



FLASH NEWS

Special edition
no. 1/2020

COVID-19

OVERVIEW OF DECISIONS IN THE PERIOD MARCH - JUNE 2020

CONFINEMENT MEASURES



France – Council of State

Fundamental rights - Public health - COVID-19 - Request for total confinement of the population in the face of the epidemic - Dismissal

Within the framework of summary proceedings brought by a syndicate of young doctors demanding the implementation of total confinement of the population in order to combat the COVID-19 epidemic, the Council of State carried out a review of the confinement measures taken by the government. The Council of State noted that it did not appear that the government had shown a serious and manifestly unlawful failure to act, infringing the right to life and health of the population by failing to decide on the total confinement of the population throughout the country. Nevertheless, it concluded that, while the general thrust of the measures taken by the government did not demonstrate any shortcomings on the part of the public authorities, the scope of certain provisions, in particular the exceptions to confinement, was ambiguous with regard to the content of the warning messages issued to the population. The Council of State then enjoined the government to clarify the scope or to re-examine certain exceptions to the confinement.

*Conseil d'État, juge des référés, [order of 22/03/2020, no. 439674 \(FR\)](#)
[Press release \(FR\)](#)*



Slovenia – Constitutional Court

Fundamental rights - Public health - COVID-19 - Temporary ban on movement and assembly in public places and spaces - Ban on movement between municipalities - Conformity with the Constitution

The Constitutional Court found admissible the examination of the constitutionality and legality of a government order concerning the temporary ban on movement and assembly in public places in the Republic of Slovenia and the ban on movement between municipalities.

The Constitutional Court recalled that the government is obliged, upon receipt of this order, to verify weekly and on the basis of an expert opinion whether the prohibition in question is still necessary to achieve its objective. According to the high court, if the government can, if necessary, extend, modify or cancel the said prohibition, it is obliged to inform the public about it.

Ustavno sodišče Republike Slovenije, [order of 16/04/2020, U-I-83/20 \(SI\)](#)



Cyprus – Administrative Court

Fundamental rights - Public health - COVID-19 - Free movement of persons - Application for interim measures against a decree restricting the entry of Cypriot citizens into Cyprus - Inadmissibility - Dismissal

The Administrative Court dismissed as inadmissible an application for summary proceedings filed by a Cypriot student abroad. The request sought the suspension of the execution of a government decree which, in view of the health crisis, prohibited the entry into Cyprus of any person, including Cypriot citizens, who did not have a medical certificate related to COVID-19, issued by a designated medical centre abroad, i.e. in a Member State or in a third State. The applicant alleged a violation of Article 14 of the Constitution, according to which the entry of a Cypriot citizen into the territory of the Republic may not under any circumstances be prohibited.

The Administrative Court concluded that the decree concerned constituted both a regulatory administrative act and a government decision, which meant it was not subject to judicial review and, in any event, it was necessary for the protection of health. The main action seeking the annulment of that decree was therefore dismissed.

Διοικητικό Δικαστήριο, [judgment of 16/04/2020, Πατσαλίδη και Κυπριακή Δημοκρατία, no. 301/2020 \(GR\)](#)



Czech Republic – Prague Municipal Court

Fundamental rights - Public health - COVID-19 - State of emergency - Powers of national authorities to limit fundamental rights - Annulment of the emergency measures in question

The Municipal Court of Prague upheld an action for annulment against certain emergency measures adopted by the Ministry of Health introducing restrictions on the movement and travel of persons in the context of the fight against the spread of the virus. The Court held that, under a state of emergency, only the government has the power to limit the fundamental rights of citizens in such a significant way. As a result, the Court ruled that the Ministry of Health had acted ultra vires and annulled the emergency measures in question.

