

The Impact of the COVID-19 Pandemic on the Model of Governance and Democracy in Poland

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Abstract

Almost the whole of 2020 was a year of governance by pandemic measures. Many governments, in these extraordinary times, formally introduced states of emergency. One exception in this regard is Poland. Although it used, in the second and third quarter of 2020, one of the most restrictive forms of lockdown, the government did not decide on the declaration of a state of emergency. At the same time, the scope of implemented regulations was extensive.

This article presents a qualitative research on the instruments used by the Polish government in the year 2020 to deal with the pandemic. The analysis allows us to conclude that the so called “anti-crisis shields” were used to a large extent as an instrument of governance of the country, not a tool to prevent a pandemic. At least part of the restrictions adopted in Poland was beyond the need and unrelated to fighting the pandemic. However, these steps are leading to further deterioration of the state of democracy.

The analysis of the tools used by the Polish government is based on the framework on the democratic backsliding and autocratization as well as the V-dem concept of “autocratization by decree”, which can be also applied to the COVID-19 situation.

Keywords

Autocratization, Democratic Backsliding, Pandemic, Poland, State of Emergency

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Introduction

The plot of the worldwide known dystopia – “V for Vendetta” – starts with a virus pandemic which allowed autocrats to grasp more power and autocratically govern the country. Who could have expected that 2020 became the year of governance by pandemic measures, which may lead some countries to implement a similar scenario in terms of a state of democracy. Many governments have temporarily restricted some human rights and civil liberties (Lührmann, et al., 2020). It seems that some countries have also used the moment of the pandemic to strengthen the power of rulers. They have adopted instruments, often within broader anti-COVID-19 packages, that would be difficult to implement in other situations (e.g. expanded state surveillance or strengthened executive position in relation to bodies important in the checks and balances system, such as local authorities or civil society organizations). A crisis situation may justify the seizure of more power by those in power, leading in some cases in the long-term to its further consolidation and at the same time the deterioration of democracy.

Many governments formally introduced a state of emergency for fighting the pandemic. The exception in this regard is Poland. Although it used, in the second and third quarter of 2020, one of the most restrictive forms of lockdown (the first one was introduced on 10-12 March 2020), the government did not decide on the declaration of a state of emergency. Instead, it introduced on 20 March 2020, the state of epidemic, which is not the formal state of emergency according to Polish law. At the same time, the scope of implemented regulations was extensive. The government ruled among others by introducing so-called “Anti-Crisis Shields” (the first one was adopted on 31 March 2020; there were nine “Anti-Crisis Shields” by May 2021).

This article presents a qualitative research on the instruments used by the Polish government in the year 2020 to deal with the pandemic. The main questions are as follows: Were the “Anti-Crisis Shields” used as a tool to prevent a pandemic or rather as an instrument of governance of the state? Were the restrictions adopted in Poland related solely to fighting the pandemic? What is the impact of the Polish government anti-COVID-19 measures on the state of democracy deteriorating in recent years?

The analysis of the tools used by the Polish government, mainly the legal acts adopted since March 2020, is based in the theoretical dimension on the conceptualization framework on democratic backsliding and autocratization as well as the concept of “autocratization by decree”, which can also be applied to the COVID-19 situation.

This article, which presents a part of the research within the project “De-democratization at the times of Covid-19” carried out at the University of Warsaw within the 4EU+ Alliance, consists of three parts. After outlining the theoretical framework and state of the Polish democracy before the pandemic, we conduct the analysis of the *de facto* state of emergency in Poland and adopted regulations to answer the main research questions.

Theoretical Framework

Before we present the empirical analysis, it is imperative to outline the conceptual framework which will be used in this article. We need to define the main terms, such as democratic backsliding or autocratization, and outline the relationship between

the introduction (formally or not) of a state of emergency and changes of the state of democracy as well as basing this latter aspect on the possible scenarios of the impact of anti-COVID measures on the change of the political regime in the long run.

Notion of Democratic Backsliding and Autocratization

On the following page, we draft a theoretical framework, that builds on the notion of democratic backsliding and autocratization, that could be useful to study how the COVID-19 pandemic may influence change within a regime or even of the regime to a less democratic one. Neither scenario can be excluded in the long run in Poland.

