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Article

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Impact of COVID-19 on Czech Cross-Border Commuters: Legal Perspective

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Abstract

The paper focuses on the impact COVID-19 has on Czech cross-border commuters. Emphasis is placed on the legal and political science perspective and on the comparison of measures against traffic at the state border, against the free movement of persons and specifically against commuter workers (also known as cross-border commuters, or as pendlers in the Czech context), during both previously declared states of emergency in the Czech Republic. From a theoretical perspective, the paper summarizes information and data on cross-border commuters in Europe and the world. The research was performed by means of two qualitative case studies. In general, the legal measures at the Czech-German state border and the conditions of commuter workers during these states of emergency are compared. The research stage also included media searches (during both states of emergency) and analysis of relevant policy outputs. The results suggest that border closures and related measures and the inability to travel abroad were unconstitutional, which also damaged commuters. And this also resulted in the fact that during the second state of emergency, the commuters were, in effect, not subject to any measures from the Czech side.

Keywords

Cross-border Commuting, Labour Market, COVID-19, Czech Republic, Germany, Borderland.

JEL Classification

J6, K31, O52, R58

Introduction

According to the President of the Constitutional Court of the Czech Republic, Pavel Rychetský, the border closure barring residents from leaving the Czech Republic, which the government acceded to after the declaration of the first state of emergency from 12 March 2020, was unconstitutional. "At one point, the government closed the border and no one was allowed to leave the Czech Republic. Well, that is absolutely unconstitutional. The government can close the border in a crisis situation, but only for those returning or coming to the country. But in our constitution, for reasons that only older people remember, I mean the totalitarian regime, there is an explicit provision that no one can be barred from leaving this country," Rychetský replied in an interview on Czech Television when asked whether he sometimes felt during the coronavirus crisis that the government had not acted in accordance with the law and that the Constitutional Court should intervene (Idnes 2020a). Other constitutional lawyers also say that closing the borders for the citizens of the Czech Republic and preventing them from leaving the country has no basis in law and is in conflict with the "right to travel abroad", which is enshrined in the Charter of Fundamental Rights and Freedoms. According to them, the declared state of emergency does not affect the guarantee of these rights (Irozhlas 2020a). However, the current chaos in the measures makes it impossible in many ways to make a clear, objective legal assessment. This is also due to the fact that legal science is usually slower in its response.

The closed border has had a major impact on the lives of cross-border commuters. In the border regions of the Czech Republic with Germany and Austria, commuter workers are relatively strongly represented (Haindorfer 2020; Bruzelius 2018; Carmel 2013; Heindlmaier, Blauburger 2017). In general, we can say that in the so-called Visegrád Group countries they represent a significant share of employees, for example in companies and other services (Janicka & Kaczmarczyk, 2016). We have documented the problems of, for example, the North Moravian ironworks or subsidiary plants of Škoda, which faced a labour shortage after Poland and the Czech Republic introduced restrictions on their borders, which (before they were closed due to COVID-19) effectively prevented cross-border commuters from Poland to commute to these companies. Similarly, problems were

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reported by medical and social facilities in the German and Austrian borders, where some of these persons stopped working after the state border was closed by the Czech Republic.

The issue of labour market mobility within the EU therefore plays an important role in border regions (Anderson, Reichert 1996; Roeder 2011; Recchi 2008). It is especially specific between the post-communist countries, where significant differences in economic and living standards persist. For some locals, crossing borders is part of their daily lives, and commuting is one of the types of cross-border mobility (Kuhn 2012). However, due to quarantine measures, which were gradually introduced by the Czech, but also, for example, Polish and German governments, many people could not get to work during the so-called state of emergency. For example, the decision of the Czech government to close some border crossings with Germany and Austria, the introduction of border controls, or a resolution (128/2020 Coll. of March 23, 2020) ordering from March 26, 2020 a fourteen-day quarantine for all cross-border commuters upon returning to the Czech Republic, were drastic interventions in the free movement of workers within the EU common market, rendering any cross-border work virtually impossible (Ihned 2020).

Cross-border commuting is what we dealt with in this study, specifically commuting to work, which is an example of cross-border labour mobility (Favell 2008; Breinbauer 2008; Bartram 2013). Cross-border commuting is also an example of circular migration, i.e. a type of short-term stays of a recurring (cyclical) nature, which are not accompanied by the intention to change residence permanently or in the long term. (King 2002; Kohli 2000; Martinsen, Vollaard 2014; Martinsen, Rotger 2017; Shutes 2016).

This study deals with the measures taken by the Czech government against a group of cross-border commuters during the two states of emergency declared so far in connection with the COVID-19 pandemic. The cross-border commuters became the object of ostracization by, for example, Prime Minister Andrej Babiš, but also the Minister of the Interior Jan Hamáček. Chaos at those border crossings, which were allowed to remain open, but also various conflicting statements of state officials then made this situation even more obscure (Ihned 2020; Idnes 2020b). The research question is: what were the differences in the legal approach to commuter workers during the two waves of the state of emergency (from 12 March to 17 May 2020 and from 5 October to the present)? Special attention will be paid to the Czech-German area.

We will proceed in three steps, noting that this is primarily a legal and political science study. Firstly, the legal measures at the Czech-German border will be presented; as regards Germany, we must differentiate between the Czech-Bavarian and Czech-Saxon border sections. Secondly, the legal measures against cross-border commuters will be described, in particular the differences in approach to them. Subsequently, these measures will be compared and their criticism from lawyers will be presented. For this purpose, a media analysis was carried out (via Monitora using the key word "cross-border commuters"), along with an analysis of the government's press releases announcing new measures, as well as an analysis of selected speeches by deputies in the Chamber of Deputies. Considering the topicality of the issue, it is worth mentioning that the current legislation and the situation regarding cross-border commuters is taken into account in this study until the submission of the text, i.e. until February 8, 2021.

