

Meanders of the legislative procedure in the time of global epidemic

Abstract: In situations of special threats to the state and society, such as: natural disasters, technical, military or biological threats including epidemics, the legislator and executive authority is obliged to take actions aimed at preventing and combating the effects of these threats. Currently, COVID-19 is such a particular threat. One of the actions taken by both authorities is to establish an appropriate legal basis. Such legal provisions introduced by the Polish legislator are the subject of this study. The aim of the study is to analyze this legislation in terms of compliance with legislative procedures, the quality of the law and its legitimacy. The research hypothesis is the claim that the executive and legislative authorities are obliged to make quick and necessary decisions, including legislative ones, to avert crisis situations. It cannot, however, be an occasion to introduce systemic changes, even insignificant ones. The final conclusions showed that the pace of legislative work was not conducive to the quality of the law, and the willingness to regulate many issues, even those not related to the threat, led to many ambiguities in the text itself and in its interpretation. The study was written using the legal and dogmatic method, thanks to which it was possible to analyze the legal provisions. In addition, the study also uses the descriptive and legal-historical methods.

Keywords: legislative procedure, action of the legislator in a state of emergency, epidemic, effectiveness of legislative procedures, systemic changes

1. Introduction

The crisis situation caused by the COVID-19 epidemic has become an opportunity for scientific research related to medical problems,¹ which is obvious, but also legal issues². The publication of Rafał Mańko, an outstanding and promising theorist of the law of the young generation is the motivation to study the issue of using extraordinary situations, such as the epidemic caused by COVID-19, to introduce normative solutions, often of a systemic nature. In the article entitled *Woods in the gardens of Justice? The Survival of Hyperpositivism in Polish Legal Culture as a Symptom / Sinthome*, the author presents the dangling of the Polish judiciary and legislation in the period after the political transformation in Poland, which began after 1989. This author pointed to the problem of the remnants of the socialist legal system, which was largely a reflection of Soviet normative solutions. This makes the legal system understood as a set of legal provisions, as well as their decoding to build legal norms, often unclear. This situation affects the jurisprudence of courts, which is largely influenced by excessive formalism and textualism. Hence, the state of jurisprudence in Poland is defined by Rafał Mańko allegorically by referring to the image of the forest³.

The above discourse can be translated into four acts known as Anti-Crisis Shields, which contain the normative solutions necessary to take actions aimed at preventing and combating

¹ e.g. F. Rubino, et. al. *New-Onset Diabetes in Covid-19*. *New England Journal of Medicine*. June, 2020 pp. 1-2.

² A. Sobczyk, *Regulacje Covid-19 w prawie pracy. Komentarz*, Warszawa: C.H. Beck, 2020.

³ R. Mańko, *Regulacje Covid-19 w prawie pracy. Komentarz*, Warszawa: C.H. Beck, 2013, p. 232.

COVID-19. However, these acts also include numerous other legal provisions which amend acts not only those directly related to the main intention of the legislator. Some of them may interfere with the systemic issues, such as the election system. Excessive concentration of point-based amendments in a single legal act introduces the opacity of the legal texts themselves, and also causes numerous interpellation ambiguities. Thus, specific labyrinths or meanders arise in the legal system with a high degree of difficulty in interpreting them.

The aim of the study is to show not only the enormous pace, but also the scope of statutory changes in this particular period of the epidemic in Poland. Hence, the research hypothesis at work is the statement that the legislature, in cooperation with the executive authorities, is obliged to act quickly and effectively, especially in the area of creating legal grounds for actions aimed at saving citizens' health and life during an epidemic. The circumstance of quick action and the need to introduce restrictions on the rights and freedoms of citizens and the creation of new institutions may, however, lead to non-compliance with legislative procedures, which is justified by higher goals. In these extraordinary circumstances, the political elites currently ruling the country may introduce legal regulations that will strengthen their position⁴. The presidential election in Poland was an occasion for this.

