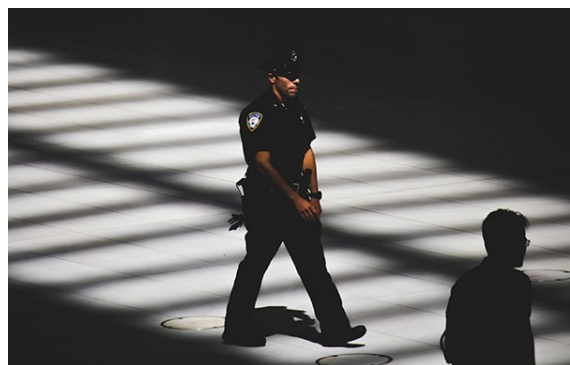




COVID-19 Mini-serie

Episode #3 – Criminal sanctions in an epidemic situation: what are the risks?

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Covid-19 Mini Legal Series

This mini-series aims at providing legal guidance and recommendations to Swiss organizations during the uncertainty relating to the coronavirus and the recent decisions from the Swiss authorities.

We provide practical legal advice to local and foreign companies. With such a major impact on the economy, health, families and restrictions to privacy we will discuss separate topic in our Covid-19 legal series.

When the Federal Council issued its [Ordinance 1](#) dated 28 February 2020, there was no criminal sanctions, even though criminal sanctions of the [Federal Act on Epidemics](#) (FAE) were applicable to infringements of Ordinance 1. Since 16 March 2020, the [revised Ordinance 2](#) contains criminal provisions. Those sanctions apply to ensure that the population and companies apply those measures to, ultimately, limiting the spread of the coronavirus. Despite the fact that cantons have to apply the measures imposed by the Federal Council, they still have a certain some room for their legislation.

Swiss citizens took time before reacting and taking the crisis seriously. Therefore, the government decided to impose stricter measures, including "Stay-at-home" orders and criminal sanctions if someone does not respect those rules. Also the government gave the possibility for the police to enforce orders and fine directly individuals. Switzerland and other countries are holding their breath before the figures of positive cases can decrease and avoid having to conduct triage in case of bottleneck in intensive care units. In this 3rd episode, we discuss criminal sanctions for non-compliance by individuals and companies of the measures imposed in this extraordinary situation.

Q.1 What can authorities punish for since the epidemic started ?

A.1.1: **On a federal level**, here are the new sanctions and criminal offense for non-compliance :

- **Up to 3 years in prison** for maintaining public or private gathering, not closing public places, not respecting hygiene and social distances.
- **CHF 100.00 fine per person** for gatherings of more than 5 people in public places or 5 persons at a distance of less than 2 meters. The revised federal Ordinance of [20 March 2020](#) goes beyond. Note that any infringement to the [Swiss criminal Code](#) remains valid to more specific illegal acts.

A.1.2 : **On a cantonal level**, French speaking cantons issued specific rules applicable to individuals, companies, grocery stores, organizers of contests and employers :

- **Geneva**: CHF 100.00 to CHF 10,000.00 fine. Decision from 20 March 2020 (more details [here](#));
- **Vaud** : **Up to CHF 20,000.00** fine (50,000.00 for recidivism) for other gatherings, non-compliance with hygiene obligations, non-closed construction sites or social distances inside companies, or imposed work times (art. 16 decision from 18 March 2020). (read [penalex.ch](#)) ;
- **Valais** : **Up to CHF 10,000.00** fine for non-compliance with decision from 16 March 2020.
- **Neuchâtel** : CHF 500.00 to 100,000.00 ([law on health \(NE\)](#)), up to CHF 40,000.00 (law on public

institutions ([LEP](#)) or law on trade police ([LPCom](#)));

- [Jura](#) : **Up to CHF 10,000.00** fine for compliance with decision from 17 March 2020.
- [Fribourg](#) : **CHF 100.00 to 250.00** in accordance with the press release from 20 March 2020.
- [Bern](#) : **CHF 100.00 to 250.00** (individuals) and **CHF 2,000 to 5,000** (shops) - 20 March 2020.

Q.2 Is this legal to film someone breaching the law and report it to the police?

A.2: Without consent of the person, we can usually consider that the evidence is not valid because it was obtained illegally. Also, filming someone without his or her consent might even be illegal under the Swiss Criminal Code ([Art. 179^{quater} CC](#)) and the right to privacy. Also, in light of the fact that the above-mentioned offences are not felonies ("crimes") but only misdemeanours ("délit"), a prosecutor would probably not be allowed to monitor and sanction individuals (CCTV surveillance, [Art. 282 CPC](#)).

Q.3 Can I face criminal sanction for spreading or sharing a fake news?

R.3: **In general, no.** It is generally not illegal to spread a lie. **However**, we have to take into account the particular context of this pandemic situation: vulnerability, anxiety and real danger to health. Anyone who raises the alarm in the population (general public) by threatening or announcing a danger to life or health can be liable to up to **3 years in prison** ([Art. 258](#) of the Swiss Criminal Code "CC"). The concept of "*general public*" is decisive.

According to the Swiss Federal Supreme Court ([Facebook case \(DE\) - summary in French](#)), in order to alarm the general public, it requires to alarm a "*group of people in a specific place*". Anyone who broadcasts or transmits "fake news" to the general public (press conference in live streaming) could face criminal sanctions. Posting a fake news on a Facebook page or within a WhatsApp group would not qualify as alarming the "general public". We strongly recommend to not share, like or re-post any content, even from a reliable person, where such information is not coming from an official source to avoid spreading viral messages.

Q.4 Can an employer face criminal fines for non-compliance of the measures?

R.4: **Yes.** An employer has a legal obligation to take care and protect its employees health (art. 328 CO et 6 LTr). In the specific context of the Covid-19 pandemic, the Federal State Bureau of Economy ([SECO](#)) reminds 3 key measures for employers to put in place: (1) **work from home**; or: (2) **distance**; and (3) **hygiene requirements**. SECO can do onsite visits and order to close [construction sites](#). Criminal sanctions both on a federal or cantonal level (see Q.1 above) apply to any employer who would impose to its employees to go to work where work from home could be possible or for non-compliance with distance and hygiene requirements. Directors may face up to 3 years in prison.

Q.5 What other criminal offenses may apply in the context of an epidemic?

R.5 : Offences for injuries to against body integrity, such as negligent bodily harm ([Art. 122, 123 CC](#)) or negligent homicide ([Art. 117 CC](#)). Negligent homicide could apply to physicians or healthcare professionals treating patients with coronavirus who may fail to observe state of the art of medicine, thereby causing injury or death. Anyone who deliberately spreads Covid-19 could also be convicted ([Art. 231 CC](#)).

Finally, other public health laws contain criminal provisions to protect public health. The following law could apply in the context of unauthorised medicines (vaccines) or non-compliant medical devices (respirators, [86 LPA](#)), foodstuffs circulating without authorisation ([63 FSA](#)). Swissmedic also has a prosecution division ([Art. 90 TPA](#)), which may initiate investigations and sanction offences relating to the manufacturing, trading, cross-border exchange or advertising of therapeutic products.

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