Polish Political Science Yearbook, **vol. 51(3) (2022), pp. 107–122**
DOI: https://doi.org/10.15804/ppsy202223 PL ISSN 0208-7375
www.czasopisma.marszalek.com.pl/10-15804/ppsy

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How Has the Coronavirus Affected Polish Criminal Law?

Abstract: This paper aims to indicate the changes in Polish criminal law introduced in the COVID-19 acts. The text identifies the new regulations of most importance to society. For this reason, the initial focus is on the issue of suspension of procedural time limits and some substantive law time limits from the Criminal Code. It must be stated that, from the perspective of the legal certainty principle, precisely these provisions are of the most significant importance for the defendant. Next, the changes in the Electronic tagging concerning the possibility of interrupting the execution of an imprisonment sentence and serving an imprisonment sentence were discussed. From a criminal policy point of view, higher penalties for the offences of exposure to infection and stalking should also have been mentioned. A new offence of particularly aggravated theft has appeared in the Penal Code and a new offence of obstructing a Police or Border Guard officer in performing official duties. For a more effective fight, it is also vital to provide for the possibility of imposing a new preventive measure and confiscating objects important to public health. The indicated legal developments are presented in the context of human rights protection and in light of recent literature and judicial decisions.

Keywords: *changes in criminal law, suspension of criminal law terms, particularly aggravated theft, state of epidemic risk, epidemic status*

Introduction

The pandemic has caused momentous changes in law worldwide and the Polish legal system. Legislation introduced during this period may have been in force only for a certain time with no significant consequences in the future, or it may have been in force for a certain time, but its effects will have to be taken into account for many years after its repeal, or it may have been a permanent regulation.

Due to this study's scope, it is impossible to discuss all the changes introduced in criminal law during the pandemic period. For this reason, only the changes producing the most socially relevant legal effects will be discussed without provisions that have only been in force for a short time. This paper aims to identify the individual changes and their nature and list their further consequences.

Faced with the changing reality, the Polish legislator introduced individual changes in the enacted laws, commonly referred to as anti-crisis shields. For the sake of completeness, the first four acts should be mentioned here, which were also widely commented on within society:

- The Act of 31 March 2020 amending the Act on special solutions related to the preventing, counteracting and combating of COVID-19, other infectious diseases and emergencies caused by them and some other acts (Journal of Laws of 2020, item 568) – further the Anti-Crisis Shield 1.0 (Act of 31 March 2020);
- The Act of 16 April 2020 on special support instruments in connection with the spread of SARS-CoV-2 virus (Journal of Laws of 2020, item 695) – hereinafter referred to as the Anti-Crisis Shield 2.0 (Act of 16 April 2020);
- The Act of 14 May 2020 amending certain acts in the field of protective measures in connection with the spread of the SARS-CoV-2 virus (Journal of Laws 2020, item 875) – hereinafter referred to as the Anti-Crisis Shield 3.0 (Act of 14 May 2020);
- The Act of 19 June 2020 on subsidies for bank loans granted to entrepreneurs affected by the effects of COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19 (Journal of Laws 2020, item 1086) – hereinafter referred as the Anti-Crisis Shield 4.0 (Act of 19 June 2020).

The plethora of acts to combat COVID-19, which in turn amended several other acts, is dictated by the fact that as the virus spread, the circumstances and social needs to which the law should respond changed. For this reason, during a pandemic, the legislator first introduced specific regulations, and after a particular time, when circumstances changed, subsequent acts repealed these (Kowalski, 2021).

Time Limits in Criminal Proceedings

From the perspective of further considerations, it is essential to note the following dates and distinguish between the concepts:

- the state of epidemiological risk,
- and epidemic status.

From a chronological point of view, the first deadline was the state of epidemiological risk in the whole country of Poland, which was introduced on 14 March 2020. It was followed by the epidemic status, which was introduced on 20 March 2020. On the other hand, the first anti-crisis shield act came into force on 31 March 2020. This state of affairs resulted in legal

uncertainty, as the bodies applying the law had to decide in specific facts whether individual complaints and means of appeal had been brought in time or not. The court decisions made on this subject will provide excellent evidence of this circumstance.

