

# **Folk improvisations**

## **How the pandemic changes social norms**

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## Introduction

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The crisis caused by the COVID-19 pandemic has affected many areas of social, economic and political life. Although barely more than a year have passed since the outbreak of the SARS- CoV-2 virus and many countries are still dealing with successive waves of infections, it is already possible to attempt at formulating first hypotheses concerning the long-term effects of the global plague. In fact, such attempts have been made since the very beginning of the pandemic – in the last few months a number of texts have already appeared that try to face this challenge intellectually.

One of the most interesting domains to observe the vivid effects of the pandemic is the institution of state. Starting with the of the so-called Polanyi's Pendulum swinging more towards the free market, which has started in the 1980s, through “crazy 1990s” marked by the collapse of the USSR and the appearance of the Internet, up to the global financial crisis of 2008, the state has been in permanent retreat. The market became the dominant mechanism of coordination, with its all lights (vide the global wealth growth) and shadows (vide the global growth of inequalities). One of the symptoms of the above-mentioned state retreat was the idea of *new public management* (NPM) according to which the decision-makers shared the responsibility for delivering public goods with private and social subjects.

This process, first symbolically and then very tangibly, began to influence the understanding of the concept of sovereign political power, crucial for the existence of a modern state. The emergence of global corporations, including technology giants wielding not only economic, but also information power, has limited state sovereignty even more. Today, states and sovereign governments exercising political power are becoming an area of colonisation by the global world of technology and finance. It is no longer surprising that governments are unable to enforce their basic function of collecting taxes owed to them by entities from the GAFAM group (Google, Apple, Facebook, Amazon, Microsoft).

The moment when the public expectation of the return of the state emerged was the already mentioned financial crisis of 2008. The masses affected by the economic collapse expected the state to step in and introduce greater protection for the interests

of ordinary citizens. The state, however, did not fulfil the hopes placed in it at the time, and rather took the side of market players. Giant bail-outs having the form of support for failing financial institutions or making the labour market more flexible only confirmed the primacy of the principle of efficiency over the principles of justice, solidarity and equality, which form the normative core of the logic of a state action. The institution of state did not take the opportunity to strengthen itself and swing the pendulum in its own direction.

However, this had far-reaching consequences: from the point of view of many people, the state did not stand by its citizens and failed to meet public expectations. The explosion of so-called populist movements in the post-crisis era – from Occupy Wall Street, through the Arab Spring, to the emergence of political initiatives such as Alternative for Germany – proved best that the existing political elites had lost some of their social legitimacy. Besides, the victories of the United Right in 2015 in Poland or Donald Trump a year later in the US were achieved precisely under the banner of taking power away from the “old” elites.

It is therefore hardly surprising that the experience of the 2008 crisis was the primary point of reference for policymakers confronted with the pandemic crisis. However, the reactions of political elites to the COVID-19 epidemic and their consequences for the very institution of the state will be analysed, it is worth trying to understand what the state has become after the global financial crisis and in what direction it has evolved in recent years. The contemporary institution of state is tossed between two extremes. On the one hand, it has to deal with the people who, thanks to social media, among others, have come to believe in legitimacy from below and in democracy based on public discourse rooted in emotions instead of abstract institutional authorities or principles, such as the concept of the common good or the rule of law. Zabdyr-Jamróz calls such a system “democratism without a republic” (Zabdyr-Jamróz 2010: 74). On the other hand, the state has to learn to function within the framework of the so-called “monitored democracy”, in which the oversight of decisions is exercised by extra-parliamentary and extra-state institutions, which are often beyond democratic control, such as the European Commission or the International Monetary Fund, rating agencies or global technology corporations (Cichocki 2019).

An assessment of the state's actions during the pandemic and their far-reaching effects – both in general terms and strictly in the Polish context – should be started with noting that when the threat of the SARS-CoV-2 virus emerged, once again, just like in 2008, societies around the world turned to the state. It was the Leviathan, as something bigger than ourselves, that was supposed to guarantee our survival and security.

