

Coronavirus pandemic in the EU – Fundamental Rights Implications

Country: Poland

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1 Measures taken by government/public authorities

1.1 Emergency laws/states of emergency

In May 2020, the government continued to uphold the state of the epidemic, however certain restrictions and limitations have been relaxed or lifted.

The government's regulation on the state of the epidemic was amended three times in May 2020.¹ With each of the amendments certain restrictions and limitations were gradually changed or lifted. For example, in the beginning of May, early childcare facilities, shopping centres and hotels reopened. In mid-May, bars and restaurants reopened and the limits of passengers' number in the public transport was raised. In the end of May, the prohibition of organizing assemblies, as well as the duty to cover mouth and nose in public places were loosened. The re-opening of public places, institutions and different facilities, such as e.g. education facilities, is subject to guidelines concerning protection of health in public spaces, and such places have to operate in a strict sanitary regime (see further points).

Despite these changes, some of the other regulations concerning e.g. closing of the country's borders, limitations in international travel or the mandatory quarantine for persons travelling from abroad were still maintained, as well as the ban on public assemblies.

Almost all of the limitations dedicated to preventing the COVID-19 outbreak were introduced by the governmental regulation. According to the Polish Constitution, limitations of any rights or freedoms may be imposed only by statute, and only "when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons". Since the beginning of the state of the epidemic, the Ombudsman referred to the government his concerns regarding the legality of the introduced limitations. In the opinion of the Ombudsman, some of the introduced limitations and duties, such as the necessity to cover face and mouth or the obligation to remain in quarantine after traveling abroad, must not be imposed by a regulation but by the statute. So far, these limitations were challenged only in a limited scope in the courts proceedings. For example, in May 2020, the Appellate Court in Warsaw heard an appeal from the decision of the Regional Court upholding the decision of Warsaw City Mayor who refused to register an assembly due to the limitations introduced during the state of the epidemic. The Court decided that the lack of registering an assembly does not mean that the assembly is banned. The Court decided that the City Mayor should have either banned an assembly or included it into the public register of assemblies. In its decision, the Court also ruled that the introduction of the ban on assemblies by the governmental regulation raised constitutional concerns from the perspective of the admissibility of such limitations and its proportionality.

Another key issue discussed in May was the organisation of presidential elections. Initially, the presidential elections were scheduled for 10 May 2020. On 6 April 2020, the Parliament adopted an Act on the special regulations concerning the organisation of the presidential elections in 2020, introducing postal voting as the only way of voting in these elections. The Act raised numerous

¹ Poland, Council of Minister's Regulation on establishing certain limits, orders and prohibition in relation to the state of epidemic (Rozporządzenie Rady Ministrów z dnia 2 maja 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii), 2 May 2020, changed or replaced by the Council of Minister's Regulations of 16 May, 21 May and 31 May 2020

concerns regarding the process of organizing the elections and voting.² Eventually, the voting on 10 May 2020 was not organized and on 12 May 2020 the Parliament adopted the new Act on the organization of the presidential elections in 2020 that introduced the optional postal voting. Still, similarly to the previous regulation, the Act raises concerns when it comes to providing the fair legal framework for the election campaign and the process of organizing the elections, especially in the context of ensuring the effective exercise of electoral rights.³

Despite the gradually growing number of infected persons, the Government still has not decided to introduce the state of natural disaster provided for in the Constitution⁴ and in the Act on the natural disaster.⁵ As it was reported earlier, if the state of the natural disaster (such as the spread of an epidemic) is proclaimed, no elections can be organized, either during the state or 90 days after its termination.

1.2 Measures affecting the general population

1.2.1 Social distancing

The provisions concerning the mandatory quarantine remained unchanged in the reporting period. As of March 2020, every person travelling from abroad is subject to a mandatory quarantine.⁶

² See e.g. ODIHR, Opinion on the draft Act on special rules for conducting the general elections on the President of the Republic of Poland ordered in 2020, available at: <https://www.osce.org/odihr/elections/poland/450856?download=true>, Ombudsman's Office, Koronawirus. "Wybory obecnie nie do przeprowadzenia". Opinia RPO dla Senatu ws. głosowania korespondencyjnego na prezydenta RP, available at: <https://www.rpo.gov.pl/pl/content/koronawirus-rpo-do-senatu-ws-glosowania-korespondencyjnego>, Helsinki Foundation for Human Rights, Opinia HFPC do projektu ustawy wprowadzającej powszechne głosowanie korespondencyjne w wyborach prezydenckich, available at: <http://www.hfhr.pl/opinia-hfpc-do-projektu-ustawy-wprowadzajacego-powszechne-glosowanie-korespondencyjne-w-wyborach-prezydenckich/>

³ ODIHR, Opinion on the draft Act on special rules for the organizations of the general election of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting, available at: https://www.osce.org/files/f/documents/e/0/453333_2.pdf

Ombudsman's Office, Uwagi RPO do nowej ustawy o wyborach prezydenckich, available at: <https://www.rpo.gov.pl/pl/content/uwagi-rpo-do-nowej-ustawy-o-wyborach-prezydenckich>, Helsinki Foundation for Human Rights, New elections law: new problems. HFHR comments on a law setting special rules for the carrying out of universal elections of the President of Poland, available at: <http://www.hfhr.pl/en/new-elections-law-new-problems-hfhr-comments-on-a-law-setting-special-rules-for-the-carrying-out-of-universal-elections-of-the-president-of-poland/>

⁴ Poland, the Constitution of the Republic of Poland (*Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*), 2 April 1997, Chapter XI.