Literature Review

Cross-border commuting is an important area of study because it is a relatively unexplored phenomenon, and because of its potential to contribute to a better theoretical understanding of cross-border living environments. Cross-border commuting is a very specific type of living environment resulting from major societal mutations. Regarding labour migration research, there are a number of important findings from various European countries (Anderson, Reichert 1996; Arpaia et al. 2016; Bartram 2013; Bruzelius 2018; Carmel 2013; Heindlmaier, Blauburger 2017; Janicka, Kaczmarczyk 2016; Kalter 2011; Klatt, Herrmann 2011; Knotter 2014; Kohli 2011; Martinsen, Vollaard 2014; Müller 2014; Novotný 2020). Indeed, cross-border commuting is an important part of the existence of cross-border communities, not only within the EU (Aslund, Engdahl 2019; Bauböck 2009; Blauburger, Schmidt 2017; Chandraet al. 2014; Gottholmseder, Theurl 2007; Haas, Osland 2014; Huber, Nowotny 2013; Jacob et al. 2019; King 2002; Maas 2013; Martinsen, Rotger 2017; Kukovic; Hacek 2018), but also in other parts of the world (Piore 2008; Roeder 2011; Shutes 2016; Comerio et al. 2020; Laboure 2019).

There is significantly less information on the issue of cross-border labour migration (Frigyes, Ward-Warmedinger 2006; Gerber 2012) concerning the Czech Republic and its workers. We have only partial, albeit well-done research studies (Haindorfer 2020; Přívara et al. 2019). However, the working conditions of Czech cross-border commuters in the current COVID-19 pandemic have not yet been the subject of any analysis. The problem is mainly in the approach to cross-border commuters in relation to the currently closed borders. The problem is purely regional in nature, which is probably also why less attention is paid (not only by lawyers) to the legal status of commuters. This is a very topical issue, all the more so in the ongoing pandemic crisis: we do not yet have the data or other findings, the issue clearly requires comparative research. In this field, it is necessary to significantly strengthen existing research activities.

Theoretical background

Theoretically, this study is anchored by the concepts of free movement of persons and commuters. Cross-border commuting is a phenomenon that is a typical side effect of the free movement of persons within the EU (Gottholmseder, Theurl 2007; Klatt, Hermann 2011), one of the more specific aspects of European integration, which facilitates the use of comparative advantages for living and working on different sides of national borders (Chandra et al. 2014; Harris, Todaro 1970; Mazzoni et al. 2017).

We first define how the EU understands freedom of movement for workers, which is a policy chapter of the *acquis communautaire* of the European Union (Vasilopoulou, Talving 2018; Roos, Westerveen 2019). The free movement of workers means that nationals of any member state of the European Union can take up an employment in another member state on the same conditions as the nationals of that particular member state (Bauböck 2009; Blauburger, Schmidt, 2017; Mass 2013; Recchi 2009, 2015). In particular, no discrimination based on nationality is allowed. It is part of the free movement of persons and one of the four economic freedoms: free movements of goods, services, labour and capital. The free movement for workers is defined in the Article 45 TFEU (ex 39 and 48). The right to free movement has both horizontal and vertical direct effect, such that a citizen of any EU state can invoke the right, without more, in an ordinary court, against other persons, both governmental and non-governmental.

A commuter worker, also known as a cross-border commuter or alien commuter is a worker who is resident in a different country to that in which he/she works, and crosses a national border as part of their regular commute (Bartz, Fuchs-Schuendeln 2012). Cross-border commuter is a term for foreign national workers who live in their home country (Bouwens 2004; Buch et al. 2009). When these workers commute between another country and Czech Republic, you must be aware of the special rules that apply relating to taxation and social security for cross-border commuters.

The EU citizens benefit from the right to live and work in other EU countries (Knotter 2014; Aslund, Engdahl 2019; Krings 2019). In 2019, 1,5 million people were cross-border commuters. The Schengen agreement allows cross-border commuters to cross the border to get to work and back home again without any ID controls and other formalities. When, during the coronavirus crisis, some EU countries temporarily reintroduced border controls, the European Commission adopted guidelines concerning the exercise of free movement of workers, taking into account their particular situation.

Other EU rules help solve matters related to taxation, social security, healthcare, unemployment, family allowances, and pensions. Each EU country imposes its own tax rules, but must also provide equal treatment to all EU citizens. Most countries have bilateral agreements to avoid double taxation. The EU offers advice to interpret tax rules and a system for resolving tax disputes that helps citizens and businesses settle their claims (Haas, Osland 2014; Huber, Nowotny 2013; Jacob et al. 2019).

While the social identities of individuals are rooted in their place of residence, work takes place in another country and is understood as requiring daily commuting (often, for example, 20-50 kilometres a day in one direction) as a means of obtaining a significantly higher income than the employee would have for comparable work in his/her country (Arpaia et al. 2016). In addition, their commuting is associated not only with certain incomes but also with the acquisition of intercultural experiences (such as language acquisition, knowledge of specific customs and other knowledge about the country in which they work) (Novotný 2016). Naturally, payment for the work is transferred to the home community and is used to strengthen the roles of individuals within "their" social structure. Thus, like other migrant workers, cross-border commuters also have two different social roles, although these positions are usually not as different as those of traditional migrant workers, who give up their home environment for a much longer period of time (see Piore 2008: 54f.).

