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The many faces of law efficiency in the context of Polish pandemic regulations

Oblicza efektywności prawa w kontekście polskich regulacji związanych z pandemią

Abstract

The COVID-19 pandemic has undoubtedly left a very strong mark on the functioning of societies, not only in terms of purely interpersonal relations, but also in the normative sphere. Regulations in this area were characterized by great instability, unpredictability and repressiveness. The subject of this article is to assess the effectiveness of Polish pandemic regulations, both from a dogmatic-legal (constitutional) and sociological-legal perspective. The article begins with a theoretical introduction and ends with a summary.

Keywords: effectiveness of law, COVID-19, sociology of law, administrative law, constitutional law, sociology of law

JEL: K10, K23

Streszczenie

Pandemia COVID-19 niewątpliwie odcisnęła bardzo silne piętno na funkcjonowaniu społeczeństw, nie tylko w zakresie relacji czysto interpersonalnych, ale także w sferze normatywnej. Regulacje w tym zakresie charakteryzowały się dużą niestabilnością, nieprzewidywalnością i represyjnością. Tematem artykułu jest ocena skuteczności polskich regulacji dotyczących pandemii zarówno z perspektywy dogmatyczno-prawnej (konstytucyjnej), jak i socjologiczno-prawnej. Artykuł rozpoczyna się wstępem teoretycznym, a kończy się podsumowaniem.

Słowa kluczowe: skuteczność prawa, COVID-19, socjologia prawa, prawo administracyjne, prawo konstytucyjne, socjologia prawa

Introduction

There is no doubt that the COVID-19 pandemic has had a brutal impact on the functioning of societies around the world. Public authorities faced the challenge of controlling it by, in fact, completely reorganizing the functioning of social life: providing public services (education, higher education, health care, functioning of offices, etc.), running a business, and finally – limiting ordinary, everyday interpersonal activities. The legal norms created for this purpose were characterized by great instability, imprecise and *ad hoc* nature. An important problem is therefore to analyse their efficiency in the understanding of the dogmatics of public law, as well as the science of sociology of law, i.e. how they were assessed by their addressees, how they were internalized by them, and whether the effect assumed by the legislator was finally achieved also against the background of the existing body of judicial decisions in this area. The background to these considerations may also be the general principle of law and administrative procedure,

i.e. the principle of deepening trust in public authorities. Therefore, an important issue seems to be whether the administrative, information and legislative policies of public authorities actually deepened this trust, or on the contrary. The above issue will be analysed primarily from one, general perspective – efficiency of legal norms of a sanction nature, i.e. penal sanctions and administrative penalties for non-compliance with specific provisions that came into force during the pandemic.

Efficiency of law from the perspective of the achievements of the doctrine of administrative law and sociology of law

At the beginning of the considerations, a certain distinction should be introduced, important from the point of view of further research findings. If we talk about “effectiveness of administrative law”, it should be referred to the

norms belonging to this area of law, while “effectiveness in administrative law” can be talked about in the sense of the effectiveness of activities of entities of this law, i.e. primarily public administration bodies.

The very concept of “efficiency” and “effectiveness” of action as such is, of course, of great importance for the science of administrative law itself. One of the representatives of the science of Polish administrative law of the older generation, i.e. W. Dawidowicz wrote almost 50 years ago (!) that “[...] if in the state administration we see a purposeful organization established to execute the tasks of the state, if we still recognize that these tasks are of a public nature in the sense that they concern important interests of society, then in these conditions there can be no room for the view that state administration bodies can act haphazardly and that the essence of their tasks does not require efficient operation” (Dawidowicz, 1970, p. 53). We should agree with this position – public administration understood both statically and dynamically is both, a specific organizational structure, official apparatus, and a system of mutual connections, relations and interactions inside and outside public administration (functional understanding of administration as “administering”). It is therefore obvious that the efficient operation of entities forming part of public administration will somehow make life easier for itself and for all entities that enter into specific legal relations with it, because it will be easier to meet the purpose of action provided for in a given standard; regardless of whether it is the implementation of a specific individual interest (from the perspective of an entity outside public administration) or the public interest. This is, of course, an aspect of efficiency (effectiveness) “in administrative law”, the effectiveness of the activities of entities – the recipients of the norms of this law.

