

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, including enforcement actions

In this reporting period, in general, the main restrictions related to combating the state of the epidemic were upheld.¹ The main provisions regulating the general framework of limitations and orders related to the state of the epidemic were systematically changed over the last month and supplemented by the legislative changes and regulations issued by some of the Government's Ministers.

On 31 March 2020, the government issued a regulation on introducing limitations, orders and prohibitions in relation to the state of the epidemic which replaced the regulations on the state of the epidemic issued earlier in March 2020.² The regulation upheld the earlier limitations in the freedom of movement, operation of public institutions and places (including shops, restaurants, and bars, as well as museums and public libraries) and freedom of assemblies. The regulation also introduced the limitations in the number of customers that can be present in a shop at the same time and the obligation to provide customers with disposable gloves and sanitizers in shops.

The Government's regulation on introducing limitations, orders and prohibitions in relation to the state of the epidemic was further amended in mid-April 2020 and in the end of April 2020. The Government's regulation of 10 April 2020³ introduced the obligation to cover nose and mouth (using facemasks or any other kinds of material) in the public space.

Since mid-April 2020 the restrictions related to the state of the epidemic have been slightly loosened as the Government announced the four-stage plan of lifting the restrictions without, however, providing exact dates for implementation of each of these stages.⁴ The restrictions were relaxed with reference to opening the nurseries and kindergartens, the number of customers remaining in the shops at the same time, entrance to public spaces (such as parks or forests) and, as of the beginning of May 2020, reopening the hotels without the possibility to serve food.

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 Constitution⁵ and the Act on the natural

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 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 prohibitions in relation to the state of epidemic.

² Poland, Council of Ministers' regulation on establishing specific limitations, orders and prohibitions in relation to the state of the epidemic (*Rozporządzenie Rady Ministrów z dnia 31 marca 2020 w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii*), 31 March 2020.

³ 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 10 kwietnia 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii*), 10 April 2020.

⁴ Poland, Serwis Rzeczypospolitej Polskiej, Nowa normalność: etapy znoszenia ograniczeń związanych z COVID-19, available at: <https://www.gov.pl/web/koronawirus/nowa-normalnosc-etapy> (accessed on 11 May 2020).

⁵ Poland, the Constitution of the Republic of Poland (*Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*), 2 April 1997, Chapter XI.

disaster.⁶ As it was reported earlier, in a case of proclaiming the state of the natural disaster (such as spread of an epidemic) no elections can be organized, either during the state or 90 days after its termination. Proclaiming the state of natural disaster could have collided with the date of the presidential elections scheduled for 10 May 2020. The lack of proper preparations to organize the in-person voting, as well as the deficiencies of the draft law on postal voting, which was eventually adopted by the Parliament on 8 May 2020, add to the growing number of concerns regarding the fairness and security of the scheduled elections.⁷ The voting in the elections scheduled for 10 May 2020 was not organized.

1.2 Measures affecting the general population

1.2.1 Social distancing

Focus on:

- *Stay at home orders and physical distancing when outside the house*
- *Enforcement and penalties*

The provisions concerning the mandatory quarantine remain unchanged in the reporting period. As of March 2020, every person travelling from abroad is subjected to a mandatory quarantine.⁸ 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.⁹

The government's regulations provided also for limitations of travelling and leaving house. Travelling and leaving house is restricted only to four situations: i) commuting to work; ii) travel in relation to perform duties in order to prevent COVID-19 voluntarily; iii) leaving home only to run the most necessary daily life errands (e.g. seeing a doctor or grocery shopping); iv) participating in religious worship. The Government's regulation also provided for the limitations in commuting – only two persons can walk together, however in a distance no shorter than 2 meters (it does not apply to

⁶ Poland, Act on the natural disaster (Ustawa z dnia 18 kwietnia 2002 r. o stanie klęski żywiołowej), 18 April 2002

⁷ 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/>

⁸ 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.

⁹ 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.

walking with children under 13 years or a person with a disabilities). As of 20 April 2020, these limitations were slightly loosened as the entrance to parks and forests were reintroduced. Still, however, the obligation to cover mouth and nose remained in place.¹⁰

On 31 March 2020, the new provisions of the Misdemeanour Code came into force and introduced the new category of petty offence of not subordinating to the Police or Border Guard's orders which is punishable with detention or fine.¹¹ During the legislative process, this provision was criticised by the Ombudsman's Office¹² and the civil society organizations¹³ due to its ambiguity and potential threat of instrumental application of this provision by the law enforcement officers. Both the Ombudsman and the civil society organizations pointed out that this provision would remain in force even after the state of the epidemic is ceased and it may be applied in e.g. suppressing the freedom of assemblies when the protesters do not obey the Police's orders. Furthermore, the Ombudsman and the civil society organizations argued that the law enforcement officers have already measures to enforce their orders (such as e.g. coercive measures) and the penalty provided by this regulation is disproportionate.

