions, who gave their authorization and approval.



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Table 2. The indicators to map the declaration and type of the state of emergency

Indicators	Definition and answer categories
Declaration of some type of a state of emergency, answer categories (soe_dec)	1: yes; 0:no
Name of the state of emergency in English (soe_name)	Name
Name of the state of emergency in original language (soe_name)	Name
Type of the legal basis on which the state of emergency has been declared (soe_legal_type)	1: Legislative act; 2: Constitution
Name of the legislative act based on a state of emergency was declared in English (soe_legal_source_doc_eng)	Name
Name of the legislative act based on a state of emergency was declared in original language (soe_legal_source_doc_or)	Name
Name of the legal document in which the state of emergency has been declared (soe_legal_doc_eng)	Name
Name of the legal document in which the state of emergency has been declared (soe_legal_doc_or)	Name
Actor(s) declared the state of emergency (soe_legal_act)	1: Government; 2: Parliament
Date of the first day of the state of emergency (soe_start)	Date
Date of the last day of the state of emergency (soe_end)	Date

2.2 Parliamentary oversight

A central concern about the legitimacy and democratic quality of crisis governance is the shift of power from legislatures to executives. When governments operate in crisis modus, two of the three central dimensions of legislative power, parliaments' direct of influence on policy-making and ex-post oversight of the cabinet are constrained (Sieberer 2011).

However, during the Covid-19 pandemic parliaments were challenged even more fundamentally as social distancing measures hindered parliaments to continue their daily work.



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To comply with social distancing measures, most parliaments formulated organizational measures and implemented new technological tools to hold virtual plenary and commission meetings (Diaz Crego and Kotsanidis 2020: 30-32; Griglio 2020; Pedersen and Borghetto 2021). Other parliaments were forced to interrupt their work during the first wave of the pandemic. Waismel-Manor et al. (2022) investigated the varying level of legislatures' activities and use of technical solutions to ensure the continuity of legislatures' activities of legislatures across 159 countries during the Covid-19 pandemic. Following their results, legislatures were more active and relied more on technical solutions if they were more powerful and when governments consisted of several parties.

Once legislatures found a way to continue their work, parliamentarians could rely on some of the regular ex-ante oversight instruments to monitor and control governments' Covid-19 emergency law-making. For instance, in plenary meetings, MPs have engaged with governments' emergency activities through government statements and through questioning in the plenary during the pandemic (Griglio 2020). Another important aspect of legislative oversight during the Covid-19 pandemic that received relatively a lot of attention was legislatures' power to oversee the budgetary aspects of executives' and the EU's Covid-19 emergency measures (Griglio 2020; OECD 2020). Legislatures' opportunities to oversee Covid-19 crisis responses depended crucially on whether governments have declared a state of emergency and also on the type of emergency that was declared. When governments declared the state of emergency, in some countries, legislatures had to approve this declaration and sunset clauses ensured that legislatures had to support the extension of the state of emergency (Griglio 2020; Lozano et al. 2021).

While the characterization of an unbound executive during the Covid-19 pandemic is not supported by the evidence (Ginsburg and Versteeg 2021), current literature does not provide a systematic and comparative study of parliamentary oversight during the Covid-19 pandemic and explanations for their documented variation (but see e.g. Bolleyer and Salát 2021). At the same time a growing number of country studies with a focus on parliaments' activities during the pandemic is published (Cartier et al. 2020; Kettemann and Lachmayer 2022; Chiru 2023). However, these country studies largely ignore regional parliaments (but see Höhne 2022 on Germany's state parliaments). Therefore, in work package 3, we aim to investigate and explain parliamentary oversight during the Covid-19 pandemic. The Inter-Parliamentary Union (IPU) defines parliamentary oversight as "the means by which parliament and parliamentarians, on behalf of the people, hold the government to account between elections" (IPU 2017: 13). Scholars often differentiate between ex-ante and ex-post parliamentary oversight. Often ex-ante forms of oversight are summarized under the label parliamentary scrutiny whereas the term parliamentary oversight refers to ex-post forms of oversight.

In work package 3, we investigate the establishment of legislative inquiry commissions addressing Covid-19 crisis governance. Such inquiry commissions are an ex-post control instrument. We first focus on the impact of institutional factors on the establishment of a legislative inquiry commission. Parliamentarians can more easily establish special inquiry commissions if they need to overcome lower hurdles to establish. If parliamentarians require



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less coordination and cooperation among parliamentarians and parties, they will more likely request the establishment of Covid-19 inquiry commissions.

