


Restrictions on rights and freedoms during the COVID-19 pandemic in a comparative perspective. First experiences, ed. K. Dobrzeński, B. Przywora, Warszawa: Instytut Wymiaru Sprawiedliwości 2021, pp. 540.

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The ability of international actors to preserve and protect their societies largely depends on maintaining security, including health security. The outbreak of the COVID-19 “coronavirus” pandemic brought about a long-forgotten debate on health issues that was reopened once again and that automatically stimulated lawmakers to make quick reactions by way of introducing new (inconsiderate) legislation. Importantly, many a lawyer felt apt to make comments on how to deal with the consequences of the pandemic and how to structure legislative responses. Now, we are after the first waves of the pandemic and that enables scholars to evaluate the reactions of States in times of a health crisis. Thus, the editors of the book under review gathered a group of authors to describe States’ reactions to the COVID-19 pandemic.

Recovering from the pandemic is sure to bring constantly changing issues and challenges. The plethora of topics to be addressed seems to be conspicuous: it starts with the basic laws such as human and civil rights, State emergency and the preservation of public health (vaccines, quarantines) and ends with more specific issues connected, *inter alia*, to banking/finance, restructuring, commercial contracts, construction/real estate, consumer financial services, insurance, intellectual property, cybersecurity and privacy. There are also, of course, some (allegedly) prosaic, but important problems, that need to be dealt with. The most obvious example lawyers can imagine maybe that many courts now use video conference software to conduct hearings. This process of handling cases may be different for each judge. And it raises not only the issues of due process of law but also

the issues of how to protect one's client's rights at a virtual hearing. The law aside, the way we work has drastically changed. Employers had little time to prepare for the profound effect that Covid-19 has on their workers and operations. Similarly, employees were put in a situation in which homework created challenges they had never encountered before. Businesses of almost all types and sizes are still reeling from the shock and short-term impact of coronavirus. The States reacted by granting financial relief which (apart from being inconsiderate and highly doubtful from an economic perspective as being counter-productive) were usually granted only to certain branches or firms. Thus, to some of them, States provided certain financial aid, whilst others were left to themselves, with the need of restructuring or declaring bankruptcy at the horizon.

Given the above, the book under review attempts to provide an overview of the current and possible future legal conditions and opportunities for all with an attempt of taking into account recent developments in a dynamic environment.

The book is written strictly from the domestic perspective. It is a compilation of articles devoted to various legal aspects of the pandemic in given countries. While the discussion on the significance of legal response to health insecurity is a not recent occurrence, the response to the COVID-19 pandemic seems in academic quarters to be a new challenge. The worldwide nature of the pandemic is something completely new as it creates a need for a collective response to effectively combat the disease and its effects. Therefore, the responses to the pandemic inevitably cause (severe) limitations to human rights and freedoms. The book also aims at analyzing those responses. At the same time, the authors recognize the crucial role of the comparative approach at the global and regional levels in combating threats to health security through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats.

The book is divided into twenty-three parts devoted successively to Austria, Belgium, Belarus, Brazil, China, Czechia, Denmark, France, Spain, the Netherlands, Israel, Canada, Mexico, Germany, Peru, Sweden, Ukraine, USA, Hungary, Italy and the United Kingdom. Finally, a separate, but modest chapter summarizes the book with a set of concluding remarks. Overall, in their chapters, authors analyze the legal and practical solutions that

have been applied in the selected countries to prevent the development of the COVID-19 pandemic in order to bring conclusions as to what extent experiences and solutions can be used in the Polish legal system to prepare Poland for the future in the world of pandemics. Also, the articles discuss selected legal problems related to the measures directed at preventing the spread of COVID-19 in light of constitutional provisions (eg. State emergency provisions). Incidentally, the authors take a look into ongoing legislative works on new acts regulating the matter. Finally, their review of normative acts intends to show whether the interference with human rights and freedoms (in particular, right to assembly and right to privacy) is permissible under the constitutional arrangements and selected international and domestic standards, including proportionality. For example, in several countries, drastic restrictions on human and civil rights were said to be justified by the unprecedented threat posed by a rapid spread of the pandemic. On the other side, these restrictions hampered or even nullified the exercise of human and civil rights (especially, during the co-called lockdowns). The authors tried to review domestic anti-pandemic legislations to question or not the legality of the measures taken. They offer some sets of conclusions in their final remarks.

