

LEGAL MEASURES UNDERTAKEN BY PUBLIC AUTHORITIES IN POLAND FOR PREVENTION AND COMBATING COVID-19

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Katarzyna Melgieś

Kazimierz Pulaski University of Technology and Humanities in Radom, Faculty of Law and Administration, Radom, Poland.

E-mail: katarzyna.melgies@gmail.com

CORRESPONDING AUTHOR

katarzyna.melgies@gmail.com

Abstract The state is a special purpose organization and the directions of its activities are determined by public tasks. One of them is to ensure an efficient health care system, also effective in emergency situations such as those caused by an infectious disease pandemic COVID-19. In particular, legal instruments are used to create it, selected by the rulers within the limits set by law, including the applicable international standards, at the discretion of local governing authorities. The whole system is completed with organizational, medical and finally financial solutions. However, it is due to the fact that public authorities move around in the public space, due to the legality of their operation, that the legal instruments used are of significant importance for the assessment of the effectiveness of the performance of tasks related to combating infectious diseases, and thus ensuring health safety.

Keywords

pandemic,
right to
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infectious
disease,
health
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task

1 Introduction

Public authorities of States, including Polish authorities, constantly are facing new challenges stemming from the emergence and spread of the SARS-CoV-2 virus. The effects of the new infectious disease¹ caused by this virus, referred to by the WHO as COVID-19², have also severely affected Polish society. The epidemic potential of this virus, which constitutes a significant global health issue³, affects almost all areas of the country's social life, including in particular the protection of health. Considering the scale and force with which the new virus that causes the COVID-19 disease destabilizes the health of individuals and the society as a whole, leading to a crisis in the public domain, it is important to identify the methods that have been used so far to manage the crisis in order to evaluate them in terms of their (in)effectiveness so as to be able to better and more effectively plan for the future. In a democratic society the methods utilized are determined not only by social needs, but critically by normative patterns relating to them, medical standards of conduct and, by the State's financial capacity. Within the limits set by normative models, it is possible not only to determine the obligations of public authorities regarding the guarantee of an individual's right to health protection as well as public tasks in the field of public health, but also to assess the preparedness and efficiency of governmental administration's in handling the extraordinary circumstances caused by COVID 19. The state is a task-oriented institution (Kuciński, 2008: 65); the tasks sets goals determined by the laws, and the state's function is to achieve the goals (Florczak-Wątor, 2016). During the COVID-19 pandemic, these tasks should focus primarily on the area of health care. The role and importance of the involvement of state structures in the public health sector is specified in particular by the WHO, in

¹ New infectious diseases have accompanied the evolving societies for centuries and will still accompany mankind. According to the World Health Organization (WHO), the emergence of new, as yet unknown epidemics or even pandemics of infectious diseases is only a matter of time, cf.: WHO: *Managing epidemics. Key facts about major deadly diseases*. WHO 2018, retrieved from: <https://www.who.int/emergencies/diseases/managing-epidemics-interactive.pdf> (28 July 2021).

² On 11 February 2020, the World Health Organization announced the official name of the disease caused by the 2019-nCoV – a virus belonging to the coronavirus family, i.e. acute respiratory syndrome coronavirus 2 (SARS-CoV-2); disease name: coronavirus infection, COVID-19, retrieved from: [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) 28 July 3021). Coronaviruses (CoVs) are a large family of viruses that cause a variety of diseases, from the common cold to more severe diseases. The new coronavirus (nCoV) was identified on 7 January 2020, then it was temporarily dubbed "2019-nCoV".

³ This form of transmission of the new disease around the world resulted in the issuance of an official position by the WHO and the announcement of the outbreak of the COVID-19 pandemic on 12 March 2020, retrieved from: <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic> (28 July 2021).

relation to the ways of implementing the global strategy for counteracting the COVID-19 pandemic. The strategy emphasizes the key roles played both by political leadership and strong executive power. Effective state structures and participation mechanisms are also critical, as they allow the entire government and the whole of society to be involved. Collaboration and coordination of efforts between these stakeholders is essential in the prevention of, preparation for, response to the virus, and return to normal, once the spread of the virus is contained.⁴

2 Constitutional responsibilities of public authorities connected with the COVID-19 pandemic

2.1 The guarantee of the right to protection of health from pandemic COVID-19 perspective

The main source of state obligations related to ensuring systemic solutions in the area of health protection in the field of preventing and combating infectious diseases, including COVID-19, is Article 68 para. 1, in conjunction with para. 4, of the Poland Constitution.⁵ Article 68 grants everyone the right to have their health protected. Paragraph 1 stipulates the basic obligations of public authorities in the field of health protection and the corresponding right of an individual to protection of health (Bosek, 2016). At the same time, it is important to note that the indicated norm is a component that constitutes the right to protection of health, both in its individual and collective aspect (public health).⁶ In addition, specific threats related to the spread of infectious disease are listed in paragraph 4 of the Article 4. It *expressis verbis* imposes an obligation on public authorities to combat epidemic diseases, which includes infectious diseases.⁷ The right to protection of health has been assigned an

⁴ See: *COVID-19 operationalization of the global response strategy in the WHO European Region: September 2020*, document no.: WHO/EURO:2020-1073-408190-55167, retrieved from: <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/strategic-documents/covid-19-operationalization-of-the-global-response-strategy-in-the-who-european-region-september-2020> (28 July 2021).

⁵ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended).

⁶ The need to protect health not only in an individual aspect, but also in a broader sense, i.e. public health, is indicated by the Constitutional Court in the judgment of 9 August 2009, SK 48/05.

