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## **Some Remarks on the Changes in the Polish Penal Code During the Pandemic**

**Abstract:** The study indicates the solutions introduced by the amendment to the Penal Code during the pandemic. These are the so-called anti-crisis shields - shield 1.0, shield 3.0 and shield 4.0. The primary role of these laws was to respond to the crises related to the COVID-19 epidemic. Amendments to the Penal Code were introduced in a manner inconsistent with the Constitution of the Republic of Poland and the Regulations of the Sejm of the Republic of Poland. The mere legislative change and increasing punitiveness of the criminal law system and penal policy will not significantly reduce crime. The work is of a presentative and systematising character. The assumed hypothesis boils down to the assertion that the changes to the penal code made pursuant to the so-called anti-Covid laws are irrational and introduced without the required legislative procedure. The study mainly used the formal-dogmatic method.

**Keywords:** amendment, criminal law, pandemic, penal code, penal populism

### **Introduction**

Diseases have accompanied every living organism since the beginning of its existence, as evidenced by fossils of invertebrate animals from the Carboniferous period (c. 275–220 million years ago) with traces of parasitic diseases. Importantly, with the evolution of organisms and thus the increase in diversity and size of their populations and the emergence of highly diverse species inhabiting diverse ecological

niches, new infectious diseases are emerging, with their type, severity and nature constantly varying<sup>1</sup>.

Traces of epidemics that affected the human species in the distant past are attested to by numerous archaeological discoveries in the oldest human settlements, but also by references found in civilisation relics from ancient Egypt, Greece, or Rome<sup>2</sup>. One of the oldest documented human epidemics was the “Justinian Plague” between 541 and 543, which was transmitted from Egypt to the Mediterranean. A renewed plague outbreak in Europe between 1347 and 1351 killed around 40–50% of the population. Each subsequent epidemic brought with it significant depopulation and had a negative impact on the social structure and economy of the regions affected. Significantly, there have also been many epidemics in the 21st century, for example the MERS epidemic (2015), SARS (2002–2003), H1N1 influenza (2009–2010; 6), Zika fever (2015–2016), and the current SARS-CoV-2 (2019–2021)<sup>3</sup>.

An epidemic is understood to be “(...) an outbreak of a specified disease during a specified period and in a specified area in larger than average numbers, and a pandemic as an epidemic of particularly large proportions, extending over countries or even continents”<sup>4</sup>. A. Zieliński defines an epidemic as “the occurrence in a specific period of time, in a specific population or area, of infections, health-related events, or behaviours that may have an impact on people’s health, in a number significantly higher than what could be expected on the basis of observations from previous years”<sup>5</sup>. This term is defined in a similar way by J. Jaskiewicz, A. Goździalska, and H. Kaducakova. The authors point out that the concept of an epidemic is relative and dependent on the characteristics of the specific pathogen that causes it. An epidemic can affect a population ranging from a family, a village, or a town to an entire country. A pandemic, on the other hand, is a rapidly spreading infectious disease that affects entire countries, continents, or even the world<sup>6</sup>. Taking this into account, it can be noted that the concept of a pandemic is the same as that of an epidemic, and the condition distinguishing one phenomenon from the other is the dynamics and the area of coverage of the infectious disease.

We are currently witnessing the SARS-COV-2 pandemic (COVID-19 infectious disease pandemic) from 2019. Researchers point out that “coronaviruses” have been around forever, however, it was only the 2019 outbreak that brought the concept to

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1 Z. Gliński, A. Żmuda, Epidemie i pandemie chorób zakaźnych, „Życie weterynaryjne” 2020, no. 95, p. 554.

2 J. Jaśkiewicz, A. Goździalska, H. Kaducakova, Współczesne epidemie, Cracow 2012, p. 29.

3 Z. Gliński, A. Żmuda, *op. cit.*, p. 554.

4 *Ibidem*, p. 554.

5 A. Zieliński, Co rozumiemy pod pojęciem opracowania ogniska epidemicznego, „Przegląd epidemiczny” 1999, no. 3–4, p. 257.

6 J. Jaśkiewicz, A. Goździalska, H. Kaducakova, Współczesne..., *op. cit.*, p. 28.

the attention of the international community<sup>7</sup>. On 30 January 2020, the World Health Organisation (WHO) declared a public health emergency of international concern as a result of the spreading COVID-19 outbreak. The first case of the infectious disease in Poland appeared on 4 March 2020, and on 5 March 2020 COVID-19 had already been reported in 84 countries<sup>8</sup>.