It is an important point because, as outlined below, both procedural and substantive criminal law deadlines remained suspended during an epidemic status. At this point, the most relevant part of the consideration will be the court decisions. Nevertheless, before these are presented, it is necessary to quote the wording of the individual provisions.

Article 15zzs(1)(1-6) of the Act of 31 March 2020 provides that during the state of an epidemiological risk or an epidemic status declared due to COVID, the course of procedural time limits and time limits as directed by the court in court proceedings, including:

- court and administrative proceedings,
- enforcement proceedings,
- criminal proceedings,
- proceedings under the Fiscal Offences Act,
- proceedings in minor offence cases,
- administrative proceedings,

shall not commence, and those commenced shall be suspended for that period.

Of course, discussing only the legislation in force at a given time, this article would be omitted since the quoted provision has been repealed according to Article 46(20) of the Act of 14 May 2020. It is because, under Article 68(5) and (6), time limits that have not commenced under Article 15zzs shall commence seven days after the entry into force of this act. However, the suspended time limits referred to in Article 15zzs shall continue to run after seven days from the date of entry into force of this act. On the face of it, it would appear that, from the date of entry into force of the Anti-Crisis Shield 1.0 until 23 May 2020, the indicated time limits have not commenced, and the remaining time limits have been suspended. It was not until 24 May 2020 that the procedural time limits and time limits prescribed by the court began to run, and the suspended time limits could continue to run.

This approach was confirmed by a communication published on the website of the Ministry of Justice. In line with this interpretation, it has been emphasised that, after all, criminal provisions should not have a retroactive effect. As a result, the time limits set out in the special purpose act, which were running on the date of entry into force of the act, were suspended from 31 March 2020. On the other hand, those that were to start running after that date did not start running until the state of epidemiological risk or epidemic status was lifted.

However, the situation indicated in judicial decisions has not been uniformly perceived, as exemplified by the following judgment. Therefore, in this case, the problem boiled down to assessing the admissibility of applying the construction of the suspension of procedural time limits between 14 March 2020, when the state of epidemiological risk was in force in Poland, and 31 March 2020. The problem arose because it was under the Act of 31 March 2020 that the provisions of Article 15zzr and Article 15zzs regarding the suspension of time

limits relied on by the appellant were added to the Act of 2 March 2020. In this case, the decision was served on the appellant on 6 March 2020, so the time limit for the appellant's appeal began on 7 March 2020 and ended on 20 March 2020. Since, therefore, both on 14 March 2020 and 20 March 2020, the time limit for the appellant's appeal was running, it becomes clear that the time limit was suspended under Article 15zzr. Therefore, its time limit did not end on 20 March 2020, so the appeal lodged by the appellant on 24 March could not be regarded as being lodged after the statutory deadline (Judgment I SA/Łd 319/20).

The Court disagreed with the public body's assessment that since the provisions of Articles 15zzr and 15zzs of the Act entered into force on 31 March 2020, the legislator did not give them retroactive effect. They could not apply in the case of the appellant, whose time limit for lodging an appeal had expired before those provisions entered into force. The legislator's rationality, explicitly passing an act containing a reference to the epidemiological risk and then passing this act in an unchanged version, even though this state has already been abolished, suggests that the legislator, who had previously given citizens a kind of promise of legal protection for the duration of the epidemiological risk, despite the abolition of this state – introduces this protection retroactively. It supports the assumption that the legislator intended to give the provision of Article 15zzs(1) of the crisis act a retroactive character.

According to the court, a linguistic interpretation of these provisions leads to the conclusion that the legislator intended to regulate the question of the running of the time limit concerning the already repealed – explicitly mentioned in the text of the provision – state of epidemiological risk and the ongoing – at the time of the entry into force of the provision – epidemic status – both declared due to the growing danger caused by the risk of contracting COVID-19. Adopting the opposite interpretation, i.e., limiting the binding force of the act's provisions to the period from its entry into force until its repeal, would constitute a negation of the principle of the rationality of the legislator.

