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The Right to a Public Hearing in the Era of the COVID-19 Epidemic – Selected Issues*

Prawo do jawnego rozpatrzenia sprawy w dobie epidemii COVID-19 – wybrane zagadnienia

Introduction

The outbreak of the SARS-CoV-2 virus causing COVID-19 disease has had far-reaching effects worldwide,[1] due to the ease of transmission of the virus and the possible severity of the disease.[2] These restrictions extended in particular

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[1] T. Cheng, A. Conca-Cheng, *The Pandemics of Racism and COVID-19: Danger and Opportunity*, "Pediatrics" 2020, vol. 146(5), p. 1.

[2] K. Krzyżak, K.E. Kościelecka, A.J. Kuć, D.M. Kubik, T. Męcik-Kronenberg, *Masks – Protection or Threat? Analysis of Social Attitudes Towards the Order to Cover the Mouth and Nose during the COVID-19 Pandemic*, "Medical News" 2020, vol. 73(8), pp. 1641–1649.

to the functioning of the judiciary,[3] and the legislator developed a number of solutions in connection with the outbreak state, some of which also applied to the subsequent outbreak state. The solutions adopted in the COVID-19 Act[4] included, *inter alia*, the provision of Article 15zzs[4](1) (in the wording in force from 3 July 2021 to 15 April 2023), which, in administrative court cases, allowed the Supreme Administrative Court to hold a closed hearing to hear the case, even with a party's objection and request for a cassation hearing. On the other hand, with regard to civil procedure, Article 15zzs[1](2) of the COVID-19 Act (in force from 16 May 2020 to 3 July 2021) enacted that the presiding judge may order a closed hearing in certain circumstances, unless a party signals an objection.

In both cases, the legislator stipulated that these provisions apply during the period of either an epidemic emergency or an epidemic state declared due to COVID-19 and within one year of the last one being revoked.

Of the above regulations, the one which dealt with the administrative court procedure is more far-reaching, as the legislator did not even grant a party the right to object to an *in camera* hearing.

The regulation that stipulated that the above requirements for the *in camera* examination of cases were also to apply one year after the last of the states was revoked needs to be analysed and evaluated. On a positive note, the legislator did not allow these regulations to be applied, as both were revoked before the state of emergency was revoked. However, they were part of the legal order for some time.

The aim of this article is to assess the proportionality of the aforementioned regulation to the extent that these provisions would still be in force one year after the cancellation of the state of epidemic or epidemic threat. This analysis will be carried out using the dogmatic-legal method, in which I will assess the indicated provisions of the COVID-19 Act through the prism of the requirements arising from Article 45(1) of the Constitution and the European Convention on Human Rights.

Right to a public hearing

Pursuant to the content of Article 45(1) of the Constitution, everyone has the right to a fair and public hearing without undue delay by a competent, independent, impartial and independent court.

[3] A. Kościółek, *Konstytucyjność zasady jednoosobowego rozpoznawania spraw cywilnych w dobie pandemii Covid-19*, „Przegląd Prawa Konstytucyjnego" 2022, nr 4, passim.

[4] Act of 2 March 2020 on special arrangements relating to the prevention, prevention and control of COVID-19, other infectious diseases and emergencies caused by them (consolidated text, Journal of Laws 2023, item 1327, as amended).

In the matter discussed in the article, the right to a public hearing is the most important. In Polish constitutionalism – taking into account the content of the current wording of the Constitution – there is a three-part concept of the right to a court, which was initially described in the legal doctrine,[5] and was later approved by the Constitutional Tribunal. The Constitutional Tribunal in its judgment of June 9, 1998[6] indicated that the right to a court includes:

1) the right of access to a court, i.e. to launch a procedure before a court – a body with certain characteristics (competent, independent, impartial and independent);
2) the right to an adequate judicial procedure, in accordance with the requirements of fairness and publicity;
3) the right to a court judgment, i.e. to obtain a binding decision on a given case by a court.[7]