In April, the media reported on the growing number of police interventions related to enforcing the restrictions implemented during the state of the epidemic.¹⁴

1.2.2 Education

Focus on:

- *Ensuring continuity of education for children from socioeconomically disadvantaged backgrounds, including measures to ensure distance learning for this group*

In the reporting period, all the education facilities remained closed. The primary schools and high school education in public schools was performed remotely via the online teaching platforms. The online teaching requires an access to a computer and internet connection which may not be available for each pupil. Nevertheless, the Ministry of National Education's regulation allows to lend a pupil or a teacher a computer or a tablet.¹⁵ Furthermore, the online platforms for remote education do not provide enough guarantees for preventing from interruptions of the third persons. In April 2020, media reported on several incidents when persons different than school pupils used the links to the online classes and disturbed the sessions by interrupting the conversations and teachers' lectures.¹⁶

¹⁰ Poland, Council of Ministers Regulation on establishing certain limitations, orders and prohibitions in relation to the state of the epidemic (*Rozporządzenie Rady Ministrów z dnia 10 kwietnia 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii*), 10 April 2020

¹¹ Poland, Misdemeanour code (*Kodeks wykroczeń*), Article 65a amended by the 2nd COVID Act of 31 March 2020.

¹² Poland, Ombudsman's office, Koronawirus. Uwagi RPO do specustawy o "tarczy antykryzysowej" dla Senatu, available at: <https://www.rpo.gov.pl/pl/content/koronawirus-uwagi-rpo-do-specustawy-o-tarczy-antykryzysowej-dla-senatu> (accessed on 11 May 2020).

¹³ Helsinki Foundation for Human Rights, Opinia HFPC do tzw. Tarczy Antykryzysowej, available at: <http://www.hfhr.pl/opinia-hfpc-do-tzw-tarczy-antykryzysowej/>

¹⁴ See e.g. TVP, Koronawirus. Rośnie liczba osób łamiących przepisy, available at: <https://lublin.tvp.pl/47396059/koronawirus-rosnie-liczba-osob-lamiacych-przepisy>

¹⁵ Poland, Ministry of National Education's Regulation on specific solutions concerning temporary limitations in the works of educational facilities due to COVID-19 (*Rozporządzenie Ministra Edukacji Narodowej z dnia 20 marca 2020 r. w sprawie szczególnych rozwiązań w okresie czasowego ograniczenia funkcjonowania jednostek systemu oświaty w związku z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19*), 20 marca 2020.

¹⁶ Gazeta Wyborcza, Patostreamerzy atakują zdalne lekcje. "Nauczyciele są ofiarami cyberprzemocy", available at: <https://wyborcza.pl/7,75398,25870580,rajdy-na-zdalne-lekcje-nauczyciele-sa-ofiarami-cyberprzemocy.html>

In response to these incidents, the Ombudsman's Office together with educational and IT experts prepared guidelines for teachers on how to secure the on-line classes.¹⁷

Furthermore, the lockdown of the education facilities revealed also the problem of pupils' limited access to regular meals. Children who are entitled to such an aid receive lunch at school free of charge. During the state of the epidemic, pupils' access to meal provided through this mechanism may be limited. The Ombudsman raised this problem in his correspondence with the Minister of National Education. The representative of the Ministry of the National Education informed that in response to suspending of works of schools the local social care offices have a possibility to provide either financial or in-kind support to families entitled to pupils' free of charge meal at school. The Ombudsman expressed his concerns whether such a mechanism would be effective given the fact that the local social care offices are overburden with work and may face difficulties in reaching out to all children which may need free of charge meal. The Ombudsman also noted that there are children who may need such aid but may not be entitled to receive it within this mechanism. The Ombudsman also noted that children of health care system workers and workers of other sectors engaged in combating the epidemic may require special assistance.¹⁸

In the reporting period also all nurseries and kindergartens remained closed. In the end of April, the government informed about the possibility to reopen these institutions in May 2020, however, it left the final decision in this regard to the units of the local self-government and the owners of the facilities. Some of the local governments have already informed that they will not consent to reopening nurseries and kindergartens in their cities.¹⁹ The government's decision was accompanied by the guidelines of the Central Sanitary Inspectorate on organization of work in nurseries 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.²⁰

1.2.3 Work

Focus on:

- *People in precarious work*
- *Measures related to 'essential workers' and those already returning to work, e.g. what is identified as an 'essential' function, physical distancing measures in the workplace, relaxing restrictions on working hours, additional financial support*

¹⁷ Poland, Ombudsman's office, Jak bezpiecznie prowadzić lekcje online? Poradnik dla nauczycieli i dyrektorów, available at: <https://www.rpo.gov.pl/pl/content/jak-prowadzic-lekcje-online-poradnik-dla-nauczycieli-i-dyrektorow>

¹⁸ Poland, Ombudsman's office, Koronawirus. Zamknięcie szkół pozbawiło najważniejszego posiłku dzieci z najbiedniejszych rodzin, available at: <https://www.rpo.gov.pl/pl/content/koronawirus-rpo-zamkniecie-szko%C5%82-pozbawilo-najwazniejszego-posilku-najbiedniejsze-dzieci>

¹⁹ Rzeczpospolita, Rząd obiecał otwarcie placówek. Samorzady: nie tak prędko, available at: https://regiony.rp.pl/bez-kategorii/25417-rzad-obiecal-otwarcie-placowek-samorzady-nie-tak-przedko?utm_source=rp&utm_medium=teaser_redirect

²⁰ Poland, Chief of Central Sanitary Inspectorate guidelines (Wytyczne przeciwepidemiczne Głównego Inspektora Sanitarnego z dnia 30 kwietnia 2020 r.), 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>

The essential workers

The situation of the “essential workers” is not specifically covered by the recently adopted regulations.

