

## HEALTHCARE AS THE STATE'S RESPONSIBILITY AND FREEDOM OF CONSCIENCE AND BELIEF DURING THE FIRST STAGE OF THE PANDEMIC

Dr. Dawid Kostecki

The John Paul II Catholic University of Lublin, Poland  
e-mail: kostecki.dawid@gmail.com; <https://orcid.org/0000-0002-8132-997X>

**Abstract.** Some time has passed since the outbreak of the COVID-19 epidemic, which affords an opportunity to reflect on the condition of the law-making process in Poland. The article attempts to assess the legislation made during the first stage of the epidemic, with special emphasis on restrictions pertaining to the freedom of conscience and belief. The procedure of circumscribing basic human rights and freedoms is discussed in detail, pointing out the necessity to restrict the said freedoms only through a legislative act. The text also addresses sanctions levied on citizens for their failure to comply with epidemic regulations. By sharing specific examples, the author presents an array of behaviours that seem difficult to justify from the perspective of the formal requirements of law-making. Extraordinary conditions in which the state operated at that time only partially justify the absence of proper legal mechanisms. For this reason, it seems imperative to reflect on how to design a proper response to similar threats in the future. It should enable an even distribution of restrictions of civil rights in extreme circumstances.

**Keywords:** COVID-19 restrictions; proper legislation; human rights; freedom of conscience and belief; theory of law

### INTRODUCTION

The influence of the pandemic on the law has been a widely debated issue, not only within the theory and philosophy of law but also from the perspective of individual legal dogmas. One of the key issues in this respect is the state's interference in citizens' civil rights during the COVID-19 pandemic. The acceptability of imposing restrictions on one's human and civil rights constituted a crucial element of public debate among political decision-makers, doctors, scientists, and ordinary citizens. It would be no exaggeration to claim that within the last three years the pandemic has been an overarching discursive subject *sensu largissimo*. To avoid formulating conclusions *prima facie*, it seems legitimate to root the discussion in the context of a specific stage of the pandemic and a specific basic right. This article concentrates on regulations pertaining to the freedom of conscience and belief during

the first stage of the pandemic (March-April 2021), as discussing the totality of pandemic-related legislation would fall beyond the scope of this article. What is more, reflecting on the initial legislative reaction to the pandemic will make it possible to pinpoint the character, legitimacy or lack thereof, as well as the proportionality or disproportionality of limiting a certain civil right. Finally, an *ex post* analysis will enable an assessment of the strategy of legal regulations in the most pivotal moment of the pandemic, that is immediately after the first case of SARS-CoV2 infection was diagnosed in Poland. The time that has passed since the outbreak of the pandemic lets one objectively evaluate the strategy of legal regulation as the scale of the pandemic as well as modifications and efficacy of the response are now well known facts.

The article has an interdisciplinary character, positioned as it is between religious law and human rights. One more component of the present reflection is a theoretical philosophical-legal approach that offers a sort of a bird's eye view of law in action. A juxtaposition of two values – that of health-care and freedom of conscience and belief – enables an argumentative discourse. An axiological reflection will constitute an opportunity to look more widely at law during the pandemic, not only from the ontological but also epistemological perspective. The article makes use of the formal-dogmatic method, explaining the literal meaning of values under study. The functional and systemic methods have been deployed to better understand the position of these values in the legal system. A question of *de lege ferenda* kind would be how the legislative should respond to similar dangers in the future and what arguments should be taken into consideration in the process of circumscribing civil rights. These reflections constitute a mere starting point for a much broader scholarly exploration.

## 1. DEFINITION OF HEALTH

Health is a strictly personal quality, belonging to every living person, while at the same time constituting a socially appreciated value. Health is closely connected with a person, their body and physical integrity, a violation or deprivation of which will result in deviation from the norm assumed by the law [Tabaszewski 2016, 29-30]. Health is then a permanent and immanent feature and is determined by internal and external variables, both dependent and independent [ibid., 29-30].<sup>1</sup> The World Health Organization defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>2</sup>

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<sup>1</sup> See Thorz 2010, 26.