⁷ The way of understanding this term refers to the meaning ascribed to it by medical science (Bosek, 2016). But the medical science shows that the term "epidemic" has evolved. It is true that for thousands of years the meaning of the word "epidemic" concerned diseases with a course characteristic of infectious infections, but after making a number of discoveries constituting the so-called »bacteriological breakthrough« in the 19th century, and the emergence of a new medical science called epidemiology in the 20th century, the situation has changed. As a result of the above events, there has been a change in the meaning of the words "epidemic" and "epidemiology" previously reserved for infectious diseases in most countries, which have been subdued in most countries (Paliga, 2020: 172). Since the 1950s, the term epidemiology understood as the science dealing with the study of the prevalence of diseases

objective order for public authorities to take such actions that are necessary for the proper protection and implementation of this right.⁸ A similar position is presented by Janik, who posits that the State should provide citizens with both a legal system that guarantees maximum protection against an epidemic, and health care in the event of an infection (Janik, 2015: 105). Other commentators hold the view that the right to protection against an epidemic should be treated both as an expectation that the State will take all necessary steps to prevent epidemiological threats, but also that citizens owe a civic duty to comply with the requirements (including undergoing vaccinations) of the provisions enacted by the government in order to fulfill the norms specified in Article 68 (Kulikowska-Kulesza & Kościuk, 2020). Thus, active involvement on the part of the public is expected.

Undoubtedly, an essential element of the normative constitutional model is the state's obligation to create a normative framework which allows for the health care system to flourish. Among other things, this framework must include a proper organizational structure and adequate financing. The optimal healthcare system, understood in the broadest sense, must not only provide high quality health services but also promote a healthy lifestyle. The system must provide solutions to prevent and combat infectious diseases as a specific type of threat. The method of shaping the last element of the health care system structure is decided by the Parliament in ordinary laws⁹ by adoption of general solutions applicable in the event of an infectious disease as such, as well as those dedicated to a specific type of infection, in particular COVID-19. General legal regulations relating to control of infectious diseases were included primarily in the Act on Infectious Diseases¹⁰, and in the Act

or other health-related phenomena in the population and the conditions and factors influencing their occurrence, as well as the application of the results of these studies to prevent and combat them. It began to be used in relation to non-infectious diseases.

⁸ See: Judgment of the Constitutional Court of 23 March 1999, file ref. no. K 2/98, OTK ZU 1999, No. 3, item 38 in relation to provision of Article 68 Constitution. The content of the right to health protection in the light of the judgment of the Constitutional Court is not some abstractly defined >health< condition of an individual, but the possibility to use the health care system that is functionally oriented at combating and preventing diseases, injuries and disabilities – see: Judgment of the Constitutional Court of 7 January 2004, file ref. no. K 14/03, OTK ZU 2004, series A, no. 1, item 1.

⁹ See: Judgment of the Constitutional Court of 22 July 2008, K 24/07, OTK-A 2008, no. 6, item 110.

¹⁰ Act of 5 December 2008 on Preventing and Combating Infection and Infectious Diseases in Humans (Consolidated act: Journal of Laws of 2020, item 1845) – hereinafter: Act on Infectious Diseases.

on the National Sanitary Inspectorate.¹¹ The COVID Act¹², was specifically dedicated to combat the COVID-19 infectious disease by establishing legal solutions in this area. The COVID Act has been amended several times in order to adapt the normative solutions it originally contained to the rapidly-evolving developments the epidemic has caused in the country.

The hierarchy of the law invoked is inextricably linked by the Constitutional Court with protection of life and with human dignity (Articles 30 and 38 of the Constitution). From this perspective, the right to protection of health is, above all, the right to preserve life and defend it when it is in danger¹³, and the tasks of public authorities related to preventing and combating infectious diseases serve this very purpose. The obligations related to the exercise of the right to protection of health are also complemented by the order contained in Article 5 of the Constitution, addressed to public authorities, concerning the obligation to ensure the safety of the citizens. As a rule, the obligations of the state related to ensuring safety in the area of health protection are related to health safety. However, due to the fact that the effects of an infectious disease epidemic may expand and become a global crisis, state obligations require qualifying infectious disease epidemics not only as a risk factor in terms of health security, but safety as such, related to the entire socio-economic life. The legal norms identified above impose obligations upon all public authorities to use the fullest extent of their competencies- regardless of where they fit within the state's operational hierarchy - to actively participate in counteracting threats (Sarnecki, 2016: 231).

2.2 The obligations of public authorities during the COVID-19 pandemic that result from international obligations

The tasks of Polish public authorities related to the COVID-19 epidemic should also be viewed from the perspective of the order under Article 9 of the Constitution, which obliges public authorities to abide by international law that is binding on the Republic of Poland. These obligations result in particular from the European

¹¹ Act of 14 March 1985 on the National Sanitary Inspectorate (Consolidated act: Journal of Laws of 2021, item 195) – hereinafter: NSI Act.

¹² Act of 2 March 2020 on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and the Resulting Crisis (Consolidated act: Journal of Laws of 2020, item 1842 as amended - hereinafter: COVID Act.

¹³ See: Judgment of the Constitutional Court of 7 January 2004, file ref. no. K 14/03.

Convention for the Protection of Human Rights and Fundamental Freedoms¹⁴, the European Social Charter¹⁵ or International Covenant on Economic, Social and Cultural Rights.¹⁶ They also result from Poland's participation in the WHO¹⁷ and its membership in the EU.

