

## Special legal solutions for foreigners in connection with the SARS-CoV-2 virus epidemic

### I. General information

On 31 March 2020, the Act of 31 March 2020 amending the act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts (Journal of Laws No. 568) entered into force. It introduces into the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them (Journal of Laws, item 374) – hereinafter the “Special Act” – **a number of specific legal solutions aimed at solving the problems caused by the SARS-CoV-2 virus epidemic for the legality of stay of foreigners' in Poland**. These solutions are characterized above all by the fact that the majority of effects beneficial for foreigners in the area of their residence rights will take place by virtue of the law itself. Foreigners who have stayed legally in Poland so far, in order to be able to remain in its territory in accordance with legal regulations during the period of the epidemic, which is currently in force, **will not have to submit to the public administration bodies any applications for granting or extending permits residence permits or visas or extension of the periods during which they should eventually leave this territory**.

These special legal solutions include:

1. **extension of the periods of validity of temporary residence permits expiring during the period state of epidemic emergency or state of epidemic – up to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (Art. 15zd para. 3 of the Special Act);**
2. **extension by law of periods of stay and periods of validity of national visas in cases where the last day of the period of stay on the basis of such visas would fall during the period of state of epidemic emergency or state of epidemic – until the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (Art. 15zd para. 1 of the Special Act);**
3. **extension by law of the periods of validity of work permits and seasonal work permits , as well as periods of permissible work based on declarations on entrusting work to a foreigner, entered in the register of declarations – until the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (Art. 15zzq of the Special Act);**
4. **extension of the deadlines for submitting an application for temporary residence permit, permanent residence permit, EU long-term resident's residence permit, for visa extension or for extension of visa-free travel during the period of state of epidemic emergency or state of epidemic – up to 30 on the day following the date of cancellation of the last of the above-mentioned states that was in force (art. 15 of the Special Act);**

5. **extension by law of the dates of leaving the territory of the Republic of Poland falling out during the period of state of epidemic emergency or state of epidemic and resulting from Art. 299 para. 6 of the Act of the 12th of December 2013 on foreigners (Journal of Laws of 2020, item 35) – until the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (art. 15zzza of the Special Act);**

6. **extension of the periods of voluntary return set out in the decisions obliging the foreigner to return falling out in the period of state of epidemic emergency or state of epidemic – by the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (art. 15zzzb of the Special Act).**

The provisions of the Special Act, which establish these specific legal solutions, refer to periods of state of epidemic emergency and state of epidemic, announced in connection with SARS-CoV-2 virus infections. It should therefore be clarified that the state of epidemic threat was in force **from 14 March 2020** pursuant to the Regulation of the Minister of Health of 13 March 2020 regarding the announcement of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws, item 433). This state was cancelled on 20 March 2020. On the same day, the state of epidemic was announced – pursuant to the Regulation of the Minister of Health of 20 March 2020 regarding the announcement of the state of epidemic in the territory of the Republic of Poland (Journal of Laws, item 491). **This state is currently in force.** It should therefore be noted that if the provisions establishing special legal solutions for foreigners refer to the period of the state of epidemic threat or state of epidemic, announced in connection with SARS-CoV-2 virus infections, **it should be understood as the period that began on 14 March 2020.**

The provisions of the Special Act shift the specified dates and periods of validity of permits and visas in a uniform manner, i.e. **until the 30th day following the date of cancellation of the last of the above-mentioned states** (state of epidemic emergency or state of epidemic), **that was in force.** As already mentioned, the state that is currently in force is the state of epidemic, which was preceded by the state of epidemic emergency. This wording of provisions is intended to take account of the possibility that after the current state of the epidemic, the state of epidemic threat would be introduced again. Then it would be finally cancelled and the shift of dates and periods of validity of permits and visas should be calculated from its cancellation.

## **II. Information on individual legal solutions**

### **1. Extension by law of the periods of validity of temporary residence permits**

Temporary residence permits are residence permits granted by public administration bodies (voivodes, the Head of the Office for Foreigners as a higher instance) for a fixed period, not longer than 3 years (art. 98 para. 2 of the Act on foreigners). A foreigner who has been granted this permit is receives ex officio a residence card issued by the voivode the validity period of which coincides with the period of validity of the granted permit (art. 243 para. 1 point 1 of the Act on foreigners).