<sup>2</sup> See <https://www.who.int/about/governance/constitution> [accessed: 23.12.2022].

Essentially, two approaches need to be distinguished that are of fundamentally different qualities, namely the dogmatic-legal and the socio-medical ones. The former understands healthcare as an attempt to guarantee a specific right for an individual, namely putting to use all the means at their disposal to retain their health as a personal good and, by inference, to keep their body in the same state, taking into account their age and general psycho-physical condition [Motyka 2013, 177]. In accord with the socio-medical approach, healthcare is perceived as part of the state's social policy encompassing all the social activities to prevent and cure illnesses, to keep individuals in good health, including by creating organizational conditions conducive to individuals' realization of their rights and, as a result, to the improvement of health of the whole population [Tabaszewski 2016, 30-31].

Healthcare encompasses "various aspects of the health of an individual and community and seems a continuum of sorts, ranging from activities supporting and promoting health to solving difficulties and problems with respect to illness, infirmity, and disability.<sup>3</sup> In this sense, healthcare should be treated as one of the policies of the state. It denotes the totality of medical and extra-medical activity performed by the state in all the sectors of socio-economic life" [ibid., 32]. Healthcare needs to be "legally regulated, whereby priority is given to meeting diverse interests and to clarity in terms of principles and consequences of the selected model (that is the social, economic, and political effects of the passed bill)."<sup>4</sup> It is the position of a citizen's right to healthcare that is a litmus paper for the state's character as either a liberal or a welfare state.

The freedom of conscience and belief is a sphere of an individual's life that the state chooses not to interfere in. The sphere is demarcated by legislative acts and international agreements. It is assumed in scholarship that the freedom of conscience and belief encompasses the freedom to hold religious convictions and to accept or reject a religious denomination as one sees fit. It likewise encompasses the freedom to express one's religious convictions alone or with others, in public or in private. Said expression can take the form of worship, prayer, religious practices, or preaching [Sobczak and Gołda-Sobczak 2012, 28].

Terminological consistency is indispensable to formulating a lucid scholarly reflection. For the sake of this article, the expression "freedom of conscience and belief" seems the most appropriate even though normative acts of many states as well as international legislative acts may also include the following expressions: "freedom of religion," "freedom of religious

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<sup>3</sup> Cf. Poździuch 1996, 52.

<sup>4</sup> Cf. Skwarzyński 2010, 82.

beliefs,” “freedom of worship,” “freedom of thought and convictions,” “freedom of conscience and religion,” “freedom to accept and preach religious, areligious, and antireligious ideas and doctrines.”<sup>5</sup> This terminological plurality stems from a long-lasting historical and philosophical process at the heart of freedom of conscience and belief.

## 2. FREEDOM OF CONSCIENCE AND BELIEF

At odds with a certain tradition, the Constitution of the Republic of Poland employs in Article 53(1) the term “freedom of conscience and religion” [“wolność sumienia i religii”], deviating from the expression “freedom of conscience and belief” [“wolność sumienia i wyznania”] deployed in Article 111 of the Constitution of 17 March 1921<sup>6</sup> and rooted in literature [Sobczak and Gołda-Sobczak 2012, 28-29]. It is not clear why the currently operative Constitution uses the term “freedom of conscience and religion” rather than that of “freedom of conscience and belief.”

Scholars assume that this change in terminology stems from the Constitution’s espousal of Catholic terminology deployed in *Dignitas splendor*, the Second Vatican Council’s declaration on religious freedom [Winiarczyk-Kossakowska 2015, 27 onwards]. Krukowski argues, in turn, that that the expression “freedom of religion” has been borrowed from international documents on basic human rights and freedoms affirming the natural law [Krukowski 2000a, 77]. The English word “religion” may be translated into Polish both as “religia” [religion] and as “wyznanie” [belief], for which reason Krukowski’s argument is not a sufficient explanation of the departure from the expression “freedom of conscience and belief.” As Misztal sees it, the expression “freedom of conscience and religion” may imply that the former is the province of non-believers, while the latter – of believers. He emphasizes the fact that “freedom of conscience” presupposes atheism without ruling out “freedom of conscience” among believers, while “freedom of belief” pertains only to those who believe in God [Misztal 2000, 211].