It is emphasized that modern administration in Poland faces many challenges, the most important of which is the constantly growing scope of its activities combined with limited financing possibilities and constantly increasing social expectations (Barańska, 2022, p. 13). Effective administration is one that achieves its goals (Nowak, 2022, p. 93); the above fully corresponds to comments of a general nature, according to which the legislator, when constructing legal norms, should assume their functionality in the process of implementing specific intentions (Nowak, 2022, p. 93).

Some terminological confusion is noticeable – of course, the notion “effectiveness” or the “principle of effectiveness of public administration activities” will cover many particular elements or terms that are to some extent synonymous, which can be collected within this concept. These will include efficiency, speed, and economy (Zimmermann, 2020, p. 154). These concepts – of a general or even vague nature – lie on the border of administrative law and other sciences: administration science, management science, organization theory, praxeology. However, since we assume that this is a legal principle (important, for example, within the framework of general, jurisdictional administrative proceedings), we should also assume that the

principle of effectiveness has its normative content of the obligation of effective and efficient operation of public administration. However, the indication that the terms mentioned above are synonymous only to some extent is intentional. In my opinion, it is more appropriate to assume that the principle of public administration effectiveness is a function of these concepts, or their resultant. Not always efficient/fast or economical or even proportional action is ultimately effective.

Of course, efficiency itself is a concept taken from the science of praxeology (Izdebski, 2009, p. 255); the efficiency of law means acting in accordance with the pattern of behaviour contained in the legal norm. The purpose of this action is to achieve what was the purpose of establishing a specific norm, i.e. strengthening or protecting a specific value, which is the axiological basis for its validity (see Pałeczki, 2003, p. 169). Assuming that we are able to distinguish the purpose of creating a legal norm, which is very difficult in the case of norms with a non-positivist origin (e.g. customary law), finding the goals of spontaneous processes can be considered teleological reasoning, i.e. logically questionable (Luhmann, 1999). The efficiency of a normative act is “all its empirically identifiable consequences” (Podgórecki, 1971, p. 457).

The operation of law depends on factors of a structural nature, related to social morphology (division of social labour), cultural and organizational, as well as other forms of social control occurring in a given society, and all these variables can be quantified by showing their interdependencies (Black, 1976). An important factor influencing the effectiveness of law is undoubtedly the dissemination of knowledge about it. Depending on how the channels for the flow of information about norms are shaped and what cognitive circumstances influence their perception, people’s behaviours and attitudes will change. However, the relationship between knowledge about the norm and acting in accordance with it may sometimes be negative. A factor that has a positive impact on the effective impact of a legal norm may be ignorance about the scale of non-compliance with it (Popitz, 1968).

Classically, according to the Polish achievements of philosophy, it should be assumed that an action is effective when it achieves the objectives for which it was undertaken and when it does it in the way that was intended (Kotarbiński, 1965, pp. 113–116). In science, the efficiency of legal norms is divided into behavioural, sociotechnical and symbolic efficiency (Kociołek-Pęksa & Stępień, 2013, p. 320). In Polish legal theory, behavioural, finitistic and socio-educational efficiency are recognised (see Wróblewski, 1980). Legal sociologists distinguish between narrower and broader efficiency (broader one – compliance of the social results of the operation of a given legal norm with the legislator’s intentions, narrower one – compliance of the conduct of the addressee of a legal norm with the pattern of conduct contained in the norm – see Borucka-Arczowa, 1967), some emphasize only the above-mentioned broader understanding of this concept (Podgórecki, 1962, p. 162 et seq.). Efficiency in the behavioural dimension

means that the behaviour of the addressees of a legal norm corresponds to its disposition in the situations indicated in the hypothesis, regardless of the further effects it produces; the source of knowledge about the purpose of the standard is the norm itself (Kociołek-Pęksa & Stępień, 2013, p. 320). An example of this type of efficiency of law is the fact that the existing ban on smoking in public places is being respected. Sociotechnical efficiency occurs when the law is an effective tool for achieving goals that go beyond simple compliance, i.e. when it leads to the achievement of the social results that led to its adoption (Kociołek-Pęksa & Stępień, 2013, p. 320)¹. Remaining in the area of the above-mentioned example regarding the smoking ban – if statistics appear that the ban has resulted in a decrease in the incidence of lung cancer, then we can say that a specific norm is effective from the point of view of socio-technical efficiency. Symbolic efficiency means that legal norms contribute to the creation of intended effects in the sphere of views, opinions, attitudes of their addressees or other people, their ideology or the values they recognize (Kociołek-Pęksa & Stępień, 2013, p. 321). Symbolic efficiency will result largely from “background knowledge”, “contextual knowledge”; so, if the smoking ban causes people to generally change their views on smoking, then we can say that the norm is also effective in the symbolic dimension.