2. Legal status of anti-crisis acts

The first issue to be clarified is the legal status of anti-crisis acts. The legislative procedure is an expression of the formation of

⁴ B. Sitek, *Bezpieczeństwo prawne a wertykalna wielowarstwowość systemów prawnych*. Journal of Modern Science 12(1), 2012, pp. 167-186.

a democratic state based on the principles of the rule of law. Hence, in the article 2 of the Constitution of the Republic of Poland, the constitutional maker states that the Republic of Poland is a democratic state ruled by law. In its judgment of 9th June 1996 (K 28/97), the Constitutional Tribunal stated that the democratic rule of law clause is a kind of collective expression of a series of rules and principles which, although not *expressis verbis* included in the content of the Constitution, immanently follow axiology and the essence of a democratic state ruled by law. There is a fairly advanced discussion on the meaning of the term democratic state of law in the doctrine⁵. The meaning of this term is best reflected in the article 20, paragraphs 2 and 3 of the German Constitution. In these regulations it was decided that all state power comes from the people, and the legislator is bound by the constitutional order. The executive and the judiciary powers must act within the law⁶.

The legislative procedure contains many nuances and complexities. In Poland, there are two modes of law-making – the ordinary and fast legislative path, the so-called urgent act. The ordinary legislative procedure is based on the articles 118 to 122 of the Polish Constitution. Its clarification can be found in chapters 1 and 1a of Section II of the Sejm regulations (M.P. 2020, item 476) and in chapter II of the Senate's regulations (M.P. 2018, item 846 and 2020, items 499 and 500). As part of the ordinary lawmaking procedure under the article 51 of the Rules of Procedure of the Sejm, the Sejm may, in particularly justified

⁵ J. Sozański, *Zasada demokratycznego państwa prawnego w polskiej praktyce prawnej*. Kwartalnik Naukowy Uczelni Vistula, 4(42), 2014, pp. 28-40.

⁶ Ch. Gröpel, *Staatsrecht I. Staatsgrundlagen. Staatsorganisation. Verfassungsprozess mit Einföhrung in das juristische Lernen*. München: C.H. Beck, 2014, pp. 105-106.

cases, shorten the procedure with bills by immediately diminishing the first reading, as well as the second reading after the end of the first reading, without returning the bill to a committee.

In the article 123 of the Polish Constitution, a fast legislative path was provided for the so-called urgent acts. According to the article 123 paragraph 1, the Council of Ministers decides on the application of this procedure with the bill. Such a solution raises concerns in the doctrine of possible imbalance between the legislative and executive powers in the legislative procedure. On the basis of the above-mentioned decision of the legislator, the executive power has the constitutional right to impose the procedure to be followed with the bill, thus entering into the legislative powers of the Sejm⁷.

Based on the article 123, paragraph 2 of the Constitution, the differences in legislative proceedings concerning an urgent bill are included and described in the Regulation of the Sejm (Chapter II, Section II) and the Senate (the article 71). According to the solutions adopted in the Constitution, the legislator does not specify the required time limit for the Sejm to proceed on an urgent bill. On the other hand, such a deadline has been provided for the Senate and it is 14 days, and for the President of the Republic of Poland, who should sign the bill within 7 days. The fast legislative path is extremely rarely used⁸. This mode is used in emergency situations and it is of temporal nature. When choosing this extraordinary legislative path, the legislator is guided by the axiological need

⁷ A. Ławniczak, *Komentarz do art. 123*, Legalis. w: M. Haczkowska (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa LexisNexis, 2014, commentary to the article 123.

⁸ M. Berek, *Rada Ministrów jako organ inicjujący postępowanie ustawodawcze*. Warszawa: C.H. Beck, 2017, pp. 211-219.

to shift the system of government towards pragmatism⁹. The use of fast-track legislation is justified by the necessity to reconcile the requirements of the legislative procedure with actions to be taken in connection with the occurrence of extraordinary threats or the emergence of specific economic, social or political needs¹⁰¹¹. In these cases, close cooperation between the legislative and executive powers occurs most often¹².

The bills referred to as the Anti-crisis Shields: 1 to 4 do not indicate the procedure for dealing with them. Certainly, they cannot be classified as urgent acts, the more so that Shield 2.0 was a parliamentary motion, and the extraordinary procedure must be requested by the Council of Ministers. Certainly, such an application does not exist in the other three, in which the applicant is the Council of Ministers. Therefore, the ordinary procedure remains. However, when we look at the duration of the proceedings, which will be analyzed when discussing each of these acts, it can be seen that this is not an ordinary procedure.