Skrzydło seems to be of a similar opinion, claiming that “freedom of conscience” signifies an ability to choose a viewpoint other than a religious one and thus pertains to non-believers [Skrzydło 2000, 53]. It needs to be added that the Constitution of the Republic of Poland from 23 April 1935<sup>7</sup> paid little attention to the problem of freedom of conscience and belief. In Article 5(2), it posits that “the state provides its citizens with an ability to develop their personal values and safeguards freedom of conscience, expression,

<sup>5</sup> See Piechowiak 1996, 7-21; Pyclik 2002, 435-62; Safjan 2003, 43-73.

<sup>6</sup> See <http://libr.sejm.gov.pl/tek01/txt/kpol/e1921.html> [accessed: 23.12.2022].

<sup>7</sup> See <http://libr.sejm.gov.pl/tek01/txt/kpol/e1935.html> [accessed: 23.12.2022].

and assembly.”<sup>8</sup> The Constitution of the People's Republic of Poland from 22 July 1952<sup>9</sup> deploys in Article 70 the expression “freedom of conscience and belief to all citizens” in a very synthetic way, accentuating at the same time lack of compulsion to participate in religious activities.

The departure from the expression “freedom of conscience and belief” is sometimes understood as a sign of shift from the 1952 Constitution's treatment of freedom of conscience and belief as a right that can be licensed by the state. Such an interpretation is espoused by Mezglewski, Misztal, and Stanisiz [Mezglewski, Misztal, and Stanisiz 2006, 62].

Freedom of belief, or freedom of religion as others would have it, is composed of three elements, or three other “freedoms”: that of thought, conscience, and belief [Warchałowski 2004, 77]. It is generally assumed that freedom of conscience encompasses an individual's right to freely choose, shape, and change their opinions and convictions in matters of religion. Freedom of belief is in turn typically conceived of as an individual's right to express and manifest their religious opinions and convictions, as an addition to and concretization of freedom of conscience [Sobczak and Gołda-Sobczak 2012, 34].

It should be noted, however, that the above freedoms constitute a compromise “accepted by major drafters of the constitution” as unlikely to generate conflict [Krukowski 2000b, 101]. The 1997 Constitution<sup>10</sup> adopted “a method of dispersion with respect to belief.”<sup>11</sup> Internally speaking, freedom of religion is freedom of conscience, that is a human being's ability to make a moral choice in accord with the mandate of their own conscience. It also incorporates an individual's capability of knowing the truth and an obligation to accept it as well as to act in accord with it. In its external aspect, freedom of religion encompasses one's freedom to manifest their convictions in their private and public life as well as freedom from external compulsion in manifestation of their religious beliefs.

In accord with Article 31(3) of the Polish Constitution – termed a general limitation clause – it is possible to restrict individuals' rights and freedoms only when certain formal and material conditions are met that are determined by the constitutional legislator [Olszówka and Dydą 2020, 445-46]. It is made clear that such restrictions can only be introduced through a legislative act, which rules out the possibility to regulate such matter in any other way, for example through ordinances (“test one”).<sup>12</sup> It is thus beyond

<sup>8</sup> Cf. Serzhanova and Tuora-Schwiarskott 2018, 306.

<sup>9</sup> See <http://libr.sejm.gov.pl/tek01/txt/kpol/e1976.html> [accessed: 23.12.2022].

<sup>10</sup> See <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed: 23.12.2022].

<sup>11</sup> Cf. Sobczak and Gołda-Sobczak 2012, 39.

<sup>12</sup> Judgment of the Polish Constitutional Tribunal of 25 July 2006, ref. no. P 24/05. OTK ZU 7A/2006, item 87, par. III.2.

any doubt that in the current Polish constitutional system it is unacceptable to restrict anybody's rights and freedoms without a univocal legislative act [ibid., 446].

