

Policing the Pandemic

Authors: Liz Aston, José A. Brandariz, Dorota Czerwinska, Sofie De Kimpe, Jacques de Maillard, Istvan Hoffman, Megan O'Neil, Mike Rowe, Randi Solhjell.

Overview and purpose

This paper presents lessons learned from a quick review of the experience of policing the pandemic in European states. Reflecting on this experience, the paper presents lessons and recommendations for the policing of any future second wave or future pandemic.

Background

These are very difficult times for policing and the police. The COVID-19 virus caused a pandemic that demanded unprecedented measures in the field of medical and social order. "In this moment of rapid transition, the reproduction of order is in question, the management of risk is tenuous and the governance of security paramount." (Sheptycki, 2020, p.2) According to James Sheptycki, for the first time we can speak of a global policing event, though actual responses have tended to be national and to reinforce borders as a first line of defence against the virus. In response to the current COVID-19 public health crisis, European states have introduced measures to close workplaces, to limit the movement of people and to require or encourage social distancing. The ways in which these measures have been formulated and enforced vary from one country to the next and, in many cases, from one town to another. Within this varied picture, we note an increased use of police authority to stop persons, to check their identity and, where appropriate, to search their person, as this is probably the most used police measure to enforce the requested social distance.

The COST network POLSTOPS undertook a first quick scan of the 'policing of the pandemic' situation among the member countries of our network. We conducted a rapid assessment of these policing changes as they affect Police Stops in terms of the practice, experience, governance and wider local context of stops. We structure the paper in that order before presenting key conclusions and recommendations. We follow this with appendices presenting further details from those countries surveyed.

The role of the police

In the majority of states, new measures were introduced to respond to the pandemic, though some states had existing powers that were applied to the specific circumstances (e.g. Croatia, Poland and Spain) and, in most cases, these included a role for the police. In some countries, the military are also involved (e.g. Spain) and some tensions/controversies have arisen as a result.

Restrictions during the first wave ranged from stay at home unless you have reason (Spain, France), to more 'light touch' restrictions for certain age groups (Turkey) or activities (e.g. Israel and religious festivals). Restrictions placed on people tended to be nationally applied but in some cases, specific cities/towns were locked down for a period (Helsinki in Finland) or in response to a cluster of cases (e.g. Bulgaria, controversially applied to a 'Roma neighbourhood'). Movement between cities was policed in some countries (e.g. Croatia). Borders were closed in most cases and, in some, this was the key focus of the policing effort (Portugal). In most countries, there was some confusion at the margins, about 'good reason' for example, or about what was legally required and what was advice (e.g. distance you could travel from home). And to add to the confusion, the rules changed with time, generally becoming more relaxed, though in Poland they became tighter and were then relaxed.

Breaches were punished by fines in most instances, some severe (Moldova, Norway), others less so (UK, Hungary) but rising with each repeated offence. In some contexts, criminal proceedings might also result (Spain). Data on fines etc. issued is limited in some countries (UK, Spain, Belgium) and non-existent in others.

The question of geographic variation emerges as an interesting point. National borders were policed by some (Portugal, Norway) and internal boundaries in others (Helsinki and affected towns in Bulgaria). More commonly, there is evidence that rules were applied more harshly in some regions (eastern and south eastern Turkey) or communities (ultra-orthodox communities in Israel). Sometimes this was a deliberate decision of local authorities (some prefects in France) or of the police (variations across police forces in England), or reflected long-standing policing approaches (the banlieues in France, working class neighbourhoods in Madrid).

As the second wave emerges across Europe, the reintroduction of restrictions, sometimes varying within a country, present further challenges. Where the early lockdown measures were clearer, there is growing uncertainty about the rules as they change with time. This presents particular challenges for policing.

What do we know of the experience of citizens?

There seem to be no major public protests or complaints in the context of pandemic measures in Europe. There are a couple of exceptions, such as Bulgaria, which appears to be linked to the political context rather than police stops specifically, as well as examples from the UK. In Bulgaria, there have been protests from professional groups and (conspiracy-related) protests linked to political opposition parties (anti-vaccine, anti-government). In the UK, it is more linked to civil society organizations protesting against misuse of power. In addition, there are public debates in most of the countries from various angles that have concerns for the welfare of different citizen groups.