Cross-border commuters and coronavirus crisis

The coronavirus crisis and the measures taken (not only) during the states of emergency meant a very sudden and unexpected interruption of work and financial loss for most cross-border commuters. If we apply this to the Czech Republic, cross-border commuters, especially from Germany, became a source of concern about the cross-border spread of coronavirus after the state of emergency was declared in the Czech Republic on March 12, 2020. Politicians, prime minister, governors and other local politicians spoke out against them, considering them a great potential for importing the disease into the country. However, not only they, but also doctors, hospital directors and hygienists argued that if COVID-19 broke out in them and their family members, it could be a problem for the operation of hospitals (Seznamzpravy 2020). Citizens' concerns in border areas were also numerous, and the increase in diseases in neighbouring countries, especially Germany and Austria, also played a role. It was argued that the Czech state authorities could not afford to expose citizens, both those who work in Germany and others who subsequently meet workers in Germany, to health risks (Idnes 2020b; Seznamzpravy 2020). The numbers of infected people in the border areas with Germany and Austria were slightly higher than in other regions. In addition, in mid-March 2020, some examples of infected cross-border commuters from the German border areas began to make headlines, which exacerbated a kind of panic and fear of commuters in a

large part of the population.

The Czech Republic therefore closed most border crossings with Germany and reintroduced border controls. This one-off introduction of controls can in itself be considered questionable under EU law. It raises questions about how appropriate and necessary it is, and so does the next step, which is a ban on the entry of foreigners into the territory of the Czech Republic, which has also been imposed. Although EU citizens could travel through the Czech Republic, they had to fill in a declaration at border crossings. In general, even within Europe, Czech measures were assessed as very strict (including the obligation to wear a face mask in public areas, the closure of shops and service establishments, etc.). Foreigners admitted to the Czech Republic were required to have a permanent or temporary residence in the country and were forced to undergo a two-week quarantine.

On March 26, by closing the border, the government banned people commuting to Austria and Germany from daily crossing the border. This significantly changed their lives. The first significant change was the fact that the Czech Republic closed some road border crossings and all tourist ones. This significantly increased the commuting distance for many of them. And the second change was that from April 14, 2020 they were allowed to commute to work only in clearly defined runs – they had to stay abroad for at least three weeks at a time, then they were locked in quarantine in the Czech Republic for two weeks after their return. People were allowed to return earlier, but in that case, they would have to self-isolate in a two-week quarantine and, in addition, they would lose their cross-border commuter status. The condition for the Czech police to admit these people back to Germany at the border was to provide a medical certificate stating that they had been quarantined for two weeks. They had to produce the so-called cross-border worker's book, which was hastily created to document their border crossings. As a second document, they were also required to have a confirmation from the employer that they were actually employed in Germany or Austria.

For many of them, the obligation to stay abroad for at least three weeks was a problem because they had not secured accommodation there. However, some facilities, such as hospitals, retirement homes, etc., provided accommodation in this period for these Czech cross-border commuters and, if need be, also for their family members, whom they could take with them. For example, some districts in Bavaria were offering free accommodation as they realized that without cross-border commuters, there would be a fundamental restriction of, for example, health or palliative care (Ihned 2020). Interestingly, the Czech Republic introduced this new scheme only for a part of the so-called cross-border commuters. These were those who commuted to work in Austria or Germany. Cross-border workers commuting to Slovakia or Poland could continue to travel for work without these restrictions.

However, a number of cross-border commuters had to stay at home (although some of them were compensated by Germany) (Klatovský deník 2020). Another problem was that the Czech government was not able to predict how long these measures would be in place, which increased uncertainty on both sides of the border. From the beginning of April, the government eventually made it possible for employees in facilities of health care, social care and critical infrastructure to be able to commute daily, also as a result of the pressure from the border federal states, i.e. Bavaria and Saxony.

At the end of March 2020, a group of Czech cross-border commuters at the German and Austrian borders founded the association "Commuters without Borders - Pendleři bez hranic" aiming to aggregate their interests and achieve the lifting of restrictions on commuting to work in Austria and Germany. Several actions were brought before an administrative court in this case. The lawsuits of individuals were based on their opinion that the government's measures were a disproportionate interference with a fundamental human right, the right to earn a living wage by work. Inter alia, the cross-border commuters pointed out that, due to coronavirus measures in Germany, it was not possible to stay in a hotel there and that their employers could hardly be expected to provide them with three-week accommodation. The government thus effectively prevented the commuters from working (Irozhlas 2020b). Another problem in this situation was the risk of the break-up of families, which were to remain divided by the state border in this difficult period. The citizen's association Cross-border Commuters without Borders also demanded an exemption for single parents and protested against a two-week quarantine after three weeks of work, which prevented the commuters from coming to the family for the weekend and then going back to work.

With effect from 27 April 2020, the Municipal Court in Prague then annulled four measures of the Ministry of Health, which restricted free movement and retail in connection with the coronavirus pandemic. According to the verdict, they were illegal since they were not adopted by the government under the Crisis Management Act. The court thus accepted the objections raised in the legal action taken by the health law expert Ondřej Dostál, who criticized the measures as arbitrary, chaotic and incomprehensible (Ihned 2020b). As a result, the barriers of the a priori ban were removed and "only" stricter measures came into force, which had already begun to be coordinated with the German and Austrian sides. The measures then gradually changed with regard to how the COVID-19 pandemic situation developed and how one or the other country always included the other on its lists of high-risk countries. The main change was that cross-border commuters could travel for work on a daily basis, so the government softened their conditions in this regard. From then on, they were to be tested not once a fortnight, but once a month. It was also enough to submit the test within 72 hours after the last border crossing.

Since September 25, 2020, the entire territory of the Czech Republic has been designated by the Federal Government as a risk area. Persons who come to Germany and have resided in the Czech Republic in the last 14 days before entering Germany are therefore subject to restrictions when entering Germany. Police checks are taking place at the borders. In addition, within Germany, each federal state sets their own quarantine conditions for arrival in Germany, which applies to Bavaria and Saxony in case of the Czech citizens – violators of these state quarantine regulations risk heavy fines.