The complete list of material conditions is given, which means that any restriction of a constitutionally guaranteed right or freedom needs to have at least one goal out of these enumerated in Article 31(3) of the Constitution, such as protection of health or public morality. An assessment of a bill restricting a constitutional freedom should not analyze individual cases (or *status quo*) in which certain values (may) collide with one another but rather should come down to an analysis of the law which would make it possible to unequivocally point out the values at odds.<sup>13</sup> In this case, the formal-dogmatic method is sufficient and there is no need to focus on juridical precedent with respect to measuring values, even though the latter may be useful in legitimizing the law-makers' resolutions.<sup>14</sup>

When it comes to restricting civil rights and liberties, it needs to be borne in mind that belief in the validity of actions undertaken by the legislative authorities is in itself insufficient, even if it serves the health of the whole population. In a democratic system, any restriction needs to be inevitable and it may not lead to complete deprivation of constitutional rights and freedoms ("test two").

The law's status of an act – the formal requirement ("test one") – and introducing a restriction so as to serve public safety or order, protect the environment, health and public opinion, or to safeguard freedoms and rights of others ("test two") are mere prerequisites for the so-called "test three." In this respect, the Constitutional Tribunal is of help, stipulating that for the state to restrict citizens' rights and freedoms, positive answers must be given to the following three questions:

- 1) is the legal regulation introduced able to achieve its goals (the so-called usefulness);
- 2) is the regulation necessary to protect public interest (the material conditions enumerated above) which it is related to (the so-called inevitability);
- 3) are the effects of the introduced regulation proportional to the burden it imposes on the citizen (the so-called proportionality *sensu stricto*).<sup>15</sup>

A negative answer to any of these questions of "test three" qualifies the regulation as faulty and unconstitutional. In the act under study here

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<sup>13</sup> Judgment of the Polish Constitutional Tribunal of 7 October 2015, ref. no. K 12/14, OTK ZU 9A/2015, No. 9, item 143, par. III.5.3.3.

<sup>14</sup> See Hubmann 1982, 301-15; Alexy 2010; Dworkin 2013; Peczenik 2010, 7-37; Potrzyszcz 2015, 107-22.

<sup>15</sup> Judgment of the Polish Constitutional Tribunal of 26 April 1995, ref. no. K 11/94. OTK ZU 12/1995, No. 1, item 12.

the constitutional legislator imposes one more obligatory condition strictly related to proportionality *sensu stricto*: the restrictions may not violate the essence of a given freedom, or its core, without which said freedom or law cannot exist and which at the same time determines its identity [Olszówka and Dyda 2020, 103]. As the Constitutional Tribunal's decisions evince, "the essence of law and freedom is based on the principle that within a specific right or freedom certain basic elements may be distinguished (root or core), without which said right or freedom will not be able to exist at all, and additional elements (areola) that may be restricted or modified in various ways without jeopardizing the identity of a given right or freedom."<sup>16</sup>

### 3. RESTRICTIONS OF THE FREEDOM OF CONSCIENCE AND BELIEF IN THE FIRST STAGE OF THE PANDEMIC

The general limitation clause is commonly used with respect to all the rights and freedoms guaranteed by the Constitution. This notwithstanding, the constitutional legislator identified specific regulations to protect rights and freedoms. One of these is Article 53(5) of the Constitution, which stipulates that one's freedom to express their beliefs may only be restricted through an act of the Parliament and only when it is necessary to protect the state's security, public order, health, morality, or the rights and freedoms of other people. The Constitutional Tribunal traditionally mentions freedom of conscience alongside freedom of belief, while the Article 53(1) of the Constitution speaks of freedom of religion. All of the above occupy a special place among a human being's rights and freedoms.

According to the Act from 5 December 2008 on countering and combating infections and infectious diseases in people,<sup>17</sup> a state of epidemic threat signifies "a legal situation announced within a given area as a reaction to the risk of epidemic so as to undertake preventive measures defined in the act," while the state of epidemic denotes "a legal situation announced within a given area as a response to the outbreak of the epidemic so as to undertake counter-epidemic and preventive actions defined in the act to minimize the outcome of the epidemic."