The binding provisions of international law include obligations arising in particular from the provisions of the European Social Charter in which the States-Parties undertook to guarantee the right to protection of health. In terms of that right, a State Party has to take appropriate measures designed, inter alia, to prevent epidemic diseases (Article 11§3), remove the causes of ill health (Article 11§1), and provide advisory facilities for the promotion of health and the encouragement of individual responsibility in matters of health (Article 11§2). In the official Statement of interpretation on the right to protection of health in times of COVID-19 pandemic, The European Committee of Social Rights expressed the view that the right to protection of health must be protected not merely theoretically, but also in fact. The Committee emphasized that implementation of the Charter requires States Parties not only to take legal action, but also practical action, making available the resources and the operational procedures necessary to give full effect to the rights specified therein. They pointed out that States Parties must take all necessary emergency measures in a pandemic, such as the adequate implementation of measures to prevent and limit the spread of the virus. Such measures also may include testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectants, as well as the imposition of quarantine and 'lockdown' arrangements. At the same time, the Committee noted that all such measures must be designed and implemented respecting the current state of scientific knowledge and in accordance with relevant human rights standards. Other obligations include ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment as well as an adequate number of healthcare professionals. It is also critically important to inform and educate people about the risks posed by the

¹⁴ Convention On the Protection of Human Rights And Fundamental Freedoms (Journal of Laws of 1993, No. 61, item 284).

¹⁵ The European Social Charter concluded in Turin on 18 October 1961 (Journal of Laws of 1999, No. 8, item 67, as amended).

¹⁶ The International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, No. 38, item 169 with annexes).

¹⁷ Constitution of the World Health Organization. Agreement concluded by the Governments represented at the International Health Conference, and Protocol relating to the International Office of Public Hygiene, signed in New York on 22 July 1946 (Journal of law of 1948, No. 61, item 477).

disease in question. This entails carrying out public awareness programmes so as to inform people about how best to mitigate the risks of contagion and how to access healthcare services as necessary. The Committee emphasized further that under Article 11§3 States Parties must operate widely accessible immunisation programmes. Subsumed within this obligation are the requirements to maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of virus and thus achieve the goals set by the WHO to eradicate a range of infectious diseases. Vaccine research should be promoted, adequately funded and efficiently coordinated across public and private actors (European Committee Of Social Rights, 2020).

Poland's obligations resulting from its membership in the WHO are also important from the perspective of combating COVID-19. The key international document developed within the framework of the WHO that is applicable concerning the eradication of infectious diseases is the International Health Regulations (IHR), adopted in 1969 by the WHO Member Countries. These were later amended and made binding in the IHR 2005¹⁸ version of the document. The document's aims are to prevent the spread of diseases, especially infectious diseases on an international scale, and to prevent and combat emerging diseases (Baker, Fidler 2006). When introducing the concept of *global health security*, it was assumed that the response of the public health system to threats would be conducted in a manner proportional to the scale of the threat, and without causing unnecessary disturbances in international traffic and commerce. This document is the only binding global legal instrument devoted solely to the prevention and control of international transmission of diseases, including epidemics of infectious diseases. The model employed in the document is premised upon dynamic and open cooperation as well as on the good faith of States-Parties. Under this model, the WHO plays a central role in surveillance, risk assessment and response, and aims to provide an effective, but proportionate, response to public health in order to avoid unnecessary disruptions to traffic and commerce. Poland, as a party to this agreement, is required to cooperate in good faith with the WHO, and with other parties to this agreement, by assessing health events occurring in its territory, notifying the WHO about the ones

¹⁸ International Health Regulations – IHR-2005 is a document issued by the WHO and it is dedicated to prevention and control of international spread of diseases – see. *World Health Organization. International Health Regulations (2005) 3rd Edition*. Geneva, Switzerland; 2016.

that reach a specific severity threshold, providing detailed information and taking a number of measures which depend on the nature of a given health event.

Polish public authorities also respect the consensus developed within the EU on how the Member States should respond to threats to public health, resulting from 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. 2119/98/EC. The network of epidemic surveillance over infectious diseases established pursuant to the IHR document, which ensures constant communication between the European Commission, the European Center for Disease Prevention and Control (ECDC) and competent national authorities, is maintained.

2.3 The COVID-19 pandemic and constitutional states of emergency

Legal solutions adopted in the discharge of the obligation to ensure the right to protection of health may be implemented by public authorities under standard (ordinary) legal procedures, including constitutional ones. Formally declared states of emergency, among others, covers the special order of exercising public authority in the state, in response to special situations (Radziejewicz, 2021), including the introduction of more sweeping restrictions on fundamental rights and freedoms than are acceptable in ordinary times, but always prescribed by law.

The obligations of public authorities related to combating COVID-19 should also be assessed in the light of the justification for declaring one of the states of emergency provided for in Article 228 para. 1 of the Constitution. They are classified as situations of special threats - and undoubtedly the situation related to the COVID-19 pandemic should be seen as such a threat - and are used by public authorities if ordinary constitutional measures are insufficient. In such situations public authorities may declare a state of emergency appropriate to the situation, i.e. martial law, the state of emergency or the state of natural disaster. In these cases, a temporary change in the principles concerning how bodies of public authority operate, and the scope in which human rights may be limited during a specific state of emergency, are constitutionally allowed. Critically, these new "extraordinary" conditions concerning the state's functioning must be specified by law (Article 228 para. 3 of the Constitution). Due to the nature of the COVID-19 pandemic, the issuance of a declaration of the state of natural disaster in order to prevent the effects of the

natural disaster (Article 232 of the Constitution) caused by this pathogen may be justified. According to the definition provided by law, a natural disaster is, among others, a natural disaster the effects of which “threaten the life or health of a large number of people, and assistance and protection can be effectively undertaken only by extraordinary measures, in cooperation of various bodies and institutions as well as specialized services and formations operating under uniform leadership.” Natural disasters can be caused by events related to the operation of forces of nature, in particular by mass occurrence of human infectious diseases.¹⁹ The state of natural disaster may only be declared for a specified period, necessary to prevent the effects of a given natural disaster, not to exceed 30 days; any extension of this period may take place only with the consent of the Sejm (Article 232 of the Constitution). Actions resulting from declaring any state of emergency must be proportional to the degree of the threat and should be aimed at restoring normal functioning of the State as soon as possible. During the state of natural disaster, since the scope of limitations of human and civil freedoms and rights is modified, this can invariably be done only under a legal act (Article 233 para. 3 of the Constitution).