Politicians in the Czech Republic and Germany are also aware of the seriousness of the situation at the borders. On January 1, 2021, the Minister of Foreign Affairs of the Czech Republic Tomáš Petříček and the Minister of Social Affairs and Social Cohesion of Saxony Petra Köpping issued a joint statement emphasizing the need for joint action, apologizing for measures restricting cross-border movement and thanking commuters and their employers for understanding in this difficult situation (Ministry of Foreign Affairs of the Czech Republic 2021). Let us also add that on December 1, 2020 the Bavarian Administrative Court annulled the ordinance of the Bavarian Government on testing obligations for cross-border commuters. Subsequently, from December 9, 2020 the government banned entering the country for shopping, while commuters and family members can continue to cross borders without quarantine and a negative test. Cross-border commuters are not required to take the test, but the authorities still recommend it. They are obliged to have a certificate of employment with them when traveling to work. Since January 11, 2021 people commuting to Saxony from neighbouring countries for work, but also for study, for example, are obliged to be tested regularly and at their own expense at least twice a week.

According to Eurostat, about 56,600 Czechs commute abroad every day to work (CT24 2019), and at least twice as many people depend on their income. Most of these workers earn their money in Germany (37,200) and Austria (12,800), but these data may not be definitive and it can be assumed that the actual number of commuters from the Czech Republic to Germany, for example, is twice as large. However, commuter numbers are likely to be higher. According to data from the Karlovy Vary Region, there are 20,000 commuters only there (Idnes, 2020b). In general, in Central Europe, it is men employed in construction and women in nursing or caregiving positions who commute most often (Kalter 2011; Chilla & Heugel 2019).

Methods

In terms of methodology, this study takes the form of case studies, i.e. it analyses the two states of emergency and adopted legislation that affects the life of cross-border commuters. The strength of case studies in general lies primarily in the fact that they help us generate hypotheses and form theories since a detailed case study can be particularly useful for answering "how" and "why" questions. (Yin 2014). In doing so, we need to find a compromise between the scope of generalization of conclusions, the details of the explanation of cases and the number of cases studied. Especially in this case, it could happen that the explanation will be so specific that it will be very difficult to generalize to other cases (George, Bennet 2005). We are therefore looking for an analytical generalization, not a statistical one – being aware of the rather fundamental specifics of legal decision-making (Helfer, Slaughter 1997). The aim of this study is therefore to shed some light on particular approaches to cross-border commuters. At the same time, it is necessary to add, within the framework of a certain methodological relativism, that the issue of cross-border commuters is a peripheral topic both in contemporary international law and in the law for minorities and labour law. Only the current COVID-19 crisis has created the need to deal with the regulation of these workers in more detail. However, the situation is evolving and will continue to evolve, so this study captures the current situation (as of early February 2021).

The aim of this research process is to contribute to the debate on whether and under what conditions border measures discriminate against a specific group of commuters. We will attempt to arrive at an analytical generalization, a generally formulated list of factors contributing to effective decision-making, which will not discriminate against this group, taking into account their specifics even during the COVID-19 pandemic. A content analysis of the available legal measures and their reflection in the media was performed.

Results

Let us now compare the measures against border traffic and especially against commuters during the first and second emergencies. These two periods are, to a large extent, difficult to compare. The first phase lasted two months, the second is longer. The first phase was associated with concerns about the unknown virus, when the intensity of its spread was difficult to predict, the second less so. The cross-border commuters and their work, as well as the reality of life, were affected by both phases, but to a very different extent. A turning point of the first phase was the government's measure of March 15, 2020 to close the border crossings (with some of them to be opened later) (Ministry of the Interior of the Czech Republic 2020) as well as a resolution of the Czech government on the introduction of border controls, or a resolution (128/2020 Coll. of March 23, 2020) ordering from March 26, 2020 a 14-day quarantine to all cross-border workers after returning to the Czech Republic. This was a drastic interference with the free movement of workers within the EU common market, making it virtually impossible to perform cross-border work (Ihned 2020).



Fig. 1. Open border crossings (as of March 16, 2020)
Source: ČT24

What was particularly piquant about this situation is that shortly after the border crossings were closed, with a few exceptions (see Figure 1), the National Security Council decided at the request of Senator and Mayor of Boží Dar that the local border crossing, which was originally planned to be closed, could open on March 17. This was to accommodate commuters, who would otherwise have to commute to neighbouring Saxony either through the crossings at Vojtanov or Hora sv. Šebestiána, which would make their travel several times longer and more expensive (Deník 2020). In general, it is clear that the measures during the first state of emergency were spontaneous, unsystematic and not entirely well thought out, thus changing frequently. In addition, they were not coordinated with the German authorities, resulting in the lack of information on the German side, but also among the commuters themselves.

Another important aspect that should be mentioned is certain ostracism of commuters. It was apparent in statements made by the prime minister (see his Twitter as well as his statement on the "introduction of border control", describing it as a measure "to prevent the unrestrained spread of the disease", intended to be in place "as long as necessary"; Government 2020), by the Minister of the Interior, but especially by the governors of the Karlovy Vary Region (Karlovarský deník 2020), the Plzeň Region (Plzeňský kraj 2020) and the South Bohemian Region (Jihočeský kraj 2020). Various messages could be heard from them about the need to close the borders – referring to the unsubstantiated information that the commuters were supposedly bringing COVID-19 to the country. However, we should admit that in the Ústí nad Labem Region, for example, COVID-19 was first diagnosed in a person working in neighbouring Saxony (CRo sever 2020; see also the info in the Ústecký kraj 2020 newsletter). This ostracism did not occur to this extent again during the second wave, nor did it occur during the second state of emergency.

