



Prague, 12 April 2021

Ref. No.: MZDR 14592/2021-
4/MIN/KAN

MZDRX01FI035

EXTRAORDINARY MEASURE

The Ministry of Health, as the competent administrative authority pursuant to Section 80(1)(g) of Act No. 258/2000 Coll., on Public Health Protection and amending certain related acts, as amended (hereinafter “Act No. 258/2000 Coll.”), orders, proceeding pursuant to Section 69(1)(i) and (2) of Act No. 258/2000 Coll., on the protection of the population and prevention of the danger of the arising and spreading of the disease COVID-19 caused by the novel coronavirus SARS-CoV-2, this extraordinary measure:

I.

Effective from 13 April 2021, the Extraordinary Measure of 6 April 2021, Ref. No. MZDR 14592/2021-3/MIN/KAN is amended as follows:

1. Art. I reads:

“I.

1. A child, pupil or student that is not prohibited from attending in-person schooling under another extraordinary measure or crisis measure, and is a child or pupil of a preschool, primary school, special primary school, field of education at a one-year practical school or two-year practical school, pupil or student participating in practical schooling or practical training at a secondary school or college, pupil of a school or student of a college that participates in group consultations or examinations at college, final examinations, school-leaving examinations or discharge examinations, will only be allowed to attend the given school in person if

- a) they do not have symptoms of COVID-19, and
- b) they have taken a non-invasive preventive antigen test for the SARS-CoV-2 virus antigen at the frequency stipulated pursuant to Art. III, performed on their own or performed by another person and provided by the school (hereinafter the “preventive antigen test”), and submits the negative result of this test, unless stipulated otherwise in Art. II.

The restriction pursuant to the first sentence does not apply to individual consultations and individual in-person schooling or other individual activity. The school may only conduct tests using the tests designated for self-testing or permitted for use by non-professionals by the Ministry of Health.

2. If the child, pupil or student with moderate or severe mental disabilities, multiple concurrent disabilities or disorders on the autism spectrum cannot undergo a preventive antigen test pursuant to paragraph 1(b) and proves these fact by means of a confirmation issued by a healthcare service provider, they will be considered

a child, pupil or student whose school or school facility which they attend is closed due to extraordinary measures during the epidemic.”

2. In Art. VI, paragraph 1 reads:

“1. If the child, pupil or student has a positive result of a preventive antigen test, then the school will not allow any child, pupil or student who was in one class or group with the positive child, pupil or student on the 2 days before taking this test or 2 days after taking this test

- a) to attend in-person schooling for the period until the result of the confirmation RT-PCR test for the presence of the SARS-CoV-2 virus is determined for the child, pupil or student with the positive preventive antigen test result,
- b) to attend in-person schooling again if the child, pupil or student with the positive preventive antigen test result submits the negative result of a confirmation RT-PCR test for the presence of the SARS-CoV-2 virus.

3. A new Art. XVII is added after Art. XVI, which reads:

“XVII.

1. The school will allow all the other persons to whom Art. I of this extraordinary measure or the extraordinary measure of the Ministry of Health concerning the testing of employees at school does not apply, to attend final examinations, school-leaving examinations or discharge examinations, provided this person does not have symptoms of COVID-19 and demonstrates that

- a) they have undergone a laboratory-confirmed instance of COVID-19, where the period of isolation in accordance with a valid extraordinary measure of the Ministry of Health has ended, and no more than 90 days have passed from the first positive RT-PCR test for the presence of SARS-CoV-2 or POC antigen test for the presence of the SARS-CoV-2 antigen,
- b) they have a negative result of POC antigen test for the presence of the SARS-CoV-2 virus antigen,
or a RT-PCR test for the presence of the SARS-CoV-2 virus, which was performed in the past 7 days by a healthcare service provider pursuant to the currently valid extraordinary measure of the Ministry of Health concerning the performance of tests,
- c) they have a negative result of a non-invasive preventive antigen test for the presence of the SARS-CoV-2 virus antigen, which they performed on themselves or which was performed by another person, and which was provided by the school where the final examination, school-leaving examination or discharge examination is being conducted, and which was conducted in the past 7 days, or
- d) they have been issued a certificate by the Ministry of Health of the Czech Republic on vaccination against COVID-19, and at least 14 days have passed since the application of the second dose of a vaccine in the case of a two-dose scheme in accordance, or at least 14 days have passed since the application of the first dose of a vaccine in the case of a single-dose scheme in accordance with the SPC.

2. Personal presence at the final examination, school-leaving examination or discharge examination is also permitted to the pupil or student if the preventive antigen test at the pupil’s or student’s school was performed in the past 7 days before the date of the examination, and also if the pupil or student submits a document of a test pursuant to Art. II(b), which was performed in the past 7 days.”

The existing Art. XVII through XIX are renumbered Art. XVIII through XX.

4. In Art. XIII the number “XVII” is replaced with the number “XVIII”.

II.

This extraordinary measure takes effect on the date of its issue.

Rationale:

In the interest of protecting public health, a different extraordinary measure of the Ministry of Health stipulates, with defined exceptions, the continued prohibition of the personal presence of children, pupils and students in schooling at school facilities.

The prevention of serious infectious diseases which are transmitted through contaminated droplets (aerosol) consists of avoiding increased concentrations of people, especially in enclosed premises. The prevention of the further spread of infectious diseases through the airborne transmission of the originator can be augmented by observing measures which restrict personal contact in places with higher concentrations of people. Therefore, it is necessary to employ instruments to ensure the control and management of movement and operation of such locations.

