

# CONTROL OF EPIDEMIC DISEASES AS A CONSTITUTIONAL DUTY OF PUBLIC AUTHORITIES

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## Abstract

The control of epidemic diseases is a constitutional obligation of public authorities, detailed in ordinary legislation and executive acts. It is also subject to the regulations of international law, to which Poland is bound. With the announcement of the epidemic and then the SARS CoV-2 pandemic, the provisions of the Polish Constitution, in addition to the programmatic character given to them, also acquired an important practical value. The public authorities did not decide to declare a state of emergency, instead declaring first an epidemic emergency and then an epidemic state. In order to limit the spread of the virus, a number of restrictions were introduced, including restrictions on the freedom of movement, the announcement of an order to cover the mouth and nose, the establishment of an order to maintain an appropriate distance, or limits on the number of people who can be in an enclosed space at the same time. Each of these orders and prohibitions directly touched individuals' rights and freedoms, and while in the initial phase of the epidemic's development they seemed to obtain public acceptance, as time passed, their effectiveness, necessity and legality were increasingly questioned. The period of the coronavirus pandemic became the subject of research conducted in various scientific fields: medical, sociological, economic and legal. The present work is a consideration of a legal nature, supported by the results of public opinion polls on the subject of assessing the government's actions to combat the SARS CoV-2 epidemic.

**Key words:** epidemic diseases, duties of public authorities, Constitution of the Republic of Poland

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## Introduction

Infectious diseases have accompanied mankind for centuries, and the first information about them dates back to ancient times. Between 541 and 543, Europe was overrun by a plague pandemic, the so-called "Justinian plague." The following centuries were also marked by the stigma of this disease on an unprecedented scale, as up to 40-50% of the population in Europe died as a result of the "Black Death" between 1347 and 1351 [1]. Plague epidemics often affected large urban centres such as London, Vienna and Moscow. In the 18th century, the incidence of plague in Western Europe, and some time later in Eastern Europe, declined significantly. Reasons cited for the reduction in infections include a change in housing and sanitation, greater attention to hygiene, a change in climate or immune tuning of animals such as rats and fleas, which had previously been significant sources of infection. Quarantine also began to be introduced as one way to limit the spread of disease [2]. It is difficult not to agree with the statement of V. Krawczyk-Wasilewska that "from the ecological point of view, epidemics accompanying the history of mankind constituted - along with migration, war, famine and natural disasters - one of the most important factors of demographic regulation of the human ecosystem" [3].

Modern civilizations, although seemingly so developed, are also not free of infectious diseases. An example of this is the recent first epidemic and then pandemic of the SARS-CoV-2 coronavirus, which emerged in 2020 in China and then spread around the world. Any epidemic disease, in addition to posing a serious threat to the population, is also a huge challenge for public authorities, on whom the law imposes obligations related to their control. The 1997 Constitution of the Republic of Poland, in Article 68(4), clearly formulates this obligation, stating that "Public authorities are obliged to combat epidemic diseases and prevent the negative health consequences of environmental degradation"[4]. The cited provision is programmatic in nature and does not establish subjective rights on the part of the individual, so it cannot be the basis for claims against the state. Nevertheless, it constitutes an obligation on the part of public authorities to combat epidemic diseases, which should be understood as taking both preventive and curative measures [5]. The obligation expressed in Article 68 of the Polish Constitution has its source in international law. Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted in 1966 by the General Assembly of the United Nations, establishes the right to health protection, also enshrining in it in paragraph 2(c) the obligation of States Parties to prevent, treat and combat epidemic, endemic, occupatio-

nal and other diseases [6]. Poland ratified the Pact in 1977, thereby assuming the obligation to implement and respect its provisions.

### The aim

Infectious diseases and epidemics and pandemics announced in connection with mass cases, are the subject of research by many scientific disciplines, and are thus interdisciplinary in nature. Their analysis is important and necessary, both in medical, psychological, economic and legal aspects. Each of these allows us to better understand them, and thus prepare for their occurrence or escalation. Trends in infectious diseases on a national or global scale in the 21st century unfortunately do not inspire optimism. It can be expected that despite the development of medicine and improvements in the conditions of human existence, the future will not be free of them, and therefore it is necessary that already analysing the experience of the past, to plan solutions for the future. The purpose of the work is to present the constitutional basis of the duty to combat epidemic diseases that the Polish legislator has imposed on public authorities. An important element of the work is also to present the results of a study of how the actions of public authorities in this regard have been evaluated by the public and whether, in light of this, they have fulfilled the obligation imposed on them by the Polish Constitution. The considerations carried out have primarily a legal dimension, but were supported by examples illustrating the problems and doubts that took place during the state of epidemic emergency and the state of epidemics in force in Poland for the period 2020-2023 and of a non-legal nature.