Crises, such as the COVID-19 pandemic, are recognized as triggering factors of the so called democratic backsliding (Bermeo, 2016). Similar concepts have also been used, such as “de-democratization” (Tilly, 2007), “democratic decline” (Plattner, 2015) or “democratic erosion” (Paloumpis, et al., 2019), just to name several terms used for describing the deterioration of the state of liberal democracy. When we take, for example, the Economic Intelligence Unit (EIU) democracy index into consideration, we can point out such components of the model as: working of the competitive electoral process (electoral integrity) and political pluralism, functioning of the government accompanied by the effective system of checks and balances, guaranteeing individual rights and freedoms, developed political participation and democratic political culture (Economist Intelligence Unit, 2020). We should add to this, particularly in the context of our research, the working of the rule of law.

The aforementioned autocratization is a separate term, even though it is a part of the phenomenon of democratic backsliding. It is about such a deterioration of the state of democracy, which means a change of the political regime to a less democratic one, depending on the working of three key aspects: executive limitations (control over the executive) as well as participation and contestation opportunities. They correspond to the aforementioned components of the liberal model of democracy. The autocratization, i.e., gradual change towards autocracy, takes place when it makes the exercise of political power more repressive and arbitrary and restricts the space for public contestation and political participation (Cassani & Tomini, 2019).

State of Emergency vs. Democratic Backsliding and Autocratization

We should also outline the issue of the relationship between the processes defined in the previous section and the introduction of a state of emergency. The key question in this context, investigated in many works to date (Ackermann, 2004; Hafner-Burton, Helfer & Fariss, 2011; Criddle & Fox-Decent, 2012; Richards & Clay 2012; Bjørnskov & Voigt, 2018; Lührmann & Rooney, 2020), is whether the introduction of a state of emergency is a favorable determinant for undemocratic changes.

The state of emergency is usually introduced in democracies according to the relevant provisions of the constitution (with exceptions as in the case of the British constitutional arrangements which, e.g., do not include the provisions on the exercise of emergency powers) and other relevant legal acts at the time of instability (Ferejohn & Pasquino, 2004, 215). John Ferejohn and Pasquale Pasquino write in this context about two models of emergency powers: the traditional constitutional (neo-Roman) model – based on

the provisions of the constitution and the new, more flexible and controllable (by the parliament) legislative model – with the central role of emergency legislation (Ferejohn & Pasquino, 2004, 210-239). The state of emergency can be a result of:

- 1) military invasion, war, revolution or military defeat (traditionally);
- 2) natural disaster, pandemics, terrorist activities, crisis (domestic or international), coup, conflict, protest or rebellion (currently) (Lührmann & Rooney, 2020).

It is connected with extension of power to executives, which get extra competences to fight against instability and its consequences. “From 1800 to 2012, eighty democracies approved legal provisions for a state of emergency, specifying how the government is empowered to take actions beyond its standard procedures in the event of international or domestic crisis.” (Lührmann & Rooney, 2020) For instance, the executives (Presidents, Prime Ministers/Chancellors or Ministers) can issue decrees, limiting the role of the parliament, censor information or suspend legal processes and rights of citizens (Ferejohn & Pasquino, 2004, 210). However, the emergency legislation, which is adopted during a state of emergency (according to a new model of emergency powers) and includes the provisions on special competences of state authorities, is still “reviewable by the constitutional court (if there is one) and is regulated in exactly the same manner as any other legislative act.” (Ferejohn & Pasquino, 2004, 215) Moreover, it is temporary, which means that everything should come back to the previous state after the end of the state of emergency, including the previously suspended rights. In addition to this, “the legislature is expected to monitor the use of the emergency powers, to investigate abuses, to extend these powers if necessary, and perhaps to suspend them if the emergency ends.” (Ferejohn & Pasquino, 2004, 217)

These special competences of the executive theoretically should not lead then to democratic backsliding or autocratization (history shows that the state of emergency can even be a tool to stop undemocratic processes). As Anna Lührmann and Bryan Rooney wrote, if the special competences “are used by the elected executive to effectively and proportionately respond to a crisis situation, the quality of electoral democracy is not at stake.” (Lührmann & Rooney, 2020) The same concerns the constraints put on democracy and human rights – proportionality and limited time of a state of emergency (although a short extension is possible, it cannot be extended for a long period) are favorable conditions for keeping democracy intact (Lührmann & Rooney, 2020).