## 1. Revision of Criminal Law During the Pandemic Period

During an epidemic, a leading role is played by regulations of a sanitary nature, in Poland contained in laws or regulations. Due to the dynamic spread of the infectious disease in Poland in the period from 14 to 20 March 2020 there was a state of epidemic emergency introduced under the Regulation of the Minister of Health of 13 March 2020 *on the declaration of a state of epidemic emergency in the territory of the Republic of Poland*<sup>9</sup>. On the other hand, on 15 March 2020, in order to limit the threat, under the Regulation of the Minister of Internal Affairs and Administration of 13 March 2020 *on the reintroduction of temporary border control of persons crossing the state border constituting an internal border*<sup>10</sup> and the Regulation of the Minister of Internal Affairs and Administration of 13 March 2020 *on the temporary suspension or restriction of border traffic at certain border crossing points, a cordon sanitaire*<sup>11</sup> was introduced at the borders of the Republic of Poland to limit border traffic.

From 20 March 2020 until further notice, a state of epidemic was introduced on the territory of the Republic of Poland by virtue of the Regulation of the Minister of Health of 20 March 2020 *on the declaration of a state of epidemic on the territory of the Republic of Poland*<sup>12</sup>, as a result of which many restrictions and limitations were imposed, as well as obligatory quarantine and isolation of infected persons or those who had contact with such persons.

As mentioned above, sanitary regulations play a key role during a pandemic. In Poland, a number of changes in legislation were also made through so-called “anti-Covid” laws since the introduction – first of epidemic risk and then of epidemic status. Essentially, this legislation was about protecting the state and its citizens from

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7 A. Jarynowski, M. Wójta-Kempa, V. Belik, Percepcja “koronawirusa” w polskim Internecie do czasu potwierdzenia pierwszego przypadku zakażenia SARS-CoV-2 w Polsce, „Pielęgniarstwo i Zdrowie Publiczne” 2020, no. 10, p. 90.

8 J. Duszyński, A. Afelt, A. Ochab-Marcinek, R. Owczuk, K. Pyrc, M. Rosińska, A. Rychard, T. Smiatacz, Zrozumieć COVID-19. Opracowanie Zespołu ds. COVID-19 przy Prezesie Polskiej Akademii Nauk, PAN 2020, p. 12.

9 Dz.U. of 2020 Item 433.

10 Dz.U. of 2020 Item 434.

11 Dz.U. of 2020 Item 435.

12 Dz.U. of 2020 Item 491.

the crisis caused by the coronavirus pandemic, mainly in terms of supporting the Polish economy.

It should be noted that, somewhat “by the way”, the Penal Code Act<sup>13</sup> was amended in an accelerated manner, which, in the case of separate proceedings on criminal law provisions only, would probably not have been possible in such an “express” manner. We are talking here about three laws:

1. Act of 31 March 2020 on 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<sup>14</sup> - the so-called anti-crisis shield 1.0;
2. Act of 14 May 2020 on amending certain acts in respect of protective measures in connection with the spread of the SARS-CoV-2 virus<sup>15</sup> - the so-called anti-crisis shield 3.0;
3. Act of 19 June 2020 on interest subsidies for bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for the approval of an arrangement in connection with the occurrence of COVID-19<sup>16</sup> - the so-called anti-crisis shield 4.0.

## **2. Act – “anti-crisis shield 1.0” of 31 March 2020**

The Act of 31 March 2020 on 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 amended provisions of as many as 62 laws. The Act in Article 13 amended the existing provisions of Article 161 and Article 190a of the Penal Code. Under the Act, the limits of the threat of punishment for the offence of exposure to infection with a disease have been changed (Article 161 of the Penal Code), and the attributes of the offence of stalking and impersonation have been broadened, as well as the limits of the threat of punishment have been increased (Article 190a).

These changes are in force since 31.3.2020. Thus, after the changes, anyone who, knowing that they are infected with HIV, directly exposes another person to such infection, is punishable by imprisonment from 6 months to 8 years (before the changes from one month to three years). In turn, anyone who, knowing that they are infected with a venereal or infectious disease, a serious incurable or life-threatening disease, directly exposes another person to infection with such a disease, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5

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13 Act of 6 June 1997 (Dz.U. consolidated text of 2020 Item 1444).