The Supreme Court has spoken in the same vein. The appellants, in this case, pointed out that it was incorrect to say that Article 15 zzs(1) had the effect of suspending procedural time limits and time limits set by the court and only from 31 March 2020, even though its wording and purpose justified the assumption that the suspension of those time limits had already taken place from the date of the declaration of the epidemic status. The Supreme Court pointed out that legal actions to prevent its adverse effects and mitigate its consequences in various areas of social and economic life took place through the issuance of many urgent legal acts. These acts had gaps and omissions, subsequently filled by hasty amendments, and were far from comprehensive, coherent and precise. The court indicated that the suspension of time limits took place from 14 March 2020.

Time Limits in Substantive Criminal Law

Secondly, it should be noted that a similar problem has arisen among legal practitioners. In this respect, too, the court decisions set out below are of paramount importance, but before doing so, the literal wording of the legislation should be pointed out. Under Article 15zzr(6) of the Act of 31 March 2020, the statute of limitations to prosecute the case and the statute of limitations on the implementation of a penalty in cases of crimes and fiscal offences shall not run during the period referred to in paragraph 1.

Therefore, these states (epidemiological risk or epidemic status) create obstacles of a factual nature that affect the limitation period.

Also, in the case of the substantive criminal law time limit, it should be stipulated that the provision indicated above (Article 15zzr of the Anti-Crisis Shield 1.0) has been repealed according to Article 46(20) of the Law of 14 May 2020. However, for the sake of clarification, the legislator added Article 68(5) of the Law of 14 May 2020, which stipulates that on the date of entry into force of this act, the statute of limitations on the punishability of an act and the statute of limitations on the implementation of a penalty in cases of crimes, fiscal offences shall commence running.

The reason for introducing this regulation was to prevent criminals from gaining an additional advantage due to the limited actions of the judicial authorities. However, due to the introduction of the regulation, the perpetrator will sometimes have to wait longer for the benefit of the statute of limitations on a crime.

The statute of limitations on a crime means that, after this period, it is not possible to sentence the perpetrator. On the other hand, if the statute of limitations has expired, the sentence imposed by the court cannot be enforced after several years. As a side note, it should be noted that there are no other terms of this nature, including periods of probation measures, inter alia, with conditional discharge in a criminal case or conditional suspension of the execution of the sentence, which has been suspended due to the Anti-Crisis Shield acts.

The literature indicated that this suspension of the statute of limitations only applies to acts committed between 31 March 2020 and 15 May 2020. The Covid Law of 31 March 2020, being unfavourable to the perpetrator due to the extension of the limitation periods, cannot be applied to acts committed before it enters into force without excluding the application of Article 4 § 1 of the Criminal Code (Hermeliński, 2019). Despite such voices in the doctrine, it is worth pointing out that a different view has emerged in judicial decisions (Lipiński, 2020).

On the subject of suspension of substantive criminal law time limits, the Court ruled, where it stated that according to the current wording of the provision of Article 45 § 1 of the Code of Petty Offences, the punishability of a petty offence ceases if one year has elapsed since the petty offence was committed. If proceedings were instituted during this period, the punishability of the petty offence ceases with the lapse of 2 years from the end of this period.

The judgment was based on the following facts: on 20 April 2017, the defendant was alleged to have committed the alleged act, and therefore the statute of limitations on crimes was originally due to expire on 20 March 2020. The court recalled that under Article 15 zzs.1.(3) of the Act of 2 March 2020, procedural time limits and time limits prescribed by the court in criminal proceedings did not commence, and those commenced were suspended for that period. The court pointed out that the state of epidemiological risk was in force in the country from 14 March 2020, which means that the limitation period for adjudication, in this case, was suspended on 14 March 2020 (Judgment X Ka 267/20).