However, past political events and processes show that:

1) the executive exceptional competences during the state of emergency can become the standard work of the government afterwards;

2) executives can also use the emergency power to strengthen its power and eliminate the obstacles present during the usual time. These constraints put on the executive power are connected with the working of democratic procedures and mechanisms, such as division of power or the checks and balances system – first of all limiting the use of sources by the executive and creating accountability tools;

3) the state of emergency is the occasion for the executive to reduce the cost of this kind of actions – much higher in a normal state of affairs;

4) the state of emergency gives a good justification for the incumbents to strengthen their power, silencing opponents, including the opposition which can be accused of being, e.g., unpatriotic or irresponsible at this special time when fast and effective measures must be taken (Lührmann & Rooney, 2020).

Democratic backsliding or even autocratization is then also possible under the state of emergency in democracies (no matter if formally introduced), particularly in a situation when we have already witnessed some democratic backsliding or autocratic changes before the beginning of the state of emergency (as it will be indicated in the Polish case below). It has been confirmed by the aforementioned scholars: Lührmann, and Rooney. The results of their interesting quantitative study “suggest that countries with a state of emergency are indeed more likely to also undergo a period of democratic decline. In fact, (...) democracies are 75 percent more likely to erode under a state of emergency than without, marking a substantial increase in the probability of democratic decline, and this result is robust to a number of alternative specifications.” (Lührmann & Rooney, 2020)

COVID-19 vs. Democratic Backsliding and Autocratization – Possible Scenarios

Having in mind what we wrote in the previous section, we should now consider the case of COVID-19-related actions of incumbents during the state of emergency (*de iure* or *de facto*). They may (but do not have to) trigger democratic backsliding or even autocratization.

In any crisis situation, a ruling elite can bypass horizontal checks, limit citizen individual rights, ban demonstrations and other public gatherings, censor media (claiming that the government which fights against coronavirus cannot be criticized) and postpone/cancel elections or organize them at all costs if it is in its favor. In addition, anti-system parties and movements, which must be taken into consideration as well, can fuel violence by their anti-governmental rhetoric and actions.

When we think about crises as drivers of democratic backsliding or autocratization, we can consider several scenarios. Crises could alternatively be “used”: 1) by the ruling elite to justify democratic backsliding or autocratization; 2) by other actors (antisystem parties and movements) to delegitimize the ruling elite and the regime and to take power; 3) by the ruling elite to stabilize the government and the regime and to marginalize antisystem parties and movements.

Hence, we may identify a few possible scenarios (depending of the scope of changes) triggered by the COVID-19 pandemic¹:

1. The ruling elite uses the pandemic to
 - a) expand executive power,
 - b) limit political competition (i.e., opposition parties and media’s ability to criticize the government),
 - c) postpone elections or organize them at any cost,
 ...beyond what the management of the pandemic reasonably requires;

¹ The scenarios presented in this section have been proposed by Andrea Cassani and Luca Tomini within the common project with the authors of this article, entitled *De-democratization at the times of Covid-19*.

2. antisystem parties and movements campaign to delegitimize the government and fuel mass revolts to make the government fall and replace it.

Alternatively, if none of these scenarios eventually materialize, the COVID-19 pandemic could have:

3. a null effect: the government makes no attempt to make the regime less democratic; antisystem parties and movements do not exist or are too weak to replace the government;

4. an “opposite” effect: the government does not try to make the political regime less democratic; antisystem parties and movements try to delegitimize the government but lose support due to their irresponsible behavior; the regime (re-)consolidates.

State of Democracy in Poland Before Pandemic

Before analyzing the issue of impact of the pandemic governance and anti-COVID regulations adopted in Poland on the state of democracy in this country, it is necessary to briefly present the state of democracy before the pandemic.