On the basis of these legal regulations, Minister of Health issued an ordinance announcing a state of epidemic threat within the Republic of Poland

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<sup>16</sup> Judgment of the Polish Constitutional Tribunal of 25 May 1999, SK 9/98, Journal of Laws No. 49, item 498; see Niżnik-Mucha 2014.

<sup>17</sup> Act of 5 December 2008 on countering and combating infections and infectious diseases in people, Journal of Laws of 2021, item 2069, 2120, as amended, Article 2(23), Article 2(22).

on 13 March 2020,<sup>18</sup> in accord with which religious worship in public was restricted, including in buildings and other places of religious worship, by imposing the limit of 50 participants, clergy included. This restriction was sustained in Minister of Health's ordinance from 20 March 2020 announcing the state of epidemic within the Republic of Poland.<sup>19</sup> The situation was drastically changed by the amendment to the ordinance from 24 March 2020,<sup>20</sup> which decreased the number of participants in religious worship to 5 persons, excluding the clergy or, for funerals, employees of the funeral home, for the period of 24 March – 11 April 2020.

In practice, lay believers were not able to participate in liturgy during Easter celebrations (until Easter Saturday), which constitutes the most important period for all Christian churches and communities deriving from the Latin tradition. These limitations were sustained by the ordinance of the Council of Ministers from 31 March 2020 introducing restrictions, orders, and prohibitions due to the state of epidemic,<sup>21</sup> and were later extended to 20 April 2020.

There is no doubt that these restrictions of religious worship were meant to protect public health. What is more, they protected the rights and freedoms of other people, including their right to live (Article 38 of the Constitution) and the right to protection of health (Article 68 of the Constitution), as well as public order, which could have been endangered by social unrest related to a substantial increase in the number of cases and casualties. That was the *ratio legis* behind the above mentioned legal regulations.

On the other hand, it needs to be emphasized that the Constitution does not entitle Minister of Health, any other Minister, or the Council of Ministers to restrict freedom of religion due to the state of epidemic threat or epidemic, even less so to totally deprive believers of an ability to take part in religious practices that are of fundamental value to them (such as in-person participation in the Sunday mass for Catholics), which was the actual outcome of the restrictions introduced. To refer to the limitation clause, the legislator did not fulfil the formal criterion – “test one” – which resulted in unjustified decrease of constitutional protection of individual rights. What is more, making no exception to the rule of keeping a distance

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<sup>18</sup> The regulation of Minister of Health of 13 March 2020 announcing the state of epidemic threat within the Republic of Poland, Journal of Laws item 433 as amended, § 5(1)(4), § 6(1)(3).

<sup>19</sup> The regulation of Minister of Health of 20 March 2020 announcing the state of epidemic within the Republic of Poland, Journal of Laws item 522.

<sup>20</sup> The regulation of Minister of Health of 24 March 2020 amending the regulation announcing the state of epidemic within the Republic of Poland, Journal of Laws item 522.

<sup>21</sup> The regulation of the Council of Ministers of 31 March 2020 on establishing specific restrictions, orders, and prohibitions in relation to the state of epidemic, Journal of Laws item 566 as amended.



of 1.5 meter among the believers in a place of worship for people living in the same household needs to be viewed as a certain legal loophole.

The restrictions likewise pertained to mobility, the functioning of certain institutions or workplaces, and contained prohibitions against organizing events and other assemblies (Article 46(4)(1, 3, 4) of the act on countering and combating infections and infectious diseases in people). These regulations cannot be treated as legitimizing restrictions of freedom of religion, as they refer to completely different aspects and are unrelated to freedom of religion, which in the Polish Constitution and legislative acts is clearly distinguished from other freedoms, including that of assembly. As a matter of fact, it is not the practices of “folk” religiosity that are jeopardized here but the essential religious obligation for members of the Catholic Church. For this reason alone, the prohibition needs to be treated as non-proportional as it not only restricts freedom of religion but essentially nullifies it (“test three”).

