



# LUND UNIVERSITY

## Special issue on legal landscape concerning the coronavirus outbreak – part II

Mattsson, Titti; Kraft, Amelie

2020

*Document Version:*

Publisher's PDF, also known as Version of record

[Link to publication](#)

*Citation for published version (APA):*

Mattsson, T., & Kraft, A. (2020, Jun 20). Special issue on legal landscape concerning the coronavirus outbreak – part II. *European Association of Health Law*.

*Creative Commons License:*

Unspecified

**General rights**

Unless other specific re-use rights are stated the following general rights apply:

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Read more about Creative commons licenses: <https://creativecommons.org/licenses/>

**Take down policy**

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

LUND UNIVERSITY

PO Box 117  
221 00 Lund  
+46 46-222 00 00



June 2020

# EAHL Newsletter

**ISSN: 2708-2784**

Special issue on legal  
landscape concerning  
the coronavirus  
outbreak – part II

\* The information presented in the reports reflects data at the time of submission

EAHL  
EUROPEAN ASSOCIATION OF HEALTH LAW

Newsletter №3 / 2020



## Message from the President



EAHL President  
Prof. Dr. Karl Harald Søvig

Dear EAHL members,

I hope that you are all fine, despite the extraordinary circumstances. The outbreak of the coronavirus has changed the world in a way that few would have anticipated. This is a second edition of a special issue of the EAHL newsletter dedicated to a survey of the legislative measures introduced due to the corona outbreak. The idea for such a project came from Lukáš Prudil (former board member); many thanks to Lukáš for the initiative! A sincere acknowledgement also to

the EAHL national contact points who have contributed with insight from their domestic legal systems.

The two editions of the newsletter cover 23 states.

The intention of the newsletter, besides giving an overview that is interesting by itself, is to fertilize further research into this field of health law. The survey shows that all European countries have used far-reaching legislative measures. However, there are many nuances and differences that are well worth investigating. If referred to, I kindly ask you to refer to this newsletter as «European Association of Health Law, Covid-19 legislative survey, second edition» (in addition to the country concerned and the author).

The survey displays the wide range of legislative measures. All countries in this report have introduced some form of social distancing, although it is interesting to see the many differences concerning number of persons in the same group and physical distance between persons. Some disparities may be explained due to differences in the spreading of the disease between countries, while others may be ascribed to cultural differences. So far, few cases have reached the courts. Partly, this may be due to the duration of legal processes but it could also be explained by the fact that the population to a large extent accept the measures due to the extraordinary situation. A current debate in many countries has been the use of digital tools, e.g. apps developed by governmental bodies in order to track and trace citizens have been in contact with infected persons.

We have not streamlined the country reports. Some of them include information about figures (mortality rates, etc.) and others not. It is important to emphasize that it is not possible to draw conclusions from the material regarding which legislative measures that are effective.

I hope that you all will enjoy reading in the material and I sincerely hope that it would lead to more research amongst health lawyers.

## Table of content

1.	<a href="#">Message from the President.....</a>	1
<i>National reports from</i>		
2.	<a href="#">Austria.....</a>	2
3.	<a href="#">Azerbaijan Republic.....</a>	4
4.	<a href="#">Belgium.....</a>	10
5.	<a href="#">Czech Republic.....</a>	15
6.	<a href="#">Denmark.....</a>	19
7.	<a href="#">Estonia.....</a>	22
8.	<a href="#">France.....</a>	25
9.	<a href="#">Germany.....</a>	31
10.	<a href="#">Greece.....</a>	34
11.	<a href="#">Ireland.....</a>	40
12.	<a href="#">Italy.....</a>	48
13.	<a href="#">Luxembourg.....</a>	52
14.	<a href="#">Malta.....</a>	56
15.	<a href="#">Poland.....</a>	61
16.	<a href="#">Serbia.....</a>	64
17.	<a href="#">Slovenia.....</a>	68
18.	<a href="#">Spain.....</a>	73
19.	<a href="#">Sweden.....</a>	77
20.	<a href="#">Ukraine.....</a>	79
21.	<a href="#">EJHL.....</a>	84
22.	<a href="#">Discount for members.....</a>	85
23.	<a href="#">EAHL.....</a>	86
<i>Countries represented only in the first special issue newsletter</i>		
24.	<a href="#">Latvia.....</a>	1
25.	<a href="#">Norway.....</a>	6
26.	<a href="#">Russian Federation.....</a>	8
27.	<a href="#">Slovak Republic.....</a>	10

## Case Report AUSTRIA Covid 19

*Magdalena Flatscher-Thöni, NCP for Austria*  
**June, 15<sup>th</sup> 2020**

---

With a reduced increase in COVID-19 infection rates in Austria, the protection and hygiene measures have been slightly released from May 2020 onwards. Since then Austria entered a transition phase primarily focusing on physical distancing and the (compulsory) use of face masks. For a detailed overview of the Austrian situation please see below.

For all readers interested in a systematic overview, as well as comparisons of country responses to COVID-19 and cross-country analysis of health system responses and key policy lessons the **Health System Response Monitor (HSRM)** is highly recommendable. This platform has been designed in response to the COVID-19 outbreak to collect and organize up-to-date information on how countries are responding to the crisis. It focuses primarily on the responses of health systems but also captures wider public health initiatives. This is a joint undertaking of the WHO Regional Office for Europe, the European Commission, and the European Observatory on Health Systems and Policies.

<https://www.covid19healthsystem.org/mainpage.aspx>

Please be aware that legal sources are still changing based on the development of infection rates in Austria and Europe. For further details or discussion do not hesitate to contact me.

---

### **1. A short description of the major legislative framework concerning communicable Diseases**

Austria's framework legislation for communicable diseases is called "Epidemiegesetz" and was first established in 1950. Given the current COVID-19 pandemic this Epidemics Act is still valid with certain amendments. Additionally different COVID-19 measure laws (Covid-19 Maßnahmengesetze) entered into force, focusing on special measures to contain the COVID-19 pandemic. Since Austria entered into a transition phase from May 2020 onwards, different regulations concerning the relaxation of the measures taken to combat the spread of COVID-19 have been enacted.

For detailed information see <https://www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus--Rechtliches.html>.

### **2. Are there any guidelines concerning the treatment of patients suffering from Coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest.**

Austrian health care providers have published internal guidelines focusing on the treatment as well as on priority setting/ triage quite fast after the outbreak of the epidemic (pandemic). Additionally, medical societies, e.g. the Austrian Society for Anaesthesiology, Resuscitation and Intensive care (ÖGARI) have published clinical and ethical recommendations for the start, implementation and termination of intensive therapy for Covid-19 patients, especially focusing on the allocation of intensive care resources.

For further details see [https://www.oegari.at/web\\_files/cms\\_daten/covid-19\\_ressourcenallokation\\_gari-statement\\_v1.7\\_final\\_2020-03-17.pdf](https://www.oegari.at/web_files/cms_daten/covid-19_ressourcenallokation_gari-statement_v1.7_final_2020-03-17.pdf).

From an ethical point of view, the German Academy of Ethics in Medicine (AEM) is constantly working on institutional ethics services in response to the COVID-19 pandemic (see [https://www.aem-online.de/fileadmin/user\\_upload/AEM\\_Recommendations\\_Role\\_of\\_COVID-19\\_Pandemic\\_2020-03-31.pdf](https://www.aem-online.de/fileadmin/user_upload/AEM_Recommendations_Role_of_COVID-19_Pandemic_2020-03-31.pdf)).

### **3. Have certain medical services been suspended during the outbreak (e.g. non urgent health care)?**

Since March 2020, hospitals have been called upon to postpone all non-acutely necessary operations and

examinations in order to free up capacity for corona patients. Since April 2020 the situation in Austrian hospitals appears manageable with sufficient bed and ventilator capacities for COVID-19 patients. Hence, operations are to be planned step by step again, and hospitals can also begin to admit non-acute patients. Certain capacities remain reserved for COVID-19 patients. Accompanying measures such as increased testing and wearing of masks are obligatory. The re-opening process differs between the federal states. (Based on <https://www.covid19healthsystem.org/countries/austria/livinghit.aspx?Section=3.1%20Planning%20services&Type=Section>)

#### **4. Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:**

Austria's framework legislation for communicable diseases is called "Epidemiegesetz". Given the COVID-19 pandemic this Epidemics Act is still valid in principle, with a few amendments. Additionally, different COVID-19 measure laws (Covid-19 Maßnahmengesetze) entered into force, focusing on special measures to contain the COVID-19 pandemic. Since Austria entered into a transition phase from May 2020 onwards, different regulations concerning the relaxation of the measures taken to combat the spread of COVID-19 have been enacted.

As of June 15 2020 the main COVID-19 rules are primarily focusing on physical distancing and the (compulsory) use of face masks:

- 1 metre minimum distance rule
- the use of face masks remains compulsory
  - in public transport and taxis
  - for events in closed rooms (except at the assigned seat)
  - in cable railways and rack railways, coaches and in the interior of excursion boats
  - in pharmacies
  - for gastronomy, when employees are having customer contact
  - for services, if the 1-metre distance cannot be maintained or no other protective measures (e.g. plexiglas pane) are available
  - for demonstrations, if the 1-metre distance cannot be maintained

For an overview of the key public health measures in the staged comeback phase from April – June 2020 see <https://www.covid19healthsystem.org/countries/austria/livinghit.aspx?Section=1.1%20Health%20communication&Type=Section>

#### **5. Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of e-health technologies/applications processing personal data?**

In Austria everyone showing any form of acute respiratory infection (with or without fever) with at least one of the following symptoms (for which there is no other plausible) cause cough, sore throat, shortness of breath, catarrh of the upper respiratory tract, sudden loss of sense of taste is tested.

Additionally series testing using PCR tests was carried for special risk groups e.g., all personnel and inhabitants in the nation's retirement and nursing homes

(<https://www.covid19healthsystem.org/countries/austria/livinghit.aspx?Section=1.5%20Testing&Type=Section>).

The use of a contact tracing app ("Stopp Corona"), provided by the Austrian Red Cross ([https://participate.rotekreuz.at/faq\\_stopp\\_corona\\_app/](https://participate.rotekreuz.at/faq_stopp_corona_app/)), is on a voluntary basis. The app allows users to record who they have been in contact with anonymously (via a so-called electronic handshake). If a user develops symptoms of COVID-19, all recorded contact persons receive a notification (<https://www.covid19healthsystem.org/countries/austria/livinghit.aspx?Section=1.4%20Monitoring%20and%20surveillance&Type=Section>).

#### **6. Links to legal sources of your country (preferably in English)**

<https://www.covid19healthsystem.org/countries/austria/countrypage.aspx#>

<https://www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus---Rechtliches.html>

## Azerbaijan Republic Report (update from May until the 19<sup>th</sup> of June 2020)

*Vugar Mammadov, Prof., MD, JD*  
*Lala Jafarova, NCP ([jlala.mail@gmail.com](mailto:jlala.mail@gmail.com))*

### *General information*

The quarantine period for May and beginning of June can be divided into 2 stages. While in May measures were taken to weaken the quarantine, a sharp increase in the incidence rate led to a number of toughening in June.

As of 19<sup>th</sup> of June 2020, 11 767 cases of coronavirus infection have been identified, 6 325 have been cured, 143 people have died. Currently, 5 299 people continue treatment. The region with most infected – 50,2 % is Baku.

During the two-month period, Azerbaijan has set up two factories with 500 thousand masks per day production capacity. The first modular hospital complex was opened in Baku on May 7. The complex with an area of 3,000 square meters, consists of three buildings and a total of 200 beds. Another three modular hospitals were opened on June 9. Six more hospitals are expected to open.

The number of infected in correctional facilities of Azerbaijan has reached **46**.

As of 22<sup>th</sup> of May 2020, 681 cases of coronavirus infection were recorded among country's medical staff. 537 health workers recovered, treatment of the rest continues, four health workers have died.

### *Legal measures:*

The Cabinet of Ministers of the Azerbaijan Republic (hereinafter CM of AR) by **Decision № 176 of 15<sup>th</sup> of May 2020** decided to weaken quarantine measures. Thus, **starting from 00:00 on May 18<sup>th</sup>:**

- all cafes, restaurants, a teahouse and public catering facilities opened in Baku, Sumgayit, Ganja, Lankaran and Absheron district. The ban on the use of hookahs in catering facilities remains in force. On-site customer service was carried out from 08:00 to 18:00.
- Although access to the boulevard and parks has been restored, the **social distance of 1.5-2 meters** remains in power.
- Children's entertainment centers and attractions do not work.
- It is forbidden to assemble in groups of **more than 10 people**, and appropriate measures will be taken if the rules of the quarantine regime are violated.
- The restriction on access to the street for people over 65 was lifted.
- Work of museums and exhibition halls have been restored.
- The ban on visiting boulevards, parks and recreation places was canceled, with the condition not to gather in **groups of 10 people or more** in Baku, Sumgait, Ganja, Lankaran and Absheron district.
- The system of obtaining permission to leave the house by SMS, by registering on icaze.e-gov.az portal, an official ID and a certificate of employment was canceled.

The following quarantine measures **remained until the 31<sup>th</sup> of May** according to the decision **№ 178 of the CM of AR of 16 May 2020:**

- suspension of access to the territory of the country by land and air, except for the carriage of goods;
- entry and exit to Baku, Sumgayit, Ganja, Lankaran and Absheron districts of trucks, and passengers by land and air transport from other cities and regions of the country, except for the movement of special purpose vehicles, including ambulances, emergency response, rescue;

- restriction by the CM of AR of the number of employees involved in special work in state bodies (institutions) in Baku, Sumgayit, Ganja, Lankaran and Absheron districts;
- suspension of group and individual reception of citizens on the spot in other state bodies (institutions), except for "ASAN service" and "DOST" centers;
- prohibition of religious ritual services (except for funerals), and the organization and holding of mourning ceremonies in ceremonial halls, tents and other enclosed spaces;
- suspension of all public events, including cultural and sports events;
- prohibition of services for the organization of events, including the organization of birthdays, weddings, engagements and similar ceremonies in the client's home or other places;
- suspension of individual teaching and tutoring services in a group (including home services);
- suspension of recreation and entertainment areas, as well as children's entertainment areas (including on the boulevards and parks);
- suspension of other cultural facilities (except for museums and exhibition halls), as well as cinemas, theaters, gyms;
- suspension of large shopping centers in the country, except for grocery stores, pharmacies and facilities that are not in contact with the customer;
- prohibition of visits to patients in medical institutions by relatives;
- suspension of sports, health and rehabilitation services (except for medical services in this area);
- suspension of massage and bath services.

**Decision №190** of the Cabinet of Ministers of AR of **29<sup>th</sup> of May** - *About prolongation of the special quarantine regime in the territory of the Azerbaijan Republic and removal of some restrictions applied in connection with this regime:*

- the special quarantine regime was extended until 00:00 on June 15, 2020;

2. The activity of the following work and service areas has been restored from 00:00 on May 31, 2020:

2.1. Full-time work of employees of state bodies (institutions) in Baku, Sumgayit, Ganja, Lankaran cities and Absheron region;

2.2. activity of large shopping centers in the country (excluding children's and other entertainment centers, cinemas and public catering);

2.3. on-site service to customers in public catering establishments, as well as restaurants, cafes and tea houses from 08:00 to 22:00 in Baku, Sumgayit, Ganja, Lankaran and Absheron region (except for the use of hookah equipment in all public catering facilities across the country and the organization of mass festivities, gatherings with more than 10 people):

2.4. outdoor sports competitions to be held without the participation of audience. Etc.

Suspension of all teaching and learning process in all educational institutions will remain in power until the end of **September 2020**.

*Other measures:*

- **Decision №175** of the CM of AR of **15 May 2020<sup>1</sup>** determined the scope of employees involved in the provision of social services during the special quarantine regime and extra payment period. Periodic overtime is paid in proportion to working hours for the period from April 1 to June 1, 2020. According to the decision, the scope of *employees involved in the provision of social services* during the special quarantine regime was determined as follows:

<sup>1</sup> Information of the Cabinet of Ministers of the Republic of Azerbaijan <https://cabmin.gov.az/az/document/4445/>

- employees working in the social service sector of district (city) departments of the State Social Protection Fund under the Ministry of Labor and Social Protection of Population;
  - employees of the State Social Protection Fund under the Ministry of Labor and Social Protection of Population working with psychoneurological and other children with disabilities, social service institutions for people of retirement age, as well as shelters and social rehabilitation institutions for vulnerable groups, employees of the Center for Social Adaptation for persons released from penitentiary institutions.
- As of **25<sup>th</sup> of May**, as a result of the widespread use of the institution of parole during a pandemic, 624 prisoners were released ahead of schedule, and 310 people under investigation were released from custody as a result of replacing this preventive measure with house arrest or other alternative measures.
- **26<sup>th</sup> of May.** Methodical instructions for prevention of coronavirus infection (COVID-19) in beaches and water recreation centers<sup>2</sup> was published. In order to protect the physical **distance** is provided:
- Minimum distance between the axes of the umbrellas is **4 m**;
  - Physical distance between people **2 m** (excluding family members);
  - Placing signs on the floor where possible.
- **29<sup>th</sup> of May:** Restrictions on entry and exit at the state border of the Republic of Azerbaijan were extended until **June 15, 2020**.
- **29<sup>th</sup> of May.** A system "Rules are the same for everyone" was created on the website [www.koronavirusinfo.az](http://www.koronavirusinfo.az). This section reveals the activities during the special sanitary regime approved by the **Resolution** of the CM of AR **No. 160 dated May 1, 2020** on regulation of the sanitary situation in the territory of the Republic of Azerbaijan within the framework of public control exercised by citizens<sup>3</sup>. Information about violations can be sent via the specified WhatsApp number. The purpose of the project is to strengthen public control over compliance with the rules in the areas of special sanitary regime during the pandemic.
- **29<sup>th</sup> of May, Decision № 189** of the CM of AR On the requirements for the use of personal protective equipment in the special quarantine regime<sup>4</sup>. According to the Decision, personal respiratory protection equipment (medical mask, cloth mask, respirator, etc.) should be used in the following cases, provided that the social distance is maintained (*distance between people is 1.5-2 meters*):
- a) in vehicles used for intercity (inter-district) and intra-city (intra-district) passenger transportation (bus, taxi, subway, railway, etc.);
  - b) in markets, indoor catering, trade and service facilities (except for cases when it is necessary to remove personal respiratory protection devices, depending on the type of service provided at these facilities);
  - c) in the areas intended for reception of citizens and service to citizens in the buildings of state bodies (institutions);
  - d) in open space offices and production sites;
  - e) queues in front of public transport stops, ticket offices, ATMs and payment terminals, trade, work and service facilities... Etc.
- **31<sup>th</sup> of May CM of AR Decision approved by President of AR on 2<sup>nd</sup> June.** According to the amendment to the Administrative Code, for violation of the requirements established by the relevant executive authority in connection with the use of personal protective equipment, as well as for the fact that officials did not stop violations of these requirements, *individuals will be fined 50 manats, officials 100 manat, legal entities - 200 manat*.

<sup>2</sup> Full text of the document can be found at the KoronaVirus info official website (in Aze.) [https://koronavirusinfo.az/files/3/101\\_C%CC%A7im%C9%99rlikl%C9%99r.pdf](https://koronavirusinfo.az/files/3/101_C%CC%A7im%C9%99rlikl%C9%99r.pdf)

<sup>3</sup> KoronaVirus info official website (in Aze.) <https://koronavirusinfo.az/az/post/306e>

<sup>4</sup> Cabinet of Ministers of the Azerbaijan Republic (In Aze.) <https://cabmin.gov.az/az/document/4468/>



For repeated non-wearing of masks before the end of the quarantine regime, the person who received the administrative punishment provided for in Art. 211.2 of the Code will be fined in the amount of 100 manat, officials - 200 manat, legal entities - 400 manat.

- **4<sup>th</sup> of June 2020.** The CM of AR has announced suspension of services and trade, as well as public transport and the movement of vehicles in all areas of work (except for emergency, recovery, ambulances and service vehicles of authorized bodies (institutions) and organizations) **from June 6, 2020 from 00:00 to 06:00 on June 8, 2020** in Baku, Sumgayit, Ganja, Lankaran and Absheron region.<sup>5</sup> It was announced as a two-days **tightening of the special quarantine regime**<sup>6</sup>.

It was **prohibited** for the population to leave their places of residence or stay on this date.

It was **allowed** to leave places of residence only in case of immediate danger to life and health, as well as in case of need of urgent medical care only by emergency medical service. Also, with the permission of the 102 Service - Call Center of the Duty Units Management Service of the Ministry of Internal Affairs of the Republic of Azerbaijan to attend the funeral of close relatives.

**Allowed services (4-6 of June):**

- Activities of the state bodies (institutions) and other organizations, the list of which is determined by the CM of AR;
- activities of hospitals, ambulance facilities;
- activities of social service institutions, including care services for people with mental and emotional disorders, as well as those in need of special care;
- utilities (water supply and sewerage, gas supply, heating, energy distribution, household waste collection and disposal);
- electricity generation and supply;
- reclamation and water management;
- communication services;
- activities of TV and radio broadcasters (television and radio channels, cable television);
- freight transportation by rail, road, sea, air;
- pipeline transportation activities;
- uninterrupted production activity (enterprises whose activity cannot be stopped due to production and technical conditions);
- production, refining, storage and sale of oil and gas;
- services to ensure the protection and technical safety of suspended work and service areas.

*For non-compliance with the requirements of the special quarantine (6-8 June) regime in Baku, Sumgayit, Ganja, Lankaran and Absheron region 900 people and 2,776 road users were fined.*

- **9 June 2020 (CM of AR Decree No. 196)** - It was decided to extend the special quarantine regime in the country until 00:00 on July 1, 2020 and repeat the *tightened quarantine regime*.

Another *tightened quarantine regime* was applied in Baku, Ganja, Lankaran and Sumgayit cities, Absheron, Yevlakh, Ismayilli, Kurdamir and Salyan districts **from 00:00 on 14 June 2020 to 06:00 on 16 June 2020**<sup>7</sup>.

<sup>5</sup> Information of the Task Force under the Cabinet of Ministers of the Republic of Azerbaijan (in Aze.)

<https://nk.gov.az/az/article/875/>

<sup>6</sup> AZERBAIJAN STATE NEWS AGENCY. Task Force makes decision to tighten special quarantine regime on certain days. [https://azertag.az/en/xeber/Task\\_Force\\_makes\\_decision\\_to\\_tighten\\_special\\_quarantine\\_regime\\_on\\_certain\\_days-1504431](https://azertag.az/en/xeber/Task_Force_makes_decision_to_tighten_special_quarantine_regime_on_certain_days-1504431)

<sup>7</sup> AzerTaj. Task Force makes decision to extend special quarantine regime until 1 July [https://azertag.az/en/xeber/Task\\_Force\\_makes\\_decision\\_to\\_extend\\_special\\_quarantine\\_regime\\_until\\_1\\_July-1508429](https://azertag.az/en/xeber/Task_Force_makes_decision_to_extend_special_quarantine_regime_until_1_July-1508429) retrieved on 17.06.20

The main differences of this time two-day quarantine:

- While on 6-8 June, employees of organizations and structures whose activities were allowed were permitted to travel on official vehicles of these institutions, this time that restriction was eliminated. So, the employees was able to come to work in a personal car.
- Persons who intended to take part in the funeral of a close relative could also use a private car.
- Bakery workers returned to work as early as 16:00 on June 15th.
- Citizens was able to walk their pets **but** only near their place of residence, and for a short period of time.<sup>8</sup>
- A number of pharmacies were permitted to work and deliver medicines to citizen's homes (online shopping or at call purchase).
- Activities (only upon permission certificate from local executive authorities) were allowed in connection with the harvest of agricultural products in the areas, as well as irrigation, emergency veterinary and plant protection services.
- citizens w leave their homes in order to throw garbage **only to** the containers for household waste at the entrances of their house.

*As of 16<sup>th</sup> of June, during 14-16 June 635 people who violated the rules of a toughened quarantine regime by moving on vehicles are brought to administrative responsibility under Article 211.1 of the Code of Administrative Offenses.*

The restriction on land and air access to the territory of the Republic of Azerbaijan, except for cargo transportation and charter flights, was extended until **July 1, 2020<sup>9</sup>**.

**- 10 June 2020.** The Cabinet of Ministers amended the "Rules for quarantine control in Azerbaijan during the spread of infectious diseases transmitted by airborne droplets." According to the document, persons who violate the quarantine regime will be liable in the manner prescribed **not only** by the Code of Administrative Offenses **but also** by the **Criminal Code** of Azerbaijan.

**- 18 June 2020.** The Task Force under CM informed that *toughened quarantine regime* to be reintroduced in some districts of Azerbaijan from **June 21 through 06:00 (GMT+4) July 5<sup>1011</sup>**.

The **reapplied restrictions:** leaving the house with SMS notification and special permission, restrictions on number of public and private employees, shopping centers and public catering facilities will be closed. Museums, shopping centers, beauty salons and barbershops (including in the home or other places), exhibition halls work will be suspended as well as outdoor sports. Final and entrance exams will be postponed. Traveling by personal transport will be allowed only to persons who have the appropriate work permit, and *only* during working hours.

The **main differences** of this time quarantine: Boulevards and parks will be open, no ban for individuals older 65 to go outside, the Baku Metro and bus public transport will operate.

The quarantine regime was extended until **August 1<sup>12</sup> (amendment of 19 June to the CM of AR Resolution No. 178 of May 16, 2020)**. Moreover, entry and exit at the state borders will be closed except for cargo transportation, charter flights and special flights.

<sup>8</sup> \*Authors note: Unfortunately, distance or time was not defined by law.

<sup>9</sup> Information of the Task Force of the Cabinet of Ministers of the Republic of Azerbaijan <https://cabmin.gov.az/az/article/886/>

<sup>10</sup> Trend. Azerbaijan lists banned activities during strict quarantine. <https://en.trend.az/azerbaijan/society/3257057.html> 19.06.20

<sup>11</sup> AZERNEWS. Azerbaijan extends coronavirus lockdown until August. <https://www.azernews.az/nation/166164.html> Retrieved 19.06.20

<sup>12</sup> Trend. <https://en.trend.az/azerbaijan/society/3256555.html> retrieved on 18.06.20

### *Additional information*

- According to the Order of the President of the Republic of Azerbaijan **No. 1947 of March 18, 2020** and the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan **No. 112 of March 25, 2020**, the State Agency for Compulsory Medical Insurance paid extra in proportion to their working hours in March to the medical workers and to 2,372 non-medical workers. Thus, 13.1 million manat was paid to medical and non-core employees of 140 state medical institutions in Baku, as well as employees of 115 state medical institutions in other cities and regions of the republic in April in proportion to working hours.
- Regulation of the formation, management and use of the funds of the Coronavirus Response Fund was approved by the Decree of the President of the Azerbaijan Republic of **March 19, 2020**. The Regulation's article 2.4 states that the Fund's activities shall cover the period until December 31, 2020. This period may be extended by the President.
- Public Control Council was established in order to control the expenditure of the Coronavirus Response Fund funds on **April 11** by the relevant Order of the Prime Minister and the CM of AR was appointed as the administrator of its funds. Public Control Council's first meeting was held on the **5<sup>th</sup> of May**.
- **11 June 2020 news**. According to the Press Service of "Azerbaijan Airlines" CJSC, new rules for passenger transportation will be implemented during the COVID-19 pandemic in Azerbaijan<sup>13</sup>.
- **12 June, 2020, news** - Starting from June 18<sup>th</sup>, "Azerbaijan Airlines" will commence performance of domestic flights in the Baku-Nakhchivan-Baku direction.<sup>14</sup> However, only for passengers tested negative for COVID. The COVID-19 test should be done no later than 48 hours and no earlier than 72 hours before departure. Moreover, sale of flight tickets on the Baku-Nakhchivan-Baku route scheduled after July 7th will be temporarily unavailable<sup>15</sup>.
- According to the decision **№202 of the CM of AR of 12 June 2020** (on amendment to the Decision №122 of 25 March 2020), it was decided to extend extra payment to medical workers involved in treatment of corona virus patients until 1 July 2020.
- In April-May of 2020, **about 25 thousand** passengers have returned to Azerbaijan by charter flights, with over 10,000 citizens out of them at the state expense.

### *Sources:*

- The official website of the President of the Azerbaijan Republic: <https://en.president.az/>
- The Republic of Azerbaijan Cabinet of Ministers: <https://cabmin.gov.az/en/>
- The State Agency on Mandatory Health Insurance: <https://its.gov.az/>
- Website on Corona virus outbreak in Azerbaijan Republic (in Aze.): <https://koronavirusinfo.az/az>
- AzerNews: <https://www.azernews.az/>
- Trend News Agency: <https://en.trend.az/>

<sup>13</sup> Buta Airways. AZAL on the New Rules for Passenger Flights in the Time of Pandemic (PHOTO, VIDEO). <https://www.butairways.az/en/article/news-11062020>

<sup>14</sup> AZAL. Flying to Nakhchivan to be allowed only to passengers tested negative for COVID-19. <https://www.azal.az/en/article/552>

<sup>15</sup> AZAL. Information on Flights to Nakhchivan. <https://www.azal.az/en/offer/555>

## Case report Covid 19 in Belgium

*Tom Balthazar, NCP for Belgium*

### 1. A short description of the major legislative framework concerning communicable diseases

The legislation concerning communicable diseases is partly the competence of the central (federal) state, but the prevention and the detection of communicable diseases are the competence of the federated authorities (communities). The legislation of the federated communities was updated to organize the contact tracing (see further under 5).

### 2. Are there any guidelines concerning the treatment of patients suffering from coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest.

There are no legally binding guidelines concerning the treatment of patients suffering from the coronavirus.

In March, Sciensano (the federal advisory institution on health policy) published a document called “Interim clinical guidance for adults with suspected or confirmed COVID-19 in Belgium”. This document was first developed by a small task force on the basis of therapeutic protocols elaborated in the two reference institutions (UZ Antwerpen and Hôpital St Pierre Brussels) and then revised in fast track by a larger group of physicians and scientists from different specialties/disciplines including experts from Sciensano and the Federal Agency for Medicines and Health Products (FAMHP). It is a “living guideline” which will be regularly updated by the scientific committee each time new relevant scientific data emerges.

See the complete text with a last update on June 20th:

[https://covid-19.sciensano.be/sites/default/files/Covid19/COVID-19\\_InterimGuidelines\\_Treatment\\_ENG.pdf?utm\\_source=Measuremail&utm\\_medium=email&utm\\_campaign=COVID19\\_EN](https://covid-19.sciensano.be/sites/default/files/Covid19/COVID-19_InterimGuidelines_Treatment_ENG.pdf?utm_source=Measuremail&utm_medium=email&utm_campaign=COVID19_EN).

Concerning the priority of treatment and ethical dilemmas in the treatment of Covid-patients several guidelines were issued by scientific organizations, in some cases with the approval of ethical committees. The most important are:

- Ethical principles and guidance with regard to ethical decisions in pre-hospital and emergency medicine in Belgium during the COVID-19 pandemic. A joint statement of the Belgian Society of Emergency and Disaster Medicine and the Belgian Resuscitation Council (22 March 2020). (<https://www.besedim.be/news/ethical-decision-making-covid-19/>)
- Ethical principles concerning proportionality of critical care during the 2020 COVID-19 pandemic in Belgium: advice by the Belgian Society of Intensive care medicine ([https://www.zorgneticuro.be/sites/default/files/general/COVID-19-ethical\\_final\\_c.cleaned.pdf](https://www.zorgneticuro.be/sites/default/files/general/COVID-19-ethical_final_c.cleaned.pdf));
- Ethische aspecten van het maken van keuzes in de COVID-19 crisis. Ethische commissie-zorg UZ Leuven (<https://www.zorgneticuro.be/sites/default/files/general/corona%20covid19%20intensieve%20bedden%20ethische%20principes%2017%20maart%202020.pdf>)
- Ethical care for persons affected by the corona-virus living in long-term-care homes. This guideline proposed criteria for the decision to transfer these patients to the hospital or give them the necessary

care (sometimes limited to palliative care) in the nursing home

(<https://www.zorgneticuro.be/sites/default/files/general/200319%20Beslissing%20opname%20bij%20mogelijk%20COVIDpos%20WZC%20bewoner.pdf>).

### **3. Have certain medical services been suspended during the outbreak (e.g. non urgent health care)?**

From March 14th all hospitals (general and university, psychiatric and rehabilitation settings) were required to cancel all non-urgent consultations, investigations and elective interventions (with special focus on those potentially impacting intensive care capacities). Urgent consultations, investigations and interventions could be maintained as well as necessary treatments (chemotherapy, dialysis, etc.) and rehabilitation. After a few weeks, it was observed that other patients (those not affected by COVID) were no longer presenting to the emergency room (for heart attacks, strokes, etc.). Several calls were made through the media to reassure people and confirm that all medical emergencies were being taken care of safely. It remains to be seen whether there will be excess mortality due to other causes of death (see Transition measures).

Since May 4th the restrictions have been lifted, but all hospitals have to keep a capacity for Covid-patients or make arrangements with the other hospitals within the same network.

### **4. Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:**

The parliament gave exceptional and temporary powers to the government to take measures to combat the crisis and to change legislation.

The government has used this exceptional power to take exceptional measures to guarantee the provision of the required care during this period of crisis. These measures are aimed at increasing the number of health care professionals who can help in the management of this health crisis and supporting doctors and nurses in caring for patients during the pandemic. A first measure concerned the temporary authorisation of performing nursing activities by health care professionals other than those already authorised to do so in normal times. This authorisation would nevertheless be restricted to activities that are necessary to cope with the consequences of COVID19. A second measure concerned the requisition of all health care professionals licensed to practice under three conditions: (i) when a facility in which health care is provided (such as nursing homes, homes for older people, hospitals or individual practices) is faced with a shortage of health care professionals that no longer allows it to function properly; (ii) this shortage can no longer be addressed by increasing capacity in accordance with crisis plans or on a voluntary basis; and (iii) requisitioned health care professionals will be assigned exclusively to managing the consequences of the coronavirus.

After strong reactions of the trade unions these two measures were withdrawn.