It should be clearly emphasised that decision-makers, having learnt from the experience of the last crisis, did not wait too long before reacting – governments of individual countries very quickly introduced radical restrictions on civil rights and freedoms, aimed at stopping the spread of the epidemic. Most importantly, however, this happened with relatively widespread public acceptance. Even those who only two months earlier had complained about excessive state interference in citizens' lives called for a lockdown to be introduced as soon as possible.

However, the state action has not been limited to the introduction of a lockdown. Most governments have decided to launch huge stimulus packages for the economy. The fiscal impulse that took place last year was unprecedented. Even the countries known for their conservative fiscal policies decided to mobilise hundreds of billions of euros in support. It should be noted, however, that while this support saved many companies (including SMEs) from bankruptcy, it did not protect the labour market from the further weakening of standards for the protection of workers' rights, which has (and will have) far-reaching social and political consequences.

However, what is equally important, similarly to the case of introduced restrictions, the actions of the authorities in the form of launching the subsequent so-called "anti-crisis shields" took place either in disregard of the law in force, or on the basis of its very flexible interpretation. Societies in a situation of existential threat, in the name of guaranteeing the efficiency of state institutions, agreed to a temporary suspension of the legal order. Obviously, the scale of the circumvention of formal institutions varied from country to country – in Poland this partial suspension of the legal order was on a very wide scale, but we were certainly not alone in this.

However, it is worth noting that this process of suspension of the legal order constituted a kind of paradox. One of the main values of the rule of law is the regulation

of social behaviour in accordance with procedures, which in a universally acceptable manner reduces uncertainty regarding the actions taken by other entities operating in one's environment (including public authority entities). However, with the emergence of great uncertainty, which it is growing also due to other, non-pandemic reasons, we have been ready to accept a departure from the old law and a transition to new rules, often adopted without taking into account the existing procedures.

This is though not the end of the paradox. As Michał Łuczewski noted during the "Risks and Trends" conference, organised by Polityka Insight platform, at some point the citizens realised that Leviathan cannot save them after all. When societies realised that the new rules do not protect them against the threat (or that the threat is not as great as it seemed earlier), and at the same time they generate huge economic and social costs that are not compensated by government "anti-crisis shields", people started to rebel against the new rules and publicly question them, undermining the trust in the state and the law even more. As a result, today in Poland as well as in other countries, one can observe an increasing social acceptance for testing the limits of the law by citizens, including entrepreneurs, especially in a situation where the state is unable/unwilling to enforce it. By the way, this is not the only example of the weakness of the state that does not want to provoke the anger of its citizens and resigns from acting or only pretends to act – it is enough to look at how in many countries, due to the lack of cooperation from citizens, contact tracing does not function, which could make it possible to stop virus transmission without the need to introduce lockdowns.

Getting back to the problem of social anger in the age of pandemics, it is worth taking a closer look at the examples of the many social movements of recent months, such as QAnon and Black Lives Matter in the USA or the anti-lockdown movements in Europe. Those movements question not only the authority of the state, but also authority of science that is trying to cope with the increasing complexity. What is more, they are creating the foundations of new, parallel institutions. " The citizens are beginning to believe more and more in democratic instruments of policy-making. However, they do not understand them in an abstract way, as some grandiloquent idea of sovereignty of the people, but concentrate on their practical, local or immediate dimension. They are animated by the overwhelming conviction that proper authority comes from below and not from above, that legitimacy comes from their own will and the will of people similar to them and is expressed in the street or in the *piazza*, that it



is shouted out. In the situation of the withering away of the technocratic discourse coming from the centre, top-down authorities are clearly fading, especially those abstract and institutional ones, associated on the one hand with symbolic power, above all with 'omniscient' science and 'infallible' religion, and, on the other hand, with public offices" (Zabdyr-Jamróz 2010: 72). Those new, parallel institutions, though, are very much rooted in what is simple, local and regional, in accordance with the idea of "holy common sense" and the philosophy of "our homeland". In a sense, such an approach fits into the category of so-called folk politics that responds to the problem of increasing complexity by reducing it to a human scale and "a return to authenticity, proximity, a transparent world, on a human scale, within reach, slow, harmonious, simple and down-to-earth" (Srnicek and Williams 2016: 37). From our point of view, such an individual strategy can be described as "folk improvisations" – in the frames of that, citizens search on their own for solutions to the problems they face.

