**Respecting the rule of law during states of emergency on the example of the COVID-19 pandemic in Poland**

**(Jakub Niedziółka)**

The paper considers how the rule of law was respected during the COVID-19 Pandemic in Poland, focusing in particular on the right to a fair trial.

The main reason for choosing this topic was to find out how the rule of law is respected and how constitutional rights and liberties are limited in states of emergency and what are the mechanisms behind it. The legal principles are essential to every liberal democracy, and they have been portrayed to be at the very core of states of emergency as well. In fact, one major risk of extraordinary situations is related to whether fundamental rights, such as the right to a fair trial, are limited and how the limiting procedure is conducted.

The aim of the research is to determine the legality of the methods used by Polish authorities to fight the COVID-19 pandemic and whether they posed an unnecessary threat to the rule of law and the right to a fair trial. If the answer to the first problem is positive, then the research will find out in what context the rule of law was not obeyed and what mechanisms can be created to prevent similar actions during the next possible state of emergency.

There are two target groups of the research:

1. Authorities – as advice to establish mechanisms for better protection of the rule of law and right to a fair trial and by doing so prevent the possible destruction of “the democratic state ruled by law and implementing the principles of social justice” in the future states of emergencies, thereby better protecting lives of the citizens.
2. Private citizens – because the average person has less awareness about legal matters due to their limited knowledge about existing laws. Conducting a study one the topic might be an opportunity for them to increase their knowledge; through this research they could become more cautious about limiting their rights in states of emergency and in general. It will also give them a better view of the existing problem if it reappears in the future.

The main research question that will help achieve the aims of the study is, ‘What mechanisms can be created to secure respecting the rule of law and the right to fair trial during states of emergencies?’ Additionally, some sub-research questions, associated with the primary question, will also be analysed to fully understand and answer the main question. These questions are:

1. *What is the link between the rule of law and the right to a fair trial?* The quick answer to this question is the principle of good legislation; so
2. *How does the principle of good legislation affect the right to a fair trial?*
The short answer to this problem might be, that there is no right to a fair trial without good legislation. The principle is all about the clarity of the law. So, the law created by Polish authorities must be clear, precise, and accurate, leaving no place for misleading regulations and not so lengthy as to make it impossible to comprehend.[[1]](#footnote-1) It also establishes the principle of appropriate *vacatio legis*, allowing people sufficient time to get to know the regulations. Additionally, it must be consistent with the higher-ranking law of such as the Constitution.[[2]](#footnote-2) This answer opens up space for the third question:
3. *Was the principle of good legislation respected during the COVID-19 pandemic*?
As the pandemic was an extraordinary event, it had to be dealt with extraordinary solutions. New legal acts had to be created for better protection of the citizens. A close look at the legislation process gives the answer that the principle of proper *vacation legis* was not obeyed.
4. *What were the specific breaches of the principle and how did it affect the right to a fair trial?*For example, *Governmental project of the statute of special solutions related to preventing, counteracting, and fighting COVID-19 and other diseases and the crisis situations caused by them (The COVID-19 Statute)*, the project was presented on March 1st, 2020, it was passed by the Sejm the next day and came into force on March 6th. The whole process took 5 days.[[3]](#footnote-3) After that, the statue was changed many times with similarly short *vacatio legis.*

Moreover, the Resolution III PZP 6/22 of the Polish Supreme Court, the resolution states, that regulations created during COVID-19 added to the amendments of *the COVID-19 Statue* that changed the *Civil Procedure Code*, decreasing the number of judges in appealing case from 3 to 1 are the against the right to fair trial)[[4]](#footnote-4);

1. *What are the effects of those actions?*

To answer questions 3-4 more broadly, the Polish COVID legislation must be analysed, especially the acts that were created during the pandemic and how they influenced the regulations regarding limiting the right to a fair trial and if they were breaching the rule of law.

A quick look at Polish legislation created during the COVID-19 pandemic shows that many parts of the principle of good legislation were disobeyed. For example:

1. too short *vacatio legis* of the COVID statutes whilst being one of the longest statutes in the history of the Polish parliament (as showed in the *question 3 and 4* above);
2. disrespecting the way of enacting the Codes (as shown above in *question 4*)
3. lack of intertemporal regulations of the statutes (one of amendments to *the COVID-19 Statue,* changed thelimitations in the Penal Code, stating that during *the state of epidemic*, time limit does not run, and it stated that they do not run since the beginning of *the state of epidemic*. It was later found unconstitutional by the Polish Constitutional Tribunal. In the sentence P 12/22 it stated that, the regulation is against the rule of law principle (art. 2 of Polish Constitution) as it breaches the principle of *lex retro non agit*.[[5]](#footnote-5) [[6]](#footnote-6)

A broad analysis, which will be created in the main study, will answer all the questions above and will suggest the mechanism that will protect the right to a fair trial of the citizens during the possible next state of emergency.

Bibliography:

Monographs:

1. M. Florczak-Wątor [w:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II*, red. P. Tuleja, Wolters Kluwer, Warszawa 2023
2. M. Zubik, W. Sokolewicz [w:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom I, wyd. II*, red. L. Garlicki, Wydawnictwo Sejmowe, Warszawa 2016, art. 2.

Courts and Tribunals sentences:

1. Resolution of Polish Supreme Court from 26.04.2023, III PZP 6/22, OSNP 2023, nr 10, poz. 104.

Sentence of Polish Constitutional Tribunal from 12.12.2023 P 12/22, OTK-A 2023, nr 101.

The Internet:

Polish Ombudsman request to Polish Constitutional Tribunal, II.510.1008.2023.PZ, Warsaw 2023, <https://bip.brpo.gov.pl/sites/default/files/2024-01/Do_TK_przedawnienie_pandemia_zasady_29.12.2023_wymazany.pdf>

1. Proces of legislation of the *Governmental project of the statue of special solutions related to preventing, counteracting, and fighting COVID-19 and other diseases and the crisis situations caused by them* <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=265>
1. M. Florczak-Wątor [w:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II*, red. P. Tuleja, Warszawa 2023, art. 2, p. 30-34. [↑](#footnote-ref-1)
2. M. Zubik, W. Sokolewicz [w:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom I, wyd. II*, red. L. Garlicki, Warszawa 2016, art. 2. [↑](#footnote-ref-2)
3. Process of legislation from <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=265> [↑](#footnote-ref-3)
4. Resolution of Polish Supreme Court from 26.04.2023, III PZP 6/22, OSNP 2023, nr 10, poz. 104. [↑](#footnote-ref-4)
5. Sentence of Polish Constitutional Tribunal from 12.12.2023 P 12/22, OTK-A 2023, nr 101. [↑](#footnote-ref-5)
6. Polish Ombudsman request to Polish Constitutional Tribunal, II.510.1008.2023.PZ, Warsaw 2023, <https://bip.brpo.gov.pl/sites/default/files/2024-01/Do_TK_przedawnienie_pandemia_zasady_29.12.2023_wymazany.pdf> [↑](#footnote-ref-6)