*Městský soud v Praze, [judgment of 23/04/2020, 14 A 41/2020 \(CS\)](#)
[Press release \(CS\)](#)*



Spain – Constitutional Court

Fundamental rights - Public health - COVID-19 - Freedom to demonstrate - Limits - Inadmissibility of appeal - Dismissal

By this order, the Constitutional Court dismissed as inadmissible an appeal challenging the ban on a motorcade. It held that the declaration of a state of alert makes it possible to limit or restrict the exercise of the right to demonstrate. According to the Constitutional Court, given the uncertainty as to the risks of contagion and the spread of COVID-19, the prohibition in question ensured that this right did not conflict with constitutional values such as life, health and the protection of the resources of the health system. It added that the prohibition was proportionate, as the applicant had not provided for specific measures to control the transmission of the virus and to avoid blocking access to hospitals.

*Tribunal Constitucional, Sala Primera, [order of 30/04/2020, ATC no. 40/2020 \(ES\)](#)
[Press release \(ES\)](#)*



Romania – Constitutional Court

Fundamental rights - Public health - COVID-19 - State of emergency - Fines applied for violation of measures taken during this period - Non-compliance with the Constitution

The Constitutional Court ruled that the provisions on administrative sanctions, including fines, applicable in case of violation of the obligation to comply with the measures taken by the public authorities during the state of emergency, were unconstitutional. On the one hand, the high court held that these provisions lacked clarity, precision and predictability, in that they did not provide a clear definition of the acts or omissions that could be punished by a fine. On the other hand, it held that the said provisions violate the principle of proportionality, in that they provide for a fine, as the only administrative sanction, for all the facts constituting a violation of the said obligation, regardless of their nature or seriousness.

*Curtea Constituțională, [decision of 06/05/2020, no. 152 \(RO\)](#)
[Press release \(RO\)](#)*



France – Constitutional Council

Fundamental rights - Public health - COVID-19 - Law extending the state of health emergency - Partial non-compliance with the Constitution

In a decision of partial non-compliance, validating the state of health emergency regime and the conditions for holding public decision-makers criminally liable in the event of a health disaster, the Constitutional Council censured the provisions allowing the legal regime of quarantine and solitary confinement to remain in force until 1 June 2020. There was no provision for the systematic intervention of a judicial judge when measures requiring the person concerned to remain at home for more than twelve hours a day were extended. In addition, the Constitutional Council also censured the provision authorising access by social support organisations to the data collected for the “tracing” of persons affected by COVID-19, and those who have been in contact with them, without their consent. The Constitutional Council stressed that this information collection system cannot be applied beyond the time strictly necessary to combat the spread of the epidemic and that the personal data collected, whether medical or not, must be deleted three months after they have been collected.

*Conseil constitutionnel, [decision of 11/05/2020, no. 2020-800 DC \(FR\)](#)
[Press release \(FR\)](#)*



Austria – Regional Administrative Court of Lower Austria

Fundamental rights - Public health - COVID-19 - National measures restricting the freedom of movement of citizens - Distinction between private and public places - Annulment of the contested decision

The Regional Administrative Court of Lower Austria heard an appeal against a decision of the administrative authority of Tulln (Lower Austria), imposing a fine of EUR 660 on a person who had visited another family's flat. This decision was based on the fact that access to public places had been prohibited by law, with certain exceptions, since 16 March 2020, in order to prevent the spread of COVID-19.

The Regional Administrative Court of Lower Austria, however, annulled this decision, ruling that the claimant had never been in a public place, but in a private place. However, the law in question did not prohibit staying in private places.

Landesverwaltungsgericht Niederösterreich, [judgment of 12/05/2020, LVwG-S-891/001-2020 \(DE\)](#)
[Press release \(DE\)](#)



Germany – Federal Constitutional Court

Fundamental rights - Public health - COVID-19 - Obligation to protect human life and health - Margin of discretion as to the choice of measures intended to ensure such protection - Inadmissibility of the action - Dismissal

The Federal Constitutional Court declared inadmissible a constitutional challenge to prohibit German public authorities from relaxing measures taken to combat the COVID-19 pandemic. The applicant, who considered himself to belong to a vulnerable group on account of his age, argued that such a relaxation risked violating his fundamental right to life and physical integrity. The Federal Constitutional Court, while stressing the basic obligation incumbent on public authorities to protect human life and health, emphasised the wide margin of discretion of these authorities as regards the choice of measures to ensure such protection. It therefore dismissed the action.