It cannot be assumed that the Anti-Crisis Acts: Shields from 1.0 to 4.0 were processed on the basis of the article 51 of the Regulations of the Sejm. In this article, as stated above, it is possible to exclude proceedings with the bill in parliamentary committees, while in the case of anti-crisis bills they were referred

⁹ S. Patyra, *Tryb pilny w teorii i praktyce procesu ustawodawczego pod rządami Konstytucji z 1997 r.* Przegląd Prawa Konstytucyjnego 1, 2011, p. 63.

¹⁰ K. Novikova, A. Orzyłowska, *Jednostka ludzka w obliczu zagrożeń współczesności: bezpieczeństwo indywidualne w Polsce. Implikacje metodologiczne.* Journal of Modern Science 40(1), 2019, p. 306.

¹¹ M. Sitek, *Prawne ramy bezpieczeństwa jednostki w cyberprzestrzeni.* Journal of Modern Science 37(2), 2018, p. 178.

¹² A. Gwiżdż, *Pilny projekt ustawy.* in: J. Trzcińskiego (ed.), *Postępowanie ustawodawcze w polskim prawie konstytucyjnym: praca zbiorowa* (pp. 156-190). Warszawa: Wyd. Seymowe, 1994, p. 185.

to the Public Finance Committee. Moreover, the admissibility of applying the article 51 of the Sejm bylaws is criticized in the doctrine¹³. In conclusion, it should be stated that the anti-crisis acts were processed in a hybrid system, it means – it was an ordinary procedure with the use of elements of solutions resulting from the article 51 of the Regulations of the Sejm and the provisions on the so-called fast legislative path. In the doctrine, these acts are classified as special acts, which are a reaction to extraordinary events. They are processed at a rapid pace and carry a high risk of introducing unconstitutional provisions¹⁴. However, one cannot fully agree with such a classification of these acts. Special acts generally regulate the implementation of a specific public purpose. This is not the case with all four acts, as they introduce legislative changes in many areas of the law.

3. Legal Regulations: Anti-crises Shields

Since the beginning of the epidemic, three important Regulations and four Acts known as anti-crisis shields have been adopted in Poland. Similar legal regulations have been introduced in other countries¹⁵, including in Italy, on the basis of the decree of the President of the Republic with the power of Act on 2nd March 2020 (Gazet. Uff. 2020, series generale n. 53). The first regulation

¹³ P. Chybalski, *Opinia prawna na temat dopuszczalności zastosowania art. 51 pkt 2 regulaminu Sejmu w postępowaniach w sprawach projektów kodeksów oraz projektów (...)*. Zeszyty Prawnicze BAS 3, 2013, pp. 80-86.

¹⁴ M. Sołtysiak, *SARS-CoV-2 a stosunki zobowiązaniowe*. Retrieved (03.07.2020) from <https://lawagainstpandemic.uj.edu.pl/2020/03/21/m-soltysiak-sars-cov-2-a-stosunki-zobowiazaniowe-2/>, 2020.

¹⁵ T. Bieniek, *Wirus Ebola – idealna broń terrorysty*. Journal of Modern Science 23(4), 2014, p. 265.

of the Minister of Health was issued on 13th March 2020 on the introduction of the state of epidemic threat. On the basis of this regulation, in Poland, the restrictions on movement were introduced, the functioning of certain institutions or workplaces was restricted, and the organization of events and other gatherings of people was prohibited. In the second regulation of the Minister of Health of 20th March 2020, an epidemic state was introduced. As a consequence, on 13th March 2020, the Minister of the Interior, on the basis of the regulation, overturned the temporary border control of persons crossing the internal border of Poland.