⁵ Poland, Act on the natural disaster (Ustawa z dnia 18 kwietnia 2002 r. o stanie klęski żywiołowej), 18 April 2002

⁶ Poland, Minister of Health Regulation on proclaiming the state of epidemic threat in Poland (*Rozporządzenie Ministra Zdrowia z dnia 13 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu zagrożenia epidemicznego*), further changed by the Regulation of the Council of Ministers on the state of epidemic (*Rozporządzenie Rady Ministrów z dnia 20 marca 2020 r. W sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu epidemii*), 20 March 2020, and then further amended and changed by the Council of Minister's Regulation on establishing certain limits, orders and prohibition in relation to the state of epidemic (*Rozporządzenie Rady Ministrów z dnia 31 marca 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii*), 31 March 2020, changed by the Council of Minister's regulations of 10 April 2020, 16 April 2020 and 26 April 2020 on establishing certain limits, orders and prohibition in relation to the state of epidemic.

Furthermore, everyone who could have been exposed to coronavirus is placed in a home or hospital quarantine upon the decision of the Chief of the County Sanitary and Health Inspectorate.⁷

On the other hand, the government's regulations introduced in the end of May loosened the obligation to cover mouth and nose – right now it is mandatory in e.g. public transport, shops or cinemas and theatres. Furthermore, the ban on assemblies was slightly changed by allowing to organize public assemblies up to maximum 150 demonstrators. Still, the demonstrators have to keep the minimum distance of 2 meters.

In May 2020, the media continued to report on a number of cases of police interventions related to enforcing the restrictions implemented during the state of the epidemic.⁸ On the basis of the police's notes prepared after the interventions, the sanitary inspector imposes penalties, in some cases reaching even up to 10.000 PLN (2.500 EUR). This practice was a matter of an intervention of the Ombudsman, who in his letter to the Minister of Interior warned that the police officers' notes are not sufficient grounds to impose penalties and there is no legal provision allowing the police to send their notes including citizens' personal data to the sanitary inspectorate.⁹

1.2.2 Education

In May 2020, the regulations concerning the closing of early childcare facilities and kindergartens due to the state of the epidemic were lifted, yet the final decision on re-opening the facilities lie with the entities running early childcare facilities. The Chief Sanitary Inspector issued guidelines concerning the organization of works in the early childcare facilities and kindergartens. The guidelines introduced limits on the number of children remaining in one group, distance between the kindergarten teachers and other adults (including children's parents and staff members) and on specific hygiene measures.¹⁰ The guidelines were criticized as difficult or in some parts unrealistic to implement in the works of the early childcare facilities and kindergartens.¹¹

Furthermore, as of 25 May, schools resumed works in a limited scope.¹² In primary schools, the pupils in class 1-3 could continue their education either from home or attend the lessons in schools. The

⁷ Poland, Act on preventing and combating infectious diseases (*Ustawa z dnia 5 grudnia 2008 r. O zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi*), 5 December 2008.

⁸ See e.g. POLITYKA, Poirytowani zakazami, znudzeni epidemią, available at: <https://www.polityka.pl/tygodnikpolityka/kraj/1956942,1,poirytowani-zakazami-znudzeni-epidemia.read>, 21 May 2020

⁹ Poland, Ombudsman's Office, Kary administracyjne dla obywateli na podstawie notatek policyjnych nie mają podstaw. RPO do MSWiA, available at: <https://www.rpo.gov.pl/pl/content/kary-administracyjne-dla-obywateli-na-podst-notatek-policyjnych-bez-podstaw-rpo-do-mswia>, 28 May 2020

¹⁰ Poland, Chief Sanitary Inspector (Główny Inspektor Sanitarny), Wytyczne przeciwepidemiczne Głównego Inspektora Sanitarnego z dnia 30 kwietnia 2020 r. dla przedszkoli, oddziałów przedszkolnych w szkole podstawowej i innych form wychowania przedszkolnego oraz instytucji opieki nad dziećmi w wieku do lat 3, wydane na podstawie art. 8a ust. 5 pkt 2 ustawy z dnia 14 marca 1985 r. o Państwowej Inspekcji Sanitarnej, available at: <https://gis.gov.pl/wp-content/uploads/2018/04/Wytyczne-dla-przedszkoli-oddzia%c5%82%c3%b3w-przedszkolnych-w-szkole-podstawowej-i-innych-form-wychowania-przedszkolnego-oraz-instytucji-opieki-nad-dzie%c4%87mi-w-wieku-do-lat-3.pdf>

¹¹ Polityka, Przedszkolna prowizorka rządu, available at: <https://www.polityka.pl/tygodnikpolityka/kraj/1955150,1,przedszkolna-prowizorka-rzadu.read>, 6 May 2020

¹² Poland, Minister of National Education (Ministerstwo Edukacji Narodowej), Rozporządzenie Ministra Edukacji Narodowej z dnia 14 maja 2020 r. zmieniające rozporządzenie w sprawie czasowego ograniczenia funkcjonowania jednostek systemu oświaty w związku z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19

maximum number of pupils in the classroom is 12 and a minimum space for a child is 4 square meters. Furthermore, eighth grade pupils in primary schools and those in high schools have a possibility to attend the group or individual consultations with teachers in schools. The matriculation exams, that usually are organized in May, were rescheduled for June. The organization of works in schools depend mainly on the decision of the headmasters, yet it has to follow the guidelines provided by the State Sanitary Inspectorate. Similarly to the guidelines for nurseries and kindergartens, the guidelines for schools provide information on the number of children in one class, hygiene procedures and the sanitary measures.¹³ Both in the case of nurseries or kindergartens and schools, the duty to provide sanitary and hygiene products such as sanitizers, face masks or disposable gloves lies entirely with the management of the educational facility, yet the Ministry of the National Education and the Ministry of Health provide free disinfectants upon schools' request.¹⁴

Although the works of the schools were resumed, still the remote teaching remain in place until the end of the school year in the end of June. Furthermore, all of the measures addressed to children in need (e.g. children entitled to free meal at school or requiring access of IT equipment) remain in place.

1.2.3 Work

The 4th COVID Act¹⁵ modified rules on state-funded legal aid. According to the new provisions of the Act on legal aid, free civic counselling and legal education, microentrepreneurs are entitled to receive state-funded legal counselling.