Bundesverfassungsgericht, [order of 12/05/2020, 1 BvR 1027/20 \(DE\)](#)
[Press release \(DE\)](#)



Germany – Federal Constitutional Court

Fundamental rights - Public health - COVID-19 - Obligation to protect human life and health - Restrictions of liberty for non-vulnerable persons - Inadmissibility of the action - Dismissal

The Federal Constitutional Court declared inadmissible a constitutional challenge seeking to order the German public authorities to lift, for persons under 60 years of age, the restrictions of liberty imposed to combat the COVID-19 pandemic. The applicant argued that these restrictions should be limited to vulnerable persons only. The Federal Constitutional Court, while stressing the temporary nature of the general restrictions and their gradual relaxation by the public authorities, highlighted the fact that these restrictions were aimed both at protecting the life and health of vulnerable third parties and at ensuring their participation in society, which the said authorities must, in principle, guarantee. It therefore dismissed the action.

Bundesverfassungsgericht, [order of 13/05/2020, 1 BvR 1021/20 \(DE\)](#)
[Press release \(DE\)](#)



Romania – Constitutional Court

Fundamental rights - Public health - COVID-19 - "State of alert" - Limits - Partial rejection of the exception of unconstitutionality

The Romanian Constitutional Court rejected in part the plea of unconstitutionality raised by the People's Advocate regarding the provisions of Article 2(f) (concerning the definition of "state of alert") and Article 4 (incorporating a list of measures admitted in the event of emergency situations) of Government Emergency Ordinance No. 21 of 15 April 2004 on the national emergency management system. In its decision, the Court considered, on the one hand, that the definition of "state of alert" met the requirements of quality, clarity and predictability and, on the other hand, that the measures allowed in emergency situations were in conformity with the Constitution insofar as they were not intended to restrict the exercise of fundamental rights or freedoms.

Curtea Constituțională, [decision of 13/05/2020 no. 157 \(RO\)](#)

 **Poland – Warsaw Regional Court**

Fundamental rights - Public health - COVID-19 - Freedom of assembly and association - Dismissal of the action

Warsaw Regional Court rejected an appeal against an administrative decision refusing to register a public gathering. In his appeal, the applicant contested the fact that the said decision concerned the entry of the said gathering in the public register without taking into account its organisational arrangements (the event).

The court ruled that, when faced with a health crisis, the public authorities are above all obliged to act in accordance with the regulations in force at the time of the crisis and to take preventive measures, i.e. prohibit public gatherings until further notice, in order to guarantee the protection of life and public health.

Sąd okręgowy w Warszawie, [order of 14/05/2020, XXV Ns 45/20 \(PL\)](#)

 **France – Council of State**

Protection of personal data - Public health - COVID-19 - Deconfinement - surveillance by drone - Invasion of privacy

The interim relief judge of the Council of State ordered the State to immediately cease surveillance by drone, in Paris, of compliance with the health rules in force during the deconfinement period. Noting that the drones used were likely to collect identification data and did not include any technical device to ensure that the information collected did not lead to the identification of persons filmed for a purpose other than the identification of public gatherings, the Council of State considered that the disputed scheme constituted processing of personal data within the meaning of Directive 2016/680 and must comply with the framework of the law provided for that purpose. In view of the risk of use contrary to the data protection rules and in the absence of prior regulatory intervention, it considered that the implementation of this processing operation constituted a serious and manifestly unlawful infringement of the right to respect for private life.