Interruption from the Execution of a Prison Sentence

An interesting solution was introduced in Article 14c of the Act of 31 March 2020. The article stipulates that in the period of an epidemiological risk or an epidemic status – declared in connection with COVID-19, the penitentiary court, on the motion of the director of the penal institution, accepted by the Director-General of the Prison Service, may grant the convicted person a break in the execution of the sentence of imprisonment. It is possible unless there is a reasonable suspicion that the offender will not respect the legal framework while outside prison.

However, the legislator has not made this benefit available to all persons subject to imprisonment, but only to those who show good prospects for the future, i.e., who have not, for example, been convicted in circumstances of recidivism. Interestingly, this privilege can also be enjoyed by perpetrators initially sentenced to a different punishment. However, due to the unserved sentence, it was just changed to imprisonment.

From the perspective of public safety, the legislator considers that this group of perpetrators creates a higher probability of re-offending. For these criminals, the criminal prognosis is undoubtedly not optimistic. At the same time, it emphasises the importance of the social interests that would be affected if they were to re-offend (Lachowski, 2008; Marszałek-Kawa & Plecka, 2019).

If this were regulated differently, and all offenders could count on the privilege of a prison break, this could also cause discomfort for perpetrators. For it must be remembered that for a prisoner who returns to society after so many years, there are massive, multifaceted changes taking place. People in long-term isolation need special preparation to leave prison, and in the COVID-19 situation, they would be deprived of this. For this reason, the proposed regulation should be viewed positively (Szczepańska-Szczepaniak, 2014).

The regulation was necessary as, under the existing legislation, it was controversial whether personal reasons included health reasons and thus whether they were sufficient to grant the convict a break. In fact, according to Article 153 § 2 of the Executive Penal Code, the penitentiary court may grant a break in the execution of the imprisonment sentence if important family or personal reasons speak in favour of it. For this reason, the adoption of this regulation has been advocated in the doctrine (Grzesiak, 2020).

It should also be noted that the discussed amendment to the criminal provisions implements the guaranteed human rights of convicted persons. Respect for human rights in the era of the COVID-19 pandemic is a priority issue since, undoubtedly, at this time, as has already been recognised in the literature, there is an exceptionally high risk of specific human rights not being respected (Klepczyński, 2021). That is why it is essential to guarantee the right to health, including for sentenced persons, and thus allow them the right to a break from their prison sentence (Baran et al., 2020).

Electronic Tagging

Remaining on topics close to the execution of the sentence, in Article 15 of the Anti-Crisis Shield 1.0, the conditions for serving a sentence of imprisonment through electronic tagging have been extended. In this respect, Article 43la of the Executive Penal Code has been amended. Currently, the provision allows electronic tagging for up to one year and six months of imprisonment. Until now, this possibility only existed for a sentence of 1-year imprisonment. Although the change has been included in Anti-Crisis Shield 1.0, it is permanent.

The purpose of the change was to reduce the risk of spreading the SARS-CoV-2 virus in prisons. This legal amendment is in line with the rational and proportionate policy pursued by the public authorities during the pandemic. Indeed, the duties of the public authorities include preventing a pandemic, a fact which is indisputable in doctrine (Tuleja, 2020). The literature, which had already been written in the era of COVID-19, emphasises, namely, that the protection of public health by public authorities through infection control consists not only in the health care of sick people but additionally in the introduction of legal regulations aimed at preventing the further spread of infection (Sroka, 2020).

Indeed, the advantage of this solution is the lack of contact between offenders and other convicted persons while maintaining the educational goal. Indeed, such a solution is incomparably more conducive to preventing recidivism (Postulski, 2007). However, the execution of short-term imprisonment under electronic surveillance can be as painful for the perpetrator as its execution in prison (Kotowski, 2009). Following the nature of this legal institution, it should be pointed out that granting permission to a convicted person to serve a sentence of imprisonment under the electronic surveillance system is optional and based on the court's assessment. The court shall assess the situation of the perpetrators based on the grounds set out in Article 43la § 1-3 of the Code of Criminal Procedure. The penitentiary court may therefore refuse such authorisation. If the penitentiary court does not grant permission, it must explain why it refuses permission despite meeting the conditions. The right to be authorised to serve a sentence of imprisonment under electronic surveillance, subject to the required conditions, does not confer any subjective right capable of protection on the convicted person.