#### 4. SANCTIONS FOR FAILURE TO COMPLY WITH THE REGULATIONS

Another issue to address in this context is the legality of sanctions imposed on citizens for their failure to comply with pandemic restrictions. According to Article 54 of Petty Offenses Code, “whoever breaks the rules of conduct in public established by a legislative act is subject to a fine of up to 500 PLN or to an official reprimand.” The problem arises when rules of conduct are introduced with a violation of the mandate to do so through a legislative act. The legitimacy of such regulations should always be assessed by a court of law. If these are found to be at odds with the operative acts, they may not be enforced. As a matter of fact, the hastily introduced pandemic restrictions led to a disregard of the principle of *nullum crimen sine lege*. Article 46b(4) of the act on countering and combating infections and infectious diseases enabled solely the introduction of the obligation to have one’s mouth and nose covered as a “preventive measure,” and only for people infected with or suspected of being infected with an infectious disease.<sup>22</sup> It needs to be added that the order to use mouth and nose coverings referred to places open to the public, including places of worship. Even if it is hypothetically assumed that regulations of Minister of Health and the Council of Ministers had the status of a legislative act, the material

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<sup>22</sup> See Maroń 2021, 40; It was only on 29 November 2020 – when Article 46b(13) added to the act became operative – that the Council of Ministers was entitled to issue an regulation of “an order to have one’s mouth and nose covered, in specific circumstances, places and buildings and within specific areas, together with the way of enforcing the order.” Act of 28 October 2020 amending certain laws in connection with counteracting COVID-19 emergencies, Journal of Laws item 2112.

conditions were nevertheless not met: the principles of inevitability and proportionality *sensu stricto* were not met and the “essence of freedom of religion” was not respected [Maroń 2021, 40].

While undertaking actions related to freedom of religion during the pandemic, the legislative and executive bodies did not avoid involvement in the sphere of sacrum, which is beyond their realm [ibid., 44]. A classical example referred to in literature is the letter of the State Powiat Public Health Inspector in Leżajsk from 4 May 2020, in which he reiterates the obligation to respect rules of hygiene while taking the communion. Currently, the most recommended form of receiving communion is having it placed in one’s palm. However, if the believers prefer to receive the communion on their tongues, they need to be divided into two groups, those who prefer taking the communion in their hands in the first, and the remaining believers in the latter.<sup>23</sup>

Such a situation clearly goes against the autonomy and separation of the state and churches and other religious groups, including the Catholic Church (Article 25(3) of the Polish Constitution actually strengthens the constitutional protection of freedom of religion, especially when exercised in places of worship). Hence, state authorities are in no position nor do they have any instruments to determine the way in which communion should be received or check the number of people participating in worship inside the temple.<sup>24</sup> It needs to be emphasized at this point that in accord with Article 91(2) of the Constitution, an international agreement consensually ratified through a legislative act – such as a concordat – takes precedence over a legislative act if the two cannot be reconciled. According to the Constitution of the Republic of Poland, as corroborated by decisions of the Constitutional Tribunal, freedom of religion scores high in the hierarchy of constitutional values, and its restriction is acceptable only when the above mentioned criteria are met in accord with the rule of proportionality. As a result, restrictions of freedom of religion should be introduced as the last possible measure, not the first or second one.

## CONCLUSIONS

There can be no doubt that the legislative activity of the executive in the context of the state of epidemic threat and subsequently the state

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<sup>23</sup> See <https://nowiny24.pl/inspektor-sanitarny-do-dymisji-bo-napisal-jak-podawac-komunie-urzednik-to-nie-biskup-oburzali-sie-katoliczy-dzialacze-zdjecia/ar/c1-14987132> [accessed: 22.12.2022].

<sup>24</sup> See <https://tyna.info.pl/tarnobrzeg-policjanci-wkroczyli-do-kosciola-bo-na-mszy-mialo-byc-zbyt-duzo-wiernych-zdjecia/> [accessed: 22.12.2022].

of epidemic was meant to prevent and combat the COVID-19 pandemic. The value that was safeguarded in this way was public health (ensuring positive outcome of “test two”).

