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## The Impact of the COVID-19 Epidemic on the Corruption Risk in Poland

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**Abstract:**

**Purpose:** The paper concerns with the impact of the COVID-19 epidemic on the corruption risk in Poland. It shows that anti-pandemic policy creates conditions for increasing corruption risk. The anti-pandemic policy effectively interferes with the legislative process, results in denial in access to public information and grants broad exclusions of criminal liability. The paper indicates that corruption factors that should be taken into account and eliminated are, sloppy work on anti-corruption laws, overly discretionary restriction of access to public information, the large number of and vague regulations excluding criminal liability. The article shows that anti-pandemic policies create the conditions for increased corruption risk in Poland.

**Design/Methodology/Approach:** Anti-pandemic policy increases corruption risk through interference with the way laws are created, access to public information and the exclusion of criminal liability.

**Findings:** The manner in which anti-pandemic policy is implemented creates conditions for increasing corruption risk and may in the future contribute to an increase in corruption crimes. Additionally, it may worsen Poland's standing in corruption indices, weaken its credibility in the international arena, lower the level of civic trust in the state and become a dominant dysfunction of the public sphere.

**Practical Implications:** Corruption factors that should be taken into account and eliminated are, sloppy work on anti-corruption laws, overly discretionary restriction of access to public information, the large number of and vague regulations excluding criminal liability.

**Originality/value:** Not the content of, but rather the way in which anti-pandemic policy has been implemented increases the risk of corruption.

**Keywords:** Corruption, COVID-19, legal procedure, central anti-corruption bureau, security threats.

**JEL classification:** D73, I18, K40.

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## 1. Introduction

The hallmark of serious crises is their impact on public life. This is the case with the COVID-19 pandemic, which in Poland led to the declaration of the State of Threat of Epidemic Emergency on March 14, 2020, (Regulation of the Minister of Health of 13 March 2020), and then, beginning March 20, 2020, the State of the Epidemic (Regulation of the Minister of Health of 20 March 2020). Today, the SARS-CoV-2 virus and the acute respiratory infectious disease COVID-19 it causes are the source of an increasing number of concerns, questions, tensions and suspicions. Corruption is one such concern; the fight against COVID-19 increases the risk of corruption, provides opportunity for abuse and leads to the waste of public resources to an extent that threatens basic human and civil rights (Czas wielkiej korupcji, 2020).

All the concerns referenced above share questions about the impact of the COVID-19 epidemic on corruption, especially corruption risk. The issue is a consequence of the pandemic crisis, which has forced people to focus on what is most urgent and make difficult decisions quickly. This occurs at the expense of other matters for which there is no time. Such has been the case with corruption, which we deem a side effect of the existing crisis (Makowski and Waszak, 2020).

By analyzing the impact of the COVID-19 epidemic on corruption risk in Poland, we want to show that implementation of anti-pandemic policy creates conditions for increasing corruption risk. The implementation in Poland has effectively interfered with the legislative process, resulted in denial in access to public information and granted broad exclusions of criminal liability. We first briefly present the level of criminal corruption before March 14, 2020. Establishing such will enable us to verify the actual impact of pandemic policy on the increase in corruption crime. This verification will of course be possible only after the epidemic is over. Next, we describe the legal regulations that form the foundation for state action during the epidemic. Subsequently, we present the above-mentioned interference in the legislative process, denial in access to public information and the expansion in exclusion of criminal liability. We present the final conclusions in the summary.

## 2. The Level of Criminal Corruption

The main institutions established to prevent corruption are the Police and the Central Anticorruption Bureau - CAB. Of the two, the CAB is commonly considered the leading service (Misiuk, 2008) This is the case even though, according to statistics, the Police actually conduct the highest number of preparatory proceedings in corruption cases. In 2018, this totaled 56.2% of all cases. While in 2019 it grew to 60% of all cases (CAB Report).