Previously, the Polish legal system has not faced a situation like the one it is facing now in connection with the COVID-19 threat. The situation has been caused by the large number of people infected, the ease of transmission of the virus, the lack of effective treatments and relatively high mortality in certain groups of people in some periods. This new pathogen poses numerous problems: its lengthy duration and uncertainties surrounding when it might end (or at least be relatively contained), the prevalence of the threat, and the probability of collapse of the health care system under the burden of the pandemic. The pandemic has posed numerous challenges legal systems around the world. Chief among them has been laws and other measures introduced to isolate people, since isolation has been one of the only effective measure against the spread of infections. These measures, unfortunately, have significantly interfered with citizens’ fundamental freedoms.

As of yet, Polish authorities have not decided to declare the state of natural disaster. Unfortunately, however, it has not been possible for the public authorities to properly fulfil the obligations imposed upon them resulting directly from Article 68

¹⁹ See: Article 3 para. 1 pt 1 and 2 of the Act of 18 April 2002 on the State of Natural Disaster (consolidated act: Journal of Laws of 2017, item 1897, as amended).

para. 4 of the Constitution (protecting the public health from infectious diseases) utilizing only ordinary measures at their disposal when limiting constitutional rights, because these measures are insufficient to combat threats. The legal and factual means of action, referred to in Article 228 para. 1 of the Constitution, require the introduction of special solutions with respect to how state bodies function, and the introduction of special types of restrictions on constitutional rights. It should be assumed that the concept of "ordinary measures" also refers to ways of limiting constitutional freedoms and rights (Tuleja, 2020). This view is also shared by Poland's Supreme Court, which in its judgment stated that there were grounds for declaring a state of emergency in Poland, i.e. the state of natural disaster. The Supreme Court stressed the extraordinary nature of the legal solutions adopted by the Government in the fight against the COVID-19 pathogen and accordingly that there were grounds for declaring such a state.²⁰ Additionally, the Supreme Court in the same judgment stated that the Polish Constitution does not provide a basis for the introduction of limitations of fundamental rights and freedoms by means of an ordinary ordinance of the Council of Ministers.

3 Legal instruments used by the Polish Government to combat COVID-19

3.1 Systemic legal solutions for preventing and combating infectious diseases

Polish public authorities acted in a two-fold manner to find solutions to the new pathogen when it appeared in the Republic of Poland. They adopted solutions based on existing law that was extant at the time while also introducing *ad hoc* legal solutions to combat the emerging circumstances posing a threat to public health. The Act on Infectious Diseases formed the legal basis for actions taken by the authorities in the field of modeling the health care system in the area related to counteracting and combating COVID-19. Solutions contained in this Act include, among others, identifying and monitoring the epidemiological situation; taking anti-epidemic and preventive measures in order to neutralize the sources of infection; limiting the means by which the virus could spread infections and infectious diseases; and, immunizing people susceptible to infection. In order to properly address the actions

²⁰ See: the Judgment of Supreme Court of 16 March 2021, file ref. no. II KK 64/21.

of the authorities, the legislator specified in the statutory catalog a list of infectious diseases and pathogens causing these diseases, allowing the catalog to be extended to new pathogens by way of a regulation from the Minister of Health (Article 3 para. 2 of the Act on Infectious Diseases). This mechanism allowed COVID-19 to be "added" as a new infectious disease.²¹ There is also a special category, i.e. "a particularly dangerous and highly infectious disease," distinguished within the group of infectious diseases. Bearing in mind the ease of transmission, and the high mortality rate associated with COVID-19, this pathogen poses a particularly serious threat to public health and requires special control methods. Consequently, specific measures may be applied.²²

The tasks of the Minister of Health include not only providing proper direction and coordination, but also identifying situations that pose a threat related to an outbreak of an epidemic or of an infectious disease. The term "epidemic" has been given normative designations and it is qualified by the occurrence of infections or incidences of an infectious disease in a given area in a number significantly greater than in the previous period, or by the emergence of new infections or infectious diseases (Article 2 pt. 3 of the Act on Infectious Diseases). However, the Act does not specify the rates of incidence of these diseases; seemingly, this assessment should be made in reference both to the current state of affairs and to the estimation of the growth rate of the endemic factor. Thus, the state of epidemic is one that is subject to a specific legal classification, the purpose of which is to enable the competent authorities to efficiently fulfil the goals and tasks related to counteracting its spread and combating its effects. Such qualification is formally performed by means of a regulation issued respectively by the Voivode (when the epidemic affects the area of a voivodeship) or by the Minister of Health (if the epidemic expands beyond the area of a voivodeship), and it leads to a change in the legal status (Article 46 para. 1 i 2 of the Act on Infectious Diseases). In addition, taking into account the routes of transmission of infectious diseases and the epidemic situation in the area where the epidemic has been announced, these authorities may impose restrictions by regulations, among others, a temporary restriction on a specific mode of movement;

²¹ Regulation of the Minister of Health of 27 February 2020 on Coronavirus SARS-CoV-2 Infection (Journal of Laws of 2020, item 325).