When it comes to the role of civil society organizations, there are two type of discussions. One is the role of collaborating and/or supporting government initiatives and/or health guidelines, e.g. assisting people in their homes with food and medicine (Portugal). The other is the role of monitoring/scrutiny from the perspectives of e.g. passing laws that are potentially in conflict with

the constitution or in assuring that the laws/guidelines are following usual governance measures (e.g. Norway, Scotland, UK, Austria, Bulgaria).

The rights of European citizens if they violate movement restrictions, seem to follow normal criminal proceedings. This also goes for the fines that people receive from the police and there are examples of 1) how people can complain (e.g. Finland) and 2) dismissal of unlawful detention of people (e.g. UK). Apart from Portugal and Scotland, there is no reporting on data regarding complaints by citizens. For instance, Portugal have reported that the Ministry of Internal Administration have obtained information between 22 March and 9 April that 175 people had been detained for disobeying orders, 47 of which for violation of mandatory confinement.

Oversight of the police during the pandemic - “There is nothing to see here”

If we look at the regulation and practice on the internal and judicial remedies, and internal control of the special measures of the police bodies during the COVID-19 pandemic, the main statement could be, that – at least in the legal regulation – nothing has significantly changed. New remedies have not been introduced, and new internal control bodies have not been established. One major tendency can be highlighted: the preference of the administrative tools – instead of the tools of the criminal and criminal procedure law.

The reason for this relative inaction has been the approach to the introduction of the new police measures. If we look at the new measures, it becomes clear that the police powers during the curfew and other restrictions have been based on the ‘regular’ regulations. It is interesting that the curfew has been controlled by the introduction of new administrative offenses and petty offenses and sometimes by new misdemeanours. The police used its ‘regular’ powers to control the restrictions. Therefore, new remedies have not been introduced. The remedies have remained: sometimes administrative remedies, and mainly judicial review of the administrative fines or petty offense fines. The judicial bodies depended on the judicial review system of the given country: in several countries (like Portugal and partly in Hungary) it belonged to the competences of the criminal courts, in Poland and Austria partly to the administrative courts. In several countries – like Portugal, Poland and Austria – the public prosecutors have important tasks in the field of the supervision of these activities – but these competences have not been special, they have been based on the ‘regular’ regulations.

Differences can be observed in the field of parliamentary and constitutional control and inquiry. Turkey is an exception: in Turkey the Parliament does not have any competence during this state of emergency, the policies can be controlled exclusively by the President. It can be stated, that the Parliamentary control has been a central issue, and not only in the judicial and legal field, but in the political arena, as well.

There are different models, which are linked to the national constitutional regulations. For example, in Hungary, the state of emergency can be declared by the Government and during this state of emergency the government can adopt decrees which can amend even acts of Parliaments (excepted by the restrictions of several, constitutionally defined fundamental rights). However, these decrees are valid only for 15 days. From early April until June 18th, a special act was passed by the Parliament by which the validity of the decrees was extended for the whole emergency. But the Parliament

continued to sit, and the 'regular' Parliamentary inquiries remained (e. g. written and oral questions to the ministers and Prime Minister and interpellations). This general delegation of the legislative power in Hungary was a controversial one – and not only in Hungary but in Europe. In Portugal the state of emergency was declared by the president, but the government had special powers. The Parliament should be informed of the special decrees, and it has competences against them. In France, the special decrees of the government were inquired into by a special commission of the two Houses (National Assembly and Senate). In the UK, similarly, a commission had several inquiries in the Home Affairs actions. In Bulgaria the state of emergency was declared by an Act of the Parliament. In Austria there are Constitutional Court and Higher Court cases in which the legality of the special powers and restriction have been challenged, whereas in Poland some district courts have already acquitted of charges of violation of movement restrictions due to the fact that they had been imposed illegally.

The Parliament inquiries are important part of the legal control during the administrative and police actions. It shall be highlighted that these regulations are based on the constitutional systems. The Parliamentary inquiries are stronger in the traditionally parliamentary countries (e.g. UK) and in the new democracies (Hungary has a special situation).

If we look at the regulations, it can be stated that the resilience of the European legal system was limited: the legal systems of the majority of the European countries have not been prepared for a long world pandemic, and therefore quick and sometimes inaccurate and uncertain regulations were introduced, by which controversies have been indicated.