People in precarious work

The Parliament introduced several measures focused on supporting persons in precarious work or micro and small entrepreneurs. Most of them were set in 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 acts²¹ (hereinafter the 2nd COVID Act), and were related to the situation of entrepreneurs. The 2nd COVID Act established a possibility for persons conducting business or working under civil law contracts to obtain a stoppage benefit if the epidemic forced them to suspend their activities or limit the number of orders from their clients. The stoppage benefit may be granted to persons who are not entitled to the social insurance on other basis such as an employment contract or registered as an unemployed. The maximum amount of the benefit should not exceed PLN 2080 (EUR 520).

Moreover, pursuant to the 2nd COVID Act, certain categories of entities are exempt from the costs of social insurance for three months. Such a possibility is addressed to micro and small entrepreneurs. In the case of medium entrepreneurs, the COVID Acts enables them not to bear only 50% of the social insurance costs. In the case of medium entrepreneurs, the 2nd COVID Act initially sustained their obligation to bear the cost of social insurance. The situation was modified by the Act on specific support instruments in connection with the spread of the SARS-CoV-2 virus²² (hereinafter the 3rd COVID Act) modifying appropriate provisions of 2nd COVID Act. Pursuant to the 3rd COVID Act, the small entrepreneurs are exempt from 50% of the costs of social insurance.

Furthermore, the 2nd COVID Act established a possibility for the employers to agree with the representatives of employees (e.g. trade unions) on certain working conditions during a stoppage or during the period of reduced working time. The agreement shall specify at least the duration of the stoppage, the groups of employees affected by the stoppage, or reduced working time. It should also indicate to what extent the working time of employees will be reduced.

According to the 2nd COVID Act, during a stoppage the employer can reduce the remuneration of the employees by no more than 50%, but it shall be no lower than the minimum remuneration determined pursuant to other legal provisions. In 2020, the amount of minimum remuneration was set at the level of PLN 2600 (650 EUR) gross for full-time employees. As a result, the remuneration of employees who are working part-time may be reduced below the level of PLN 2600 (650 EUR), accordingly to the dimension of their work. Nevertheless, such remuneration might be co-financed by the State for a maximum period of 3 months. The Council of Ministers may extend this possibility for a further period.

On the other hand, the agreement with representatives of employees may also include provisions concerning the reduction of employees’ working time by a maximum of 20%, but no less than to half of their working time. As in the case of the stoppage, the remuneration for employees with reduced working time cannot be lower than the minimum remuneration (accordingly to the dimension of their

²¹ 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.

²² Poland, the Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-2 virus, Journal of Laws of 2020, item 695.

work). Once again, such remuneration might be co-financed by the state for a maximum of 3 months. The Council of Ministers may extend this possibility for a further period.

The 2nd COVID Act enabled also local authorities to grant one-time loan for micro entrepreneurs. The loan is financed from the funds of Work Fund. It cannot exceed PLN 5000 and has to be used to cover the running costs of the company.

Special rights regarding the work of people with disabilities have been introduced in the Act of 31 March 2020 amending the Act on specific solutions related to the prevention and combating COVID and other infectious diseases and crises they caused and some other acts (Journal of Laws item 568). The main state aid in this matter is increasing the monthly co-financing for the salaries employees with disabilities.²³ In addition, the possibility of compensation of remuneration paid to persons with disabilities employed in Vocational Activity Establishments has been introduced²⁴. Mention should also be made of the introduction of provisions enabling the provision of public aid to economic entities in a difficult economic situation which employ persons with disabilities. Additionally, it is also possible to allocate the resources of the company's rehabilitation or activity fund to maintain jobs at risk of liquidation as well as for remuneration payments and crisis financial assistance for workers with disabilities regardless of the legal basis of their employment – this possibility is open for employers with the status of a Vocational Activity Establishments or Sheltered Workshops.²⁵

1.2.4 Access to justice

Focus on:

- *Restrictions to court proceedings (e.g. adjournment of proceedings, written procedures, extension of deadlines, determination of what constitutes 'urgent cases')*
- *Use of alternatives to detention*

Urgent cases

The 2nd COVID Act suspended all pending court-imposed time limits and time limits in criminal proceedings. The suspension started as of 31 March 2020.

Pursuant to the 2nd COVID Act, during the state of epidemic or epidemic threat, the courts are not allowed to hold a hearing in cases that were not specified as urgent. As of 30 April, the catalogue of urgent cases included:

- cases concerning the application and extension of pre-trial detention;
- cases concerning the apprehension of an individual;
- cases concerning placement of a defendant in a psychiatric institution;
- cases concerning ordering an interruption in executing a penalty implemented with the use of an electronic monitoring system;

²³ Poland, Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities (Journal of Laws item 426).

²⁴ Poland, Office of the Plenipotentiary for Persons with Disabilities, *10 faktów o wsparciu osób niepełnosprawnych podczas epidemii* at <http://www.niepelnosprawni.gov.pl/art,1002,10-faktow-o-wsparciu-osob-niepelnosprawnych-podczas-epidemii>

²⁵ Poland, Act of 31 March 2020 amending the Act on specific solutions related to the prevention and combating COVID and other infectious diseases and crises they caused and some other acts (Journal of Laws item 568).