### **Restrictions concerning movement in public spaces and Restrictions concerning “social distancing”.**

Mandatory measures were issued by both the federal and federated entities as of March 13th

- Closure of all schools (with the exception of day care for children of ‘essential workers’ and for those who can only be cared for by their grandparents). The crèches remain open, with priority for the children of essential workers.
- Closure of colleges and universities with distance learning courses whenever possible

- In nursing homes, homes for older people and residential settings for people with a handicap, all visits to residents were prohibited, except in specific situations, i.e. palliative care or death (starting from March 10th according to the federated entities). Also, day care centres had to be closed. These measures were slightly softened on April 15th, by allowing a relative (always the same person and asymptomatic for the last 14 days) to visit older/disabled persons in residential settings under very strict conditions.
- Cancellation of all recreational activities (sports, cultural, etc.) and religious ceremonies (except funerals for immediate family). Summer festivals were cancelled until August 31st.
- Closing of cafés, restaurants, clubs, etc. Take-away sales and home delivery are still allowed.
- Closure of non-essential shops for the weekend (followed by a total closure from 18/03)
- Some shops can remain open with an obligation to respect the rules of social distancing (of 1.5 metres): food shops, pharmacies, bookshops, gas/fuel stations; with limitation on the number of customers in large stores (1 customer per 10 square metres). On April 15th this was enlarged to include hobby and garden shops and waste disposal sites (with the same rules).
- Mandatory teleworking for all non-essential businesses; if not possible, mandatory social distancing rules. If this is not possible, companies must close.
- Maintenance of public transport but with the obligation to ensure social distancing.
- Outdoor physical activities remain permitted, alone, with cohabiting family members or with one friend (at social distance). Otherwise, it is prohibited to be in public spaces, except in cases of necessity and for urgent reasons such as going to the doctor or pharmacy, food shopping, providing assistance and care to older people and vulnerable people, or for business trips, including commuting to and from work.

On April 24th the National Security Council decided that the physical distancing measures would be progressively lifted from May 4th, and follow an evolving schedule.

From May 4th it is strongly recommended to wear protection to cover the mouth and nose in public spaces and when a physical distance cannot be guaranteed. Wearing a mask on public transport is compulsory from May 4th, from the moment a passenger over the age of 12 enters a station or arrives at a stopover point. In workplaces, wearing a mask is compulsory when maintaining a physical distance is not possible. It is also foreseen that initiatives would be implemented so that every citizen can receive at least one fabric mask and two filters to be incorporated into masks already acquired or made up.

From May 10th (Mothers' day in Belgium) families are allowed to receive 4 people at home but these 4 people should always be the same and they must only enter one household. The aim is to keep a minimum number of silos and to ensure the greatest possible reciprocity. This measure was enlarged to 10 different people per week on June 8th.

Schools (e.g. primary, higher education, etc.) - The return to school started gradually from May 18th with very strict distancing measures. Each federated entity worked out how this decision should be put in practice, in consultation with the sector. Consequently, the return to school was variable and most of the time partial. Kindergarten classes were not allowed to restart until June 2nd. Primary schools are allowed to restart fully from June 8th. School attendance is nevertheless not mandatory.

Workers (e.g. essential workers, childcare workers, etc.) - No change for essential workers. For other workers, see below.

Businesses (SMEs, restaurants, etc.) - For B2B enterprises and industry, teleworking will be maintained whenever possible (no end date is foreseen). A general guideline will serve as a basis for sectoral or company-level agreements to be concluded for those where social distancing is not possible.

Reopening of shops on May 11th (whatever the size and the sector), but under strict conditions for the organisation of work, reception of customers and limitations on access to avoid crowd effects. These conditions have been defined in consultation with the sectors and the social partners. Conditions include, one client per 10 square metres, no more than 30 minutes in the shop, etc. Measures are also taken to manage queues on the streets.

Professions involving physical contact (such as hairdressers) could resume their activities from May 18th with very strict distancing measures and disinfection between each client.

Restaurants, cafés and bars are allowed to reopen from June 8th under strict conditions (1.5 m between tables, 10 people maximum per table, waiters wearing a mask, closure at 1.00am, etc).

Travel (local, cross-border, etc.) People were not allowed to organise day trips to other parts of the country but from May 18th they were allowed to go to a secondary residence in Belgium. Trips within Belgium are allowed from June 8th and borders reopen from June 15th.

Gatherings (events, informal gatherings, religious services, etc.) - The possibility of allowing private meetings at home has been opened to 4 persons from May 10th. From May 18th up to 30 people were allowed to attend wedding and funeral ceremonies, but the parties thereafter were still forbidden. From June 8th, religious celebrations were allowed with a maximum of 100 people (200 from July 1st).

Museums reopened from May 18th with online ticketing, quotas per hour and predefined circuits for visitors. Cinemas, theatres and concert halls remain closed until July 1st. Summer festivals (music, theatre) are all cancelled until August 31st.

Sports activities - From May 4th people are allowed to practice outdoors and participate in non-contact sports activities (contact activities allowed from July 1st). However, if these activities require infrastructure, access to changing rooms and communal showers as well as to cafeterias is still prohibited. Team sports are allowed from May 18th in the open air, in agreed clubs and under strict conditions and indoor activities (without contact) from June 8th. Competitions could restart on June 8th but without public (allowed from July 1st for a maximum of 50 competitors and 200 persons as public). Swimming pools all also reopen in July.

Prison visits are allowed again from May 25th, but only one visit per prisoner per week, preferably always the same person, with physical distancing.

## **5. Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of e-health technologies/applications processing personal data?**

Different strategies for tracing the contacts of all COVID-19 positive patients have been considered. A federal legal framework has been studied; the principle is that the technology has to be open source, only anonymised data will be used, and Bluetooth technology would be used rather than geolocation technologies. If different applications are to be used in the different regions, they should be compatible with each other and with the federal eHealth platform. On April 30th, the Belgian Data Protection Authority published some recommendations and conditions regarding such an application (Dutch:

<https://www.gegevensbeschermingsautoriteit.be/nieuws/adviezen-van-de-GBA-op-voorontwerpeninzake-opsporingsapplicaties-en-covid-19-databanken> )

Meanwhile, the solution of 'human' tracing (by telephone) has been preferred to technological tracing, at least for the first stage. The principle is that Sciensano centralises the data from all test results (which has been the case since the beginning of the epidemic); these results are then dispatched to the health administrations of

the federated entities who organise contact tracing at the local level (telephone calls to the patients in order to identify all their contacts). The Inter-ministerial conference agreed that identical procedures should be followed in all federated entities and a working group was created in order to set up a common platform and tools. From May 4th, call centres have been set up. The contact tracking system has been gradually expanded to reach its maximum capacity in the following weeks. On May 20th the Inter-ministerial conference also agreed on a framework for enhanced surveillance of the epidemic in complement of the tracing. The aim is to detect any local resurgence of the virus, or a possible second wave, as soon as possible and to take targeted measures. The development of this second line of defence will be further refined so that it can be implemented in the short term by the infectious disease surveillance services of the federated entities.

There is a complex legal discussion going on about the organization of the contact tracing. The legal basis for the database of Sciensano (a Royal Decree on the basis of the temporary exceptional power of the Government) was strongly criticized by the Data Protection Authority, the Conseil d'Etat and privacy activists. A proposal to reform the legal framework is under discussion in the parliament ([www.dekamer.be](http://www.dekamer.be) – proposal 55/1249).

There is also a discussion going about the legal basis of temperature control in the airports and other public spaces. The Belgian Data Protection Authority issued an opinion about the privacy aspects of temperature control. The DPA accepts control without registration. For any form of registration new legislation is necessary, with respect for the GDPR-provisions concerning health data

<https://www.gegevensbeschermingsautoriteit.be/koorts-meten-het-kader-van-de-strijd-tegen-covid19>).

## **6. Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?**

There are no forms of civil or criminal immunity for healthcare professionals.

All the insurance-companies who are active in the healthcare-sector have temporarily broadened their coverage and confirmed that they would insure health care-professionals who worked out of their field of expertise or out of the legal limits of their profession.

Covid has been recognized as a professional illness. Not only for health professionals, but for everybody who had a professional risk of transmission.

## **7. Have there been cases before the courts relating to health law due to the coronavirus outbreak?**

Not to my knowledge.

## **8. A link to legal sources of your country (preferably in English)**

<http://www.ejustice.just.fgov.be/wet/wet.htm>

<https://www.info-coronavirus.be/en/>

<https://www.covid19healthsystem.org/countries/belgium/countrypage.aspx>

<https://www.sciensano.be/en>



## National report – CZECH REPUBLIC

By: *Michal Kosciak*, National correspondent, EAHL  
15. June 2020 – Update of the text from 16. April 2020

### 1. A short description of the major legislative framework concerning communicable diseases

#### Public health system.

Preventive measures against communicable diseases are routinely dealt with under the regulatory framework of the Law on Public Health (*zákon č. 258/2000 Sb., o ochraně veřejného zdraví*), which serves as an umbrella for dozens of rather technical regulations.

The responsibility for public health at the central level is divided between several ministries (Healthcare, Defence, Internal affairs, Environment, Local development and Transit). On the regional level, the responsibility is divided between the political representation of Regions and so-called “Regional Hygiene Stations” (RHS), which are expert based institutions, largely independent on regional governments. The activities of RHS are coordinated by the Ministry of Healthcare. The competence matrix between abovementioned authorities (i.e. ministries, regions and RHS) is quite complex. However, the primary responsibility for public health lies with the Ministry of Healthcare and RHS.

Most activities of RHS are **preventive by nature** and revolve around enforcement of workplace safety rules and hygienic standards and in public and business premises (including schools, restaurants, healthcare facilities).

**In the case of the outbreak of a disease**, the Ministry of Healthcare and RHS have broad competences to take necessary measures to prevent and fight the epidemic, such as:

- the competence to shut down production, trade, or imports of any goods,
- the competence to ban travel from specific destinations
- the competence to shut down public events
- the general competence to issue orders to ban any activity, or even general competence to “order activities” to prevent epidemic.

The abovementioned measures can be taken on both regional (adopted by RHS), and national level (adopted by the Ministry).

#### National emergency rules.

The government has the competence to declare „the state of emergency”. The state of emergency can last for up to 30 days and can be subsequently extended by the lower chamber of the Parliament (Chamber of Deputies). During the state of emergency, the government receives power to restrict individual freedoms (including the freedom of movement and right to property), and issue individual orders and general rules. The process of passing new laws under emergency is also much faster.

To address the epidemic, the **government tried to combine legal instruments based on the Law on public health and instruments reserved for the national emergency**<sup>16</sup>. Both systems provide similar instruments (for example it is possible to close shops under both “public health” and “national emergency” grounds). However, both systems operate with different restrictions of state power and compensation mechanisms, and the government was using both systems simultaneously, arbitrarily and opportunistically. On the 23rd of April 2020, the Administrative Court in Prague ruled, that the government cannot arbitrarily cherry-pick the instruments from both systems and needs to be consistent (see section 7. for details). The government appealed

<sup>16</sup> which was declared on 12<sup>th</sup> of March 2020

the ruling, which is currently pending at the Supreme Administrative Court. The ruling had a significant material impact, as the government became significantly more consistent in and adopted its measures under the legal framework of national emergency, until the state of emergency was lifted (17<sup>th</sup> of May 2020). After that, the government switched to the legal framework of public health measures.

**2. Are there any guidelines concerning the treatment of patients suffering from coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest.**

**The first set of guidelines**, which was introduced in early March, was focused on exposed persons, i.e. people arriving from risk locations (for example Italy and Spain) and people in contact with infected patients. These people were automatically quarantined for 14 days by their general practitioners. This system was in place one week before the state of emergency was declared<sup>17</sup>.

**The second set of measures** was introduced after the declaration of national emergency (in Czech “nouzový stav”) after the 12<sup>th</sup> of March 2020. Shortly after the National emergency was declared, the government issued approximately 20 partial “emergency measures”, few of them directly involved healthcare. At that time, there were no reported deaths (first death was reported ten days later) and 116 known cases of infection.

The government was focused on the closure of border crossings, limiting transit and travel within the republic, closure of schools, public facilities, non-essential shops and restaurants. The perceived lack of discipline among citizens<sup>18</sup> quickly escalated to the eventual the general ban on “free movement of persons” on 14<sup>th</sup> of March. This general ban was basically a curfew (see section 4). As a part of these measures, Students in the fields of healthcare and social work have been put on an emergency and were obliged to work in healthcare and social-care facilities upon request.

As a specific measure taken under the public health framework, the Ministry of Healthcare suspended the visits in healthcare facilities and social care facilities. The ban on visits was at no point in time absolute and contained exceptions (for example, it was allowed to visit terminally ill patients or underage patients). The scope of exceptions was later both extended and reduced as the situation required.

**The third set of guidelines** (from April) focused on easing the lockdown and extending the exceptions. The lockdown (i.e. ban on the free movement of persons) ended on the 24<sup>th</sup> of April (see section 4). The lockdown was unprecedented in its extensivity. However, it managed to protect the capacity of the healthcare system. Therefore there has been **no need to introduce rules on priority of patients due to scarcity of resources**. The nature of measures changed after the state of national emergency was lifted (17<sup>th</sup> of May). This “**fourth**” **generation of measures** has the nature of decrees of individual governmental departments (ministries) that introduce specific preventive measures within the respective areas of public life.

**The scarcity of resources** was publicly discussed in regards to protective gear for healthcare staff. As a result, the government shut down the free market in protective gear. The protective gear for healthcare workers could be sold only to the government, which distributed the protective equipment according to set priorities (large hospitals first).

**3. Have certain medical services been suspended during the outbreak (e.g. non urgent health care)?**

Most of the non-essential healthcare was rescheduled in all segments of healthcare. The order of Ministry of Healthcare to suspend and to reschedule non-essential healthcare applied to facilities that provide emergency care<sup>19</sup>. However, the remaining facilities also rescheduled healthcare due to general hygienical recommendations and on-site managerial decisions, even if they were not obliged to do so.

<sup>17</sup> See. The „Emergency measure of Ministry of Healthcare from the 8th of March, 2020, no. MZDR 10386/2020-1/MIN/KAN.

<sup>18</sup> Some citizens used the unexpected holiday for mass leisure activities

<sup>19</sup> General Measure of Ministry of Healthcare MZDR 12066/2020-1/MIN/KAN from 16.th of March.

**The lack of protective measures** for healthcare workers forced many providers of primary care to temporarily suspend their activity (especially in March). It is yet to be evaluated, whether the shutdown of a free market of protective gear and distribution via state-controlled channels made the shortage worse, or whether it indeed helped providers to receive protective equipment within weeks.

**4. Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:**

As was described above, plenty<sup>20</sup> or legally binding rules were introduced, but few of them were laws that directly related to healthcare. The “emergency measures” issued by the government and the Ministry are legally binding but are temporary in nature. AS to the **Restrictions concerning movement in public spaces**, the government took the strategy of full and immediate curfew and ban of all non-essential activities. The government also shut down all non-essential shops and services. At the strictest point (16<sup>th</sup> of March), it was only possible to:

- commute to and from employment, in case the premises were not shut down by separate decree
- shop for essentials goods, which were - food, drugs, personal hygiene, pet food, but also flowers and tobacco
- necessary visits to the family (in case they needed help)
- hikes in nature and parks (whilst respecting social distancing)
- travel to receive or provide care
- attend funerals

The curfew was gradually and rather slowly eased by extending the list of premises that are allowed to open. The social distancing rules were also gradually eased. First, the outdoor sports activities could be performed in couples (a group of 2) and since the 24<sup>th</sup> of April in groups of 10. (For the full list of measures, see section 8.) As of today, recreational sports activities are unrestricted.

The curfew was lifted in waves. The freedom of movement is currently not restricted but many activities remain strongly regulated. The shops are allowed to re-open. Most services were restored under specific hygienical standards.

The obligation to wear face masks in public has been in place since the 19<sup>th</sup> of March (with very few exceptions). Initially, the face masks were compulsory both indoors and outdoors. As of today, citizens do not have to wear face masks outdoors but are requested to do so inside publicly accessible buildings and in mass transit.

With a retrospective look, it can be said, that the focus of the legislative response quickly shifted from the questions of public health to the issues of mitigating economic damage and restoration of public governance. The parliament passed several *ad hoc* laws, which contained vast amounts of *ad hoc* exceptions, pardoned deadlines, pardoned penalties, postponed tax duties, temporarily suspended instruments of insolvency law etc. The measures aimed to prevent social crisis and restore public governance, are outside of the scope of this report.

**5. Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of e-health technologies/applications processing personal data?**

The government is adopting “**smart quarantine**” which involves tracking of cell phone movement. The purpose of monitoring is to create a “memory map” which will help an infected individual to remember all his physical contacts with other people. These people will be then invited for tests. The tracking is based on the consent of an individual and performed by the operator of the mobile phone network.

<sup>20</sup> By quick counting the author of the report managed to identify 61 legally binding measures adopted after the 12<sup>th</sup> of March.

A voluntary smartphone application was made available for download that would allow individual cellphones to remember (anonymously) their proximity to other cellphones (via Bluetooth). Once the owner of the cellphone is diagnosed with the disease, owners of the cellphones that appeared in close proximity in recent past are notified.

Both technologies are based on voluntary participation, and their effect is yet to be evaluated.

#### **6. Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?**

Intentional spreading of COVID 19 became a criminal offence. Other than that, the occupational injury schemes were not reviewed. Being infected by COVID 19 at work would, however, allow an employee to claim compensation under existing rules.

#### **7. Have there been cases before the courts relating to health law due to the coronavirus outbreak?**

- The Supreme administrative court addressed the question, **whether a by-election** for the deceased member of parliament's upper chamber (Senate) **could be postponed** by the government on the grounds of national emergency (Pst 19/2019 – 12). The court reached a conclusion that the government has no authority to postpone parliament's by-election. However, the decision came three days after the by-election was supposed to take place and had no tangible effect.
- The individual citizen challenged the very nature of the curfew. The motion challenged several emergency measures of the Ministry of Healthcare (including **ban free movement of persons and ban on non-essential retail sale**). The Administrative Court in Prague<sup>21</sup> did not question the need for emergency measures. However, it cancelled some key pieces of regulation on formal grounds, because they were adopted by the Ministry of Healthcare under the Law on public health (see section 1). The court was of the opinion that they should have been adopted by the whole government under the legal framework for a national emergency. It is important to note that the measures were at first adopted by the government as a national emergency measure. However, they were later cancelled and immediately adopted by the Ministry of Health as a public health measure. This was because the public health measures have different compensation mechanisms than national emergency measures. The government tried to avoid legal disputes with owners of closed businesses. Even if the court ultimately acknowledged that the curfew is possible in these circumstances, the ruling influenced the government's decision to lift the curfew earlier than expected, for the sake of legal clarity. The large parts of curfew were lifted the next day. The shops were allowed to re-open within five days after the ruling.

The approach of the Administrative Court in Prague is however quite isolated considering the fact that the **Constitutional court refused at least nine submissions that challenged the curfew** and the Supreme administrative court refused to hear at least two complaints.

- Human rights groups prepared complaint that advocated for the presence of fathers during childbirth. This complaint never materialised, because it was questionable, whether the presence of a father at childbirth was actually forbidden and legal uncertainty lasted less than a month. The presence of a father is now allowed but conditional upon strict hygienical measures.

#### **8. A link to legal sources of your country (preferably in English)**

The most comprehensive source in English is a press release that summarises the measures taken in the course of an epidemic:

<https://www.vlada.cz/en/media-centrum/aktualne/measures-adopted-by-the-czech-government-against-coronavirus-180545/>

<sup>21</sup> ruling from the 23<sup>rd</sup>. of April 2020 (case no. 14A 41/2020)

## Denmark

*Katharina Ó Cathaoir & Ida Gundersby Rognlien, Faculty of Law, University of Copenhagen.  
Legislating Corona: Proportionality, Non-Discrimination and Transparency (PRONTO) funded by  
Independent Research Fund Denmark (Grant number: 0213-00025B).  
More information: [katharina.o.cathaoir@jur.ku.dk](mailto:katharina.o.cathaoir@jur.ku.dk)*

**Background:** In response to the COVID-19 pandemic, the Danish parliament substantially revised the 1979 Act on Measures against Infectious Diseases.<sup>22</sup> The amendments transferred important powers from expert epidemic committees to the Minister for Health. This includes the power to order the isolation and treatment of persons with COVID-19, or suspected to have COVID-19, and the power to order compulsory vaccination. The Minister of Health was also given new powers to create regulations, inter alia, restricting gatherings, closing public institutions. The amendments will be repealed automatically on 1 March 2021.

**COVID-19 Treatment Guidelines:** The Patient Safety Authority has issued guidelines that provide a national framework for dealing with COVID-19, including, suspected infection, criteria for referral for health screening and rules on treatment of infected patients.<sup>23</sup> There are also guidelines regarding how personnel in the health care system, and the elderly and social care system should prevent COVID-19 at work.<sup>24</sup> The State Serum Institute has prepared infectious hygiene guidelines for parts of the health and care sector.<sup>25</sup> Laboratories that detect COVID-19 or antibodies are required to report the results to the State Serum Institute.<sup>26</sup>

Furthermore, the Patient Safety Board has the power to order the examination, hospitalisation, treatment and isolation of patients with, or suspected of having, Covid-19. This can be enforced by the police.<sup>27</sup>

**Suspension of certain medical services:** The amendment to the law on infectious diseases gave the Minister the power to suspend certain medical services to prioritise responding to COVID-19. Following this power, the Minister issued a regulation that allows the Regions to postpone planned and future examinations, treatments and appointments, where the aim is to secure necessary treatment, care and personnel capacity for COVID-19. This includes suspending certain treatments guaranteed by law, including, preventative examinations for school aged children (except children aged under 1), and the right to an investigation within a month of referral.<sup>28</sup> The affected groups are, among others, patients at psychiatric departments, patients with substance abuse problems, people with disabilities and areas of health care related to diagnosis, prevention and rehabilitation.<sup>29</sup> It concerns, for instance, time limits, information, board meetings, visits by patient counsellor, temporary suspension of help like dental care for certain groups.

<sup>22</sup> Lov om ændring af lov om foranstaltninger mod smitsomme og andre overførbare sygdomme (nr 208 af 17/03/2020).

<sup>23</sup> Retningslinjer for håndtering af Covid-19 9. juni 2020, page 5, available at: <https://www.sst.dk/da/Udgivelser/2020/Retningslinjer-for-haandtering-af-COVID-19>.

<sup>24</sup> Retningslinjer for håndtering af Covid-19 9. juni 2020, page 32 and the following

<sup>25</sup> Infektionshygiejniske retningslinjer for COVID-19 <https://hygiejne.ssi.dk/retningslinjer/infektionshygiejniske-retningslinjer-for-covid-19>.

<sup>26</sup> BEK nr 665 af 20/05/2020 Bekendtgørelse om anmeldelse af COVID-19.

<sup>27</sup> Bekendtgørelse om undersøgelse, indlæggelse eller isolation og tvangsmæssig behandling i medfør af lov om foranstaltninger mod smitsomme og andre overførbare sygdomme i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19) BEK nr 368 af 04/04/2020.

<sup>28</sup> Bekendtgørelse om begrænsning af rettigheder på sundheds- og ældreområdet i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19) (nr 364 af 04/04/2020).

<sup>29</sup> Bekendtgørelse om begrænsning af rettigheder på sundheds- og ældreområdet i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19) BEK nr 364 af 04/04/2020 kap 3

The Health Authority issued two guidelines, one on reducing hospital activity during COVID19 (March 2020) and another on increasing activity in private hospitals (April 2020).<sup>30</sup> It up to the individual regions and hospitals to determine the precise prioritisation.

Secondary legislation also allows limitations on prisoners' rights, such as to exit, contact with others, leave of absence, health care related to drug abuse, and visitors, if necessary to prevent or mitigate COVID-19.<sup>31</sup> The Patient Safety Authority was also given the power to order prohibitions or restrictions on, for instance, visitors to nursing homes, health and social care facilities, with exceptions for close relatives of persons who are critically ill or dying.<sup>32</sup> Measures and restrictions have also been implemented in asylum centres, in areas such as education and health care.<sup>33</sup>

**Specific policies/guidelines concerning screening for COVID19:** Over the course of the pandemic, the Danish testing strategy has changed. Under the first strategy – containment - residents with mild symptoms with a referral could be tested. As the number of cases increased, in March, the health authorities moved to a mitigation strategy, whereby only those with severe symptoms could be tested (although those who were seriously ill and health professionals were also prioritised).<sup>34</sup> This led to not enough individuals being able to access tests and the government loosening the requirements.<sup>35</sup>

The current May 12<sup>th</sup> testing strategy takes a “more offensive” approach. There are two tracks: one for symptomatic residents and healthcare professionals, as well as patients admitted in hospitals; the second track is for persons without symptoms, as well as those working in the care sector.<sup>36</sup> Since 18 May, all residents can be tested for COVID19 without charge and without requiring a referral. A new testing strategy will be released in the Autumn.

Leftover biological material from testing will be stored in Denmark's National Biobank and can be used for future research “of significant societal importance”.<sup>37</sup> If the resident does not want their biological material to be used for research, they may opt out by registering in the Tissue Use Register (§ 29, Health Act).

#### **New regulations:**

**Closures:** Starting 18 March, groups of more than 10 were prohibited, with some exceptions. In the middle of March, secondary legislation ordered the closure of both public and private locations and institutions, such as cafés, hairdressers and swimming pools.<sup>38</sup> Gradual reopening was announced on 30 April 2020.<sup>39</sup> Closure of educational institutions was also ordered, with exceptions for emergency day care for specified groups, such as children of health care workers.<sup>40</sup>

<sup>30</sup> Notat om reduktion af hospitalsaktivitet ifm COVID-19 (13-03-2020). Håndtering af COVID-19: Omstilling og gradvis øget aktivitet på private hospitaler mv. (18-04-2020).

<sup>31</sup> BEK nr 221 af 17/03/2020) (Bekendtgørelse om forebyggelse og inddæmmelse af udbredelse af Coronavirussygdom 2019 (COVID-19) på kriminalforsorgens område.

<sup>32</sup> BEK nr 610 af 13/05/2020 Bekendtgørelse om midlertidigt forbud mod besøg på anbringelsessteder og botilbud m.v. på socialområdet i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19); BEK nr 823 af 09/06/2020 Bekendtgørelse om besøgsrestriktioner på plejehjem, plejeboliger og aflastningspladser samt sygehuse og klinikker i forbindelse med håndtering af Corona-virussygdom 2019 (COVID-19).

<sup>33</sup> <https://uim.dk/nyheder/2020-03/covid-19-regeringen-vil-forebygge-smittespredning-fra-asylansogere>.

<sup>34</sup> COVID-19 Risikovurdering, strategi og tiltag ved epidemi i Danmark (Sundhedsstyrelsen 10. marts 2020).

<sup>35</sup> Sundhedsstyrelsen 21 April 2020 <https://www.sst.dk/da/Nyheder/2020/For-at-undgaa-smittespredning-skal-mange-flere-testes-for-COVID-19>.

<sup>36</sup> Sundheds-og Ældreministeriet, COVID-19: Test strategi (12.05.20).

[www.sum.dk/Aktuelt/Nyheder/Coronavirus/2020/Maj/~media/Filer%20-%20dokumenter/01-corona/Teststrategi-faktaark/01-Teststrategi-corona.pdf](http://www.sum.dk/Aktuelt/Nyheder/Coronavirus/2020/Maj/~media/Filer%20-%20dokumenter/01-corona/Teststrategi-faktaark/01-Teststrategi-corona.pdf)

<sup>37</sup> Statens Serum Institut, Information om behandling af dine personoplysninger (08-06-2020).

<sup>38</sup> See for instance BEK nr 224 af 17/03/2020 Bekendtgørelse om forbud mod større forsamlinger og forbud mod adgang til og restriktioner for visse lokaler i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19) <https://www.retsinformation.dk/eli/Ita/2020/224> with further changes.)

<sup>39</sup> (Prime Minister Press Conference 30 April 2020 [https://www.stm.dk/\\_p\\_14935.html](https://www.stm.dk/_p_14935.html))

<sup>40</sup> BEK nr 217 af 17/03/2020 Bekendtgørelse om lukning af dagtilbud, skoler, institutioner m.v. og om nødpasning i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19).

Since 15 April 2020, gradual reopening has taken place.<sup>41</sup> Measures on the educational area have been imposed, such as online teaching due to the Covid-19 outbreak.<sup>42</sup>

**Gatherings:** In the beginning of March 2020, the authorities recommended the cancellation of gatherings of more than 1000 people.<sup>43</sup> Subsequently, several prohibitions on gatherings of a specified number of people were introduced in secondary legislation (100, 50, 10 persons). At present, there is a prohibition on gatherings of more than 50 people.<sup>44</sup> During the pandemic, the police have also ordered temporary prohibitions on gathering in specific zones. Recommendations on distance between people was initially two meters, and as of 11 May 2020 the Patient Safety Authority recommended one meter's distance.<sup>45</sup>

**Travel:** As of 14 March, Denmark prohibited entry to Denmark, with the following exceptions, Danish citizens, residents of Denmark, Greenland or Faroe Islands, and others with legitimate purpose.<sup>46</sup> The scope of legitimate purpose has been regularly updated to include, for instance, attending a funeral, visiting children or grandchildren resident in Denmark.

Currently all people entering Denmark are recommended to self-isolate for 14 days, with some exceptions, for instance, for cross-border commuters. Gradual reopening is taking place, such as, for tourism between specified countries (Iceland, Norway and Germany) and business travel. Controversially, the border to neighbouring Sweden remains closed.<sup>47</sup>

Recommendations and guidelines have been given on avoiding public transport in rush hours and on social distance during transport.<sup>48</sup>

Criminal sanctions have been legislated in order to regulate measures imposed.<sup>49</sup>

**Use of e-health technologies/applications processing personal data:** In April 2020, "COVIDmeter" – whereby residents voluntarily self-report on their health every week – was released by the State Serum Institute in collaboration with a private company.<sup>50</sup> The Danish authorities are also currently developing a mobile app with the same company. The app will be available for download for all residents aged over 15 years. It will use Bluetooth to track individuals' movements and alert them if they have encountered a person who later tests positive.

**New provisions concerning liability:** The occupational injury scheme remains unchanged but the Danish Working Environment Authority (Arbejdstilsynet) has produced a guideline for assessing work injury claims related to COVID-19.<sup>51</sup>

**There have not been cases before the courts relating to health law due to the coronavirus outbreak.**

### **A link to legal sources of your country (preferably in English)**

The main law (Lov om ændring af lov om foranstaltninger mod smitsomme og andre overførbare sygdomme) is available here: <https://www.retsinformation.dk/eli/lta/2020/208> (in Danish).

<sup>41</sup> BEK nr 666 af 24/05/2020 Bekendtgørelse om lukning og gradvis, kontrolleret genåbning af dagtilbud, skoler, institutioner m.v. i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19).

<sup>42</sup> LOV nr 241 af 19/03/2020 Lov om midlertidige foranstaltninger på børne- og undervisningsområdet og folkehøjskoleområdet og for den frie folkeoplysende virksomhed til forebyggelse og afhjælpning i forbindelse med covid-19.

<sup>43</sup> Prime Minister Press conference 6 March 2020 [https://www.stm.dk/\\_p\\_14913.html](https://www.stm.dk/_p_14913.html)

<sup>44</sup> BEK nr 795 af 08/06/2020 <https://www.retsinformation.dk/eli/lta/2020/795>. 8 June 2020 a political agreement was announced on the gradual opening of banned gatherings <https://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2020/aftale-om-forsamlingsforbuddet>.

<sup>45</sup> [www.sst.dk/da/Nyheder/2020/Vi-skal-alle-fortsat-holde-afstand-og-vise-hensyn-saa-kan-vi-rykke-en-smule-taettere-sammen](http://www.sst.dk/da/Nyheder/2020/Vi-skal-alle-fortsat-holde-afstand-og-vise-hensyn-saa-kan-vi-rykke-en-smule-taettere-sammen).

<sup>46</sup> Legal basis: udlændingeloven (law on aliens) § 28, stk. 1, nr. 7, og stk. 3 <https://www.retsinformation.dk/eli/lta/2019/1022>.

<sup>47</sup> <https://politi.dk/coronavirus-i-danmark/hvis-du-skal-rejse-ind-i-eller-via-danmark>

<sup>48</sup> Prime Minister Press conference 10 March 2020 [https://www.stm.dk/\\_p\\_14919.html](https://www.stm.dk/_p_14919.html)

<sup>49</sup> LOV nr 349 af 02/04/2020 Lov om ændring af straffeloven, retsplejeloven og udlændingeloven (Skærpet straf for lovovertrædelser med baggrund i eller sammenhæng med covid-19 og blokering af hjemmesider, hvorfra der begås visse lovovertrædelser, som har baggrund i eller sammenhæng med covid-19).

<sup>50</sup> COVIDmeter: Hjælp sundhedsvæsenet <https://www.sundhed.dk/borger/corona/covidmeter/>

<sup>51</sup> Arbejdstilsynet, Vejledning om vurdering af arbejdsskadesager om sygdom med COVID-19 (21 April 2020).

## Estonia, an overview of legal measures taken at the time of COVID19 outbreak

*Tiina Titma, NCP for Estonia*

### 1. A short description of the major legislative framework concerning communicable diseases

The relevant normative act regulating how the control of communicable diseases is organised and the procedure for the provision of health care services to infected persons is the Estonian Communicable Diseases Prevention and Control Act. The Act sets out the obligations of the state, local governments, legal persons and natural persons in the prevention and control of communicable diseases. The Act is in force from 2003 mostly amended concerning the new provisions of EU. From the outbreak of coronavirus epidemic, the Act has been changed twice.

The Health Services Organisation Act provides the organisation of and the requirements for the provision of health services, and the procedure for the management, financing and supervision of health care. Most provisions concern the state in normal circumstances.