Understanding the different contexts*

While trying to determine whether the pandemic constituted a political opportunity to extend Police powers and whether it was seized by the authorities one should note that – as has already been stated – in general introducing new Police powers was rare in European countries which rather focused on effective or even extensive use of already existing ones. Nevertheless, in some countries, there was an increase in surveillance measures, especially drones (e.g. in France, Spain, Belgium or UK) or mobile phone apps designed to control individuals' movements or obeying the rules of mandatory quarantine (such an app has been introduced in Poland and in Norway – in the latter the Norwegian Data Protection Authority later imposed a temporary ban on processing personal data collected by the app). The benefits and dangers of introducing such an app were widely discussed also in the countries where it has not yet been introduced (e.g. Austria, Croatia) or its use was non-mandatory (Denmark). The issue of electronic surveillance is thus at the heart of public discussions concerning Police powers during the pandemic, especially in Western Europe. However, it has to be underlined that the use of Police powers during the pandemic became a public issue only in some countries and some aspects. It seems that an almost clear division might be drawn between Western European countries, where public discussion was mainly focused on individual freedom of movement and risks of its electronic surveillance, as well as Police misconduct (that was the case in Austria, UK, Belgium, Spain or France), whereas in the countries of Central-Eastern Europe the discussion revolved around collective freedom of assembly (e.g. in Poland, Hungary). For the former, Western European countries, there were criticisms of police abuse of powers by some media and NGOs (for instance in France and Spain). However, the policing of the pandemic did not become a

political issue as such. For the latter, Central-Eastern European countries and especially in Poland and Hungary, the citizens contested a lengthy ban on public assemblies issued by the governments while they continued to work on controversial legislative projects, such as the project for a complete ban on abortion in Poland. It seems that, in most countries, international and national NGOs were active in such discussions, with some exceptions e.g. Greece or France. The common thread of public discussion in countries across Europe is also the issue of legality of introduced restrictions and the competence of particular bodies to impose them. What is also worth noting is that the politics had a strong influence on the manner of policing the pandemic in some countries. The discussion on the potentially political character of certain restrictions was held in Slovakia with relation to Roma minorities – an intensified testing had been held in Roma settlements which raised doubts about the risk of increasing the prejudice against this minority. In response, the government explained that such actions were not connected with the ethnicity itself but with the higher risk of spreading the COVID-19 due to the environmental conditions in such settlements.

Concluding comments /implications /recommendations?

As the second wave takes hold across much of Europe, we make the following recommendations for policing and its oversight:

- **Political scrutiny and consent**

It is apparent that the control and suppression of a virus requires the cooperation of citizens. Any measures must carry legitimacy in the form of the fullest of public and democratic discussions. This is particularly important if any enforcement measures are to be entrusted to the police. Without that legitimacy, police officers and forces are vulnerable to criticism and hostility.

- **Clarity**

Any rules that police officers are asked to enforce must be clear, easily interpreted by both citizens and the police and applied in a just and legitimate manner. In the UK, '4 Es'¹ approach, only escalating to enforcement after seeking to educate and explain, represents an example of good guidance and practice that might inform thinking in other contexts.

- **Scrutiny**

The use of police powers should then also be subject to scrutiny and review. Mechanisms could include internal governance, making police data publicly available, oversight by civil society organisations, judicial remedies, and external oversight bodies. Examples of good practice include Policing Authority in Ireland² and the Independent Advisory Group in Scotland³. Data on usage of police powers, enforcement measures such as fines has an important role in understanding and scrutinising the use of police powers, and potential differential experiences.

¹ <https://www.college.police.uk/What-we-do/COVID-19/Documents/Engage-Explain-Encourage-Enforce-guidance.pdf>

² <https://www.policingauthority.ie/en/about-us/detail/oversight-of-covid-19-policing>

³ <https://www.spa.police.uk/strategy-performance/oversight-of-policing-covid-19/>

Appendices – national cases

England

As England (and the rest of the UK) went into lockdown on 23rd March, official announcements declared that schools and workplaces would be closed, except for essential work that could not be done at home, and indicated that people should stay at home, except for specific reasons. The regulations passed a few days later were narrower, leaving some confusion over what was actually law and what was advice and guidance. Police officers were expected to enforce this law, but had little or no training or even written guidance with which to work. In many instances, there were not even appropriate forms for use when issuing fines for breaches.