14 Dz.U. of 2020 Item 568.

15 Dz.U. of 2020 Item 875.

16 Dz.U. of 2020 Item 1086.

years (prior to the amendment, this was a fine, restriction of liberty or imprisonment for up to one year, giving the court a broader choice in individualising the legal penal response to a crime and treating imprisonment as the *ultima ratio*). Article 161 of the Penal Code § 3 introduces a completely new type of offence consisting in the exposure to infection with a venereal or infectious disease, a serious incurable disease or life-threatening disease of a large number of persons and provides for a penalty of imprisonment from one to ten years. This new type of offence of exposure to contagion to a number of persons is prosecuted by public prosecution, while the other two (Article 161 §1 and §2), as before, are prosecuted at the request of the victim.

At this point, it would be worth pointing out the doubt about the relation to existing Article 165 of the Penal Code, as the two provisions will now compete to assess identical facts. This is a typical example of over-regulation - the so-called statutory *superfluum*. Such procedures may cause serious problems with the qualification of the conduct in question in judicial practice and consequently discrepancies in case law. The rare formula of Article 161 of the Penal Code (in its old form) had even previously raised some doubts in the context of the content of Article 160 of the Penal Code.

In Article 190a §1 of the Penal Code the description of statutory attributes of the crime of stalking has been expanded by adding new alternative attributes of the effect - the feeling of humiliation or torment and the limits of statutory threat for this act have been made more severe. Thus, at present, anyone who by persistent harassment of another person or a person closest to that person arouses in that person, justified by circumstances, a feeling of threat, humiliation, or anguish, or significantly violates his or her privacy, is subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years (before the amendment, between one month and three years). This provision could be crucial in the fight against hate speech in the online space, which poses a huge challenge to the modern legislator. However, we should be in favour of creating a separate type of prohibited act and placing it in a relevant chapter of the special part of the Penal Code, depending on the shaping of the elements of the prohibited act. First of all, one could consider criminalising such behaviour in Chapter XXVII "Crimes against life and health", as the behaviour criminalised in the new Article 190a of the Penal Code resembles the offence under Article 216 of the Penal Code, *i.e.*, insult<sup>17</sup>. New elements have also been introduced into the offence of identity theft, extending protection to data by which a person is publicly identified. Thus, anyone who, by impersonating another person, uses that person's image, other personal data, or other data by means of which that person is publicly identified, with the aim of inflicting a pecuniary or personal damage, shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years (before

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17 M. Budyn-Kulik, Nowe znamiona nękania z art. 190a §1 Kodeksu Karnego, „Palestra” 2020, no. 9, p. 23.

the amendment between one month and three years). If the consequence of the act specified in §1 (stalking) or §2 (identity theft) is that the aggrieved person attempts suicide, the perpetrator shall be punished with imprisonment from 2 to 12 years (before the amendment from one year to ten years). No change has been made to the mode of prosecution, which means that prosecution of stalking and identity theft continues to take place at the request of the victim, while the victim's attempt on his or her own life as a consequence of these behaviours still results in a change to the mode of prosecution, with prosecution in such cases taking place *ex officio*.

In addition, the Act on the Code of Petty Offences<sup>18</sup> has been supplemented with Article 65a, under which anyone who intentionally, without complying with specific behavioural orders issued by a Police or Border Guard officer on the basis of law, prevents or significantly obstructs the performance of official duties shall be subject to a penalty of arrest, deprivation of liberty, or a fine. This change serves primarily to ensure the proper conduct of interventions undertaken by officers of the said formations. It aims to implement the right of Police and Border Guard officers to give orders, which is explicitly formulated in the provisions of Article 15(1)(10) of the Act on the Police<sup>19</sup> and Article 11(1)(14) of the Act on the Border Guard<sup>20</sup> added by the Act on amending the Act on the Police and certain other acts.