From the legal point of view, most remarkable was the statement made by the Constitutional Court that closing the borders, and not allowing Czech citizens to leave the country in effect, was unconstitutional. Quite remarkable was also the legal action taken by the health law expert Ondřej Dostál and as the judgment of the Municipal Court in Prague, which annulled with effect from April 27, 2020 four measures of the Ministry of Health of the Czech Republic, which restricted free movement and retail in connection with the coronavirus pandemic. According to the verdict, they are illegal and legally indefensible since they were not adopted by the government under the Crisis Management Act (Idnes 2020a; Irozhlas 2020a). It was found that this was an unprecedented restriction on freedom of movement and freedom to conduct a business, failing to take into account that the measures should comply with the rule of law, in particular the principle of predictability. Specifically, it was criticized that the measures were not adopted under the Crisis Management Act, but under the Public Health Protection Act, but also that the measures concerned only some border sections. The court's decision states that the substantive scope to issue them was not sufficient and that it is the government, not "just" the Minister of Health, who is only entitled to restrict the rights to such a mass extent. As a result, the existing bans immediately ceased to apply and new, stricter measures were adopted (see Table 1), which were already coordinated. The main change was that cross-border commuters could travel for work on a daily basis, i.e. the government relaxed their restrictions in this regard.

When comparing the measures during the two phases of the state of emergency, it is interesting that the total closure of the borders has no longer been implemented. Conditions were set for those who wanted and want to travel abroad, mostly it was the need for tests or quarantine. What is remarkable from our point of view is that cross-border commuters that have started to form various associations have always been granted exemptions. Their situation was also discussed at the diplomatic level, and they were also supported by some local politicians.

One can only assume what this change was grounded in, but it was probably that they had proved to be an indispensable workforce, especially in the German and Austrian borders, which was reflected in moderate measures (on the Bavarian side, for example, they are reimbursed for tests).

Table 1. Graphics of measures against cross-border commuters during the states of emergency

Variable	1 st State of Emergency	2 nd State of Emergency
Duration	March 12 - May 17, 2020	October 5, 2020 -
Course	- declared for 30 days, subsequently extended to May 17	- declared for 30 days and subsequently extended 4 times (so far until January 22, 2021)
Border measures in general	- from March 14 border checks; - from March 16 state borders closed; a ban on traveling to "countries at risk"; - from March 26 to April 27 quarantine for all citizens after returning from Germany to the Czech Republic; - from April 27 travelling abroad allowed (test / quarantine)	- in general, the Czech Republic is viewed by Germany as a risk area; - from November 16, 2020 to December 31, 2020 quarantine upon arrival in Saxony (or test); except for working stays not longer than 12 hours - from December 9 travels from the Czech Republic to Bavaria are not possible; quarantine/test exceptions;
Measures against cross-border commuters in the Czech Republic	Measures identical - see above; - from April 27 they can commute for work daily (testing every 14 days)	There are exceptions for cross-border commuters; they are allowed to work.
Measures against cross-border commuters in Germany	-	- from October 23 to Bavaria with a test (paid by the Bavarian government); the measure annulled by the Bavarian Administrative Court on December 1) - from January 11, 2021 commuters to Saxony are obliged to be tested twice a week at their own expense
Evaluation/criticism of the measures	Municipal Court in Prague Opinion of the President of the Constitutional Court on the unconstitutionality of border closures	

Sources: Ministry of Foreign Affairs of the Czech Republic, Federal Foreign Office, Resolution of the Government of the Czech Republic No. 281, Sächsische Corona-Quarantäne-Verordnung (SächsGVBl. p. 562), Einreise-Quarantäneverordnung, November 5, 2020 (BayMBl. Nr. 630, BayRS 2126-1-6-G).

However, even though no measures affecting the lives of cross-border commuters were taken by the Czech side during the second state of emergency, the deteriorating epidemiological situation in the Czech Republic and later in Germany resulted in some restrictions from the Bavarian and Saxon sides. In general, the Czech Republic has been viewed as a risk country since the end of September. Specific measures are in place in the individual federal states. Thus, according to the Bavaria (BayMBl. Nr. 630, BayRS 2126-1-6-G) and Saxon (SächsGVBl. p. 562) regulations, the obligation to test was introduced from the end of October (in Saxony from January 11, 2021 and at one's own expense). However, this obligation was cancelled by the Bavarian Administrative Court on December 1, 2021.

Discussion

First of all, it must be said that we now have only a little knowledge about legal perspective of cross-border commuters. When comparing the measures that affected their lives and especially their work on the Czech-German border during the COVID-19 pandemic, we can see that their needs were not taken into account at all by Czech politicians, especially in March and April 2020. We can therefore say that they have fallen victim to unsystematic measures and a certain panic caused by the onset of COVID-19 in the Czech Republic. It was eventually the Municipal Court in Prague that annulled, with effect from April 27, 2020, those measures of the Ministry of Health which restricted the free movement of persons and the crossing of borders. The contested measures were annulled for their being illegal and for an insufficient substantive scope to be issued, which confirms the unsystematic nature of these measures.

The interests of cross-border commuters have since been taken into account more seriously. There were several reasons for this. Firstly, it was the above-mentioned court decision. Secondly, the diplomatic negotiations and pressure from Germany when problems in some border districts in Germany began to manifest themselves in the local health and social care facilities. Thirdly, they began to form associations, aggregating their interests and

appearing in the media.

The legal measures taken so far against cross-border commuters during the COVID-19 pandemic in the Czech Republic show how difficult it is to find a balance between the protection of public health and the protection of human rights. On the one hand, we need to support the people who are most at risk of adverse effects, but on the other hand, we must not forget the standards of protection of fundamental rights and freedoms. Emergency measures should be limited to what is strictly necessary and proportionate, for a limited period of time, while being subject to regular review and complying with the above principles and international law. This was not respected in the case of measures against cross-border commuters during the first state of emergency. During the second state of emergency, the situation had already changed and the interests of cross-border commuters were taken into account.