²² In line with the recommendations of WHO and others institutions, including the Ministry of Health and Sanitary Inspection in the case of particularly dangerous diseases, very strict procedures must be applied to prevent spreading of these infections, among others the isolation of people suspected of being infected, use of appropriate personal protective equipment or put under quarantine.

a temporary restriction or prohibition on marketing and use of certain items or food products; a temporary limitation of operation of certain institutions or workplaces; a prohibition on organizing shows and other public gatherings; an obligation to perform specific sanitary procedures, if they need to be performed in relation to the operation of specific production, service, commercial or other facilities; an order to provide real estate, premises, areas and means of transport for anti-epidemic activities provided for in anti-epidemic plans (Article 46 para. 4 of the Act on Infectious Diseases). With the outbreak of the COVID-19 epidemic, since 5 March 2020, Article 25 pt 4 of the the COVID Act has modified the provisions of the Act on Infectious Diseases and adopted a solution according to which, in the event of an epidemic of a nature and size exceeding the capabilities of the competent government administration bodies and local government units, the Council of Ministers may specify, by means of a regulation, the endangered area together with an indication of the type of zone in which the epidemic or epidemic threat has occurred, and the type of solutions applied related to imposing specific restrictions, orders and bans in the endangered area, taking into account the scope of the applied solutions and the current capacity of the state budget and the budgets of local government units (Article 46a and b of the Act on Infectious Diseases). Declaring the state of epidemic has been left to the discretion of the competent executive authorities. The Declaration is intended to enable them to effectively undertake the anti-epidemic and preventive measures specified in the Act on Infectious Diseases in order to minimize the effects of the epidemic. Thus, the remaining regulations contained in the Act on Infectious Diseases are applied, but with a modified model of public tasks, so as to allow the competent authorities to achieve the normatively specified goal when the disease spreads.

As a standard, tasks were performed related to the implementation of a comprehensive epidemiological surveillance program. The program includes extensive epidemiological studies (and an assessment of the current situation), monitoring of the disease incidence and mortality due to infections, comprehensive implementation of prophylaxis, modern diagnostics and therapy of infectious diseases. The legal measures that enable separation of infected individuals from the rest of the society through the use of quarantine, hospitalization or isolation, including isolation at home, are important for counteracting the size of the

epidemic.²³ The concept of epidemic surveillance is understood by the Act on Infectious Diseases as individual or general surveillance (Article 2 pt 14 of the Act on Infectious Diseases). Individual surveillance includes: observation of an infected or suspected person without restricting their freedom of movement; performing sanitary and epidemiological tests on that person in order to detect biological pathogens or confirm the diagnosis of an infectious disease; collecting, analyzing and interpreting information about the circumstances and consequences of the infection. General surveillance includes constant, systematic collection, analysis and interpretation of information about the incidence of diseases or other processes taking place in the field of public health. This information is used to prevent and combat infections or infectious diseases. The Act also uses the term »sentinel surveillance« which is defined in the Act to mean selective epidemiological surveillance performed by a selected entity or group of entities as part of their basic activity (Article 2 pt 15 of the Act on Infectious Diseases).

An important element of the infectious disease prevention and control system is the infectious disease vaccination program (Article 17 Act on Infectious Diseases). The Minister of Health determines which of them are mandatory.²⁴ There also is a category of "recommended vaccinations".²⁵The Act imposes an obligation on the government to create a reserve of vaccines and other immunological medicinal products used in the event of an epidemic threat or epidemic.

The systemic solutions stipulated in the Act on Infectious Diseases are also supplemented by the provisions of the NSI Act, as the epidemiological surveillance program was entrusted to the NSI authorities.

The adopted legal model for combating the epidemics of infectious diseases presupposes a strong centralization of power transferred respectively to the Minister of Health, Prime Minister or the Council of Ministers related to relevant actions justified due to the epidemic state of the country. Activities of central authorities, especially the Minister of Health, should focus on the coordination of other structures of public administration in the field of public health and the directing and

²³ See: Regulation of the Minister of Health issued on the basis of Article 34 para. 5 of the Act on Infectious Diseases.

²⁴ See: Ordinance Health Minister of 18 August 2011 on compulsory vaccinations (Journal of Laws of 2018, item 753 with amendments).

²⁵ Mandatory vaccinations are basically free for patients while recommended ones can be financed from public funds. The cost of vaccination against COVID-19 is covered by public funds.

coordination of the health care system. The legal system equips public authorities with tools enabling preventive actions, in particular the implementation of vaccination programs or the introduction of social distancing measures until the possibility of introducing a lockdown – if it is necessary. As subsequent measures related to an epidemic situation, the authorities are allowed to isolate infected individuals as well as to conduct individual surveillance. These measures also grant the public authorities powers to introduce changes to the structures and procedures in hospitals and other medical entities in order to ensure the safe and effective treatment of all patients in hospital, both those infected with COVID-19 and all others.