At this point, attention should be paid to the first “crash” between administrative law and the sociology (and theory) of law, because, as already indicated, in the field of administrative law the concept of effectiveness and efficiency of law is basically treated synonymously, pointing to a greater extent of praxeological roots of the concept of efficiency. Meanwhile, following the sociology of law, it should be assumed that in the case of efficiency of law, it is about achieving a specific goal that led to the adoption of a specific norm, while in the case of effectiveness of law, it is about its optimization so that the balance of positive and negative consequences is as good as possible. In the case of a ban on smoking in public places, this ban will be effective when the balance of social utility resulting from its adoption (i.e. all material costs – tax revenues, costs of enforcing the ban, reduced income of restaurants, bars, etc.) exceeds the balance of utility from not passing the ban. Therefore, this is a separate issue from the (behavioural, sociotechnical, symbolic) efficiency of a legal norm, although, to be clear, it would be desirable for a specific legal norm to be effective in each of the above-mentioned dimensions.

The degree of efficiency of a legal norm also varies. While behavioural efficiency can be conceptualized in principle as a zero-one approach – because either a given entity complies with a given norm or not – the situation is different in the case of sociotechnical efficiency. Goals can be achieved to varying degrees, some can be achieved, others not, there may also be some side effects² such as a decrease in restaurant turnover (see the pandemic restrictions introduced due to the primacy of public health values) as a consequence, a reduction in the level of eco-

nomie development. In the case of symbolic efficiency, it is very difficult to clearly predict the existence of this type of efficiency of a legal norm; since we are considering symbolic efficiency in relation to a certain generality (society), its level will of course be varied and will depend on many factors and the ground on which a given norm will fall.

In my opinion, as a supporter of a functional, dynamic understanding of public administration, i.e. analysing it through its activity and the relationships occurring with it (within it), or even a broader approach to administration as a social phenomenon, when talking about the effectiveness/efficiency of public administration activities, it is necessary to pay special attention to one aspect. Namely, the action of public administration will be effective if a given decision or action is appropriately internalized by the addressee of the norm and the addressee of the behaviour of the public administration body resulting from this norm; only in such a situation it will be possible to talk about the 100% implementation of the administration process and its full, i.e. also sociological and legal, success. In this context, more attention is paid to the extent to which law can be an effective instrument for making social changes and whether, as part of this process, it encounters certain barriers to its effectiveness – some natural ones (resulting from the properties of the subject of regulation), other ones artificially placed in order to protect values, however, above efficiency (Stefaniuk, 2021, p. 63).

In conclusion, it should be pointed out that pandemic regulations in Polish legislation can firstly be analysed from the perspective of the effectiveness of administrative law, i.e. by assessing to what extent they actually contributed to counteracting the COVID-19 pandemic and its negative effects, also in the context of “durability” (i.e. remaining in legal transactions) of administrative acts issued on their basis, the legality of which was subsequently controlled by administrative courts and courts of law. Secondly, from the sociological and legal perspective, i.e. the reception of these regulations and their internalization by Polish society.

Effectiveness of Polish pandemic regulations from the perspective of Polish constitutional law

Pandemic regulations in Polish legislation and Polish constitutional law

As already indicated, the regulations introduced to counteract the COVID-19 epidemic significantly limited (and in some cases suspended) the ability of citizens to exercise their constitutionally guaranteed rights and freedoms. These restrictions were introduced in a short time, on a massive scale, and their scale went beyond the degree previously encountered (cf. Florczak-Wątor, 2020, pp. 5–22). The doctrine of constitutional law emphasizes that the problem from this perspective was the commonly

raised doubts regarding the legal regime within which the constitutionality of these restrictions should be assessed due to the fact that they were introduced without the use of “states of emergency” functioning in Polish legislation, having obvious constitutional roots. Such a state did not include declared states of epidemiological threat or epidemic because the Polish constitution provides for a closed list of extraordinary states, which cannot be freely supplemented by the ordinary legislator (Florczak-Wątor, 2020, pp. 5–22). At the same time, some representatives of Polish constitutional law pointed out that restrictions corresponding to states of emergency were introduced *de facto*, but not *de jure*; materially, their content corresponded to the regulations of a state of emergency, and it was also indicated that the so-called “hybrid state of emergency” (Krzemiński, 2024).