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References

- Anderson, C. J., & Reichert, S. (1996). Economic Benefits and Support for Membership in the EU: A Cross-National Analysis. *Journal of Public Policy*, 15(3), 231-249.
- Aslund, O., & Engdahl, M. (2019). Open Borders, Transport Links, and Local Labor Markets. *International Migration Review*, 53(3), 706-735. <http://doi.org/10.1177/0197918318789067>
- Arpaia, A., Kiss, A., Palvolgyi, B., & Turrini, A. (2016). Labour mobility and labour market adjustment in the EU. *IZA Journal of Migration*, 5(21), 1–21. <http://doi.org/10.1186/s40176-016-0069-8>.
- Bartram D. (2013). Happiness and 'economic migration': A comparison of Eastern European migrants and stayers. *Migration Studies*, 1(2), 156–175.
- Bartz, K., & Fuchs-Schuendeln, N. (2012). The role of borders, languages, and currencies as obstacles to labor market integration. *European Economic Review*, 56(6), 1148-1163 .
- Bauböck, R. (2009). Global Justice, Freedom of Movement and Democratic Citizenship. *European Journal of Sociology/Archives Européennes de Sociologie*, 50(1), 1–31.
- Blauberger, M., & Schmidt, S.K. (2017). Free Movement, the Welfare State, and the European Union's Over-Constitutionalization: Administrating Contradictions. *Public Administration*, 95(2), 437–49.
- Bouwens, S. (2004). The dynamics of cross-border labor: Commuting from the Dutch to the German part of the Euregio Meuse-Rhine, 1960-2000. *Journal of Borderlands Studies*, 19, 135-153 .
- Breinbauer A. (2008). MigrantInnen und PendlerInnen aus Centrop-e-Ländern –Humanpotenzial für Wiener Unternehmen. *Wirtschaft und Management* 9, 49–76.
- Bruzelius, C. (2018). Freedom of movement, social rights and residence-based conditionality in the European Union. *Journal of European Social Policy*, 29(1), 70-83. <https://doi.org/10.1177/0958928718756262>
- Buch, T.; Schmidt, T.D., & Niebuhr, A. (2009). Cross-border commuting in the Danish-German border region integration, institutions and cross-border interaction. *Journal of Borderland Studies*, 24(2), 38-54.
- Carmel, E. (2013). Mobility, Migration and Rights in the European Union: Critical Reflections on Policy and Practice. *Policy Studies*, 34(2), 238-253.
- Chandra, A., Keith H., & Mariano T. (2014). The economics of cross-border travel. *Review of Economics and Statistics*, 96 (4), 648–661.
- Chilla, T., & Heugel, A (2019). Cross-border Commuting Dynamics: Patterns and Driving Forces in the Alpine Macro-Region. *Journal of Borderlands Studies*, doi:10.1080/08865655.2019.1700822.
- Comerio, N.; Minelli, E.; Sottrici, F., & Torchia, E. (2020). Cross-border commuters: How to segment Them? A Framework of Analysis. *International Migration*, <https://doi.org/10.1111/imig.12720>
- ČRo sever (2020). Zdravotníci evidují v Ústeckém kraji prvního pendlera s pozitivním testem na koronavirus. [online] sever.rozhlas.cz. Available at: <https://sever.rozhlas.cz/zdravotnici-eviduji-v-usteckem-kraji-prvniho-pendlera-s-pozitivnim-testem-na-8203098> [Accessed 6.2. 2021]
- Deník (2020). Boží Dar dostal výjimku, hraniční přechod je otevřen. [online] Deník.cz. Available at: <https://www.denik.cz/regiony/bozi-dar-dostal-vyjimku-hranicni-prechod-je-otevren-20200316.html> [Accessed 6. 2. 2021]
- Favell A. (2008). The new face of East-West migration in Europe. *Journal of Ethnic and Migration Studies*, 34(5), 701-716.
- Frigyes, F.H., & Ward-Warmedinger, M. (2006). Cross-Border Labor Mobility within an Enlarged EU. Frankfurt: European Central Bank. [online] ECB. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=923371 [Accessed 6. 1. 2021]
- George, A., & Bennet, A. (2005). *Case studies and theory development in the social sciences*. Cambridge: Mitpress.
- Gerber, P. (2012). Advancement in Conceptualizing Cross-Border Daily Mobility: the Benelux Context in the European Union. *European Journal of Transport Infrastructure Research*, 12(2), 178–97, <https://doi.org/10.18757/ejtr.2012.12.3.2980>
- Gottholmseder, G., & Theurl, E. (2007). Determinants of cross-border commuting: Do cross- border commuters within the household matter? *Journal of Borderlands Studies*, 22 (2), 97–112. <https://doi.org/10.1080/08865655.2007.9695679>.
- Haas, A., & Osland, L. (2014). Commuting, Migration, Housing and Labour Markets: Complex Interactions. *Urban Studies*, 51(3), 463-476.
- Haindorfer, R. (2020). Impacts of negative labor market experiences on the life satisfaction of European East-West mobile workers: Cross-border commuters from the Czech Republic, Slovakia and Hungary in Austria. *Journal of Industrial Relations*, 62(2), 256-277. <https://doi.org/10.1177/0022185619897087>
- Harris, John R and Michael P Todaro. (1970). Migration, unemployment and development: atwo-sector analysis. *The American Economic Review*, 60(1),126–142.