The 4th COVID Act established a mechanism of support for persons and legal entities taking care of historical buildings. Under the amended provisions of the 2nd COVID-Act¹⁶, owners of historic buildings gained a possibility to seek financial assistance to cover part of the salaries of their employees.

Also, the support mechanisms were introduced for owners of commercial yachts who would decide to scrap their yachts or adopt them to perform different activities than organizing sport fishing.

The abovementioned Act (4th COVID Act) also created a possibility to suspend, for no longer than 6 months and at the request of the borrower, the repayment of students loans. In such a situation, the interest rates would be covered by the Student's Loan Fund.

The 4th COVID Act eased the way for the refugees to gain the integration support from the local self-government by enabling them to electronically submit motions for such support. Before the amendment, refugees were obliged to do that in writing.

The Council of Ministers' regulation of 16 May 2020¹⁷ amended the rules on operation of hair and beauty salons, cinemas and restaurants, allowing them to operate under certain conditions (e.g. the

¹³ Poland, Serwis Rzeczypospolitej Polskiej, Wytyczne GIS, MZ i MEN, available at: <https://www.gov.pl/web/koronawirus/wytyczne-gis-mz-i-men>, 15 May 2020

¹⁴ Poland, Ministry of National Education, Ponad 13 tys. wniosków o bezpłatne środki ochrony i wsparcie dla szkół ponadpodstawowych, available at: <https://www.gov.pl/web/edukacja/ponad-13-tys-wnioskow-o-bezplatne-srodki-ochrony-i-wsparcie-dla-szkol-ponadpodstawowych>

¹⁵ Poland, The Act of 14 May 2020 *act on the amendment to some other acts in reference to protection measures connected with the spread of the SARS-CoV-2 virus (Journal of Laws, item 875), hereinafter 4th COVID Act.*

¹⁶ Poland, the Act on the amendment to the Act on specific solutions related to the prevention and combating COVID-19, other infectious diseases and crisis situations caused by them and amending certain other acts, 31 March 2020

¹⁷ Poland, the Regulation of the Council of Ministers of 16 May 2020 on establishing specific restrictions, orders and bans in connection with the occurrence of the state of the epidemic, Journal of Laws, item 878.

government set the rules regarding the maximum number of persons in hair and beauty salons, while cinemas were allowed to operate only outside). Libraries, museums and archives were also granted permission to operate.

The Council of Ministers' regulation of 30 May 2020¹⁸ allowed airlines to operate under certain conditions (e.g. they are obliged to clean planes after each flight and disinfect them each day). The regulation allowed persons who obtain a negative COVID test to use spa and rehabilitation treatment.

Moreover, the Council of Ministers¹⁹ extended the possibility of employees to obtain additional childcare allowance related to the closure of a nursery or kindergarten due to a state of epidemic.

Beside abovementioned measures, the parliament and the government did not modify nor add any specific measures related to people in precarious work. The solutions indicated in the previous report remain in force.

1.2.4 Access to justice

The 4th COVID Act repealed the provisions of 2nd COVID-Act²⁰ which suspended all time limits in criminal, civil and administrative proceedings. According to the 4th COVID-Act the new time limits will begin 7 days after its entering into force.

Moreover, according to the 4th COVID Act all court hearings in civil proceedings will be held remotely during the state of an epidemic (and one year after its abolishment).

Secondly, the presiding judges gained a power to order closed session whenever they will conclude that public hearing may create a threat to the life or health of persons taking part in the proceedings and there is no possibility to conduct the proceedings remotely. However, the party may oppose this decision within 7 days after the decision is rendered. In such a situation the case cannot be recognized as a session behind closed doors. The Act obliges the courts to instruct the parties to the proceedings of their right to oppose the chairman's decision.

Moreover, the 4th COVID-Act established a competence for the presidents of the courts to order their courts' judges to take part in the proceedings remotely. However, it does not apply to hearings closing the cases.

Furthermore, the courts gained the power to close the proceedings and issue a judgment during in camera session whenever all pieces of evidence were established. In such a situation parties might be asked to submit their closing statements in writing.

Last but not least, under the 4th COVID ACT, the appellate courts, whenever they conclude that there is no need to conduct a public hearing, may adjudicate a case at a closed session. However, it does not

¹⁸ Poland, the Regulation of the Council of Ministers of 29 May 2020 on establishing specific restrictions, orders and bans in connection with the occurrence of the state of the epidemic, Journal of Laws item 964, as amended.

¹⁹ Poland, the Regulation of the Council of Ministers of 16 May 2020 on establishing specific restrictions, orders and bans in connection with the occurrence of the state of the epidemic, Journal of Laws, item 878 and the Regulation of the Council of Ministers of 29 May 2020 on establishing specific restrictions, orders and bans in connection with the occurrence of the state of the epidemic, Journal of Laws item 964, as amended.

²⁰ Poland, the Act of March 31, 2020 on the amendment to the Act on specific solutions related to the prevention and combating COVID-19, other infectious diseases and crisis situations caused by them and amending certain other acts, Journal of Laws of 2020, item 568.

apply to a situation in which the party asked for a public hearing or submitted a motion to hear a witness or a party.

Similar to the proceedings before the courts of the 1st instance, within 7 days after the notification of the court's decision, the parties may demand the court to recognize their case at a public hearing. The courts have an obligation to instruct the parties about that possibility.

Similar provisions were also adopted in the context of administrative courts. According to 4th COVID Act, during the state of an epidemic or a year after it, regional administrative courts and the Supreme Administrative Court are entitled to hear all cases remotely. However, the cases may be heard in a regular way whenever the court decides that it will not create an excessive threat for the health of persons involved in the proceedings.

What is more, the 4th COVID-Act enabled the Supreme Administrative Court to recognize cassations at closed sessions during the state of the epidemic or a year after it. However, parties have to agree to have their case recognized at a closed session within 14 days after they were notified about court's intentions.