3.1. Anti-crisis shield 1.0 – Act of 31st March 2020

The first anti-crisis act was passed on 31st March 2020, amending the act on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and the crisis situations caused by them, and some other acts (Journal of Laws of 2020, item 568). It is a government bill (print no. 299-A) which was submitted to the Sejm on 26th March 2020. The 1st reading took place on 27th March 2020, the 2nd reading on 27th March 2020 and the 3rd reading took place on the same day. On 28th March, the text of the act was submitted to the Marshal of the Senate. The Senate introduced amendments (print no. 307) and adopted a relevant resolution on 31st March 2020. On the same day, the Sejm considered the Senate's amendments and sent them to the President of the Republic of Poland. He signed it on the same day. In total, the legislative procedure lasted 5 days.

This act introduces the legal provisions necessary for taking measures to prevent, counter and combat COVID-19 or other infectious diseases. First of all, changes have been introduced

to the Act of 2nd March 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and the crisis situations caused by them (Journal of Laws of 2020, items 374 and 567).

The addressees of the provisions of the Shield 1.0 Act are generally public or private bodies which provide public services, such as nurseries, schools or private universities. As a consequence, common or military courts could discontinue judicial activities except for urgent cases, such as: issuing a temporary arrest warrant, detention or ordering a protective measure. As a consequence, the position of court presidents has been strengthened. Moreover, the legislator decided that the running of the time limits provided for by the provisions of administrative or judicial law do not start, and those the commenced ones are suspended for the duration of the epidemic threat or state of the epidemic.

An important solution was the introduction of the possibility to perform work remotely with the use of ICT devices. In this way, the activities of public administration and many areas of economic and social life were not completely stopped. An example of this was conducting the lectures with the use of ICT devices at Polish universities or the possibility of holding remote meetings of the Council of Ministers (the article 10 of the Shield 1.0 Act), and the National Bank of Poland's bodies could operate in the same mode (the article 21, paragraph 1 of the Shield 1.0 Act) . Such methods of operation of public administration and other entities from the public or economic sphere have been used in other European and non-European countries¹⁶.

¹⁶ G. Basilaia, D. Kvavadze, *Transition to online education in schools during a SARS-CoV-2 coronavirus (COVID-19) pandemic in Georgia*. Pedagogical Research, 5(4), 2020, pp. 1-9.

The Shield 1.0 Act contains numerous amendments to the acts concerning various areas of social life, the functioning of the administration, and the tax system (the possibility of reducing the income obtained in a tax year by an amount not exceeding PLN 5 million in the cases specified in the article 6 of the Shield 1.0 Act or the possibility of using the National Guarantee Fund – article 12 of the Shield 1.0 Act).

This act limited the application of the provisions of the public procurement law for services or supplies necessary to counteract COVID-19. This decision is temporary. To the Act of 29th January 2004 – the Public Procurement Law (Journal of Laws of 2019, item 1843), the article 8a, on the basis of which the possibility of introducing regulated prices, was introduced. If maximum prices are established by the minister responsible for economy, their amounts should be based on the prices before the introduction of the state of epidemic threat. It was about preventing the emergence of a black market in products needed to carry out the tasks necessary to stop and combat COVID-19. Such a solution has its rational justification, but historical experience shows that it does not always bring the expected results. Poland has a large negative experience of martial law in this area, in the years 1981-1983. In § 10 point 3 of Resolution no. 278 of the Council of Ministers of 20th December 1981 on the functioning of the economy during martial law (M.P. 1982 No. 1 item 1), the list of foodstuffs for which official and regulated prices were established was extended. As a result, a black market of food products was created¹⁷. One cannot forget about the unfortunate Edict of Diocletian of 301, *De pretiis rerum venalium*, in which he introduced severe penalties,

¹⁷ A. Zawistowski, *Kartkowy handel reglamentowany na ziemiach polskich*. Kwartalnik Kolegium Ekonomiczno-Społecznego Studia i Prace/Szkoła Główna Handlowa (3), 2018, p. 156.

including the death penalty, for failure to respect the prices specified by the emperor in this constitution. Unfortunately, this decision did not bring any positive effects^{18 19}.