Poland has been classified as one of the main “autocratizing” states in the 2009-2019 period (see Table 1 below). Although using the term “autocratization” in the case of Poland is to some extent disputable, without any doubt we can observe in this country the rising problems with keeping the liberal model of democracy. The V-dem Liberal Democracy Index (LDI), embracing Electoral Democracy Index (EDI) – i.e., issues concerning electoral integrity, freedom of association (with reference to political parties and civil society organizations) and freedom of expression as well as the Liberal Component Index (LCI) – equality before the law and individual liberty index, judicial constraints on executive index and legislative constraints on executive index (the last two concerning checks and balances system), shows that this state is the third country in this context, after Hungary and Turkey. Its LDI decreased from 0.83 in 2009 to 0.50 in 2019 (all results are between 0 – the worst score and 1 – the best score) (Lührmann, et al., 2020).

The term autocratization can be justified in the Polish case, when we look at other V-dem data. According to the research of the Swedish institute, Poland’s political regime changed in 2015 (the year of taking over the power by the United Right - first of all Law and Justice, PiS - in presidential and parliamentary elections) from the liberal democracy to electoral democracy, i.e., the democracy with deficits (Lührmann, et al., 2020) or, as Wolfgang Merkel put it, “defective democracy.” (Merkel, 2004) Although all Economist Intelligence Unit (democracy index) reports from 2010 to 2021 define the Polish political regime as a flawed democracy (not full democracy), proving that there was no regime change in the state in this period, this country is in recent years ever closer to the group of states with hybrid regimes (with a mixture of democratic and authoritarian components) (Economist Intelligence Unit, 2021)

Table 1

Poland Among Top 10 “Autocratizing” Countries 2009-2019 (LDI)

State	Change	LDI 2009	LDI 2019	Regime Type 2009	Regime Type 2019
Hungary	-0.36	0.76	0.40	Liberal Democracy	Electoral Autocracy
Turkey	-0.36	0.46	0.10	Electoral Democracy	Electoral Autocracy
Poland	-0.33	0.83	0.50	Liberal Democracy	Electoral Democracy
Serbia	-0.27	0.53	0.25	Liberal Democracy	Electoral Autocracy
Brazil	-0.25	0.76	0.51	Electoral Democracy	Electoral Democracy
India	-0.19	0.55	0.36	Electoral Democracy	Electoral Democracy
Mali	-0.17	0.48	0.31	Electoral Democracy	Electoral Autocracy
Thailand	-0.16	0.32	0.15	Electoral Autocracy	Closed Autocracy
Nicaragua	-0.16	0.22	0.06	Electoral Autocracy	Electoral Autocracy
Zambia	-0.15	0.42	0.27	Electoral Democracy	Electoral Autocracy

Source: V-dem, 2020, 16.

The findings of the V-dem reports correspond to the EIU results. Although these reports classify the Polish political regime after 2015 continuously as an electoral democracy, the undemocratic change has been growing each year. It is evident when we look at four V-dem indexes from 2016-2019, i.e., the aforementioned Liberal Democracy Index (LDI), Electoral Democracy Index (EDI) and Liberal Component Index (LCI) as well as Deliberative Component Index (DCI) covering such items as: engaged society and range of consultation (at a low level in the Polish legislative process) as well as respect for counterarguments or reasoned justification of decisions by the incumbents (see Table 2 below). All four indexes are going down, with the exception of 2017. The worst relative decline (in comparison with other countries) is in the case of LCI (53rd rank in 2016, but 83rd in 2019) and DCI (106th rank already in 2016 and 122nd in 2019). A much better situation in the context of a state of democracy is indicated by two other indexes – Egalitarian Component Index (ECI) – referring to egalitarian dimension of democracy and Participatory Component Index (PCI) – connected with aspects of participatory democracy – at the level of civil society organizations and local democracy (which, however, can reflect the mobilization against the incumbents’ undemocratic actions).

Table 2

Poland – V-dem indexes (2016-2019)

Year	LIBERAL DEMOCRACY INDEX			ELECTORAL DEMOCRACY			LIBERAL COMPONENT INDEX (LCI)		
	RANK	SCORE	SD+/-	RANK	SCORE	SD+/-	RANK	SCORE	SD+/-
2016	55	0.574	0.054	56	0.707	0.056	53	0.797	0.058
2017	50	0.596	0.07	49	0.731	0.06	56	0.803	0.07
2018	56	0.548	0.053	54	0.708	0.051	62	0.754	0.054
2019	64	0.5	0.048	55	0.692	0.059	83	0.693	0.063