The Special Act currently provides that if the last day of the period of validity of the temporary residence permit falls during the period of state of epidemic emergency or state of epidemic (as defined above), this period is by law extended to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. **The effect resulting in extension of the period of validity of a temporary residence permit is automatic.** No administrative decision will be issued for this purpose. The foreigner will not have to apply for official confirmation of this fact either.

The extension of the period of validity of the temporary residence permit by law **will not entail the issue of a new residence card or replacement of the existing one.** The Special Act expressly excludes the legal basis for voivodes to perform such actions in these situations.

Extending the period of validity of the temporary residence permit by law will result in the possibility for the foreigners to further perform their purpose of stay on the territory of the Republic of Poland and exercise the rights arising from the possession of the permit, for example to work under the conditions specified in the temporary residence and work permit (Art. 118 para. 1 of the Act on foreigners) or taking up and running a business on the same terms as Polish citizens in the case of a temporary residence permit for the purpose of family reunification (Art. 159 para. 1 of the Act on foreigners in connection with Art. 4 para. 2 point 1 letter c of the Act of 6 March 2018 on the rules for the participation of foreign entrepreneurs and other foreign persons in business transactions on the territory of the Republic of Poland /Journal of Laws of 2019, item 1655/).

## **2. Extension by law of the periods of stay and periods of validity of national visas**

National visas are long-term visas **issued only by Polish authorities**, entitling to enter the territory of the Republic of Poland and to stay there permanently or to have in this territory several consecutive stays, **with a total duration of more than 90 days. The period of validity of a national visa cannot exceed 1 year** (Art. 59 of the Act on foreigners).

The Special Act provides that in the event that the last day of the period of stay on the basis of such a visa (and therefore the last day of admissible stay marked in days in the visa sticker) falls during the period of state of epidemic emergency or state of epidemic (as defined above), this period, as well as the period of validity of the visa itself, is legally extended to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. In its assumptions, this solution is analogous to the solution consisting in the automatic extension of the periods of validity of temporary residence permits. **Also in this case, the right to stay on the territory of the Republic of Poland is extended by the law itself.** No administrative decision is issued for this effect. There is no need to obtain a visa extension pursuant to Art. 82 et seq. of the Act on foreigners. The extension of the period of stay and of the validity of the national visa by law will also not involve the issuing by any Polish authority of a visa sticker in a foreigner's travel document. As in the case of residence cards in relation to the extension of the period of validity of temporary residence permits, the legislator explicitly excluded the grounds for any public authority of the Republic of Poland (located in Poland or abroad) to place the visa sticker in the travel document.

### **3. Extension by law of work permits, seasonal work permits and periods of work permissible on the basis of declarations on entrusting work to a foreigner entered in the register of declarations**

Work permit is an administrative decision determining the right of foreigners to work in the territory of the Republic of Poland, provided that they stay in that territory on the basis of one of residence titles listed in Art. 87 para. 1 point 12 of the Act of 20 April 2004 on the employment promotion and labour market institutions (Journal of Laws of 2019, item 1482, as amended), for example:

- temporary residence permit (except for a permit due to circumstances requiring a short stay – Art. 181 of the Act on foreigners),
- national visa or Schengen visa issued by the Polish authority (with the exception of visas for tourist purposes, visas for the purpose of temporary protection and for arrival for humanitarian reasons, due to the interest of the state or international obligations),
- visa issued by another Schengen State,
- residence document issued by another Schengen State,
- on the basis of visa-less travel,

Work permits are issued by provincial voivodes for a fixed period of time, no longer than 3 years (exceptionally 5 years – in the case when the performance of work involves performing a function on the management board of a legal person who employs over 25 people on the day of submitting the application).

A special type of work permit is a seasonal work permit issued by starosts for foreigners who perform seasonal work, i.e. work in the field of activity specified in the Regulation of the Minister of Family, Labour and Social Policy of 8 December 2017 regarding subclasses of activity according to the Polish Classification of Activities (PKD), in which seasonal work permits for a foreigner are issued (Journal of Laws of 2019, item 1845).