The CAB is a secret service whose primary task is to fight corruption in the public and economic areas. It is possible to identify CAB activities due to publicly available reports entitled *Information on the results of the activities of the Central*

*Anticorruption Bureau.* The latest reports, for 2018 and 2019, show that in 2018 the CAB conducted 470 operational cases and 567 preparatory proceedings, while in 2019 that rose to 564 operational cases and 583 preparatory proceedings. Preparatory proceedings conducted in 2018 netted charges against 721 suspects, while 804 suspects were charged in 2019. The reports prepared by the CAB also show that CAB officers additionally performed audits in 2018-2019. In 2018, the CAB performed 145 audits and 1,422 audit cases, while in 2019 there were 192 audits and 1,433 audited cases (Information 2018; Information 2019). Therefore the numbers show a slightly upward trend.

### **3. Legal Foundations for Anti-Pandemic Policy**

The most important tools of the anti-pandemic policy are special laws and executive acts issued on their basis. These laws are commonly known as anti-crisis shields. Their main goal is to support the economy with the help of many instruments, such as exempting micro-businesses from social security contributions, granting special benefits to contractors and the self-employed, subsidizing employee salaries or protecting consumers against excessive price increases (Shield). Anti-crisis shields are responses to the changing level of the epidemiological threat, the attendant limitations on human and civic freedoms and rights, and the insufficiency of previous measures.

The first anti-crisis shield was the Act of 2 March 2020 on special solutions related to the prevention, preemption and combating of COVID-19, other infectious diseases and crisis situations caused by them (Shield No. 1). By the end of January 2021, many anti-crisis shield laws had been passed. (Their actual number varies depending on the adopted numbering method.) The most recent shield is the Act of 21 January 2021 amending the Act on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them, and some other acts (the Newest Shield). This is the 26th act amending the initial anti-crisis shield. Meanwhile, there have already been 54 executory acts issued (List).

Anti-crisis shields are adopted in close connection with the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Act 2008). It was on this basis that the state of epidemic threat and the state of the epidemic were announced. Poland did not declare a natural disaster (Brzeziński, 2007), which at the beginning of the epidemic seemed an obvious solution (Rogojasz, 2020).

### **4. The Legislative Process**

The legislative process only superficially appears to be a technical matter. Its analysis provides valuable information on the practice of making law (Kopińska,

2008). This is also the case with anti-crisis shields. Work on them, especially the first acts, differed from the typical legislative process.

The most obvious feature was the rush. The legislative procedure on the draft of the first anti-crisis shield lasted six days (List No. 265). Work on the second shield lasted the same amount of time (List No. 301, 301-A). Work on the third shield took five days (List No. 299, 299-A). Work on successive shields took longer, but still these bills were passed faster than ordinary acts.

The short duration of the legislative process influenced the work on anti-crisis shields and the negative opinions about them. The work is believed to have been intense and chaotic. Bills were passed without in-depth consultations and discussions in parliamentary committees or subcommittees. Furthermore, the literature shows similar opinions regarding shields prepared and submitted by the government. Here, too, work was done at an express pace, without inter-ministerial consultations and arrangements (Makowski and Waszak, 2020).

This way of creating anti-crisis laws failed to comport with their content and importance. Shields are distinguished by a large number of articles and interrelated with many other legal acts. They are important and complicated regulations and, as such, their nature requires calm and deliberate action. Had calm and deliberation prevailed, the constitutionality of the anti-crisis shields would have been less likely questioned. In response to the manner of conducting legislative work, the Human Rights Commissioner appealed four anti-crisis shields to the Constitutional Tribunal. He alleged their breach of the constitution as regards the principles of legalism, the correctness of the legislative process and legal certainty. In his opinion, while working on the laws, changes were made to various codes, such as the criminal code, the civil code or the code of administrative procedure. These changes violated the procedure of adopting the codes in such a way that they violated the obligation to meet the minimum deadlines for their next readings (Application).

## **5. Access to Public Information**

Access to public information is a constitutional right (Constitution). This right is closely related to the principle of transparency in the operation of public authority, one designed to facilitate social oversight of authority, prevent abuses, counteract official corruption and improve the quality of work of the entire public administration (Dudek, 2010).