Year	EGALITARIAN COMPONENT			PARTICIPATORY COMPONENT			DELIBERATIVE COMPONENT		
	INDEX (ECI)			INDEX (PCI)			INDEX (DCI)		
	RANK	SCORE	SD+/-	RANK	SCORE	SD+/-	RANK	SCORE	SD+/-
2016	27	0.860	0.061	65	0.553	0.057	106	0.631	0.116
2017	31	0.860	0.05	36	0.630	0.06	116	0.575	0.12
2018	29	0.859	0.048	51	0.596	0.052	109	0.629	0.628
2019	17	0.896	0.055	28	0.648	0.032	122	0.542	0.625

Source: V-dem, 2017-2020.

The worst democratic deficits pointed out in 2016 by the V-dem report are: taking control over judiciary by incumbents and their growing influence over the weakening the civil society, public media and educational system (Lührmann, et al., 2017, 31). The V-dem report from 2018 presented in turn the following list of the democratic components which Poland does not fully respect: freedom of expression, equality before the law, judicial constraints on the executive and deliberative components. The other democracy dilemmas in this year were the polarization of society and populist in power (Lührmann, et al., 2018, 21). We can read in the same document that: “The ruling party, PiS, has made legislative changes to the judicial system, negatively affecting constitutional checks and balances. The PiS government then pushed through legislative changes increasing the role of political appointees in election-administration bodies, and authorities can now give preferences to favored groups and gatherings.” (Lührmann, et al., 2018, 22)

Poland at the Times of Covid-19 – Fighting of Incumbents Against Coronavirus or Democracy?

This part of the article is devoted to analyzing the pandemic governance period in Poland and the question if the introduced anti-COVID-19 regulations serve the pandemic goals or some other purposes and how this affects the state of democracy, already deteriorating in recent years in this country.

Pandemic State of Emergency without Constitutional State of Emergency

During the COVID-19 pandemic, the further deterioration of the state of democracy can be seen in Poland in two distinct processes:

1) restricting civil liberties and political rights without introducing a formal state of emergency in Poland and genuine doubts regarding the unconstitutionality of regulations, which limited these liberties and rights;

2) inclusion in normative acts, which were to prevent the effects of the COVID-19 pandemic, regulations not related to the situation, also these which raise questions about the compliance with democratic principles. This can be seen as a case of “executive aggrandizement” (Bermeo, 2016, 6).

The former process consists of two strongly interrelated issues – the government’s reason for resignation to introduce a formal state of emergency despite the rationale for its settlement and, as many legal experts point out, the government’s unconstitutional action to restrict civil liberties and rights by decrees, not laws. The issues are interlinked because a lack of a state of emergency hinders possibilities to control the spread of SARS-CoV-2

by restricting certain people's activities.

The Article 228 of the Polish Constitution provides a possibility of introducing on part or on the whole territory of the country one of three “extraordinary measures”² – “martial law”, “state of emergency” or “state of natural disaster” (Poland Const. art. 228, § 1). In the situation of a pandemic, the Polish law provides for the possibility of introducing the third of these “extraordinary measures” – the state of natural disaster.³ It can be introduced by the government for a definite period, no longer than 30 days (Poland Const. art. 232). An extension of this state may be made, but the consent of the Sejm (the lower house of the Polish parliament) is needed. The state of natural disaster allows the government to limit freedom of economic activity, personal freedom, inviolability of the home, freedom of movement, the right to strike, the right of ownership, freedom to work, the right to safe and hygienic conditions of work and the right to rest. All other liberties should not be limited.

According to the Polish Constitution the extraordinary measures may be introduced when the state is “unable to manage the crisis situation by ordinary constitutional means” (Poland Const. art. 228, § 1). In this context Monika Florczak-Wątor argues that “the introduction of a state of natural disaster in Poland should have taken place as early as 12.03.2020, when an epidemic emergency was introduced.” (Florczak-Wątor, 2020, 8). The lack of this step may raise doubts about the constitutionality of the significant restrictions on the exercise of freedoms and rights of the people. The restrictions were based on “the state of the epidemic”, which is not the constitutional “extraordinary measure”. The question arises about the lack of introduction of the state of emergency in Poland. The government maintained that there were no grounds for it. However, it is suspected that this was related to the need for paying compensation to people harmed by the state of emergency (e.g. entrepreneurs whose business was closed) and the inability to organize elections during the state of emergency and 90 days after its end, which would prevent the incumbent President, Andrzej Duda, from winning the presidential election (decline in support for the President due to the negative effects of the pandemic could be expected, thus incumbents favored quick elections).