The introduced legal regulation is in line with the postulates represented in doctrine during the epidemics, according to which infections that pose a significant threat to

the life or health of the entire society cause a change in the accepted optics. In such circumstances, the classical view of protecting individual rights and freedoms changes, as the need to ensure the security of members of society begins to outweigh freedom. The health of all members of society, including the health of prisoners, is, therefore, a much more highly protected legal good than having to serve a custodial sentence directly in prison (Sroka, 2020).

Furthermore, it should be pointed out that the legislative amendment in question is the result of *de lege ferenda* postulates, raised in doctrine by human rights organisations, to reduce the population in penitentiary units. Therefore, through the regulation, the legislator expressed that the introduced changes comply with the guaranteed human rights (Klepczyński, 2021).

Permanent Changes – Higher Penalties

The legislative actions introduced during COVID-19 did not always enjoy the approval of the public or the legal community. The controversy concerning respect for human rights, in connection with the introduction of particular restrictions and changes in the law that were not entirely related to the threat posed by COVID-19. We can mention, for example, the group of provisions that have increased the punishment for behaviour such as exposure to infection – Article 161 of the Penal Code – and for stalking – Article 190a of the Penal Code.

During a pandemic, legislators undoubtedly faced difficult legislative choices. In the face of such circumstances, it was necessary to consider the importance of the various legal interests from society's point of view.

The level of punishment has been significantly increased in the case of Article 161 of the Penal Code, which states that whoever, knowing that he is infected with HIV, directly exposes another person to such infection shall be subject to a penalty of deprivation of liberty of between 6 months and 8 years. Having indicated this change, it should be pointed out by comparison that prior to the COVID legislation, the penalty of imprisonment was only up to 3 years.

An even more momentous change was introduced by the legislator in Article 161 § 2 of the Penal Code, according to which anyone who, knowing that he/she is afflicted with a venereal or infectious disease, a serious, incurable disease or a disease endangering life, directly exposes another person to infection with such a disease, is subject to the penalty of imprisonment from 3 months to 5 years. At this point, it should be recalled that until now, this offence has been punishable by an entirely different penalty, namely a fine, restriction of freedom or imprisonment, but not exceeding one year.

Moreover, the legislator added only one paragraph, but with far-reaching consequences – Article 161 § 3 of the Penal Code, which stipulates that if the perpetrator of the act specified in § 2 exposes other persons to infection, he shall be subject to a penalty of imprisonment of between one and 10 years.

This provision is due to the risks posed by COVID-19, as the disease caused by this virus is often life-threatening. However, opponents of the position that exposure to COVID-19 realises the elements of this offence point out that the perpetrator does not always create the danger set out in this provision. In further argument, the opponents point out that this virus does not lead to a more severe threat to life in some infections. Nevertheless, the vast majority of doctrine indicates that COVID-19 is, in fact, a life-threatening disease, and therefore, at the same time, exposure to infection constitutes the fulfilment of the elements of the offence under Article 161 of the Penal Code (Kubiak, 2020).

In addition, there is a provision for an increase in the penalty for stalking. Under Article 190a of the Penal Code, a person who by persistent harassment of another person or a person closest to them makes them feel threatened, humiliated or abused, which is justified by circumstances, or significantly violates their privacy, shall be subject to the penalty of imprisonment for a term of between 6 months and 8 years. As for effect, when the stalking results in suicide, the perpetrator is currently subject to imprisonment between 2 and 12 years. The previous wording of the law only provided a sentence of between 1 and 10 years.