Already in the Shield 1.0 Act, there are provisions not directly related to the containment or eradication of the COVID-19 virus. In the article 40, changes were introduced to the Act of 5th January 2011 – the Electoral Code (Journal of Laws of 2019, items 68 and 1504). The modifications of postal voting are of major importance. In my opinion, these changes do not introduce system changes. The introduced changes are rather organizing the mode of voting by correspondence – for example: how people under compulsory quarantine should vote or how to fill in voting cards. At the same time, an authorization was carried out for the Minister responsible for communications to define, by way of a regulation, the detailed procedure for delivering election packages, the method and procedure for receiving return envelopes and the method of forwarding these packages to the competent director of the delegation of the National Electoral Office.

The statutory amendment in the Shield 1.0 Act, which has a systemic context, is the content of the article 64 of the Act, on the basis of which a minor amendment to the article 17 of the Act of 20th December 2019 on amending the Act – Law on the System of Common Courts and the Act on the Supreme Court and some other acts (Journal of Laws 2019, item 19). In the article 17 of the mentioned act, they only changed the date after which the act would enter into force. Originally, the legislator specified a period of 3 months, and in the amended form it is a period of 5 months.

¹⁸ B. Sitek, *Pojęcie sprawiedliwości w konstytucjach cesarskich okresu Dioklecjana i Konstantyna*. Kraków: Oficyna Cracovia, 1996, pp. 100-102.

¹⁹ H. Blümner, *Der Maximaltarif des Diocletian/Edictum Diocletiani de pretiis rerum venalium*. Berlin, Boston: Walter de Gruyter, 2011).

This change was certainly related to the election of candidates by the General Assembly of the Supreme Court at the end of April 2020 and the nomination of one of them by the President of the Republic of Poland as the first president of the Supreme Court.

3.2. Anti-crisis shield 2.0 – Act of 17th April 2020

Another act on special support instruments in connection with the spread of the SARS-CoV-2 virus was passed on 17th April 2020 (Journal of Laws of 2020, item 695). This act was a parliamentary initiative and is referred to as a special fund act. The bill was submitted to the Sejm on 2nd April 2020. (print no.324). On 6th April 2020, the draft was sent for the first reading at the session of the Sejm, on 7th April 2020, it was sent for an opinion by local government organizations. The first reading took place on 7th April 2020. During the deliberations on this bill, a motion was made to immediately refer it to the second reading. This application was rejected and the project was referred to the Public Finance Committee. The second reading took place on 8th April 2020. The project returned to work in the Public Finance Committee. The third reading took place on the same day. The next day, the act was submitted to the Marshal of the Senate and the President of the Republic of Poland. The Senate adopted a resolution introducing numerous amendments on 16th April 2020 (form no. 340). On the same day, the Sejm considered the Senate's position and on 17th April the text of the act was submitted to the President, who signed it on the same day. Overall, the legislative procedure lasted 15 days.

According to the article 1 of the Act, the purpose of the anti-crisis shield 2.0 is to provide support to entrepreneurs affected by the epidemic caused by the spread of COVID-19. The legislator

introduced a number of regulations and instruments which were to allow for the maintenance and continuation of business activity threatened by the epidemic. The instruments of financial support granted by institutions to entrepreneurs have been introduced (the article 6 of the Act). These financial instruments include loans, guarantees and sureties. The institution responsible for implementing the legal solutions adopted in this act is the Industrial Development Agency. The legislator also introduced financial support for local governments for the purchase of equipment for remote education. The allocated funds were to be used to purchase laptops for children and then lend them to them.

The anti-crisis shield 2.0 also lifted some of the restrictions introduced in the field of civil rights and freedoms introduced at the beginning of the epidemic by the regulation of the Minister of Health of 13th March 2020 on the introduction of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws 2020, item 433) and the regulation of the Minister of Health of 20th March 2020 on the introduction of the state epidemic in the territory of the Republic of Poland (Journal of Laws 2020, item 491).

It should be noted that along with the introduction of the regulations or legal instruments necessary to combat and prevent the spread of the COVID-19 epidemic, other normative solutions of an incidental nature were introduced, which were not directly related to this extraordinary situation.

Such ancillary provisions include changes introduced in the article 27 of the Shield 2.0 Act to the Act of 10th September 1999 – Fiscal Penal Code (Journal of Laws of 2020, items 19 and 568). Also, in the article 28 of the Shield 2.0 act, a new provision was introduced to the Act of 9th September 2000 on tax on civil law transactions (Journal of Laws of 2019, items 1519 and 1901). There are many more such normative regulations in Shield 2.