The States' reactions to the first waves of the pandemic varied and largely depended on a given State's approach to the coronavirus and its constitutional provisions. For example, while analyzing the situation in Austria, P. Czarny focuses on limiting the freedom of movement and freedom of economic activity in the light of constitutional regulation. He points out that the Austrian Constitution does not provide for the institution of a state of emergency and it does not contain provisions on the suspension of constitutional rights and freedoms in emergencies (the same provisions are included, *inter alia*, in the Constitution of Belgium). On the other side, the constitutional regulations concerning the criteria on which the admissibility of limiting fundamental rights depends are general and imprecise. The most important formal criterion is the requirement of a statutory basis (usually, this condition has been abided by). Also, the Austrian Constitutional Tribunal underlines the importance of the proportionality principle. In the light of these criteria, the author assesses a huge number of laws and regulations in Austria that were sparked by the COVID-19 pandemic. They include, in particular, the special act on counteracting COVID-19 of

March 2020 which provides for a far-reaching limitation of civil rights. As indicated above, the author thus studies judgments of the Constitutional Court to show that the guarantees of individual rights and freedoms have not been suspended in Austria. But to assess the legality of their introduction, constitutional principles continue to apply, including the need for a clear statutory basis, the requirement to observe the principle of proportionality, including precise (and not general) justification by the executive authorities of the necessity of the introduced restrictions. The author(s) might be applauded for highlighting the barriers for (often) unfettered willingness of States to combat the pandemic at all costs.

The editors of the book were careful not to neglect those States which have a relaxed approach to the pandemic. For instance, as opposed to Austria, the Belarusian authorities have consistently denied the appearance of the pandemic. Thus, neither the state of emergency nor any restrictions were introduced. The only limitation was the prohibition to enter Belarus by natural persons, including its citizens, crossing the land borders with Lithuania, Latvia, Poland and Ukraine. However, as K. Kakareko and J. M. Sobczak rightly pointed out, this restriction was sparked by political tensions with neighboring countries.

The seemingly most important conclusion reached in the book is that the States reacted to the pandemic in two basic forms. Either the pandemic was recognized as an event that could be managed through ordinary means or the pandemic was regarded as an extraordinary event that caused a state of emergency to be declared, but only if the constitutional provisions allowed the authorities to do so (the most prominent examples being Spain, Czechia, Hungary and France). In the latter case, the States benefited from special powers that severely limited the exercise of human and civil rights and freedoms. In my opinion, this is one of the most important conclusions of the book: the States did not hesitate to limit human rights and freedoms. More worrisome, the States seem likely to impose a far-reaching limitation in the foreseeable future unless people will vigorously and commonly object to the imposition of such extreme means. Also, the authors rightly noted that the States had adopted many soft law documents (guidelines, plans, procedures, etc.) that indicated the ways and means for providing basic services in the time of the pandemic.

As follows from the above, the authors persuasively proved that the limitation on civic and human rights and freedoms was severe. In particular, personal freedom (right to privacy – lockdowns, quarantines), as well as the freedom of economic activity and the freedom of religion, were restricted. The authors, however, could have presented a more in-depth analysis to show whether (why) these limitations were inconsistent with basic human and civil rights and freedoms.

This book is an interesting piece of scholarly writing. It has drawbacks, though. The authors could have been more critical in their assessment of the domestic legislations under their respective review. Sometimes an article simply boils down to a description of the COVID-19 legislation. Also, my big concern for the book is that it does not include any sort of (considerable) introduction or summary written in English. Also, summaries attached to each chapter are modest, to say the least. They do not fully reflect the content of articles and, sometimes, do not include the conclusions reached in a given article. Therefore, at their current state, the summaries often impart none of these, which significantly detracts from their usefulness. I identify these issues as the most significant drawbacks of the book under review. It is the duty of the authors and editors of such a book on such an important topic to provide an international reader with at least a cursory overview of the book, its content, theses and, most of all, conclusions. Absent such an English introduction/summary, the book is automatically devoid of its use in the wider context, to wit, in the international discussion on the legal issues arising out of the pandemic.

In sum, this book still has several strengths. It tries to explain to the reader how the response to the pandemic interfered with human rights and freedoms. Authors' ideas should become known to possibly the widest spectrum of readers. Therefore, the book has its original significance for the future: it contributes to the conscious evaluation of the limitations imposed by States by way of evaluating the pandemic restriction with basic rights and freedoms. The authors should be applauded for taking up again a difficult and complex subject at the very first stage of the pandemic. Their considerations are interesting. The breadth of issues and of arguments certainly proves that the authors fully committed themselves to the subject matter. Therefore, the added value of the book is the discussion on the legal

foundation of responses to the COVID-19 pandemic in light of basic rights and freedoms.

Naturally, it is not possible in a short review of such a book to comment in detail on every aspect of first reactions to the COVID-19 pandemic. But hopefully, it follows from this brief description that the book under review is a good piece. The authors do not avoid thorny issues and confidently present and defend their views. I would venture to conclude that anyone with a genuine interest in health safety would immediately identify with this book and regard it as valuable work. Thus, I expect that this book will find its way onto many shelves of those dealing with health safety and the COVID-19 pandemic.