Finally, the presiding judge of the administrative court may decide to recognize the cases during closed session, whenever there is no technical possibility to recognize it remotely and there is a risk that a public hearing will pose an excessive threat to life or health of all persons involved in the proceedings.

In the reporting period, the parliament did not adopt any specific measures regarding backlog in judicial proceedings prompted by the lockdown restrictions.

1.2.5 Freedom of movement

As of 4 May 2020, the compulsory quarantine was abolished for persons crossing the internal EU borders when performing professional activities in Poland or another EU country, as well as for pupils and students receiving education in Poland or another EU country²¹. According to the newest government's regulation, such persons, while crossing the state border, will be obliged to prove that they perform professional activities or receive education in another member state.

Persons entering Poland have no legal obligation to provide the authorities with the result of COVID test. What is more, they have to be quarantined even if they have a negative result of COVID test. Initially, these provisions did not apply to persons performing a medical profession (e.g. physicians and nurses) or working in social welfare homes. Such persons were subjected to compulsory 14-day quarantine. The situation was changed by the Government Regulation of 16 May 2020 establishing certain restrictions, orders and prohibitions in connection with the state of the epidemic²². Since its adoption, all transborder employees have been released from the duty to be in quarantine each time they cross the border. They are not required to regularly provide authorities with COVID-19 test result.

²¹ The Council of Ministers Regulation of 2 May 2020 establishing certain restrictions, orders and prohibitions in connection with state of epidemic, Journal of Laws, item 792.

²² The Council of Ministers Regulation of 16 May 2020 establishing certain restrictions, orders and prohibitions in connection with state of epidemic, Journal of Laws, item 878.

In the reporting period, the Minister of Interior and Administration decided to extend the period of compulsory border control with other EU member states until 12th June²³.

In the reporting period the government did not modify asylum application procedures.

1.3 Impact of measures on particular groups

As in March and April, also in May 2020, the media continued to report on the new cases of infected patients of the nursing houses. According to the media coverage, the reasons for the growing number of infections are related to the lack of the proper sanitizer equipment, lack of staff and difficulties in access to the medical tests.²⁴ In May 2020, the access to the tests have slightly improved. For example, according to the information of the Ombudsman's office in social welfare houses in Mazovia the tests are available for all the staff members who agree to be tested.²⁵ Still, there is no available updated data indicating the number of patients of such houses who died due to COVID-19. On 21 April 2020, the Ministry of Family Labour and Social Policy announced that, 16 patients of social welfare houses died due to COVID 19.²⁶ However, according to an NGO – the Institute of Independent Life – this number may be higher and may reach 41 (see also point 2.1.3).²⁷

In May 2020, the Ombudsman's Commission of Experts on the situation of Migrants alarmed about the situation of migrants during the state of the epidemic. According to the Commission, some of the restrictions concerning the border control could have influenced the access to the asylum procedure and "made the access illusory".²⁸ Furthermore, the Commission raised the problem of difficulties which migrant children face in access to home schooling. In the opinion of the Commission, the main problem concerns the lack of proper equipment in the detention centres for migrants that would enable children to attend the lessons online.²⁹ Thirdly, the Commission pointed at the problems related to hiring the migrants in Poland during the state of the epidemic. In the opinion of the Commission, already the migrant workers face numerous problems in legalizing their work in Poland as the administrative procedures are excessively lengthy and time-consuming. Furthermore, with the deterioration of the economy, the migrants' work situation may deteriorate as well – many of them

²³ The Minister of Interior Affairs and Administration Regulation of 12 May 2020 amending the Regulation on the temporary reintroduction of border control of persons crossing the internal border, Journal of Laws, item 854.

²⁴ Dziennik Gazeta Prawna, statystyki COVID-eutanazji nie było, ale prokuratura przygląda się DPS-om, available at: <https://serwisy.gazetaprawna.pl/zdrowie/artykuly/1477517,dps-zol-koronawirus-prokuratura-sprzet-ochronny-personel-medyczny.html>

²⁵ Poland, Ombudsman's Office, Koronawirus. Sytuacja w mazowieckich DPS-ach, available at: <https://www.rpo.gov.pl/pl/content/koronawirus-sytuacja-w-mazowieckich-dps-ach>

²⁶ Dziennik Gazeta Prawna, statystyki COVID-eutanazji nie było, ale prokuratura przygląda się DPS-om, available at: <https://serwisy.gazetaprawna.pl/zdrowie/artykuly/1477517,dps-zol-koronawirus-prokuratura-sprzet-ochronny-personel-medyczny.html>

²⁷ Dziennik Gazeta Prawna, statystyki COVID-eutanazji nie było, ale prokuratura przygląda się DPS-om, available at: <https://serwisy.gazetaprawna.pl/zdrowie/artykuly/1477517,dps-zol-koronawirus-prokuratura-sprzet-ochronny-personel-medyczny.html>

²⁸ Poland, Ombudsman's office, Koronawirus. Sytuacja migrantów i migrantek. Stanowisko RPO i Komisji Ekspertów ds. Migrantów oraz wystąpienie do MSWiA, available at: <https://www.rpo.gov.pl/pl/content/sytuacja-migrantow-pandemii-stanowisko-rpo-i-komisji-ekspertow-ds-migrantow>

²⁹ Ibidem

may find themselves unemployed and may not have enough resources neither to continue to live in Poland nor to return to their countries.³⁰

In May 2020, the media reported on the situation in the migrants' detention centres. For example, in one of the centres in Warsaw 63 out of 111 persons staying in the centre were tested positive with COVID 19.³¹ According to the information provided by the Office for Foreigners, since the beginning of the state of the epidemic the Office has recommended all the detention centers to undertake measures preventing the spread of coronavirus. Among these measures were e.g. cancelling all sorts of group activities, introducing the policies of sanitizing the facility and providing the foreigners staying in the centres with information on the epidemic and methods of hygiene. There are, however, no information regarding the mandatory testing of persons staying in the centres or their staff.³²