The term "openness of court proceedings" is most commonly used in legal doctrine to mean openness to the public. In this sense, the principle of openness means the public's right of access to court hearings and to this extent it fulfils the function of external openness. The term "openness of proceedings" is also used to mean openness to the parties. Openness of proceedings in the latter sense means that the parties are allowed to participate in procedural actions – in this respect it is a manifestation of the internal openness of the proceedings. In the context of Article 45(2) of the Constitution, the requirement to hear a case in public should be understood as the obligation to provide the public with the possibility to enter the court hearing, which, however, does not lead to the rejection of the guarantees arising from the second of the presented meanings of the principle in question.[8]

As indicated in the doctrine, the admissibility of statutory regulations providing for the hearing of certain cases in closed session must be subject – in addition to verification through the prism of the realisation of the right to a hearing – to a cumulative assessment in terms of the prerequisites set out in the first sentence

[5] M. Wyrzykowski, *Komentarz do art. 1 przepisów utrzymanych w mocy*, [in:] *Komentarz do Konstytucji Rzeczypospolitej Polskiej*, red. L. Garlicki, Warszawa 1995–1998; Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej (ogólna charakterystyka)*, „Państwo i Prawo" 1997, z. 11–12.

[6] Judgment of the Constitutional Tribunal of June 9, 1998, K 28/97, OTK 1998, no. 4, item 50.

[7] A. Hyżorek, *Prawo do sądu a uzasadnianie orzeczeń sądowych – studium konstytucyjnoprawne*, Warszawa 2024, p. 6.

[8] Judgment of the Constitutional Tribunal of June 11, 2002, SK 5/02, OTK-A 2002, no. 4, item 41; judgment of the Constitutional Tribunal of December 6, 2004, SK 29/04, OTK-A 2004, no. 11, item 114.

of Article 45(2) of the Constitution, as it is at the same time a case of exclusion of external openness (public) of the hearing of the case.[9]

The openness of proceedings must also be assessed in the context of the right to a fair trial, which is guaranteed by Article 6 of the European Convention on Human Rights.[10] Article 6(1) second sentence ECHR states that proceedings before a court shall be public, but that the press and public may be excluded from all or part of the trial on grounds of morality, public order or national security in a democratic society, where the welfare of minors or the protection of the private life of the parties so requires, or in special circumstances, within the limits considered absolutely necessary by the court, where publicity would prejudice the interests of justice. The European Court of Human Rights has held that a restriction on the principle of openness of judicial proceedings must be applied only within the limits of strict necessity.[11]

Openness of justice contributes to the objective of Article 6(1), namely a fair trial, the guarantee of which is one of the fundamental principles of a democratic society within the meaning of the Convention.[12] The European Court of Human Rights points out that the public nature of the proceedings protects the parties to the proceedings from the secret administration of justice, devoid of public scrutiny; it is also one of the means by which confidence in both higher and lower courts can be maintained. By keeping the administration of justice public, openness contributes to the objective of Article 6(1) of the Convention, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society within the meaning of the Convention.[13]

Thus, in light of the provisions of the Polish Basic Law, as well as the Convention standards, the principle is that court proceedings are open to the public.

[9] P. Grzegorczyk, K. Weitz, *Komentarz do art. 45*, [in:] *Konstytucja RP*, t. 1: *Komentarz do art. 1–86*, red. M. Safjan, L. Bosek, Warszawa 2016, pp. 113–116.

[10] Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols nos. 3, 5 and 8 and supplemented by Protocol no. 2 (Journal of Laws 1993, No. 61, item 284, as amended), hereinafter: ECHR.

[11] Judgment *Belashev v. Russia* of 4 December 2008, Chamber (Section I), Application no. 28617/03; *Welke and Białek v. Poland* of 1 March 2011, Chamber (Section IV), Application no. 15924/05.

[12] *Axen v. Federal Republic of Germany* judgment of December 8, 1983, Series A, no. 72.

[13] ECtHR judgment of January 17, 2008, 14810/02, *Biryukov v. Russia*, LEX no. 337205.