### Material and methods

The method that was adopted in the course of the study was mainly the dogmatic-legal method. An analysis of surveys conducted by specialized national centres on the evaluation of the public authorities' actions during the coronavirus pandemic in Poland was also used. A significant part of the research was also based on the results of an audit of a key body in this field, the Supreme Chamber of Control.

### Results

The data presented here comes from surveys conducted by specialized entities, such as the Centre for Public Opinion Research (CBOS), which has been monitoring public evaluations of the government's policy toward the epidemic since May/June 2020. The evaluation of the government's actions in terms of the effectiveness of the fight against the coronavirus pandemic varies, depending on the surveyed period over the years 2020-2023. Due to the high frequency of the surveys, only selected results have been cited to show public sentiment and evaluations in a cross-sectional manner. According to the CBOS survey conducted from August 18 to 27, 2020 (i.e., during the period when the incidence of the disease was particularly

high) from a sample of 1,149 people, 57 percent of Poles gave a good assessment of the government's efforts to combat the epidemic, of which 15 percent gave a decidedly good assessment and 42 percent a rather good assessment; a critical assessment was given by 36 percent of respondents, of which 23 percent gave a rather bad assessment of the government's efforts and 13 percent gave a decidedly bad assessment; 7 percent had no opinion. According to the survey, the demographic and social group surveyed had a significant impact on the assessment made. Among those surveyed, positive opinions were expressed mainly by older people (aged over 55), with primary or basic vocational education, with relatively low incomes, living in rural areas or small towns. Negative evaluation of the government's actions, on the other hand, was expressed most often by young people (under 34), well-educated and well-off, executives, professionals, students and pupils. The respondents' political orientation and worldview also influenced the outcome of the survey. Support for the government's actions was overwhelmingly (as much as 74 percent) expressed by those identifying with the right wing, while it was criticized by respondents supporting left-wing groups (59 percent). A link was also noted between the frequency of participation in religious practices and the approval rating of the authorities' actions, drawing the conclusion that the more frequent the participation, the better the rating. With regard to the restrictions imposed, as many as 50 percent of respondents thought they were adequate to the situation, 27 percent thought they were too little, and only 14 percent thought they went too far. The latter group primarily included entrepreneurs and the unemployed. As the survey showed, the political views of those satisfied with the scale of the restrictions were overwhelmingly right-wing (60 percent). The assessment of state assistance to entrepreneurs during the period under review was described as sufficient by 45 percent of respondents, with 36 percent having the opposite view [7].

The Supreme Audit Institution also commented in detail on the government's response to the covid-19 pandemic in its report. The report has not yet been made public, but the media and a press conference have covered its main points, which makes it possible to refer to the contents of the report. The audit covered both the preparatory activities for the pandemic and the way those in power dealt with it. The report was critical of the authorities' actions in both areas. It found that neither the state authorities nor its institutions, nor the services or medical entities were prepared for the possibility of dangerous and highly contagious diseases as a result of which they took "inadequate measures" and "insufficiently took into account changes in the epidemiological situation". A comparison was made between the existing state of affairs and the desired state of affairs with regard to the functions performed by the Minister of Health, and it was concluded that he "unreliably performed the function of coordinating the activities of other state bodies and institutions." The allegations formulated by the NIK auditors also concerned mismanagement allegedly taking place in connection with the purchase of equipment, or the organization and operation of temporary hospitals. The

report extensively raises the problem of the purchase of ventilators, which the state acquired, among other things, from people with no medical experience, and consequently, they often had deficiencies or defects, so that, fearing for the lives and health of patients, they could not be used. The estimated cost of their purchase was PLN 44 million 702.4 thousand (purchased by the Minister of Health) and PLN 37 million 622.1 thousand (purchased by the Minister of the Head of the Prime Minister's Office). The Supreme Audit Office also noted that during the pandemic, access to treatment services was restricted, including for those with conditions other than coronavirus, resulting in increased mortality among patients. The audit found that a shortage of infectious disease specialists and a reduced number of infectious disease wards were also among the main problems. The allegations outlined in the report became the subject of notices filed by the NIK with the public prosecutor's office on suspicion of crime [8]. The Chamber's audit also covered the COVID-19 Prevention Fund, as a result of which it was found that the 190 billion zlotys allocated from it were spent in a chaotic, inefficient manner and without overt, transparent procedures. The negative assessment also applied to purchased vaccines, in particular the contracting of vaccines worth about PLN 8.4 billion, while the value of all contracted vaccines in total was PLN 13.9 billion. According to NIK Chairman Marian Banaś, "the Prime Minister's Office failed to properly fulfill its duties, and the overall supervision of the Fund should be assessed in an unequivocally negative manner." During a press conference to present the results of the audit, he said that he had forwarded the results of the audit to the Central Anti-Corruption Bureau with a request to take action appropriate to the seriousness of the situation [9]. The presented research results are only illustrative, and the purpose of presenting them is to show the complexity of the problem of assessing the implementation of the government's obligation to combat epidemic diseases. Assessments of public sentiment and evaluation of the government during the pandemic by research centres were cyclical and characterized by high frequency, hence their detailed analysis should become the subject of a comprehensive and detailed study.