Since the beginning of the state of the epidemic, the situation in prisons and detention facilities was challenging in terms of securing inmates' health. According to the information provided by the Central Prison Service, in the beginning of May there were seven inmates tested positive with COVID 19 (out of almost 74 000 inmates).³³ Helsinki Foundation for Human Rights, after receiving information from inmates and their families about the deteriorating situation in prisons during the state of the epidemic, asked the Chief of the Prison Service about the measures undertaken to prevent the spread of coronavirus in prisons. In May 2020, the Chief of the Prison Service informed that the Prison Service, together with the Chief Sanitary Inspectorate, prepared specific guidelines concerning the works of the prison facilities during the epidemic. For example, the guidelines provide for a procedure in a case of coronavirus infection and depending whether the person has to be hospitalized or not. The Prison Service established two centres for inmates who need to be placed in quarantine. There are no information on the capacity of these centres. In mid-May 2020, there were 4 inmates staying in the special centres.³⁴

³⁰ Poland, Ombudsman's office, Koronawirus. Sytuacja migrantów i migrantek. Stanowisko RPO i Komisji Ekspertów ds. Migrantów oraz wystąpienie do MSWiA, available at: <https://www.rpo.gov.pl/pl/content/sytuacja-migrantow-pandemii-stanowisko-rpo-i-komisji-ekspertow-ds-migrantow>

³¹ TvN Warszawa, Nowe zakażenia w ośrodku dla cudzoziemców. 63 osoby mają koronawirusa, available at: <https://tvn24.pl/tvnwarszawa/najnowsze/koronawirus-w-warszawie-wzrosla-liczba-przypadkow-w-osrodku-dla-cudzoziemcow-63-osoby-zakazone-4603990>

³² Poland, Office for Foreigners, Informacja na temat zakażeń koronawirusem w ośrodku dla cudzoziemców (aktualizacja), available at: <https://udsc.gov.pl/informacja-na-temat-zakazen-wirusem-sars-cov-2-w-osrodku-dla-cudzoziemcow/>

³³ Poland, Helsinki Foundation for Human Rights, Prawa osób pozbawionych wolności w dobie koronawirusa – odpowiedź Centralnego Zarządu Służby Więziennej na pismo Fundacji, available at: <http://www.hfhr.pl/prawa-osob-pozbawionych-wolnosci-w-dobie-koronawirusa-odpowiedz-centralnego-zarzadu-sluzby-wieziennej-na-pismo-fundacji/>

³⁴ Poland, Helsinki Foundation for Human Rights, Prawa osób pozbawionych wolności w dobie koronawirusa – odpowiedź Centralnego Zarządu Służby Więziennej na pismo Fundacji, available at: <http://www.hfhr.pl/prawa-osob-pozbawionych-wolnosci-w-dobie-koronawirusa-odpowiedz-centralnego-zarzadu-sluzby-wieziennej-na-pismo-fundacji/>

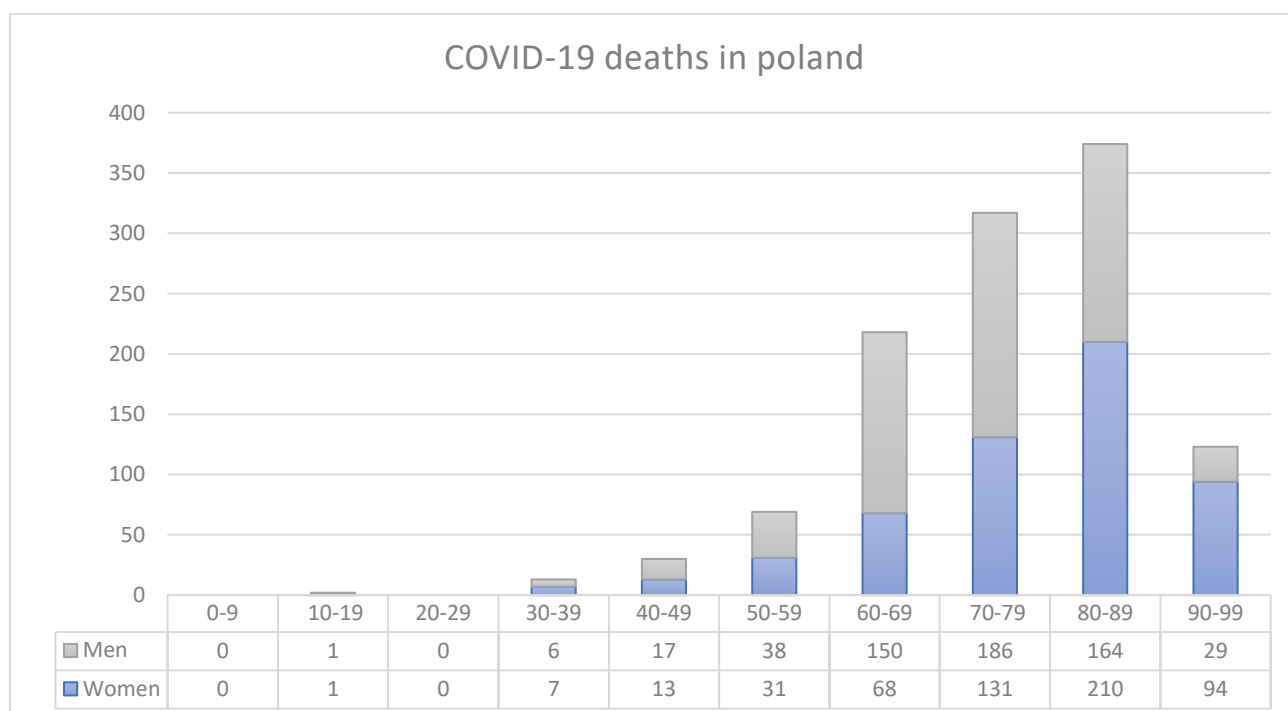
2 Impact on fundamental rights of older people

2.1 Data/statistics

2.1.1 Share of persons 60+ in the total number of persons in the community infected, recovered and died in relation to COVID-19.