3.2 The consequences of declaring the state of epidemic by Polish government

Poland started preparations for SARS-CoV-2 infections that could be imported into the country as early as in January 2020.²⁶ Starting from 9 January 2020, the Chief Sanitary Inspectorate has analyzed the epidemiological data and international recommendations published by the WHO, the European Centre for Disease Prevention and Control (ECDC), the Centers for Disease Control and Prevention (CDC) as well as the IHR and Early Warning and Response System (EWRS) messages (Pinkas et al., 2020). The diagnostic pipeline for performing molecular tests for SARS-CoV-2 was launched on 29 January 2020, at the National Institute of Public Health – National Institute of Hygiene. The WHO and the ECDC guidelines were used as the bases for developing procedures to handle suspected cases in terms of, among others, quarantine and epidemiological surveillance as well as testing guidelines. The procedures could be tested in practice in connection with the evacuation of Polish citizens from Wuhan after lockdown had been imposed there. A group of students returned from Wuhan on 25 January 2020, and another large group on 2 February 2020. In accordance with the procedures applicable at the time, all students were hospitalised and tested; fortunately, none were infected. The first case of COVID-19 in Poland was diagnosed on 4 March 2020, in a person who arrived by coach from Germany (Rosińska, Sadkowska – Todys, Stępień, Kitowska Milczarek & Juszczuk, 2020).

²⁶ Covid-19. Health System Response Monitor. Policy responses for Poland (2020), retrieved from: [https://www.covid19healthsystem.org/countries/poland/livinghit.aspx?Section=1.3%20Isolation%20and%20qu\(27%20July%202021\)](https://www.covid19healthsystem.org/countries/poland/livinghit.aspx?Section=1.3%20Isolation%20and%20qu(27%20July%202021)).

Initially, COVID-19 was not included in the official list of communicable diseases. However, subject to the Regulation of the Minister of Health,²⁷ it was classified as such a disease. On 2 March 2020, the Polish Parliament adopted the COVID Act. Initially, the state of epidemic threat was declared via the Regulation of the Minister of Health of 13 March 2020²⁸, and on 20 March the Minister of Health declared the state of epidemic.²⁹ Further legislation enacted at the beginning of the pandemic regulated not only isolation and quarantine, but also imposed and lifted the restrictions applied in response to the epidemic.

Poland follows the WHO recommendations and uses the RT-PCR molecular test for COVID-19 testing. In line with the national laboratory diagnostic testing regulations, testing should be performed by laboratories with at least a BSL-2 classification. State Sanitary Inspection units authorise cases for testing but physicians can also order a test as part of the process of treatment.³⁰ The obligation to undergo testing pertained to the people indicated in the regulations issued by the Minister of Health pursuant to Article 46a and 46b of the Act on Infectious Diseases.

As of March 2020, Poland's health care system also started preparations for a potential wave of new infections. The Covid Act was the legal basis for such adjustments. On the basis of the COVID Act, 19 hospitals were converted into single-purpose hospitals (COVID-19 hospitals), which were to provide services only for COVID-19 patients who required specialised medical assistance due to co-existing medical conditions or needed to undergo surgeries (Article 10 of the COVID Act). At least one such hospital was located in each of the 16 administrative regions. The establishment of COVID-19 hospitals was aimed at providing full access to medical services for COVID-19 cases as well as limiting the spread of infection in other medical facilities. The sale of key medical supplies was regulated in order to make personal protection equipment available. On 14 March, a total ban was imposed on the export of respirators and cardio-monitors.³¹

²⁷ Regulation of the Minister of Health of 27 February 2020 on SARS-CoV-2 Infection (Journal of Laws of 2020, item 325).

²⁸ See: Regulation of the Minister of Health of 13 March 2020 on the Declaration of the State of Epidemic Threat in the Territory of the Republic of Poland, (Journal of Laws of 2020, item 433).

²⁹ See: Regulation of the Minister of Health of 20 March 2020 on the Declaration of the State of Epidemic in the Territory of the Republic of Poland (Journal of Laws of 2020, item 491).

³⁰ The list of COVID laboratories retrieved from: <https://www.gov.pl/web/zdrowie/lista-laboratoriow-covid> (27 July 2021).

³¹ See: Regulation of the Minister of Health of 27 February 2020 on SARS-CoV-2 Infection.

Polish authorities have undertaken numerous steps to publicly disseminate information on the epidemic threat. The Government runs a special website dedicated to the latest information on COVID-19. The information on the website is available in three foreign language versions: English, Russian and Ukrainian.³² Press conferences given by the Prime Minister and the Minister of Health are translated into the sign language. Moreover, the National Health Fund operates a 24-hour helpline that provides information on COVID-19.³³ The Government and the Ministry of Health ordered publication in the media of educational spots and information on preventing the COVID-19 infection.³⁴

A complete lockdown was imposed on 25 March 2020, including a ban on gatherings of more than two people and on religious gatherings, restrictions on movement and recommendations to work from home.³⁵ Even stricter rules were introduced on 1 April 2020. Included were new trade restrictions and bans on entering parks and leisure areas. Further orders and restrictions that were imposed in Poland included: 16 April 2020 – the order to cover the nose and mouth; 30 May 2020 – the obligation to cover the nose and mouth was restricted to crowded places where maintaining distance is not possible, to means of public transport, shops, cinemas, theatres, churches and offices. In practice, the pandemic restrictions were rather loose throughout the summer holidays of 2020. A person subject to compulsory quarantine due to suspected infection with the SARS-CoV-2 virus had the following obligations: install on their mobile device software (Home Quarantine application) provided by the Minister of Digital Affairs in order to confirm their compliance with the quarantine and to use the application to confirm the fulfillment of this obligation.

The COVID-19 module was created as part of the Epidemiological Case Reporting System (SRWE), which is the basic tool for work within the mandate of the Department of Epidemiology of Infectious Diseases and Surveillance at the

³² Poland, Serwis Rzeczypospolitej Polskiej: szczepienia i ważne informacje, retrieved from: <https://www.gov.pl/web/koronawirus> (27 July 2021).