What remains doubtful is whether some of the introduced restrictions fulfilled other criteria of the principle of proportionality (“test one” and “test three”). This pertains in particular to restrictions of freedom of religion and of mobility introduced through regulations. It needs to be stressed that the assessment of these measures should always take into account the current state of the epidemic and restrictions introduced in other spheres of social life.

The COVID-19 restrictions enforced from March to April 2020 pertaining to the acceptable number of participants in religious worship raise justified doubts in the context of “test one” and “test three” of the principle of proportionality, as they were stricter than those introduced in other spheres of social life, such as public transport or trade and commerce. It is likewise difficult to pinpoint the medical rationale for imposing tougher restrictions on religious worship than on other areas of life. The constitutional status of freedom of religion is not lower than that of other freedoms – which were restricted to a lesser degree – but in accord with consistent decisions of the Constitutional Tribunal it is very high. What is more, religious freedom should have been restricted through a legislative act, not a regulation. If one was able to use public transport, go shopping, visit shopping malls, etc. since that was deemed essential from the point of view of citizens’ basic necessities, particularly sensitive and vital needs of religious nature should also have been taken into consideration.

Three persons were allowed at that time in shops per one cashier [Maroń 2021, 34]. In turn, in public transport the number of passengers allowed equaled 50 percent of the available seats.<sup>25</sup> The Constitutional Tribunal believes that “the contingency that restrictions of rights and freedoms are only legal when introduced ‘through a legislative act only’ is more than a mere reminder of a general rule that the legal status of individuals needs to be determined through acts as a classical element of the concept of the rule of law.”<sup>26</sup>

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<sup>25</sup> Regulation of the Council of Ministers of 31 March 2020 on establishing specific restrictions, orders, and prohibitions in relation to the state of epidemic, *Journal of Law* item 566 as amended (§ 5(4), § 8(1)(3), § 9(1)(3), § 9(5), § 18(1)(2)). See the regulation of the Council of Ministers of 10 April 2020 on establishing specific restrictions, orders, and prohibitions in relation to the state of epidemic, *Journal of Laws* item 658 (§ 5(4), § 8(1)(3), § 9(1)(3), § 9(2)).

<sup>26</sup> Judgment of the Polish Constitutional Tribunal of 12 January 2000, ref. no. P 11/98, *Journal of Laws* No. 3, item 46.

Maroń aptly argues that “a theological laxism of sorts on the part of some clergy and believers as regards restrictions of group religious worship during the pandemic as well as their obedient and *ex ante* affirmative attitude to the activities of the authorities in this respect should have no bearing on the assessment of the constitutionality of regulations restricting freedom of religion.”<sup>27</sup>

The moral of sorts and recommendation for the future that can be formulated is therefore a necessity to always seek maximum efficacy and efficiency of legislative changes. The dynamic of a complex reality, chaos, and panic are not good indicators in the law-making process. It is always worthwhile to recall the legislative canon, which essentially comes down to respecting the formal principles of natural law as formulated by Lon Luvois Fuller<sup>28</sup> or the rules of decent legislation (principles of the law-making process<sup>29</sup>) as manifested by the Constitutional Tribunal’s decisions. The reflection offered in this article is of an *ex post* character as at the present moment more in-depth knowledge on the coronavirus is available, together with vaccines and herd immunity. All of these may lead one to the conclusion that it is now easy to criticize the legislative reaction during the early stage of the pandemic. However, it needs to be remembered that excessively restrictive regulations passed with a violation of normal procedure and later implemented at the authorities’ discretion seriously disrupt the democratic rule of law. It is the role of both theoretical and practical lawyers to counteract the atrophy of the law and demonstrate constant care for good law in all its five dimensions.<sup>30</sup>

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<sup>27</sup> Cf. Maroń 2021, 42.

<sup>28</sup> See Fuller 2004; Izdebski 2020, 29-58.

<sup>29</sup> See regulation of the Prime Minister of 20 June 2002 on the principles of the law-making process, Journal of Laws of 2016, item 283.

<sup>30</sup> Namely, creation, implementation, interpretation, validity, and compliance.

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