The Emergency Act provides for the legal bases for crisis management, including preparing for and resolving an emergency as well as ensuring the continuity of vital services. This Act also governs the declaration, resolution and termination of an emergency situation, the involvement of the Defence Forces and the Defence League in resolving an emergency that has led to the declaration of an emergency situation, and state supervision and liability. The provisions of the Emergency Act shall be applied to the organisation of health care in case of an emergency, taking account of the specifications provided for in the Health Services Organisation Act.

In Estonia, the government declared an emergency situation in connection with the pandemic spread of the coronavirus causing the COVID-19 disease throughout the world on March 12 based on the Emergency Act. The emergency situation came to an end at midnight on May 18.

The restrictions imposed during the emergency situation will be gradually eased and new legal bases will be provided. After the end of the emergency situation, the health care emergency remains in force in Estonia.

At the time of the emergency situation, several legal acts had been changed. Altogether 32 new orders and regulations have been introduced.

- **Are there any guidelines concerning the treatment of patients suffering from coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest.**

At the start, no guidelines concerning the treatment of patients suffering from coronavirus were not known. From April the official guideline was given created by The North Estonia Regional Hospital. However, some local hospitals used their own guidelines which were based on the newest scientific knowledge available.

There were several restrictions concerning every-day healthcare as the most vulnerable frontline at the time of the emergency situation.

- Women were not allowed to have birthing partners during the emergency situation.
- Visiting patients in the hospital was prohibited. Valid until 18.05.2020.
- Care home residents were not allowed to leave the premises until the emergency situation has ended and there was no longer possible to visit relatives in care or nursing homes. Valid until 18.05.2020.



The generated new guidelines for hospitals did not set the new triage rules but the priority is given for those who work in the health care sector.

Even the Estonian Communicable Diseases Prevention and Control Act provides conditions and procedure for the application of involuntary treatment in the case of communicable diseases, such an approach have not implemented.

**Have certain medical services been suspended during the outbreak (e.g. non urgent health care)?**

The scheduled outpatient appointments, daycare or inpatient treatment were postponed due to the emergency situation. The restoration of planned treatment begun from the start of May.

The arrangements concerning the deficiency of medical supply due to the new border controls in EU, the ban of export of medical goods (personal protective equipment, medicines etc.) by some states and the higher consumption by consumers were as follows.

- Prescription of medicinal products for chronic diseases for no more than two months at a time.
- Pharmacies were restricted to dispense over-the-counter medicinal products more than two packagings per proprietary medicinal product and per customer.
- Pharmacies were restricted to dispense medicinal products subject to repeat prescription more than one prescription's worth for no more than two months.

The restrictions related to prescription or dispensing of medicinal products were valid until the end of the emergency situation.

- **Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:**
  - **Restrictions concerning movement in public spaces (curfew, closing of parks etc.)**

The borders were closed for foreign nationals from March 16 unless they have a residence permit. Anyone returning from abroad had to self-quarantine for 14 days not leaving home during that period. The movement restrictions for western islands of Estonia were established allowing the access only for local residents. The strict stay-at-home rules had placed for those who have confirmed or suspected to have the virus.

Schools, colleges and universities across the country were closed from March 16 using onwards the online teaching. From March 24 all public gatherings were banned, playgrounds and sports areas were closed. The order was valid until the end of the emergency situation.

The government approved a decision allowing people arriving from a member state of the European Union, the Schengen Area, or the United Kingdom of Great Britain and Northern Ireland to cross the Estonian state border from 1 June. A person may enter the Republic of Estonia if they have no symptoms of illness and have stayed in those countries for the last 14 days, which is the incubation period of COVID-19.

The government also clarified its previous order and provided that a person arriving in Estonia from a country with a higher COVID-19 infection rate would be subject to a 14-day restriction (during the latent period of infection) on freedom of movement. Quarantine was previously required, but for the sake of legal clarity, the wording of the order was clarified by adding a restriction on freedom of movement. This means a prohibition on leaving the place of residence or permanent residence, except on the instructions of a healthcare professional or a police officer or in the event of an emergency endangering a person's life or health. People can also leave home to receive healthcare services or if it is not possible to obtain food, basic necessities, or medicine in any other way. This requirement arises from subsection 28 (9) of the Communicable Diseases Prevention and Control Act.

- **Restrictions concerning “social distancing” concerning number of meters between people, inside and outside.**

**Please specify whether the restrictions are in form of guidelines or legal binding instruments (and date for latest amendment)**

From March 27 new restrictions were introduced allowing only groups of two people or fewer meet in public and leave a gap of two meters from others, which did not apply to families. Police took to drones to enforce 2+2 coronavirus rule and in extreme cases fines of up to €2,000 can now be issued. The restrictions were set by Prime Minister *Order of the person in charge of emergency situation for imposing restrictions on the freedom of movement in public places* and was valid until the end of an emergency situation.

The restrictions will be eased gradually after the end of the emergency situation on May 18.

From June 1. public events may be organised with 100 participants instead of a maximum of 50 people. Indoors, the 50 per cent occupancy limit and the 2+2 rule had been observed.

This applies to public events (cinemas, theatres, concerts, etc.) as well as to meetings, casinos, and arcades.

Until 30 June, the 2+2 rule and the limit of 100 participants also apply to sports competitions held indoors without spectators in accordance with the Covid-19 recovery plan.

The most important movement restriction, i.e. 2+2 rule, remains in force. However, the scientific council for coronavirus outbreak considers such a rule not necessary as it does not bear any relevance to the real behaviour of people. Thus, the government decided to end the 2+2 rule from June 19.

- **Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of e-health technologies/applications processing personal data?**

There are different guidelines concerning the screening of COVID19 available on the webpage of the Estonian Health Board. However, the disputes on the valid and precise method of testing of COVID19 between scientists, the Health Board and government had been often taken much of the media coverage.

Some of the universities in Estonia have collaboration with the state medical agencies to create several methods predicting the progress of COVID19.

- **Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?**

There are no such schemes to my better knowledge.

- **Have there been cases before the courts relating to health law due to the coronavirus outbreak?**

There are no such schemes to my better knowledge. However, several complaints addressing the restrictions at the time of emergency situation have been applied to the Chancellor of Justice of Estonia.

## **8. A link to legal sources of your country (preferably in English)**

All the consolidated texts of English translations of Estonian legislation could be found on the website of Riigi Teataja <https://www.riigiteataja.ee/en/>

All the legislation concerning the emergency situation could be found listed on <https://www.riigiteataja.ee/viitedLeht.html?id=7>

## COVID 19 France report

*Renaud Bouvet MD PhD*

*Université de Rennes I ; CHU de Rennes France*

*Anne-Marie Duguet MD PhD Emeritus Senior Lecturer*

*UMR/INSERM Unit 1027 Toulouse 3 Université Paul Sabatier*

France was among the most affected countries in Europe by COVID 19, after Great Britain, Spain and Italy. Between March 1 and May 22, 144,556 cases were detected and 100,038 patients hospitalized with 28,289 deaths. The French health system has responded to the epidemic at the cost of considerable efforts to prepare and adapt hospital services and mobilized health professionals practising at home and in health care facilities. A health emergency law was enacted and population containment was effective from March 15 to May 11.

### **Legislative framework concerning communicable diseases**

The State shall guarantee without discrimination to all persons equal access to the care required by their state of health. France is a centralized state that provides the same access to healthcare and prevention throughout its territory. The Public Health Code (CSP) organises the prevention of health risks in Title III.

With regard to infectious diseases, articles L3111-1 et seq. of the CSP provide for the compulsory vaccination of children (diphtheria, tetanus, poliomyelitis, whooping cough, Haemophilus influenzae type b, hepatitis B, pneumococcus, meningococcus C, measles, mumps, rubella) as well as the compulsory vaccination of certain professionals according to the particular risks to which they are exposed (health professionals, laboratory staff, thanatopractors, etc.). The fight against communicable diseases is supplemented by a system of compulsory reporting of certain diseases to the health authorities (art. L.3113-1 CSP).

In 2004, the Law 2004-806 on Public Health Policy established a High Council for Public Health<sup>52</sup>, a national public health expert body, and a National Public Health Committee responsible for ensuring interministerial and inter-institutional coordination in the field of health safety and prevention. The national plan for the prevention of health risks (article L.1311-6 CSP), drawn up for five years, takes into account risks from physical, meteorological, chemical and biological agents.

In the event of a serious health threat (article L.3131-1), the Minister of Health may, by reasoned order, prescribe any measure proportionate to the risks. The validity of the measures is subject to periodic review by the High Committee on Public Health in accordance with procedures defined by decree of the Council of State. (Art L.3110-2 CSP).

The state representative in the region (Director of the Regional Health Agency) defines the methods of implementation of the national objectives in a Regional Public Health Plan (art L. 1411-11 CSP). Each health establishment is equipped with a crisis mechanism: the « white plan » for the establishment which enables it to immediately mobilise the means at its disposal in the event of a massive influx of patients, or to deal with an exceptional health threat (L.3110-7 CSP). This plan is an anticipation plan which provides for the organisation to be implemented in such a way as to respond to the epidemic when the establishment is faced with it.

Other control measures are provided for, such as disinfection of premises and sanitary transport vehicles (Article L 3114-1 CSP) and sanitary control at borders in accordance with the WHO International Health

<sup>52</sup> [www.hcsp.fr](http://www.hcsp.fr) English presentation available

Regulations to prevent the spread of communicable diseases by land, sea or air. (Art L 3115-1 CSP).

## Recommendations for Referral and Treatment of Patients with COVID 19

### Contingency plans

The White Hospital Plan, a crisis mechanism activated by the hospital director, to immediately mobilize all the means at his disposal in the event of an influx of patients or to deal with an exceptional situation, in agreement with the Regional Health Agency. The plan provides for the management of alerts and relations with the authorities and the media, coordination with the SAMU (emergency Medical Assistance, on duty 24 hours a day, on all the territory) to ensure the care and transport of patients, transport and transfers to the appropriate care structures. The White Plan organizes the recall and allocation of available medical staff and the distribution of human resources, the use of all beds and care structures and certain closed units, the mobilization of temporary economic and logistical resources made available, as well as communication with law enforcement services.

The ORSAN plan: Organization of the health system's response to exceptional health situations

Since 2014, this plan organizes, for the whole territory, the response of the health system in exceptional health situations<sup>53</sup>. The plan covers the following areas: outpatient, inpatient and medico-social care. It was activated by the Minister of Health for COVID 19 on 23 February 2020. In the dedicated establishments, the plan provides for a first-line system which must receive patients 24 hours a day, with regulation (assessment and orientation) organised by the SAMU (Emergency Medical Assistance Service). The second line takes care of regulated patients with adequate resources. Level 1 of the ORSAN plan is the internal mobilization to receive a large number of patients. Level 2 is the white plan of the hospitals which increases the human resources, with the recall of personnel and the release of beds (programmed interventions) The management of patient flows is organized according to the criteria of prioritization/orientation according to the gravity: absolute emergency or relative emergency. Actions are coordinated by the Hospital's Crisis Unit.

### Recommendations for care

In the specific context of the SARS-COV2 pandemic, various bodies have published recommendations on the management of patients with Covid19 , in the particular context of the crisis situation, in which the needs are likely to exceed hospital capacities, particularly for intensive care and resuscitation. For example, the French Society of Anesthesia and Resuscitation (SfAR) has published criteria for hospitalization in intensive care during the pandemic<sup>54</sup>. The High Council of Public Health and the High Authority for Health have very regularly proposed recommendations in line with the progress of knowledge concerning the disease, both in terms of prevention and diagnosis and therapy. Ethical reflection has also been initiated, following on from the CCNE's reflections in 2009 in the context of the H1N1 flu pandemic <sup>55</sup>. On 13 March 2020, the CCNE<sup>56</sup> made 4 recommendations: 1) to set up a joint body of scientific experts from different disciplines together with members of civil society.2) to set up an ethical support unit to deal with the management of rare resources (resuscitation beds, mechanical ventilation) to support healthcare professionals as closely as possible in defining their healthcare priorities, 3) to encourage innovation, pooling of services, use of IT tools ... 4) organise rapid feedback and independent evaluation. A similar approach has been taken by the French Society

<sup>53</sup> Methodological guides of the Ministry of Solidarity and Health see [www.solidarite-sante.gouv.fr](http://www.solidarite-sante.gouv.fr) Preparation for the risk of an epidemic of COVID 19 (February 2020) and preparation for the epidemic phase of Covid 19 (16 March 2020).

<sup>54</sup> <https://www.srlf.org/wp-content/uploads/2020/04/20200410-Reco-Ethique-SRLF.pdf>

<sup>55</sup> [https://www.ccne-ethique.fr/sites/default/files/publications/avis\\_106\\_anglais.pdf](https://www.ccne-ethique.fr/sites/default/files/publications/avis_106_anglais.pdf)

<sup>56</sup> Contribution of the CCNE of March 13, 2020 on referral from the Minister of Solidarity. [www.ccne-ethique.fr](http://www.ccne-ethique.fr) some opinions are translated to english

for Anesthesia and Resuscitation (SFAR), which has published recommendations entitled Ethical Issues of Access to Resuscitation and Other Critical Care in the Context of the COVID 19 Pandemic<sup>57</sup>.

### **Exceptional authorisation for the use of medicinal products in the context of the Covid pandemic 19 Decree 2020-314 (off label Prescriptions)**

In the absence of validated treatment, various drugs that had been shown to be effective in other epidemics have been used to treat Covid 19. Decree 2020-314 provides for provisions relating to the availability of medicines outside their marketing authorisation (off label ): hydroxychloroquine and the lopinavir/ritonavir combination.

Exceptionally, the supply of products outside their marketing authorisation is provided for rare or serious diseases where there is no appropriate treatment (Art L 5121-12 CSP). By way of derogation, the decree allows the dispensing and administration of the 2 products under the responsibility of a doctor in health establishments. The National Agency for the Safety of Medicines has drawn up a protocol for use and the methods for providing information adapted to patients.

Therapeutic monitoring is accompanied by the collection of information on adverse reactions with transmission to the regional pharmacovigilance centre. In its opinion, the High Committee recommends that clinical trials be carried out in parallel.

### **Medical services suspended during the outbreak**

In application of the White Plan in hospitals, non-urgent interventions are deprogrammed as of March 6 in order to free up hospital beds. At the request of the Ministry of Health, all public and private health establishments have been ordered to deprogram all non-essential hospitalizations. This deprogramming was carried out on an individual basis, with an assessment of the benefit-risk ratio and the obligation to provide patients with more information. Assisted reproduction and organ and tissue harvesting and transplantation activities have been suspended by the Biomedicine Agency. Since mid-May 2020, health establishments have been asked to reschedule deferred hospitalisations, again with an individualised assessment of the benefit-risk ratio in relation to the Covid19 risk and information for the patient.

### **Emergency health laws and regulations related to Covid 19**

The Operational Centre for Regulation and Response to Health Emergencies of the Ministry of Health (CORRUSS) was set up on 27 January to anticipate the arrival of the virus. The ORSAN plan and its ORSAN REB component were launched on 23 February.

The council of Covid scientists is set up on 10 March. On March 11th, visits to the EHPADs are forbidden. The closure of the crèches, schools, colleges and universities is ordered on March 12th. Municipal elections are held on 15 March with protective measures, in the evening, closure of all non-essential public places except for pharmacies, banks, food shops, petrol station, tobacco shops and press offices.

On 16 March, after the advice of the Council of Scientists, the confinement is organized only those activities strictly necessary for the life of the nation must be maintained. The borders of the Schengen area are closed, but French nationals living abroad will be able to return.

### **Health emergency laws**

A first health emergency law 2020-290 was adopted on 22 March, followed by law 2020-546 extending the state of health emergency.

<sup>57</sup> <https://sfar.org/download/enjeux-ethiques-de-laces-aux-soins-de-reanimation-et-autres-soins-critiques-sc-en-contexte-de-pandemie-covid-19/?wpdmdl=25401&refresh=5ee4c60c180e31592051212>

**Law 2020-290** <sup>58</sup> defines the state of health emergency in its Title 1, then the economic emergency and adaptation measures to fight the epidemic (Title 2) and finally the electoral provisions (Title 3). The health emergency is pronounced for 2 months until 23 May 2020. The Committee of Scientists is set up<sup>59</sup> to give periodic opinions on the state of the health disaster, the scientific knowledge relating to it and the measures to put an end to it. The opinions shall be made public without delay.

The main provisions of the Act are adopted by decree of the Prime Minister for the sole purpose of guaranteeing public health. Decree No. 2020-293 of 23 March 2020 provides as follows:

- measures restricting freedom of movement: 1) prohibition of persons from leaving their homes subject to travel that is strictly necessary for family or health needs; 2) quarantine of persons likely to be infected within the meaning of the International Health Regulations of 2005; 3) isolation measures at home or in a suitable place of accommodation;
- additional measures: 1) temporary closure of establishments open to the public (sports stadiums, cinemas and theatres, department stores, etc.); 2) provision of appropriate medicines; 3) requisitioning of goods and services, and of any person necessary for their execution 4) temporary measures to control the prices of certain products.

### **Law 2020-546 extending the state of health emergency** <sup>60</sup>

The state of health emergency is extended until 10 July inclusive. The new law retains some of the provisions of the previous law and, in particular, specifies the time limits for pre-trial detention and conditions of release in criminal matters.

Following the opinion of the Committee of Scientists, the conditions of quarantine are specified for air or rail passengers; the place of isolation at home or in a dedicated place (hotel). Special derogations are provided for in the case of intra-family violence<sup>61</sup> to prevent the perpetrator from being confined in the same place.

Placement in solitary confinement for 14 days is subject to medical confirmation of the infection, and may be extended in the same way. It may be reviewed by the liberty judge or be the subject of a complaint to the public prosecutor.

An information system for the sole purpose of combating the covid-19 epidemic is set up. The article 11 of the Act authorizes the sharing of data of patients who may have been infected without their consent.

## **E-health technologies and data protection**

### **Tele-consultations and COVID 19**

Teleconsultation is a recently developed practice in France since 2018, with reimbursement like traditional consultation. Organized on a secure messaging system with the patient's consent, teleconsultation is usually performed on a patient already known to the doctor. Decree n°2020-227 allows this obligation to be waived and can be carried out on a patient unknown to the professional. The occurrence of COVID 19 has encouraged

<sup>58</sup> Loi 2020-290 d'urgence pour faire face à l'épidémie de COVID 19. JORF n°0072 du 24 mars 2020.

<sup>59</sup> prévu par l'art L. 3131-19 du CSP.

<sup>60</sup> Loi n°2020-290 du 11 mai 2020 prorogeant l'état d'urgence sanitaire JORF du 12 mai 2020. <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&categorieLien=id>

<sup>61</sup> Art 515-9 of Civil code

the development of telemedicine and telecare (Art. 8 of the decree of 23 March 2020) by all healthcare professionals. The Ministry of Health has published an information guide for professionals and the Haute Autorité de Santé has drafted recommendations. In addition, Order 2020-428 introduces the abolition of the co-payment, i.e. 100% reimbursement of the cost of teleconsultation, until the end of the state of health emergency. Finally Decree n°2020-459 authorises teleconsultation for an act performed by telephone when videotransmission is not possible.

### **Covid tracing**

The Health Emergency Extension Act 2020-546 provides for the creation of an information system to combat COVID 19 which adapts existing information systems and provides for the sharing of data (Decree No. 2020-551, COVID Contact and SI-DEP devices).

Health surveys are planned to identify contact subjects and the support of these persons. Subjects carrying the virus, detected by their general practitioner and subjects alerted by the stop covid device on their smartphone who have consulted their doctor are reported to the « health brigades ». Health insurance personnel are assigned and paid for these surveys. They are bound by professional secrecy and can be prosecuted in case of violation.

The personal data collected is kept for 3 months, it concerns the virological or serological status of the subject, evidence of clinical diagnosis or medical imaging, transmitted by a doctor or a medical biologist. In accordance with French legislation, any person has the right to access and rectify the information collected. For the secondary use of this data in epidemiological studies, the names of individuals and their national identification numbers will be removed.

A monitoring and liaison committee is responsible for involving civil society and Parliament in operations to combat the spread of the virus. The committee evaluates feedback and the real contribution of digital tools and checks whether or not they make a significant difference in dealing with the epidemic. In addition, the Committee verifies throughout the operation the guarantees of protection of personal data and respect for professional secrecy. A detailed report on the application of the measures is sent by the government to Parliament every three months (public notice).

The Commission Informatique et Libertés (CNIL) gave a favourable opinion on the implementation of these measures on 25 May<sup>62</sup>. In addition, the National Assembly also gave a favourable opinion on 27 May.

### **Protection and compensation of health professionals**

Health professionals who contract infections in the course of their work are compensated for occupational diseases according to a list of works and germs defined in Table No. 76. Covid19 will be added to this table. Professionals should then be able to obtain recognition of the work-related nature of the SARS-CoV2 infection, and thus benefit from the special occupational disease compensation scheme, which is particularly favourable to them. The presumption of imputability exempts them from having to provide proof of the contamination in return for a lump-sum compensation, which may be increased in the event of inexcusable

<sup>62</sup> <https://www.cnil.fr/fr/la-cnil-rend-son-avis-sur-les-conditions-de-mise-en-oeuvre-de-lapplication-stopcovid>

fault on the part of the employer, in which case the professional must prove that the employer did not comply with the necessary prevention and protection measures.

The criminal liability of an employer is assessed on the basis of the normal diligences it has carried out. The manifestly deliberate abstention from a safety obligation imposed by the regulations of the state of health emergency and the means at his disposal in the crisis situation must be established, as well as the nature of his missions or functions. (Article L.3136-2 CSP).

### Case before Courts

Restrictive measures under the emergency health law may be appealed against before the administrative judge: summary proceedings - suspension or interim release (Art L.3131-18 CSP). Numerous actions have been brought. The main grounds rejected by the Council of State have been<sup>63</sup>: compulsory wearing of a mask, insufficient ordering of screening tests and hydroxychloroquine, request for total confinement, access to healthcare for people in EHPAD, closure of administrative detention centres, health measures for detainees, etc.

On the conformity of laws with the Constitution, the Constitutional Council considered that the law extending the state of health emergency did not infringe rights and freedoms<sup>64</sup>. The Court of Cassation questioned the Council on the constitutionality of the repression of non-compliance with the measures enacted by the administrative authority<sup>65</sup> provided for in article L.3136-1 of the Public Health Code. All these measures are considered as constitutionnals.

The government was also questioned for its management of the crisis. It is possible to lodge a complaint against members of the government before the Court of Justice of the Republic (CJR) to engage their personal criminal liability in the exercise of their duties. As of 13 May, 63 complaints had been filed<sup>66</sup>. The Petitions Committee of the CJR, composed of 18 high-ranking judges, can decide whether or not to follow up on these complaints and, if necessary, refer them to the Investigation Committee.

### References

**Most of the references of the report are in French, however the majority of the Public Administrative web-sites have an English version. This does not mean that all the documents are translated but it can help to understand how they work.**

Legifrance Official web site for laws and regulations <https://www.legifrance.gouv.fr/Traductions/en-English>

Santé Publique France official website for information on COVID 19 [www.santepubliquefrance.fr](http://www.santepubliquefrance.fr)

French Ministry of health <https://solidarite-sante.gouv>

National ethics committee [www.ccne-ethique.fr](http://www.ccne-ethique.fr) English version of opinions.

National Data protection commission CNIL [www.cnil.fr](http://www.cnil.fr)

National Agency for Medicine ANSM <https://ansm.sante.fr>

<sup>63</sup> J-M Pastor « Coronavirus : le Conseil d'Etat a imposé au Gouvernement de préciser ses mesures de police » AJDA, n°12,30 mars 2020, p 655. Demande d'un confinement total par un syndicat de jeunes médecins (rejeté) : note de la rédaction « Coronavirus confinement : légalité du décret du 16 mars 2020 » recueil Dalloz, 2020, p 687.

<sup>64</sup> C. const., 11 mai 2020, n° 2020-800 DC, Loi prorogeant l'état d'urgence sanitaire et complétant ses dispositions.

<sup>65</sup> Crim., 13 mai 2020, n° 20-90.003, n° 20-90.004, n° 20-90.006.

<sup>66</sup> [https://www.lemonde.fr/societe/article/2020/05/14/covid-19-deja-plus-de-soixante-plaintes-contre-des-membres-du-gouvernement\\_6039643\\_3224.html](https://www.lemonde.fr/societe/article/2020/05/14/covid-19-deja-plus-de-soixante-plaintes-contre-des-membres-du-gouvernement_6039643_3224.html)



## Questionnaire Coronavirus – Germany

*Hanna-Luisa Tippner, Susannah Vierke and Lia Noebel*

*University of Göttingen*

### 1. A short description of the major legislative framework concerning communicable diseases

- The German Infection Protection Act entered into force on 1<sup>st</sup> January 2001 as a part of the risk prevention law, which belongs to the police law
- Its aim is to prevent communicable diseases and detect infections at an early stage
- The law introduced a system of reporting obligations concerning those diseases
- Germany is founded on federalism. According to that, legal competences are shared between the German state, the federal states and their communes. The Infection Protection Act was enacted by the German state, its implementation/execution predominantly lies within the competence of the federal states.
- Accordingly, regulations concerning the handling of the coronavirus differ from federal state to federal state

### 2. Are there any guidelines concerning the treatment of patients suffering from Coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-termcare homes, prisons, asylum centers) are also of interest.

- In case of a suspicion of a Corona infection, patients are obliged to stay at home in quarantine for 14 days at least
- There are no legal guidelines concerning the priority of patients suffering from Coronavirus. The reason for that is the position of human dignity as the central virtue in German law forbidding any direct weighing up of human life. Instead, seven medical societies published a catalogue of possible guidelines: according to this catalogue, in case of overloaded medical stations and missing ventilators there is a priority for patients who have the highest chance of surviving. Crucial for that consideration are not only age and pre-existing conditions. Instead there is the necessity to weigh up all circumstances of each individual case.
- Most hospitals and nursing homes provide special stations for patients infected with Coronavirus to minimize contact
- Prisoners and residents of nursing homes are partially obliged to stay in their room or cell the whole day in order to prevent the spread of the Coronavirus. In prisons also therapies, sport programs and walks in the courtyard have often been cancelled.

### 3. Have certain medical services been suspended during the outbreak (e.g. non urgent healthcare)?

- Since the middle of March 2020, all elective interventions in medical institutions as well as outpatient treatments, for which there is currently no urgent medical need, need to be suspended in order to ensure the ability of hospitals to act in case of a real crisis
- The individual case-by-case decision is taken by the medical staff
- For example, the performing of abortions in hospitals was temporarily stopped. Normally about 21-50% of all abortions take place in hospitals.

### 4. Have new regulations been introduced within the field of health law due to the Coronavirus outbreak, particularly: what is the main content of these laws:

- a. Restrictions concerning movement in public spaces (curfew, closing of parks etc.)

- Because of German federalism, the restrictions differ from federal state to federal state
- On 16<sup>th</sup> March border controls and entry bans were introduced by the federal government
- Also, the first federal states started to close kindergartens, schools and universities (the first federal state was the Saarland, followed by the other federal states)
- Employees who work in jobs which are not crucial for the maintenance of the system were transferred into home office
- Governmental guidelines for the federal states recommended the prohibition of church services and leisure establishments
- On 22<sup>nd</sup> March, the federal government and the federal states agreed on strict contact and exit restrictions: all meetings with more than two persons who do not belong to the same household or family were temporarily forbidden
- Due to that, spending time outdoors was only allowed for essential activities such as grocery shopping or sport. Also, all sport fields and playgrounds were closed.
- Following an agreement on 15<sup>th</sup> April stores with a retail space of under 800 qm were allowed to reopen
- On the 20<sup>th</sup> April the federal states introduced the duty to wear masks in shops and public transport
- However, since the end of April, easing measure have been introduced. For example, schools, shops, restaurants and playgrounds have gradually reopened. For that, the federal government and the federal states agreed on a concept according to which relaxations of the restrictions must be taken back if Coronavirus infections surpass the number of 50 cases per 100.000 inhabitants in a district.

**b. Restrictions concerning “social distancing” concerning number of meters between people, inside and outside.**

**Please specify whether the restrictions are in form of guidelines or legal binding instruments (and date for latest amendment)**

- Due to federalism, every federal state enacted different restrictions
- Those restrictions are legal binding instruments in form of regulations, often following agreements between the federal government and the federal states
- The compliance of those rules is enforceable by the police and regulatory authorities
- Also, in case of a trespassing of those restrictions legal punishments are possible
- Following the agreement between the federal government and the federal states on 22<sup>nd</sup> March meetings between more than two people who do not belong to family or the same household are forbidden
- Also, the duty to keep a distance of at least 1.5 – 2 meters to other persons inside and outside got introduced
- Furthermore, residents and patients of nursing homes and hospitals were temporarily not allowed to receive visits. After the middle of May some federal states relaxed the ban making it possible for one fixed person to visit.
- In prisons inmates are often only allowed to have contact with their lawyers
- Furthermore, customers of all stores except restaurants and banks are obliged to wear face masks
- Since May some federal states started to loosen the contact restrictions step by step. For example, after only closest family has been allowed at funerals or weddings in Lower-Saxony, since the beginning of June up to 50 persons are permitted. Also, up to 10 persons of two households can meet.

- The latest amendment of the Coronavirus restrictions in Lower-Saxony came into force on the 8<sup>th</sup> June
- Nonetheless, the overall restriction of social contact in the whole federal republic is extended until 29<sup>th</sup> June
- All large-scale events are forbidden until the 31<sup>st</sup> August

**5. Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of health technologies/applications processing personal data?**

- The Robert-Koch-Institute, an independent higher federal authority, provides guidelines for legal and medical orientation
- Persons are only tested if any symptoms of Coronavirus occur, if they had immediate contact with an infected person or if they have been in a risk area with symptoms
- In the case of a suspect of a Coronavirus infection, authorities follow back the affected contact chains and order quarantine for all
- In most federal states, hairdressers, bars and restaurants are obliged to request and save personal data of their customers, so that in case of a Coronavirus infection or suspect the contact chains can be followed back
- In April, the Robert-Koch-Institute launched an app which allows citizens to voluntarily give out personal data concerning their health to detect infections with the Coronavirus earlier
- Furthermore, the federal government plans to publish an app on 16<sup>th</sup> June for citizens to download simplifying the following of contact chains after Coronavirus infections.

**6. Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?**

- Concerning the civil and criminal liability no new provision has been introduced
- However, in other areas some simplifications were made possible, for example:
  - In case of minor respiratory diseases doctors are allowed to give patients up to 7 days of sick leave through the telephone (until 31<sup>st</sup> May)
  - Doctors and psychotherapists can offer unlimited video consultation hours (until 30<sup>th</sup> June)

**7. Have there been cases before the courts relating to health law due to the Coronavirus outbreak?**

- Since the beginning of the enactment of restrictions, many applications for interim relief have been before the courts. Some cases even got decided by the highest German courts.
- For example:
  - 17<sup>th</sup> April, a legal proclamation of the federal constitutional court allows demonstrations against restrictions because of the Coronavirus under certain circumstances, especially while keeping distance ([http://www.bverfg.de/e/qk20200417\\_1bvq003720.html](http://www.bverfg.de/e/qk20200417_1bvq003720.html))
  - 10<sup>th</sup> April: legal proclamation of the federal constitutional court banning the general prohibition of holding church services ([http://www.bverfg.de/e/qk20200410\\_1bvq002820](http://www.bverfg.de/e/qk20200410_1bvq002820))

**8. A link to legal sources of your country (preferably in English)**

<https://www.gesetze-im-internet.de/ifsg/>

## National Report on the Legal Measures adopted by the Greek Government in response to COVID-19

*Maria Paraskeva*  
EAHL NCP for Greece

### 1. A short description of the major legislative framework concerning Communicable Diseases

In Greece, public health issues such as those related to communicable diseases, fall within the domain of the Ministry of Health.<sup>67</sup> Greece is required to comply with EU Decision No. 1082/2013 on Serious Cross-Border Threats to Health<sup>68</sup> and is also in close contact with the ECDC, established by the EU.<sup>69</sup> In addition, Greece participates in the Early Warning and Response System established in 1998 in order to provide notification of alerts concerning serious public health threats with cross-border implications.<sup>70</sup> The Ministry of Health also participates in the Health Security Committee, established at the EU level.<sup>71</sup> Additionally, Greece, as a WHO member since 1952, ratified the revised 2005 International Health Regulations,<sup>72</sup> which require members to provide notification of events that may constitute a public health emergency of international concern.<sup>73</sup> In 2011 the International Health Regulations were ratified by virtue of law No.3991/2011 “Ratification of the revised International Health Regulations of the World Health Organisation”. In February 2014, WHO elected the University of Thessaly in Central Greece as a WHO collaboration center in order to have support in training activities related to ship inspections and the management of public health events at points of entry.<sup>74</sup> In 2019, Greece established the National Public Health Organization (NPHO)<sup>75</sup> which is a legal entity of Private Law under the supervision of the Minister of Health with particular focus “to effectively respond to threats to human health by communicable diseases through the early detection, monitoring and evaluation of risks, reporting and submission of evidence-based proposals and intervention measures”.<sup>76</sup>

In reality, Greece does not have a specific healthcare provision concerning communicable diseases. In April 2012, Greece adopted the 39A/2012 Act of the Minister of Health<sup>77</sup> concerning the limitation of the spread of the infectious diseases. This Act called for the criminalisation of condomless sex with sex workers, and it also provided for the medical control and examination of inter alia undocumented migrants and asylum seekers for infectious diseases. It has been heavily criticised as it allowed police to arrest, detain, forcibly test people suspected of being HIV-positive, and those who were tested HIV-positive were charged with a felony, imprisoned and publicly vilified. The law was strenuously opposed by scientists and human rights advocates

<sup>67</sup> Hellenic Republic, Ministry of Health, <http://www.moh.gov.gr/articles/ministry/organogramma/45-armodiothtes-toy-ypourgeioy-ygeias-kai-koinwnikhs-allhleggyhs> (in Greek; last visited June. 07, 2020).

<sup>68</sup> Decision No. 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on Serious Cross-Border Threats to Health and Repealing Decision No. 2119/1998/ EC, 2013 O.J. (L 293) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:293:0001:0015:EN:PDF>.