- cases involving the application of detention measures in the form of the placement of a foreign national in a guarded immigration centre or the application of immigration detention of a foreign national;
- cases involving the enforcement of a custodial sentence or other penalty or coercive measure resulting in the deprivation of liberty, if the decision of the court concerns the release of a person deprived of their liberty from prison or remand centre or is necessary for the enforcement of such a sentence, penalty or coercive measure at the prison or remand centre;
- cases involving the removal of a person remaining under the parental authority or is under guardianship;
- cases referred to in the Mental Health Protection Act;
- cases involving the placement and extension of a minor in a juvenile shelter;
- cases involving the placement of a migrant minor in a custody and a care centre;
- cases concerning the examination of applications for the appointment of a guardian ad litem to represent the interests of minors in proceedings of urgent cases before a court or other authority;
- cases referred to in the Act on the proceedings concerning the persons with mental disorders that pose a threat to life, health or sexual freedom of other persons;
- cases involving the order for a perpetrator of domestic violence to leave the premises occupied with the victim of domestic violence;
- cases related to the enforcement of a European Arrest Warrant (EAW);
- taking the testimony of a person within the framework of the procedure for securing evidence or a person who may reasonably be expected to be unable to give testimony at the trial;
- cases referred to administrative courts in which the court is obliged to issue a judgement before the end of the time limit specified by law;
- application for initiating restructuring proceedings,
- cases involving the order for a perpetrator of domestic violence to leave the premises occupied with the victim of domestic violence;

The last two types of cases were not included in the initial catalogue of urgent cases and were added to it by the 3rd COVID Act.²⁶

Moreover, the president of the court has the power to declare a specific case as urgent, whenever the failure to do so would cause danger to a human or an animal life or health, serious harm to the public interest or due to imminent material damage or whenever it is required by the interest of justice system.

The COVID Act established also a procedure enabling the president of Appeal Court and in some cases president of the Supreme Court and the President of the Supreme Administrative Court to designate the court competent to hear particular cases whenever another court has ceased operation due to the epidemic reasons.

Access to court

The Polish justice system still does not widely use means of electronic communication. As a result, at the beginning of the state of the epidemic, the Polish courts were unable to easily switch into electronic proceedings and electronically communicate with the parties.

This issue was raised during the parliamentary works on the 2nd COVID Act. The initial draft of that Act, submitted on 26 March, included provisions allowing submitting and delivering pleadings by electronic

²⁶ Poland, the Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-2 virus, Journal of Laws of 2020, item 695.

communication.²⁷ However, during the legislative process the government requested to remove those solutions.²⁸

The plans to introduce electronic communication were also included in the draft act on the amendment to some other acts in reference to protection measures connected with the spread of the SARS-CoV-2 virus²⁹ (hereinafter 4th COVID Act) – the law was adopted by the Parliament on 30 April 2020, however the law has not come into force as until 12 May 2020 the President has not signed it. Pursuant to the law initial meaning, the parties to the proceedings would be entitled to receive and submit pleadings through Electronic Platform of Public Administration Services (ePUAP). However, such solution was removed from the final text of the Act adopted by Sejm.

The study conducted by the Helsinki Foundation for Human Rights³⁰ revealed that there are no uniform rules on the submission of letters and documents or the operations of court registry offices during the state of the epidemic. According to the HFHR findings, the situation directly influences the individuals seeking protection in courts and creates uncertainty for parties to judicial proceedings.

The HFHR pointed out that the Supreme Court has failed to clearly and unambiguously notify that its Customer Counter is closed and does not accept any correspondence, whereas websites of the appellate courts do not provide for uniform information about the available methods of submission of letters and documents. Moreover, in the case of two appellate courts, there is no information on the operation of their registry offices at all. Only one of the appellate courts accepts the appeals through measures of electronic communication and establishes specific regulations in that regard. For example, the court requires to print the e-mail with the appeal to consider the appeal delivered. Moreover, e-mails sent after 2 pm on the working day are printed on the next working day.

The study reveals also that there are no uniform rules on the submission of letters and documents to regional and district courts. The rules of receiving correspondence differ, depending on the court. In some of them the parties may submit pleadings directly at the Registry Offices, while in the other they may send it via e-mail or have to put them in a specially prepared container. According to the study, such large differences occur between the district courts of the same appeal, the same district, and even sometimes located in the same city.³¹

Alternatives to detention

The draft of the 2nd COVID Act submitted to the parliament on 26 March 2020 initially included an alternative preventive measure in the form of house arrest applied by public prosecutor instead of criminal court. However, the government has withdrawn from this proposal as it was criticized by

²⁷ Poland, Draft act on the amendment to the Act on special solutions related to the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts, available at: <http://orka.sejm.gov.pl/Druki9ka.nsf/0/OED4D419861EFC71C12585370038D29C/%24File/299-ustawa.docx> (8 May 2020).

²⁸ Poland, Government motion to amend the draft act on the amendment to the Act on special solutions related to the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts, available at: <http://orka.sejm.gov.pl/Druki9ka.nsf/0/5EDFDA5A0BA099CBC1258538003A6786/%24File/299-A.pdf> (8 May 2020).