From the outset, some English forces have been criticised for being draconian and some examples have made headlines. Derbyshire released drone footage to shame ramblers in the Peak District. Northamptonshire, at one point, threatened to inspect the contents of shopping baskets in Northamptonshire to ensure that the items really were essential. And there have been examples of inappropriate actions by individual officers – fining someone in their own front garden in Manchester, for instance. However, for the most part, forces have preferred to follow the national guidance to Engage, Explain and Encourage rather than Enforce (the 'Four Es Approach'⁴) through fines or other measures.

At the same time, Personal Protective Equipment (PPE) kit for officers was inadequate and they were left to risk assess situations for themselves. For many officers, it became apparent that they were the potential sources of risk and so they began to withdraw from hands-on interactions and from search warrants or other interventions into homes. Arrest and detention were discouraged. All this underlined the lack of forethought given to the policing (in a much broader sense than simply police involvement) of a pandemic.

As the lockdown has gradually been relaxed, it has become harder for the police and the public to understand what is and is not acceptable behaviour. All the data points to a growing reluctance to Enforce. As beaches opened up and as demonstrations over #blacklivesmatter have taken place, the police have found themselves caught between competing and contradictory expectations. Politically, they find themselves caught between a Home Secretary and others demanding tough action against illegal parties and #blacklivesmatter protests as if they are the same policing problem.

As lockdowns have been reintroduced, first in Leicester and then across large parts of the north, police forces have become less clear about their role. Without resources, without clarity of purpose and without a clear consensus, both political and public, as to the appropriateness of the policing role, it remains an unfunded and largely impossible mandate.

⁴ <https://www.college.police.uk/What-we-do/COVID-19/Documents/Engage-Explain-Encourage-Enforce-guidance.pdf>

France

On the 16th of March, President Emmanuel Macron has declared the state of medical emergency and a national lockdown, to be enforced on the 17th, one week after the Italian government (10 of March). At the rhetorical level, on the 16th of March, the President claimed that « we are at war ». The lockdown consisted of an accumulation of various measures, some are targeted at the institutions, others at the individuals. All measures were imposed as a block from day 1, without any variation according to the local context or stages. Regarding citizens, the domestic limitations of freedom, on top of the closures of national borders, airports, harbors, consist of a lockdown assorted of a self-authorization form to be filled out and carried for each presence outside home (for sport activities limited to one hour in a one-kilometer radius around home; the prohibition to use bicycles), a ban of public gatherings (included for ceremonies such as funerals).

On 17 March, the national police and gendarmerie were immediately mobilized by the government to enforce the lockdown. Very quickly, a series of controls were put in place. The ministry of the Interior has been exceptionally keen on counting the number of stops and of fines, and on communicating numbers to the public as a sign of its performance. From day one of the lockdown to the end, virus-motivated stops have reached the astounding number of 20,7 million. This massive mobilization of the forces of law and order can be interpreted as part of a vertical logic in which the government affirms its will to protect citizens against themselves through punishment. The dominant logic, in which the police are involved, is that of a State situated above the population, and controlling it in order to reduce the spread of the virus. Despite its centralized nature and the fact that the central government has the authority over both two main police forces, there appears to be some distinct approaches between them. The national gendarmerie has deployed a partially different discourse, putting forward the notions of listening and solidarity in the context of its action "#répondreprésent" (@answerpresent): "in addition to the fundamental mission of protection, 'responding present' is a real offer of solidarity to respond to the concerns of the territories".

The state of health emergency and police action have generated a variety of criticisms, from police unions to non-governmental organisations, lawyers, doctors, epidemiologists and social science researchers, relayed by the media and social networks. The first issue, largely internal to the institution, concerned the deployment of personnel in an epidemic context to ensure the health security of officers. But it is in the relationship with the public that the debate has taken hold. The abusive use of force in the control of lockdown has been highlighted by numerous media reports: kicking or punching by police officers at people on the ground, use of tear gas and tasers, people beaten or insulted⁵. These abuses were highlighted by Amnesty International based on the analysis of events filmed in 15 cases of checks and arrests⁶. Poor neighbourhoods (what in France are known as "banlieues", or neighbourhoods on the outskirts of cities) have been a concentrate of these difficulties as a greater number of controls than in the rest of the country have been carried out there.

Finally, since the beginning of June, the tension has shifted to the question of the possibility of demonstrating in the context of a health emergency. Following the Floyd affair in the United States,

⁵ <https://www.bastamag.net/attestation-controle-deplacement-PV-amendes-violences-policieres-confinement-covid#nb5>

⁶ Amnesty International (2020), Pratiques policières pendant le confinement: Amnesty dénonce des cas de violations des droits humains, 7th of May.