This permit is also issued for a limited period. However, it cannot be longer than 9 months in a calendar year.

A special form of providing a foreigner with access to the Polish labour market is the institution of a declaration on entrusting work to a foreigner, entered in the register of declarations. It is available to citizens of six countries: the Republic of Armenia, the Republic of Georgia, the Republic of Belarus, the Republic of Moldova, the Russian Federation and Ukraine (§ 2 of the Regulation of the Minister of Family, Labour and Social Policy of 8 December 2017 on the countries the citizens of which are concerned with some provisions regarding the seasonal work permit and provisions regarding the declaration of entrusting work to a foreigner /Journal of Laws item 2349/) and consists in exemption from the obligation to have a work permit in the case of performing work other than seasonal work (within the meaning of the above) for a period not longer than 6 months in the next 12 months (regardless of the

number of entities entrusting this work to the foreigner), provided that the poviata labour office entered the declaration on entrusting work to a foreigner into the register of declarations before the commencement of work, and the work is performed under the conditions specified in that declaration. One of the data placed by the entity entrusting work in the declaration to be entered in the register of declarations is the information about the period or periods of work that is offered to the foreigner (Art. 88z para. 1 point 3 letter d on the Act on employment promotion and labour market institutions).

The Special Act contains solutions enabling foreigners to perform work based on their work permits, seasonal work permits and declarations on entrusting work to a foreigner longer if their rights would end in the period of state of epidemic emergency or state of epidemic (as defined above). If the end of the period of validity of a work permit or seasonal work permit falls in one of these periods, it will be extended by law to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. A similar solution has been applied in the case of foreigners who have had a work permit or a seasonal work permit, which were extended by a decision in this regard, and the end of the period of the extended permit of which fell within the period of one of the two above-mentioned states.

In the case of declarations about entrusting work to a foreigner, which have been entered in the register of declarations pursuant to Art. 88z para. 2 of the Act on the employment promotion and labour market institutions, the Special Act provides that if the end of the period indicated in the declaration as the period of work (referred to above) falls within the period of state of epidemic threat or state of epidemic, the foreigner will be able to continue performing work covered by this declaration until the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force, still being exempted from the obligation to have a work permit. If the declaration indicates several periods of work that end within the period of state of epidemic emergency or state of epidemic, the foreigner will be able to perform work also in periods not indicated as periods of work. In practice, during a period of state of epidemic emergency or state of epidemic, work based on a declaration or several declarations on entrusting work to a foreigner can be performed for more than 6 months in the next 12 months.

As in the case of extension of the periods of validity of temporary residence permits, this effect in the form of extension of the periods of validity of work and seasonal work permits and periods of permissible work based on declarations on entrusting work to a foreigner, will take place automatically, by virtue of law. The entitlement to continue work by a foreigner will not be based on any administrative decision or material and technical action.

#### **4. Extension of the deadlines for submitting an application for a temporary residence permit, permanent residence permit, EU long-term resident's residence permit, for visa extension or for extension of visa-free travel.**

Particular provisions of the Act on foreigners require foreigners who are already in the territory of the Republic of Poland to submit specific applications related to the legalisation of their stay in this territory

within the time limits that determine the period of their legal stay (e.g. based on their temporary residence permit, visa , stay under visa-free travel).

These are the following provisions:

- Art. 105 para. 1 of the Act on foreigners – in relation to the application for temporary residence permit,
- Art. 202 para. 1 of the Act on foreigners – in relation to the application for permanent residence permit,
- Art. 202 para. 1 – used pursuant to the reference contained in Art. 223 of the Act on foreigners – in relation to the application for the European Union long-term resident's residence permit,
- Art. 85 para. 1 of the Act on foreigners – in relation to the application for visa extension,
- Art. 300 para. 2 of the Act on foreigners – in relation to the application for extension of stay as part of visa-free travel.