There is no official and aggregated data regarding a number of persons 60+ who have been infected, recovered or died in relation to COVID-19.

According to the data reported by the Ministry of Health and unofficially aggregated by one of the websites³⁵, as of 6 June 2020, 90% out of 1146 persons who died in relation to COVID-19 were over 60 years.



2.1.2 Share of persons 60+ in the total number of persons in institutional settings infected, recovered and died in relation to COVID-19.

There is no official data regarding the share of persons 60+ in the total number of persons in institutional settings who were infected, recovered or died in relation to COVID-19.

2.1.3 Number and type of institutions affected

As of 8 April 2020, 6,6% of all SARS-COV-2 infections in Poland were connected with nursing houses³⁶.

As of 5th May 2020, the SARS-COV-2 has been diagnosed among residents of 29 social welfare houses out of the general number of 824 social welfare houses. According to the Ministry of Family, Labour and Social Policy, at this date, the COVID-19 infected 495 residents of social welfare houses (out of the

³⁵ <https://koronawirusstatystyka.pl/> (2 June 2020).

³⁶ Chief Sanitary Inspector, Struktura zakażeń SARS-CoV-2 /8 kwietnia 2020 r./, available: <https://gis.gov.pl/bez-kategorii/struktura-zakazen-sars-cov-2-8-kwietnia/> (2 June 2020).

general number of 80,000) and 204 members of the staff (out of the general number of 57 838 employees)³⁷.

Moreover, as of 5 May 2020, 37 persons died in social welfare houses due to infection of SARS-COV-2³⁸.

Furthermore, media estimate that deaths in social welfare houses and other long-term care facilities, related to the infections of SARS-COV-2 constitute from 10% to even 20% of the general number of COVID-19 victims in Poland³⁹.

2.1.4 Do official statistics on mortality rates from COVID-19 include deaths of older persons in care homes? Has there been any critique of data collection with respect to care homes?

The official statistics on mortality rates from COVID-10 include deaths of persons in care homes. However, the Association Institute of Independent Life has criticized the inconsistency of the data on infected nursing homes and number of infected persons. The collection of data on persons tested or infected with Covid-19 lies within the competence of the Ministry of Health and the Chief Sanitary Inspector. According to the Association, the data revealed by the government included only social welfare houses, whereas the SARS-COV-19 was diagnosed also in other care facilities e.g. care and treatment facilities (*zakłady opiekuńczo – lecznicze*)⁴⁰, which fall within the responsibilities of the Ministry of Health.

Moreover, the association revealed that on 17 April 2020 the COVID-19 infections were present in 53 residential care institutions, including social care as well as health care institutions, and involved 969 persons (including 241 members of staff), while the official information of Minister of Family, Labor and Social Policy presented to the members of Parliament indicated only 20 facilities and 334 infected persons (including 87 staff members)⁴¹. The information was presented within the scope of the competences of the Ministry of Family, Labour and Social Policy which does not cover the whole area of the residential care. What is more, the representatives of the association indicated that the number of persons indicated in the official statistics on COVID-19 infection might be lower than the actual number of persons who died in care homes due to COVID-19 infection⁴².

³⁷ Ministry of Family, Labor and Social Policy, Answer to interpellation No. 4396 on the preparation of social welfare homes for the COVID-19 epidemic, available: <https://www.sejm.gov.pl/Sejm9.nsf/interpelacjaTresc.xsp?documentId=ECB7DA86E9808F67C1258567004BD21C&view=S> (2 June 2020).

³⁸ Ministry of Family, Labor and Social Policy, Answer to interpellation No. 4301 on the situation of nursing homes during the COVID-19 epidemic, available: <http://sejm.gov.pl/sejm9.nsf/InterpelacjaTresc.xsp?key=BPCJ4E>

³⁹ Dziennik Gazeta Prawna, COVID-eutanazji nie było, ale prokuratura przygląda się DPS-om, DGP, available: <https://serwis.gazetaprawna.pl/zdrowie/artykuly/1477517,dps-zol-koronawirus-prokuratura-sprzet-ochronny-personel-medyczny.html> (2 June 2020).

⁴⁰ Dziennik Gazeta Prawna, COVID-eutanazji nie było, ale prokuratura przygląda się DPS-om, DGP, available: <https://serwis.gazetaprawna.pl/zdrowie/artykuly/1477517,dps-zol-koronawirus-prokuratura-sprzet-ochronny-personel-medyczny.html> (2 June 2020).

⁴¹ Dziennik Gazeta Prawna, Śmierć w DPS-ie. Liczba zakażeń koronawirusem i zgonów w placówkach opiekuńczych jest wyższa niż oficjalne statystyki, DGP, available: <https://praca.gazetaprawna.pl/artykuly/1470064,liczba-zakazen-koronawirusem-w-dps-liczba-zgonow.html> (2 June 2020).

⁴² Dziennik Gazeta Prawna, Śmierć w DPS-ie. Liczba zakażeń koronawirusem i zgonów w placówkach opiekuńczych jest wyższa niż oficjalne statystyki, DGP, available: <https://praca.gazetaprawna.pl/artykuly/1470064,liczba-zakazen-koronawirusem-w-dps-liczba-zgonow.html> (2 June 2020).

2.1.5 Independent studies published on the situation of older persons with respect to the impact of and responses to COVID-19

There are no independent studies published on the situation of older persons with respect to the impact of and responses to COVID-19.