Regulations related to the occurrence of SARS-CoV-2 virus

It is a truism to point out that the fight against the COVID-19 disease caused by the SARS-CoV-2 virus paralysed the world in 2020. This posed a very big challenge for countries – both in terms of the organisation of the health sector and also in terms of the appropriate development of the various types of regulations and procedures that should be in place during the epidemic period.[14]

The Polish legislator, during the state of epidemics and then epidemic threat, enacted the Act on combating COVID-19. In the justification for the Act, it was stated that in connection with the threat of the spread of SARS CoV-2 virus infection, there is a need to introduce specific solutions, enabling measures to be taken to minimise the threat to public health that are complementary to the basic regulations contained in particular in the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans. The legislator also indicated that, in its assessment, the submitted regulations address all situations in which the threat of epidemics and spread of infectious diseases in humans is growing and introduce the necessary mechanisms of action.[15]

In Poland, the state of epidemic was in force from 20 March 2020 to 16 May 2022,[16] and the state of epidemic emergency from 16 May 2022 to 1 July 2023.[17]

The legislator in the COVID-19 Act drafted, *inter alia*, the provision of Article 15zzs^4(1), which, in the period from 3 July 2021[18] to 15 April 2023, stipulated that during the period in which either an epidemic emergency or an epidemic

[14] A. Hyżorek, *Skierowanie do pracy przy zwalczaniu epidemii – uwagi konstytucyjnoprawne i procesualistyczne*, „Przegląd Prawa Publicznego" 2023, nr 3, pp. 26–47.

[15] Government bill on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and emergencies caused by them, 9th term Sejm, print no. 265.

[16] See Regulation of the Minister of Health of March 20, 2020 on the declaration of an epidemic state in the territory of the Republic of Poland (consolidated text, Journal of Laws 2022, item 340); Regulation of the Minister of Health of May 12, 2022 on the cancellation of an epidemic state in the territory of the Republic of Poland (Journal of Laws, item 1027).

[17] Ordinance of the Minister of Health of 12 May 2022 on the declaration of an epidemic emergency in the territory of the Republic of Poland (Journal of Laws, item 1028); Ordinance of the Minister of Health of 14 June 2023 on the cancellation of an epidemic emergency in the territory of the Republic of Poland (Journal of Laws, item 1118).

[18] By virtue of Article 4(3) of the Act of 28 May 2021 amending the Act – Code of Civil Procedure and certain other acts (Journal of Laws, item 1090), this provision was amended as of 3 July 2021. Previously, it read: "During the period in which the state of epidemic emergency or the state of epidemic declared due to COVID-19 is in force and within one year from the revocation of the last of them in cases in which the party bringing the cassation appeal has not waived a hearing or another party has requested a hearing, the Supreme Administrative Court may hear the cassation appeal in a closed session if all parties, within 14 days from the date of service of the notice of the intention to refer the case to a closed session, agree to it. In a closed session in these cases, the Supreme Administrative Court shall decide in a panel of three judges".

state declared due to COVID-19 is in force and within one year of the revocation of the last one, the Supreme Administrative Court is not bound by a party's request for a hearing. When a case to be heard is referred to a closed hearing, the Supreme Administrative Court shall decide in a three-judge panel.[19]

Significantly, this provision was already amended during the state of epidemics and led to a worsening of the status of an individual – a participant in administrative court proceedings, as it indicated that the Supreme Administrative Court was not bound by a party's request for a hearing. The party therefore had no influence on whether its case would be heard at a hearing or at a closed court session. The referral of a case to a closed hearing could also not be challenged in any way, as there was no such procedure in the Act.