²⁹ The Act of 30 April 2020 on the amendment to some other acts in reference to protection measures connected with the spread of the SARS-CoV-2 virus.

³⁰ Helsinki Foundation for Human Rights, Access to courts in the time of pandemic, available at: <http://www.hfhr.pl/wp-content/uploads/2020/04/Access-to-court-in-times-of-a-pandemic.pdf> (2 May 2020).

³¹ *Ibidem*.

representatives of civil society and media, who argued that such a measure was a form of deprivation of liberty and should only be used by the court³².

On the other hand, the 2nd COVID Act introduced several solutions that may reduce the number of persons serving their sentence in the penitentiary unit. It allowed the director of a penitentiary unit to submit a request for the interruption of the execution of the sentence to a penitentiary court. However, the director was able to submit such only whenever there was a guarantee that the convict will obey the law. In addition to this, only convicts who were convicted for a sentence not exceeding three years of imprisonment were entitled to be granted such interruption.

Moreover, the director of the penitentiary unit can submit a request for interruption only during the state of the epidemic (or an epidemic threat) and only if it contributes to the reduction or elimination of epidemic threats in the penitentiary unit.

The penitentiary court was granted the power to order such interruption of sentence for a specified period and extend it if needed but no longer than for the duration of the state of epidemic. In every case, the public prosecutor gained a final say and was able to oppose the director's motion. In such a situation, the court was forced to discontinue the proceedings.

1.2.5 Freedom of movement

Focus on:

- *Closure of borders/restrictions on movement within the EU and categories of people allowed to enter the Member State (including EU citizens, legally-residing third country nationals and their families, asylum applicants)*
- *Special provisions for cross-border commuters (especially health and care workers) or other workers from neighbouring non-EU countries*

The Minister of Health's Regulation of 25 March 2020³³ modified the catalogue of persons entitled to cross the border without undergoing mandatory quarantine. According to the new meaning, the members of train crews, as well as drivers of vehicles under 3,5 tonnes carrying goods were exempted from the compulsory quarantine.

The catalogue of persons exempted from the compulsory quarantine was repeated in the Council of Ministers' Regulation of 30 March 2020 on establishing certain restrictions, orders and bans in relation to the outbreak of the state of the epidemic,³⁴ which sustained the compulsory quarantine for people crossing borders. According to that regulation, specific categories of people crossing borders as part of their professional activities were exempted from the compulsory quarantine. This includes inter alia members of aircraft's, train's and ship's crews, fishermen and drivers carrying goods. The exemption applied also to the diplomats, police officers, soldiers and members of other services, as well as persons operating trans-border farms.

³² P. Żytnicki, Rząd wprowadza areszt domowy. Prokurator będzie mógł zakazać wychodzenia z mieszkania przez trzy miesiące, wyborcza.pl, <https://poznan.wyborcza.pl/poznan/7,36001,25822969,rzad-wprowadza-specustawa-areszt-domowy-prokurator-bedzie-mogl.html> (8 May 2020).

³³ Poland, The Minister of Health regulation amending the regulation on the announcement of the state of the epidemic in the territory of the Republic of Poland, 25 March 2020.

³⁴ Poland, The Council of Ministers Regulation of 30 March 2020 on establishing certain restrictions, orders and bans in relation to the outbreak of the state of the epidemic, 30 March 2020.

No provisions of the Council of Ministers regulation concerned the situation of asylum seekers. As a result, to seek for asylum status in Poland, they need to obtain a consent of the Commander-in-Chief of the Border Guard and the commander of Border Guard post.

The closure of borders was initially accompanied with introducing sanitary controls for all persons crossing borders. The representatives of the Border Guard measured temperature of persons crossing borders and collected their statements about whereabouts.

In recent weeks, the problem of compulsory quarantine for trans-border employees, especially those performing medical profession, has met with protests at the borders. Protesters opposed their separation from relatives working on the other side of the border³⁵ and lack of possibility to work, study and use healthcare in other EU members state³⁶. Some of the protesters complained, that due to compulsory quarantine they were dismissed from work³⁷.

The protest took place at several Polish-German³⁸ and Polish-Czech³⁹ border crossings. Each of them involved from several dozen to several hundred people at both sides of the borders⁴⁰. The protesters in Poland, due to legal prohibition of assemblies, were forced to pretend that they were just on a walk⁴¹.

1.3 Impact of measures on particular groups

Select the three most relevant groups from the following:

- *persons with disabilities,*
- *homeless people,*
- *older people (which should include older persons in institutions),*
- *Roma and Travellers (FRA would like to see this group covered in those Member States with significant Roma populations)*
- *detainees*
- *or another group not listed that have immersed in your country as facing particular challenges - before selection, this should be discussed with FRA.*

In April 2020, the media reported on at least ten cases of the social welfare houses where residents were infected with coronavirus (mainly elderly persons and persons with disabilities). The situation was particular difficult in the nursing homes, in which the persons infected were also the members of the staff. The nursing homes are run by either local governments or private institutions and provide housing and support services to persons (usually elderly persons or persons with disabilities) who require 24-hour nursing care. In the case of the coronavirus infection in the nursing home, the entire

³⁵ TVN24, Demonstracje na granicy. Premier Brandenburgii pisze list do polskich władz, available at: <https://tvn24.pl/swiat/koronawirus-protesty-na-granicy-z-niemcami-premier-brandenburgii-pisze-list-do-polskich-wladz-4566421> (2 May 2020).