This, in turn, can have far-reaching consequences. Let us look at Poland: just like in the 1990s we had to cope largely without the state, which was only just building its potential, and in conditions of the "Washington Consensus" that was unfavourable for the strengthening of the state, so after the pandemic crisis we may have to function in a reality in which the state will cease to be present, not because it does not have the will and resources to do so, but because it will lose a part of its legitimacy.

The time of building permanent institutions, or in simple terms, legally sanctioned norms and rules of conduct, guaranteeing greater stability, equality or social justice, which has been going on since the beginning of EU accession negotiations, may be coming to an end before our very eyes. If this trend is not stopped, we may be facing a symbolic return to the 1990s, with growing systemic helplessness of the state in terms of coordinating public policy and, more broadly, social behaviour. The difference between the post-transition period and the post-pandemic period may lie only in the fact that a state with more resources than before will sometimes succeed in individual actions.

To make matters worse, this process may not be halted either by extra-political elites who, thanks to the crisis, have become even more alienated from social reality. When the people were "tied down" to the land, the upper middle-class representatives could participate in the remote world without taking much risk, from the depths of their armchairs, and not even notice that for many people the world really had collapsed. It

should also not be forgotten that the globalising elites are doing much better in a world of “private” norms, as evidenced for example by the rapid increase in the number of children attending non-public schools and going to universities abroad. Even if the elites today call for increased funding for public services, they will probably no longer support this idea when discussing tax increases, and will use the money thus saved to send their children to study in Paris or London.

There is no room for delusion - if the process of relativisation of institutions, leading to the aforementioned “folk improvisations”, continues after the end of the pandemic, in the face of considerable individualism of Polish society, it will be difficult to stop it. Can this process be stopped/reversed? It is difficult to point to a concrete remedy; in fact, the authors of this study do not know one either. The aim of this report is rather to examine to what extent the aforementioned process is taking place in various areas of the functioning of the state – legislation, public administration or, finally, the broadly understood economy – and what are the mechanisms that, on the one hand, strengthen it and, on the other, could weaken it. We believe that this is a good starting point for further discussion and research.

## 1. The dynamics of institutional order – theoretical approach

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The theoretical description of institutional dynamics is a major challenge that social scientists have been grappling with for several decades (Kingston, Caballero 2009). The very defining of institutions, which may have either codified or informal character, is problematic. It is also difficult to analyse changes in institutions that are inherently fluid (although they themselves have the function of stabilising social behaviour). They may replace each other, coexist, disappear, emerge. Finally, they can compete or complement each other. Deciding whether an institution is functioning or not very often depends on a certain research decision.

There are many ways of defining institutions in the literature, but for the purposes of this report we will focus on understanding institutions as norms or patterns of social behaviour. At the same time, we assume that, in accordance with the literature (Hindriks and Guala 2014; Greif and Kingston 2011), norms can be divided into the believed ones (they are, for example, expressed in law) and those that are practiced in the form of repeated patterns of behaviour. The essence of this perspective is the assumption that various verbalised and even codified norms can only be considered as working institutions if they determine people's behavioural patterns. Therefore, the reduction of the dissonance between the norms one believes in (or officially wants to believe in; regulatory approach) and the norms one practices (equilibrium approach) is an important element in the process of recognising a norm as an institution in the strict sense.

Taking such a perspective, one can ask the crucial question: under what conditions are institutions (norms) universally respected? In other words, what must happen for people to conform to the constructed norms. As it seems, an adequate answer to this question is given by Basu (2019), who points to two basic conditions for the effectiveness of a created norm:

1. When an individual considers whether to act in accordance with a norm, he/she must have the belief that there is a high probability that other social actors will change their behaviour with the appearance of that norm.

2. If other actors choose to act in accordance with the norm, the individual's failure to comply with the norm will be costly with some non-zero probability.

If any of the conditions are not met, the institution is not binding and therefore has little chance of survival, certainly in its original form.