Hypothesis 2.1: *In countries and regions where the institutional hurdles for the establishment of legislative inquiry commissions are lower, a legislative Covid-19 inquiry commission is established more likely.*

Hypothesis 2.1 is therefore founded in the idea that the institutional rules for the establishment of inquiry commissions and the power of the committee system at the onset of the crisis have an impact on the establishment of an inquiry commission. But it is also likely that the role of the legislature during the Covid-19 crisis governance have shaped whether an inquiry commission has been set up. Ex-post legislative inquiry commissions are potentially an instrument to compensate and fight back for the loss of legislature's power in crisis governance. Some legislatures went into to a recess in the very initial phase of the pandemic. For instance, in mid-March 2020, the offices of both chambers of the Swiss Federal Parliament decided to suspend their regular spring session including committee meetings (Uhlmann and Scheifele 2020: 7). The parliament paused until an extraordinary session was held between May 4-6, 2020. Legal scholars have questioned the proportionality and legality of this act of self-suspension (Ammann and Uhlmann 2022: 189-191). This self-imposed break of the Swiss Federal Parliament is considered one of the most controversial steps of Switzerland's Covid-19 crisis response. Covid-19 inquiry commissions are potentially a tool for legislatures to demonstrate their power and to restore their damaged reputation.

Hypothesis 2.2: *In countries and regions where legislatures restricted their activities more in the beginning of the Covid-19 pandemic, a legislative Covid-19 inquiry commission is established more likely.*

The loss of power of legislatures was not only due to a break of their activities but because executives declared a state of emergency that considerably limited the role of legislatures in emergency-law making in many countries. The more legislatures' ex-ante control of executives' emergency law-making was limited possibly because of the declaration of a state of emergency, the more likely parliaments fought back and established legislative inquiry commissions.

Hypothesis 2.3: *In countries and regions where legislatures had less ex-ante oversight of emergency law-making, a legislative Covid-19 inquiry commission is established more likely.*



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The final pair of institutional hypotheses draw on the diffusion literature. The diffusion of democracy, institutions, institutional norms, and policies has been widely studied. Diffusion means that geographically or culturally close political entities emulate each other. If a legislature sets up a Covid-19 inquiry commission, it could be that in neighboring regions our countries legislative feel a pressure to also establish an inquiry commission fulfilling a democratic norm of crisis governance.

Hypothesis 2.4a: If in a country respectively a region a legislative Covid-19 inquiry commission is set up, a legislative Covid-19 inquiry commission is established in the neighboring country respectively region more likely.

A diffusion dynamic could be also in place in federal and strongly decentralized countries. If state-level legislatures establish a Covid-19 crisis governance regional legislatures likely follow this example. It could be also the case that this dynamic not only exists top-down but also bottom-up.

Hypothesis 2.4b: If a state-level legislative Covid-19 inquiry commission is established, a regional legislative Covid-19 inquiry commission is established in the respective state (and vice-versa) more likely.

The third set of arguments, as mentioned previously, captures the impact of party politics. It is likely that oppositional parties were the main initiators to establish Covid-19 inquiry legislative commissions to blame governing parties for poor crisis governance. Whether they succeed depends on several factors such as on the extent they have the opportunity to monitor and control governmental policy-making in legislatures (Wegmann 2022). Hypothesis 2.5 suggests that oppositional legislative power shapes the emergence of Covid-19 inquiry commissions.

Hypothesis 2.5: In countries and regions where oppositional parties have more power in legislative inquiry commissions, it is more likely that a legislative Covid-19 inquiry commission is established.

To map parliaments' activities during the pandemic and their institutional adaption to social distancing measures we draw on the country compilation of parliamentary responses to the pandemic the Inter-Parliamentary Union (IPU 2020).

Finally, the general performance of Covid-19 crisis government shapes the demand of parliamentarians to establish Covid-19 inquiry commissions.



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Hypothesis 2.6: *In countries and regions where the social and economic impact of the Covid-19 pandemic was more severe, a legislative Covid-19 inquiry commission is established more likely.*

Hypothesis 2.7: *In countries and regions where fundamental rights were more restricted during the Covid-19 pandemic, a legislative Covid-19 inquiry commission is established more likely.*

Table 3 and 4 present the information we collect on parliaments' activities during the pandemic.