³⁶ TVN24, "Wpuśćcie nas do pracy. Wpuśćcie nas do domu", available at: <https://tvn24.pl/poznan/koronawirus-w-polsce-protesty-na-polsko-niemieckiej-granicy-4565864> (8 May 2020).

³⁷ A. Dobkiewicz, Wielki protest na polskich granicach. Chcą zniesienia kwarantanny, Wyborcza.pl, available at: <https://wroclaw.wyborcza.pl/wroclaw/7,35771,25897463,na-polskich-granicach-protestowali-pendlerzy-i-genzpendlerzy.html?disableRedirects=true> (May 2020).

³⁸ Border crossings in Słubice, Zgorzelec, Gubin, Rosówek, Kostrzyn, Łęknica.

³⁹ Border crossings in Pojarów and Cieszyn, Kudowa Zdrój.

⁴⁰ TVN24, "Wpuśćcie nas do pracy. Wpuśćcie nas do domu", available at: <https://tvn24.pl/poznan/koronawirus-w-polsce-protesty-na-polsko-niemieckiej-granicy-4565864> (8 May 2020).

⁴¹ TVN24, "Wpuśćcie nas do pracy. Wpuśćcie nas do domu", available at: <https://tvn24.pl/poznan/koronawirus-w-polsce-protesty-na-polsko-niemieckiej-granicy-4565864> (8 May 2020).

institution is subject to quarantine and does not have enough staff and capacity to continue to provide medical care and assistance to the residents. One of the most serious situations occurred in the nursing home in Warsaw, i.e. the care and treatment facility, where 20 out of 37 residents were infected with coronavirus, and almost the entire medical staff left the facility.⁴² In some nursing homes subject to quarantine, the residents were evacuated to the hospitals. Nursing homes in Poland, including care and treatment facilities, are placed under the responsibility of the Ministry of Health. As regards residential care services provided by the social assistance sector, they fall under the responsibility of The Ministry of Family, Labour and Social Affairs. The Minister of Family, Labour and Social Affairs informed the Ombudsman that the situation in the social assistance houses is being monitored on a daily basis.⁴³ Furthermore, the Ministry in cooperation with voivodeships (the part of the government administration in regions) regularly update the instructions and recommendations concerning the safety and health in social assistance homes. Such instructions include, among others, transferring the staff from the facilities whose operation has been suspended to these facilities which face the shortage of staff and capacity. As the spread of the virus in the nursing homes was also linked to the fact that the medical staff usually worked in several health facilities (including hospitals), the Ministry of Health recommended also limiting the employment of the medical staff to only one facility.⁴⁴

Due to the state of the epidemic, the prisoners' visitations rights and their work outside the prisons have been limited. These limitations have also affected the right to contact the lawyer. The media reported on cases where in order to schedule the meeting with the imprisoned client, the lawyer had to present a certificate on their health, even though it is not required by law.⁴⁵ In response to the threat of spreading the coronavirus in prisons, the 2nd COVID Act widened the possibility to use electronic monitoring in cases of crimes punishable up to 1.5 imprisonment earlier such a possibility was available in case of crimes punishable up to 1 year⁴⁶.

2 Users' data - privacy and data protection

2.1 Arrangements between public authorities and other actors to allow collection, sharing and processing of user data

The 3rd COVID Act imposed an obligation on the telecommunication operators to provide, upon the requests from the Ministry of Digitalization, localization data of phones belonging to persons

⁴² TVN24.pl, Studenci, pielęgniarki i lekarze. Ochotnicy chcą ratować dom opieki przy Bobrowieckiej, available at: <https://tvn24.pl/tvnwarszawa/mokotow/koronawirus-w-warszawie-w-domu-opieki-przy-bobrowieckiej-pomoga-studenci-medycyny-4554829>

⁴³ Poland, Ombudsman's office, Koronawirus. MRPiPS o sytuacji w domach opieki, available at: <https://www.rpo.gov.pl/pl/content/koronawirus-mrpips-o-sytuacji-w-domach-opieki>

⁴⁴ Poland, Ombudsman's office, Koronawirus. MRPiPS o sytuacji w domach opieki, available at: <https://www.rpo.gov.pl/pl/content/koronawirus-mrpips-o-sytuacji-w-domach-opieki>.

⁴⁵ Prawo.pl, Więzienia w czasie epidemii - problem z testami, zakazami, brakiem informacji, available at: <https://www.prawo.pl/prawnicy-sady/sytuacja-w-polskich-wiezieniach-w-czasie-koronawirusa,499532.html>.

⁴⁶ 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.

subjected to quarantine.⁴⁷ At the same time, media reported that in March 2020, on the basis of the Prime Minister's order, four main telecommunication operators were obliged to provide to the voivodes (part of the regional government's administration) information on localization of mobile telecommunication devices belonging to persons remaining in quarantine. The Prime Minister's decision lacked any justification. The data was supposed to be transferred on the basis of a contract between the telecommunication operator and the voivodes. In case such a contract has not been signed, the Prime Minister's decision should become immediately due. Two out of four telecommunication operators informed that they do not transfer the data on the basis of the Prime Minister's decision.⁴⁸

2.2 Legal framework enabling collection, processing, sharing and storage of user data

In the reporting period, there were two main legal changes concerning the collection, processing and storage of user data provided by the COVID Acts.