The timely submission of the application determines that in the course of the procedure which is to lead to the granting of a permit or other action (extension of visa, extension of stay under visa-free travel), the stay of a foreigner on the territory of the Republic of Poland will be considered legal, regardless of how the proceedings will be terminated (e.g. Art. 108 para. 1 point 2 of the Act on foreigners) or additionally the admissibility of conducting proceedings (in the case of extension of a visa, temporary residence permit and long-term EU resident's residence permit, the submission of an application during an illegal stay gives rise to the basis for issuing a decision refusing to initiate proceedings).

In connection with the introduction on 16 March 2020 of the state of epidemic threat, as mentioned earlier, voivodship offices temporarily suspended direct customer service, which in fact prevented foreigners from fulfilling the requirement of submitting a personal application in the above-mentioned cases within the time limits resulting from their current legal stay or of personal appearance at the request of the authority. Therefore, the legislator decided that the deadlines for submitting these applications - if they would fall during the period of the state of epidemic emergency or state of epidemic (which in fact coincides with the date of suspension of direct customer service in voivodship offices) – should be properly extended by law, i.e. by the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. Foreigners who take advantage of this solution, i.e. submit applications within a prolonged period (in particular after reinstating direct service in voivodship offices) **will also be the beneficiaries of the benefit of a stay considered legal in the period preceding the submission of the application** and the legal basis of this stay will result from individual provisions regulating the legality of stay in the course of proceedings, i.e.

- **Art. 108 para. 1 point 2 of the Act on foreigners – in relation to the application for temporary residence permit,**

- Art. 206 para. 1 point 2 of the Act on foreigners – in relation to the application for permanent residence permit,
- Art. 206 para. 1 point 2 applicable pursuant to the reference from Art. 223 of the Act on foreigners – in relation to the application for the European Union long-term resident's residence permit,
- Art. 87 para. 1 point 2 of the Act on foreigners – in relation to the application for visa extension,
- Art. 300 para. 4 of the Act on foreigners – in relation to the application for extension of stay as part of visa-free travel.

Therefore, it is a conditional solution that will be available to all foreigners, in particular those who are not affected by special solutions of the Special Act related to the extension of the periods of validity of temporary residence permits and national visas, i.e. persons staying on the territory of the Republic of Poland for other residence titles, **e.g. Schengen visas, residence permits or long-stay visas issued by other Schengen States or as part of a visa-free regime**. The condition of using it will be to subsequently submit one of the appropriate applications.

The fact that the stay of a foreigner **will be considered legal already in the period preceding the submission of the application, based on the specific provisions of the Act on foreigners**, means that the foreigners **will be able to derive certain rights for themselves during this period, including in particular the right to work** in the cases specified in the provisions of the Act on the employment promotion and labour market institutions, i.e.:

a) on the basis of Article 88g para. 1b of this Act – if the foreigner has a work permit (the validity of which will be extended in accordance with the provisions mentioned above), hence the foreigner will be able to work under the conditions specified in this permit, provided that the foreigner subsequently submits (in a prolonged deadline) application for:

- temporary residence and work permit (art. 114 para. 1 or Article 126 of the Act on foreigners),
- temporary residence permit for the purpose of highly qualified employment (Art. 127 of the Act on foreigners),
- temporary residence permit for the purpose of conducting business activity – for performing work consisting in the shareholder fulfilling a function in the management board of a limited liability company or joint-stock company, or conducting affairs of a limited partnership or limited joint-stock partnership by a general partner, or acting as a proxy (Art. 142 para. 3 of the Act on foreigners),
- European Union long-term resident's residence permit,

– to continue the work carried out so far;

b) on the basis of Article 88za para. 3 of this Act – if the foreigner has a declaration of entrusting the performance of work to a foreigner, entered in the register of declarations (which, in accordance with the provisions discussed above, will allow the performance of work for periods longer than

originally specified and regardless of the rule of 6-months in the next 12 months), therefore the foreigner will be able to perform work on conditions not worse than specified in the declaration, and in order to continue the same work will then (in the extended period) submit an application for a temporary residence and work permit (Art. 114 para. 1 of the Act on foreigners).