### Discussion

In March 2020. Europe and the world faced the serious threat of the emergence and rapid spread of the SARS CoV-2 virus, which causes COVID-19 disease. This was not the first pandemic faced by the authorities of individual countries and international organizations, such as the World Health Organization, but the scale of illness and death caused by the coronavirus was so significant that it was even referred to as "the global plague of the 21st century." [10]. The Polish authorities did not take advantage of any of the constitutional states of emergency, first introducing a state of epidemic emergency (14.03.2020) and then a state of epidemic emergency (20.03.2020), followed by a return to a state of epidemic emergency (16.05.2022), before finally abolishing it on 1.07.2023. There is no doubt that the implementation of the public authorities' obligation under

Article 68(4) of the Constitution of the Republic of Poland was not possible with the ordinary means at their disposal, especially since it involved the introduction of many restrictions in the sphere of human and civil rights and freedoms. As P. Tuleja aptly notes, the only one of the states of emergency that could have been introduced was a state of natural disaster, which, however, the authorities did not use [11]. Legal doubts are raised not only by the fact that the authorities created quasi-emergency states: epidemic threat and epidemic, but above all by the scope of the restrictions introduced. It is the duty of public authorities to ensure the exercise of the constitutional right to education (Article 70), which became quite problematic in the era of the pandemic, when schools and universities were closed. The introduction of remote education has found both its supporters and detractors. Interestingly, Poland was among the countries that maintained the remote form of education for the longest time, which today, in retrospect, is often evaluated negatively, due to the lack of proper IT and organizational facilities and the adverse effects of isolation from peers in the psychological and pedagogical spheres [12]. The Polish legislature, in Article 52 of the Basic Law, provided for freedom of movement within the territory of the Republic and the choice of residence and domicile, as well as freedom to leave its borders [13]. Since the beginning of the coronavirus pandemic, this freedom has been subject to relatively far-reaching restrictions by public authorities. The Constitution of the Republic of Poland, in Article 31(3), clearly indicates how restrictions on rights and freedoms can be established. The basic condition is that they be established by law and only if they are necessary in a democratic state for its security or public order, or for the protection of the environment, public health and morals, or the freedoms and rights of others. These restrictions must not affect the essence of freedoms and rights [14]. As F. Morawski points out, the restrictions that were introduced in Poland between 1.04.2020 and 11.04.2020 essentially established a general prohibition on movement within the territory of the Republic, and thus caused a temporary deprivation, with respect to all subjects, of the ability to exercise freedom of movement. Thus, it can be concluded that they affected the essence of the freedom expressed in Article 52. It is clear that the intention of the public authorities was to restrict interpersonal contacts in public space, but nevertheless this does not reduce doubts about the appropriateness of the restrictions introduced [15]. The coronavirus pandemic and the restrictions that were established did not bypass the sphere of freedom of conscience and religion either. There was a temporary restriction on the ability to worship in public places, including buildings and other religious facilities, and a limit on the number of people who could be indoors and outdoors during such worship [16]. An order to cover the mouth and nose was also introduced, which has been particularly controversial in terms of the appropriateness of its establishment on legal grounds. This obligation was extended not only to those who were sick or suspected of being infected but to everyone, so it was given a universal character. As studies show, the uncertainty and fear of contracting the disease or its consequences that dominated society in the early days

of the epidemic were reflected in support for the restrictions introduced, or more broadly, the actions of public authorities. However, one can observe how the extent of this support began to change over time, with it usually increasing as the incidence of the disease increased. Even during the course of the epidemic, and later the pandemic, there were many voices claiming that the public authorities were going beyond the legal framework given to them by their actions. In addition, centres such as CBOS constantly monitored how the public evaluated them. The report of the Supreme Audit Institution, which revealed irregularities and excesses of authority that took place in connection with preparatory and targeted measures to combat the effects of the pandemic, was also an important document. It can be assumed that it represents only the beginning of considerations in this regard and does not close the discussion of legality in the fulfilment of their tasks by state bodies.

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