### **3. Act – “anti-crisis shield 3.0” of 14 May 2020**

The Act of 14 May 2020, on amending certain acts in respect of protective measures in connection with the spread of the SARS-CoV-2 virus has amended dozens of laws. The Act in Article 8 amended the existing provision of Article 304 of the Penal Code. The amendment is effective from 30.5.2020. Under the Act, two new prohibited acts have been criminalised. Criminal liability has been introduced for charging a borrower or a lender, in exchange for granting a loan or credit, benefits (interest or other costs) at least twice the maximum amounts specified in the law (Article 304 § 2 and 3 of the Criminal Code). Thus, under Article 304 §2 of the Penal Code, anyone who, in return for a monetary benefit provided to a natural person under a loan agreement, credit agreement, or any other agreement the subject of which is the provision of such a benefit with the obligation to repay it, not directly connected with that person's business or professional activity, demands from that person the payment of costs other than interest in an amount at least twice as high as the maximum amount of such costs specified by the law, is subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. Pursuant to Article 304 §3 of the Penal Code, the same penalty shall be imposed on anyone who,

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18 Act of 20 May 1971 Code of Petty Offences (Dz.U. of 2021 Item 281).

19 Act of 6 April 1990 on the Police (Dz.U. of 2020 Item 360).

20 Act of 12 October 1990 on the Border Guard (Dz.U. of 2020 Item 305).

in connection with the provision of a pecuniary benefit to a natural person under a loan agreement, credit agreement, or any other agreement the subject of which is the provision of a pecuniary benefit with the obligation to repay it, not directly related to that person's business or professional activity, demands from that person the payment of interest in an amount at least twice as high as the maximum interest rate or the maximum interest for a delay, as defined by the law.

The extensive explanatory memorandum to the bill indicates, *inter alia*, that the current provision of Article 304 of the Criminal Code covers a very narrow range of behaviour. It is clearly unsuited to the prosecution of typical modern usury offences, *i.e.*, payday loans, as a result of which the victims sometimes lose everything they have acquired through failure to repay a relatively small loan on time. It is most questionable to offer usury loans to elderly or infirm people whose financial situation is difficult.<sup>21</sup>

#### 4. Act – “anti-crisis shield 4.0” of 19 June 2020

Act of 19 June 2020 on interest subsidies for bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for the approval of an arrangement in connection with the occurrence of COVID-19 in Article 38 it introduced a number of changes to the Penal Code - in the general and specific parts. The changes are effective from 24.6.2020.

As M. Małecki rightly points out, the amendment to the Penal Code has been hidden in the thicket of provisions on a completely different subject, as the amendment to the Penal Code is not related to interest subsidies for bank loans, as indicated by the title of the Act<sup>22</sup>.

The specific part introduces Article 278a of the Penal Code, which criminalises a new aggravated theft offence, previously unknown to the 1997 Penal Code<sup>23</sup>. The Ministry of Justice website indicates that there has been an increase in theft during the epidemic. It stressed that: “Stealing from a shopkeeper who can barely survive at a time of pandemic should be treated as if someone were stealing from flood victims. And theft during a natural disaster has for years been treated in criminal law scholarship as examples of exceptional audacity that deserve particular condemnation<sup>24</sup>”. It should be noted, however, that attempts to introduce this type

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21 <https://sip.lex.pl/#/act-project/102869776?unitId=justification> (6.06.2021).

22 M. Małecki, Rządy prawa czy rządy ustaw (karnych)? Nielegalne prawo w czasie epidemii, <https://www.dogmatykarnisty.pl/2021/05/nielegalne-prawo-w-czasie-epidemii/> (6.06.2021).

23 See widely on this subject: T. Iwanek, Kradzież szczególnie zuchwała – perspektywa historyczna i uwagi *de lege lata*, „Prokuratura i Prawo” 2021, no. 1, p. 75–97.

24 <https://www.gov.pl/web/sprawiedliwosc/tarcza-sprawiedliwosci---kary-za-wlamania-na-e-lekcje-ochrona-przedsiębiorców-mniej-spraw-w-sadach-i-procesy-on-line> (7.06.2021).

of theft had already been pushed for several years (in late 2018 and early 2019), and the outbreak of the pandemic only provided a convenient excuse to implement it. According to the new provision, anyone who commits especially aggravated theft shall be punished with imprisonment from 6 months to 8 years. If exceptionally aggravated theft is committed to the prejudice of a next of kin, prosecution shall take place at the request of the victim. In Article 115 §9a of the Penal Code, the legislator has defined exceptionally aggravated theft. It has explained that exceptionally aggravated theft is:

- 1) theft, where the perpetrator by his/her conduct shows a disrespectful or defiant attitude towards the possessor of the property or towards other persons, or uses violence other than violence against the person with the aim of taking possession of the property;
- 2) theft of movable property situated either directly on the person or in the clothing worn by the person or carried or moved by the person under conditions of direct contact or contained in objects carried or moved under such conditions.