³³ Poland, National Health Fund (Narodowy Fundusz Zdrowia), Całodobowa infolinia NFZ o koronawirusie, retrieved from: <https://gis.gov.pl/aktualnosci/calodobowa-infolinia-nfz-o-koronawirusie/> (27 July 2021).

³⁴ See: Epidemic Status in Poland due to Coronavirus, retrieved from: <https://study.gov.pl/coronavirus> (27 July 2021).

³⁵ See: Regulation of the Minister of Health of 24 March 2020, Amending the Regulation on the Declaration of the State of Epidemic in the Territory of the Republic of Poland (Journal of Laws of 2020, item 522).

National Institute of Public Health – National Institute of Hygiene (NIPH-NIH) (regarding epidemiological surveillance).³⁶

After August 2020, there were further changes instituted as a result of the shift in the epidemic situation, as well as the change in the position of the Minister of Health. For example, on 1 September 2020, poviats were divided into three zones – green, yellow and red – depending on the values of epidemiological indicators.³⁷ In October 2020, the Government adopted the new *Strategy to combat the COVID-19 pandemic. Autumn 2020. Version 2*.³⁸ The organizational transformation of the network of single-purpose hospitals was the most important change. The single-purpose hospital scheme was scrapped in lieu of the creation of three levels of hospital security. The principal components of the “autumn strategy” to combat the COVID-19 pandemic were the inclusion of primary care physicians in the testing system as well as the expansion of the network of mobile swab points. In addition, private hospitals were included in the fight against the epidemic, and the medical personnel from the drive-thru points were redirected to medical facilities. Instead, soldiers of the Polish Army were assigned to take swabs from patients.

In October 2020, the Prime Minister appointed the National Infectious Diseases Consultant as his Chief Advisor for COVID-19, and then the Medical Council for the Chief Advisor was established.³⁹ These actions strengthened the coordination and planning of government activities by professionals and specialists.

³⁶ The designed and implemented electronic system supporting the operation of epidemiological surveillance was intended not only to ensure the collection of information for national purposes at the poviats, voivodeship and central level, but also to enable the fulfillment of the obligation of timely reporting of data to the European surveillance network. Hence, it was necessary to create an additional module in the central system that would allow the registration of suspected and confirmed cases of SARS-CoV-2 infections (Kitowska, Stępień, Rosińska, Szmulik, Jamsheer-Bratkowska, Budziosz & Sadkowska-Todys, 2020).

³⁷ Regulation of the Council of Ministers of 7 August 2020 on the Establishment of Certain Restrictions, Orders and Bans under the Epidemic (Journal of Laws of 2020, item 1356).

³⁸ Strategy to Combat the COVID-19 Pandemic. Autumn 2020. Version 2.0 (currently: 3.0), retrieved from: <https://www.gov.pl/web/zdrowie/strategia-walki-z-pandemia-covid19> (28 July 2021).

³⁹ Order No. 205 of the President of the Council of Ministers of 6 November 2020 on the Establishment of the Medical Council for COVID-19 for the Prime Minister.

The tasks of the Council covers three main areas:

- 1) analyzing and assessing the current health situation in the country, with particular emphasis on the epidemic situation caused by the COVID-19 pandemic;
- 2) preparing and presenting proposals for actions aimed at improving the health situation in the country in terms of counteracting COVID-19;
- 3) issuing opinions on draft legal acts and other government documents with a significant impact on health protection issues related to counteracting COVID-19.

The Council issued almost 20 positions, and although they are not binding, they are important guidelines for the Minister of Health in taking further actions, including amendments to the binding legal regulations.

From 15 December 2020, The National Vaccination Program⁴⁰ was adopted, which concerns planning and the implementation of all activities required to guarantee Polish citizens access to voluntary, free, effective vaccinations and safety during the procedure. It also includes the purchase of preparations for, the distribution of, and the monitoring of the course and effectiveness of vaccinations. The program aims to protect those most at risk of complications and to thwart the severe symptoms and illnesses associated with the COVID-19 disease, as well as to (hopefully) control the pandemic by the end of 2021 December. The timing of the introduction of COVID-19 vaccines to the market has become a key factor in the adopted government strategy, as the introduction of the program offers Polish society hope for the acquisition of collective immunity. Thus, although the government's efforts to obtain the expected immunity have been focused, to date they have yet to achieve the expected success. Although the government has stressed that safe and effective vaccines do not only help the inoculated people (efficacy confirmed in multiple RCT), but accomplish their primary role of stopping the spread of SARS-CoV-2 on a society-wide basis (Jarynowski & Skawina, 2021: 17), still a substantial part of the

⁴⁰ The strategic goal is to achieve the vaccination rate a society to contain the COVID-19 pandemic by the end of 2021, while maintaining the highest safety standards, see: *Narodowy Program Szczepień Narodowy Program Szczepień przeciw COVID – 19*, retrieved from: <https://www.gov.pl/web/szczepimysie/narodowy-program-szczepien-przeciw-covid-19> (27 July 2021).

public seems to need to be better informed about the risks and benefits, both individual and collective.

As of the time this paper was written, we can also observe that the public authorities have made flexible use of the above-mentioned »epidemic« legal tools in their attempt to combat the pandemic. Their application,⁴¹ or their withdrawal from use, are based upon the epidemic conditions in the country, and are based upon the recommendations of the Medical Council for the Chief Advisor for COVID-19. At present, measures taken by the public authorities focus on achieving the highest possible percentage of vaccinated people.⁴² However, the success of the vaccination program continues to depend on the ability of the authorities to convince Poles of both the individual and public benefits that will be achieved through the program.