<sup>69</sup> European Centre for Disease Prevention and Control, <http://ecdc.europa.eu/> (last visited June. 07, 2020).

<sup>70</sup> Decision No. 1082/2013, *supra* note 2, art. 8.

<sup>71</sup> *Id.* art. 17, para. 3.

<sup>72</sup> Strengthening health security by implementing the International Health Regulations (2005), <https://www.who.int/ihr/publications/9789241580496/en/> (last visited June.07, 2020).

<sup>73</sup> Law No. 3991/2011 Ratification of the Revised International Health Regulations Adopted by WHO, 2011, (FEK, A’162).

<sup>74</sup> New WHO Collaborative Centre for IHR – Points of Entry in Greece (University of Thessaly), WHO PAGNet (July 22, 2014), <https://extranet.who.int/pagnet/?q=content/new-who-collaborative-centre-ihr-points-entry-greece-university-thessaly> (last visited June 07, 2020).

<sup>75</sup> Law No. 4633/2019 (Fek A’161); it is the universal successor of the pre-existing since 1992 Centre for Diseases Control and Prevention (KEELPNO/HCDPC), which was abolished by the Law 4600/2019.

<sup>76</sup> NPHO, <https://eody.gov.gr/en/npho/>, (last visited June. 07 2020).

<sup>77</sup> Ministry of Health, Act No G.Y. 39a/2.4.2012 on the Regulations for containing the spread of infectious diseases (OGG 1002/B/2.4.2012).

as it often led to the stigmatisation of socially vulnerable groups. It is noteworthy that the Act had been repealed in April 2013<sup>78</sup>, was brought back into force in July 2013<sup>79</sup> and then again repealed in 2015.<sup>80</sup>

As a response to the covid-19 outbreak, and due to the gap to the legislation, the government has adopted *restrictive measures* based on the Greek Constitution which provides for a basic mechanism of “constitué” Law of necessity that is activated “under extraordinary circumstances of urgent and unforeseeable need”.<sup>81</sup> This is the mechanism of *article 44(1)*, which in other words, is the ability of the President of the Republic to issue “*Acts of Legislative Content*”, after a proposal by and in agreement with the Government, that is essentially responsible for this issuance. Consequently, the Act of Legislative Content of 20.3.2020 entitled “Urgent measures to address the consequences of the risk of dispersal of the COVID-19 coronavirus, the support of society and entrepreneurship and ensuring the smooth operation of the market and public administration”<sup>82</sup> invoked constitutional provisions in order to protect public health and national economy. *Joint Ministerial Decisions* and *circulars* are issued to implement or specify provisions in the acts of legislative content. Also, restrictions for reasons of protection of public health are explicitly provided for in the interpretative clause under *Article 5* of the Greek Constitution.<sup>83</sup>

2. Are there any guidelines concerning the treatment of patients suffering from coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest.

Greece’s National Health System has recruited 3,337 additional hospital staff members in the last three months and worked quickly to increase its intensive care beds. A country with of about 11 million people, with the second largest elderly population in Europe, at the beginning of March had only 565 intensive care units and by the end of March managed to raise that number to 910, mostly via philanthropist donations. In order to deal with the pandemic reality, at the beginning of February, a national experts committee on public health was established and the ministry of health appointed *Sotirios Tsiordas*, a professor of pathology and infectious disease, as its COVID-19 spokesperson. Scientific knowledge was integrated into the government’s policy and decision-making process. *National experts advised and government executed*. The message was early and consistent: we have an emergency and we need to save lives.

It is important to mention that according to Article 36 of the Legislative Act dated 30 March 2020,<sup>84</sup> as long as there is an imminent risk to public health from the spread of coronavirus, and provided there are no other approved appropriate therapies available, the administration of off-label medicines to covid patients were approved.<sup>85</sup> The Minister of Health has allowed treating physicians to administer medicines, which have been approved for a different disease and are considered potentially effective in the fight against covid-19, to patients who (a) suffer from severe pneumonia due to their exposure to the virus, or (b) have mild or moderate symptoms and other coexistent risk or age factors, or there is laboratory evidence that the virus may adversely

<sup>78</sup> Ministry of Health, Act No Γ.Π.οικ.39728/2013 (OGG 1085/B/30.4.2013).

<sup>79</sup> Ministry of Health, Act No οικ.62752/2013 (OGG 1652/B/4.7.2013).

<sup>80</sup> Ministry of Health, Act No Γ1/Γ.Π.οικ.24834/2015 (OGG 627/B/17.4.2015).

<sup>81</sup> It is noteworthy that an urgent situation is a real situation provided for and regulated by law, it is not an unpredictable situation, nor does it need to be declared as such. For this reason, to this day, state of emergency of civil protection has not been declared by the General Secretariat of Civil Protection (GGPP) the competent authority.

<sup>82</sup> Greece, Act of Legislative Content on “Urgent measures to address the consequences of the spread of the coronavirus COVID-19, to support society and entrepreneurship and to ensure the smooth functioning of the market and public administration.” (O.G A’ 68/20-3-2020).

<sup>83</sup> Greek Constitution, Section II, Part II - *Individual and Social Rights*, Article 5 since 1975 when the Constitution came into force. See also Article’s 18(3) and 22(4) of the Greek Constitution.

<sup>84</sup> Legislative Act dated 30 March 2020 (Official Government Gazette Bulletin A’ 68/30.3.2020).

<sup>85</sup> Article 36(1).

affect them due to underlying health conditions. Article 37 of the same Act outlines the procedure for the administration of these medicines to patients.

### *Long-term care homes*

To this moment, Greece has zero morbidity rates in care homes as strict restrictions had been put in place. For example:

- all new and existing employees and residents were tested and passed coronavirus tests.
- strict hygiene and operation protocols were created and applied in close collaboration with the Ministry of Health, i.e. wearing gloves, masks and disinfecting hands constantly.
- new protocols on how they should operate have been developed i.e. visits, ventilation, equipment, isolation rooms etc.
- antibody tests have been made for covid-19 for both employees and residents of state-run care homes.
- All visitors have been forbidden in all nursing homes for safety reasons, unless a resident was about to die – for humanitarian reasons.

Day-by-day, after a series of consultations with the health-expert committee, they are now gradually lifting restrictions as the data about covid-19 seems increasingly more encouraging.

### *Asylum centers*

Planning and management of covid-19 cases in asylum centers remains under the jurisdiction of the Greek Ministry of Migration and Asylum instead of the Ministry of Health. Early on these centers has been given attention by government authorities as potential carriers of coronavirus. The early introduction of non-pharmaceutical interventions, an ongoing operational plan with preventive lockdown of *all* refugee centers in Greece and self-isolation of any confirmed or suspected cases, has successfully delayed and controlled the coronavirus epidemic for the time being. Immediate decongestion of asylum centers, full integration of refugee care in the national healthcare plan, and effective epidemiological surveillance and contact tracing systems for the entire population are public-health prerequisites for sustaining this success.

### *Prisons*

People detained in Greek prisons are obliged to face the pandemic with limited or no access to protective means, while living conditions in prisons have always been hygienically decadent and extremely poor. According to general lockdown measures, the competent authorities have prohibited prisoners' permissions of short-term leaves (since March 16<sup>th</sup>) and visitations (since March 19<sup>th</sup>), while appointing quarantine areas in prisons, along with other supportive measures. Up to this day, there are no confirmed cases of infected inmates. However, the much-anticipated decongestion, required by both human/prisoners' rights organisations and prison staff, has not yet been implemented, despite reports about the Ministry planning the release of 1,500. Due to this, during general lockdown, small protests have taken place in at least 4 Greek prisons. At the central penitentiary of Korydallos in Athens, the biggest in the country, detainees in both male and female wings published letters to authorities asking for decongestion, while women once refused getting in their cells during the midday lockdown. In their announcement, they noted that they are afraid of being completely abandoned, and made a plea even to the newly elected president of Greece, judge Katerina Sakellaropoulou, for urgent release – especially for those with shorter sentences, the ill, the old, the pregnant, and the mothers. According

to the ECHR's annual report for 2019,<sup>86</sup> Greece has committed repeated violations through the years, especially related to Article 3 and its provision against inhuman or degrading treatment or punishment. On 27 May 2020, Greece enacted Law *no.4689/2020*<sup>87</sup> to relieve congestion in the criminal courts when they will return to their regular, fully functional status. The law includes provisions regarding the limitation periods of certain misdemeanors, the suspension of criminal prosecution and the conditional non-execution of imposed sentences.

*3. Have certain medical services been suspended during the outbreak (e.g. non-urgent health care)?*

Restrictions regarding planned surgeries have been announced. In particular, only emergencies and accident surgeries that could not be postponed have been taking place in public hospitals, following a Ministry of Health announcement. All afternoon hospital surgeries are currently suspended.

The Ministry of Health had also set-up private clinics to begin the transfer of patients hospitalised in public hospitals with non-infectious diseases, so that only patients who needed hospitalisation in the public sector to remain. Yet, in most cases many public hospitals and private clinics were not needed, as the Greek government moved quickly and has managed in a competent manner to keep the coronavirus pandemic under full control.

*4. Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:*

*a. Restrictions concerning movement in public spaces (curfew, limitations regarding how many members in a group, closing of parks etc.)*

*b. Restrictions concerning "social distancing" concerning number of meters between people, inside and outside. Please specify whether the restrictions are in form of guidelines or legal binding instruments (and date for latest amendment)*

During the current pandemic crisis, Greece reacted swiftly to the threat and has imposed restrictions on freedom of movement and all the necessary measures in accordance with international scientific recommendations to bring the pandemic under control. The core measures adopted are incorporated in Acts of Legislative Content and specified by many ministerial decisions and circulars.

- February 26th the first COVID-19 case was diagnosed in Greece.
- On February 27th, the annual carnival in Patra (an event which draws big crowds from all over the country), was cancelled.
- On March 10th, with officially 89 cases and 0 deaths, all schools and universities across the country were closed.
- On March 12th, movie theaters, gyms and courtrooms were closed.
- On March 13th, with 190 confirmed cases and 1 death, malls, cafés, restaurants, bars, beauty parlors, museums and archaeological sites were closed.
- On March 14th, organized beaches and ski resorts were also closed.
- On March 18th, with 418 confirmed cases and 5 deaths, all stores were closed.
- On March 23rd, with 695 confirmed cases and 17 deaths, all form of movement is prohibited from 22 March until 4 May by way of Joint Ministerial Decision,<sup>88</sup> whereby citizens can leave their house only

<sup>86</sup> European Court of Human Rights, Annual Report, (2019), Available at: [https://www.echr.coe.int/Documents/Annual\\_report\\_2019\\_ENG.pdf](https://www.echr.coe.int/Documents/Annual_report_2019_ENG.pdf) (last visited May 20, 2020).

<sup>87</sup> Law no.4689/2020 (Fek A 103 – 27.05.2020).

<sup>88</sup> Greece, Ministries of Citizen Protection, Health and Interior, Joint Ministerial Decision No. D1a/G.P oik. 20036, O.G B' 986/22-3-2020 on "Imposition of a measure to temporarily restrict the movement of citizens in response to the risk of spreading the COVID-19 coronavirus". Available at: <https://bit.ly/2Ud69we> (last visited June 14, 2020).

for specific reasons and with a special permit via sms; for purposes of buying food and medicine, attending doctor's appointments, going to work, training outdoors alone or with one other person, walking a pet, and attending a ceremony such as funeral or wedding. Individuals who are found outside must also carry ID or passport. Any violation of these measures was subject to a penalty of €150 imposed by the police or other public security forces.

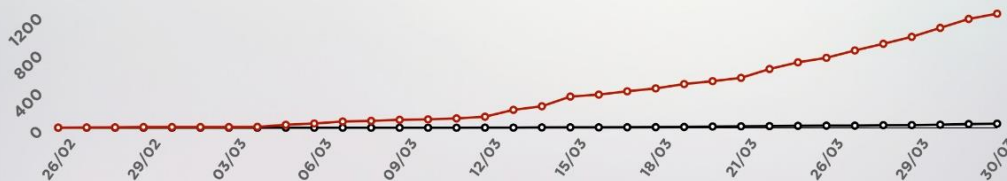
- As of March 30th, Greece had 1212 confirmed cases and 46 deaths.

The lockdown measures have been greeted with widespread support probably because the public knew the healthcare system was not going to work, so they accepted it.

## Timeline of COVID-19 key containment events in Greece



Date	#of cases	#of deaths	Measures taken
Feb 27	1	0	Cancellation of carnival
March 10	89	0	Schools and Universities close down
March 12	117	1	Movie theaters, gyms and courtrooms close down
March 13	190	1	Malls, cafés, restaurants, bars, beauty parlors, museums and archaeological sites close down
March 14	228	3	Organized beaches and ski resorts close down
March 18	418	5	All stores aside from supermarkets and pharmacies close down
March 23	695	17	Nation wide restriction of movement imposed



### Penalties (article 1, paragraph 6 of Legislative Act of 25.02.2020) and article 285 of Criminal Code)

Failure to comply with the provisions of this Article can result in punishment by imprisonment of up to two (2) years, unless it is provisioned a stricter punishment for this offense.

Prime Minister Mitsotakis announced the reopening of bookstores, hair salon and some other shops starting on May 4 and Greek citizens no longer needed to notify the government before leaving the house. Churches also opened for personal worship on this date.

- May 11 students of the 3rd Lyceum will return to the classrooms.
- May 18 students of the A 'and B' Lyceum and all Gymnasium grades will return to schools; operation of schools opening is taking place in "rotating sub-departments (resulting from the division of one class into two) in order to reduce congestion within the same room. The distance between students is 1.5 square metre and the maximum number of students in a class is limited to 15.
- Cafes, bars and restaurants opened again on May 25<sup>th</sup> and minimum distance between the tables according to the arrangement of the seats is set from 0.70 cm to 170 cm; maximum number of people allowed to sit at a table is six (6). All staff members are obliged to wear masks.
- Primary schools, preschools and day care facilities opened on June 1.
- All Greek airports will cater to flights from abroad as of July 1.



- supermarkets must allow one customer per 15 square metres instead of 10 square metres.<sup>89</sup> These measures are mandated to last for six months.
- physical distancing measures include restricting the number of passengers in private cars to two including the driver, unless the passengers are children. Larger vehicles can carry three or four passengers including the driver whereas buses can carry up to 50% of their capacity in passengers.<sup>90</sup> This measure was adopted on 1 April 2020 and will apply until 31 May 2020.

*5. Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of e-health technologies/applications processing personal data?*

The Hellenic Data Authority issued a press release disseminating specific guidelines for the processing of personal data under the management of COVID-19.<sup>91</sup> To this moment, the details of deceased that have been mentioned in the media, were public figures. In particular, name, age and personal details such as professional background, studies and family status were presented in newspapers and the media along with photos. As far as other incidents concerning contraction or deaths have been reported by *only* revealing the age, and the gender.

It was also reported that the Data Protection Officer of the First Regional Health Directorate of Attica (1st YPE) requested permission to install cameras in hospitals in order to monitor the patients of Coronavirus COVID-19.<sup>92</sup> The Data Protection Officer of the Ministry of Health denied permission on the grounds that the use of cameras is not justified.

*6. Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?*

No new provision has been introduced concerning liability.

*7. Have there been cases before the courts relating to health law due to the coronavirus outbreak?*

As of June 6<sup>th</sup>, such information has not yet been made public, in relation to cases before the courts due to covid-19 or linked to the measures taken.

*8. A link to legal sources of your country (preferably in English).*

Please note that the resource gates are governmental websites. Legislative measures, information and regulations provided are only available in Greek language at the moment.

<sup>89</sup> Greece, Ministry of Development and Investments, press release, “Obligations on the application of measures for the limitation of coronavirus COVID-19 in supermarkets”, Available in Greek at <https://bit.ly/3fiLYFJ> (last visited June 05 2020).

<sup>90</sup> Greece, Ministry of Transport and Infrastructure, Circular, “Supplementary measures for the transport of passengers and the avoidance and limitation of Coronavirus COVID-19”, No 21656/1115, 1 April 2020, available in Greek at <https://diavgeia.gov.gr/doc/9%CE%9A%CE%A19465%CE%A7%CE%98%CE%9E-%CE%94%CE%9F4?inline=true>, (last visited June 07, 2020).

<sup>91</sup> Greece, Hellenic Data Authority, “Specific guidelines regarding data protection issues in the framework of COVID-19”, Available in Greek at <https://www.dpa.gr/APDPXPortlets/htdocs/documentSDisplay.jsp?docid=163,39,44,101,194,223,3,99> (last visited June 08, 2020).

<sup>92</sup> Greece, Law-spot, “Personal Data and Coronavirus: Can Hospitals Use Webcams in Wards and Wider Areas?”, 12 March 2020 available at <https://www.lawspot.gr/nomika-nea/prosopika-dedomena-kai-koronoios-mporoy-n-ta-nosokomeia-na-hrisimopoioun-kameres-se> (last visited June 08, 2020).

## EAHL Covid-19 Country Report: Ireland

*Dr Brenda Daly,*

*Associate Professor of Law, Dublin City University, (EAHL NCP for Ireland)*

### **1. A description of the major legislative framework concerning communicable diseases**

The **Health Act, 1947** is the principal legislation governing communicable diseases in Ireland.<sup>93</sup> This Act has recently been amended by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 to make provision in relation to the outbreak of Covid-19. Section 31 (1) of the Health Act 1947 has been amended by section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, with the insertion of section 31A<sup>94</sup> which grants the Minister for Health the power to introduce regulations for preventing, limiting, minimising or slowing spread of Covid-19.<sup>95</sup>

#### **Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020.**<sup>96</sup>

This emergency legislation was signed into law on 20th March 2020 specifically dealing with the Covid-19 outbreak.<sup>97</sup> Section 31A(1) enables the Minister for Health to introduce regulations to impose restrictions on numerous grounds, including travel into and out of the state,<sup>98</sup> requiring people to stay in their homes,<sup>99</sup> prohibiting gatherings of people (concerts, sporting activities, and religious, recreational, entertainment, commercial, social, community, and educational events),<sup>100</sup> closure of premises such as crèches and childcare facilities, schools, language schools, third-level institutions, and any other such educational facilities.<sup>101</sup> Section 11 inserts amending section 38A(1) into the Health Act 1947 which makes provision for the detention and isolation of any person deemed to be a potential source of the infection and who is a potential risk to public health in order to contain the spread of Covid-19.<sup>102</sup> These regulations contain amending provisions which enable any such person to be detained or isolated in a hospital or other appropriate accommodation if it is not feasible to isolate in their own home, or indeed if such person refuses to isolate in their own home.<sup>103</sup> A medical officer of health has responsibility for certifying the period of detention and isolation for the purposes of this legislation. Contravention of these regulations by any person constitutes an offence.<sup>104</sup> Powers were conferred on An Garda Síochána (the Irish police service) to enforce these regulations in the event that a person contravenes these regulations without reasonable cause.<sup>105</sup> These powers include the power to arrest without warrant for contravention of the regulations.<sup>106</sup>

**Emergency Measures in the Public Interest Act (Covid-19) Act, 2020.**<sup>107</sup> Part 4, sections 10-14 of this Act introduces a number of amendments to existing legislation which regulates the health and social care professions to facilitate the ‘re-recruitment of retired health sector workers’ (including those healthcare

<sup>93</sup> Available at <http://www.irishstatutebook.ie/eli/1947/act/28/enacted/en/html>

<sup>94</sup> Section 31A (1) & (2)

<sup>95</sup> The Minister for Health has introduced the Health Act 1947 (Section 31A – Temporary Restrictions) (Covid-19) Regulations (S.I. No.121/2020) by virtue of the power conferred on him by this statutory amendment.

<sup>96</sup> Available at <http://www.irishstatutebook.ie/eli/2020/act/1/enacted/en/pdf>

<sup>97</sup> Part 3, sections 9 to 11 of this Act contains the relevant provisions pertaining to amendment of the Health Act 1947.

<sup>98</sup> Section 31A (1) (a)

<sup>99</sup> Section 31A (1) (c) (i)

<sup>100</sup> Section 31A (1) (d) (i) to (iv)

<sup>101</sup> Section 31A (1) (h)

<sup>102</sup> Section 38A (1)(a)-c(i) and (c)(ii)

<sup>103</sup> Section 38A (1)(d)

<sup>104</sup> Section 31A (6)

<sup>105</sup> Section 31A (7)

<sup>106</sup> Section 31A (8)(b) and s.31A (11)

<sup>107</sup> <http://www.irishstatutebook.ie/eli/2020/act/2/enacted/en/pdf>

professionals no longer working in the public health system, and those whose professional registrations had lapsed) identified as essential by the Irish Government and the Health Service Executive (HSE) in the National Action Plan.<sup>108</sup> Sections 10-14 enables quicker restoration to the respective professional registers of previously registered health and social care professionals for the purposes of returning to practice to assist in the collective efforts to provide healthcare during the Covid-19 emergency;<sup>109</sup> this includes doctors, nurses, midwives, dentists, pharmacist, pharmaceutical assistants, and persons registered under the Health and Social Care Professionals Act 2005.<sup>110</sup>

Part 5, sections 15-24 contains amendments to the Mental Health Act, 2001 in respect of the period of the Covid-19 public health emergency. Among the amendments are provision for any person who would normally be required to attend a mental health tribunal to submit a written statement to the tribunal instead because of the current public health emergency.<sup>111</sup> Any decisions in respect of discharge of patients detained under the Mental Health Act 2001 ‘shall be made as soon as is reasonably practicable having regard to the exigencies of the public health emergency’.<sup>112</sup> Psycho-surgery is not permitted at this time.<sup>113</sup>

### **Health Act 1947 (Section 31A – Temporary Restrictions) (Covid-19) Regulations (S.I. No.121/2020).<sup>114</sup>**

These regulations place on a statutory footing the public health guidance regarding restrictions on movement. The regulations stipulate that people should remain at their place of residence and should not leave their home ‘without reasonable excuse’. The regulations contain prohibitions on gatherings for purposes other than the limited reasons permitting any person to leave their home. Permissible grounds for people to leave their home in Phase 1 include going to an essential retail unit (e.g. grocery shop, pharmacy), attending medical appointments, donating blood, provision or assistance with providing an essential service, accessing essential services. These regulations contain provisions granting An Garda Síochána (Irish police) additional powers of arrest without warrant of any person in breach of the Covid-19 restrictions. Since easing of restrictions on movement in Phase 2 introduced on 8<sup>th</sup> June, An Garda Síochána no longer have the power to enforce restrictions on movement, and can no longer impose a penalty on those breaching the movement restrictions.<sup>115</sup> The regulations are subject to ongoing review by the Chief Medical Officer and the National Public Health Emergency Team and there have been several amendments extending the operation of these regulations during the Covid-19 emergency.

**Infectious Diseases (Amendment) Regulations 2020 (S.I. No. 53 of 2020)** – these statutory regulations amend the schedule to the Infectious Diseases Regulations 1981 to include Covid-19 on the list of notifiable infectious diseases as required by section 29 of the Health Act 1947. Further, regulation 3(a) amends regulation 8 of the Infectious Diseases Regulations 1981, to include Covid-19 on the list of infectious diseases that any

<sup>108</sup> Action 6. p.22, Government of Ireland National Action Plan. 14<sup>th</sup> March 2020 (prepared by the Department of An Taoiseach and the Department of Health). <https://www.gov.ie/en/publication/47b727-government-publishes-national-action-plan-on-covid-19/>

<sup>109</sup> Minister for Foreign Affairs and Trade (Deputy Simon Coveney), Seanad Éireann debate – Friday, 27<sup>th</sup> March 2020 “Emergency Measures in the Public Interest (Covid-19) Bill 2020: Committee and Remaining Stages”. Available at <https://www.oireachtas.ie/en/debates/debate/seanad/2020-03-27/9/>

<sup>110</sup> S.111 (3) (a)-(e) Emergency Measures in the Public Interest Act Covid-19 Act 2020

<sup>111</sup> S.49(2)(ca), as inserted after s.49(2)(c) by section 21 of the Emergency Measures in the Public Interest Act Covid-19 Act 2020

<sup>112</sup> Section 28 of the Mental Health Act, 2001, as amended by section 19(6)(b)(i) of the Emergency Measures in the Public Interest Act Covid-19 Act 2020

<sup>113</sup> Section 58 of the Mental Health Act, 2001, as amended by section 22 of the Emergency Measures in the Public Interest Act Covid-19 Act 2020

<sup>114</sup> These are a source of secondary legislation and came into effect on 8<sup>th</sup> April 2020. The regulations have been amended several times to continue the period of operation for the duration of the public health emergency.

<sup>115</sup> Gallagher, C. “Covid-19: Garda lose enforcement powers over movement restrictions” *Irish Times*, Tuesday 9<sup>th</sup> June 2020 <https://www.irishtimes.com/news/crime-and-law/covid-19-garda-lose-enforcement-powers-over-movement-restrictions-1.4273899>

person inspected by a registered medical practitioner and identified as being a “probable source of infection with an infectious disease” can be detained and isolated in a hospital or other setting until such time that the infected person is certified by a medical officer “as no longer a probable source of infection”.

**2. Are there any guidelines concerning the treatment of patients suffering from coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest.**

The Health Protection and Surveillance Centre has published a number of guidance documents for healthcare settings.<sup>116</sup> The National Public Health Emergency Team (NPHE) has approved guidance documents on ethical considerations in various health care contexts: (1) NPHE guidance document “Ethical considerations relating to critical care in the context of COVID-19”, published on 3<sup>rd</sup> April 2020. The purpose of this document is to provide guidance to those clinical staff who are responsible for decision making pertaining to the “prioritisation of critical care resources in the context of COVID-19”;<sup>117</sup> (2) NPHE guidance document “Ethical Considerations for PPE Use by Health Care Workers in a Pandemic”, published on 14<sup>th</sup> April 2020.<sup>118</sup> This document sets out the obligations of health care workers to ‘provide, or participate in the provision of, a medical intervention’ in situations where there are issues concerning the availability of personal protective equipment.

**Long-term care homes.**

The National Public Health Emergency Team (NPHE) has published a guidance document, “Ethical Considerations Relating to Long-Term Residential Care Facilities in the Context of COVID-19”.<sup>119</sup> A significant number of patients in long-term residential care homes have been diagnosed with Covid-19, and sadly many patients have also died from Covid-19 with 62% of death rates attributed to residents in long-term care homes.<sup>120</sup> Initially a decision was taken to move some hospital patients (so-called ‘bed blockers’) into residential care homes to free up hospital beds that would be necessary to deal with any surge of hospital admissions of patients with Covid-19.

**Prisons.**

The Irish Prison Service introduced a health screening protocol applicable to all persons entering the prisons on 29<sup>th</sup> March 2020. Restrictions were imposed on physical visits with these being suspended during the pandemic and replaced by virtual video visits instead.<sup>121</sup> Infection prevention procedures and contact tracing were deployed within the prisons. Contact tracing commenced immediately if any person displayed Covid-19 symptoms. Measures were introduced to isolate any inmates suspected of having Covid-19 symptoms while waiting for test results, with some prisons setting up isolation units specifically to deal with any potential

<sup>116</sup> Available at: <https://www.hpsc.ie/a-z/respiratory/coronavirus/novelcoronavirus/guidance/guidanceforhealthcareworkers/>

<sup>117</sup> National Public Health Emergency Team, “Ethical considerations relating to critical care in the context of COVID-19”, published on 3<sup>rd</sup> April 2020. Available at: <https://www.gov.ie/en/publication/13ead5-ethical-considerations-relating-to-critical-care-in-the-context-of-c/>

<sup>118</sup> <https://www.gov.ie/en/publication/58d3de-ethical-considerations-for-ppe-use-by-health-care-workers-in-a-pande/>

<sup>119</sup> Available at: <https://www.gov.ie/en/publication/37ef1-ethical-considerations-relating-to-long-term-residential-care-facilities/>

<sup>120</sup> <https://www.irishtimes.com/news/ireland/irish-news/the-human-cost-of-covid-19-ireland-s-care-homes-with-the-most-deaths-revealed-1.4264170?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fireland%2Firish-news%2Fthe-human-cost-of-covid-19-ireland-s-care-homes-with-the-most-deaths-revealed-1.4264170>

<sup>121</sup> <https://www.irishprisons.ie/request-a-family-visit/>

Covid-19 cases.<sup>122</sup> The Irish Prison Service has been praised by the World Health Organisation for its work to prevent the spread of Covid-19 in the prisons.<sup>123</sup> To date there have been no Covid-19 positive cases or deaths of inmates in the Irish prison system.<sup>124</sup>

### **Direct Provision/ Asylum Seekers.**<sup>125</sup>

Concerns were raised at an early stage of the Covid-19 outbreak in Ireland regarding direct provision centres and the potential for a serious outbreak of the virus in this community,<sup>126</sup> given the nature of this accommodation and the challenges in terms of residents being able to socially distance, as well as access to handwashing facilities and medical care.<sup>127</sup> Measures have been introduced to make provisions for these residents, including facilities for self-isolation, as well as providing access to public health advice to assist with those responsible for centre management in these direct provision centres.<sup>128</sup> In one situation, a number of asylum seekers who were resident in a direct provision centre based in a hotel in Dublin were transferred to a hotel in County Kerry in an effort to prevent these residents from exposure to Covid-19 as it had been reported that there were confirmed cases of Covid-19 in the Dublin accommodation.<sup>129</sup>

### **3. Have certain medical services been suspended during the outbreak (e.g. non urgent health care)?**

Patients are advised to attend medical appointments, and also to seek medical help if necessary.<sup>130</sup> In Ireland, the National Public Health Emergency Team announced on 27<sup>th</sup> March 2020 that all in-patient and day-care procedures have been postponed in the majority of public hospitals. All routine elective procedures were postponed by the Health Service Executive (HSE) to ensure the availability of medical staff and hospital beds to deal with the potential influx of Covid-19 patient admissions. The HSE has provided a link listing all public hospitals which outlines the continuance or postponement of non-Covid related health care services.<sup>131</sup>

Many procedures have also been postponed in private health care setting. The HSE has an agreement in place with the Private Hospitals Association enabling the use of private hospitals for the provision of public health services.<sup>132</sup> This agreement is on a not-for-profit basis and is a temporary arrangement. The agreement will provide access to equipment, existing beds, as well as access to the healthcare services of the clinicians and professionals who usually work in the private hospital setting. As Ireland is now in Phase 2 of lockdown, there has been some discussion that the private hospitals should now to be used to help clear the backlog of postponed hospital treatments for non-Covid-19 illnesses.<sup>133</sup>

<sup>122</sup> Gallagher, C. "Inmates with Covid-19 symptoms kept in 24 hour lock up", *Irish Times*, 24<sup>th</sup> April 2020 <https://www.irishtimes.com/news/crime-and-law/inmates-with-covid-19-symptoms-kept-in-24-hour-lock-up-1.4236286>

<sup>123</sup> <https://www.rte.ie/news/coronavirus/2020/0610/1146481-covid19-coronavirus-prisons/>

<sup>124</sup> [https://merrionstreet.ie/en/NewsRoom/Releases/Minister\\_Flanagan\\_publishes\\_Irish\\_Prison\\_Service\\_Annual\\_Report\\_2019.html](https://merrionstreet.ie/en/NewsRoom/Releases/Minister_Flanagan_publishes_Irish_Prison_Service_Annual_Report_2019.html)

<sup>125</sup> Direct provision in Ireland refers to accommodation provided by the State for those people seeking asylum in Ireland.

<sup>126</sup> <https://www.irishtimes.com/news/social-affairs/vulnerable-asylum-seekers-must-be-moved-from-centres-without-delay-1.4209425>

<sup>127</sup> <https://nascireland.org/news/2020/coronavirus-outbreaks-direct-provision-centres-could-be-devastating>; Movement of Asylum Seekers in Ireland - <https://www.masi.ie/>

<sup>128</sup> <https://www.gov.ie/en/press-release/d8cc04-ministers-announce-further-covid-19-supports-for-direct-provision-re/>

<sup>129</sup> [https://amp.irishtimes.com/breakingnews/ireland/reckless-treatment-of-virus-hit-asylum-seekers-996412.html?twitter\\_impression=true](https://amp.irishtimes.com/breakingnews/ireland/reckless-treatment-of-virus-hit-asylum-seekers-996412.html?twitter_impression=true)

<sup>130</sup> <https://www2.hse.ie/conditions/coronavirus/protect-yourself.html#stay-at-home>

<sup>131</sup> <https://www2.hse.ie/services/hospital-service-disruptions/hospital-service-disruptions-covid19.html>

<sup>132</sup> <http://privatehospitals.ie/media-statement-private-hospitals-association/>

<sup>133</sup> <https://www.independent.ie/irish-news/health/public-patients-face-apocalyptic-waiting-lists-and-being-locked-out-39255775.html>

## Cancer treatment

There is limited ongoing cancer treatment occurring at this time. Advice published by the HSE and National Cancer Control Programme instructs patients to attend for appointments unless told otherwise.<sup>134</sup> This advice indicates that it may be necessary to change cancer treatment plans and medications during the public health emergency. Cancer screening programmes (breast screening, cervical screening, bowel screening, diabetic retinopathy screening) are currently paused.<sup>135</sup> Concerns have been raised that this will have a detrimental impact on the testing and treatment of cancer.<sup>136</sup>

## Emergency medical care

The advice remains that any person requiring essential medical care should contact their GP by telephone for advice, or if necessary to attend the Emergency Departments. Emergency Departments in Ireland have remained open 24/7 for anyone needing urgent medical care.<sup>137</sup> There is now grave concern among members of the medical profession regarding all those non-Covid 19 illnesses and diseases, and that delay in seeking medical attention will inevitably lead to problems in the near future, for example, patients not attending emergency departments with suspected heart attack/ stroke; patients not seeking medical advice for symptoms which might be early signs of cancer. Some supports have been made available in the voluntary sector with organisations such as the Irish Heart Foundation setting up online and telephone support services for those living with heart conditions.<sup>138</sup>

## Vaccinations

The Health Service Executive (HSE) has advised that vaccinations of babies at the ages of 2, 4, 6, 12 and 13 months is still proceeding during the pandemic, and recommends that parents attend appointments to ensure vaccination of their babies against the thirteen vaccine preventable diseases.<sup>139</sup> Vaccinations normally administered to children of school age has been postponed while schools remain closed. Pregnant women, and any patient who is deemed to fall in the at-risk category are advised that they can still avail of vaccinations (including the flu vaccine, pertussis vaccination for pregnant women).<sup>140</sup>

## **4. Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:**

### **a. Restrictions concerning movement in public spaces (curfew, limitations regarding how many members in a group, closing of parks etc.)**

Yes, Ireland introduced restrictions concerning movement in public spaces. Curfews were not imposed in Ireland. Public amenities including parks, playgrounds, gyms and leisure facilities were closed during phase

<sup>134</sup> Health Service Executive & National Cancer Control Programme, Advice on Coronavirus (COVID-19) for cancer patients currently on treatment. 25<sup>th</sup> March 2020. Available at <https://www.hse.ie/eng/services/list/5/cancer/news/covid19.pdf>

<sup>135</sup> <https://www.screeningservice.ie/>

<sup>136</sup> Dr Muirís Houston, “Sidelining of non-Covid patients will exact heavy toll” *Irish Times*, Monday 27<sup>th</sup> April 2020 - <https://www.irishtimes.com/life-and-style/health-family/sidelining-of-non-covid-patients-will-exact-heavy-toll-1.4235985>

<sup>137</sup> <https://www.hse.ie/eng/services/news/media/pressrel/eds-open-24-7.html>

<sup>138</sup> <https://irishheart.ie/news/irish-heart-foundaiton-launches-range-of-supports-for-most-vulnerable-patients/>

<sup>139</sup> <https://www.hse.ie/eng/health/immunisation/whoweare/vaccocovid19.html>

<sup>140</sup> Ibid.