In my opinion, the legislator, taking advantage of the convergence of the epidemic with the upcoming presidential election in Poland, originally planned for 10th May 2020, introduced quite significant statutory changes which significantly changed the electoral system in Poland. In the article 99 of the Shield 2.0 Act, new rules for the processing of data necessary for the implementation of tasks related to the organization of the presidential elections were introduced. The Polish Post, after submitting the application in electronic form, may receive data from the PESEL register or from another census at the disposal of the state administration body. Such a solution must raise legitimate concerns about the security of this data, especially as it may end up in the hands of postmen who are not properly prepared to secure this data.

At the same time, in the article 102 of the Shield 2.0 Act, the legislator decided that during the period of the state epidemic threat or the state of epidemic, when general elections for the President of the Republic of Poland are held in 2020, the provisions of the Election Code, which is the basic act used in the organization and holding of elections in Poland, do not apply. Doubtful, from the part of the constitutional principles, solutions were introduced. Namely, the possibility of voting by correspondence and voting by proxy without functional or age restrictions was introduced. Such a solution must raise legitimate concerns about the fairness of the elections, and not so much on the part of the authorities, but rather on the part of the voters themselves. With such a solution, after all, silent election agitation with the use of telecommunications devices will be possible, as well as meetings in the real world organized at home by party activists.

Among the numerous statutory changes introduced by this act, the introduction of the possibility of issuing orders to local governments by the central government administration through administrative decisions is quite significant. Such decisions

are immediately enforceable. In the article 15, paragraph 1, the legislator introduced the possibility of limiting the costs of personnel remuneration in the public administration sector. In other words, the legislator introduced the possibility of increasing unemployment, which could be justified by the threat to public finances. There are many such legislative complexities in the act referred to as Shield 2.0.

3.3. Anti-crisis shield 3.0 – Act of 14th May 2020

The third Anti-Crisis Shield is a government draft (print no. 344) of the Act amending certain acts regarding protective measures in connection with the spread of SARS-CoV-2 virus and was issued on 14th May 2020 (Journal of Laws of 2020, item 875). The draft act was sent to the Sejm by the applicant on 28th April 2020 and the first reading took place on the next day - 29th April 2020. The project was sent to work in the Public Finance Committee, and on 30th April 2020, the second reading took place. The third reading was held on 30th April 2020. On the same day, the act was submitted to the Marshal of the Senate, and on 4th May 2020 to the President of the Republic of Poland. On 14th May, the Senate of the Republic of Poland adopted it positions (print 370), which were considered by the Sejm on the same day. The act was signed by the President of the Republic of Poland and published in the Journal of Laws on 15th May 2020. The production cycle of this act took 18 days.

The act does not contain an introductory provision that would define its purpose. From the justification to the draft act, we learn that the purpose of the act is to prevent the negative effects of economic changes resulting from the COVID-19 epidemic.

The introduced legal provisions are intended to mitigate the consequences of the epidemic and prepare the Polish economy and administration structures to take up the challenges that await Poland after the epidemic is over.

When analyzing the content of this act, it can be concluded that it is an incoherent legal act, containing a set of legal provisions from various areas of social, economic or political life and consequently from various ministries. Each minister wanted to introduce solutions, in her or his opinion, necessary for the functioning of a specific area of matters subordinate to her or him. It is impossible to mention even the most important ones in this study. I will just mention a few of them.

In the Anti-Crisis Shield Act, statutory changes were introduced to legal acts with a code rank. Among other things, in the article 387¹ of the Civil Code. the sanction of invalidity of contracts, the so-called transfer of title to secure residential real estate used by the consumer was introduced. Such invalidity may be pronounced by the court, inter alia, if the value of the transferred real estate is higher than the value of the monetary claims secured by this real estate.