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many demonstrations have taken place in France, particularly in connection with the mobilisation of several committees (and in particular the Truth Committee for Adama), which the police prefecture initially banned.

Hungary

In January 2020 an Operative Staff has been established, which had some recommendations on the proper hygienic and on the reduction of the number of the human contacts. During the pandemic on 11th March 2020 the state of emergency was declared by the government. During the state of emergency, the Government can pass emergency decrees by which even acts of the Parliament can be amended. An important restriction that these decrees are only valid for 15 days, after the expiration of that period, the decrees shall be confirmed by the Parliament. As it has been mentioned earlier, from early April till June 18th a special act was passed by the Parliament by which the validity of the decrees was extended for the whole emergency.

The Government and the whole administration had a clear message from the beginning of the pandemic: if you could, stay at home – this message fit into the tendencies in Europe. During the state of emergency, on 27th March 2020 a curfew has been introduced (from 28th March). The curfew was a limited one: the exceptions – defined by the government decree No. 71/2020. (published on 27th March) - were relatively wide: 21 exceptions were defined, and not only the performance of work, professional obligations, but – for example – shopping in a tobacco shop and access to hairdressing or manicure services were exceptions, as well.

According to the Hungarian legal traditions the violence of the restrictions was defined as a petty offence (infraction) which could be fined up to 500 000 HUF (approx. 1400 EUR). Because the violence of the restriction was a petty offence (infraction), the decree on the curfew ordered the police and police bodies to control it. Because of the burden of the extended control tasks, not only the police could have the competence to control the regulations, but it was allowed to the military police and to any organ under the Act on the service relationship of the professional personnel of organs performing law enforcement duties (these organs are the penitentiary service, the finance guards, the firefighters and disaster protection). The control was strict and extensive: during the state of emergency there were 23 778 petty offence cases, spot fines were imposed in 14 275 cases (370,445 Million HUF – approx. 1.1 Million EUR), petty offence fines were imposed in 3 345 cases (295,615 Million HUF – approx. 0.8 Million EUR).

However, the number of the cases were relatively high, but the curfew (lockdown) was mainly followed by the Hungarian population – partly because of the wide exceptions. The contradictions and were not among the curfew, but among the ban of the demonstrations. During April and May – as a preparation for the pandemic – the capacities of the hospitals were released for the potential coronavirus patients. Therefore, several people wanted to organise demonstrations. They tried to get around the rule (for example they do not held demonstration, but they hammed near the prime minister's office), but these attempts were fined (because they were actually petty offences against the order of the traffic). Except from these incidents, the restrictions and the strengthened police control was accepted by the Hungarian society.

The state of emergency ended on 18th June 2020, but new type of restrictions has been introduced, especially in the field of health care service organisation and in the field of foreign travels and border controls. The restrictions on foreign travels and the home lockdown based on several foreign travels are controlled by the police.

Norway

When Norway went into lockdown the 12th of March 2020 to limit the spread of COVID-19, the Norwegian government frequently used the term “nasjonal dugnad”. For many Norwegians, this expression was easy to understand: We all take part in a collective effort for the common good. For those (many) who are unfamiliar to Norway and Norwegian as a language, some clarification is needed. In the words of Professor Thomas Hylland Eriksen⁷, the term dugnad “refers to unpaid, collective, cooperative work where every member of a community is expected to participate, regardless of their social position.” While the term nasjonal, meaning national, “is suggesting that the nation as such was to act as a supra-individual subject”.

The strategy of the Norwegian Police Directorate follows the primary role of guidance and support to the health authorities in their work.⁸ Interestingly, the head of the Police directorate, Benedicte Bjørnland, echoed the “nasjonal dugnad” principles:

“Even though the police is prepared to react in cases where it is needed, the police resources should not be used to enforce the [government and health] authorities’ advice to individual citizens all the time. Compliance of efforts to limit the spread is not a private matter, but a social responsibility everyone take part in together [felleskap]. I urge the public to take their responsibility and follow the advice given by the authorities.”⁹

This principle has also been the police practice. In cases where commentators in the media or the public have urged the police to “take action”, such as when their neighbors are throwing private parties or political demonstrations are held, the message has been clear from the police: “We are not an infection control police”.