According to the intentions of the drafters, the new type of exceptionally aggravated theft is dedicated to cases of shoplifting, while the second part of the definition determines that the new offence is also intended to combat pickpocketing. The provision is an example of the return to legislation of a “communist relic” known from the previous Penal Code of 1969. It is rightly criticised in the doctrine for the “vagueness” of the criteria, which must be assessed by the court each time and may create room for very different interpretations. It suffices to point out the ambiguities surrounding the interpretation of expressions such as, for example, “disrespectful attitude”, “defiant attitude”. Furthermore, the penalty of up to 8 years in prison for exceptionally aggravated theft is clearly disproportionate, and inconsistent with other criminal law provisions aimed at protecting property.

It is also worth pointing out that the principle of a wobbler, *i.e.*, that a prohibited act can be punished as either a crime or a petty offence, does not apply here. Regardless of the value of the movable property which constitutes the object of the theft, aggravated theft is always a criminal offence punishable under the Penal Code and not the Code of Petty Offences, so pickpocketing of even a few zlotys *de lege lata* constitutes a criminal offence and not a petty offence. The same applies to petty shoplifting, which usually involves food items that represent little material value. It is also impossible not to notice that this setting of the limits of the statutory threat for the conduct in question also leads to a serious intensification of the penalty for the continuing act. This is unfortunately a typical manifestation of penal populism.



A comparison of the historical regulation of Article 208 of the Penal Code of 1969<sup>25</sup> and the currently in force Article 278a of the Penal Code shows far-reaching similarities between the classifications of exceptionally aggravated theft, but also reveals a number of significant differences. It appears that the modern regulation expands the understanding of the elements of exceptionally aggravated theft to include states that previously did not fall within its scope, which may mean that this provision will be used more frequently in practice.<sup>26</sup>

## Final conclusions

1. Almost every anti-crisis shield designed to combat the effects of the pandemic has included provisions amending the Penal Code, and there are certainly at least a dozen such amendments made by the Ministry of Justice. Most of them are not related to the epidemic and these changes will continue to apply after the epidemic is over.

2. The Act – “anti-crisis shield 1.0” of 31 March 2020, introduced amendments to Article 161 of the Penal Code and Article 190a of the Penal Code. Exposing a person to contagion, Article 161 of the Penal Code, has been subjected to more severe penalties, and a new type of crime has been introduced, consisting of exposure to infection with a venereal or infectious disease, a serious incurable disease or a life-threatening disease of a large number of persons. This type of crime that is particularly dangerous in times of pandemics. The new type of prohibited act is prosecuted by public indictment, while the other two (Article 161 §1 and §2), as before, are prosecuted at the request of the victim. Article 190a of the Penal Code extends the elements of the offence of stalking to include a feeling of humiliation or anguish on the part of the victim. New elements have also been introduced into the offence of identity theft, extending protection to data by which a person is publicly identified. In both cases - stalking and identity theft - there are also clearly more severe limits to the statutory threat of imprisonment.

3. The Act – “anti-crisis shield 3.0” of 14 May 2020, amended Article 304 of the Penal Code. Criminal liability has been introduced for charging a borrower or a lender, in exchange for granting a loan or credit, benefits (interest or other costs) at least twice the maximum amounts specified in the law (Article 304 § 2 and 3 of the Criminal Code). Criminalisation in this area is a response to the usurious practices of providers of loans, particularly for short periods, known as payday loans. Without questioning the need to protect victims of this type of crime, it should be noted that the expansion of criminalisation in this area should be carried out through a legislative procedure conducted in a balanced manner, preceded by a series of

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25 Act of 19 April 1969 Penal Code (Dz.U. of 1969 No 13, item 94 as amended).