The third anti-crisis shield limited the ability to obtain public information quickly because it suspended provisions on official inaction and the attendant obligations to notify a party or participant to proceedings about the failure to timely settle a matter (Shield No. 3). This provision was in force for one and a half months (Shield No. 4).

This interference with access to public information has provoked strong criticism. It was assessed that citizens and social organizations *de facto* lost the right to obtain information - they did not receive it and could do nothing about it. The changes affected journalists the most, because according to the press law, their inquiries are examined in accordance with the provisions on access to public information. As a result, in a period of enormous demand for information, journalists faced difficulties in obtaining answers to their questions; there was even talk of censorship (Makowski and Waszak, 2020).

This state of affairs raised serious doubts as to the constitutionality of the adopted restrictions. According to the Chairman for Human Rights, in the name of combating the COVID-19 epidemic, a situation was created in which the possibility of obtaining public information quickly depended solely on the public authority's good will. This violates the principles of civic trust in the state and the law it enacts as well as the principle of individual legal security, according to which the state should not create illusory powers that a citizen cannot exercise in practice (Document).

## **6. Exclusions of Criminal Liability**

Whether an act is a crime depends upon, amongst other, the circumstances excluding its criminal nature. The content of such exclusions determines whether a perpetrator's actions are legal. As a result, the content determines the scope of criminal liability (Gardocki, 2003).

Anti-crisis shield No. 2, which amended the content of shield No. 1, is an example of such interference involving exclusion of criminal liability. It introduced art. 10c, which excluded criminality of specific acts from the Penal Code, as long as such met all the following requirements: 1) consist of the purchase of goods or services necessary to combat COVID-19, 2) violate official duties or applicable regulations, 3) the perpetrator acts in the social interest, and 4) without committing these violations, the acquisition of these goods or services could not be completed or would be significantly threatened (Shield No. 2).

Exclusion of criminal liability in anti-crisis shields has generated confusion, due to the large number of exclusions adopted and their vagueness, including whether they effectively protect against potential criminal risk (Karlik, 2020). Additional confusion stemmed from the opportunities for the exemptions to be exploited to avoid liability for mismanagement or other abuses leading to waste of taxpayers' money, in particular related to public procurement (Makowski and Waszak, 2020).

## **7. Conclusion**

The presented examples of anti-pandemic policy implementation create the conditions for increasing the corruption risk and may in the future contribute to an increase in criminal corruption. Additionally, they may worsen Poland's

performance in corruption indices (Makowski, 2020), weaken its credibility in the international arena, lower the level of civic confidence in the state and become a dominant dysfunction of the public sphere (Itrich-Drabarek, 2009).

The COVID-19 outbreak is an extremely serious threat. Sometimes the fight against it forces decisive action, which is difficult to control and consider a part of ordinary politics, subject to normal democratic procedures. It is easy to fall into the trap of extreme politicization and give priority to distrust, war rhetoric, necessity, and exceptional measures (Brzeziński, 2019). Nevertheless, the COVID-19 epidemic cannot be an excuse for everything. Above all, it may not justify the violations of the legislative process, the right to access to public information or the improper exclusion of criminal liability.

The hasty way of creating anti-crisis shields is a corruption factor as it does not ensure the proper quality of law and the transparency of legislative proceedings. Anti-pandemic law may be passed quickly, but it must be carefully drafted so that its interpretations are unambiguous. Legislative work on anti-pandemic law should make it possible to identify the participants involved, determine the motivation of their amendments, effects thereof and to distinguish interest groups.

Access to public information is not an absolute right. It may be subject to restrictions as long as such are exceptional, precise and clearly justified. If they are not, they increase the risk of corruption. The anti-crisis shields introduced a discretion that is difficult to explain and, in practice, temporarily made it difficult to oversee the actions of public authorities.

The exclusions of criminal liability are a similar matter. Their large number and vagueness have led to the formulation of accusations of lifting the control over abuses and allowing for total discretion and impunity (Makowski and Waszak, 2020). Above all, however, such could have led to the emergence of a belief in society that criminal liability has been significantly relativized. This, in turn, may adversely affect the credibility of future anti-corruption efforts.

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