Table 3. *The indicators to map parliaments' pause during the pandemic and adaptation to social distance measures*

Indicators	Definition and answer categories
Name of the parliament in the original language (parl_name_or)	Name
Name of the parliament in the original language (parl_name_en)	Name
Date of the day after the last day of plenary session (parl_plen_br_start)	Date
Date of the before the day of the start of the new plenary session (parl_plen_br_end)	Date
Date of the day after the last day of a committee meeting (parl_com_br_start)	Date
Date of the before the day of the start of new committee meetings (parl_com_br_end)	Date
Document including the decision to take a break of parliaments' activities (parl_break_doc)	Name of the document
Decision-makers who decided about the parliament's break (parl_break_dec)	Decision-makers
Introduction of remote work (parl_remote)	Date of the first day of remote deliberative work of the plenary session
Types of parliamentary remote work (parl_remote_type)	1: plenum voting; 2: commission voting; 3: plenum deliberation etc.



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Table 4. *The indicators to map parliamentary Covid-19 inquiry commissions*

Indicators	Definition and answer categories
Names of the MPs who formally requested the launch of Covid-19 inquiries (<code>parl_inq_req_name</code>)	Names
Names of the MPs who formally requested the launch of Covid-19 inquiries (<code>parl_inq_req_party</code>)	Party membership
Date of the parliamentary request to conduct Covid-19 inquiries (<code>parl_inq_req_date</code>)	Date
Establishment of a parliamentary Covid-19 inquiry commission (<code>parl_inq_new</code>)	0: no; 1: yes
Existing committee is authorized to inquire Covid-19 crisis governance (<code>parl_inq_old</code>)	0: no; 1: yes
Name of the relevant commission conducting a Covid-19 inquiry in English (<code>parl_inq_name_en</code>)	Name
Name of the relevant commission conducting a Covid-19 inquiry in original language (<code>parl_inq_name_or</code>)	Name
Scope of the Covid-19 inquiry by the parliamentary commission (<code>parl_inq_scope</code>)	Issues that the Covid-19 inquiry addresses (vaccination, masks etc.)
Instruments of the Covid-19 inquiry by the parliamentary commission (<code>parl_inq_instr</code>)	Public hearings, closed hearings, request of internal reports etc.
Date of the start of the work of the Covid-19 inquiry (<code>parl_inq_start</code>)	Date
Date of the end of the work of the Covid-19 inquiry (<code>parl_inq_end</code>)	Date
Names of the members of the Covid-19 inquiry commission (<code>parl_inq_mem_name</code>)	Names
Party membership of the members of the Covid-19 inquiry commission (<code>parl_inq_mem_party</code>)	Party abbreviations

2.3 Judicial oversight

Courts play an important role in crisis governance mainly through their oversight function. As parliaments, courts were challenged to continue to operate during the pandemic. As parliaments, many courts have struggled to adapt to the various Covid-19 measures such as lockdowns, quarantines and social distancing during the pandemic. Most courts have introduced remote hearings and extended deadlines, but proceedings have been also stayed especially during the first wave of the pandemic (see the country studies of the the Oxford Compendium of National Legal Responses to Covid-19 edited by King and Ferraz (2022)).



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In work package 3, we aim to investigate the forms and strength of judicial oversight during the Covid-19 pandemic. Ginsburg and Versteeg (2021) differentiate between two main forms of judicial oversight during the pandemic. On the one hand, courts could oversee whether procedural requirements were followed by the authorities. In countries where authorities declared a state of emergency based on the constitution courts could scrutinize whether authorities adhered to the constitutional conditions (Ginsburg and Versteeg 2021: 1519-20). In some countries, judicial scrutiny is built and defined in the constitutional emergency clause. In the case of France, the review of the declaration of a state of emergency can occur *ex ante*, if the President of the Republic, President of the National Assembly, President of the Senate, Prime Minister, 60 deputies, or 60 senators request a review by the Constitutional Council (Chambas and Perroud 2022: 8). Furthermore, in some countries, parliament must authorize the government both to declare the state of emergency and to extend the state of emergency once it is expired. If a country's emergency response is not rooted in constitutional emergency powers, courts can insist on a legal authorization of executives' emergency ordinance.