We should agree with the thesis that the emergence of the COVID-19 epidemic was undoubtedly a circumstance justifying the introduction of a state of natural disaster, and the reasons for not doing so should be sought in strictly political issues (Florczak-Wątor, 2020) – the introduction of this type of emergency would involve in the light of the provisions of the Polish Constitution (Article 228, paragraphs 6-7), even a ban on holding presidential elections at that time, which were to be held in Poland in 2020.

Undoubtedly, the basic premise for introducing a state of natural disaster is the occurrence of “a natural disaster or technical failure bearing the hallmarks of a natural disaster” and “the need to prevent the effects of such phenomena or remove these effects” (Article 232 of the Constitution). The COVID-19 epidemic may be classified as a natural disaster, which is confirmed by the content of Article 3 paragraph 1 point 2 of the Act of April 18, 2002 on the state of natural disaster, which defines a natural disaster as “an event related to the action of forces of nature, in particular [...] infectious human diseases”. It is also a natural disaster within the meaning of Article 3 paragraph 1 point 1 of this Act, because its “effects threaten the life or health of a large number of people, and assistance and protection can only be effectively undertaken using extraordinary measures, in cooperation with various authorities and institutions as well as specialized services and formations operating under uniform management.”

A separate issue from the above is the admissibility of the introduced restrictions on rights and freedoms in the light of the so-called proportionality test of these restrictions, expressed in Article 31 paragraph 3 of the Constitution, according to which restrictions on the exercise 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 for the protection of the environment, public health and morals, or the freedoms and rights of other persons. These limitations cannot affect the substance of freedoms and rights. In this context, it should be noted that in the science of constitutional law, the constitutionality of the COVID regulations was critically assessed from this perspective (Florczak-Wątor, 2020).

Firstly, referring to the type of legal act under which restrictions on rights and freedoms were introduced, it was noted that in the event of a state of emergency not being introduced, the legal structure consisting in activating, by way of a regulation, restrictions generically provided for in the act, will always constitute a violation of Article 31 paragraph 3 of the Constitution. Regardless of the negative assessment of the regulations in force until 2020, the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans, the Articles added in 2020, i.e., Article 46a and Article 46b have additionally significantly expanded the possibilities of non-statutory restriction of individual rights and freedoms. In the current legal situation, these restrictions may be introduced not only in a regulation establishing a state of epidemic threat or a state of epidemic, but also in any regulation issued while one of these states was in force, where at the same time the legislator introduced an alternative solution to the constitutional solution, which allows the government to bypass the obligation to introduce a state of emergency in a situation in which the Constitution requires its introduction. At the same time – which will also be shown on the example of jurisprudence – the restrictions introduced in the regulations issued in connection with the COVID-19 epidemic often went beyond the scope of the authorizations resulting from the Act.

The analysis of the relevant legal regulations also leads to the conclusion that the legislator has repeatedly violated the prohibition of violating the essence of constitutional freedoms and rights, in fact suspending the freedom of assembly (e.g. in the period between 25 March 2020 and 11 April 2020, a total ban on organizing gatherings, including those of up to 50 people, as well as gatherings organized as part of the activities of churches and other religious associations, as well as events, meetings and gatherings regardless of their type) and limiting freedom of movement, for example by introducing the obligation to undergo quarantine, an evacuation order at a set time from specific places, areas and facilities, an order or ban on staying in specific places and facilities and in specific areas, an order on a specific method of movement.

Regarding the requirement of “usefulness” of restrictions (proportionality in the strict sense) provided for by the legislator in the light of the provisions of the Constitution, it should be each time examined whether a given restriction is useful for achieving the intended goal, which is to protect the life and health of citizens and prevent the spread of COVID-19, and also whether it is the least burdensome among other restrictions which may also be useful to achieve this objective, and whether it takes into account all the benefits and burdens of its introduction. Again: the science indicates that in this context, many statutory and sub-statutory solutions adopted during the pandemic, e.g. in terms of the most far-reaching restrictions, i.e. a total ban on organizing meetings or a ban on the use of green areas, should be considered unconstitutional.