Only in few cases where private citizens have intentionally broken isolation (proven/assumed COVID-19) and put others at risk or a rather odd incident where a man coughed at fellow passengers on a train between Oslo and Bergen stating he had Corona, the police have used reactive measures such as fines and forced removal.

However, when it comes to border controls, the “outside” threat, the police have been supported by branches of the Norwegian armed forces, namely The Norwegian Home Guard; a quick mobilization force tasked to “safeguard territorial integrity.”¹⁰ This support was established between 17 March 2020 and terminated in early May 2020 to patrol the borders between Sweden and Norway. Sweden, as most readers will know, has chosen a different strategy of “herd immunity”.

⁷ <https://www.coronetimes.net/norway-covid-19-nordic-trust/>

⁸ <https://www.politiet.no/politiet-informerer/politiets-tiltak-i-forbindelse-med-koronaviruset/informasjon-fra-politiet---korona/politiets-prioriteringer/>

⁹ Ibid.

¹⁰ <https://forsvaret.no/en/organisation/home-guard>

Poland

The first COVID-19 case in Poland was confirmed on 4th March 2020. On 14th March 2020 the state of epidemiological threat had been declared by the Minister of Health; it was replaced by the state of epidemic on 20th March 2020. Nevertheless, the Council of Ministers did not use its competence neither to declare the state of natural disaster nor to apply to the President for declaration of the state of emergency – both of which (according to the Polish Constitution) allow to introduce extraordinary limitations of individual rights and freedoms. This was very controversial in Poland. The opposition, some of the media and legal scholars claimed that lack of such declaration led to illegality of imposed measures and that the government's intention had been to avoid mandatory rescheduling presidential election, which had already been set for 10th May 2020 (due to the epidemic they were not organised anyway, without any legal grounds for that)¹¹.

Restrictions on movement and other individual activity were thus introduced by the Minister of Health at the beginning, and by the whole Council of Ministers at the later stage, by way of regulations. Some statutory provisions were enacted as well but they did not create any new Police powers – rather confirmed that all the already existing powers, except from surveillance of private correspondence, including electronic one, could be used for the purpose of fighting COVID-19 disease spread.

The lockdown began on 14th March 2020 and was then harshened on 31st March 2020 and 10th April 2020. During the period between 10th and 20th April 2020 it was even forbidden to enter parks, woods and forests. The restrictions were gradually lifted since 20th April until 7th August 2020, when some of them were re-instated for certain districts with particularly high rates of new COVID-19 cases. It is worth noting that no limitation of number of household members allowed to leave the house, number of times that individuals were allowed to leave daily or the maximum distance they could cover had ever been introduced. During the whole lockdown always the criterion of purpose was decisive – citizens were allowed to move only for the purposes stated in law, which included work and necessary business of everyday life. The latter was very unclear and left room for interpretation by Police officers and inequality in applying the law.

As in many other countries, Police forces were used to enforce new laws, which included conducting daily check-ups on people in mandatory quarantine, the use of drones to inspect whether citizens are gathering in the parks, and regular patrolling the streets. The Police were sometimes supported in these efforts by the Polish Army and Territorial Defence Forces. Breaching the epidemic restrictions was considered a petty offense but at the same time the Parliament enacted the law that made such breach punishable by an administrative fine of at least 5000 PLN (1100 EUR) up to 30000 PLN (6800 EUR). The fines could have been imposed by local sanitary-epidemiological stations on the basis of a Police note and were immediately enforceable regardless of the appeal in administrative proceedings. Because of that and the high minimum amount, they were more bothersome than punishments for a petty offense itself. There are no publicly available statistics on the number of Police interventions in connection with the lockdown.

¹¹ See Polish Ombudsman's letter to the Prime Ministers here: https://www.rpo.gov.pl/sites/default/files/do%20Prezesa%20RM%20ws%20naruszenia%20praw%20i%20wolno%C5%9Bci%20w%20czasie%20pandemii%2C%204.06.2020_0.pdf and Polish Ombudsman's statement here: <https://www.rpo.gov.pl/pl/content/koronawirus-rpo-rozporzadzenia-MZ-niezgodne-z-ustawa> .

It also needs to be underlined that some individuals who had refused to accept a Police fine for petty offense consisting in moving in public space without good reason were later acquitted by the courts due to the fact that the regulation imposing such restriction (as well as mandatory use of masks) was issued by the Council of Ministers outside its competence given by the statute¹².