At this point, a few remarks should be made about the impact of a specific penalty. It is a truism that there are retributive, utilitarian and mixed approaches. According to retributive theory, punishment is punitive and focuses on the past. The sanction is merely a consequence of the crime committed. According to utilitarian theories, on the other hand, punishment is a purposeful tool because punishment should prevent crime. Therefore, punishment in this perspective is directed toward the future. Punishment is intended to deter the offender and others from committing crimes. Consequently, factors such as the degree of the penalty and its inevitability strengthen general prevention. Introducing a system of severe penalties was intended to create fear of sanctions, which will deter the public from committing the offences indicated. On the other hand, according to mixed theories, the perpetrator's characteristics and the punishment's specific purpose should be considered (Niewiadomska, 2007). When looking for answers to questions, it is important to consider: the measure of the punishment, the standard that the legislator needs when developing the penal framework, or the judge making the operational interpretation – related to the application of the law when judging and imposing the appropriate punishment for the crime (Kotowski, 2016).

It was noted that punishment should have a different purpose depending on the perpetrator. The purpose of punishment is not only to fit the crime committed but, above all, to fit the perpetrator. Having this in mind, criminal law is a sign of the progress of civilisation and a move away from a revenge response to the appropriate imposition of sanctions by the state (Wróbel & Zoll, 2012).

It is also worth mentioning that Liszt revolutionised the understanding of punishment because it should be socially useful (Janicka, 2015). For this reason, the increase of the penalty by the legislator in the Anti-Shield Laws should be viewed positively on the one hand. To sum up, the current possibilities provided for in the Penal Code, and in particular, the wide range of penalties that can be imposed in the case of Article 161 of the Penal Code

and Article 190a of the Penal Code, made the introduced regulations properly implement the assumptions of criminal policy, however, on the other hand, it is emphasised whether due to their significance they were introduced in the right mode and at the right time – i.e., in laws combating COVID-19.

No Crime

From the perpetrator's point of view, essential provisions have been introduced to define when someone does not commit a crime. According to Article 15t of the Anti-Crisis Shield 1.0, the person does not commit a crime under Article 296 § 1-4 of the Penal Code if fails to claim from a party to a contract the damages for non-performance or improper performance of a public procurement contract due to circumstances connected with the occurrence of COVID-19 or amendment to the public procurement contract. Article 15w of Anti-Crisis Shield 1.0 has also been added, which states that one does not commit a crime under Article 231 of the Penal Code or Article 296 of the Penal Code if, during the epidemic, status declared due to COVID-19, when purchasing goods or services necessary for the fight against the epidemic, violates official duties or applicable regulations, and acting in the public interest purchases goods or services. Without these violations, those services could not be performed, or the performance of such would be seriously endangered. The regulations were introduced to prevent an incomprehensible situation in which the behaviour of the person responsible for the financial affairs of economic entities after an epidemic would be judged negatively. However, it should be remembered that the optics completely changed during the epidemic, and the most important thing was to combat the epidemic effectively. In such cases, the trial will have to acquit the accused.

New Type of Offence

Moreover, Article 65a of the Code of Petty Offences has also introduced a new type of offence. According to it, anyone who intentionally, without complying with specific behavioural orders issued by a Police or Border Guard officer based on the law, prevents or significantly obstructs the performance of official activities shall be subject to a penalty of arrest, restriction of liberty or a fine. The added type of offence is intended to ensure the effectiveness of the actions of the designated services in a state of epidemic emergency and in carrying out typical statutory tasks. This regulation is intended to ensure that officers intervene properly.

The Supreme Court has ruled on this provision. It was concluded that the offence under Article 65a of the Code of Petty Offences is effectual. Failure to comply with an official order of a police officer is intended to prevent or substantially hinder an official act's performance. In the present case, the defendant was reading a book in a park, which in the opinion of the Supreme Court, did not constitute an offence. The request for them to leave a public place

such as a city park constituted a violation of constitutionally protected freedoms and likely provoked an objection from a citizen as to its legitimacy. The Supreme Court pointed out that it is true that the police officers acted in the justified conviction of the existence of the prohibition to stay in parks, threatened with punishment (under Article 54 of the Penal Code), resulting from § 17 of the Ordinance of the Council of Ministers of 31 March 2020. Nevertheless, the District Court should make a finding as to the existence of the actual legal basis for the order to leave the park. In the present case, however, it has not been explained how R. W.'s conduct prevented or significantly impeded the performance of official duties and what specific duties were at issue (Judgment I KK 40/21).