On the other hand, courts could oversee emergency law-making through substantive right review. Constitutional courts have reviewed Covid-19 emergency ordinances and declared them void if they considered them as contradictions to the statutory basis. For instance, in Austria the Constitutional Court annulled a considerable number of ordinances issued during the pandemic. Ordinances were annulled if they lacked a legal basis or because of the absence of precise reasons in the preparatory files of the ordinance on why the respective measure was indispensable on public health grounds (Stöger 2022: 10-12). In addition, the Constitutional Court also declared several binding general instructions by administrative authorities as void arguing that these were ordinances in disguise. Country studies suggest that judicial review was important in countries with constitutional courts. Some of the 31 countries included in the study of this work package have no constitutional courts as in Switzerland and Sweden. Even in these cases, there is the possibility that courts can scrutinize emergency law-making to some extent. For instance, the Federal Supreme Court of Switzerland can carry out an abstract normal control of cantonal laws and regulations before they come into use (Schiess Rüttimann 2023: 34).

Extant literature on the role of courts in Covid-19 crisis governance lacks comparative studies. To study judicial oversight, we aim to explain why in some countries and regions courts annulled more Covid-19 ordinances, laws and regulations.¹ As in the studies on legislative oversight, we expect that institutional factors, the severity of the crisis, the performance of Covid-19 crisis governance and multi-level governance shape judicial review.

Hypothesis 3.1: *In countries and regions with constitutional right review, courts annul Covid-19 ordinances, laws and regulations more likely.*

¹ We might restrict our analysis of the annulment of Covid-19 ordinances, laws and regulations to those that restricted political rights if we observe that the collections of court decisions across regions and countries turns out to be too complicated and ambitious.



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Hypothesis 3.2: *In countries and regions where Covid-19 crisis measures were more stringent, courts annul Covid-19 ordinances, laws and regulations more likely.*

Hypothesis 3.3: *In countries and regions with higher infection rates, courts annul Covid-19 ordinances, laws and regulations less likely.*

There is little research on courts behavior during the pandemic in multilevel governance but we it is likely that in strongly decentralized countries judicial oversight is higher as regional courts are more powerful.

Hypothesis 3.4: *In more decentralized, courts annul Covid-19 ordinances, laws and regulations more likely.*

Table 5 presents the information, we collect on judicial oversight apart from the Covid-19 cases that led to the annulment of Covid-19 ordinances, laws and regulations.

Table 5. The indicators to map the judicial overview

Indicators	Definition and answer categories
Ex-ante review of a constitutional state of emergency (soe_rev)	1: yes; 0: no
Actors who can request an ex-ante review of a constitutional state of emergency (soe_rev_ac)	Name
Presence of constitutional right review (con_rev)	1: yes; 0: no
Courts that can conduct a constitutional right review (con_rev_act)	To be defined
Scope of constitutional right review (con_rev_scope)	To be defined



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2.4 Limitation of political rights

Political rights are central to democracies. Political participation feeds democracies' input legitimacy (Schmidt 2013). For most citizens, voting is the main way to participate in politics and to hold politicians accountable. According to the first results of our data collection on elections and referendums during the pandemic, around 20 elections and referendums have been postponed between March and May 2020 in the 31 European countries included in our analysis. In work package 3, we aim to investigate why some state-wide, regional or local elections and referendums have been postponed during the pandemic.

Where elections were planned, authorities faced the challenge to implement social distancing measures so not only that citizen could exert their rights safely but also that the political campaigns in the forefront of the elections not only safely but safeguarding the principles of a free and fair elections (James 2021). James and Alidhodzic (2020) have argued that five key democratic principles need to be taken into account when deciding about the holding respectively postponing of elections. These are opportunities for deliberation, equality of participation, equality of contestation, electoral management quality and the institutionalization of the rules.

As mentioned, the first results of our data collection on election shows that authorities have primarily postponed elections and referendums in the first wave, while there are almost no case of postponed elections in the second wave of the pandemic. This observation raises the question why authorities refrained from postponing elections and referendum amidst rising infection rates during the second wave of the pandemic. As some case studies suggest the availability of postal voting was crucial for holding elections during elections. As an example, in Bavaria the first round of local elections were held on March 16 as foreseen. In the first round of election, in-person voting was possible with social distancing measures and disinfection facilities. In addition, postal voting was facilitated. While previously postal voting was only allowed upon the provision of a medical certificate, in this election postal voting was also possible without a medical certificate and a "trusted person" could pick up and also bring back the ballot paper (Wagner 2023). The day after the elections the Bavarian State Ministry of Health and Care decided to administer the run-off elections on 29 March 2020 exclusively via postal voting (Wagner 2023). The shift from partial postal voting to all-postal voting in the second round was possible as postal voting was already introduced in Germany in 1957.