The consequences of a pandemic in Poland are managed on the basis of the act voted on 2 March 2020 (adopted two days before the first confirmed case of COVID-19 in Poland) “on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and the crisis situations caused by them.” (Act of 2 March 2020). The act is referred to as the “special coronavirus act” as it contains the main instruments adopted in Poland to combat the pandemic. However, the act raised doubts as to whether it is not an attempt to circumvent the requirement to introduce a state of emergency in Poland (Zajadło, 2020). It is also argued that some of the provisions of the Act went further than the solutions in the Polish constitution concerning the state of natural disaster. As it was mentioned previously, Article 232 of the Constitution of the Republic of Poland indicates that a state of natural disaster may be introduced, for a

2 Formally those are “states of emergency” but since one out of three “extraordinary measures” is called “state of emergency”, we use here the constitutional term “extraordinary measures”.

3 Article 3 of the Act of 18 April 2002 on the state of natural disaster (Act of 18 April 2002) specifies the natural disaster as an exceptional situation “caused by spread of infectious diseases”.

fixed period of no longer than 30 days, and its extension may only take place with the consent of the Sejm (Poland Const. art. 232). The Act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and emergencies caused by them, introduces provisions for 180 days (Jałoszewski, 2020).

During the pandemic in Poland, some political rights were significantly reduced (e.g., freedom of assembly). The restrictions on basic political rights without the introduction of a state of emergency raised questions about compliance with the rule of law. Florczak-Wątor underlines that the pandemic in Poland showed that restrictions concerning freedoms may be aimed at achieving *ad hoc* political goals and it is really difficult to justify restrictions which have been introduced “until further notice.” (Florczak-Wątor, 2020, 6-13).

An interesting case here is the right to assembly. The restrictions limiting the spread of the virus are obvious, but the restrictions on the right to protest in Poland must be seen in the process of changing the rules of holding protests in Poland before the pandemic, and in the course of the pandemic of eliminating this basic political right on the basis of decrees, not laws. In addition, during the pandemic, the possibility of abortion was limited by the decision of the Constitutional Court (Constitutional Tribunal, 2020). It was obvious that it would lead to protests. This hard-to-push decision was in the air, but its effects came at a time when protesting was hampered.

As it was previously signaled, restrictions on freedoms and rights were introduced in Poland by decrees, not laws. Although laws, which were adopted at the beginning of the pandemic, allowed to restrict certain freedoms, most of the restrictions were introduced by means of the executive decrees issued on the basis of blank statutory authorizations (Florczak-Wątor, 2020, 7). The statutory mandate is “too general and gives too much leeway to the authorities empowered to issue a regulation.” (Sobczak, 2020). Several courts already rejected, in the year 2020, the fines imposed on citizens which were based on the “COVID-19 regulations”. Courts emphasized that fines were based on regulations “that were issued in excess of statutory delegation.” (Żaczkiewicz-Zborska, 2021)

Rule by Regulations

The COVID-19 pandemic contributed to a further increase in “executive aggrandizement” in Poland. The post-2015 process of limiting the rule of law and changing the parliament into a “voting machine” has increased. There are also doubts concerning some provisions appearing in “COVID acts”. Part of them were not at all related to fighting the pandemic and others excessively restricted the rule of law. Several cases will be analyzed in the following part.

In the above-mentioned act of 2 March 2020, a questionable permanent change in the Polish law that allows the Minister to suspend the functioning of universities “in cases justified by extraordinary circumstances threatening the life or health of members of the university community” was introduced. It should be emphasized that the academic community is one of the most vocal institutions in terms of criticizing the democratic backsliding in the country after 2015 (Act of 2 March 2020).

This act made changes in 15 laws. Until 1 February 2021, there were already 26 legal acts amending this act, and the consolidated version of the act had already 305 pages in

October 2020 (in comparison to the original 13 pages). By 1 February 2021, 51 executive acts were issued on its basis.