Conseil d'État, [order of 18/05/2020, no. 440442 \(FR\)](#)

 **Belgium – Council of State**

Fundamental rights - Public health - COVID-19 - Measures restricting freedom of religion - Prohibition of religious ceremonies - Dismissal of the appeal

The Council of State received a request to suspend, as a matter of extreme urgency, a ministerial order prohibiting religious ceremonies. This application was submitted by persons of the Catholic faith. They argued, inter alia, that, despite the initial deconfinement measures, they had no idea when they would be able to go to church again.

The Council of State dismissed the appeal on the grounds that the condition of extreme urgency was not met. In this respect, it explicitly referred to the express commitment of the Belgian State to examine, at the next meeting of the National Security Council, to what extent and under what conditions religious ceremonies could again take place.

*Raad van State, [judgment of 28/05/2020, no. 247.674 \(NL\)](#)
[Press release \(NL/ FR\)](#)*

 **France – Council of State**

Fundamental rights - Freedom of expression - Freedom to demonstrate - Suspension of the general and absolute ban on demonstrating on the public highway

In view of the imminence of a number of planned events that the applicants were claiming to be taking place, the interim relief judge of the Council of State ordered the suspension of the enforcement of the provisions of the decree of 31 May 2020 prohibiting gatherings, meetings or activities involving more than ten people in public places. Referred to by several associations and trade unions, the interim relief judge, referring in particular to the recommendations of the High Council of Public Health of 24 April 2020, considered that this ban was justified by the health risks only when the “barrier measures” (distance of one metre or wearing a mask, in particular) or the temporary ban on any event involving more than 5,000 people could not be complied with.

*Conseil d'État, [order of 13/06/2020, nos. 440846, 440856, 441015 \(FR\)](#)
[Press release \(FR\)](#)*

MEASURES INVOLVING DEPRIVATION OF LIBERTY



Belgium – Court of Cassation

Criminal law - Public health - COVID-19 - Referral of a case sine die due to the health crisis - Application for provisional release of the remand prisoner - Dismissal

The Brussels Court of Appeal, Criminal Division, hearing an appeal against a criminal conviction for attempted murder, had postponed *sine die* the hearing to be held in this case due to the “global health crisis”. The person concerned, who was in pre-trial detention, had then submitted an application for provisional release, which was rejected. He therefore appealed to the Court of Cassation against this rejection, arguing that a referral *sine die* violated his right to be tried within a reasonable time. In addition, he claimed an increased risk of exposure to COVID-19 in prison and denounced restrictions on visits by his children.

The Court of Cassation dismissed the appeal, considering that the appeal judges had duly motivated and legally justified their decision to maintain pre-trial detention.

Cour de cassation, [judgment of 01/04/2020, no. P.20.0337.F \(FR\)](#)



France – Court of Cassation

Criminal law - Public health - COVID-19 - Systematic extension of pre-trial detention in the context of a state of health emergency

In two judgments handed down on 26 May 2020, the Court of Cassation ruled on the legality of the provision providing for the automatic extension of pre-trial detention in the context of a state of health emergency. It considered that, while the systematic extension of all expiring detention permits without the control of a judicial judge is legal, this extension is, on the other hand, contrary to Article 5 of the European Convention on Human Rights (right to liberty and security) and that its compliance with the Constitution will have to be decided by the Constitutional Council, considering the serious risk of unconstitutionality, with regard to its Article 66 (prohibition of arbitrary detention).