One of the key measures is to restrict contacts between individual persons and limit the movement of persons to the essential minimum. At schools and school facilities, there is intensive contact between individual children/pupils/students and the teaching staff. Attendance at schools and school facilities is associated with increased mobility and the frequency of social contacts during transportation. Due to the closing of schools, these contacts are limited.

However, the importance of education and the right to education and the length of restrictions in schooling create the need to find ways to restore the possibility of in-person schooling. Yet public health protection must always be held in account.

Given the consistently unfavorable epidemiological situation in the Czech Republic, it is necessary to employ all the available tools to reduce the risk of the further spread of the contagion during any easing of the measures in education.

Pursuant to Section 69(1)(i) of Act No. 258/2000 Coll., the Ministry of Health is authorized to prohibit or order certain other activities to eliminate the pandemic or risk of its occurrence. This activity may also include undergoing testing as a condition for attending in-person schooling, examinations, etc. A similar opinion is held by the Municipal Court in Prague, which, in its judgement ref. no. 11 A 127/2020-77, specified that “under the term *“eliminate the epidemic” or “elimination of the risk of the occurrence of an epidemic” it is necessary to see a certain process that requires gradual steps leading to this goal. Hence, the given terms must also include actions which reduce the spread of the epidemic, as well as actions which will prevent the epidemic for occurring at all at certain locations (here social facilities). The court believes that the contested measure did not stipulate a legal obligation without adequate support in the Act on Public Health Protection, and even a restrictive interpretation leads to the conclusion that the measure imposing the testing of certain groups of employees is, given its character and the intensity of interference in work, a measure which is foreseeable under Section 69(1)(i) of the Act on Public Health Protection. It is a measure that is foreseen by law and is therefore within the boundaries of the law.”*

In the same judgment, the Municipal Court in Prague further states that *“the respondent*

(Ministry of Health) is authorized to order the closing of healthcare facilities or closing of social service facilities through an extraordinary measure. Such an order, given its nature and degree of infringement on the rights and freedoms of the addressees, may indeed interfere much more intensively than a measure which imposes the testing of workers at social service facilities. If the legislator allows the respondent to order the closing of the given type of facility, it cannot be inferred that the respondent is not allowed to issue a type of less intensive measure, which imposes the testing of employees at these facilities. The testing imposed by the contested measure does not infringe on the petitioner's specified rights and freedoms in a comparably intensive manner; it merely regulates the condition of exercising rights for a certain range of entities. Although it is a restriction which is not negligible and may be considered unpleasant on a subjective level, the court believes that it does not affect the substance of constitutionally guaranteed rights and freedoms in a manner that would lead the court to a conclusion on the inadequacy of the respondent's actions." The same argument may be applied analogically to the testing of pupils and students (and teaching staff and other employees) at schools and school facilities, and other persons whose presence is required at schools and school facilities, because pursuant to Section 69(1)(b) of Act No. 258/2000 Coll., the Ministry of Health is authorized to close the school or school facility, as is the case of the social service facilities in the case of the cited judgment. Hence, this extraordinary measure is less invasive than would be a measure that would lead to the closing of schools and school facilities, respectively the prohibition of conducting all examinations.

The school is obliged to protect the health of children, pupils and students, as well as school employees (Section 29(2) of the Schools Act and Section 101 et seq. of the Labor Code). It applies even in normal situations, and all the more so in the current pandemic, that persons who show symptoms of an acute disease must not go to school.

Without preventing the spread of COVID-19, the school would not be a safe environment in the current situation and the easing of measures in education could lead to a worsening of the overall epidemiological situation. Should such a situation arise, this would threaten the health of other classmates, teaching staff and other persons that they meet both inside and outside of the school.

For the purpose of the incontestable interpretation of the measure, the diction of Art. I is specified so that it is entirely obvious that the school is obliged not to allow attendance at in-person schooling for children, pupils and students that do not undergo regular testing. If the child, student or pupil does not undergo testing and has no alternative document proving that they are not positive for the presence of the SARS-CoV-2 virus (or antigen thereof), their absence will be excused.

The measure also resolves situations where the child, pupil or student cannot be tested regularly due to health disabilities. These are primarily persons with disorders on the autism spectrum or combined disabilities. If attendance at schooling at their school is permitted pursuant to another extraordinary measure, the parent loses the claim to the allowance. If it is factually impossible to test the child (pupil, student), then this child cannot attend school in person, whereas these cases generally concern children that require full-day care. For this reason, a fiction is established that such child is a person that is not allowed to attend in-person schooling. In this case, the parent retains the claim to the care allowance. The fact that the child cannot be tested for medical reasons must be substantiated by a medical confirmation.

In the case of final examinations, school-leaving examinations and discharge examinations, it is definitively stated that even the persons who attend these examinations must be tested,

respectively the test must be replaced by other means proving the person does not have COVID-19. This particularly concerns the members of the committee and other persons participating in the respective examinations, who are not school employees (because those are subject to the extraordinary measure of the Ministry of Health of 6 April 2021, Ref. No. MZDR 14592/2021-2/MIN/KAN). The measure also applies to the potential public, which may attend certain forms of examinations (e.g. oral examinations before the school-leaving committee). Another such case concerns persons who may be present based on supporting measures, e.g. an interpreter for the hard of hearing, assistant or personal assistant. Furthermore, the testing obligation applies e.g., to representatives of the Czech School Inspection who conducts inspection activities during the examination. The deadline by which the test must be performed by pupils and students is also modified, because the testing must be spread over time. The tests are organized according to predefined and often unchanging time intervals. Therefore, it is not realistic to perform testing shortly before the actual examination or on the weekend before the examination date.

**Prof. MUDr. Petr Arenberger, DrSc., MBA,
undersigned**

Minister of Health