In turn, in the Act of 17th November 1964 – the Code of Civil Procedure (Journal of Laws 2019, item 1460), the article 952¹ of the Code of Civil Procedure was added. The legislator, guided by the need to protect the most far-reaching interest of the debtor, decided that the date of the auction of a residential unit of a land property built with a residential building is set by the loan holder. Therefore, an auction cannot be made solely on the basis of the two-week period referred to in the article 952 of the Code of Civil Procedure

In addition, the statutory changes were introduced, inter alia, to the article 35 of the Act of 13th October 1955 the Hunting Law

(Journal of Laws of 2020, item 67,148 9,695), to the Acts of 27th July 2001 – Law on the System of Common Courts (Journal of Laws of 20202, items 365 and 288) and in the article 53, § 5 of the statutory authorization was introduced for the Minister of Justice to design, in the form of a regulation, the further development of an ICT system supporting court proceedings.

An important solution was the suspension of the obligation for foreigners to apply for a residence permit. This provision contained in the article 46, point 13 involved seasonal workers and a large group of students from outside of the European Union. Thus, the amendment to article 15z of the Anti-Crisis Act Shield 1.0 was done.

In the article 46 points 42b, new regulations supporting the economy were introduced – for example: the income limit was abolished when applying for exemption from ZUS (social security insurance fees) for self-employed persons. The provisions concerning the suspension of the running of judicial and administrative deadlines (the article 68 of the Shield 3.0 act) were repealed. Thus, the normal functioning of common and administrative courts was restored. In the article 8, important changes were introduced to the article 304 of the Acts of 6th June 1997 – Penal Code (Journal of Laws of 2019, items 1950 and 2128), the purpose of which is to combat usury.

Only a very cursory presentation of the issues regulated in the Anti-Crisis Act Shield 3.0 allows the reader to imagine the scale of the amendment. Undoubtedly, many legislative changes are necessary due to the need to combat the effects of COVID-19. However, too many other legislative changes blur the image of this act, and the addressees of individual changes are not able to interpret them rationally. Consequently, it cannot be said that this legal act maintains one of the principles of the legislative procedure, which is the transparency of legal provisions. The

method used to build the Anti-Crisis Act Shield 3.0 is based on a synchronic fragmentation of norms in legal provisions²⁰.

3.4. Anti-crisis shield 4.0 – Act of 19th June 2020

The Anti-Crisis Shield 4.0 Act of 19th June 2020 on interest rate subsidies for bank loans granted to provide financial liquidity to entrepreneurs affected by COVID-19 and amending certain other acts is a government project. The bill (print no.382) was received by the Sejm on 22nd May 2020. On 26th May 2020, the self-amendment was submitted (form 382a). The first reading took place on 27th May 2020. Then, the project was sent to work in the Public Finance Committee. The second reading took place on 28th May and after the Public Finance Committee worked on this project, the third reading took place on 4th June 2020. On 5th June 2020, the act was submitted to the Marshal of the Senate and to the President of the Republic of Poland. On 18th April 2020, the Senate adopted a resolution (form no. 427). The Sejm debated the amendments of the Senate on 19th June and on 22nd June, the act was submitted to the President, who signed it on the same day. In total, the legislative procedure in this case lasted 29 days, so the legislative procedure for the act referred to as Shield 4.0 lasted the longest from all anti-crisis shields.

This Act introduced a solidarity supplement for people with whom, after March 15, 2020, their employment contract was terminated or their remuneration was reduced (the article 77, point 13). The amount of unemployment benefit was also

²⁰ M. Zieliński, *Wykładnia prawa. Zasady. Reguły. Wskazówki*. Warszawa: LexisNexis, 2002, pp. 103-105.

increased (the article 77, point 58). Companies which have found themselves in a difficult financial situation due to COVID-19 may receive support from the Subsidy Fund for interest repayment on loans taken to ensure financial liquidity (the articles 4-7). Only those banks which have concluded a cooperation agreement with Bank Gospodarstwa Krajowego – Polish National Development Bank (the article 8) have the right to grant loans with a subsidy. The Bank will establish an Interest Subsidy Fund (the article 10).

An important solution contained in this Act is the introduction of the principles of simplified restructuring proceedings (chapter 6). Thus, a number of new solutions were introduced to the Act of 15th May 2015 – Restructuring Law (Journal of Laws of 2020, item 814). The purpose of this amendment is to create a legal basis for restructuring companies that have lost liquidity as a result of the COVID-19 epidemic.