In general the society obeyed the restrictions. The biggest public discussion with active participation of the Ombudsman and the NGOs concerned a lengthy ban on public assemblies¹³. Some citizens tried to bypass the ban by e.g. standing in lines to the shopping malls with political banners. The ban on spontaneous public assemblies was upheld by the government on 7th August 2020, on the very day of controversial Police stops and arrests of marchers contesting the pre-trial detention of a Polish LGBT+ activist due to the charge of destroying a truck presenting homophobic contents¹⁴.

The state of epidemic has not yet been lifted in Poland, as well as mandatory use of face mask in public spaces if maintaining distance of 1.5 m is not possible.

¹² The most famous example is the decision of the District Court in Kościan of June 3rd 2020, II W 71/20, unpublished.

¹³ See abovementioned Ombudsman's letter to the Prime Minister https://www.rpo.gov.pl/sites/default/files/do%20Prezesa%20RM%20ws%20naruszenia%20praw%20i%20wolnosc%20C5%9Bci%20w%20czasie%20pandemii%2C%204.06.2020_0.pdf and the letter of Helsinki Foundation of Human Rights to due to excessive Police interventions during the entrepreneurs' protest on May 16th 2020: <https://www.hfhr.pl/wp-content/uploads/2020/05/KGP.pdf>.

¹⁴ See Polish Ombudsman's <https://www.rpo.gov.pl/pl/content/RPO-po-wydarzeniach-7-sierpnia> and Helsinki Foundation's of Human Rights <https://www.hfhr.pl/stanowisko-helsinki-fundacji-praw-czlowieka-w-sprawie-zajsc-w-warszawie-w-nocy-z-7-na-8-sierpnia-2020-r-po-zatrzymaniu-aktywistki-lgbt-margot/> statements on the events of 7th and 8th August 2020.

Scotland

In Scotland, much like elsewhere, new police powers were introduced in order to enforce public health measures brought in by government. A public health approach¹⁵ to policing is not an unfamiliar concept in Scotland (Aston, 2020 SCCJR blog) where core purpose of policing enshrined in legislation is enhancing the safety and wellbeing of communities. Shortly after the introduction of emergency public health legislation and associated police powers an Independent Advisory Group (IAG)¹⁶ was proposed by Police Scotland established by the Scottish Police Authority (SPA) in order to scrutinize the use of the temporary police powers. Chaired by John Scott QC (Human Rights Lawyer), it has representation from Amnesty International, the Scottish Human Rights Commission, various groups representing diverse communities (children and young people, people with autism and disabilities), the National Health Service, the Crown Office and Procurator Fiscal Service and academic researchers, among others. The IAG reports to the Scottish Police Authority, and all meetings and reports are made publicly available on the SPA's website.

The Police Service of Scotland (Police Scotland) created a data management system to record and process police activity in relation to the COVID-19 police powers (dispersal, fines, arrests). The Coronavirus Intervention System (CVI) is unique system in the UK. Through this, extensive data has been made available to the IAG for analysis, and academics at Scottish Institute for Policing Research (SIPR) have supported the work of Police Scotland's the OpTICAL (Operation Talla Information Collation, Assurance and Liaison) group through weekly meetings to assess and plan responses to the data. The raw CVI data has also been made publicly available via the Police Scotland website.¹⁷ The comparatively quick response and desire to be transparent and open to scrutiny, and the ability to record and report on data on usage of emergency police powers in a timely manner has arguably been made possible given recent learning from reforms relating to Stop and Search in Scotland (Aston, Murray and O'Neill, 2019).

The legislation required that all residents in Scotland must remain in their homes, unless they worked for essential services. Residents were permitted out once a day for essential activities such as shopping for food, exercise or to provide medical care for vulnerable people. All non-essential businesses were closed. People were not permitted to gather in groups (either indoors or outdoors) or to socialise with others from outside their home. The police were empowered to issue fines or arrest those not following these restrictions. As was the case in England and Wales, a 'policing by consent' approach was used, exemplified by the 'Four Es'.¹⁸ The final 'E', Enforce, was to be used as a last resort. The data supports this, in that between 27th March and 17th June 2020, 92.8% of all police interventions in Scotland related to the Coronavirus legislation involved dispersal. Fixed Penalty Notices were the outcome of 6.1% of police interventions and arrest occurred 0.5% of the time.¹⁹ There was wide variation across the police divisions in Scotland in terms of the relative use of these interventions in the early stages of lockdown, but this has become more consistent over time.