26 T. Iwanek, *op. cit.*, p. 95.

analyses and discussions, and not somewhat in the shadow of, and on the occasion of, the “Anti-Covid Act”, which in principle is intended to respond to immediate problems associated with the pandemic crisis. Payday loans, , short term loans with high interest rates, are in fact not a “pandemic-derived product”, but have been present for Poles for a good few years now.

4. The Act – “anti-crisis shield 4.0” of 19 June 2020 introduced amendments to general, and specific, parts of the Penal Code. A new aggravated theft offence has been introduced, namely exceptionally aggravated theft in two varieties (Article 278a of the Penal Code). This is a return to “backward” legislation, to the construction of “exceptional audacity”, which has been criticised for years, and which is a completely imprecise and extremely discretionary category that cannot be reconciled with the principles of definiteness of criminal law. For some unknown reason, the legislator decided that one of the ways to combat the coronavirus epidemic should be an amendment to the Penal Code, under which a new offence of exceptionally aggravated theft was introduced<sup>27</sup>. This type of theft was known in the times of the People’s Republic of Poland.

5. In a democratic state governed by the rule of law, the existence of a “rational legislator” is presumed, assuming that the legislator drafts laws in accordance with the rules of legislative technique and uses the language in which the laws are written in a correct manner.<sup>28</sup> The will of the legislator, treated as a certain historical fact, is of great importance in the case of functional interpretation in static (historical) terms. For this purpose, for example, verbatim reports of meetings of the chambers of parliament, or parliamentary committees, which drafted the bill or explanatory memoranda to the bill are used.<sup>29</sup> In some of the justifications for the changes introduced, it is impossible to find broader arguments in favour of the amendments.

6. When considering the need to create criminal law regulations, especially those criminalising certain behaviour, it is necessary to cite the position of A. J. Szwarc. According to A. J. Szwarc, the law in this area should be created with respect for the supplementary role of criminal law and treating criminal liability as *ultima ratio*, as it is not infrequently sufficient to reach for instruments provided for on the grounds of other branches of law, , administrative law. Indeed, criminal law responses should only be resorted to, when necessary, when other measures fail or are insufficient, abandoning the naive belief in the omnipotence of the law, in this case criminal law. Potential orders and prohibitions criminalised under threatening conditions should be introduced with a high degree of caution, given that - when interfering with certain protected values and freedoms - they require a prior balancing with

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27 J. Kluza, *Kradzież szczególnie zuchwała* (art. 278 a §1 kk), *Nowa Kodyfikacja Prawa Karnego*, Wrocław 2020, no. 4019, v. LVIII, p. 41.

28 A. Jamróz (ed.), *Wstęp do prawoznawstwa*, Białystok 2007, p. 129.

29 *Ibidem*, p. 132.

constitutionally protected values. The seriousness of this problem is accentuated when legal instruments of this kind sometimes subsequently become permanent and durable regulations, which continue to apply even after the threats for which they were created have been contained.<sup>30</sup>

7. While the introduction of a new type of exposure to infection with a serious incurable disease or a disease which poses a real threat to the lives of many people, especially in times of a pandemic, should be assessed positively (although it should be borne in mind that the toughening of the provisions of Article 161 of the Penal Code outside the state of an epidemic will include cases of exposure to influenza or other seasonal infectious diseases), the remaining amendments are not clearly and convincingly justified. The hasty manner in which they are being introduced, in particular, is by no means acceptable. Such treatment of the codes is incompatible with the constitution and the Regulations of the Sejm, which describe a special procedure for passing the codes. According to the constitution, government bills on code amendments cannot be considered under an urgent procedure (Article 121)<sup>31</sup>. Article 89 of the Sejm's Regulations provides for a special procedure for passing code acts<sup>32</sup>.

8. Increasing criminal sanctions for individual crimes does not deserve approval, as it serves penal populism and makes the system of criminal reaction too harsh. Imprisonment is becoming the main instrument of response to crime, instead of being the *ultima ratio* measure. Punishment, after all, is supposed to be inevitable, not unduly harsh. Legislative change and increasing the punitiveness of the criminal law system and criminal policy alone will not have a significant impact on reducing crime.

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30 A.J. Szwarc, Prawne wyzwania wobec prognozowanych zagrożeń, unpublished materials preparing a conference at the Poznań School of Banking, used by permission of Prof. J. Szwarc. A.J. Szwarc, held by the Author.

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