First, the COVID Acts provided that in order to control whether persons subjected to quarantine fulfil this duty, the Police can use its statutory measures with an exception to surveillance. The exception concerns mainly access to the content of the communication; however, it is not applicable to the meta data of the communication such as e.g. information on localization of the mobile device.

Second, as it was stated above, the COVID Acts imposed an obligation on the telecommunication operators to provide upon the requests of the Ministry of Digitalization localization data of phones belonging to persons subjected to quarantine.⁴⁹

2.3 Privacy and data protection concerns and possible solutions

ProteGO Safe Application

The government of Poland developed a specially designed application⁵⁰ to track contacts between Poles. The first version of the ProteGO Safe allowed users only to conduct self-assessment of health risk based on the WHO guidelines, as well as to keep a health journal, to regularly record information

⁴⁷ Poland, Act on special support instruments in relation to the spread of virus SARS-CoV-2 (*Ustawa z dnia 16 kwietnia 2020 r. o szczególnych instrumentach wsparcia w związku z rozprzestrzenianiem się wirusa SARS-CoV-2*), 16 April 2020.

⁴⁸ Rzeczpospolita, Do rządu popłynął strumień danych o lokalizacji osób poddanych kwarantannie, available at: <https://www.rp.pl/Koronawirus-SARS-CoV-2/200419545-Do-rzadu-poplynal-strumien-danych-o-lokalizacji-osob-poddanych-kwarantannie.html>

⁴⁹ Poland, Act on special support instruments in relation to the spread of virus SARS-CoV-2 (*Ustawa z dnia 16 kwietnia 2020 r. o szczególnych instrumentach wsparcia w związku z rozprzestrzenianiem się wirusa SARS-CoV-2*), 16 April 2020.

⁵⁰ ProteGO Safe, available at: <https://play.google.com/store/apps/details?id=pl.gov.mc.protegosafe&hl=pl> or <https://apps.apple.com/pl/app/protego-safe/id1508481566?l=pl>. (8 May 2020).

about users health. It was also used to provide official and current information on the situation related to the development of an epidemic⁵¹.

After modification introduced on April 29, ProteGO Safe uses Bluetooth module to register devices that were in the vicinity of user's phone and inform the user about contact to a device belonging to a person suffering from COVID⁵².

According to the Ministry of Digitization, the application will automatically estimate the risk of infection for each user based on his personal history of devices encountered and medically verified cases of infections. As a result, it will assign a user to the status: green ("freeway") or red ("quarantine!")⁵³. However, due to the fact that code running on the ProteGO Safe server has not been made public, it is not known how ProteGO Safe will profile the users in that context.

According to the Ministry of Digitization, "the application is not used as a surveillance method and does not collect user data. Pieces of information about the encountered devices do not contain any data about their owners". They are "anonymous, encrypted, and stored on the phone for only two weeks"⁵⁴. No authentication is required to run the application (originally the government informed about the need to provide a phone number to run it⁵⁵).

According to the government's, "the application is built in accordance with the principles arising from the General Data Protection Regulation (GDPR), including data minimization, privacy by design, privacy by default, accuracy, integrity and confidentiality"⁵⁶. Moreover, the government declares that the application is based on the guidelines of the European Council for the Protection of Personal Data, the European Commission and Toolbox developed as part of the eHealth network operated by the European Commission⁵⁷.

The Panoptykon Foundation emphasized that the solution adopted in version 3.0.3 of ProteGO Safe has a hybrid character: it is both centralized (because key operations for the application take place on the server) and decentralized (the server operator does not have all the necessary information to de-anonymize application users)⁵⁸. However, the Ministry of Digitization shows a desire to integrate the ProteGO Safe application with solutions provided by Google and Apple, that are based on decentralized systems⁵⁹.

⁵¹ Government information on ProteGO Safe, available at: <https://www.gov.pl/web/koronawirus/protegosafe> (8 May 2020).

⁵² Government information on ProteGO Safe, available at <https://www.gov.pl/web/cyfryzacja/protego-safe--pobierz-zainstaluj-przetestuj>.

⁵³ Government information on ProteGO Safe, available at: <https://www.gov.pl/web/cyfryzacja/zycie-po-kwarantannie--przetestuj-protego> (8 May 2020).

⁵⁴ Government information on ProteGO Safe, available at: <https://www.gov.pl/web/cyfryzacja/z-protego-safe-do-sklepu---obalamy-mity> (8 May 2020).

⁵⁵ Government information on ProteGO Safe, available at: <https://www.gov.pl/web/cyfryzacja/zycie-po-kwarantannie--przetestuj-protego> (8 May 2020).

⁵⁶ Government information on ProteGO Safe, available at: <https://www.gov.pl/web/cyfryzacja/z-protego-safe-do-sklepu---obalamy-mity>

⁵⁷ Government information on ProteGO Safe, available at: <https://www.gov.pl/web/cyfryzacja/z-protego-safe-do-sklepu---obalamy-mity>

⁵⁸ Panoptykon Foundation, Jak Polska walczy z koronawirusem i dlaczego aplikacja nas przed nim nie ochroni?, available at: <https://panoptykon.org/protego-safe-ryzyka> (8 May 2020).