The so-called Anti-Crisis Shield 1.0 of 31 March 2020, which included solutions to support entrepreneurs in the fight against the crisis caused by the COVID-19 pandemic, was to provide also for provisions not only inconsistent with the constitution, but also with the international law. The law was to enable the dismissal of members of the Social Dialogue Council by the Prime Minister during the period of an epidemic. The provision was to allow the dismissal of members of the Council indicated also by social organizations and without any request on their part. At the same time, it was to limit the prerogatives of the President of the Republic of Poland as regards dismissal or appointment of members of the Council (Act of 31 March 2020. art. 85). The principle of social dialogue and principle of the autonomy of social organizations are expressed in the Constitution of the Republic of Poland. The issues of freedom of association and protection of trade union rights are also regulated by the provisions of international laws ratified by Poland (Baran, 2020). These principles were to be infringed by the new law, but at the end of the day the lawmakers decided to delete this anti-democratic provision.

The Anti-Crisis Shield 1.0 changed some laws permanently, even those not related to the COVID-19 pandemic. This raises the question about the real aim of the government and parliament majority. In the Anti-Crisis Shield, prison warders were granted the right to use tasers. The official reason was that “it may be of particular importance in the context of the epidemic threat related to COVID-19, e.g., in the case of the necessity to perform official tasks in a reduced staffing.” (Sejm, 2020a). Increasing imprisonment penalties for those who intentionally infect others with HIV virus or for stalkers belonging to the same category. These types of changes were not justified by the coronavirus pandemic.

From the perspective of more than a year of the law being in force, one wonders about the provision allowing the police to store information about healthy people who have been in contact with persons suffering from infectious diseases and who are subject to mandatory quarantine or epidemiological supervision for up to a month after the expiry of the special law. Similar questions may be raised by the very broad wording of regulations that hindered access to public information. It was written in the Anti-Crisis Shield 1.0 that “cessation of activities by a court, authority or entity, conducting proceedings or control, respectively, in the period referred to in paragraph 1, may not be the basis for deriving legal measures relating to inactivity, excessive length or infringement of the party’s right to hear the case without undue delay.” (Act of 31 March 2020. art. 15zszs, § 11.)

The Anti-Crisis Shield 2.0 adopted on 16 April 2020 raised even more doubts. The law allowed for reducing employment in government administration offices. It was an especially alarming issue when we take into consideration the previous attempts of the United Right’s government to undermine the civil service. The Anti-Crisis shield 2.0 very broadly presented the possibility to reduce employment and did not guarantee trade unions a possibility to participate in the process of staff reduction (Act of 16 April 2020. art. 15zszszszsz). As noted by Jakub Szmit with reference to employees of the private sectors, the state attempted to maintain employment by implementing aid measures while in relation to government administration of employees, it allowed for their arbitrary dismissal. This raised questions as to whether the constitutional principles of equality before the law and

social justice were not violated. What is more, the proposed mechanism of group layoffs with the attempts to change employment in budgetary units in 2010 was questioned by the Constitutional Tribunal (Szmit, 2020).

The change of voting system in the Anti-Crisis Shield concerning the presidential elections in Poland, which were planned for 2020, triggered an international reaction. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) criticized the plan to hold presidential elections only by postal voting (ODHIR, 2020). It was emphasized that the electoral law was changed quickly, in a difficult situation and without broad support being given by parliamentary groups. Among others, transferring the organization of elections from the National Electoral Commission to the Ministry of State Assets and the excessive ease of changing the date of elections by the Speaker of the Sejm were pointed out by the ODIHR. Doubts were expressed as to the method of voter registration and collection of ballot papers. Especially in the latter case, there was a concern that in the absence of appropriate control, which is ensured in the case of usual elections, electoral irregularities may occur. The possibility of full respect for the main electoral principles, especially their secrecy, but also directness, universality and equality, were also questioned (Rutynowska, et. al, 2020).