To conclude this thread – it is hard to blame public authorities that the coronavirus pandemic, which on the

one hand constitutes a sudden global challenge and, on the other hand, the political phenomenon known as black swan, i.e. a sudden and unforeseen factor that could influence the electoral attitudes of societies, was not easy to inscribe into the existing political and constitutional order. However, it is impossible not to notice that the legal instruments existing in the Polish constitutional law system have either been used voluntarily or have been completely disregarded. Of course, the above may provoke judgments about the political class, their level of preparation for public service, etc. However, it is difficult to resist the reflection that constitutional law, systemic law, by its nature is political – after all, it concerns the organizational shape of central public authorities and the granting/declaration of basic rights and freedoms, where the scope and degree of this protection is determined and specified by public authorities; the process of concretizing these norms in its basic dimension occurs at the political level, primarily as part of the legislative process. Therefore, the idea that the implementation of certain systemic assumptions contained in a legal act of constitutional importance will be separated from strictly political processes is fraught with a large dose of hypocrisy.

The constitution has become a tool for practicing politics (not only public policies). It is indicated that as the concept of constitution – which has more or less developed in tandem with the idea of fundamental law in the modern usage (Grimm, 2016, pp. 90–96; see also Loughlin, 2010, pp. 288–297) – becomes more and more indistinct from raw politics with its legal half obscured (Dixon & Landau, 2021, pp. 152–166), constitutionalism is veering from the normative universe towards the factual world. In the latest – and distorted – version, political constitution (or political constitutionalism) is virtually reduced to politics (Kuo, 2023; pp. S45–S64).

Assessment of the constitutionality of pandemic regulations in the light of Polish court jurisprudence

Pandemic regulations were assessed by common courts (mainly criminal) and administrative courts. In the case of the latter, the analysis included, among others, constitutional grounds for imposing administrative fines by way of a sub-statutory act (regulation).

In this context, the judgment of the Provincial Administrative Court in Warsaw of 12/01/2021, file ref. no. VII SA/Wa 1614/20 is symptomatic.³ In this judgement, the administrative court assessed the legality of the administrative decisions of the State District Sanitary Inspector (first instance body) and the State Provincial Sanitary Inspector (second instance body), imposing a fine of PLN 10,000 (approx. EUR 2,300) on a citizen participating in a public meeting, for failure to comply with the regulation's requirement to move at a distance of not less than 2 m from each other.

The administrative court, declaring the contested decisions invalid, strongly criticized these regulations. It was pointed out, that in Article 46, nor in Article 46b of the

Act, which constitutes the alleged legal basis for the Council of Ministers' issuance of the regulation of 2 May 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic, does not specify any guidelines regarding the content of the regulation, including temporary restrictions on a specific method of movement. Therefore, it was found that the regulation of the Council of Ministers of 2 May 2020 issued pursuant to Article 46a and Article 46b points 1–6 and 8–12 of the Act on preventing and combating infections and infectious diseases in humans did not meet the constitutional condition for its issuance on the basis of a statutory authorization containing guidelines on the content of the implementing act. The legislator, in the content of the above-mentioned statutory authorizations, did not include any instructions regarding the matter referred to for regulation in the challenged regulation. § 17, section 1, point 1 of the Regulation of the Council of Ministers of 2 May 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of a state, constituting the substantive legal basis for the judgement of the authorities of both instances, imposed the obligation to travel (on foot) at a distance of not less than 2 m from another person with the exceptions specified in the next points. In fact, this obligation, introduced by an implementing act to the Act, concerned the restriction of citizens' free movement by defining the conditions necessary for the admissibility not only of the stay itself, but also of the nature of movement in publicly accessible places such as roads, squares, parks, cemeteries, workplaces, public buildings, commercial and service facilities, etc.

Therefore, the Provincial Administrative Court in Warsaw indicated that on the date of the event (8 May 2020) that was the reason for imposing a financial penalty, there was no substantive legal basis of a statutory nature which would indicate that a citizen of the Republic of Poland is obliged to keep a distance of not less than 2 m from another person while traveling on foot. The entire restriction (related to preventing and combating COVID-19) is included in the regulation.