In civil proceedings from 16 May 2020 to 3 July 2021,[20] on the other hand, the provision of Article 15zzs[1](2) of the COVID-19 Act was in force, according to which, during the period in which an epidemic emergency or a state of epidemics declared due to COVID-19 is in force and within one year after the last one is revoked, in cases heard in accordance with the provisions of the Act of 17 November 1964 – Code of Civil Procedure, the presiding judge may order an *in camera* hearing if he deems it necessary to hear the case, and the hearing or the public hearing required by the Act could cause an undue risk to the health of the persons participating in it and cannot be conducted remotely with simultaneous direct video and audio transmission, and none of the parties has objected to the holding of the *in camera* hearing within 7 days of the date of service of the notice to them of the referral of the case to an *in camera* hearing; the party not represented by an advocate, legal adviser, patent agent or the Public Prosecutor's Office of the Republic of Poland shall be instructed in the notice sent about the right and the time limit for filing an objection.

In both of these cases – in administrative and civil court proceedings – cases could be heard in closed sessions despite the objections of the parties to the proceedings requesting the proceedings to be held in a hearing. Last but not least, the parties to the proceedings were not guaranteed an avenue of appeal against the orders directing their case to be heard in closed sessions.

[19] By virtue of Article 17(2)(a) of the Act of 9 March 2023 amending the Act – Code of Civil Procedure and certain other acts (Journal of Laws, item 614), this provision was amended as of 15 April 2023 and currently reads: "During the period in which the state of epidemic emergency or the state of epidemic declared due to COVID-19 is in force and within one year from the revocation of the one that was in force last, the provincial administrative courts and the Supreme Administrative Court may hear the case in a closed session, unless a party or a participant in the proceedings requests that the case be heard. The request of a party or participant in the proceedings is binding on the court".

[20] This provision was amended as of 3 July 2021 by Article 4(1) of the Act of 28 May 2021 amending the Act – Code of Civil Procedure and certain other acts (Journal of Laws, item 1090).

The Ombudsman intervened with the Minister of Justice regarding the above legal regulations under the COVID-19 Act. In his letter, he indicated that the Ombudsman had received complaints from citizens indicating that, despite the remote hearing originally scheduled, the administrative court had abandoned the hearing and referred the case to be heard in closed session. The party did not have the opportunity to challenge this order and indicated that their procedural rights had been violated.[21]

It should be recalled, however, that during the period discussed above, the legislator used a construction in which it allowed the failure to hold a hearing (even at the request of a party) also within one year of the day after the revocation of an epidemic state or an epidemic emergency.

While one has to agree with the position of the Supreme Administrative Court assuming that the right to a public hearing is not of an absolute nature and may be subject to limitations, including also due to the content of Article 45 and Article 31(3) of the Constitution, which refers to limitations on the exercise of constitutional freedoms and rights when it is normalized by law and only when it is necessary in a democratic state for, *inter alia*, the protection of health,[22] insofar as it is justified and proportionate in my opinion only in the case where the situation related to COVID-19 was new, unknown before. What the legislator did not take into account was that in a situation in which protective vaccination against COVID-19 already existed and doctors already knew how to deal with the disease, the provisions of the COVID-19 Act cannot be so restrictive and limiting of the subjective rights of litigants.

Proportionality of restrictions

Article 45(1) of the Constitution deals *expressis verbis* with the openness of court proceedings, assuming that everyone has the right to a fair and public hearing without undue delay by a competent, independent, impartial and independent court. This provision can and should be assessed through the prism of proportionality.

Proportionality is derived in this respect from Article 31(3) of the Constitution. In this provision, the system legislator indicated that limitations to the exercise of constitutional freedoms and rights may be established only by statute

[21] Letter from the Ombudsman of May 30, 2022 (No. VII.510.13.2022.PKR) to the Minister of Justice.

[22] Judgment of the Supreme Administrative Court of July 15, 2021, III OSK 3743/21, LEX no. 3205557.

and only when they are necessary in a democratic state for its security or public order, or for the protection of the environment, health and public morals, or the freedoms and rights of other persons. Such limitations may not impair the essence of the freedoms and rights.