- Heindlmaier, A., & Blauburger, M. (2017). Enter at Your Own Risk: Free Movement of EU Citizens in Practice. *West European Politics*, 40, 1198–1217.
- Helfer, L., & Slaughter, A. M. (1997). Toward a Theory of Effective Supranational Adjudication. *Yale Law Journal*, 107(2). [online]. Available at: <https://digitalcommons.law.yale.edu/yj/vol107/iss2/1> [Accessed 6.2. 2021]
- Huber, P., & Nowotny, K. (2013). Moving across Borders: Who is Willing to Migrate or to Commute? *Regional Studies*, 47(9), 1462-1481.
- Idnes (2020a). Rychetský: Uzavření hranic pro vycestování bylo protiústavní. [online] Idnes.cz. Available at: https://www.idnes.cz/zpravy/domaci/pavel-rychetsky-pandemie-covid-protiustavni-opatreni.A201129_214544_domaci_kzem [Accessed 6. 2. 2021]
- Idnes (2020b). Sasko a Bavorsko podpoří pendlery, poskytnou jim ubytování a další pomoc. [online] Idnes.cz. Available at: https://www.idnes.cz/zpravy/zahranicni/sasko-bavorsko-podpora-pendleru-ubytovani.A200325_123140_zahranicni_blj [Accessed 6. 2. 2021]
- Ihned (2020). Bavorsko a Sasko pomohou českým pendlerům s ubytováním. Někteří si již shání ubytování sami. [online] Ihned.cz. Available at: <https://byznys.ihned.cz/c1-66740700-bavorsko-a-sasko-pomuzou-pendlerum-s-ubytovanim-chteji-aby-v-nemecku-pokracovali-v-praci> [Accessed 6.1. 2021]
- Irozhlas (2020a). *Zákon nezná možnost uzavřít hranice směrem ven. 'Zákaz cestovat mají v Evropě jen Češi a Belgičané.* [online] Irozhlas.cz. Available at: https://www.irozhlas.cz/zpravy-domov/koronavirus-cesko-zakaz-vycestovani-hranice-cestovani-zavrene-vlada-opatreni_2004202012_cha [Accessed 6. 1. 2021]
- Irozhlas (2020b). Vláda nás hodila přes palubu, znemožnila nám pracovat, říkají pendleři a bojí se o práci. [online] irozhlas.cz. Available at: https://www.irozhlas.cz/ekonomika/pendleri-koronavirus-opatreni-zavrene-hranice-omezeni-cestovani_2003241018_ban [Accessed 6. 1. 2021]
- Jacob, N.; Munford, L., & Rice, N. (2019). The disutility of commuting? The effect of gender and local labor markets. *Regional Science and Urban Economics* 77, 264-275.
- Janicka A., & Kaczmarczyk, P. (2016). Mobilities in the crisis and post-crisis times: Migration strategies of Poles on the EU labour market. *Journal of Ethnic and Migration Studies*, 42 (10), 1693–1710.
- Jihočeský kraj (2020). Otevřený dopis pendlerů hejtmance a otevřená odpověď hejtmanky pendlerům. [online] kraj-jihocesky.cz. Available at: <https://www.kraj-jihocesky.cz/otevreny-dopis-pendleru-hejtmance-otevrena-odpoved-hejtmanky-pendlerum> [Accessed 6. 1. 2021]
- Kalter, F. (2011). Social capital and the dynamics of temporary labour migration from Poland to Germany. *European Sociological Review*, 27 (5), 555–569. <https://doi.org/10.1093/esr/jcq025>.
- King, R. (2002). Towards a New Map of European Migration, *International Journal of Population Geography* 8(2), 89-106.
- Karlovarský deník (2020). Uzavřete hranice i pro pendlery, vzkazuje vládě hejtmán Petr Kubis. [online] karlovarskydenik.cz. Available at: https://karlovarsky.denik.cz/zpravy_region/uravrete-hranice-i-pro-pendlery-vzkazuje-vlade-hejtman-20200319.html [Accessed 6. 1. 2021]
- Klatovský deník (2020). Pendlery ve zdravotnictví a sociální sféře podpoří Sasko i Bavorsko finančně. [online] klatovskydenik.cz. Available at: https://klatovsky.denik.cz/zpravy_region/pendlery-ve-zdravotnictvi-a-socialni-sfere-podpori-sasko-i-bavorsko-financne-20200325.html [Accessed 6. 1. 2021]
- Klatt, M., & Herrmann, H. (2011). Half empty or Half full? Over 30 years of regional cross-border cooperation within the EU: experiences at the Dutch–German and Danish–German border. *Journal of Borderlands Studies*, 26 (1), 65–87. <https://doi.org/10.1080/08865655.2011.590289>.
- Knotter, A. (2014). Perspectives on Cross-Border Labor in Europe: "(Un) familiarity" or "Push-and-Pull"? *Journal of Borderland Studies*, 29(3), 319-326.
- Kohli, M. (2000). The Battlegrounds of European Identity. *European Societies*, 2(2), 113-137.
- Krings, T. (2019). Posted Workers in Österreich: Grenzüberschreitende Entsendearbeit im Spannungsfeld von offenen Märkten und (supra-)nationaler Regulierung. *Österreichische Zeitschrift für Soziologie*, 44, 21-41.
- Kukovic, S., & Hacek, M. (2018). Cross-Border Cooperation of escaping crisis conditions in Slovenia. *Transylvanian Review of Administrative Sciences*, 53E, 54-66.
- Laboure, M. (2019). Pensions: the impact of migrations and cross-border commuters in a small open economy. *Journal of Pension Economics & Finance*, 18(2), 247-270.
- Maas, W. (2013). Free Movement and Discrimination: Evidence from Europe, the United States, and Canada. *European Journal of Migration and Law*, 15(1), 91-110.
- Martinsen, D.S., & Vollaard, H. (2014). Implementing Social Europe in Times of Crises: Re-established Boundaries of Welfare?. *West European Politics*, 37(4), 677–692.
- Martinsen, D.S., & Rotger, G.P. (2017). The Fiscal Impact of EU Immigration on the Tax-Financed Welfare State: Testing the 'welfare Burden' Thesis. *European Union Politics*, 18(4): 620-639.
- Mazzoni, D.; Albanesi, C.; Ferreira, P.D.; Opermann, S.; Pavlopoulos, V. & Cicognani, E. (2017). Cross-border mobility, European identity and participation among European adolescents and young adults. *European Journal of Developmental Psychology*, 15(3), 324-339.
- Müller, K. B. (2014). Aktivní hranice a evropeizace veřejné sféry. Jak „stejný“ může být i „jiný“ a naopak. *Sociológia*, 4, 412-433.
- MV ČR (2020). *Opatření obecné povahy ze dne 15. března 2020.* [online] MVCR.cz. Available at: <https://www.mvcr.cz/clanek/opatreni-obecne-povahy-ze-dne-15-brezna-2020.aspx> [Accessed 6. 1. 2021]
- MZV (2021). *Společné tiskové prohlášení ministra zahraničních věcí ČR Tomáše Petříčka a ministryně sociálních věcí a sociální soudružnosti Saska Petry Köppingové.* [online] MZV.cz. Available at: https://www.mzv.cz/jnp/cz/udalosti_a_media/prohlaseni_a_stanoviska/x2020_12_31_spolecne_tiskove_prohlaseni_ministra.html [Accessed 6. 1. 2021]
- Novotný, L. (2016). Sociological Reflexion of the European integration. *Sociológia - Slovak Sociological Review*, 48(2), 119-138.
- Novotný, L. (2020). Place management a přeshraniční cestovní ruch: příklad česko-bavorského pohraničí. In: Linderová, I. (ed.): *Aktuální problémy cestovního ruchu* (pp. 146-153). Jihlava: VŠPJ.
- Piore, M.J. (2008). *Birds of Passage: Migrant Labor and Industrial Societies*. New York: Cambridge University Press.