As it has already been indicated, the constitutionality of pandemic regulations was also the subject of opinions by criminal courts. In this context, it is worth paying attention to the judgment of the Supreme Court of 8 April 2021, file ref. no. II KK 96/21, relating to the issue of unconstitutionality of the regulation introducing the obligation to cover the mouth and nose.⁴

By the judgment of the district court of 26 June 2020, the citizen was found guilty of violating the legal provisions introduced in connection with the outbreak of the epidemic regarding covering the mouth and nose on 26 April 2020, while leaving the vehicle at a road check, i.e. he committed an offense provided for in Article 54 of the Act of 20 May 1971,⁵ Petty Offenses Code in conjunction with § 18 paragraph 1 point 2 item a) of the Regulation of the Council of Ministers of 19 April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic, and imposed a reprimand on

him. Although the judgment became final, it was appealed against in a special procedure by the Polish ombudsman, i.e. the Ombudsman, to the Supreme Court.

The Supreme Court noted that in accordance with Article 54 of the Code of Petty Offenses, a person who violates the order regulations on behaviour in public places issued under the authority of the Act should be liable for an offense. The quoted regulation is blank. This means that in order to decode the content of the elements of the offense, it is necessary to refer to the content of other provisions.

The court noted that § 18 section 1 point 2 letter and the Regulation of the Council of Ministers of 19 April 2020 does not meet such criteria as a regulation of a nature other than orderly nature. The aim of the regulation of the Council of Ministers of 19 April 2020 was to protect life and health that could be threatened as a result of the spread of the SARS-CoV-2 virus. This nature of the provisions of the mentioned regulation results from the scope of statutory delegation, included in the Act of 5 December 2008 on the prevention and combating of infectious diseases in humans. Article 1 of this Act clearly states that it regulates: “preventing and combating infections and infectious diseases”. At the same time, the purpose of the Act was not to define methods of ensuring public order within the meaning of Article 54 of the Petty Offenses Code. Consequently, there are no grounds to conclude that the provisions of the regulation, which only specify the content of the Act within the meaning of Article 92 of the Constitution of the Republic of Poland, are of an orderly nature. This is a necessary condition for connecting them with the content of the provision specifying the alleged offense. The Supreme Court emphasized that specifying the elements of Article 54 of the Code of Petty Offenses by taking into account the provisions of the Regulation of the Council of Ministers of 19 April 2020 is impossible already at the construction level.

The Supreme Court expressed the opinion that if it was hypothetically assumed that a secondary purpose of this executive act was also to ensure public order, the accused could not be considered the addressee of the provisions contained therein. Provision of § 18 section 1 point 2 item a) of the Regulation of the Council of Ministers of 19 April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic was issued on the basis of the statutory authorization contained in Article 46b point 4 of the Act of 5 December 2008 on the prevention and combating of infectious diseases in humans, in the version in force at the time of committing the act. This authorization allowed for the clarification of detailed rules of conduct in the event of an epidemic, including the introduction of the obligation to wear face coverings only in the case of sick people and those suspected of being sick. Only as a result of the normative change introduced by the Act of 28 October 2020 amending certain acts in connection with counteracting crisis situations related to the occurrence of COVID-19 to Article 46b of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in

humans, point 4a was added, which provided for the establishment of the obligation to use certain preventive measures and treatments also in relation to healthy people. From that moment – according to the Supreme Court – it became possible to impose specific obligations on such persons by regulation, while maintaining the principle of proportionality referred to in Article 31 of the Constitution of the Republic of Poland. The accused committed his behaviour on 26 April 2020, i.e. under the provisions of the Act on preventing and combating infectious diseases in humans in its previous version. In the circumstances of that case, it was not proven that the accused was a person who was sick or even suspected of being sick. Therefore, that person was not bound by the provisions of the regulation, if they were interpreted taking into account the scope of the statutory authorization, in accordance with the directive arising from Article 92 of the Constitution of the Republic of Poland.