On the grounds of the provision of Article 31(3) of the Constitution, the Constitutional Tribunal at the end of the 1990s held that the requirement of "necessity" referred to by the system legislator is fulfilled if the established restrictions comply with the principle of proportionality. This means, in the light of the case law of the Constitutional Tribunal, that: (1) the measures applied by the legislator must be capable of achieving the intended objectives; (2) they must be necessary for the protection of the interest to which they are linked; (3) their effects must be in proportion to the burdens imposed on the citizen.[23] It follows from the above statements of the Constitutional Tribunal that the indispensability of the established limitations in relation to the interest to which they are linked – and which indispensability may also be referred to as the necessity of such limitations – is one of the three elements constituting the broader principle of proportionality (or the broader "necessity" within the meaning of Article 31(3) of the Constitution, next to the element in the form of usefulness (effectiveness) of the established limitations and their proportionality *sensu stricto*.[24]

It should also be noted that the situation related to the COVID-19 epidemic in Poland did not result in the declaration of any state of emergency. Even assuming that a state of emergency would have been declared for this reason, the system legislator did not allow for the possibility of limiting the right to court. Pursuant to the content of Article 233(1) of the Constitution, a law defining the scope of restrictions on human and civil liberties and rights during a state of martial law and emergency may not limit the freedoms and rights set out in Article 45 (access to court).

In the light of the considerations made in this article, the question therefore arises as to whether the initial legal regulation enacted by the legislature to return to open proceedings only one year after the last of the states – epidemic or epidemic threat – had been revoked was proportionate?

The terms epidemic state and epidemic threat state are legal terms. Pursuant to the content of Article 2(22) of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans,[25] an epidemic state is

[23] Judgment of the Constitutional Tribunal of June 9, 1998, K 28/97, OTK 1998, no. 4, item 50; judgment of the Constitutional Tribunal of April 26, 1999, K 33/98, OTK 1999, no. 4, item 71.

[24] M. Szydło, *Komentarz do art. 31*, [in:] *Konstytucja RP*, t. 1: *Komentarz do art. 1–86*, red. M. Safjan, L. Bosek, Warszawa 2016, p. 791.

[25] Act of 5 December 2008 on the prevention and control of infections and infectious diseases in humans (consolidated text, Journal of Laws 2023, item 1284, as amended).

a legal situation introduced in a given area in connection with the occurrence of an epidemic in order to take the anti-epidemic and preventive measures defined by the Act to minimise the consequences of the epidemic. By epidemic emergency, on the other hand, the legislator understands the legal situation introduced in a given area in connection with the risk of an epidemic in order to take the preventive measures specified in the Act (Article 2(23) of the Act).

As Mateusz Radajewski points out, the fundamental purpose of these states is to temporarily establish specific rules for the functioning of the state, which would normally be inadmissible. Thus, during their duration, specific legal norms may be in force, which, however, must remain in compliance with all provisions of the Constitution.[26] Leszek Bosek points out that the two definitions are distinguished by the fact that an epidemic is a biological and social phenomenon, while a state of epidemic emergency is a normative category. It encompasses a functionally related set of legal situations as well as tasks and competences of public authorities aimed at minimising the consequences of epidemic risk.[27]

Therefore, if the epidemic state is replaced by an epidemic risk state by the legislator, this means in practice – taking the legal definitions into account – that there is only an epidemic risk. If the epidemic emergency is also repealed, this can mean that the risk of an epidemic occurring or returning has also subsided. When the state of epidemic risk is cancelled, the restrictions, orders and prohibitions introduced earlier cease to be in force, as well as the restrictions, orders and prohibitions introduced by the Council of Ministers in regulations issued on the basis of Article 46b of the Act[28] become pointless.

Therefore, if the legislator by its act confirms that even the state of emergency of an epidemic has subsided, then all regulations that restrict the rights and freedoms of citizens, which were introduced to counteract the epidemic and the state of emergency of an epidemic, should be abolished, as they do not appear to be proportionate to the threat.

The very essence of the principle of proportionality requires that the measure used to achieve the intended objective is appropriate and necessary and that the interference involved is not excessive in relation to the gravity of the case.[29] Im-

[26] M. Radajewski, *Stan zagrożenia epidemicznego oraz stan epidemii jako formy prawne ochrony zdrowia publicznego*, „Przegląd Legislacyjny" 2021, nr 4, p. 61.