*Cour de cassation, [judgments of 26/05/2020, no. 20-81.910](#) and [no. 20-81.971 \(FR\)](#)
[Press release \(FR\)](#)*



Bulgaria – Plovdiv District Court

Criminal law - Public health - COVID-19 - Failure to comply with the confinement obligation - Penalties - Agreement between the prosecutor and the offender

Plovdiv District Court found a Bulgarian national guilty of endangering the health and life of others for failing to comply with the obligatory fourteen days of isolation on his return from Germany by leaving his accommodation. Taking the view that he had not complied with the confinement measures put in place by the government in connection with the COVID-19 pandemic and that he had committed an offence under Article 343b(1) of the Criminal Code, the Court sentenced him to a custodial sentence of three years' imprisonment and a fine of 10,000 Bulgarian leva (BGN) (approximately EUR 5,000). Following an agreement concluded by the defendant's lawyer with the public prosecutor, the execution of the said sentence was postponed for three years from the date of entry into force of the said agreement, pursuant to Article 66, paragraph 1 of the Criminal Code.

Rayonen sad, [protocol no. 301 of 14/04/2020, no. 2279/2020](#)

ASYLUM



France – Council of State

Immigration policy - Public health - COVID-19 - Request for temporary closure of administrative detention centres - Dismissal

Within the framework of summary proceedings, several associations for the defence of the rights of foreigners and professional lawyers' organisations asked the Council of State to enjoin the government to temporarily close all the administrative detention centres where illegal foreigners are held pending their removal. The Council of State rejected this request on the grounds that, in the current circumstances, the operating conditions of the administrative detention centres are not likely, by themselves, to undermine respect for life or the right to receive care. Furthermore, the Council of State also recalled that the foreigners concerned may only be placed or kept in detention for the time strictly necessary for their departure and therefore when there are prospects of effective removal.

Conseil d'État, juge des référés, [order of 27/03/2020, no. 439720 \(FR\)](#)



Netherlands – Court of First Instance of The Hague

Immigration policy - Public health - COVID-19 - Transfers of applicants for international protection - Time limit

Where a transfer to the Member State responsible for an applicant for international protection is not carried out within the applicable time limit, responsibility is transferred pursuant to Article 29(2) of Regulation 604/2013 to the Member State requesting the transfer. There is no provision in the Regulation that allows for derogation from this rule in a situation such as that resulting from the COVID-19 pandemic that led to the closure of internal borders. This was judged by the interim relief judge of the Court of First Instance of The Hague referring to the Commission Communication of 17 April 2020 “COVID-19: Guidelines on the implementation of relevant EU provisions governing asylum and return procedures and resettlement (2020/C 126/02)”.

Rechtbank Den Haag (voorzieningenrechter), [decision of 21/04/2020, NL20.6494 \(NL\)](#)

EUROPEAN ARREST WARRANT



Spain – Central Court

European Arrest Warrant - Public health - COVID-19 - Temporary stay of surrender - Continued detention - Dismissal of the appeal

The Central Court dismissed the appeal against an order of 19 March 2020, by which an examining magistrate had, on the one hand, granted a temporary stay of execution of a European Arrest Warrant (EAW) and, on the other hand, allowed the person concerned to remain in detention. On 16 March 2020, the Polish issuing authority had informed the Spanish authorities that it was no longer able to receive the interested party due to the closure of its borders. The Central Court ruled that the current pandemic situation, which entails an imminent and serious risk of global contagion, is covered by the notion of “serious humanitarian reasons”, justifying the temporary suspension of a surrender, within the meaning of Article 23(5) of the EAW Framework Decision. Consequently, and given that this suspension entails the suspension of the time limits for the surrender, it stated that the person concerned should not be released, but should be kept in detention, particularly in view of the proven risk that he might escape.

Audiencia Nacional, Sala de lo Penal, [order of 06/04/2020, no. AAN 931/2020 \(ES\)](#)

ORGANISATION OF JUSTICE

Netherlands – Council of State

Fundamental rights - Public health - COVID-19 - Delivering decisions in open court - Right to be heard - Limits

While stressing the temporary nature of its decisions, the Council of State approved certain court practices developed during the health crisis due to the closure of the buildings of the Dutch courts. In addition to suspending the delivery of decisions in open court, it confirmed the possibility of depriving a third-country national who is in detention and at risk of being removed of the right to be heard before a judge in the context of an appeal before that judge. In this respect, given the exceptional circumstances, the Dutch high court stated that such a decision can only be justified by balancing, on a case-by-case basis, the interests involved, such as the impossibility of hearing the person concerned, with other fundamental rights such as the right to obtain a decision on the lawfulness of the detention as soon as possible, the right to privacy and the right to health.