#### **5. Extension by law of the time limits for leaving the territory of the Republic of Poland resulting from Art. 299 para. 6 of the Act on foreigners**

In Article 299 para. 6 of the Act on foreigners, an obligation was set for foreigners to leave the Republic of Poland within a specified period and thus avoid the risk of being obliged to return. At the same time, this provision distinguishes between deadlines for fulfilling this obligation. And so, a 30-day period is set for foreigners in respect of whom a specific decision closing the way to legalisation of stay has become final or to whom such decision has been delivered as final (decision of a higher authority).

Administrative decisions that have such an effect are decisions on:

- refusal to extend a Schengen visa,
- refusal to extend a national visa,
- refusal to grant a temporary residence permit,
- refusal to grant a permanent residence permit,
- refusal to grant an EU long-term resident's residence permit,
- discontinuation of proceedings regarding the extension of the Schengen visa,
- discontinuation of proceedings regarding the extension of a national visa,
- discontinuance of proceedings regarding the granting of temporary residence permit,
- discontinuation of proceedings regarding the granting of permanent residence permit,
- discontinuation of proceedings regarding the granting of a long-term resident's EU residence permit,
- withdrawal of temporary residence permit,
- withdrawal of permanent residence permit,
- withdrawal of EU long-term resident's residence permit,
- refusal to grant refugee status and subsidiary protection,
- declaring the application for international protection to be inadmissible,
- discontinuation of proceedings on granting international protection,
- revocation of refugee status,
- deprivation of subsidiary protection.

In turn, a 7-day period was established for foreigners who, pursuant to Art. 31 para. 1 of the Act on foreigners, in particularly justified cases, due to their health, were not transferred to a third country, despite the decision to be refused entry. This period runs from the day on which the reasons for not transferring the foreigner to a third country ceased.

Due to the fact that in recent weeks the possibilities of moving across the borders of countries neighbouring the Republic of Poland have been significantly reduced, the implementation of the obligation to leave the territory of the Republic of Poland within the statutory deadline has become impossible in many cases. Hence, the Special Act introduces a solution based on an appropriate extension of the time limit **by law** – in the event that its end falls during the period of state of epidemic emergency or state of epidemic. Then it will be extended until the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force.

The extension of time limits by virtue of law will apply to those time limits that started before 14 March 2020, but have not expired by this date, as well as those that would have started to run during the period of the state of epidemic emergency or state of epidemic. Therefore, in the case of receiving, within the period starting on 14 March 2020, by the party (proxy, other representative) of one of the above decisions, which is final, the deadline for fulfilling the obligation to leave the territory of the Republic of Poland - if it does not end until the end of the period of state of epidemic (or the potential subsequent state of epidemic emergency) – will be extended accordingly.

#### **6. Extension by law of the periods of voluntary return**

In decisions on the obligation of the foreigner to return (which in today's legal status is the equivalent of old expulsion decisions), as a rule, the deadline for voluntary return is 15-30 days, and in accordance with Art. 315 para. 1 of the Act on foreigners runs from the date of delivery of the decision. Exceptionally, in the case of parallel proceedings for the granting of a residence permit, extension of a visa, proceedings for the grant of international protection, this period runs from the moment a specific decision ending these parallel proceedings becomes final or is delivered as final. The nature of this deadline is such that it allows a foreigner who is the addressee of a return decision to fully fulfil the obligations arising from this decision, without the need to resort to coercive measures. For reasons identical to the dates of leaving the territory of the Republic of Poland pursuant to Art. 299 para. 6 of the Act on foreigners, the fulfilment of specific obligations within the set-out deadlines has become impossible in many cases. Hence, the Special Act likewise extends the deadlines for voluntary return, which would fall in the period of the state of epidemic emergency or state of epidemic. The extension shall last until the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. As with other special solutions of the Special Act, this legal effect occurs automatically, by virtue of the law itself. The extension of the deadline for fulfilling the obligation under the decision obliging the foreigner to return is not based on any decision, and the foreigner does not have to apply for the extension of the period of voluntary return in accordance with Art. 316 of the Act on foreigners.

The extension of time limits by virtue of law will apply to those time limits that started before 14 March 2020, but have not expired by this date, as well as those that would have started to run during the period of the state of epidemic emergency or state of epidemic. Therefore, it will also apply to decisions obliging the foreigner to return, which will be issued during one of these states.