1 of the restrictions. As part of phase 2 easing of restrictions, public parks can reopen and there are plans for phased reopening of playgrounds.<sup>141</sup>

Section 4 (2) (i) of the Health Act 1947 (Section 31A -Temporary Restrictions) (Covid-19) Regulations 2020 introduced a 2 kilometre restriction on movement from their place of residence for any persons exercising on their own, or with other members of the same household.<sup>142</sup> As part of Phase 2, easing of restrictions on movement have come into effect from 8<sup>th</sup> June so it is now permissible to travel up to 20km, however the government advice is to stay local within your own county (or within a 20km limit from home if you live on a border with another county).

At the start of the pandemic, the Irish Government advised persons over the age of 70 and those deemed to be medically vulnerable to ‘cocoon’, effectively meaning that this category was not to leave their homes for any purpose. There has been some relaxation of the rules for this category of people cocooning from 5<sup>th</sup> May 2020. The most recent guidance is that persons cocooning can leave their homes, however they are advised to ensure that they adhere to the 2 metre social distancing rule and to stay at home as much as possible.<sup>143</sup>

The Health Service Executing (HSE) has issued guidelines concerning any persons travelling from overseas to Ireland, advising any persons (both Irish and non-Irish citizens) returning to Ireland to self-isolate for a period of fourteen days. It is now a legal requirement for any passengers who arrive in Ireland to complete a passenger locator form.<sup>144</sup> There is an exemption for those passengers arriving in the Republic of Ireland who are returning to Northern Ireland or travelling onwards to another jurisdiction, such passengers are not required to submit a passenger locator form.

#### **b. Restrictions concerning “social distancing” concerning number of meters between people, inside and outside.**

Yes, there are social distancing restrictions in place inside and outside the home. If individuals have to leave home for essential reasons (which includes shopping for essential groceries, attending medical appointments, collecting essential medical supplies/ prescriptions, care of vulnerable family members, travel for essential work), there are 2 metre restrictions in place for the purposes of social distancing. In phase one of lockdown, gatherings with persons who do not reside in the same household were not permitted.<sup>145</sup> However with the easing of restrictions in Phase 2, the latest guidelines permit up to six people to meet indoors or outdoors provided that the 2 metre social distancing is adhered to.<sup>146</sup>

#### **Please specify whether the restrictions are in form of guidelines or legal binding instruments (and date for latest amendment)**

The restrictions are in the form of guidelines.

#### **5. Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of e-health technologies/applications processing personal data?**

<sup>141</sup><https://www.gov.ie/en/publication/cf9b0d-new-public-health-measures-effective-now-to-prevent-further-spread-o/#cultural-social-and-sport-measures>

<sup>142</sup> This 2 kilometre restriction applied to exercise only. The 2km restriction for exercise was extended to a 5 km limit from the person’s household from Tuesday 6<sup>th</sup> May, provided social distancing was adhered to (this measure has also been extended to include those persons who have been cocooning provided that such persons avoid all social contact).

<sup>143</sup><https://www.gov.ie/en/publication/923825-guidance-on-cocooning-to-protect-people-over-70-years-and-those-extr/>

<sup>144</sup> Department of An Taoiseach; Department of Health, “View Phase 2 of Ireland’s Roadmap for reopening which is in place right now.” Published at: 5 June 2020, last updated 11 June 2020. Available at: <https://www.gov.ie/en/publication/7ae99f-easing-the-covid-19-restrictions-on-june-8-phase2/?referrer=http://www.gov.ie/phase2/#transport-and-travel>

<sup>145</sup> [https://www.citizensinformation.ie/en/health/covid19/covid19\\_what\\_you\\_need\\_to\\_do.html](https://www.citizensinformation.ie/en/health/covid19/covid19_what_you_need_to_do.html)

<sup>146</sup> <https://www.gov.ie/en/publication/7ae99f-easing-the-covid-19-restrictions-on-june-8-phase-2/>

Any person with suspected Covid-19 symptoms is advised to self-isolate for 14 days and to contact a GP for assessment, who may if necessary refer the patient to a coronavirus community assessment hub for the purposes of testing for Covid-19.<sup>147</sup> The Health Service Executive (HSE) has set up a number of Covid-19 contract tracing centres across the country. The contact tracing centres are located at government offices, statutory agencies and universities.<sup>148</sup> The HSE has plans to introduce a Covid-19 smartphone app for the purposes of contact tracing.

## **6. Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?**

There are no new liability schemes specific to the pandemic to my knowledge at the time of reporting. Persons who deliberately spit or cough on another person during the pandemic may be prosecuted for public order offences under the Criminal Justice (Public Order) Act, 1994 or Non-Fatal Offences Against the Person Act, 1997.<sup>149</sup>

## **7. Have there been cases before the courts relating to health law due to the coronavirus outbreak?**

An unsuccessful judicial review application was submitted to the Irish High Court challenging the constitutionality of the imposition of restrictions on individual movement introduced under the emergency Covid-19 legislation.<sup>150</sup> The legal challenge does not raise issues relating to health law specifically.<sup>151</sup>

## **8. Additional information**

### **Cross- border healthcare & Covid-19: North –South Co-operation on the island of Ireland**

Both the Department of Health in the Republic of Ireland and the Department of Health in Northern Ireland have signed a memorandum of understanding (MOU), “Covid-19 Response – Public Health Cooperation On An All-Ireland Basis”,<sup>152</sup> to “promote cooperation and collaboration in response to the COVID-19 pandemic”<sup>153</sup> as it is acknowledged that this virus is not contained by geographical borders, and there is a need to share information, and when appropriate for both jurisdictions to adopt “a common approach to action”.<sup>154</sup> This MOU builds upon existing cooperation and cross border provision of healthcare services, including cancer treatment, congenital heart and ambulance services.<sup>155</sup> It is noted that there is already well-established cooperation between the offices of the Chief Medical Officers in both jurisdictions which pre-dates the

<sup>147</sup> <https://www2.hse.ie/conditions/coronavirus/testing/how-to-get-tested.html>

<sup>148</sup> Department of Health. 8<sup>th</sup> April 2020. “COVID-19 Contact Tracing Centres” <https://www.gov.ie/en/publication/6a6e32-covid-19-contact-tracing-centres/>

<sup>149</sup> <https://www.rte.ie/news/2020/0325/1126291-coughing-investigation/>

<sup>150</sup> O’Faolain, A. “State to oppose John Waters and Gemma O’Doherty challenge to Covid-19 laws”, 21<sup>st</sup> April 2020. Available at <https://www.irishtimes.com/news/crime-and-law/courts/high-court/supporters-of-john-waters-and-gemma-o-doherty-crowd-into-four-courts-1.4234127>

<sup>151</sup> O’Doherty & Watters v The Minister for Health for Ireland & The Attorney General [2020 271 JR]; O’Faolain, A. “Covid-19: Waters and O’Doherty refused permission to challenge laws”, 13<sup>th</sup> May 2020. Available at <https://www.irishtimes.com/news/crime-and-law/courts/high-court/covid-19-waters-and-o-doherty-refused-permission-to-challenge-laws-1.4252334>

<sup>152</sup> Paragraph 8 states that this MOU is non-binding and is not ‘intended to create legally binding rights or obligations on any Participant.’ Memorandum of Understanding (MOU), *Covid-19 Response – Public Health Cooperation On An All-Ireland Basis Between: The Department of Health, Ireland (and its agencies); and the Department of Health, Northern Ireland (And Its Agencies)*. 7<sup>th</sup> April 2020. This memorandum of understanding is available at <https://www.gov.ie/en/press-release/31af90-ministers-for-health-agree-memorandum-of-understanding-between-irish/>

<sup>153</sup> Ibid. Paragraph 1.1.

<sup>154</sup> Ibid. Paragraph 1.2.

<sup>155</sup> Ibid. Paragraph 2.1.



emergence of the pandemic.<sup>156</sup> The MOU facilitates cross-border cooperation on a number of areas including: modelling the transmission of Covid-19 to assist evidence based decision making,<sup>157</sup> development of evidence based public health measures,<sup>158</sup> information sharing, research,<sup>159</sup> ethics,<sup>160</sup> consistent public health communication on appropriate public health measures, discussion of ‘appropriate social distancing measures being considered, including public health-mandated travel restrictions.’<sup>161</sup> The MOU acknowledges the importance of ensuring consistency of the public messages in both jurisdictions in regards to those essential communications pertaining to handwashing, social distancing, respiratory hygiene.<sup>162</sup> Furthermore, the MOU will facilitate procurement where it is mutually beneficial to do so ‘to support the response to Covid-19’,<sup>163</sup> for example, there are ongoing efforts to explore joint procurement of personal protective equipment (PPE).<sup>164</sup> Provision is set out in the MOU to facilitate ongoing communication between the respective Departments of Health, whereby a teleconference will be held on a weekly basis.<sup>165</sup> There is an agreement to provide regular reports updating the respective administrations.<sup>166</sup>

## 9. A link to legal sources of your country

### Useful websites

- Citizens Information Ireland – Covid 19 information
  - [https://www.citizensinformation.ie/en/health/covid19/public\\_health\\_measures\\_for\\_covid19.html](https://www.citizensinformation.ie/en/health/covid19/public_health_measures_for_covid19.html)
  - [https://www.citizensinformation.ie/en/health/covid19/covid19\\_what\\_you\\_need\\_to\\_do.html](https://www.citizensinformation.ie/en/health/covid19/covid19_what_you_need_to_do.html)
- Department of Health web link to Covid-19/ coronavirus dashboard on the latest statistics from the Health Protection Surveillance Centre
  - <https://www.gov.ie/en/service/0039bc-view-the-covid-19-coronavirus-dashboard-showing-the-latest-stats-and/?referrer=/covid19dashboard/>
- Irish Statute Book – [www.irishstatutebook.ie](http://www.irishstatutebook.ie)
- Irish Government web link to Covid-19 information
  - <https://www.gov.ie/en/campaigns/c36c85-covid-19-coronavirus/>
- Irish Government National Action Plan on Covid-19
  - <https://www.gov.ie/en/publication/47b727-government-publishes-national-action-plan-on-covid-19/>
- [Irish Medical Council – Covid-19 guidelines](https://www.medicalcouncil.ie/covid-19/)
  - <https://www.medicalcouncil.ie/covid-19/>

<sup>156</sup> Ibid. Paragraph 2.1.

<sup>157</sup> Ibid. Paragraph 4.1.

<sup>158</sup> Ibid. Paragraph 4.2.1.

<sup>159</sup> Ibid. Paragraph 4.5.

<sup>160</sup> Ibid. Paragraph 4.6.

<sup>161</sup> Ibid. Paragraph 4.2.2.

<sup>162</sup> Ibid. Paragraph 4.3.1

<sup>163</sup> Ibid. Paragraph 4.7.1.

<sup>164</sup> Oral Statement to the Northern Irish Assembly by Health Minister Robin Swann – Thursday 30<sup>th</sup> April – COVID-10 UPDATE <https://www.health-ni.gov.uk/sites/default/files/publications/health/oral-statement-300420.pdf>

<sup>165</sup> Ibid. Paragraph 5.

<sup>166</sup> Ibid. Paragraph 6.

## Report on the legal measures regulating ‘Phase 2’ of Italy’s Covid-19 exit strategy

*Prof. Stefania Negri, University of Salerno  
EAHL National Contact Point for Italy*

### A. Regulating ‘Phase 2’ to rapidly move into ‘Phase 3’

After over two months of total lockdown, on 4 May 2020 Italy officially entered ‘Phase 2’ of a multi-step Covid-19 exit plan based on progressive lifting of lockdown limitations and resumption of economic and recreational activities, family contacts and travels. Within the ongoing ‘Phase 2’, 15 June is a topical date, since it marks the reopening of a number of crucial activities that will allow more than 60 million Italians to recover most of their freedoms and move confidently into ‘Phase 3’ with an eye towards returning to ‘normal’, whatever it will mean in the post-Covid era.

This step-by-step process began at the end of April with the adoption of the Italian Prime Minister’s roadmap to ‘Phase 2’. His cautious lockdown exit plan was harshly criticised by some categories of workers and economic operators, who complained that the plan was discriminatory and risked bringing them on the brink of economic disaster.<sup>167</sup> Such discontent was accompanied by equal disappointment from the leaders of the opposition parties and representatives of the civil society, who claimed that there was no longer any need to decide the exit measures by means of emergency decrees. They urged a return to transparent and democratic decision making within the Parliament, so as to guarantee that the Prime Minister’s exercise of emergency normative powers remained limited in time and scope and did not turn into ordinary practice.<sup>168</sup>

Despite political criticism, the first legal measures regulating ‘Phase 2’ were once again adopted by Decree of the Prime Minister (DPCM).<sup>169</sup> The new rules, to be applied from 4 to 17 May, slightly relaxed the restrictions in force, allowing meetings with non-cohabiting relatives and partners; the possibility to return to one’s personal residence as an exception to the ongoing ban on movements across regions; the reopening of most economic and productive activities in compliance with sanitary and social distancing measures; the reopening of restaurants and cafeterias for takeaway and delivery services; outdoor physical exercise at a distance from home larger than the previously allowed 200 metres; access to public gardens, villas and parks with the exception of children’s play areas.

On 16 May, the Government adopted Decree-law no. 33,<sup>170</sup> which allowed the full reopening of all shops, bars and restaurants as from 18 May to help the recovery of these ‘suffering’ activities. It also removed all limitations on travel within and across regions as from 3 June and, to offer some relief to Italy’s vital tourism

<sup>167</sup> Crispian Balmer, [Italy’s prime minister defends snail-paced end to lockdown](#), Reuters, 28 April 2020; Rebecca Ann Hughes, [Italians Angered by Chaotic and Confusing Phase 2 Lockdown Lift](#), Forbes, 29 April 2020.

<sup>168</sup> Associazione Luca Coscioni, [Per la riapertura serve maggiore democrazia e trasparenza](#), 14 April 2020. See also Stefania Negri, [Anti-COVID Measures Restricting Civil Liberties in Italy: Issues of Legality and Legitimacy](#), in ‘Global Responses to COVID-19: An Inflection Point for Democracy, Rights, and the Law’, digital symposium edited by Alicia Ely Yamin on [Bill of Health](#), the blog of the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School.

<sup>169</sup> DPCM 26 April 2020, Additional implementing provisions of Decree-law 23 February 2020, no. 6, containing urgent measures regarding the containment and management of the epidemiological emergency from COVID-19, applicable on the whole national territory, in *Gazzetta Ufficiale*, no. 108 of 27 April 2020. The website of the *Gazzetta Ufficiale della Repubblica Italiana* has set a special section dedicated to the measures of containment and management of the Covid-19 epidemic, where it is possible to access to a [collection](#) of all the acts adopted by the Government (38 decrees and laws so far), the Department of Civil Protection (32 orders), the Ministry of Health (20 decrees and orders) and other Ministries.

<sup>170</sup> Decree-law 16 May 2020, no. 33, Additional urgent measures to face the epidemiologic emergency from Covid-19, in *Gazzetta Ufficiale*, no. 125 of 16 May 2020.

sector, it allowed people from European Union countries to enter Italy without undergoing compulsory quarantine.<sup>171</sup>

By Decree of the Prime Minister dated 17 May, further measures were added to gradually restart all productive, economic, social and recreational activities under condition of respecting social distancing rules (as detailed in the 17 Annexes to the Decree). This act immediately reopened play areas in public parks and gardens, hairdressers, barbers and aestheticians. It allowed unrestricted outdoor physical exercise and provided for the reopening of public and private gyms, swimming pools, sports centres and clubs as from 25 May, as well as recreational and sport facilities for children and adolescents as from 15 June. On this same date, theatres, cinemas and concert halls would equally reopen, with assigned seats and no more than 1000 people audience in outdoor shows and a maximum of 200 people in indoor shows. Museums and other cultural sites were also allowed to open their doors to a limited number of visitors, so as to avoid crowding and gatherings, while access to churches and other places of worship, together with public participation to religious celebrations, were permitted under specific organizational conditions. With the holiday season rapidly approaching, the Decree also disposed that access to hotels and beaches would be regulated according to the criteria set by its Annexes. This decree also lifted all limitations on travels to Italy for people coming not only from European Union countries, but also from the Schengen area, the United Kingdom, Andorra, Monaco, San Marino Republic and Vatican City; it reiterated the prohibition, until 15 June, of all movements to and from countries not included in that list (extended to 30 June by DPCM 11 June 2020, following the recommendation issued by the European Union<sup>172</sup>).

On 11 June, the Prime Minister signed the latest Decree aimed at further progressing towards the coveted ‘Phase 3’.<sup>173</sup> This new set of rules, applicable as of 15 June, allows sports events and competitions considered of national interest, according to the opinion of the Italian National Olympic Committee (CONI) and the Paralympic Italian Committee (CIP), to be celebrated as from 12 June; it lifts the ban on public events, provided they are ‘static’ and do not imply mass gatherings; it reopens game rooms, betting rooms and bingo halls, while extending to mid-July the closure of nightclubs, discos and similar places (both indoor and outdoor) and the suspension of all fairs and congresses. This Decree substitutes the DPCM of 17 May 2020 and is valid until 14 July.

Other recent developments that are worth mentioning concern the current judicial assessment of possible governmental responsibilities for an alleged delay in imposing lockdowns in the area which was worst hit by the pandemic. The Prime Minister and the Ministers of Health and of the Interior were questioned (as witnesses) on 12 June by prosecutors from Bergamo in the framework of several inquiries opened following legal complaints from a large group of relatives of victims of Covid-19. At the basis of these complaints is the contention that two towns in the Lombardy Region, Alzano Lombardo and Nembro, should have been declared ‘red zones’ much earlier than it was decided.<sup>174</sup> The complainants have also asked prosecutors to investigate the alleged failure by public authorities to sufficiently inform people about the risk of infection, the lack of personal protective equipment (PPE) in healthcare facilities and the lack of effective and timely medical assistance. To decide on the multiple accusations made by the complainants, these inquiries will have preliminary to clarify whether the responsibility for imposing ‘red zones’ to seal off towns lays with the

<sup>171</sup> See [Italy reopens borders to tourists within Europe and allows travels between regions](#), The Local, 3 June 2020.

<sup>172</sup> European Commission, [Communication from the Commission to the European Parliament, the European Council and the Council on the third assessment of the application of the temporary restriction on non-essential travel to the EU](#), COM (2020) 399 final, 11 June 2020.

<sup>173</sup> DPCM 11 June 2020, Additional implementing provisions of Decree-law 25 March 2020, no. 19, containing urgent measures to face the epidemiological emergency from COVID-19, and of Decree-law 16 May 2020, no. 33, containing additional urgent measures to face the epidemiological emergency from COVID-19, in *Gazzetta Ufficiale*, no. 147 of 11 June 2020.

<sup>174</sup> See [Italian prosecutors question Conte over handling of coronavirus outbreak](#), The Washington Post, 12 June 2020.

national government or with regional authorities, which share competences in the field of health protection pursuant to article 117 of the Italian Constitution.<sup>175</sup>

It is exactly due to such concurring competences that some regional governors used their powers to tighten restrictions during ‘Phase 1’, while others loosened them to anticipate the start of ‘Phase 2’.<sup>176</sup>

## B. Social distancing rules

The Prime Minister’s Decree of 11 June 2020 is complemented with 18 Annexes which contain the guidelines and protocols adopted for *ad hoc* regulation of the religious, social, economic and productive activities that are allowed to reopen or restart. These Annexes confirm that 1 metre is the minimum social distance to be respected in all circumstances; in addition, they require the use of PPE in case it is impossible to keep the necessary interpersonal distance, as it may occur in some working places or on public transports.

Additional rules are added for specific situations and activities:

- a) an orderly access to churches requires a minimum distance of 1,5 metres; other places of worship cannot host more than 200 people;
- b) access to shops of up to 40 square metres must be allowed to one customer at a time wearing PPE (masks and gloves), while access to larger shops must be appropriately restricted;
- c) outdoor physical exercise and practice in gyms require a minimum of 2 metres distance;
- d) restaurants and bars cannot accept more people than the available seats and customers can take off masks only when seated;
- e) bathing establishments must guarantee 10 square metres for each beach umbrella and 1,5 metres between beach equipment;
- f) advance booking is required for restaurants, gyms, swimming pools, hairdressers, aestheticians and bathing establishments, and booking lists have to be kept for 14 days.

## C. The regulation of the digital Covid-19 alert system and the application IMMUNI

Last April, the Italian Ministry of Technological Innovation and Digitalization chose the application IMMUNI, developed by Bending Spoons and the Santagostino Medical Centre, to monitor and prevent the possible spread of Covid-19 among the resident population. IMMUNI has hence become the ‘official app’ of the Italian government, developed by the Extraordinary Commissioner for the Covid-19 Emergency, in collaboration with the Ministry of Health and the Ministry for Innovation Technology and Digitalization.

The application is currently ready for download from the IMMUNI website, Apple and Google Stores and since 8 June 2020 it has been tested experimentally in a few pilot regions (Abruzzo, Liguria, Marche and Puglia) before being fully operationalised at national level as from 15 June. Its employ is totally voluntary and free of charge and no limitations will be imposed on those people who will not use it.

IMMUNI’s exposure notification system alerts users when they have been in contact with a potential source of infection. Thanks to the app’s early alarm, users can promptly contact their general practitioner and immediately self-isolate to minimise the risk of infecting others. Tracking takes place through Bluetooth Low Energy technology via random codes and it does not imply any geolocalisation of the device. When two users are in close proximity, their smartphones store each other’s random codes, taking note of the event and of the

<sup>175</sup> Article 117 of the Italian Constitution provides that the State and the Regions have concurring competences in health-related matters, with ‘legislative powers vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation’.

<sup>176</sup> See Why lockdown rules aren’t the same around Italy, The Local, 7 May 2020; Why some Italian regions have opened sooner than others, The Local, 11 May 2020.

distance between the two devices, but without knowing who they are and where the contact occurred. In fact, to protect users' privacy and the confidentiality of their personal data, the app cannot collect any information that would identify the user, such as their name, date of birth, address, telephone number, or email address. Therefore, contacts with other people are tracked but remain 'blocked' in the user's smartphone. The app retains the encrypted data until it is certain that the person who installed it tested positive to Covid-19. At that point, the user can give consent to the processing of their stored data, thus allowing to trace the people with whom they came into contact in the previous days and reconstructing the history of their movements. To this end, some cryptographic keys are transferred to a server through an authorised healthcare operator – to ensure that only users who actually tested positive for the virus may upload their keys – making it possible to track the user's random codes and check whether they correspond to those stored in other devices' memories. All connections between the user and the server are equally encrypted. The app evaluates the length and the approximate distance of the contact, makes its risk assessment (based on possible exposure at a distance of less than 2 metres for more than 15 minutes) and, if need be, sounds the alarm and provides basic recommendations.

The legal framework for IMMUNI is condensed in article 6 of Decree-law no. 28, adopted by the Government on 30 April 2020.<sup>177</sup> This provision sets out the rules necessary to operate the single national digital platform for the 'Covid-19 alert system'. The Ministry of Health is designated as the subject entitled to collect and treat the data, which are stored in servers located in Italy and managed by public entities. The collection and treatment of data have to comply with the European Union General Data Protection Regulation<sup>178</sup> and with the Italian Personal Data Protection Code.<sup>179</sup> Collected data are confidential and may be shared only for reasons of public health, scientific research, prophylaxis or statistics, provided that they are completely anonymised and aggregated. The application, the platform, the collection and treatment of data will cease at the date when the state of emergency expires (31 July 2020) and no longer than 31 December 2020. At the same date all data will automatically be deleted.

For the management of the alert system and the adoption of the related public health and care measures, the Decree-law requires that the Ministry of Health coordinates its work with the Ministry for Regional Affairs and Autonomy, the *Istituto Superiore di Sanità*, the National Service of Civil Protection, and public and private facilities authorised to operate within the National Health Service. The Ministry of Health is also required to adopt the necessary technical and organizational measures suitable to guarantee a level of security adequate to the high risks for the rights and freedoms of the interested subjects. To this end, the Ministry has to seek the views of the Italian Data Protection Authority (*Garante per la protezione dei dati personali*). On 1 June 2020, the Supervisory Authority authorised the Ministry of Health to start the processing of data related to the Covid-19 alert system collected via the IMMUNI app. Based on the impact assessment provided by the Ministry, the Supervisory Authority concluded that the processing of personal data within the contact tracing system is proportionate, since measures have been put in place to adequately safeguard the rights and freedoms of data subjects and mitigate the related risks. Nonetheless, the Supervisory Authority suggested a number of additional measures to be put in place to better guarantee users' information, security of data and transparency of processing operations.<sup>180</sup>

<sup>177</sup> Decree-law no. 28 of 30 April 2020, in *Gazzetta Ufficiale*, no. 111 of 30 April 2020, in force as of 1<sup>st</sup> May 2020.

<sup>178</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), in *Official Journal of the European Union*, L119 of 4 May 2016, p. 1.

<sup>179</sup> Legislative decree no. 101 of 10 August 2018, in *Gazzetta Ufficiale*, no. 205 of 4 November 2018.

<sup>180</sup> *Garante per la protezione dei dati personali, Provvedimento di autorizzazione al trattamento dei dati personali effettuato attraverso il Sistema di allerta Covid-19 - App Immuni*, 1 June 2020. For a very brief synthesis in English, see [Green light to the 'Immuni' contact tracing app by the Italian SA](#).

## EAHL COVID-19 COUNTRY REPORT – LUXEMBOURG

*Mike Schwebag, NCP for Luxembourg*  
[\(\[mike.schwebag@gmail.com\]\(mailto:mike.schwebag@gmail.com\)\)](mailto:mike.schwebag@gmail.com)  
 Luxembourg, 16 June 2020

This contribution summarizes the Luxembourg response to the propagation of the novel coronavirus, focusing on the developments since the first EAHL Covid-19 survey submitted in mid-April 2020.

### **Q1. Short description of the general legislative framework concerning communicable diseases**

As stressed in the first EAHL Covid-19 survey, Luxembourg has an incomplete legal framework concerning communicable diseases. The existing provisions confer broad powers with limited safeguards. The conformity to constitutional requirements and international standards protecting fundamental rights is questionable.

The use of these broad powers during the current sanitary crisis lead to a public debate<sup>181</sup>. Government recognized the limitations of the current legal framework. Legislative measures are currently under discussion<sup>182</sup>.

### **Q2. Guidelines concerning the treatment of patients.**

The author has no knowledge of major new developments since the first country report.

### **Q3. Adaptation of the healthcare system.**

As detailed within the first EAHL Covid-19 survey, a large organizational shift of the healthcare system was performed to reduce the spreading of the virus and free resources needed to face the COVID-19 pandemic.

Meanwhile, Luxembourg entered into its 4<sup>th</sup> phase of de-confinement. Access restrictions reported previously have been lifted. The focus is currently on resuming activities that were suspended and on preparing for a possible second wave in a way that non-urgent care could continue to be available.

### **Q4. New regulatory framework adopted within the context of the SARS-CoV-2 outbreak**

#### **a) Confinement and de-confinement measures adopted with exceptional powers during the state of crisis**

Luxembourg Government declared the state of crisis on 17 March 2020. Parliament confirmed the declaration of the state of crisis on 24 March 2020 and conferred exceptional powers until 25 June 2020. According to the mechanism foreseen by article 32 § 4 of the Luxembourg Constitution, this permits the adoption of Grand-Ducal Regulations that have the same legal value than ordinary laws and may derogate to the existing ordinary legal framework.

The core measures are contained in a Grand-Ducal Regulation of 18 March 2020 introducing a series of measures as part of the fight against Covid-19, as modified 13 times since its adoption<sup>183</sup>. The exceptional powers allowed not only the quick adoption of measures, but also to follow by a “regulatory tango” the confinement and the subsequent de-confinement phases. A summarized overview<sup>184</sup> can be given:

- Phase 0: confinement started on 16/18 March as reported in detailed in the previous EAHL Covid-19 survey;

<sup>181</sup> The press reported that public health authorities tried to make use of the powers conferred by the law of 11 November 1980 organizing the directorate of health, requesting the compulsory hospitalization of a homeless person reluctant to accept a preventive quarantine measure. The psychiatrists at the requested closed psychiatric unit refused the isolation in their premises, as the legal conditions for a compulsory psychiatric hospitalization were not fulfilled. The incident, as well as the appropriateness of such measures, were lively discussed during a TV talk about the limitations of fundamental rights during the COVID crisis. (RTL Letzebuerg, 4. June 2020, “Kloertext: Fräiheitsbegrenzung a Corona-Zäiten“ / <https://www.rtl.lu/tele/kloertext/a/1528926.html>)

<sup>182</sup> See Q4 point c) below.

<sup>183</sup> Règlement grand-ducal du 18 mars 2020 portant introduction d’une série de mesures dans le cadre de la lutte contre le Covid-19 (<http://www.legilux.lu/eli/etat/leg/rgd/2020/03/18/a165/jo>)

<sup>184</sup> A detailed chronological overview of the measures would exceed the purpose of this contribution. Social distancing requirements are detailed below under point b).

- Phase 1: de-confinement started on 20 April 2020 with the reopening of certain non-essential activities: construction sites, do-it-yourself markets, gardening-, landscape- and plant shops, recycling centers ...;
- Phase 2: de-confinement continued on 11 May 2020, with reopening of shops, hair salons, driving schools, museums, exhibition centers, archives, and libraries. Outdoor sport infrastructures and outdoor collective sport activities<sup>185</sup> were again allowed, provided there is no physical contact. Sport competitions and the assistance of audience remained prohibited. Public gatherings were generally limited to 20 people. It was again possible to welcome up to 6 persons in a private context.
- Phase 3: de-confinement further continued on 27/29 May 2020, with the reopening of restaurants and cafés. Churches also reopened with specific requirements. Indoor sport infrastructures were allowed to reopen and collective sport could have an audience, but organizers need to follow specific hygiene and distancing guidelines. Contact sport remains prohibited. Indoor and outdoor playgrounds remained closed for children.
- Phase 4: the current phase of de-confinement started 10/12 June 2020, with the opening of playgrounds. In bars and restaurants, the maximum of guests per table is now 10. Discotheques, as well as indoor exhibitions and indoor fairs remain prohibited. Public gatherings of more than 20 people are again possible under certain social distancing conditions. The number of guests admitted at home is no longer limited.

Besides the core measures contained in the Grand-Ducal Regulation of 18 March 2020, a large number of sectorial adaptations and measures were also adopted by exceptional powers. For instance, Schools and Higher Education closed on 16 March 2020 and have gradually been reopening since 4 May with students in their final year of secondary school returning first. The sectorial measures necessary within this context are however not part of the Grand-Ducal Regulation of 18 March 2020.

Constitutional law limits the validity of these exceptional regulations to the duration of the state of crisis. There is thus currently an urgent need to shift towards ordinary legal instruments.<sup>186</sup>

#### **b) Physical distancing and mask policy (“social distancing”)**

Physical distancing and mask requirements are part of the mandatory rules introduced since the beginning of the first de-confinement phase on 20 April 2020. Since that date, the amended Grand-Ducal Regulation of 18 March 2020 requires to wear a mask<sup>187</sup> in any location open to the public unless it is possible to maintain a distance of 2m to people not living under the same roof.

Since the last de-confinement phase, gatherings of more than 20 people are no longer prohibited, whether in private or in places open to the public. There is however a requirement to respect a distance of 2m or to wear a mask, as well as a requirement to assign places to participants unless in certain specific circumstances. Below 20 people, these obligations have been replaced by a recommendation.

Masks are mandatory at all times in public transport, shops, Courts etc. Churches reopened with the requirement of a distance of 2 meters between seats and masks when circulating. If the distance of 2m is not maintained, mask are mandatory when seated.

In restaurants and bars, tables were initially limited to 4 guests unless from the same household. This limit was raised to 10 persons since phase 4 of the de-confinement. By exception to the general 2m rule, tables in

<sup>185</sup> Individual outdoor recreational activities were always allowed, including individual sport like running or cycling.

<sup>186</sup> According to constitutional law, it is not possible to extend the maximal period of the state of crises after 25 June 2020. Technically, it would be possible to declare a second state of crisis, for instance in the event of a severe second infectious wave. This is currently not justified by the factual situation.

<sup>187</sup> Wearing a mask has to be understood as wearing a mask covering mouth and nose, or another mouth and nose coverage like a scarf.

restaurants must be 1,5m apart or have a physical separation wall. Guests must wear masks when they circulate, but not when seated at the table.