Afdeling bestuursrechtspraak van de Raad van State, [decisions of 07/04/2020, 202001949/1/V3 \(NL\)](#), [summary \(EN\)](#) and [202002016/1/V3 \(NL\)](#), [summary \(EN\)](#).

Hungary – Supreme Court

State of emergency - Public health - COVID-19 - Organisational arrangements for hearings - Conditions

The Supreme Court interpreted a government decree on the procedural measures applicable during a state of emergency. Under this decree, where possible, hearings are to be conducted electronically. The Supreme Court clarified that a hearing can only be held electronically if all necessary technical conditions are met and all persons summoned can have access to it. The participation of the parties and other persons in the hearing in this form is subject to the prior communication by the interested parties of their e-mail address and to the fact that they each have equipment and an Internet connection capable of transmitting image and sound simultaneously. In addition, the Court of Appeal must refrain from scheduling hearings during a state of emergency.

Kúria, [PK vélemény 30/04/2020, no. 1/2020 \(HU\)](#) and [no. 2/2020 \(HU\)](#)

ECONOMIC ACTIVITY

Spain – Valencia Commercial Court

State of emergency - Public health - COVID-19 - Suspension of company bankruptcy proceedings - Temporary resumption of activity

Within the framework of the state of emergency declared by Royal Decree 463/2020, of 14 March 2020, in order to deal with the health crisis caused by COVID-19, the Commercial Court granted a textile company, in the process of judicial liquidation after having gone bankrupt and already in a state of cessation of activity, the authorisation to exceptionally resume its activity in order to produce health protection clothing for healthcare personnel. The Commercial Court based its reasoning on the social aspect of bankruptcy laws, which goes beyond the simple protection of shareholders' and creditors' rights.

Juzgado de lo mercantil, [order of 28/03/2020, no. AJM V 8/2020 \(ES\)](#)

France – Versailles Court of Appeal

State of emergency - Public health - COVID-19 - Labour law - Obligation of safety and health prevention of employees - Lack of assessment of risks induced by COVID-19

In a decision of 24 April 2020, Versailles Court of Appeal upheld the order issued in summary proceedings on 14 April 2020 by Nanterre Magistrates' Court ([no. 20/00503](#)). The latter had censured the company Amazon France Logistique for not having sufficiently assessed the risks induced by COVID-19 with regard to its employees, nor having involved the staff representatives in this assessment, as well as for not having sufficiently implemented the measures provided for by the Labour Code, in violation of its obligation of safety and to prevent the health of employees. Thus, pending the implementation of additional measures, the company is obliged to restrict the activity of its warehouses to the sole activities of receiving goods, preparing and dispatching orders for essential products.

Cour d'appel de Versailles, [judgment of 24/04/2020, no. 20/01993 \(FR\)](#)



Belgium – Council of State

Fundamental rights - Public health - COVID-19 - Measures restricting economic freedom - Partial resumption of certain commercial activities - Dismissal of the action

The Council of State was asked to suspend, as a matter of extreme urgency, a ministerial order allowing, in particular, the reopening of DIY stores with a general range and garden centres, but not specialised shops. This application had been submitted by traders who had not been authorised to resume their activity. They alleged that the said decree had been adopted in violation of the principles of equal treatment and legal certainty.

The Council of State dismissed the action on the grounds that the applicants had not established, firstly, that this distinction was unreasonable and, secondly, that it was a source of confusion.

*Raad van State, [judgment of 27/04/2020, no. 247.452 \(NL\)](#)
[Press release \(NL / FR\)](#)*