The Ombudsman and the Ombudsman's Commission of Experts on the situation of elders issued a joint statement on 21 April 2020⁴³ on vulnerable groups during coronavirus pandemic. The statement indicated a need to create a reliable source of information on epidemic threats and countermeasures, support local initiatives and build a culture of solidarity and promote volunteering. The Ombudsman and the Commission of experts called upon the public authorities to start a cooperation in this field as well as to collect information about persons who are lonely or need assistance. Moreover, the statement indicated that the epidemic should force the authorities to update senior policy, deinstitutionalize care system of vulnerable person, as well as improve healthcare standards and modify crisis management system.

2.2 COVID-19 measures targeting older people

2.2.1 National guidelines/protocols in response to COVID-19 addressing older people

The regional representatives of the government (voivodes) issued several recommendations (on 12th March, 13th March, 26th March, 30th March, 2nd April, 4th April, 8th April) for social welfare houses on the issue of visits, procedures regarding leaving the premises of social welfare houses and admitting new residents. The recommendations have been prepared by the Ministry of Family, Labor and Social Policy and also described frameworks of procedures for nursing homes regarding suspected or diagnosed infection of SARS-COV-2⁴⁴. There is no available information whether the recommendations for social welfare houses were amended in May. In May, the Ministry of Family, Labour and Social Policy issued recommendations on the admission of new residents to social assistance houses during Covid-19.⁴⁵

The recommendations of voivodes addressed to social welfare houses recommended heads of the facilities to forbid the third persons to enter social welfare houses, limit residents' activities outside of the facility, as well as to limit the admission of new residents (according to the recommendation, they should be allowed only in exceptional situations). Moreover, under the recommendations, all persons entering social welfare houses should have their body temperature measured.

⁴³ The joint statement of Commissioner for Human Rights and Committee of experts on elderly people, available: <https://www.rpo.gov.pl/pl/content/koronawirus-pomoc-seniorzy-osoby-z-niepelnosprawnosciami-stanowisko-rpo-i-ekspertow> (2 June 2020).

⁴⁴ Ministry of Family, Labor and Social Policy, Answer to interpellation No. 4398 on the protection of employees and residents of nursing homes against the spread of COVID-19 virus, available: <https://www.sejm.gov.pl/Sejm9.nsf/interpelacjaTresc.xsp?documentId=B6B85F3716928A0CC1258561004A1C8A&view=S> (2 June 2020).

⁴⁵ Dziennik Gazeta Prawna, Są wytyczne do przyjmowania nowych osób do domów pomocy, available at: <https://praca.gazetaprawna.pl/artykuly/1476293,dps-koronawirus-wytyczne-do-przyjmowania-nowych-osob.html>

The provincial governors (voivodes) recommended heads of the units to conduct interviews with staff and identify potential situations posing a risk of infection.

The provincial governors (voivodes) suggested also to provide residents with sufficient medical and psychological assistance and to create a possibility for residents to maintain family contact using electronic devices. The staff of social welfare houses was also told to limit to minimum residents' contacts and group activities. They were also recommended to promote appropriate hygienic standards among residents⁴⁶.

The Chief Sanitary Inspector published on 10 March 2020 the recommendations for seniors. Pursuant to the guidelines, the seniors should avoid public places and take care of hygiene (often wash hands, avoid touching face, disinfect surfaces in their homes). The Chief Sanitary Inspector suggested seniors to keep safe distance from their interlocutors, remember about nutritious diet and to use only proven sources of knowledge about coronavirus.⁴⁷ There are no available on updates to the Chief Sanitary Inspector recommendations to seniors.

2.2.2 National guidelines/protocols on patient triage that apply age as the main and decisive criterion

There are no triage procedures applying age as a main and decisive criterion. The triage procedures described on the website of Ministry of Health include only health symptoms⁴⁸.

2.2.3 Targeted testing of residents and staff in residential care homes

There is no standardised policy of targeted testing of staff and residents of care homes. According to the answer to one of the interpellations submitted by a member of Parliament, the Ministry of Family, Labour and Social Policy referred to the clarification made by the Ministry of Health that residents of social welfare houses have to meet epidemic and clinical criteria in order to be tested for the SARS-COV-2. It indicated, however, that the Ministry was analysing the possibility to introduce another testing criteria.⁴⁹

On the other hand, on 22 April 2020, the provincial governor (voivode) in Kraków established a programme of prophylactic tests for the staff of social welfare houses. The tests were first conducted

⁴⁶ Ministry of Family, Labor and Social Policy, Answer to interpellation No. 4398 on the protection of employees and residents of nursing homes against the spread of COVID-19 virus, available: <https://www.sejm.gov.pl/Sejm9.nsf/interpelacjaTresc.xsp?documentId=B6B85F3716928A0CC1258561004A1C8A&view=S> (2 June 2020).

⁴⁷ Chief Sanitary Inspector, Informacja Głównego Inspektora Sanitarnego dla seniorów, available at: <https://www.gov.pl/web/zdrowie/informacja-glownego-inspektora-sanitarnego-dla-seniorow>

⁴⁸ Ministry of Health, Organization of triage in infectious and non-infectious hospitals, available: <https://www.gov.pl/web/zdrowie/organizacja-triage-w-szpitalach-zakaznych-i-niezakaznych> (2 June 2020).

⁴⁹ Ministry of Family, Labor and Social Policy, Answer to interpellation no. 5021 on the protection of social welfare homes against a coronavirus pandemic, available at: <https://www.sejm.gov.pl/Sejm9.nsf/interpelacjaTresc.xsp?documentId=12765AFA91EAC5C2C1258570004A6E12&view=S> (2 June 2020).

in regions with the highest number of infections⁵⁰. Similar initiatives were implemented, among others, in Pomerania region⁵¹, Lower Silesian region⁵² and the city of Warsaw⁵³.

The Ombudsman called upon the Minister of Family, Labour and Social Policy to establish regular SARS-COV-2 testing for the personnel of all care facilities⁵⁴.