Sport activities that imply physical contact (like football, rugby ..) remain currently prohibited. The same is true for discotheques, indoor exhibitions and indoor fairs.

### c) Post state of crisis legal framework

During the state of crisis period, some measures and adaptations were already adopted by ordinary laws<sup>188</sup> or by ordinary regulations. These measures will continue to be applicable after the end of the state of crisis. Other sectorial measures are pending in Parliament and close to adoption.<sup>189</sup>

After initially envisaging the adoption of a new general framework on communicable diseases, the Government deposited on 29 May 2020 three law proposals. Proposal No. 7605<sup>190</sup> is of purely formal nature and aims to repeal the state of crises. The two other proposals will replace the above-mentioned Grand-Ducal Regulation of 18 March 2020 after the end of the state of crisis. Their validity has been limited to one month only, thus ensuring a constant reassessment by Parliament. Council of State has very recently issued his opinion on both proposals<sup>191</sup> and the vote in Parliament is scheduled on 22 June 2020.

Proposal No. 7607<sup>192</sup> contains measures applicable to sport and cultural activities, as well as to activities open to the public, such as restaurants, bars etc. The proposal further allows remote deliberations by the Council of State. This proposal contains rules that are in substance identical to those currently applicable rules applicable since the phase 4 of de-confinement<sup>193</sup>. Except of formal clarifications and procedural improvements, this proposal is likely to be adopted without major substantial changes.

Proposal No. 7606 focusses on measures applicable to individuals and amends the pharmaceutical legislation<sup>194</sup>. This more controversially debated proposal contains:

- a. specific dispositions concerning distancing and mask requirements that are in substance identical to those currently applicable<sup>195</sup> as described above;

<sup>188</sup> Example: Law of 18 April 2020 aimed at setting up a guarantee scheme in favor of the Luxembourg economy in the context of the Covid-19 pandemic (<http://data.legilux.public.lu/eli/etat/leg/loi/2020/04/18/a307/jo>)

<sup>189</sup> All bodies and actors implied in the legislative process are currently facing an important workload, with very strict timelines, to avoid any legal vacuum. Example of a sectorial adaptation deposited recently (27/05) and scheduled to be adopted (18/06): Law proposal 7603 concerning; 1. temporary derogation from certain labor law provisions in connection with the state of crisis related to Covid-19; 2. amendment of the Labor Code

(<https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7603>)

<sup>190</sup> Projet de loi 7605 portant abrogation de la loi du 24 mars 2020 portant prorogation de l'état de crise déclaré par le règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19 (<https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7605>)

<sup>191</sup> Avis du Conseil d'Etat du 16 juin 2020, doc. parl. 7606/11 (<https://conseil-etat.public.lu/fr/avis/2020/Juin2020/16062020covid/60261.html>) /

Avis du Conseil d'Etat du 16 juin 2020, doc. parl. 7607/08 (<https://conseil-etat.public.lu/fr/avis/2020/Juin2020/16062020covid/60262.html>)

<sup>192</sup> Projet de loi 7607 portant introduction d'une série de mesures à l'égard des activités économiques et accueillant un public dans le cadre de la lutte contre le virus SARS-CoV-2 (Covid-19) et dérogeant à certaines dispositions de la loi du 16 juin 2017 sur l'organisation du Conseil d'État (<https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7607>)

<sup>193</sup> Please refer to the information given under a) and b) above for a general description.

<sup>194</sup> Projet de loi 7606 portant introduction d'une série de mesures concernant les personnes physiques dans le cadre de la lutte contre le virus SARS-CoV-2 (Covid-19) et modifiant 1. la loi modifiée du 25 novembre 1975 concernant la délivrance au public des médicaments ; 2. la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des médicaments (<https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7606>)

<sup>195</sup> As described in point b) above.



- b. a new framework for isolation or quarantine measures at home, as well as mandatory placement of infected persons within a hospital or another appropriate setting;
- c. data processing and data protection rules;
- d. amendments to the pharmaceutical legislation in order to allow pharmaceutical stocks in certain premises (like homes for elderly people) and in order to temporarily allow the distribution of a medicinal product not authorized through the ordinary authorization procedures in response to a sanitary crisis ;
- e. a catalog of sanction and specific procedural rules.

The Council of State has underlined in his opinion the necessity of balancing the requirements of the protection of life and health with fundamental rights and liberties.

Concerning the distancing and mask requirements applied to gatherings of more than 20 persons, the Council of State formally opposes these requirements to be mandatory in private. Thus it is likely that these rules will be mandatory for gathering in streets and places open to the public, but no longer in a private context.

When it comes to the regime of isolation or quarantine measures, as well as the mandatory placement of infected persons, the appropriateness of such measures has been questioned within the current context. The proposal on the table has also been largely criticized for being not clear and precise enough and for not offering sufficient safeguard to the persons concerned by such a measure.<sup>196</sup>

The current proposal has at the same time the merit to address the limits of the general legal framework concerning communicable diseases.

In its critical, still constructive opinion, the Council of State proposes a way forward by suggesting concrete formulations, stressing at the same time that his proposals are incomplete given the time constraints. It has to be seen in how Parliament will move forward on these delicate questions and it is likely that there will be further legal developments in the future.

#### **Q5. Screening, tracing and eHealth technologies.**

The national teleconsultation platform, as well as a tele-monitoring software that allows remote follow-up of COVID-19 patients are operational. The currently imperative<sup>197</sup> is to prefer the use of teleconsultation when the patient's state of health allows it.

The above mentioned proposal 5506 foresees the creation of a mandatory database and of an IT system to follow the evolution of COVID-19, which will contain personal data about COVID-19 positive cases, suspected cases of infection, as well as their follow-up. The opinion<sup>198</sup> of the national Data Protection Authority (CNPd) admits the principal of such a mandatory data processing, while rising interrogations concerning the necessity of certain data, the duration of the processing of the data, as well as the clarity and completeness of the current proposal. In its recent opinion, the Council of State, while remaining critical, suggests concrete formulations that would allow to address parts of these interrogations.

While Luxembourg Government remains cautious when it comes to a COVID-19 tracing app, one may note that the National Ethics Commission (CNE) issued a position paper<sup>199</sup> in which it stresses that a non-mandatory, noncommercial and open tracing app should be actively assessed and explored. It stresses that the current “classical” tracing operated by the health authorities may be regarded as equally intrusive into the private life and fundamental rights of the individuals concerned. While considering the importance of data

<sup>196</sup> See the very well elaborated opinion of the national advisory Commission on Human Rights (CCDH): Avis de la Commission consultative des Droits de l'Homme du 9.6.2020 ([https://ccdh.public.lu/fr/actualites/2020/20200609\\_Avis\\_PL7606\\_Covid.html](https://ccdh.public.lu/fr/actualites/2020/20200609_Avis_PL7606_Covid.html)).

<sup>197</sup> Règlement grand-ducal modifié du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19, Art. 4 (4) al. 2: « Le recours à la téléconsultation est à privilégier lorsque l'état de santé du patient le permet. »

<sup>198</sup> Délibération 13/2020 de la CNPD du 8 juin 2020 sur le projet de loi n° 7606 (<https://cnpd.public.lu/fr/decisions-avis/2020/13-lutte-sars-covid19.html>)

<sup>199</sup> Prise de position de la CNE sur les aides informatiques dans la lutte contre la pandémie du Coronavirus SARS-CoV-2 (<https://cne.public.lu/dam-assets/fr/publications/avis/Prise-de-position-tra%C3%A7age.pdf>)

protection, the Commission is of the opinion that such an app could be part of a balanced response to avoid more incisive measures, such as a second “shut down”.

#### **Q6. Provisions concerning liability**

The modifications to the pharmaceutical legislation proposed by the Government contain a liability immunity<sup>200</sup> for healthcare professionals who use a medicinal product temporarily available during the pandemic or use an authorized medicinal product “off label”, in the event that this exceptional use has been indorsed by the health department in response to the sanitary crisis.

#### **Q7. Cases before the courts**

The author has not knowledge of any cases before the national courts linked to COVID-19 or linked to the measures taken.

## **Malta: Country report regarding legislative measures adopted to combat the outbreak of COVID-19 – June 2020 update<sup>201</sup>**

*Dr. Daniel Bianchi,*

*Faculty of Laws, University of Malta*

A previous issue of the newsletter of the European Association of Health Law featured a report regarding legislative measures adopted in Malta to combat the outbreak of COVID-19.<sup>202</sup> Since when that report was published, the Maltese authorities have removed or scaled back many of the restrictions introduced by way of those legislative measures. As of the 14<sup>th</sup> June 2020, that has occurred in three stages on the 4<sup>th</sup> May, on the 22<sup>nd</sup> May and on the 5<sup>th</sup> June 2020. This report outlines how measures introduced in view of the outbreak of COVID-19 have been removed or changed, while also outlining what mitigating measures consequent to COVID-19 are still in effect or have otherwise been freshly introduced.

On the 1<sup>st</sup> May 2020, Maltese authorities announced that some of the restrictive measures imposed due to the outbreak of COVID-19 would be reduced or amended as from the 4<sup>th</sup> May 2020.<sup>203</sup> These largely featured measures that had been introduced consequent to Article 27 (c) of the Public Health Act (PHA) by way of Legal Notices and were therefore likewise amended or withdrawn by Legal Notice in terms of that same provision in the PHA as follows:

(i) the prohibition to travel between the two main inhabited islands of Malta, other than as permissible by way of S.L. 465.37 Mandatory non-essential travel between Malta and Gozo Order, was revoked so as to enable unrestricted travel between the islands of Malta and Gozo;<sup>204</sup> (ii) the prohibition of groups of more than 3 people gathering together in public places, unless they live in the same residence, was changed to a maximum of 4 persons but, at this stage, the obligation to maintain a distance of 2 meters between persons waiting in queues or on bus stops was maintained;<sup>205</sup> (iii) with the exception of vaping shops, hairdressers, barbers,

<sup>200</sup> Art. 16 of the above-mentioned proposal 7606.

<sup>201</sup> Information contained herein is correct up to the 14<sup>th</sup> June 2020. No part of this report purports to provide legal advice.

<sup>202</sup> Daniel Bianchi, ‘European Association of Health Law, Covid-19 legislative survey – Malta’ (2020 – Issue n. 2) *European Association of Health Law Newsletter* 27 – 29.

<sup>203</sup> PR200801, *Stqarrija mill-Ufficju tal-Prim Ministru* (01/05/2020).

<sup>204</sup> L.N. 175 of 2020 – Mandatory non-essential travel between Malta and Gozo (Revocation) Order, 2020 [Government Gazette of Malta No. 20, 398 – 02/05/2020].

<sup>205</sup> L.N. 173 of 2020 – Number of persons in public spaces (Increase in number of persons) Order, 2020; L.N. 174 of 2020 – Enforcement of the order relating to the number of persons in public spaces Regulations (Amendment), 2020 [Government Gazette of Malta No. 20, 398 – 02/05/2020].

beauticians, spas, nail artists, nail technicians and tattooists that had to remain closed, all other non-essential retail outlets and outlets providing non-essential services, as well as lotto booths<sup>206</sup> and vehicle road worthiness testing centres,<sup>207</sup> were no longer barred from opening;<sup>208</sup> and (iv) the Registry of the Courts of Justice was no longer ordered to remain closed,<sup>209</sup> where after internal measures were taken to prevent transmission of COVID-19 such as hand sanitizers in the building/s housing the courts and Perspex screens separating tables,<sup>210</sup> as well as a phased reopening of the Registry.<sup>211</sup> This first stage of the transition phase out of restrictive measures largely introduced by way of Legal Notices was accompanied by detailed mandatory conditions issued under the authority of the PHA, with failure to adhere thereto resulting in enforcement procedures as provided by that same Act.<sup>212</sup> For instance, in the context of non-essential retail outlets, the 1<sup>st</sup> May 2020 COVID-19 Bulletin notes that “everyone who enters shops ... will be required to wear a mask [or visor]. Every shop will only permit one client per 10sqm of store space. This criterion must be affixed to the shop so that everyone knows how many individuals can enter the shop. At every entrance there will be hand sanitizers so that everyone entering and exiting the shop can keep their hands clean. In shopping malls, no more people than the total of that number of people that the individual shops are permitted to take in may enter, and every person entering must have their temperature checked. Changing rooms for clothes may not be used”.<sup>213</sup> Likewise, persons intending to use public transport, taxi or ferry service would not be permitted aboard without wearing a face-mask or visor.<sup>214</sup> It was furthermore announced that a number of health services that had been suspended, such as routine screening for cervical cancer and vaccination provided at health centres across the archipelago, would resume.<sup>215</sup>

On the 18<sup>th</sup> May 2020, Maltese authorities announced that the second stage of the transition phase would take effect on the 22<sup>nd</sup> May 2020 by removing or easing more restrictions introduced due to the onset of the pandemic.<sup>216</sup> Similarly to the first stage of the transition phase commencing on the 4<sup>th</sup> May 2020, this second stage also in part dealt with measures that had been introduced by way of Legal Notices under the authority given to the Superintendent of Public Health (SPH) in terms of Article 27 (c) of the PHA and were

<sup>206</sup> L.N. 171 of 2020 – Closure of places open to the public (Amendment No. 2) Order, 2020 [Government Gazette of Malta No. 20, 398 – 02/05/2020].

<sup>207</sup> L.N. 178 of 2020 – Closure of vehicles roadworthiness testing stations (Revocation) Order, 2020 [Government Gazette of Malta No. 20, 398 – 02/05/2020].

<sup>208</sup> L.N. 172 of 2020 – Closure of non-essential retail outlets and outlets providing non-essential services (Amendment) Order, 2020; L.N. 170 of 2020 – Enforcement of the order relating to closure of non-essential retail outlets and outlets providing non-essential services (Amendment) Regulations, 2020 [Government Gazette of Malta No. 20, 398 – 02/05/2020].

<sup>209</sup> L.N. 177 of 2020 – Closure of the Courts of Justice (Amendment No. 2) Order, 2020; L.N. 176 of 2020 – Epidemics and infectious disease (Suspension of legal and judicial times)(Amendment No. 2) Order, 2020 [Government Gazette of Malta No. 20, 398 – 02/05/2020].

<sup>210</sup> PR200808, *Stqarrija mill-Ministeru għall-Gustizzja, l-Ugwaljanza u l-Governanza* (03/05/2020).

<sup>211</sup> Chamber of Advocates (Malta), *Re-opening of Court Registry – Chamber update* (02/05/2020). Available at: <<https://www.avukati.org/2020/05/02/re-opening-of-court-registry-chamber-update/?fbclid=IwAR3yJ1SfWINGHJO4YQr7IqrVzD1bTm5Zzva5s7mrW2yVCIQxguJtpAgtl4>> (Accessed 15/06/2020).

<sup>212</sup> See for instance: Office of the Superintendent of Public Health (Malta), *Mitigating measures – COVID-19 transition phase: Mandatory conditions for retail outlets and lotto booths* (Last updated 02/06/2020). Available at: <[https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Mitigation Measures Retail Outlets And Lotto Booths.pdf](https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Mitigation%20Measures%20Retail%20Outlets%20And%20Lotto%20Booths.pdf)> (Accessed 15/06/2020).

<sup>213</sup> PR200802, *Covid-19 Bulletin – Issue 51* (01/05/2020).

<sup>214</sup> See for instance: Health Promotion and Disease Prevention Directorate, *Passenger/service provider guidelines when using public transport services*. Available at: <[https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Mitigation Measures Passenger Or Service Provider Conditions When Using Public Transport Services.pdf](https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Mitigation%20Measures%20Passenger%20Or%20Service%20Provider%20Conditions%20When%20Using%20Public%20Transport%20Services.pdf)> (Accessed 15/06/2020).

<sup>215</sup> PR200802, *Covid-19 Bulletin – Issue 51* (01/05/2020).

<sup>216</sup> PR200943, *Stqarrija mill-Ufficju tal-Prim Ministru, Illum irridu nhallu lin-nies jghixu hajja ta' kwalita tajba fil-kuntest ta' cirkostanza ta' sahha pubblika tajba li ghandna illum – il-Prim Ministru Robert Abela* (18/05/2020).

therefore amended consequent to Legal Notices arising within the confines of that same provision in the primary law as follows:

(i) the prohibition of groups of people exceeding 4 persons gathering together in public places, unless they live in the same residence, was changed to 6 persons but, at this stage, the obligation to maintain a distance of 2 meters between persons waiting in queues or on bus stops was still maintained in the subsidiary law;<sup>217</sup> (ii) open-air markets, restaurants, cafeterias, snack bars, and clubs were no longer restricted to operating by way of a delivery or take-away service and could open their premises to the public provided that seating facilities outdoors should, where available, be primarily used and,<sup>218</sup> where these were not available, seating indoors should be available at a reduced capacity in accordance with the applicable measures of social distancing which were issued separately as briefly explained further on in this report;<sup>219</sup> (iii) gaming parlours were no longer prohibited from opening, provided that they open “solely and exclusively to provide sports betting through the till and for no other service, and clients are not to remain inside the gaming parlours after availing themselves of such sports betting service”;<sup>220</sup> (iv) with the exception of spas and tattooists, all other non-essential retail outlets and outlets providing non-essential services were no longer prohibited from opening, provided that “vaping shops shall open solely and exclusively for sale of products permissible in accordance with the Tobacco (Smoking Control) Act and for no other service, and clients are not to remain inside the vaping shops after availing themselves of such products”;<sup>221</sup> and (v) while the order to suspend organised events remained in effect, an exemption was granted for some sports activities in the context of “individual and group training of not more than six (6) persons in open spaces”<sup>222</sup> subject to mitigating measures issued by the SPH who was also now empowered to grant other *ad hoc* exemptions “if she is satisfied that the organized event will be held in public or open spaces and that the event organised is such as to enable the public to maintain social distance and other preventative measures”.<sup>223</sup> For example, in consultation with the country’s bishops, Holy Mass could be celebrated for the purpose of funerals subject to limited numbers of people in attendance. Measures introduced by Legal Notice into the subsidiary law were then accompanied by more detailed obligatory conditions introduced in the latter part of May 2020 that had to be met by establishments prior to lawfully reopening. Different conditions were provided depending on the nature of the establishment. For instance, tables at establishments with outdoor dining were to be restricted to groups of no more than 6 persons or persons from the same household and tables were to be arranged so that “the distance from the front of one chair to the front of the chair behind it shall be 2 [metres] apart and the back to back distance between chairs is to be 1 [metre]” while establishments with indoor dining were to include tables of no more than 6 persons or persons from the same household and tables were to be arranged so that “the distance from the front of one chair to the front of the chair behind it shall be 3 [metres] apart and the back to back distance between chairs is to be 2 [metres]”.<sup>224</sup> It was furthermore announced on the 18<sup>th</sup> May 2020 that health

<sup>217</sup> L.N. 208 of 2020 – Number of persons in public spaces (Increase in number of persons)(Amendment) Order, 2020 [Government Gazette of Malta No. 20, 409 – 22/05/2020].

<sup>218</sup> This was accompanied by changes made by the Minister for Health to the regulations regarding smoking in public places so that “no one shall at any time smoke any tobacco product in places where food is served or within the parameters of places where food is served, such that smoking is only allowed if it is done ten (10) metres away from the place where food is being served”. See: S.L. 315.04, Smoking in public places Regulations, r 5A.

<sup>219</sup> L.N. 204 of 2020 – Closure of places open to the public (Amendment No. 3) Order, 2020 [Government Gazette of Malta No. 20, 409 – 21/05/2020].

<sup>220</sup> *Ibid.*

<sup>221</sup> L.N. 202 of 2020 – Closure of non-essential retail outlets and outlets providing non-essential services (Amendment No. 2) Order, 2020 [Government Gazette of Malta No. 20, 409 – 21/05/2020].

<sup>222</sup> L.N. 205 of 2020 – Suspension of organized events (Amendment) Order, 2020 [Government Gazette of Malta No. 20, 409 – 21/05/2020].

<sup>223</sup> *Ibid.*

<sup>224</sup> Health Promotion and Disease Prevention Directorate, *Re-opening Malta’s tourism infrastructure: Procedures to re-introduce operations on the principles of social distancing, enhanced hygienic practices and minimised infection risks* (18/05/2020). Available at:

services that had been suspended due to the pandemic would resume on the 22<sup>nd</sup> May 2020, while other healthcare services, including mental health treatment in the community and outpatient appointments at Malta's largest hospital, would increase to rates nearer to the period preceding the pandemic.<sup>225</sup> Moreover, as from the 25<sup>th</sup> May 2020, visits were permitted at residences for the elderly so long as the visit occurs in an established place from behind a Perspex screen and that the visit would last no longer than 15 minutes.<sup>226</sup>

On the 1<sup>st</sup> June 2020, Maltese authorities announced that the third stage of the transition phase would take effect from the 5<sup>th</sup> June 2020 by repealing swathes of the subsidiary legislation that had been introduced under the authority of Article 27 (c) of the PHA and in part replacing that subsidiary legislation by obligatory conditions and/or guidelines to mitigate the potential spread of COVID-19.<sup>227</sup> This resulted in the following action taken by way of Legal Notice:

(i) Other than the organisation of contact sports, which were still ordered not to take place,<sup>228</sup> the order suspending all other organised events was revoked so that events such as non-contact sporting activities and religious events could resume subject to conditions outlined in brief further on in this report; (ii) the prohibition of groups of people gathering together in public spaces was changed from a maximum of 6 persons to 75 persons, which was qualified as a prohibited “organized mass event”,<sup>229</sup> and the obligation to maintain a distance of two meters between persons waiting in queues or on bus stops was struck out of the subsidiary law; (iii) the order to close the Courts of Justice was repealed;<sup>230</sup> (iv) while most schools and educational institutions were ordered to remain closed, child care centres and English language teaching schools were no longer prohibited from opening;<sup>231</sup> (v) persons categorized as vulnerable were no longer ordered to remain segregated in their residence;<sup>232</sup> (vi) any order that premises normally open to the public, such as bars and gymnasiums, should remain closed was repealed;<sup>233</sup> and (vii) spas and tattooists, which were the last outlets providing non-essential services to be ordered to remain closed, were no longer prohibited from opening.<sup>234</sup> These measures were often accompanied by some mandatory mitigating measures.<sup>235</sup> For instance, retail outlets and lotto booths were *inter alia* ordered by the SPH to “ensure that inside the shop every person keeps a minimum of 2 metres from others”<sup>236</sup> and, though bars could operate, all staff are “to wear mask or visor at all times” and “order of food and drinks at the bar are not allowed”,<sup>237</sup> while venues organizing sporting

<[https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Obligatory\\_Conditions\\_And\\_Guidelines\\_For\\_Outdoor\\_Restaurants\\_Pools\\_Hotels\\_Accommodation.pdf](https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Obligatory_Conditions_And_Guidelines_For_Outdoor_Restaurants_Pools_Hotels_Accommodation.pdf)> (Accessed 15/06/2020).

<sup>225</sup> PR200944, *Covid-19 Bulletin – Issue 68* (18/05/2020).

<sup>226</sup> PR200981, *Covid-19 Bulletin – Issue 70* (22/05/2020).

<sup>227</sup> PR201038, *Stqarrija mill-Ufficcju tal-Prim Ministru: “Mill-5 ta’ Gunju se nkomplu bir-ritorn lejn il-hajja normali li tant ilna nistennew” – il-Prim Ministru Robert Abela* (01/06/2020).

<sup>228</sup> L.N. 228 of 2020 – Suspension of organized events (Amendment No. 2) Order, 2020 [Government Gazette of Malta No. 20, 416 – 03/06/2020].

<sup>229</sup> L.N. 233 of 2020 – Number of persons in public spaces (Amendment) Order, 2020 [Government Gazette of Malta No. 20, 416 – 03/06/2020].

<sup>230</sup> L.N. 230 of 2020 – Closure of the Courts of Justice (Repeal) Order, 2020 [Government Gazette of Malta No. 20, 416 – 03/06/2020].

<sup>231</sup> L.N. 229 of 2020 – Closure of schools (Amendment) Order, 2020 [Government Gazette of Malta No. 20, 416 – 03/06/2020].

<sup>232</sup> L.N. 232 of 2020 – Repealing Regulations, 2020 [Government Gazette of Malta No. 20, 416 – 03/06/2020].

<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*

<sup>235</sup> Health Promotion and Disease Prevention Directorate, *Mitigating conditions and guidelines*. Available at: <<https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Pages/mitigation-conditions-and-guidances.aspx>> (Accessed 15/06/2020).

<sup>236</sup> Office of the Superintendent of Public Health, *Mitigating measures – COVID-19 Transition phase: Mandatory conditions for retail outlets and lotto booths* (02/06/2020). Available at: <[https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Mitigation\\_Measures\\_Retail\\_Outlets\\_And\\_Lotto\\_Booths.pdf](https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Mitigation_Measures_Retail_Outlets_And_Lotto_Booths.pdf)> (Accessed 15/06/2020)

<sup>237</sup> Office of the Deputy Prime Minister – Ministry for Health, *COVID-19 transitioning – Obligatory conditions and guidelines for bars, clubs and similar establishments* (05/06/2020). Available at: <[https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Obligatory\\_Conditions\\_And\\_Guidelines\\_For\\_Bars\\_Clubs\\_and\\_Similar\\_Establishments.pdf](https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Obligatory_Conditions_And_Guidelines_For_Bars_Clubs_and_Similar_Establishments.pdf)> (Accessed 15/06/2020)

activities are to keep a “log of bookings with name, telephone number and time of arrival ... for a minimum of 4 weeks”.<sup>238</sup> Furthermore, visiting hours to adult wards at Malta’s public hospital/s will resume as from the 15<sup>th</sup> June 2020 on condition that there is one visitor per person and that visitor is to wear his/her own mask or visor, practice hand hygiene, and should not visit if s/he is feeling sick.<sup>239</sup>

As of the 14<sup>th</sup> June 2020, the following legal measures adopted in view of COVID-19 remain in force: (i) the public health emergency Order made by the SPH in accordance with Article 14 of the PHA;<sup>240</sup> (ii) other than as specified by the SPH, there is a travel ban to and from Malta;<sup>241</sup> (iii) when persons are allowed to travel from another country to Malta, there remains in force a 14 day period of quarantine immediately upon that person’s entry into Malta unless that requirement is suspended by the SPH;<sup>242</sup> (iv) any person who is diagnosed as suffering from COVID-19, as well as anybody living in the same residence as that person, shall immediately upon receiving an order from the SPH, submit him/herself to self-isolation and shall so remain until the SPH revokes that order;<sup>243</sup> (v) any person who comes into contact with a person diagnosed as suffering from COVID-19 must submit him/herself to a 14 day period of quarantine immediately upon receiving an order from the SPH;<sup>244</sup> (vi) the majority of schools and educational institutions are still subject to an order to remain closed;<sup>245</sup> (vii) the organisation of contact sports remains suspended;<sup>246</sup> and (viii) gathering of masses of more than 75 persons is still prohibited.<sup>247</sup>

That being said, the Prime Minister of Malta informally announced on the 14<sup>th</sup> June 2020 that most of the legal measures introduced due to COVID-19 will imminently be revoked, including the declaration of a public health emergency and the prohibition of mass gatherings, while the travel ban to and from some destinations overseas will be revoked as from the 1<sup>st</sup> July 2020 and will be revoked for all destinations as from the 15<sup>th</sup> July 2020.<sup>248</sup>

---

[19/Documents/mitigation-conditions-and-guidances/Conditions%20and%20guidelines%20Bars,-clubs,-similar-establishments\\_05Jun20.pdf](#)> (Accessed 15/06/2020).

<sup>238</sup> Office of the Deputy Prime Minister, Ministry for Health, and SportMalta, *Return to sport as part of the COVID-19 transition in Malta* (03/06/2020 – Version 2.0). Available at: <[https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-](https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Obligatory%20Conditions%20And%20Guidelines%20For%20The%20Return%20To%20Sport%20In%20Malta.pdf)

[guidances/Obligatory Conditions And Guidelines For The Return To Sport In Malta.pdf](#)> (Accessed 15/06/2020).

<sup>239</sup> Mater Dei Hospital, *Mater Dei Hospital restoring visitor access for patients* (14/06/2020). Available at: <<https://deputyprimeminister.gov.mt/en/MDH/Pages/Home.aspx>> (Accessed 15/06/2020).

<sup>240</sup> S.L. 465.36, Declaration of a Public Health Emergency Order.

<sup>241</sup> S.L. 465.15, Travel Ban Order; S.L. 465.26, Travel Ban (Extension to all countries) Order.

<sup>242</sup> S.L. 465.13, Period of quarantine Order; S.L. 465.18, Period of quarantine (Extension of countries) Order.

<sup>243</sup> S.L. 465.30, Self-isolation of diagnosed persons Order.

<sup>244</sup> S.L. 465.23, Period of quarantine (Contact with other persons) Order.

<sup>245</sup> S.L. 465.14, Closure of schools Order; S.L. 465.22, Closure of schools (Extension of period of closure) Order.

<sup>246</sup> S.L. 465.32, Suspension of organised events Order.

<sup>247</sup> S.L. 465.34, Number of persons in public spaces Order.

<sup>248</sup> The interview with the Prime Minister is available in the Maltese language on the following: <<https://www.one.com.mt/news/2020/06/14/dirett-intervista-mal-prim-ministru-u-mexxej-tal-partit-laburista-robot-abela-fuq-one-3/>> (Accessed 15/06/2020).

## POLAND

*Luiza Jakubiak*  
luiza.jakubiak@wp.pl

### Major legislative framework concerning communication diseases

Prevention of infection diseases with its long history is currently defined in the Law of December 5, 2008 on Prevention and Control of Infections and Infectious Diseases in Humans. It defines the principles and methodology of prevention and control of infectious diseases, It also determines the duties of public administration organisations within the area of prevention and control of infectious diseases as well as rights and obligations of health care providers. The Act applies to individuals residing and staying in the Republic of Poland with respect to prevention and control of infectious diseases (Journal of Laws of 2008, no. 234, item 1570).

The rapid spread of COVID-19 in Europe determined the need to introduce new legal instruments. As early as on March 2, 2020, the Law on Special Measures Related to Preventing, and Fighting COVID-19, and Counteracting Crisis Situations provided the Polish authorities with additional, far reaching competences. Journal of Laws 2020 no.374 .

### Dynamics of the epidemic

On 4th March the first case of coronavirus was confirmed. The patient “zero” was a resident of the Lubuskie Province coming back from Germany. By the end of March more than 200 new cases were recorded every 24 hours. In April and May the number of new cases recorded daily fluctuated between 300 and 400.

On March 13, 2020, the Ministry of Health announced a condition of epidemiological threat on the territory of the Republic of Poland, which as early as on March 20 became a state of epidemic.

March 15<sup>th</sup>, all air and railway traffic were suspended. Polish citizens coming home from abroad had to undergo a compulsory 14-day home quarantine after having crossed the borders of our country. (Regulation dated March 13, 2020)

The subsequent restrictions were limiting people’s concentration to prevent horizontal transmission of the virus. March 10, the Government announced the cancellation of mass gathering events in the entire Polish territory. In the second place, restrictions were imposed in workplaces. It was recommended that employees should work from home.

Since March 12 educational institutions, including universities, schools, pre-schools and children’s clubs have been temporarily closed.

Confirming the policy of restrictions imposed so far the Polish government adopted additional prevention measures such as:

- social distancing - obligation to maintain a distance of at least 2 m between every two individuals;
- restrictions on using collective public transportations; and on the number of people attending religious services and funerals.
- it was also forbidden to enter and walk in green areas, river boulevards, botanical gardens and zoos, parks, forests and to ride bikes belonging to urban bicycle systems.
- other public facilities such as fitness clubs, swimming pools, museums, libraries and movie theaters were closed
- People under 18 were prohibited from leaving home without assistance

On April 16, 2020, the government introduced an obligation to wear face masks covering the nose and mouth. The Poles have been supportive of the government’s decisions and restrictions imposed on them. The „stay home” slogan was observed by most of the Polish people for a couple of weeks. Such approach seem to prevent horizontal transmission and explains the fact that a long flattened spread of the disease rather than an acute peak has been observed with respect to the COVID-19 epidemic in Poland.

Significant increases in the number of COVID-19 cases have been recorded only in places representing an enhanced epidemiological risk due to high concentration of people. The first of them was recorded on April 19: COVID-19 was diagnosed in 545 residents of long-term care institutions. The Ministry of Family, Labour and Social Policy, together with the heads of the respective provinces (voivodes), immediately implemented prevention measures and procedures. Admissions of new patients have been suspended and the flow of people coming to such facilities and leaving them has been limited. In some cases, additional medical staff from other institutions have had to be employed to help to take care of the residents of social assistance care homes.

Another large number of coronavirus cases has been recorded in coal mines in Silesia (southern Poland). Within merely two weeks, a fast growth of the positive test results made up one third of all the cases of infection in the country. The Province of Silesia has become the only place in Poland where the R-naught of the virus exceeds 1.

At the end of May the Ministry of Health informed that so far 22,303 people had been infected with coronavirus and 1025 had died of it. According to the data provided by the Central Statistical Office as of April 14th, the average age of a mortal victim is 72.9 years, while the mortality rate has been 3.6% .

Epidemiologists believe that the actual number of infected Poles could be much higher than the one detected and recorded. In the early days of the epidemic difficulties arose in organizing the work of laboratories responsible for performing SARS-CoV-2 tests. There were 11 such laboratories in Poland at the time.

Although their number increased within a short period of time to 135, they can still carry out no more than 10-20,000 tests a day. So far 104261 has been done in the country.

#### **Healthcare system in the time of the epidemic**

Pursuant to the Act on Special Measures Related to Preventing, Counteracting and Fighting COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them, the Minister of Health defined the scope of operations to be performed by the so-called one-purpose or isolation hospitals, which focused exclusively on providing care to patients with COVID-19. In total, 21 such hospitals have been created and they have been supported by more than 70 communicable disease wards in the whole country. 10,000 beds and about 1400 ventilators have been provided in such facilities.