In Finland, the parliament decided in March 2021 to postpone municipal elections for two months that were originally scheduled for April 18. In contrast to Germany, Finland has only recently introduced postal voting limiting its use to voters living abroad. In fall 2020 the parliamentary committee preparing election reforms and ministry of Justice which is the national electoral authority ruled against expanding postal voting to include domestic voters. Instead, they chose more technical solutions such as outdoor and drive-in voting (Wass et al. 2021). These cases suggest that a long-standing experience with postal voting played a crucial when governments decided about the implementation of postal voting during the pandemic. Accordingly, we suggest the following hypothesis:



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Hypothesis 4.1: *In countries and regions with higher infection rates, authorities postponed elections less likely.*

Hypothesis 4.2: *In the early days of the pandemic, authorities postponed elections less likely.*

Hypothesis 4.3: *In countries and regions where more forms of absentee voting (postal, online and proxy voting) are available and longer established, authorities postponed elections less likely.*

Finally, we aim to formulate an expectation on the impact of multilevel governance on elections during the pandemic. We expect that in more decentralized countries, authorities can more flexibly decide on the postponement of elections as often regional and local elections are held at various time points.

Hypothesis 4.4: *In more decentralized countries, authorities postponed elections less likely.*

Table 6 presents the indicators to map the characteristics of elections that have been held or postponed during the pandemic. We started our data collection relying on the IDEA Election tracker that is focusing the postponed elections (James et al. 2023). We extend the IDEA's data by including systematically including regional and local elections that were postponed or hold during the pandemic until the end of 2021. We also collect the legal documents that provided the basis of the decision to postpone elections, identify the actors that decide to keep or postpone elections and will trace the arguments that lead to the postponement of elections.

Table 6. The indicators to map elections and referendums during the pandemic

Variables	Definition and answer categories
Type of vote (vote_type)	1: Election; 2: Referendum
Type of election (elec_type)	1: Presidential; 2: Legislative; 3: Executive; 4: Executive and legislative
Issue of the referendum (ref_issue)	Policy issue
Level of vote (vote_level)	1: Local; 2: Regional; 3: State
Vote postponed (vote_post)	1: postponed; 2: not postponed
Date of the vote (vote_time_old)	Date



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New date of the vote (vote_time_new)	Date
Legal basis of the postponement of the vote (vote_legal_doc)	Name of the legal document based on the vote was postponed
Decision-maker postponing the vote	1: National government; 2: Regional government
Availability of postal voting before March 2020 (vote_postal_before)	0: no; 1: Local-level; 2: Regional-level; 3: State-level,
Voter segments for postal voting was available before March 2020 (vote_postal_before_seg)	1: voters abroad; 2: voters with medical condition etc.; 3: all
Time point of introduction or extension of postal voting during the pandemic (vote_postal_after)	Time point
Time point of introduction or extension of postal voting during the pandemic (vote_postal_after_seg)	1: voters abroad; 2: voters with medical condition etc.; 3: all

Beyond voting, restrictions of other forms of political participation merit attention such as the restriction of protests or direct democratic forms of political participation. For instance, in Switzerland the Federal Council has not only decided to postpone the federal referendum of May 17, 2020 but it has also prohibited the collection of signature that are required for the launch of referendums and delayed the relevant deadlines (Markic 2020: 160). Several cantonal governments followed the example of the Federal Council. In addition, the parliament of the Canton Zurich formulated a law that authorized municipal councils at the ballot box where usually voting takes place open at the communal assembly (Markic 2020: 161).

2.5 Expert advice bodies

In modern days, it is taken for granted that policy-makers rely on expertise to make good decisions given the ever-increasing complexity of policy issues (Christensen et al. 2023: 9-15). It is expected that expert advice enhances the effectivity of policies (Schmidt and Wood 2019; Tallberg and Zürn 2019). However, the political legitimacy of expert influence on policy decisions is much debated for a number of reasons (Christensen et al. 2023: 78-90).

During the Covid-19 crisis, in some countries established expert committees have been activated. In other countries, new committees had to be formed with the goal to provide governments a better understanding of the complexities of the Covid-19 pandemic and advise governments in formulating crisis measures (Hodges et al. 2022; Vicentini and Galanti 2021). Scholars have argued that the selection of expert committees should be transparent, and the composition of expert committees should be made public (Donovan 2021; Pelling et al. 2022; Rajan et al. 2021). Furthermore, given that multidimensional nature of the Covid-19 crisis, it became clear that the representation of a range of disciplinary expertise is crucial for effective policy advice (Rajan et al. 2020).