¹⁵ <https://gleapha.wildapricot.org/>

¹⁶ <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/>

¹⁷ <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/>

¹⁸ <https://www.college.police.uk/What-we-do/COVID-19/Documents/Engage-Explain-Encourage-Enforce-guidance.pdf>

¹⁹ <https://www.spa.police.uk/spa-media/idqn4yyy/30-june-ps-weekly-bulletin.pdf>

Some of the challenges to policing the pandemic in Scotland have included a lack of clarity and gaps between legislation and government guidance, mixed messages and differences between UK/England and Scotland (which had a slower approach to easing lockdown than England and appeared to focus more on public health than economic considerations in this decision making) and the willingness or ability of police to enforce aspects such as the wearing of face coverings in shops and quarantine, for example.

The stated intention of the police approach to supporting public health measures to restrict the spread of COVID-19 in Scotland has been to maintain public confidence. ...refer to data on public confidence (some increases certainly in early lockdown) via 'your view counts' survey etc..... and public satisfaction survey (those in contact with police).... data on complaints... see IAG interim report?

Policing of protests, particularly in light of black lives matter appeared to be allowed to go ahead senior police but with the case of, asylum seekers and far right? Etc. in Glasgow there was a controversial statement from the Scottish Police Federation that all protests are in breach of legislation, despite some having been approved and others not official.

Spain

In line with other European countries, Spain was hardest hit by the pandemic in late winter and early spring. In order to curb this concerning public health scenario, the Spanish national administration enacted state of exception-like provisions (i.e. the so-called state of alarm) which were in force over a fourteen-week period (roughly from mid-March to late June). This legal order enabled the Spanish government to implement severe lockdown and stay at home measures, which were particularly stringent since the inception of the state of alarm until mid to late May, to be gradually lifted thereafter. In the most restrictive phase, individuals were authorised to leave their homes and shelters only to carry out a very small number of basic activities, namely purchasing food, going to work, going to the hospital, and taking care of dependent, infirm and impaired people.

In contrast to other countries, the Spanish administration set in motion a gargantuan policing apparatus aimed at monitoring and enforcing these freedom of movement restrictions. Beyond closing both internal and external borders – some of which, like the northern border separating Spain from Portugal, were closed for the very first time since the enactment of the Schengen agreements in 1993 -, a dense network of police check-points was put in place over more than two months both inside and outside Spanish cities and towns, with special impact in the areas featuring particularly high infection rates, such as a number of Madrid's neighbourhoods. The punitive consequences of this widest ranging policing strategy were no less remarkable; according to official data, the millions of stop and search interventions resulted in some 9,000 arrests and some 1.2 million fines issued for state of alarm breaches from March to June. In addition, an unknown number of people have been put on pre-trial detention and imprisoned for having breached freedom of movement provisions.

These policing tasks were put under a single national command and, therefore, were essentially performed by the two main national police corps, the National Police and the Civil Guard, supplemented in Catalonia, Navarre, and the Basque Country by their own regional police corps.

As many other aspects of the pandemic scenario, this social control effort was unparalleled in Spanish modern history in quantitative terms. However, beyond the unprecedented constitutional state of alarm order, it relied on the regular legal norms and the usual policing tactics, rules and practices consolidated long before the inception of the coronavirus crisis. Consequently, coercive measures were based on the regular administrative and penal norms prohibiting public order breaches, and more precisely disobedience to public officers. Since these measures relied on a controversially stringent interpretation of the corresponding legal rules, the legal validity of these policies – especially, with regard to fines – still remains to be seen.

To the extent that this policing apparatus was only innovative in terms of its outstanding reach, no specific training was provided to frontline officers. By contrast, the public order strategy adopted innovative accountability practices. In an unprecedented move that combined social pedagogy and deterrence purposes, top rank police officials held daily press conferences informing of the outcomes of policing interventions from mid-March to late April.

Despite its scale and scope, this pandemic-related policing strategy did not spark either significant human right concerns or public and political controversy. Although both social media and conventional media occasionally reported a number of cases of apparent police misconduct, political debate was largely focused on public health measures, not on policing tactics. Surprisingly, only a



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small group of human rights organisations publicly challenged law enforcement practices carried out in the framework of the state of alarm restrictions.