According to the data of the Ministry of Health that even at the peak of the epidemic no more than 40% of beds reserved for COVID-19 patients were occupied. The problem with determining the order of access to scarce resources and care – e.g. to ventilators – has not occurred at all. The number of beds provided has been bigger than that of patients admitted. As of May 27th, about 20% of beds and 10% of ventilators were occupied.

The major problem however recorded in some medical centers – has been shortages of medical staff (both physicians and nurses). The issue results to some extent from a high percentage of medical staff infected with coronavirus at the beginning of the epidemic. According to the data published by the Central Statistical Office, as of April 4<sup>th</sup> 461 physicians, nurses and other medical staff members were infected with COVID-19, which constituted 17% of all the recorded cases. More than 4.500 health workers have undergone a home (4391) or collective (186) quarantine.. It might have been a consequence of massive shortages of personal protective equipment in healthcare facilities in the early days of the epidemic.

**Guidelines concerning treatment** Doctors could follow „The Guidelines on Measures to be Adopted for Cases of SARS-CoV-2 Infection” published by the Polish Association of Epidemiologists and Infectiologists. Their first version, updated after some time, was published on 31 March 2020. The most recent instructions come from 1 May 2020.

Agency for Health Technology Assessment and Tariff System also prepared recommendations for COVID-19 management entitled „Polish Diagnosis, Treatment and Organizational Recommendations on Care to Be Provided to People Infected or Exposed to Infection with SARS-CoV-2” on April 25, 2020.



An important element of the COVID-19 spread has been a 14-day quarantine for those who have had contact with infected people or suspected of being infected themselves.

The Regulation of the Minister of Health of March 26, 2020 defined the standards of organizational care in isolation rooms.

On April 7<sup>th</sup>, the Regulation of the Minister of Health defined the scope of data to be reported by medical entities on the National Register of COVID-9 Patients with respect to cases of infection.

### **Primary health care**

Reorganization of health care system oriented towards patients with COVID-19 and anti-epidemic actions resulted in limitation of availability of medical services in other areas. primary health care services, as well as specialized outpatient health care services.

Direct contacts with physicians/healthcare facilities have been replaced with on line consultations. An appointment at a doctor's office has been possible only if absolutely necessary.

At the same time, some services such as spa treatment, medical rehabilitation, health programs and dental care in the form of mobile laboratories stopped being provided. Mandatory vaccination under the Preventive Vaccination Plan has also been temporarily suspended.

Hospitals have been facing difficult situation. Scheduled admissions to hospitals and for medical procedures have been cancelled or postponed. Lots of healthcare centers have not been performing diagnostic technics (CT, MRI and PET-CT) and stopped the respective bookings. Patients have been admitted only in emergency cases requiring immediate hospitalization. Lots of people have avoided medical facilities out of fear of getting infected.

### **Telemedical solutions during the pandemic**

The epidemic has provided the opportunity to use telemedicine tools on a larger scale. IT solutions implemented previously in the Polish health care system (e-prescription, e-referral, Online Patient Account) have had a very positive impact on some areas of medicine.

It is estimated that, in case of primary medical care, in some cases about 90% of all the consultations have adopted the form of teleconsultation.

For the first time in the history of the Polish health care system IT tools have been used for monitoring of the epidemiological situation.

At first, observance of the 14-day quarantine imposed on Poles coming back from abroad or those who had contact with individuals infected with COVID-19 or suspected of being infected with it was checked by the police or representatives of other uniformed services.

On April 1st, the „home quarantine” app was launched. Individuals who had to undergo quarantine had to install and use the app to demonstrate their fulfillment of the quarantine duty.

As of end of May the Government has been gradually lifting the restrictions.

### **Links to legal sources:**

Coronavirus: information and recommendations, Website of the Republic of Poland

<https://www.gov.pl/web/coronavirus>

Recommendations of management in SARS-CoV-2 infection of the Polish Association of Epidemiologists and Infectiologists (published in Polish Archives of Internal Medicine)

[http://www.pteilchz.org.pl/wp-content/uploads/2020/05/Prof.Flisiak\\_2020-PAIM-COVID-19-recommendation-PTEiLChZ-eng.pdf](http://www.pteilchz.org.pl/wp-content/uploads/2020/05/Prof.Flisiak_2020-PAIM-COVID-19-recommendation-PTEiLChZ-eng.pdf)

2 March 2020 r. Law on Special Measures Related to Preventing, and Fighting COVID-19, and Counteracting Crisis Situations <http://dziennikustaw.gov.pl/DU/2020/374>

Council of Ministers' Decree of 31 March 2020 r. on restrictions in connection with the state of epidemic, <http://dziennikustaw.gov.pl/DU/2020/566>

## Country report on legislative measures undertaken in Serbia for the purpose of combating the Corona virus outbreak

*Marta Sjenicic*  
NCP for Serbia

### 1. A short description of the major legislative framework concerning communicable diseases

Law regulating issue of communicable diseases in Serbia is *Law on the protection of population from communicable diseases* (Official Gazette RS, no. 15/2016). Law prescribes different measures in the area of communicable diseases, among which also extraordinary measures for the protection of population from communicable diseases: pronouncing of epidemic of communicable diseases of considerable epidemiological significance (Article 50); different measures in extraordinary situations (Article 51 and 52); prevention of importing of communicable diseases into the country and their transmission into other countries (Article 53). These provisions contain specific measures, most of which have been implemented during COVID 19 pandemic.

In the COVID 19 outbreak, it became clear that several other general acts are relevant, as well as the by-legislation which was adopted for the purpose of preventing further spreading of COVID 19. These are:

- *Constitution of Republic of Serbia, Official gazette RS, no. 98/2006*
- *Law on reduction of risk of catastrophes and managing of emergency situations, Official gazette RS, no. 87/2018*
- *Criminal Code, Official gazette RS, no. 85/2005, 88/2005 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019), Article 238, non-acting in line with health regulation during the outbreak.*
- *Decisions of Government, Ministry of Health, Ministry of Labor, Employment, Veteran and Social affairs, as well as decisions of other ministries in their sector, related during outbreak situation*
- *Also, Law on social care, Official gazette RS, no. 98/2006, and Labor Law, Official gazette RS, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018, are relevant in some aspects related to working conditions and working time of the employees in health and social care sector, multisectoral cooperation, etc.*

### 2. Are there any guidelines concerning the treatment of patients suffering from coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest.

- Republic Institute of Public Health of Serbia “Dr Milan Jovanovic Batut” prepared the “Expert-methodological instruction on control of import and prevention of spreading of the new CORONA virus SARS-CoV-2 in the Republic of Serbia”.
- Institute for Public Health of RS issued several recommendations for acting in different settings related to prevention of spreading of infection.<sup>249</sup>
- One of the hospitals allocated for COVID 19 patients, Clinical – hospital centre “Dr Dragisa Misovic”, a tertiary level health institution in Beograd, adopted “Internal guidelines and procedures for treatment of the patients with COVID-19”, on March 22<sup>nd</sup>, 2020.

<sup>249</sup> [http://www.batut.org.rs/index.php?category\\_id=204](http://www.batut.org.rs/index.php?category_id=204)

- “The Handbook on COVID 19 Prevention and Treatment”, drafted by The First Affiliated Hospital, Zhejiang University School of Medicine, on the basis of China clinical experience, was translated to Serbian language.
- Government adopted the Decree on organization of work of residential social care institutions and organizations during extraordinary conditions.
- Ministry of Labour, Employment, Veteran and Social affairs has under its competence all Social residential institutions for long-term care of adults, elderly, children, people with intellectual disabilities, Centres for foster care and adoption, and also, partly, Centres for social work (which are based in the local communities, but have some public authorities transferred from the central level). Therefore, Ministry issued a number of Recommendations (before proclamation of state of emergency in the country and therefore, in most of the cases, not mandatory but recommendable), Instructions and Orders (after proclamation of state of emergency, thus mandatory). All of by-regulation related to the keeping hygiene in institutions and private residential institutions, ban of visits, ban of moving in and out of institutions, way of communicating, keeping social distance, manner of using protective equipment, etc.). Ministry recommended to the employees in the social residential institutions to form 15-days shifts in order to protect the residents from the infection. Most of the institutions accepted recommendation, and managed to keep the residents safe. Therefore, there was no need for prioritisation formal or informal, since the capacities of existing hospitals and newly formed temporary hospitals were enough to accept all infected persons.
- Pharmaceutical guidelines for COVID-19 of Faculty of Pharmacy, related to: clinical information and guidelines in therapy, employees in pharmacies, ways of transmission and incubation, interventions of pharmacists in pharmacies, processes in pharmacies, plans for unexpected situations, isolation and referring of patients, cleaning and disinfection, treatment, etc.
- Recommendation for biochemical laboratories on COVID-19.<sup>250</sup>
- Different NGOs created guidelines for their patients or other target groups: diabetes<sup>251</sup>, drug addicts<sup>252</sup>, assisted reproduction,<sup>253</sup> doping control in sports.<sup>254</sup>
- UNICEF issued guidelines for prevention of COVID in schools.<sup>255</sup>

### **3. Have certain medical services been suspended during the outbreak (e.g. non urgent health care)?**

Not officially. However, offer of “regular” medical services have decreased in time, due to the entering of CORONA 19 into healthcare institutions and, thus, the lack of medical staff, that is in isolation and on treatment.

Also, some hospitals were redetermined as the Covid-hospitals and only patients infected with Covid 19 were referred there. All the other patients were referred into, at this moment, “non-Covid hospitals”, and this made additional burden of non-Covid patients onto these hospitals. Therefore, health system managed to treat Covid patients and urgent non-Covid patients.

### **4. Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:**

<sup>250</sup> <http://pharmacy.bg.ac.rs/covid-19/>

<sup>251</sup> <http://www.novonordisk.rs/patients/diabetes-care/diabetes-and-COVID-19.html>

<sup>252</sup> <http://prevent.org.rs/covid-19-smernice-za-korisnike-droga/>

<sup>253</sup> <https://sansazaroditeljstvo.org.rs/asistirana-reprodukcija-i-covid-nove-smernice-eshre-a/>

<sup>254</sup> <https://judo.rs/news/1227/smernice-za-proces-doping-kontrole-tokom-epidemije-covid-19>

<sup>255</sup> <https://www.unicef.org/serbia/documents/glavne-poruke-i-mere-za-prevenciju-i-kontrolu-covid-19-u-%C5%A1kolama>

As already mentioned in the April report, new regulations have been introduced as the decisions of health bodies, interior, social, educational and other bodies, for their specific sectors.

Social distancing measures were all prescribed in binding documents, and introduced gradually, from the moment of proclaiming the extraordinary situation. Extraordinary conditions/situation was proclaimed on March 16<sup>th</sup>, 2020.

On March 10, it was recommended to the employees in the social and care system not to travel into the countries with intensive transmission of COVID-19, i.e. into the centres of epidemic. The same day, for the protection from COVID 19, entering into Serbia was temporarily banned, or entering and movement limited, for people coming from the areas with intensive transmission (in that moment): Italy, China, South Korea, Switzerland, Iran.

The general ban of grouping in the closed spaces was enacted on March 11<sup>th</sup>, 2020. There are prescribed necessary exceptions. On March 12, the road, rail and river traffic and border crossings were closed with neighbouring countries.

On March 16<sup>th</sup>, the control for travellers through airports and other border crossings, and the measures of quarantine, were introduced. For the persons that were treated from COVID 19, and after two negative tests released home, 14 more days of quarantine were prescribed as obligatory. The Commission allowing transits, as the exceptions from entering Serbia and moving within it, was formed.

From pronouncing of epidemic in Serbia (March 16<sup>th</sup>, 2020), due to their vulnerability, persons of 65 and above (in the places with more than 5000 inhabitants) and persons of 70 and above (in the places with less than 5000 inhabitants), have prohibition of leaving the apartments; the services for delivering them necessities for life were provided in the formal or informal way (through volunteering services or support of neighbours and families).

On March 16<sup>th</sup> all levels of schools were closed and the e-learning was introduced. The same day, all inhabitants of asylum centres were limited in moving.

For the purpose of social distancing, the decisions were adopted on limitation of movement in public spaces. They were more strict as the number of infected people grew and warm weather suitable for walking and enjoying the nature was coming (max. 5 persons, than 2 persons in the groups; in the peak of epidemic, 60 hours of quarantine (prolonged weekend) for the whole population, with the necessary exceptions; ban of moving after 5 P.M.; closed theatres, cinemas, restaurants and cafes, malls, green markets, shops – except grocery stores and pharmacies; closing parks and public places for recreation and sports; distance of two meters between two persons); minimizing the city and intercity local transportation.

On March 28, the decision was made to treat infected people with weaker symptoms in the adapted hospitals. This isolation is obligatory for such patients. Corona Centres on the primary health care level in Belgrade, were defined, as the triage centres.

On April 3<sup>rd</sup> (amended April 16<sup>th</sup>) Government adopted the Conclusion on setting the unique centralised software solution – information system COVID-19 (IS COVID-19), Official Gazette RS, no. 50/2020 and 57/2020) for the purpose of epidemiological surveillance related to COVID 19, and managed by the Institute of Public Health of Serbia.

Ministry of Social Affairs commenced issuing recommendations and instructions for the institutions it is competent for, on March 10<sup>th</sup>. These institutions are residential care institutions for elderly, children, people with intellectual disabilities and other residential institutions, centres for foster care and adoption, and partially centres for social work (for other services, in the community, the local municipalities are competent). These recommendations related to the manner of keeping hygiene, protection measures, ban of visits, education and information on hygiene and protective measures and other measures of prevention of infection spreading, everyday online reporting to Ministry, etc. On the April 6<sup>th</sup>, Ministry instructed the residential institutions to draft institutional Plan of measures and activities for prevention and suppression of COVID 19 spreading. Mid

of April, Ministry issued Recommendation for introduction of 15-days shift in the social residential institutions, with the purpose to protect service users from outside infection. This Recommendation was elaborated by further recommendations on how to organise switch of human resource teams each 15 days, how to test service users and service providers etc. The end of April/beginning of May, Ministry enacted the Instruction on the gradual involving the users into the social activities, walks, receiving the packages from outside family members and hygiene measures, etc. Mid of May, Ministry issued several instructions on the interim way of functioning of residential institutions towards social opening, but still keeping the users safe.<sup>256</sup> Also, the Republic professional commission for surveillance over the hospital infections of the Ministry of Health issued on April, 21<sup>st</sup>, the Recommendations for prevention of spreading of infections provoked by the Corona virus in residential institutions for adult and elderly people.<sup>257</sup>

The state of emergency was revoked on May 6<sup>th</sup>, and since then the preventive measures are being relaxed.

**5. Are there specific policies/guidelines concerning the screening of COVID 19 and/or the use of e-health technologies/applications processing personal data?**

Republic Institute of Public Health of Serbia “Dr Milan Jovanovic Batut” issued the “Expert-methodological instruction on control of import and prevention of spreading of the new CORONA virus SARS-CoV-2 in the Republic of Serbia”. This instruction contain also the case definition which encompass the target population for testing, which might be treated as organised screening.

The information system COVID-19 (IS COVID-19) is set by the decision issued in the Official Gazette RS, no. 50/2020 and 57/2020, for the purpose of epidemiological surveillance related to COVID 19. This system is managed by the Institute of Public Health of Serbia and should process the personal data of the tested and infected persons.

**6. Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?**

Medical Chamber introduced the solidarity fund for the physicians that were COVID 19-infected during the outbreak.

Also Government enacted the *Decree on the addition to the basic salary of the employees in the health institutions and employees performing the activities in the area of health, i.e. protection of health of population of Serbia, i.e. treatment and prevention of the COVID 19 epidemic* (Official Gazette RS, no. 48/2020 and 81/2020).

**7. Have there been cases before the courts relating to health law due to the coronavirus outbreak?**

There have been cases before the Constitutional court related the legality of proclaiming the State of Emergency, and also related to the legalilty of different decisions adopted on the basis of the State of Emergency decision. The Constitutional court decided that decision on proclaiming of SoE was legally/Constitutionally based. So far, decisions on other specific claims were not enacted.

Also, during State of Emergency, there were several proceedings lead against individuals claimed to be breaching SoE decision(s).

**8. A link to legal sources of your country (preferably in English)**

Legal sources relevant for this situation are not translated to English. Most of them could be found on the link: <http://www.pravno-informacioni-sistem.rs/>.

Some sources are available in the footnotes.

<sup>256</sup> <https://www.minrzs.gov.rs/sites/default/files/2020-06/Pregled%20akata%20minrzs%20o%20delovanju%20V10.pdf>

<sup>257</sup> <http://www.batut.org.rs/index.php?content=2066>

## SLOVENIA - SECOND COUNTRY REPORT: AFTER THE EPIDEMIC

*associate professor **Suzana Kraljić**  
University of Maribor, Faculty of Law  
Email: [suzana.kraljic@um.si](mailto:suzana.kraljic@um.si)*

### 1. Introduction

Slovenia declared an epidemic at 6 pm on 12 March 2020 based on Article 7 of the **Communicable Diseases Act**. There were 96 confirmed cases of infection in Slovenia that day, but no deaths. The first death was recorded on 14 March 2020. Compared to the statistics of 16 April 2020, they are as follows on 14 June 2020:

	Total cases	Death	Recovered	Active cases	Serious, Critical	Tot Cases / 1 mio	Death/ 1 mio	Total Tests	Tests/ 1 mio
16 April 2020 <sup>258</sup>	1.268	61	174	1,033	31	610	29	38.137	18.344
14 June 2020 <sup>259</sup>	1495	109	1.359	27	--	719	52	88.754	42.692

Source: Worldometer

On Thursday 14 May 2020 the "**Ordinance on the revocation of epidemic of contagious disease SARS-CoV-2 (COVID-19)**" was published in Slovene Official Gazette.<sup>260</sup> It comes into force on the next day, on Friday, and has been in force since 31 May. Based on a favorable epidemiological situation, on 15 May 2020, Slovenia with mentioned ordinance has become the first European country to declare its domestic coronavirus outbreak officially over. Despite declaring an end to the epidemic, the government kept measures such as widescale testing, contact tracing, and bans on public gatherings in place. It also remained the mandatory wearing face coverings in public spaces.

### 2. The major legislative framework concerning communicable diseases

#### 2.1 Constitution of the Republic of Slovenia<sup>261</sup>

Article 16 (Temporary Suspension and Restriction of Rights): *»Human rights and fundamental freedoms provided by this Constitution may exceptionally be temporarily suspended or restricted during a war and state of emergency...«*

<sup>258</sup> See Worldometer, accessed 16 April 2020:

<https://www.worldometers.info/coronavirus/> and <https://www.worldometers.info/coronavirus/country/slovenia/>.

<sup>259</sup> See Worldometer, accessed 14 June 2020:

<https://www.worldometers.info/coronavirus/> and <https://www.worldometers.info/coronavirus/country/slovenia/>

<sup>260</sup> Odlok o preklicu epidemije nalezljive bolezni SARS-CoV-2 (COVID-19) (Ordinance on the revocation of epidemic of contagious disease SARS-CoV-2 (COVID-19)): Uradni list RS, št. 68/20.

<sup>261</sup> Ustava Republike Slovenije (URS - Constitution of the Republic of Slovenia): Uradni list RS (Official Gazette), št. [33/91-I](#); [42/97](#) – UZS68; [66/00](#) – UZ80; [24/03](#) – UZ3a, 47, 68; [69/04](#) – UZ14; [69/04](#) – UZ43; [69/04](#) – UZ50; [68/06](#) – UZ121, 140, 143; [47/13](#) – UZ148; [47/13](#) – UZ90, 97, 99; [75/16](#) – UZ70a.

Article. 92 (War and State of Emergency): *»A state of emergency shall be declared whenever a great and general danger threatens the existence of the state. The declaration of war or state of emergency, urgent measures, and their repeal shall be decided upon by the National Assembly on the proposal of the Government. The National Assembly decides on the use of the defence forces.«*

Article 32 (Freedom of Movement): *»Everyone has the right to freedom of movement, to choose his place of residence, to leave the country and to return at any time. This right may be limited by law, but only where this is necessary to ensure the course of criminal proceedings, to prevent the spread of infectious diseases, to protect public order, or if the defence of the state so demands.«*

To the Constitutional Court of the Republic of Slovenia have been submitted various initiatives concerning the questions related to 'Covid-19 legislative'. For example the initiative for proceedings for the review of the constitutionality of article 100.e of the **Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy**.<sup>262</sup> According to the Constitutional Court of the Republic of Slovenia, the initiative did not open significant constitutional issues and was therefore rejected<sup>263, 264</sup>

## 2.2. Communicable Disease Act

The Communicable Disease Act<sup>265</sup> is the basic regulatory legal act in the field of communicable diseases. It provides general and specific measures to prevent and control them. On 10 April 2020, the Communicable Disease Act was amended. One of the most important changes is given with the new fourth paragraph of Article 7. Concerning the amendment, the epidemic of communicable disease and the infected or endangered area shall be declared or determined by the minister responsible for health. When the infected or endangered area is the entire territory of the Republic of Slovenia, the (general) epidemic is declared by the Government of the Republic of Slovenia. Also, the definition of the quarantine was amended as follows: *"Quarantine is a measure that restricts free movement and imposes mandatory medical examinations on healthy people who have been or are suspected of being in contact with someone who has the plague, viral hemorrhagic fever (Ebola, Lassa, Marburg) or a communicable disease for which the Minister responsible for the health or the Government of the Republic of Slovenia has declared an epidemic based on the fourth paragraph of Article 7 of this Act, at the time of its contagion."*

## 2.3 Patients' Rights Act

The **Patients' Rights Act**<sup>266</sup> is dedicated to the protection of patients' rights. It has 92 articles and defines 14 patients' rights.

Article 4(4) defines: *»Patients' rights may be restricted by laws in the field of public safety and public health and where the rights of other persons would be jeopardized.«*

## 2.4 Criminal Code

Article 177 of the **Criminal Code**<sup>267</sup> refers to the criminal offense of "Spreading of Contagious Diseases":

<sup>262</sup> (See more below) Zakon o interventnih ukrepih za zajezitev epidemije COVID-19 in omilitve njenih posledic za državljane in gospodarstvo (ZIUZEOP - Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy): Uradni list RS, št. 49/20.

<sup>263</sup> See U-I-181/20-4 (ECLI:SI:USRS:2020:U.I.181.20), 25 May 2020.

<sup>264</sup> Also other initiatives have been rejected or discarded: see U-I-73/20 (ECLI:SI:USRS:2020:U.I.73.20), 23 April 2020; U-I-94/20 (ECLI:SI:USRS:2020:U.I.94.20), 14 May 2020; or accepted U-I-83/20 (ECLI:SI:USRS:2020:U.I.83.20), 16 April 2020.

<sup>265</sup> Zakon o nalezljivih boleznih (ZNB - Communicable Diseases Act): Uradni list RS, št. 33/06 – official consolidated version (hereinafter: OCV), 49/20 – ZIUZEOP.

<sup>266</sup> Zakon o pacientovih pravicah (ZPacP – Patients' Rights act): Uradni list RS, št. 15/08; 55/17.

<sup>267</sup> Kazenski zakonik (KZ-1 – Criminal Code): Uradni list RS, št. 50/12 – OCV; 6/16 – popr.; 54/15; 38/16; 27/17; 23/20.

»(1) Whoever does not comply with regulations or orders, by which a competent authority has ordered a medical examination, disinfection, quarantine or other measures for the suppression or prevention of contagious diseases in human beings and thereby causes the spread of a contagious disease, shall be punished by a fine or sentenced to imprisonment for not more than one year. (2) The same punishment shall be imposed on anyone who does not comply with regulations or orders, by which a competent authority has ordered measures for the suppression or prevention of contagious diseases in animals and thereby causes the spread of a contagious disease to human beings. (3) Whoever commits the offense under paragraphs 1 or 2 of this Article by negligence shall be punished by a fine or sentenced to imprisonment for not more than six months. (4) If the act under paragraphs 1, 2 or 3 of this Article results in the death of one or more persons, the perpetrator shall be sentenced to imprisonment for not more than eight years for the offense under paragraphs 1 or 2 and not more than five years for the offenses under paragraph 3.«

## 2.5. Employment Relationships Act

Also, the **Employment Relationships Act**<sup>268</sup> refers in article 148 to ‘additional labor in cases of natural or other disasters’ or in article 169 to ‘change of labor due to natural or other disasters’.

## 2.6. Health Services Act

In article 23a the **Health Services Act**<sup>269</sup> provides that the **National Institute of Public Health** (Nacionalni inštitut za javno zdravje - NIJZ) also performs communicable disease monitoring and response to events that pose a threat to public health and the plan measures to control communicable and other diseases.

## 3. New special regulations introduced due to the coronavirus outbreak

On 20 March 2020, due to the Covid-19 situation, two acts have been adopted and all entered into force on 29 March 2020:

- A) **Act on the Interim Measure of Partial Reimbursement of Wage Compensation**<sup>270</sup> in art. 1 provides that to preserve jobs due to the effects of the COVID-19 communicable disease epidemic, the partial reimbursement of wages paid to workers from employers who are temporarily unable to provide work due to the epidemic's consequences shall be regulated and shall meet the requirements of this Act (so-called temporary waiting to work). The ZIUPPP also regulates the reimbursement of wages to workers who cannot work because of quarantine due to an epidemic situation. The ZIUPPP also regulates the deferral of payment of social security contributions by the self-employed as a measure to reduce the negative consequences of the outbreak.
- B) **Act on provisional measures for judicial, administrative, and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19)**<sup>271, 272</sup>.

<sup>268</sup> Zakon o delovnih razmerjih (ZDR-1 - Employment Relationships Act): Uradni list RS, št. 21/13, 78/13 – popr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – odl. US, 22/19 – ZPosS, 81/19.

<sup>269</sup> Zakon o zdravstveni dejavnosti (ZZDej – Health Services Act): Uradni list RS, št. 23/05 – OCV; 15/08 – ZPacP; 23/08; 58/08 – ZZdrS-E; 77/08 – ZDZdr; 40/12 – ZUJF; 14/13; 88/16 – ZdZPZD; 64/17; 1/19 – odl. US; 73/19.

<sup>270</sup> Zakon o interventnih ukrepih na področju plač in prispevkov (ZIUPPP - Act on the Interim Measure of Partial Reimbursement of Wage Compensation): Uradni list RS, št. 36/20; 49/20 – ZIUZEOP; 61/20 – ZIUZEOP-A; 80/20 – ZIUOOPE.

<sup>271</sup> Zakon o začasnih ukrepih v zvezi s sodnimi, upravnimi in drugimi javnopravnimi zadevami za obvladovanje širjenja nalezljive bolezni SARS-CoV-2 (COVID-19) (ZZUSUDJZ - the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19)): Uradni list RS, št. 36/20; 61/20.

<sup>272</sup> The temporarily suspension of the deadlines expired on 1 June 2020. The deadlines that started to run before the imposition of provisional measures are run further since that day, and the deadlines that did not run during the duration of the provisional, continued to run since that day.



C) On 2 April 2020 was adopted **Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy**,<sup>273</sup> which entered into force on April 11, 2020, which brought changes also to ZNB.

Additional to mentioned legal acts, On 29 May 2020 the **Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic**<sup>274</sup> has been adopted.

In connection with the COVID-19 pandemic situation, several by-laws have also been adopted in Slovenia (for more see <http://www.pisrs.si/Pis.web/aktualno>).

#### 4. Guidelines concerning the treatment of patients suffering from coronavirus

On March 13, 2020, the National Plan on the Protection and Relief in the Event of Epidemic or Pandemic Infectious Diseases in Humans<sup>275</sup> came into use.

In cooperation between Ministry of Health, the Association of Psychiatrists of the Slovenian Medical Association and the Extended Professional College of Psychiatry, were prepared the **guidelines for the provision of psychiatric services** in outpatient activities, in hospitals, at the Forensic Psychiatry Unit, as well as for treatment in institutions (for example institution for elder persons, asylum homes, prisons).

The director of a **prison** facility may, of his own motion, where necessary to prevent the spread of the Covid-19 epidemic, move a convicted person from one institution to another or another department (art. 11 ZZUSUDJZ). It is also possible, under certain conditions, for early release and suspension of imprisonment (art. 13 ZZUSUDJZ).

NIJZ prepared several instructions and recommendations:

- a) Instructions for preventing acute respiratory infections for employees of homes for the elderly and in other social welfare institutions;<sup>276</sup>
- b) Recommendations for the treatment of the deceased with COVID-19 (but suspected COVID-19);<sup>277</sup>
- c) New viral epidemic COVID-19 diseases and elder;<sup>278</sup>
- d) Pregnancy and childbirth at the time of the spread of COVID-19 infection;<sup>279</sup>
- e) Recommendations for extremely vulnerable groups of persons at the time of the spread of COVID-19 infection;<sup>280</sup>
- f) Children and adolescents at the time of the spread of COVID-19 infection;<sup>281</sup>
- g) Instructions for the blind at the time of the spread of COVID-19 infection;<sup>282</sup>
- h) Coronaviruses in pets - dogs and cats.<sup>283</sup>

<sup>273</sup> Zakon o interventnih ukrepih za zaježitev epidemije COVID-19 in omilitev njenih posledic za državljane in gospodarstvo (ZIUZEOP - Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy): Uradni list RS, št. 49/20; 61/20.

<sup>274</sup> Takon o interventnih ukrepih za omilitev in odpravo posledic epidemije COVID-19 (ZIUOOPE - Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic): Uradni list RS, št. 80/20.

<sup>275</sup> Državni načrt zaščite in reševanja ob pojavu epidemije oziroma pandemije nalezljive bolezni pri ljudeh. Available: [http://www.sos112.si/slo/tdocs/epidemija\\_pandemija.pdf](http://www.sos112.si/slo/tdocs/epidemija_pandemija.pdf).

<sup>276</sup> Available at: [https://www.nijz.si/sites/www.nijz.si/files/uploaded/navodila\\_zaposleni\\_dso.pdf](https://www.nijz.si/sites/www.nijz.si/files/uploaded/navodila_zaposleni_dso.pdf)

<sup>277</sup> Available at: [https://www.nijz.si/sites/www.nijz.si/files/uploaded/priporocila\\_postopanje\\_z\\_umrlimi\\_.pdf](https://www.nijz.si/sites/www.nijz.si/files/uploaded/priporocila_postopanje_z_umrlimi_.pdf)

<sup>278</sup> Available: [https://www.nijz.si/sites/www.nijz.si/files/uploaded/epidemija\\_nove\\_virusne\\_bolezni\\_covid19\\_in\\_starejsi.pdf](https://www.nijz.si/sites/www.nijz.si/files/uploaded/epidemija_nove_virusne_bolezni_covid19_in_starejsi.pdf)

<sup>279</sup> Available at: <https://www.nijz.si/sl/nosečnost-in-porod-v-casu-sirjenja-okuzbe-s-covid-19>

<sup>280</sup> Available at: <https://www.nijz.si/sl/priporocila-za-izjemno-ranljive-skupine-oseb-v-casu-sirjenja-okuzbe-covid-19>

<sup>281</sup> Available at: <https://www.nijz.si/sl/otroci-in-mladostniki-v-casu-sirjenja-okuzbe-covid-19>

<sup>282</sup> Available at: <https://www.nijz.si/sl/navodila-za-slepe-v-casu-sirjenja-okuzbe-s-covid-19>

<sup>283</sup> Available: <https://www.nijz.si/sl/koronavirusi-pri-hisnih-ljubljenskih-psih-in-mackah>

## 5. Suspension of certain medical services during the outbreak and after

**Decree on interim measures for the safety of activities incident to the control of the COVID-19 epidemic,**<sup>284</sup> adopted on 31 March 2020, provided that the prevention activities, dental services, except emergency and those whose omission would lead to permanent damage to general and dental health, and home births have been suspended. It further stipulated that all specialist examinations and surgeries, except those indicated by the urgent and very urgent, oncology services and treatment of pregnant women, have been canceled. The decree also provided for the redeployment of health-care professionals in the public health service network to perform tasks related to curbing and managing the COVID-19 epidemic, integrating concessionaires, and ensuring that health care is provided in nursing homes (long-term care homes). The Decree has expired on 9 May 2020.

## 6. Fewer restrictions concerning movement in public spaces

Since the end of April 2020, the restrictions concerning movement in public places are gradually reduced and removed. **Ordinance on the prohibition of the recruitment of people in educational establishments and universities and independent higher education institution**<sup>285</sup> temporarily prohibited the gathering of people in educational institutions and universities and independent higher education institutions. On 18 May 2020, the pupils of the first triad of primary schools, and secondary school seniors (graduates, Slovene: 'maturanti') returned to schools and kindergarten opened doors again for healthy children. Today (15 June 2020), all pupils of primary schools returned to schools.

Since 15 June 2020, having regard to the recommended guidelines of the Ministry of Health and the National Institute of Public Health for the Prevention of SARS-CoV-2 Virus Infection:

- a) the public gathering up to 500 persons is again possible
- b) sports events can also be attended by spectators;
- c) it is possible to organize international sports competitions;

On 15 June 2020 Slovenia is also opening the **border** with Italy and the small border crossings with Croatia.

## 7. A link to legal sources of your country (preferably in English)

Constitution (eng): <https://www.us-rs.si/en/about-the-court/legal-basis/constitution/>

Criminal Code (eng): <https://www.wipo.int/edocs/lexdocs/laws/en/si/si045en.pdf>

Communicable Diseases Act (slo): <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO433>

Patients' Rights Act (slo): <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4281>

Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (also called Mega Covid-19 Act) (slo): <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8190>

By-laws on Covid-19 (slo): <http://www.pisrs.si/Pis.web/aktualno>

<sup>284</sup> Odlok o začasnih ukrepih za varnost dejavnosti, ki so nastale pri obvladovanju epidemije COVID-19 (Ordinance on interim measures for the safety of activities incident to the control of the COVID-19 epidemic): Uradni list RS, št. 40/20; 49/20.

<sup>285</sup> Odlok o začasni prepovedi zbiranja ljudi v zavodih s področja vzgoje in izobraževanja ter univerzah in samostojnih visokošolskih zavodih (Ordinance on the prohibition of the recruitment of people in educational establishments and universities and independent higher education institution): Uradni list RS, št. [25/20](#); [29/20](#).