[27] L. Bosek, *Komentarz do art. 2*, [in:] *Ustawa o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi. Komentarz*, red. L. Bosek, Legalis 2021.

[28] P. Łazutka-Gawęda, *Ogłoszenie i odwołanie stanu zagrożenia epidemicznego i stanu epidemii*, [in:] *Zapobieganie oraz zwalczanie zakażeń i chorób zakaźnych u ludzi. Zagadnienia prawne*, red. R. Budzisz, LEX/el. 2023.

[29] Judgment of the Constitutional Tribunal of July 10, 2007, SK 50/06, OTK-A 2007, no. 7, item 75.

manently linked to the concept of proportionality is a weighting mechanism – it is a weighing of the principles that are components of the proportionality test in question. Weighting is at the heart of the proportionality test.[30] Robert Alexy considers that a weighting mechanism is necessary when the fulfilment of one principle leads to even partial non-fulfilment of another principle, i.e. when the fulfilment of a principle comes at the expense of another or other principles.[31] The greater (higher) the degree of non-fulfilment or violation of one principle, the more important the fulfilment of another principle must be.[32] When there is a conflict between principles, it is necessary to appropriately balance the protected values so as to safeguard each of them to the maximum extent possible. In doing so, the balancing process may sometimes lead to giving absolute preference to one of the values, when it is irreconcilable with another conflicting value and has been considered for one reason or another to be more important or more significant.[33] Of course, the arguments should not be counted, but weighed[34] – which emphasises the qualitative rather than quantitative nature of the arguments weighed in the proportionality test.

Assessment of the proportionality of selected regulations appearing in COVID-19 – summary

The arguments expounded above support the research hypothesis that the legal regulations, which stipulated that only one year after the last of the conditions – epidemic or epidemic threat – had been revoked would the proceedings return to openness, were disproportionate to the facts and therefore incompatible with the provisions of the Basic Law and the ECHR.

If the legislator decided to revoke the state of epidemic threat, he lost the possibility of invoking the limitation clause under Article 31(3) of the Constitution in the form of health protection, as he was no longer combating the state of epidemics and epidemic threat (Article 68(4) of the Constitution), as they no longer existed. In this respect, the juxtaposition of Article 31(3) in conjunction

[30] A. Śledzińska-Simon, *Analiza proporcjonalności ograniczeń konstytucyjnych praw i wolności. Teoria i praktyka*, Wrocław 2019, p. 32 and the literature cited therein.

[31] G. Maroń, *Formuła ważenia zasad prawa jako mechanizm usuwania ich kolizji na przykładzie koncepcji Roberta Alexego*, „Zeszyty Naukowe Uniwersytetu Rzeszowskiego" 2009, nr 53, p. 93.

[32] R. Alexy, *A Theory of Constitutional Rights*, Oxford 2002, p. 102.

[33] K. Mularski, *Komentarz do art. 3*, [in:] *Kodeks cywilny*, t. 1: *Komentarz do art. 1–352*, red. M. Gutowski, Legalis 2021 and the literature cited therein.

[34] T. Barszcz, *Decyzja prawna jako determinant argumentacji prawniczej*, [in:] *Wymiary prawa. Teoria. Filozofia. Aksjologia*, red. M. Hermann, M. Krotoszyński, P. Zwierzykowski, Legalis 2019.

with Article 68(4) of the Constitution and Article 45(1) of the Constitution should lead the legislator to conclude that the return to openness of court proceedings only after the lapse of one year from the cessation of the last condition is disproportionate, as it excessively interferes with everyone's right to a court, as well as does not exist in relation to the threat of an infectious disease or its occurrence.