⁵⁹ Panoptykon Foundation, Jak Polska walczy z koronawirusem i dlaczego aplikacja nas przed nim nie ochroni?, available at: <https://panoptykon.org/protego-safe-ryzyka> (8 May 2020).

The Ministry of Digital Affairs published application source code⁶⁰, which allows interested users to assess it. The government has also published a privacy policy related to the use of this application⁶¹. The Ministry of Digital Affairs also regularly monitors user's comments on Google Play.

As the application was introduced in its final shape at 29 April, its effectiveness has not been assessed yet.

As of 30 April, the government withdrew⁶² from solutions forcing phone users to use ProteGO Safe just after announcing such plans. The guidelines for shopping malls proposed by the Ministry of Digitization suggested owners of shopping malls, among others, to encouraging customers to install these applications. To do so, the shopping malls should set specific discounts and promotions for people using this app. Besides, the Ministry pointed out that customers of shopping malls using this app will not be calculated within the maximum limit of persons staying in the shopping malls.

Kwarantanna Domowa application

ProteGO safe is the second application developed by the government in connection with coronavirus. The first application was Kwarantanna Domowa (Home Quarantine), developed as a tool to verify whether the user obeys the mandatory quarantine. Furthermore, it enabled users to conduct health self-assessment, notify state services a threat to their lives or a need to be supplied in the most necessary items.

The application uses geolocation and face-matching system to verify that users obey the quarantine. The person subject to quarantine has 20 minutes to perform the task designed by the application and confirm its localization. Failure to confirm it is a signal for the Police to directly verify whether users of the application comply with the quarantine requirements⁶³.

At the beginning of the epidemic state, Kwarantanna Domowa was a voluntary solution for persons staying at the quarantine. This was amended with the 2nd COVID Act⁶⁴. Since its entry into force, the application has a mandatory status only for people who are subjects to the obligatory quarantine.

According to the 2nd COVID Act, persons subject to mandatory quarantine, are obliged to install on their mobile devices software used to confirm the compliance with the quarantine obligation. For this purpose, they must provide public authorities with their phone number or declare, under threat of criminal liability, that they do not have a mobile device that allows the installation of the application. Persons with sight impairments are exempt from the obligation to use the app.

⁶⁰ ProteGO Safe source code, available at: <https://github.com/ProteGO-Safe> (8 May 2020).

⁶¹ ProteGO Safe privacy policy, available at: <https://www.gov.pl/attachment/092a389f-0a09-438f-9532-b04b8c205c7e> (8 May 2020).

⁶² Niebezpiecznik.pl, Programista, który pracował przy aplikacji ProteGO Safe odradza jej instalację, <https://niebezpiecznik.pl/post/programista-pracujacy-przy-aplikacji-protego-safe-odradza-jej-instalacje/> (2 May 2020).

⁶³ Poland, The Police, Jesteś objęty kwarantanną? Skorzystaj z bezpłatnej aplikacji Kwarantanna Domowa, available at: <http://www.policja.pl/pol/aktualnosci/186649,Jestes-objety-kwarantanna-Skorzystaj-z-bezplatnej-aplikacji-Kwarantanna-domowa.html>.

⁶⁴ 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.

The Ministry of Digitization refused to reveal application source code⁶⁵.

2.4 Any other privacy and data protection concerns

The ongoing state of the epidemic in Poland overlapped with the election campaign before the presidential elections and significantly influenced the organization of the elections.

In April 2020, the Parliament adopted the provisions on the postal voting as the only available way of voting in the upcoming elections (the law is still being proceeded in Senat).⁶⁶

At the same time, the Parliament adopted amendments to the Electoral Code which equipped the public postal operator with a power to request voters' lists from self-administrative bodies⁶⁷. However, the public postal operator gained the power to ask for the data only if it is needed to carry out tasks related to the organization of the election of the President of the Republic of Poland or to perform other statutory duties.

Based on this, on 23 April 2020, the public postal operator requested the local government bodies for access to voters' lists. The vast majority of heads of self-governing bodies refused to share voters' list with the postal operator. In their opinion, the law enabling the public postal operator to organize postal voting is still not binding, therefore it cannot be used as a base to share the data with the operator. They pointed out, that at the same time, there is no other legal basis that would allow the public postal operator to obtain such data.

Nevertheless, the refusal did not prevent the public postal operator from gaining the data. The Ministry of Digitization approved operator's motion to gain access to population register and share data despite lack of an appropriate legal base.

The President of the Personal Data Protection Office issued a statement on obtaining personal data of voters by postal operator⁶⁸.

⁶⁵ Niebezpiecznik.pl, Aplikacja "Kwarantanna domowa" będzie obowiązkowa, ale nie otwarta, available at: <https://niebezpiecznik.pl/post/aplikacja-kwarantanna-domowa-bedzie-obowiazkowa-ale-nie-otwarta/>.

⁶⁶ Poland, The Act on specific rules for holding general elections of President of the Republic of Poland ordered in 2020, 6 April 2020.

⁶⁷ Poland, the Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-2 virus, Journal of Laws of 2020, item 695.

⁶⁸ The statement of the President of the Personal Data Protection Office, available at: <https://uodo.gov.pl/pl/138/1508> (20 May 2020).