## Overview of the COVID-19 legal framework in Spain: from the ‘state of alarm’ to the ‘new normal’

*Joaquín Cayón-De las Cuevas*  
*Juan I. Ochagavía-Colás*  
 IDIVAL- University of Cantabria

### 1. Major legislative framework concerning communicable diseases.

There are several Spanish norms that allow public authorities to adopt measures in case of communicable diseases. Firstly, the 1986 General Health Law (Law 14/1986, of 25 April 1986) lays down that, in case of a reasonable suspicion of an extraordinary risk to health, authorities are allowed to adopt preventive measures such as products immobilization, suspension of activities, business lock-down, and any other restrictions considered to be justified in terms of public health.

Likewise, Organic Law 3/1986, of 14 April 1986, on Special Measures in the field of Public Health, broadly empowers health authorities. In order to control transmissible diseases, it points out that health authorities, in addition to carrying out general preventive actions, may adopt appropriate measures for controlling sick persons or their contacts. More comprehensively, the Public Health Law (Law 33/2011, of 4 October 2011) regulates public health as a whole, also including preventive measures and remedies, as well as a set of infringements and penalties. In addition to these national regulations, there is also a legal framework at the regional level. Although Spain is not formally a federal state, its seventeen regions —so called Autonomous Communities— are responsible for implementing preventive measures in the field of healthcare.

On 14 March 2020 the national government declared a ‘*state of alarm*’ through the Royal Decree 463/2020 of 14 March 2020. The state of alarm is a constitutional mechanism that allows for the limitation of certain fundamental rights. One of the goals of the declaration of a ‘state of alarm’ —a formal type of public emergency— was the attribution to the national government of the sole command of the crisis management. Otherwise, this power would have corresponded to Autonomous Communities.

Among other measures, the state of alarm has involved the confinement of the whole population and the closure of most activities and business. Subsequently, since 11 May 2020, measures adopted according to the state of alarm rules have been relaxed under a de-escalation transition plan. This plan consists of four phases of progressive relaxation, applied asymmetrically according to the epidemiological evolution in each Spanish region. The state of alarm ended on 21 June 2020, giving way to what is known as the ‘new normal’. This legal notion (‘new normal’) implies the continuity of certain preventive measures such as social distancing and, failing that, the compulsory use of masks. This ‘new normal’ will last until the national government declares the coronavirus crisis is over once a vaccine or a medical treatment is discovered.

An English version of the Spanish legal framework on Covid-19 measures can be found at this link from the Official Gazette State. <https://www.boe.es/index.php?lang=en>

### 2. Guidelines concerning the treatment of patients suffering from coronavirus.

Different protocols and guidelines for action have been approved by the Ministry of Health at the soft law level during coronavirus. The following are worthy of note:

(a) Protocol for action against the coronavirus.

- (b) Guidelines for management of coronavirus in the emergency department.
- (c) Guide to the management of Covid-19 in primary care and home care.
- (d) Guidelines for the prevention and control of infection in the management of patients with Covid-19
- (e) Procedure for action against the coronavirus for the Occupational Risk Prevention Services.
- (f) Guidelines for health and social care professionals to deal with Covid-19.
- (g) Procedure for the management of corpses in cases of Covid-19.
- (h) Recommendations for Covid-19 to nursing homes and social health centres.
- (i) Guidelines for the management of pregnant women and newborns with Covid-19.
- (j) Clinical management of Covid-19: Hospital care.
- (k) Clinical management of Covid-19: Medical treatment.
- (l) Clinical management of Covid-19: Intensive Care Units (ICU).
- (m) Pediatric management of Covid-19 in primary care.
- (n) Management, prevention and control of Covid-19 in Dialysis Units.
- (o) Scientific-technical report: coronavirus disease.
- (p) Recommendations in radiotherapy oncology services for the management, prevention and control of Covid-19.
- (q) Guide for the update of rapid tests against Covid-19 antibodies.
- (r) Recommendations for obtaining plasma from Covid-19 convalescent donors.
- (s) Priorities for the vaccination program during the alarm state.
- (t) Recommendations in penitentiary centres regarding Covid-19.
- (u) Recommendations on the use of masks for the general population.
- (v) Interpretation of diagnostic tests against SARS-CoV-2.
- (w) Strategy for diagnosis, surveillance and control in the transition phase of the Covid-19 pandemic.
- (x) Recommendations for safe surgery scheduling during the transition period of the COVID 19 pandemic.
- (y) Guide for identification and follow-up of Covid-19 case contacts
- (z) Instructions on performing diagnostic tests for Covid-19 at the enterprise level.
- (aa) Collection and transport of samples for SARS-CoV-2 PCR diagnosis

### **3. Medical services suspended during the outbreak**

Since the declaration of the state of alarm was adopted primary and hospital care consultations have been postponed, as well as non-urgent appointments. There has also been a notable delay in surgical interventions. Suspensions have been adopted by the Autonomous Communities according to the epidemiological context of each region.

It is important to point out that most of Spanish hospitals have been sectorized so that there is a covid side for treating patients infected by coronavirus and a non-covid side for regular care. Currently, within the 'new normal' period, hospital and care services are operating with the usual frequency, but maintaining prophylactic and hygiene measures.

### **4. New regulations within the field of health law due to the coronavirus outbreak**

#### *a) Restrictions concerning movement in public spaces*

The declaration of the state of alarm by means of Royal Decree 463/2020 established multiple restrictions that affected basic freedoms such as the free movement of persons, the use of public spaces, the closure of

parks, commercial, cultural and sport facilities, as well as the closure of universities and teaching centres. At the middle of the alarm period restrictions on free movement were relaxed but there were special time slots for each type of person according to their age, under 14 years-old, adults—including people from 14 to 17—and elderly.

In the current phase of ‘new normal’ the crisis management has returned to each Autonomous Community which is allowed to establish their own restrictions. At this time, we are therefore faced with an asymmetric range of limitations for public health reasons. Two blocks of regions can be clearly distinguished. On the one hand, those that have relaxed their restrictions because they are in a favourable situation with a low rate of infection. On the other hand, regions that keep restrictions by limiting the number of people to a percentage of their maximum capacity in bars, restaurants, hotels, sports facilities and other public spaces.

#### *b) Restrictions concerning ‘social distancing’*

Measures of social distancing have also been implemented in Spain. Indeed, contacts in public or private spaces have been restricted, including visits to elderly people in residences and inmates in prisons. Attendance at wakes, cemeteries and spaces for religious worship has also been limited. The most recent regulation laying down certain restrictions has been implemented via the Royal Decree Law 21/2020 of 9 June 2020. According to this norm the safety distance between persons has decreased from 2 metres to 1.5 metres as it was initially adopted. If this distance cannot be respected it is compulsory for people over 6 years-old to wear a mask both outdoor and indoor. Obviously, persons living together are excepted. The mask is also compulsory for travelling on air, sea, bus or rail transport, under a penalty up to 100 euros.

### **5. Policies and guidelines concerning the screening of Covid-19 and the use of e-health technologies/applications processing personal data**

Compliance with personal data protection regulations has not been affected during the alarm state. In this regard, the aforementioned Royal Decree-Law 21/2020 provides that the processing of information of a personal nature shall be carried out in accordance with the GDPR and the domestic framework (2018 Data Protection Law and 1986 General Health Law).

According to this legal framework the purpose of the processing should be monitoring and epidemiological surveillance of the Covid-19 to prevent exceptional situations of particular seriousness on the ground of the public interest in the specific field of public health.

Data controllers for coronavirus data are Autonomous Communities and the Ministry of Health, within the scope of their respective competences. Both institutions must guarantee the application of the mandatory security measures resulting from the corresponding risk analysis, taking into account that processing affects health as a special category of personal data. Finally, the exchange of data with other countries is governed by the GDPR, taking into account Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and the revised International Health Regulations (2005) adopted by the 58th World Health Assembly in Geneva on 23 May 2005.

Royal Decree-Law 21/2020 also contains provisions on case detection and reporting, ensuring that health services will perform a diagnostic test by PCR or another molecular diagnostic technique, as well as any

suspected case of coronavirus. This diagnosis should be carried out as soon as possible after symptoms are detected. Health authorities from the Autonomous Communities must report information on COVID-19 cases to the national Ministry of Health. In the same way public and private laboratories authorized in Spain must also report diagnostic tests for the detection of SARS-CoV-2 by PCR or other molecular tests. In this regard, laboratories must send data on the tests performed to the Ministry of Health and to the Autonomous Community where they are located.

Finally it must be emphasized that the Spanish Data Protection Agency has issued reports and recommendations on data processing related to Covid-19, focusing on *geolocation* apps, *body temperature measurements*, and, in general, the use of artificial intelligence for preventing the coronavirus outbreak.

## **6. Provisions regarding liability**

In general, health centres are subject to the civil liability system provided for by the Civil Code. In the case of public health centres, there are special rules on the liability of public administration in case of wrong performance (Law 40/2015, of 2 October, on the Legal System of the Public Sector). In addition to these general rules, it is possible to find special regulations within the norm that regulates the state of alarm (Organic Law 4/1981, of 1 June 1981, on states of alarm, exception and siege). It provides that those who suffer damages as a result of the application of decisions during these emergency legal scenarios have the right to be compensated. There are no improved occupational injury schemes for health workforce or civil/criminal liability immunity for healthcare professionals.

## **7. Cases before the courts relating to health law due to the coronavirus outbreak**

Several issues related to the Covid-19 outbreak have been brought to court. Thus, criminal investigations have been initiated against some public authorities for an alleged offense in failing to adopt in advance measures to restrict some public meeting. For example, the government delegate in the Community of Madrid has been criminally prosecuted for failing to ban the Women's Day demonstration on 8 March. However, the lawsuit has recently been dismissed

In the working field, health professionals have also sued hospitals for not providing enough protection material to perform their work. There have been convictions and acquittals. The latter argue that the hospitals' obligation to provide individual protection material to health workers is an obligation of means and not of result. In the absence of material available, hospitals would be exempt from liability if there is an evidence that they had exercised the due diligence in achieving it, even if the result was not successful. There have also been lawsuits filed for the lack of healthcare provided to elderly residents in geriatric homes. Applicants complain about the delay in being referred to hospitals. Public authorities have also been sued for prioritizing younger patients over older ones in intensive care units. No ruling from courts have been adopted yet.

## Covid-19 update Sweden

*Professor Titti Mattsson,  
Director of the Health Law Centre for Lund University  
and Amelie Kraft, Administrative coordinator for the Centre.*

### Overview

Sweden has had a distinctive approach for combatting the spread of the Covid-19 virus compared to most European countries.<sup>286</sup> Its constitutional framework does not formulate a possibility of a state of exception scenario and the law concerning communicable diseases does not provide measures which would routinely put civil and human rights out of play. As a consequence, Sweden has not been on an official lockdown during the rise of Covid-19 and most prohibitions have not been combined with penalties. Instead, the legal actions taken against the spread have been taking the form of mild restrictions and recommendations. Some of these have recently been loosened up whereas others remain.

This text will mainly focus on recent changes in policies in the combat against the spread of the virus. Worth noticing is that the fighting measures have not been as drastic as we have seen in other parts of Europe during the spring. There are some practical and legal reasons for this which were described in greater details in the first special issue regarding the coronavirus outbreak.<sup>287</sup> There are however three aspects which play a significant part in the governments decision-making during this crisis will therefore be briefly noted as an introduction to this analysis of the current situation in Sweden.

First, the Swedish Communicable Diseases Act are qualified by both the need for strong scientific indication of the necessity and effectiveness of each measure and a proportional respect for the personal integrity of the population. This proportionality assessment is much influential in all actions taken by the Government and the Public Health Agency. It is also reflected in the fact that some restrictions are no longer considered necessary or proportional although the virus is still tangible for the healthcare services. Second, the explanation to the governments use of ‘recommendations’ or ‘general advice’, produced by the Public Health Agency, can be found in Sweden’s tradition of strong institutional reliance on expertise provided by politically independent institutions. All recommendations are supposed to be based on science or the best available knowledge and are not necessarily connected to a political decision or legislation. Third, and finally, Sweden has a low population density and is also characterized by administrative decentralization. Healthcare and welfare services (including palliative care, rehabilitation and care for the elderly and persons with special needs), are run respectively by 21 regions and 290 municipal authorities, coordinated by the National Board of Health and Welfare.

As of 17 of June 2020, there were over 5 000 deaths in Sweden related to the coronavirus. While the death rate is severely high, the healthcare has still managed the situation well in with regard to the intensive care. At the moment of writing, there are 2 383 people that are being cared for in hospitals and the maximum capacity is estimated up to 3 259 care places.<sup>288</sup>

<sup>286</sup> Mattsson T & Nordberg A, ‘CoViD-19 pandemic in Sweden: measures, policy approach and legal and ethical debates’ (2020) 15 *BioLaw Journal/Rivistadi BioDiritt* 731-739.

<sup>287</sup> Mattsson T & Kraft A, ‘Legislative framework, guidelines and restrictions’, EAHL newsletter – Special issue on legal landscape concerning the coronavirus outbreak, April 2020, 43. Available at: <https://eahl.eu/sites/default/files/NEWSLETTER.pdf>

<sup>288</sup> Svenska Intensivvårdsregistret SIV (‘The Swedish Intensive care register’), ‘COVID-19 in Swedish intensive care’. Available at: <https://www.icuregswe.org/en/data--results/covid-19-in-swedish-intensive-care/>

## Removed recommendations

The recommendations from the Public Health Agency have been mildly imposed on every individual in Sweden during the spring. Gradually, these recommendations how to behave in the public sphere are now changing or taken away. When the recommendations gradually are removed, the change will have a practical effect on the Swedish people's behavior in society. One important removal of a recommendation is that from June 15 it is no longer required that domestic personal travels of longer distance needs to be essential or necessary, given that the traveller is symptom-free. This decision to remove the former recommendations of geographical limits is foremost based on a national statistical reduction in the spread of infection in the country. It is, however, also based on the assumption that everyone will take on a continued personal responsibility and follow the recommendations on social distance.<sup>289</sup>

Another removal of a national recommendation is that as of June 14, the Public Health Authority has decided to change its regulations and general advice concerning sport events and physical activities. This means that sport events such as public matches, training matches, competitions and cups are allowed, on all levels. The stated motive behind the decision is that the Public Health Agency considers sport and physical activity being an important part for the public health in Sweden.<sup>290</sup>

A third removed recommendation is the obligation of education on distance for students in the upper secondary school, colleges, universities, municipal adult education, vocational college etc. This decision will especially have a tangible effect on the everyday life of upper secondary students since the Public Health Agency stated that regular classroom tutoring will be available for them from the fall of 2020. The change is important for the Swedish authorities in light of every child's right to free education<sup>291</sup>, especially since the United Nations Convention on the rights of the child was to be fully implemented into the Swedish legislation from the beginning of the year. For education aimed for adults, this may however continue to be given in part at a distance in order to reduce the spread of infection.<sup>292</sup> This approach means, according to the Swedish Public Health Agency, to hold distance education whenever possible, as for theoretical parts, but resuming teaching in place in the premises for practical elements. Ultimately, it is up to the principal to help minimize the spread of infection in the way that best suits the business, in every level of education. The new recommendation applies from the 15 of June.<sup>293</sup>

A final change of recommendation came from the Ministry of Foreign Affairs. The 18 of June, it decided to cancel the recommendation of not taking unnecessary trips to the following countries: Belgium, France, Greece, Iceland, Italy, Croatia, Luxembourg, Portugal, Switzerland and Spain. For other countries in the EU, EES and Schengen, the recommendation remains until 15 July. For travels to countries outside the EU, the EEA and the Schengen area, the recommendation of unnecessary travel is still extended until 31 August 2020.<sup>294</sup>

<sup>289</sup> Ministry of Health and Social Affairs, announcement from 9 of June 2020. Available at: <https://www.regeringen.se/artiklar/2020/06/lattade-reserestriktioner-i-sommar/>

<sup>290</sup> Public Health Agency, announcement from 29 of May 2020. Available at: <https://www.folkhalsomyndigheten.se/nyheter-och-press/nyhetsarkiv/2020/maj/idrottstavlingar-och-matcher-tillats/>

<sup>291</sup> See especially article 28(b), United Nations Convention of the Rights of the Child, considering free education.

<sup>292</sup> Swedish department of education, announcement from 29 of May 2020. Available at:

<https://www.regeringen.se/pressmeddelanden/2020/05/kravet-pa-distansundervisning-lattas-upp/>

<sup>293</sup> Public Health Agency, announcement from 29 of May 2020. Available at: <https://www.folkhalsomyndigheten.se/nyheter-och-press/nyhetsarkiv/2020/maj/gymnasieskolorna-kan-oppna-till-hostterminen/>

<sup>294</sup> Ministry of Foreign Affairs, announcement from 17 of June 2020. Available at:

<https://www.regeringen.se/pressmeddelanden/2020/06/ud-avradan/>



## Restrictions still at place

Legislative amendments due to the Covid-19 outbreak has so far been limited to a general prohibition of visitors in elderly care facilities and a limitation of physical general gatherings and public events with more than 50 people in public spaces and establishments open to the public. There are yet not any decisions to remove these restrictions. Both the amendments have however been problematic. Although the national visitors' restriction, there has been a broad national critique that elderly care facilities have suffered from unstoppable transmission of the Covid-19 virus.<sup>295</sup> This critique does consequently raise a broader scepticism to how elderly care is organized in relation to health care. The Swedish government has declared that the high death rates at the homes for older persons are mainly due to unsatisfied conditions in the elderly care system generally and that heavy measures to improve the situation in the municipalities are urgently needed.

Furthermore, the restriction of public gatherings has recently shown to be particularly limiting as it has been a profound interest from the public to protest in support of the Black Lives Matter movement. The right to demonstrate has not been denied by the Swedish police on the ground of a potential risk of that more than 50 people would attend the demonstrations. However, most demonstrations have had to later be dissolved at the place according to the law.

## REPORT regarding legislative measures in order to combat the coronavirus outbreak in Ukraine

*Khrystyna Tereshko, NCP for Ukraine*

### 1. A short description of the major legislative framework concerning communicable diseases.

During March-May 2020, in Ukraine, Ukraine there were adopted a number of regulations on combating the spread of coronavirus infection, including the following.

1. Law of Ukraine “On Amendments to Certain Laws of Ukraine in order to increase the capacity of the health care system of Ukraine to counteract the spread of coronavirus disease (COVID-19)” of 7 May 2020. The named law provides for mandatory outpatient and inpatient testing for all individuals with symptoms of coronavirus disease, as well as those who have been in contact with patients with COVID-19. In addition, mandatory testing applies to physicians who work in medical institutions with such patients. The law provides for the right to involve interns and specialists who do not yet have a qualification category on a voluntary basis to counteract the spread of coronavirus, and defines the restrictions on such involvement. In addition, the Law provides for the payment of temporary disability benefits in the amount of 50 percent of the average salary (income), regardless of length of service. If medical professionals are in treatment or self-isolation, they are provided with the payment of temporary disability benefits in the amount of 100 percent of the average salary, regardless of length of service.

2. Law of Ukraine “On Amendments to Article 39 of the Law of Ukraine ‘On Protection of the Population from Infectious Diseases’ regarding additional safeguards of the rights of medical and other employees engaged in the protection of the population from infectious diseases and their families” of 7 May

<sup>295</sup> See e.g. SVT Nyheter, ‘SVT granskar: Så tog sig coronaviruset in på Sveriges äldreboenden’ Swedish television, 10 May 2020. Available at: <https://www.svt.se/nyheter/inrikes/svt-granskar-sa-tog-sig-coronaviruset-in-pa-sveriges-aldreboenden>

2020. This law aims to establish additional safeguards for the rights of health care practitioners to insurance benefits in the event of a coronavirus infection.

3. Cabinet of Ministers of Ukraine Resolution “On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine and the stages of anti-epidemic measures mitigation” No392 of 20 May 2020. According to the named Resolution, quarantine in Ukraine was extended until 22 June 2020 with the approval of the stages of withdrawal. Weakening of anti-epidemic measures (adaptive quarantine) is introduced in the regions with a favorable epidemic situation.

**2. Are there any guidelines concerning the treatment of patients suffering from coronavirus, please also include any guidelines concerning priority of patients due to scarcity of resources. Guidelines applicable outside the hospitals (e.g. in long-term care homes, prisons, asylum centers) are also of interest?**

According to the medical standards of health care for patients with COVID-19 provision, inpatient treatment shall be provided to the following categories of patients:

- patients with suspected / confirmed COVID-19 in moderate and severe condition, as well as those with symptoms of pneumonia or respiratory failure;

- patients, regardless of the severity of the condition, who belong to the risk group of complications.

This risk group includes patients with:

- severe hypertension,
- decompensated diabetes mellitus,
- immunosuppressive conditions,
- severe chronic pathology of the respiratory and cardiovascular systems,
- renal failure,
- autoimmune diseases,
- severe allergic diseases,
- cerebrovascular diseases in the stage of decompensation,
- cancer.

Upon arrival of the patient at the health care facility, medical sorting is performed according to the severity of the disease, the need to initiate health care and the presence of SARS (severe acute respiratory syndrome) associated with COVID-19.

Depending on the patient’s condition and classification, specialists provide appropriate health care. All hospitalized patients with COVID-19 are given prevention treatment of common complications.

Pregnant women with suspected COVID-19 should be hospitalized in a specialized hospital, all therapy should be carried out in accordance with the standards of pregnant women treatment.

All relevant standards were approved by the Ministry of Health Order “On organization of health care for patients with coronavirus disease (COVID-19)” No772 of 28 March 2020, with further amendments. They are based on the recommendations of the World Health Organization, updated after the spread of the disease outside China, and are adapted to the needs of the healthcare system of Ukraine.

**3. Have certain medical services been suspended during the outbreak (e.g. non urgent health care)?**

According to the Resolution of the Cabinet of Ministers of Ukraine “On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, and stages of mitigation of anti-epidemic measures” No392 of 20 May 2020, it is prohibited to carry out planned hospitalization measures for healthcare facilities during the quarantine period, except the following:

- planned hospitalizations in regions where beds in healthcare facilities designated for hospitalization of patients with a confirmed case of COVID-19 are less than 50 percent. Permission for planned hospitalization in the region is established by the decision of the regional commission on technogenic and ecological safety and emergencies, which is posted on the official website of the Cabinet of Ministers of Ukraine (<http://covid19.gov.ua>);

- provision of health care due to the complicated course of pregnancy and childbirth;
- providing health care to pregnant women, parturients, newborns;
- providing health care in specialized departments of healthcare institutions to patients with cancer;
- providing palliative care in an inpatient setting;
- carrying out other urgent hospitalization measures, if as a result of their transfer (postponement) there is a significant risk to life or health.

Patients receiving health care in connection with planned hospitalization measures are subject to mandatory testing for COVID-19 in accordance with the standards of the Ministry of Health.

#### **4. Have new regulations been introduced within the field of health law due to the coronavirus outbreak, particularly: what is the main content of these laws:**

**a. Restrictions concerning movement in public spaces (curfew, limitations regarding how many members in a group, closing of parks etc.)**

**b. Restrictions concerning “social distancing” concerning number of meters between people, inside and outside. Please specify whether the restrictions are in form of guidelines or legal binding instruments (and date for latest amendment)**

According to the Cabinet of Ministers of Ukraine Resolution “On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine and the stages of anti-epidemic measures mitigation” No392 of 20 May 2020 (as amended and supplemented on 3 June 2020), the following events are prohibited for the quarantine period:

- 1) stay in public buildings and structures, public transport without wearing personal protective equipment, including respirators or protective masks that cover the nose and mouth, including self-made;
- 2) being on the streets without identity documents confirming citizenship or special status;
- 3) arbitrarily leave places of self-isolation, observation;
- 4) visits to educational institutions by its applicants;
- 5) holding mass (cultural, entertainment, sports, social, religious, advertising and other) events with more than 10 participants;
- 6) the work of catering establishments (restaurants, cafes, etc.), shopping and entertainment centers (except for the shops located in them), the activities of establishments providing accommodation services, entertainment establishments, fitness centers, cultural institutions;
- 7) implementation of regular and irregular transportation of passengers by road in urban, suburban, intercity, intra-regional and inter-regional communication, in particular passenger transportation on city bus routes in the mode of minibus;
- 8) other measures provided by law.

It should be emphasized that the same Resolution introduces the so-called adaptive quarantine, i.e., in the territory of regions with a favorable epidemic situation, the mitigation of anti-epidemic measures is being introduced.

#### **5. Are there specific policies/guidelines concerning the screening of COVID19 and/or the use of e-health technologies/applications processing personal data?**

On 13 April 2020 the Law of Ukraine No555-IX “On Amendments to the Law of Ukraine ‘On Protection of the Population from Infectious Diseases’ on Prevention of the Spread of Coronavirus Disease (COVID-19)” was adopted [URL: <https://zakon.rada.gov.ua/laws/show/555-20>], which amended the Law of Ukraine “On Protection of the Population from Infectious Diseases”. This Law entered into force on 18 April 2020. The Final and Transitional Provisions of which contain paragraph 2, which states:

“2. It shall be established that for the period of quarantine or restrictive measures related to the spread of coronavirus disease (COVID-19) and within 30 days from the date of its cancellation:

1) processing of personal data without the consent of the data subject, in particular data concerning health status, place of hospitalization or self-isolation, surname, name, patronymic, date of birth, place of residence, work (study), is allowed in order to counteract the spread of coronavirus disease (COVID-19) in the manner specified in the decision to establish quarantine, provided that such data is used solely for the purpose of anti-epidemic measures.

Within 30 days after the end of the quarantine period, such data shall be subject to decontamination and, if impossible, it shall be destroyed.”

#### **6. Have new provision been introduced concerning liability, e.g. improved occupational injury schemes for health personnel, or civil or criminal liability immunity for healthcare professionals?**

The Ministry of Health of Ukraine in a letter dated 6 April 2020 No05.1-08/9247/2-20 and the State Labor Service of Ukraine in a letter dated 7 April 2020 No2480/1/3.5-20 stated that confirmed laboratory cases of infection with COVID-19 of medical and other employees associated with the performance of professional duties in conditions of increased risk of infection with COVID-19 shall be investigated as cases of acute occupational disease in accordance with the requirements of the Procedure for investigation and accounting of accidents, occupational diseases at work, approved by the Cabinet of Ministers of Ukraine Resolution of 17 April 2019 No337.

The Law of Ukraine “On Amendments to Article 39 of the Law of Ukraine ‘On Protection of the Population from Infectious Diseases’ regarding additional safeguards of the rights of medical and other employees engaged in the protection of the population from infectious diseases and their families” of 7 May 2020 establishes extra safeguards for the rights of healthcare professionals in the event of coronavirus infection. The state provides insurance payments in the following amounts to healthcare professionals of state and municipal healthcare institutions:

1) in the case of establishing a disability group within one calendar year due to coronavirus disease (COVID-19), provided that such disease is associated with the performance of professional duties in conditions of increased risk of infection: depending on the disability group established for the employee and the degree of loss of professional capacity for work, but not less than 300 times the subsistence level established by law for capable persons on 1 January of the certain calendar year;

2) in the event of the death of an employee: in the amount of 750 times the subsistence level established by law for capable persons on 1 January of the certain calendar year.

In addition, the Cabinet of Ministers of Ukraine Resolution “On urgent measures to ensure state financial safeguards for healthcare of patients with acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, and adequate remuneration of medical and other employees who provide health care to such patients” No331 of 24 April 2020, provides additional surcharges for healthcare professionals who work with patients with coronavirus infection, in particular, an additional surcharge of up to 300% of salary.

Healthcare professionals are not subject to immunity.

#### **7. Have there been cases before the courts relating to health law due to the coronavirus outbreak?**

There have been no judgements concerning this category of cases in the Uniform Register of Judgments of Ukraine yet.

**8. A link to legal sources of your country (preferably in English).**

All the official documents are in Ukrainian language.

<https://portal.rada.gov.ua/en>

<https://www.kmu.gov.ua/en>

<https://moz.gov.ua/nakazi-moz>

## European Journal of Health Law (EJHL) – issue 3 of June 2020

### Volume 27

- Table of Contents

**Free access** Introduction: Special Issue on Innovative Medicine and Research: Ethical, Legal and Regulatory Issues

**By: Annagrazia Altavilla**

**Pages: 187–193**

**Publication Date: 15 Jun 2020**

Introducing Key Elements Regarding Access to Personal Data for Scientific Research in the Perspective of Developing Innovative Medicines

**By: Jean Herveg and Annagrazia Altavilla**

**Pages: 195–212**

**Publication Date: 18 May 2020**

Ethical, Legal and Regulatory Issues of Paediatric Translational Research. Call for an Adequate Model of Governance

**By: Annagrazia Altavilla, Viviana Giannuzzi, Mariangela Lupo, Donato Bonifazi and Adriana Ceci**

**Pages: 213–231**

**Publication Date: 18 May 2020**

Genetic Material and Sequence Data to Protect Global Health in the Light of Pandemic Outbreaks: Mapping the Legal Landscape under European and International Law

**By: Claudia Seitz**

**Pages: 232–241**

**Publication Date: 04 Jun 2020**

Machine Learning Systems Applied to Health Data and System

**By: Fedele Bonifazi, Elisabetta Volpe, Giuseppe Digregorio, Viviana Giannuzzi and Adriana Ceci**

**Pages: 242–258**

**Publication Date: 19 May 2020**

Exploring Solutions to Foster ATMP Development and Access to Patients in Europe

**By: Vincenzo Salvatore**

**Pages: 259–273**

**Publication Date: 28 May 2020**

Health Technology Assessment (HTA) and Access Policies

**By: Verena Stühlinger**

**Pages: 274–289**

**Publication Date: 07 May 2020**

Introducing ‘Health Vulnerability’. Towards a Human Right Claim for Innovative Orphan Drugs?

**By: Éloïse Gennet**

**Pages: 290–307**

**Publication Date: 16 Apr 2020**

High Price Medicines and Health Budgets: The Role Patients’ and Consumers’ Organisations Can Play

**By: François Houyez**

**Pages: 309–323**

**Publication Date: 18 May 2020**

Models of Governance for Innovation in Medicine and Health Research

**By: Siobhán O’Sullivan**

**Pages: 324–334**

**Publication Date: 15 Jun 2020**

New Technologies, New Challenges for Human Rights? The Work of the Council of Europe

**By: Laurence Lwoff**

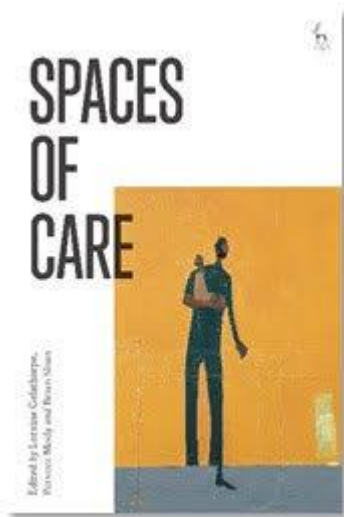
**Pages: 335–344**

**Publication Date: 16 Apr 2020**

## Discounts for our members

### Spaces of Care

*Edited by Loraine Gelsthorpe, Perveez Mody and Brian Sloan*



The collection examines the ways in which the emerging interdisciplinary study of care provokes a reassessment of the connections and disjuncture between care and governance, ethics, and public, personal and professional identities. Evolving from a project coordinated by the Cambridge Socio-Legal Group, *Spaces of Care* brings together leading international scholars to articulate what we may consider to be a useful analytic of care. Lawyers, anthropologists, sociologists and criminologists reflect on specific aspects of conceptualising caring relations in ‘spaces’. These spaces include: communities of care and abandonment; self-care and kinship care; spaces as ‘gaps’ in care; the meanings of marketised care; and the ways in which care is constructed and constrained in different ways in venues such as homes, prisons, workplaces and virtual spaces.

Common themes include temporality (historical specificity) and the dynamics of care across time and place; subjectivity (including different experiences of care); the economies of care (including the commodification of care; public and private manifestations of care; privatised ‘care’); disruptions of care (which generate vulnerabilities with regard to continuities of care); eligibility (those deemed to be deserving and undeserving of care); relationalities of care (collective and individual agency in caring relations, kinship care), and technologies and imaginaries of care (as in new notions of care forged by those in online virtual worlds such as Second Life).

*Loraine Gelsthorpe is Professor of Criminology and Criminal Justice and a Fellow of Pembroke College, Perveez Mody is a University Lecturer in the Department of Social Anthropology and a Fellow of King’s College and Brian Sloan is a College Lecturer and Fellow in Law at Robinson College, all at the University of Cambridge.*

Apr 2020 | 9781509929634 | 288pp | Hbk | RSP: £65

**Discount Price: £52**

**Order online at [www.hartpublishing.co.uk](http://www.hartpublishing.co.uk) – use the code HE6 at the checkout to get 20% off your order!**

# EAHL

Membership of the EAHL is open to health lawyers in Europe and other countries.

To become a member of the EAHL, please, send your electronic application to

[eurohealthlaw@gmail.com](mailto:eurohealthlaw@gmail.com)

EAHL secretariat organizes decision on admission and informs applicants about further procedure.

EAHL membership prices:

- Regular one year membership – 76 EUR;
- Regular two-year membership – reduced fee of 130 EUR!
- Student/PhD student membership – 38 EUR;
- Associate (for non-Europe resident only) – 38 EUR.

For more information, please, visit:

<http://www.eahl.eu/membership>

## IMPORTANT NEWS!



**NEXT EAHL Conference  
Venue in 2021 is  
Ghent University, Belgium!**

*More details to follow!*

**We are on Twitter:**

<https://twitter.com/EAHLaw>

**LinkedIn:**

<https://www.linkedin.com/in/european-association-of-health-law-aba0b0177/>

EAHL members are eligible to subscribe (printed and electronic versions) to the European Journal of Health Law at a reduced annual fee of 88 euros!

*\* The association is in no way liable for the damage associated with the use of materials provided in the newsletter. Opinions expressed in this publication are the views of the authors, which do not necessarily reflect the position of the EAHL.*