Particularly Aggravated Theft

When discussing the permanent legal changes introduced in the Anti-Crisis Shield 4.0 (Zabłocka, 2021), it is important to mention the new legal definition – particularly aggravated theft. Under Article 115(9a) of the Penal Code, theft is particularly aggravated when the perpetrator displays a disrespectful or provocative attitude towards the property owner or other persons or uses violence other than violence to seize property against a person. In addition, it is particularly aggravated theft to steal movable property situated directly on or worn by a person, or items carried by that person under conditions of direct contact, or items contained in objects moved or transported under such conditions. The introduction of a new definition is a consequence of adding a new offence in Article 278a of the Penal Code, according to which whoever commits a particularly aggravated theft shall be subject to imprisonment for a term of between 6 months and 8 years. If a particularly aggravated theft has been committed to the detriment of a next of kin, the prosecution shall take place at the victim's request. At this point, it is necessary to point out more far-reaching consequences, such as Article 130 § 1 of the Petty Offences Code, which provides that Article 119 does not apply if the perpetrator commits burglary or theft in a particularly daring manner. In practice, this means that even if a particularly aggravated theft involves property worth less than PLN 500, the perpetrator's act will be classified as a crime rather than a petty offence. The explanatory memorandum to the Act indicates that the very manner of the perpetrator's action, arrogant and aimed at violating a person's integrity, often professionally planned and always extremely reprehensible, should justify treating the act as a crime regardless of its value.

Given the categories of legislative changes, which are *de facto* changes in the scope of penalisation of individual behaviours, questions are raised in doctrine as to their necessity. In other words, the doctrine disputes changes in the law that would increase the penalties for individual crimes unrelated to the COVID-19 pandemic or introduce new crimes or offences (Lipiński, 2020). It is then argued that the introduced changes are an expression of legal penal populism (Kubiak, 2020). The opponents point out that, in a pandemic, there is an increase in populist speeches, which are dangerous because they consist in manipulating

facts on a principled issue such as the existence of a threat at all or the acceptability of restrictions (Dąbrowska-Kłosińska, 2018).

Preventive Measure

At present, importantly, as a preventive measure, according to Article 276a of the Code of Criminal Procedure, it is possible to rule: – a prohibition on approaching the victim within a prescribed distance, – a prohibition on contacting or – a prohibition on publishing information via telecommunications systems or networks, the content of which violates the victim's legally protected rights. It is possible when the accused commits an offence against a medical staff member in connection with the performance of medical acts. It is to be welcomed, as the COVID-19 epidemic threatens human life worldwide. On the other hand, medical services are the guarantors of our health and life. Their proper functioning during a pandemic is a supreme asset, but it also places an above-average burden on medical services (Giezek, 2020).

The introduced regulation is a response to the demands of the medical community. During the epidemic, it is necessary to provide special protection to health workers exposed to verbal and physical attacks during their work. The doctrine stresses that the accepted level of risk that directly affects medical personnel looks different in situations like before a pandemic, which can be called normal state conditions, and different in emergencies. Therefore, there is a need to assess the danger to medical staff members differently in non-epidemic situations and in times of pandemics (Kardas, 2020).

In the same way, the introduction of additional precautionary measures should be assessed differently – as it would have been if it had taken place before the pandemic and differently if it had taken place precisely in an emergency. In order to discipline defendants, prohibitions may be accompanied by financial surety. The surety items must be forfeited in case of non-compliance with the prohibitions. Under Article 276a § 4 of the Code of Criminal Procedure, the duration of the prohibitions shall be determined considering the need to secure the proper course of the criminal proceedings and ensure appropriate protection for the victim or the victim's next of kin. The extension of the prohibition for a further period, exceeding a total of 6 months, in pre-trial proceedings may be carried out by the district court at the request of the public prosecutor.