Janusz Roszkiewicz pointed out at the time that the solution in question is incompatible with Article 6(1) ECHR, because it does not provide for the possibility of limiting the openness of court proceedings due to the necessity of health protection (which has already been mentioned above) and, moreover, the introduction of such a far-reaching limitation would only be admissible under Article 15(1) ECHR (provided that its necessity and usefulness in preventing an epidemic is demonstrated), but the Polish government did not use this possibility.[35] Also Tomasz Tomczak argued that the right to openness of court hearings should not be abandoned due to the health protection clause, as there are new technologies that allow participation in hearings by means of remote communication and allow the principle of openness to be realised in full.[36] The doctrine has therefore consistently indicated that proceedings conducted on the basis of the provisions shaping the principle of openness in pandemic proceedings should therefore be considered as violating fair trial standards, including the principle of openness of the trial expressed in Article 6(1) ECHR.[37]

The only positive circumstance is that the regulations discussed in this article were amended with regard to administrative court proceedings with effect from 15 April 2023 and with regard to civil proceedings with effect from 3 July 2021, and the state of epidemic emergency was revoked on 1 July 2023. The regulations replacing the provisions of Article 15zzs^{4}(1) and Article 15zzs^{1}(2) of the COVID-19 Act fortunately did not contain solutions that, once the state of epidemic or epidemic emergency was lifted, would include restrictions on the openness of hearings.

However, despite the inapplicability of the provisions in question, there was a situation in which there were regulations in Polish legislation *expressis verbis* that *prima facie* raised reasonable doubts as to their compatibility with the Constitution and the Convention – given their disproportionality after the last state was revoked.

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[35] J. Roszkiewicz, *Jawność postępowania sądowego w świetle Europejskiej Konwencji Praw Człowieka*, „Radca Prawny Zeszyty Naukowe" 2021, nr 2, p. 33.

[36] T. Tomczak, *The Openness of Civil Court Proceedings in the Time of the COVID-19 Pandemic*, "Acta Universitatis Sapientiae, Legal Studies" 2021, vol. 10(2), p. 283.

[37] W. Szafrańska, *Limitation of the Principle of Openness in Polish Judicial Administrative Proceedings During the Pandemic and the Standards of a Fair Hearing: The Reasons for Possible Complaints Brought before the European Court of Human Rights*, "Studia Iuridica" 2022, no. 91, pp. 368–386.

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Abstract: The article is devoted to the subject analysis of the constitutional regulation of the right to court as regards the right to a public hearing in judicial-administrative and civil cases on the basis of the regulation that was in force during the state of epidemic and state of epidemic emergency in connection with the COVID-19 disease. The aim of the study is an attempt to assess the constitutionality of the regulation occurring in civil proceedings and the regulation occurring in judicial-administrative proceedings, according to which, still within one year from the date of cancellation of the state of epidemics, or the state of epidemic threat, the Supreme Administrative Court could consider appeals in closed sessions – not being bound by the application of the parties. The author tries to show that the regulation in question did not meet the requirements of the institution of the right to court. The text assesses the proportionality of such a regulation.

Keywords: right to a fair trial; right to a court in times of epidemic; publicity of proceedings; public hearing; right to publicity

Abstrakt: Artykuł poświęcony jest analizie przedmiotowej konstytucyjnej regulacji prawa do sądu w zakresie dotyczącym prawa do jawnej rozprawy sądowej w sprawach sądowoadministracyjnych oraz cywilnych na gruncie regulacji, które obowiązywały w stanie epidemii i stanie zagrożenia epidemicznego w związku z chorobą COVID-19. Celem jest próba oceny konstytucyjności regulacji występującej w postępowaniu cywilnym oraz regulacji występującej w postępowaniu sądowoadministracyjnym, zgodnie z którą jeszcze w ciągu roku od dnia odwołania stanu epidemii lub stanu zagrożenia epidemicznego Naczelny Sąd Administracyjny mógł rozpatrywać środki odwoławcze na posiedzeniach niejawnych, nie będąc związanym wnioskiem stron. Autor stara się wykazać, że przedmiotowa regulacja nie odpowiadała wymogom stawianym przez instytucję prawa do sądu. W opracowaniu dokonano oceny proporcjonalności takiej regulacji.

Słowa kluczowe: prawo do sądu; prawo do sądu w dobie epidemii; jawność postępowania; wysłuchanie publiczne; prawo do jawności