4 Conclusions

The basic task of the State, determined by its goals in the area of counteracting and combating COVID-19, is to create an efficient health care system that can adequately and quickly respond to the ever-changing current level of threat. This obligation is imposed not only under Poland's Constitution but also by international agreements that effectively bind Poland. Due to the dynamically changing epidemic situation in the country and all over the world, the standards of fulfilling this obligation, resulting from the cited sources, are specified in detail by the Parliament and the Government.

Due to the nature of their activities, public authorities, while operating within the limits set by law, can use legal, logistical, infrastructural and financial instruments to achieve the indicated goals. The aim of this paper was to verify the available legal measures in terms of the adopted models of combating the infectious disease COVID-19 based on international standards in force in this area and the manner of their use by national authorities. At this stage of the development of the epidemic situation, it is not possible to fully assess the effectiveness of the use of these legal measures due to the fact that the threat is still ongoing, the virus is mutating and the

⁴¹ Another lockdown was introduced under the Regulation of the Minister of Health of March 19, 2021, on the establishment of certain restrictions, orders and bans in connection with an epidemic, Journal of Laws of 2021, item 512.

⁴² In order to increase the availability of vaccines against COVID-19, the government introduced special mobile vaccination points.

epidemic has moved into a creeping state. Therefore, this assessment is determined by the time constraints and a certain stage of the government's operation.

When attempting to assess the actions of public authorities at a given stage, it should be stated that the presented legal solutions adopted by the Polish legislator are characterized by the fact the executive has been granted a considerable degree of autonomy. In other words, it is up to the public authority – Government - to recognize when it will act, how, and with what degree of intensity.

A central characteristic of the actions actually taken by the executive branch lies in its concentration of power: the central government assumed all management instruments, thus weakening local and regional self-governments. This assumption of power occurred without the introduction of a constitutionally based extraordinary state.

Legal measures at the disposal of public authorities allow for taking actions in accordance with the standards recommended, in particular, by WHO or The European Committee of Social Rights, although the assumed goals in the fight against the virus in terms of achieving herd immunity have not been achieved. The cooperation of executive authorities with the Medical Council for the Chief Advisor for COVID-19, as an advisory body of experts in the field of medicine, in reference to the current epidemic reports and scientific data in the scope of political decisions made has been exceptional.

However, bearing in mind the published data,⁴³ the evaluation of the subsequent phases of the epidemic's development so far reveals less than stellar results.

There are numerous reasons that can help explain why the campaign against COVID-19 has, as of yet, not been as effective as had been hoped. The reasons include those of an organizational nature, in particular due to the constant shortages of medical personnel. Vaccine delivery delays has been another factor. The negative (i.e., fake news) propaganda campaign involving vaccines continues to be a serious problem. Those that continue to spread misinformation about their safety and effectiveness, especially over social media platforms, have frightened many people,

⁴³ See: Coronavirus. Poland. Reported Cases and Deaths (2021), retrieved from: <https://www.worldometers.info/coronavirus/country/poland/> (28 July 2021).

some of whom may have been reluctant to receive vaccines in the first place. Irrespective of the reasons why a small, yet statistically significant, percentage of the population has refused the vaccines to date, the fact remains that their refusal is making so-called herd or group immunity difficult to achieve.

Other reasons why Poland continues to experience new waves of infection from COVID-19 include an ineffective strategy for patient testing as well as (some of) the Polish citizens' violation of the rules regarding the sanitary regime (especially wearing masks and maintaining social distance).

It seems that the main factor that may undermine and hinder Poland achieving optimal results in the fight against the pathogen is the lack of a comprehensive, overarching strategy to keep pace with the current challenges of the COVID-19 epidemic, both those determined by the properties of the pathogen (for example, its constant mutations/variants such as Delta) and those determined by the (inadequate) conditions of the health care system adopted by the public authorities. The lack of any comprehensive strategy seriously hinders the possibility of applying adequate and effective legal measures to stop an epidemic, and may increase the risk of public authorities exposing themselves to the accusation they have breached the fundamental norm of proportionality with regard to the constitutional test of limitations of rights and freedoms.

When assessing the manner in which public authorities employ the available legal remedies to combat COVID-19, serious concerns are raised by the fact that Poland's Supreme Court has posed question concerning the legality of the methods used to introduce restrictions on citizens' rights and freedoms in connection with the obligation to maintain social distancing, covering the mouth with a mask or gathering in public places. In particular, these questions focus on the government's failure to comply with the standard of instituting these limitations on otherwise protected rights to privacy and freedom of movement by way of properly and regularly enacted statutes. In other words, the Polish government has relied upon legal acts, which are adopted by the Council of Ministers, instead of upon statutes passed through normal channels by the Parliament, as the means of instituting the limitations discussed. Although it is true that the Council of Ministers is entitled by the Act on Infectious Diseases to pass these Acts, nevertheless, they fail to comply with constitutional standards. Consequently, the restrictions introduced merely by

regulations lack enforceable sanctions (i.e. they are toothless), and therefore are useless as a tool for achieving the desired goals of eradicating the virus.

Legislation, Acts, Regulations or Court Decisions

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- Act of 5 December 2008 on Preventing and Combating Infection and Infectious Diseases in Humans (Consolidated act: Journal of Laws of 2020, item 1845).
- Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended).
- Constitution of the World Health Organization. Agreement concluded by the Governments represented at the International Health Conference, and Protocol relating to the International Office of Public Hygiene, signed in New York on 22 July 1946 (Journal of Laws of 1948, No. 61, item 477).
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