Confiscation of Objects That Are Important for Public Health or Safety

Specific changes have been made to provisions of a procedural nature. Under Article 232b of the Code of Criminal Procedure, in case of an epidemiological risk or epidemic status, confiscated objects of significance for public health or safety may be transferred free of charge to medical entities, the State Fire Service, the Armed Forces of the Republic of Poland, the Police, the Border Guard and state and local government institutions. The public

prosecutor shall decide to transfer the property free of charge in the pre-trial stage or by the court in the trial stage. What is particularly important is that the decision can be appealed. However, lodging a complaint does not suspend the implementation of the contested decision. From a practical point of view, this provision can, for example, be applied to confiscated alcohol that can be used, for example, to produce disinfectant. Although the new solution resembles confiscation, it is another different option. At this point, it is necessary to mention Article 46 of the Constitution of the Republic of Poland, which stipulates that the forfeiture of property may take place only in cases specified by law and only based on a final court decision. It is worth noting that, as the prosecutor may make this order, the forfeiture may prove unjustified when the order is subsequently overturned. These items must then be returned to the holder.

Should this not be possible, the State Treasury shall be liable for the damage under Article 192 of the Executive Penal Code. As it is well known, the legislator indicates each provision's justification – *ratio legis* – in the explanatory memorandum of the act. In this case, it was pointed out that the destruction of facilities would be classified as a waste of resources under pandemic conditions. Moreover, as the recent pandemic experience has shown, dealing with this problem and combating COVID-19 requires decisive and rapid action, so using these measures was justified as it can immediately increase public safety. At this point, it is necessary to cite Article 68 of the Constitution of the Republic of Poland, according to which public authorities are obliged to combat epidemic diseases and prevent the adverse health effects of environmental degradation. In this regard, recent literature indicates that the state must protect public health. This obligation is fulfilled by public authorities precisely by the need to make decisions and take actions to reduce the threat of COVID-19. It is in the category of such actions that the introduction of the regulation contained in Article 232b of the Code of Criminal Procedure should be perceived (Sroka, 2020). The indicated provision interferes with the rights and freedoms of an individual. However, it corresponds to the principle of proportionality expressed in Article 31 par. 3 of the Constitution of the Republic of Poland, according to which limitations to the enjoyment of constitutional freedoms and rights may be established only by statute and only when they are necessary in a democratic state for its security or public order or the protection of the environment, health and public morals, or freedoms and rights of other persons. Such limitations shall not affect the essence of the freedoms and rights. Postulates derived from the constitutional principle of proportionality are addressed to the legislator and the bodies applying the law, in this example, the courts and prosecutor's offices. Therefore, if certain discretionary power is left to them when taking actions and making decisions on restricting the rights and freedoms of individuals, they should always apply the proportionality test to their decisions (Kubiak, 2019).

The indicated provision is an expression of how the law responds to the needs of society. The doctrine points out that the protection of public health may *de facto* consist in restricting the rights or freedoms of individuals. In this case, the property right is restricted. The exercise

by public authorities of the task of protecting health by combating infections always leads to conflicts with the rights and freedoms of individuals, which is inevitable. For this reason, it is understandable that there are societal tensions over this. However, opponents of the introduced solutions should see the whole situation from a broader perspective, especially considering the state's duty to protect public health (Sroka, 2020).

Conclusions

The COVID-19 pandemic has brought about unexpected changes in social life and the law, which is undoubtedly part of social life. Changes in criminal law have been made to substantive and procedural criminal law. Although the epidemic status or a state of epidemiological risk is only temporary, the regulations introduced are, in some cases, permanent. The legislature had to make difficult decisions while dealing with the COVID-19 outbreak, which was often hyped by the public. It has happened not only in Poland but also worldwide. While not all of the changes were related to the fight against COVID-19, most of the changes were aimed at protecting the public and keeping its members safe, including protecting their health.

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