The chapter 7 contains numerous changes to the applicable regulations. Some of them attract special attention. The legislator introduced a new wording to the article 6g of the Act of 10th April 1997 – Energy Law (Journal of Laws of 2020, items 833 and 843), introducing subjective exclusion regarding the possibility of suspending the supply of gaseous fuels and energy to households.

A rather controversial change was introduced to the Act of 6th June 1997 – Penal Code (Journal of Laws 2019, items 1950 and 2128). Namely, for a crime that carries a penalty of deprivation of liberty not exceeding 8 years, and the penalty of deprivation of liberty for it would not exceed one year, the court may order a penalty of restriction of liberty not lower than three months or a fine which is not lower than 100 daily rates – which means not less than PLN 7,500 (approx. EUR 1,800). In the public opinion,

this solution raises doubts, because beatings or sexual abuse may be relatively mild ailments²¹.

Summing up, it can be said that the Shield 4.0 Act is a collection of various legal provisions introducing changes to numerous acts.

4. Conclusions

By making only a cursory analysis of the Polish statutory provisions on counteracting and combating the effects of COVID-19, the various conclusions can be drawn. Undoubtedly, the Polish legislator, following the example of other European countries, undertook extensive legislative activities aimed at creating legal and institutional foundations for preventing and combating the effects of the epidemic. The state of epidemic threat was introduced followed by the state of epidemic. As a consequence, the civil rights and freedoms, consisting in the prohibition of movement of the population, restrictions on the functioning of public offices, workplaces, schools, universities, cafes, cinemas and transport, were limited. A number of right decisions have been made in the sanitary and epidemiological area, such as wearing masks, gloves or keeping an appropriate distance between individuals. Entrepreneurs and people who lost their jobs received significant financial support. Questions may be raised as to whether these are sufficient measures to effectively prevent and combat the effects of COVID-19. However, a satisfactory answer to this doubt cannot be obtained.

²¹ J. Theus, *Marcin Warchol: Nowelizacja nie zaostrza przepisów. To tylko modyfikacja fragmentu Kodeksu Karnego*. w: WP wiadomości. Pozyskano: (02.07.2020) Źródło: <https://wiadomosci.wp.pl/marcin-warchol-nowelizacja-nie-zaostrza-prze-pisow-to-tylko-modyfikacja-fragmentu-kodeksu-karnego-6524707332576897a,2020>.

Apart from those positive assessments of the activities of the Polish legislator, it should be identified also those which may raise some anxiety not only among the political opposition, which is obvious, but also in the broadly understood society. In the first place, it is necessary to point to the enormous pace of legislative work. The first of the analyzed acts was adopted within 5 days, and the last one within 29 days. This enormous pace of the legislator was undoubtedly justified by the need to protect the life and health of citizens. Nevertheless, the excessive pace of legislative work may have a negative impact on the quality of the law. In this respect, it is difficult to draw an unambiguously evaluative conclusion. This concern will be verified by applying the adopted normative solutions.

Starting with the Shield 2.0, the legislator introduced a wide range of amendments to many acts and codes, most often without even an indirect link with the state of the epidemic. In particular, the third and fourth acts clearly show that the legislator wanted to solve many other problems which were not directly related to combating the effects of the epidemic. As a consequence, these legal acts are quite complex, which can be seen in the confusing way of numbering editorial units.

However, the most important remark concerns the use of anti-epidemic legislation to introduce systemic changes. In Poland, the COVID-19 epidemic coincided with the presidential election. The ruling party made an attempt to conduct the elections at all costs during this period to achieve tangible results, including the re-election of the current President of the Republic of Poland. In the second Shield 2.0 act, the legislator introduced the possibility of postal voting with the possibility of voting by proxy, practically without any restrictions. This rightly raised doubts among the society and the opposition as to the course of the elections conducted by postal voting.

This study can be concluded with the statement that the need to introduce the necessary changes to counteract and combat COVID-19 has become an opportunity to create legal acts with a high degree of complexity, with the risk of concealing solutions aimed at systemic changes. Due to the complexity of the procedures used, it is not possible to clearly define the legislative procedure used in this case.

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