- Plzeňský kraj (2020). *Krizový štáb Plzeňského kraje chce zastavit pendlery*. [online] plzensky-kraj.cz. Available at: <https://www.plzensky-kraj.cz/krizovy-stab-plzenskeho-kraje-chce-zastavit-pendl> [Accessed 6. 1. 2021]
- Přivara, A, Rievajová, E., & Murat Yüceşahin, M. (2019). Labour market disadvantages faced by migrant workers from Czech Republic, Hungary, and Slovakia in Britain. *Migration Letters*, 16(4), 585–594.
- Recchi, E. (2008). Cross-State Mobility in the EU: Trends, Puzzles and Consequences. *European Societies*, 10 (2), 197-224.
- Recchi, E. (2009). Cross-State Mobility in the EU. *European Societies*, 10(2), 197-224.
- Recchi, E. (2015). *Mobile Europe: The Theory and Practice of Free Movement in the EU*. Basingstoke: Palgrave.
- Roeder, A. (2011). Does mobility matter for attitudes to Europe? A multi-level analysis of immigrants' attitudes to European unification. *Political Studies*, 59(2), 458–471. <https://doi.org/10.1111/j.1467-9248.2010.00871.x>
- Roos, Ch., & Westerveen, L. (2019). The conditionality of EU freedom of movement: Normative change in the discourse of EU institutions. *Journal of European Social Policy*, 30(1), 63-78. <https://doi.org/10.1177/0958928719855299>
- Sächsische Corona-Quarantäne-Verordnung, 30.10.2020. [online] SächsGVBl. p. 748. Available at <https://www.revosax.sachsen.de/vorschrift/18892.3#p3> [Accessed 6. 1. 2021]
- Seznamzpravy (2020). Zavřete hranice úplně. Pendleři jsou problém, zní z krajů. [online] Seznamzpravy.cz. Available at: <https://www.seznamzpravy.cz/clanek/zavrete-hranice-uplne-pendleri-jsou-problem-zni-z-kraju-94774> [Accessed 6. 1. 2021]
- Shutes, I. (2016). Work-Related Conditionality and the Access to Social Benefits of National Citizens, EU and Non-EU Citizens. *Journal of Social Policy*, 45(4), 691–707.
- Resolution of the Government of the Czech Republic of 23 March 2020 No. 281 on the adoption of crisis measures
- Ústecký kraj (2020). 20/září 2020. [online] Kr-ustecky.cz. Available at: https://www.kr-ustecky.cz/assets/File.ashx?id_org=450018&id_dokumenty=1749908 [Accessed 6. 1. 2021]
- Vasilopoulou, S., & Talving, L. (2018). Opportunity or threat? Public attitudes towards EU freedom of movement. *Journal of European Public Policy*, 26(6). <https://doi.org/10.1080/13501763.2018.1497075>
- SächsGVBl. (2020). Verordnung über Quarantänemaßnahmen für Einreisende zur Bekämpfung des Coronavirus. [online] SächsGVBl. Available at: <https://www.gesetze-bayern.de/Content/Document/BayEQV/true?AspxAutoDetectCookieSupport=1> [Accessed 6.1. 2021]
- Vláda (2020). Premiér ve sněmovně: Předstupuji před vás s pokorou a lidskou prosbou, abychom v této krizové situaci zapomněli na naše politické hádky a spory. [online] Vlada.cz. Available at: <https://www.vlada.cz/cz/clenove-vlady/premier/projevy/premier-ve-snemovne-predstupuji-pred-vas-s-pokorou-a-lidskou-prosbou--abychom-v-teto-krizove-situaci-zapomneli-na-nase-politicke-hadky-a-spory-180602/> [Accessed 6. 1. 2021]
- Yin, R. (2014). *Case Study Research: Design and Methods*. Los Angeles: SAGE Publications.