Therefore, if the measure of the efficiency of pandemic regulations was their durability from the perspective of confirming their legality by court jurisprudence, it would be worth pointing out that the Polish legislator suffered quite a painful defeat in this respect. Hastily prepared regulations limiting the exercise of constitutional rights and freedoms (freedom of business activity, freedom of movement, etc.) did not pass the constitutional test of proportionality; or they did not have an adequate statutory basis and were imposed by means of an implementing act, unilaterally introduced into the legal system by an executive authority, in fact beyond parliamentary control (since it did not have to obtain the support of the parliamentary majority in this way, which was somehow bypassed), or they limited these rights in an obviously too drastic way, which was not justified also in the light of the epidemiological situation at that time. Therefore, it is difficult to say in this context that these norms were effective, even in the sociotechnical or symbolic sense, since ultimately they could not bring about the expected deterrent effect against entities that did not comply with the instructions of these norms.

Summary

The COVID-19 pandemic drastically changed the functioning of countries and societies for about 2 years, and the pandemic regulations that existed at that time often became a permanent element of the normative landscape in individual countries. Undoubtedly, there is no single, clear answer to the question asked in retrospect about the efficiency of these legal norms, which gives rise to more in-depth analyses, also from the point of view of the effectiveness of public administration (as a specific function of the principle of speed, efficiency and economics of activities of public authorities), effectiveness/efficiency within the meaning of public law (constitutional and administrative one) and sociology of law. The starting point for all

assessments should be the general assumption that the operation of public administration will be effective if a given decision or activity is internalized by the addressee of the norms and behaviour of the authority, and – importantly – if its legal efficiency is respected by other public authorities in the broad sense, e.g. courts.

Again, as a summary, it should be emphasized that when it comes to analysing the efficiency of pandemic regulations, the Polish authorities have either not been successful in many fields or have even suffered quite a large failure. Although, of course, the coronavirus pandemic was such an unexpected global event that the initial legislative and decision-making chaos was to some extent justified, when assessing from the perspective of 2024, it is impossible to avoid critical reflection on several of the presented levels. Firstly, there was appropriate instrumentation at the level of the norms of the Constitution, which would allow for the introduction of many regulations limiting constitutional rights and freedoms by way of a regulation, which, however, was disregarded for purely political reasons (the introduction of a constitutional state of emergency would not allow, from a formal and legal point of view, holding presidential elections in 2020, in which the president from the then ruling political camp fought for re-election). Failure to take this action automatically led to further problems: lack of an appropriate legal basis for the restrictions introduced, violation of the constitutional principle of proportionality, violation of the essence of constitutional rights and freedoms. The legality of the above prohibitions has indeed been negatively verified in

court decisions. So, from this perspective, it is difficult to say that these regulations were effective, since time and time again in individual cases these norms were (to put it simply) eliminated from legal transactions.

The period of the COVID-19 pandemic and the challenges faced by legislators in individual countries are undoubtedly a very attractive research field for representatives of various legal disciplines – both dogmatic and legal theoretical ones. The topic of efficiency (effectiveness) of pandemic regulations connects both groups of scientists. Regardless of the detail and breadth of the research conducted, a common reflection seems obvious: the real efficiency of legal norms depends both on their legality in the constitutional sense (i.e. whether they can actually be the basis for imposing specific obligations on citizens and depriving them of rights) and actual effectiveness, i.e. whether they will achieve the objective on which they are based, and the possible balance of benefits and losses will be positive. Any disturbances in this respect, i.e. questionable legality, questionable effectiveness, and often the political background of their introduction, affect the final assessment of the efficiency of legal norms. The above deficits can also naturally translate into another value important from the sociological point of view, namely trust – institutional towards public authorities, systemic towards the political system, or personal towards other people (Sztompka, 2020, pp. 355–356). Then it is difficult to effectively implement public policies, including the policy of building (culture of) trust (Sztompka, 2021, pp. 294–295).

Notes/Przypisy

¹ See also the literature mentioned there, including: Petrzycki, 1985 p. 153. This author wrote “about the conscious-rational use of law as a means to achieve one or another objective”.

² In the sociology of law, also referred to as unintended effects and secondary effects, i.e. “losses” reducing the productivity of a normative act, cf. Stefaniuk, 2021, pp. 55–72.

³ Judgment of the Provincial Administrative Court in Warsaw of 12/01/2021, VII SA/Wa 1614/20, LEX No. 3146581.

⁴ Judgment of the Supreme Court of 08/04/2021, II KK 96/21, LEX No. 3220091.

⁵ Journal Laws of 2023, item 2119, consolidated text as amended.

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