2.2.4 Restrictions/bans on visits to residential care settings, and any (conditional) lifting of these restrictions

The provincial governors (voivodes) recommended heads of the facilities to forbid the entrance of third persons to social welfare houses. The staff of those units was suggested to create a possibility for residents to maintain family contact using electronic devices, as well as to provide the residents with sufficient psychological care⁵⁵. According to the media coverage, visits to social welfare houses were forbidden in all units across Poland⁵⁶.

2.2.5 Restrictive measures for older people living in the community

All restrictions concerning the social distancing are applicable to everyone regardless their age. The only specific regulation concerning elder persons pertained to the functioning of shops in the period between April and beginning of May 2020. Back then, the shops were available exclusively to persons older than 65 years old between 10 and 12 am.

2.2.6 Access to healthcare for older people for conditions unrelated to COVID-19

There were no policies or measures specifically dedicated to older persons to improve their access to health care system during the epidemic. In general, the state of the epidemic influenced the regular works of the health care system and in practice limited the access to the regular and planned medical treatment. This influenced all groups of patients but in particular it may have had impact on the health conditions of older people. Nevertheless, there is no specific policy, nor specific measures, which would address this problem. The Commissioner of Patient's Rights and the Commissioner's Council of

⁵⁰ Provincial Governor Office for Małopolska, Koronawirus: testy dla pracowników domów pomocy społecznej available at: <http://www.muw.pl/PressArticlePage.aspx?id=12136> (2 June 2020).

⁵¹ Prewencyjne testy w DPS-ach i ZOL-ach. Dobra akcja, ale szybko zrobi się kolejka, available at: <https://wiadomosci.onet.pl/trojmiasto/koronawirus-pomorze-testy-w-dps-ach-i-zol-ach-szybko-zrobi-sie-kolejka/g9ely4z> (2 June 2020).

⁵² Provincial Governor Office for Lower Silesia, Dolny Śląsk: testy dla pracowników i mieszkańców Domów Pomocy Społecznej, available: <https://www.duw.pl/pl/biuro-prasowe/aktualnosci/16576,Dolny-Slask-testy-dla-pracownikow-i-mieszkanow-Domow-Pomocy-Spolecznej.html> (2 June 2020).

⁵³ RDC.PL, Warszawski ratusz kupi testy na koronawirusa dla pracowników DPS, available: <https://www.rdc.pl/informacje/warszawski-ratusz-kupi-testy-na-koronawirusa-dla-pracownikow-dps/> (2 June 2020).

⁵⁴ Commissioner for Human Rights, available: <https://www.rpo.gov.pl/pl/content/koronawirus-mrpips-do-rpo-o-pomocy-dla-dps-testach-dla-personelu>, (2 June 2020).

⁵⁵ Ministry of Family, Labor and Social Policy, Answer to interpellation No. 4398 on the protection of employees and residents of nursing homes against the spread of COVID-19 virus, available: <https://www.sejm.gov.pl/Sejm9.nsf/interpelacjaTresc.xsp?documentId=B6B85F3716928A0CC1258561004A1C8A&view=S> (2 June 2020).

⁵⁶ Dziennik Gazeta Prawna, Rzecznik MZ: Wzrost zakażeń koronawirusem wiąże się z wykryciem trzech nowych ognisk, available <https://www.gazetaprawna.pl/artykuly/1470290,andrusewicz-wzrost-liczby-zakazen-nowe-ogniska-koronawirus-dps.html> (6 June 2020).

Experts adopted guidelines which stressed the urgency of defining the standards of providing the geriatric aid during the state of the epidemic.⁵⁷

2.2.7 Support measures and promising practices targeting older people, including access to goods and services online and offline, social/psychological support, and use of digital tools and technology

The measures and promising practices addressed to the older people during the state of the epidemic were adopted mainly at the local level and as grass roots initiatives.

The Association MANKO runs a campaign "In solidarity with seniors".⁵⁸ Within the campaign the organizations prepared media content concerning among others health and psychological care during the state of the epidemic. The campaign also promotes the volunteer initiatives to do shopping for senior neighbors (a similar actions were undertaken by the communities in different cities across Poland). The campaign also provides information on threats of financial fraud which may use the false information related to the state of the epidemic.

Furthermore, local senior councils such as e.g. Silesia Council for Seniors launched helplines for seniors facing psychological effects of the isolation and the state of the epidemic.⁵⁹

2.2.8 Consultation of older people's organisations and/or other civil society organisations in the design, implementation and review of COVID-19-related measures

There is no available information on the consultation of older people's organization concerning implementing COVID-19 related measures. The Ministry of Health organized the working consultations providing one day for presenting opinions and remarks on the draft regulations concerning the state of the epidemic, however these provisions concerned the general situation and did not address the situation of the older people directly. The results of the consultations have not been published.⁶⁰

⁵⁷ Commissioner of Patient's Rights, „Ochrona zdrowia w czasie epidemii” – rekomendacje Rady Ekspertów przy Rzeczniku Praw Pacjenta, available at: <https://www.gov.pl/web/rpp/ochrona-zdrowia-w-czasie-epidemii-rekomendacje-rady-ekspertow-przy-rzeczniku-praw-pacjenta>

⁵⁸ Stowarzyszenie MANKO, Solidarni z Seniorami – Razem Damy Radę, available at: <https://glosseniora.pl/solidarni-z-seniorami/>

⁵⁹ Tvp.info, Zamknięci z powodu koronawirusa. Ruszyły telefony wsparcia dla seniorów, available at: <https://www.tvp.info/47303638/zamknieni-z-powodu-koronawirusa-ruszyly-telefony-wsparcia-dla-seniorow>

⁶⁰ Ministry of Health, Rozporządzenie ws. ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii - konsultacje robocze, available at: <https://www.gov.pl/web/zdrowie/rozporzadzenie-ws-ustanowienia-okreslonych-ograniczen-nakazow-i-zakazow-w-zwiazku-z-wystapieniem-stanu-epidemii-3>