The comments submitted by the Polish Ombudsman (officially: The Commissioner for Human Rights) to the provisions of the Anti-Crisis Shield 2.0 included the issues of shifting some of the regulatory costs onto entrepreneurs and creating inequalities on the market, as well as imprecise possibilities of extending the tasks of the tax administration or indicating new powers for the Railway Security Service. The lack of detailed regulations regarding the access of the Minister responsible for computerization to the location data of mobile phones was raised by the Ombudsman as well (Commissioner for Human Rights, 2020a). He also expressed concerns related to the introduction of the possibility of issuing oral orders by public administration bodies.

It must be emphasized that, on the one hand, the adopted provisions of the “shields” have directly infringed democratic principles. On the other hand, due to their frequent vagueness, they created the fertile breeding ground for limiting these principles. Such processes are seen in the literature as a stage of democratic backsliding.

On 15 May 2020, the Act on “amending certain acts regarding protective measures in connection with the spread of SARS-CoV-2 virus” was announced (Act of 14 May 2020). The act, known as the Anti-Crisis Shield 3.0, entered into force the day after its announcement. The law introduced changes to 50 legal acts. According to the lawmakers, the purpose of the act was to take on *ad hoc* actions – adapting to the current pandemic situation, and long-term measures – “a package of further simplifications and facilitations aimed at maintaining and a possible increase in investments at the stage of recovery from the pandemic.” (Sejm, 2020b).

The provisions of the analyzed act changed the rules for the selection and dismissal of the President of the Office of Electronic Communications (UKE). The participation of the Senate in the procedure of electing the president of the UKE has been removed. It is of particular importance in the situation where the incumbents, having the majority in the Sejm, have lost control over the Senate after the last parliamentary elections. The reasons for shortening the term of office of the current President of UKE may be of a political

nature. At the same time, the limitation of the Senate's powers should be perceived as a manifestation of strengthening the executive power ("executive aggrandizement"), while the Sejm has become a "voting machine" and extension of the government.

The next case is the Anti-Crisis Shield 4.0. This legal act, signed by the President of the Republic of Poland on 22 June 2020, concerned subsidies for bank loans granted to entrepreneurs affected by COVID-19. It seems that this law had a much narrower scope than the previous "shields". However, it amended 56 legal acts and had 76 pages (Act of 19 June 2020).

The Ombudsman pointed out that the Act introduced a possibility that within a lawsuit, an attorney and an accused person are in different places (the lawsuit is proceeded on-line). This regulation may significantly affect the defendant's right to defense (Commissioner for Human Rights, 2020b). The challenge for the rule of law in the pandemic in Poland is not only connected with the fact that the government acts without a clear legal basis or that the hierarchy of sources of law has been changed (key role of decrees), but also that citizens' procedural rights have been violated.

In the second half of 2020, the lawmakers continued to introduce a number of normative acts related to attempts to counteract the coronavirus pandemic. One of the most significant cases challenging one of principles of liberal democracy (i.e. the electoral integrity) was the Act of 15 July 2020 on the "Polish Tourist Voucher". The Act, which introduced a one-time support for each child up to maturity, worth 500 PLN, was announced by the President of Poland just before the presidential elections (Act of 15 July 2020). It can be seen as a form of electoral malpractice in the form of an electoral bribe.

Conclusion

To conclude, it is necessary to point out several basic issues that pose a challenge to the state of a liberal democracy in Poland during the COVID-19 crisis. Taking into account the large scale of the regulations issued during the pandemic, it is difficult to explain why the state of emergency has not been introduced in Poland. This situation poses threats to the rights of citizens (including participatory and contestation rights) because many freedoms were limited without introducing the state of emergency, and what is more, many restrictions were made in the form of regulations - decrees on the basis of blanket statutory provisions. Therefore, the requirements of the Polish constitution were not met. We can also notice that the scope of regulations based on "COVID-19 laws" went beyond the issues related to combating the pandemic and its consequences. This can mean that the government has used the pandemic as a possibility to strengthen and consolidate its power.

Although we can agree that the deterioration of democracy in Poland is still about undemocratic changes within one political regime (be it "flawed democracy" or "electoral democracy") and can be called democratic backsliding, the measures taken by the Polish government during the pandemic may change the situation in the future. If the adopted anti-COVID-19 regulations as well as the model of governance adopted during pandemic will not be temporary and will remain after the pandemic, it may contribute substantially to a further shift of the political regime towards a less democratic (hybrid) regime. The claims about increasing autocratization in Poland will then be fully justified.

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