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The case of Switzerland illustrates the mentioned problems to some extent. Given the lack of established guidelines to create a scientific advisory group with the task to inform public decision-makers during crises, four Swiss academic institutions – the ETH Board, the Swiss National Science Foundation (SNSF), swissuniversities and the Swiss Academies of Arts and Sciences took the initiative to establish an ad hoc scientific advisory group. These four institutions selected and nominated the members of the NCS-TF in agreement with federal authorities (Hirschi et al. 2022: 60; Swiss National COVID-19 Science Task Force 2022: 4). Almost all members of the NCS-TF were experts employed at a Swiss university or a medical health institution. In fact, among the experts from medical disciplines have been overrepresented. Social sciences have been represented by eleven economists, two legal scholars, one sociologist and two scholars of health policies. The NCS-TF was mandated to provide scientific advice to policy makers and to identify future scientific research projects on SARS-CoV-2, its containment and innovation potential to develop products and services supporting pandemic control (NCS-TF 2022: 48f.). Because the NCS-TF only started its work at the beginning of April 2020, it was not involved in the formulation of the most severe Covid-19 measures by the Federal Council early March 2020.

In work package 3, we aim to investigate whether and why expert advice bodies were more powerful and influential in some countries during the Covid-19 pandemic. More influential expert advice bodies have more tasks and exchange with authorities more frequently. We expect that ad hoc expert bodies were weaker if they had no established working routines and communication channels with authorities at the onset of the pandemic.

Hypothesis 5.1: *In countries and regions where established expert advice bodies were present at the onset of the crisis were more influential.*

Hypothesis 5.2: *Countries and regions with institutional mechanisms for involving experts, expert advice bodies were more influential.*

We expect expert that advice bodies at the state-level are less influential in more decentralized countries as it is more difficult to have a continuous exchange with numerous regional authorities (Sager et al. 2022).

Hypothesis 5.3: *In more decentralized countries, expert advice bodies were less influential.*

We also expect that when state-wide government had declared a state of emergency, expert advice bodies were more influential as decision-making was centralized.



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Hypothesis 5.4: *When national executives declared a state of emergency, expert advice bodies were more influential during the pandemic.*

Table 7. *The indicators to map expert advice bodies active during the Covid-19 pandemic*

Variables	Definition and answer categories
Name of the expert advice body in English (exp_name_eng)	Name
Name of the expert advice body in original language (exp_name_or)	Name
Date of the formation of the expert advice body (exp_name_form)	
List of the members of the expert advice body public (exp_list)	1: yes: 0: no
List of the members of the expert advice body (exp_mem)	Names of members
Members professional background (exp_mem_prof)	Disciplinary background
Tasks of the expert advice bodies (exp_task)	Tasks
Intensity of the exchange between expert advice body and authorities (exp_exchange)	To be defined

3. Outlook

We will focus on the following tasks in the next year. First, we are collecting data on the indicators presented in the tables 1 to 7. The data collection includes 31 European countries and the EU. In addition, we collect data on the regional level in the federal countries (Austria, Belgium, Germany and Switzerland) and strongly decentralized countries (Italy, Spain and the UK). Only the study on the judicial oversight will likely cover the local level of Covid-19 crisis governance. We expect to discover cases that address the limitation of fundamental rights during the pandemic by the decisions of the city governments. So far, we focused on the collection of information on the declaration of the state of emergency, parliaments' activities and elections during the pandemic. In addition, we will collect data on the independent variables of the proposed hypotheses. We aim to rely on existing data sets such as the Oxford



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COVID-19 Government Response Tracker (OxCGRT) (Hale et al. 2020) and the Pandemic Backsliding dataset by the V-Dem Institute of the University of Gothenburg (Edgell et al. 2020).

Second, based on the findings of descriptive analyses of the collected data, we will select cases for qualitative more in-depth analyses. We plan to test the formulated hypotheses first relying on a quantitative analysis and complement them with qualitative studies investigating the impact of multi-level governance on the democratic quality and legitimacy of Covid-19 crisis governance.

Finally, we will further develop and refine the presented hypotheses so that we can start with hypothesis testing once the data collection is completed.



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