Such an approach assumes that there is a group that should conform to the norm and a group of the “enforcers” of the norm. When it comes to the norms established by the state, the group of enforcers is relatively clearly distinguished (e.g. the police). However, it is worth noting that the two groups are not necessarily disjoint. For example, the obligation to issue invoices in business-to-business trade is enforced by the interested parties themselves, who need these documents to prove the costs of their activity that reduces their tax liability. Moreover, in the case of strongly internalised norms, we are even able to incur individual costs in their defence, in order to “punish” those who do not comply with them (the most trivial example is reprimanding a passer-by who litters the pavement).

In Basu's proposal, the norms designed and communicated by those in power in their most primordial form constitute a kind of “focal points” that may or may not organise social behaviour. This approach brings to mind a philosophy of action based on the so-called “soft law”. The question whether such “soft” norms work effectively depends on the individual perception of the above-mentioned conditions by their individual recipients. One should also remember that newly established norms do not operate in an institutional vacuum. They can usually be expected to enter into various interactions (including conflictual ones) with previously accepted patterns of behaviour.

A road example may be helpful to understand how this mechanism works in practice. In 2019, an amendment to the “Road Traffic Law” came into force in Poland, which in certain situations (reduction of the number of lanes) imposed on drivers the obligation of so-called “zipper method” of driving, so that cars from the terminating lane could be alternated into the continuing lane. The necessity for introducing this regulation arose from the observation of the behaviour of drivers who a) entered the continuation lane before the lane they were travelling in ended, b) did not want to allow drivers entering from the end of the lane, c) positioned themselves in the continuation lane as early as possible for the “peace of mind”. All this led to traffic jams and conflicts. In fact, the earlier chaos can be explained by recalling the general norm that drivers followed. Let

us illustratively call it the “queuing norm”. According to this norm, all those who are aware of the fact that one lane is about to end should queue as quickly as possible in the lane continuing the traffic. If a driver does not comply with this norm, he/she is considered a “dodger” who breaks it, which will result in him/her being obstructed from joining the traffic. This standard has had various interesting consequences and this is not the place to analyse them in detail. However, it is an important observation that with the introduction of the zipping obligation (reinforced by the potential sanction for the offence) the negative consequences of the previously functioning practice were reduced relatively quickly. The conflict between the general standard (queues) and the specific standard (zipping) was thus reduced. This happened because the two above indicated conditions for the effectiveness of the institution were met:

- The establishment of a new “landmark” in the form of a relatively unambiguous legal regulation, reinforced by a sanction, has convinced most people that other road users will obey it.
- In such a situation, disobedience (positioning oneself in the lane that continues traffic, even if there are more vehicles in it) is costly because it makes the journey longer. Consequently, the sanctions laid down become unnecessary and the norm becomes essentially “self-enforcing”.

The essence of the effectiveness of the newly established norm in the above-presented example was its ability to effectively solve the coordination dilemma. However, one can easily imagine a situation where a similar norm might not work as intended. This would most likely be the case if the standard lacked precision (e.g. it would indicate an absolute necessity to let cars in from the end of the lane, without specifying either the place to let in or the number of cars to let in). Then, the key role would be played by the practice of enforcers, who would be forced to make the norm more specific. In this situation, there is a possibility that such an unclear norm will be ignored by the entities appointed to enforce it. The likelihood of compliance with the norm would also probably decrease in the absence of an appropriate sanction (although spontaneous compliance can be imagined even if there were no sanctions – the belief that it is a good way to coordinate actions would suffice).

The above instance exemplifies the coordination dilemma, where unilateral violation of the norm is costly (the socially optimal solution is at the same time voluntarily chosen

by an individual). However, there is a whole range of situations where maintaining coordination is much more difficult, as they take the form of the so-called prisoner's dilemma (in this case, the voluntary choices of individuals lead to a socially suboptimal situation).

A good example of a situation illustrating this second logic is the payment of taxes. Breaking the norm is beneficial for the company that by avoiding taxation reduces its costs, thereby improving its competitive position. Therefore, if a situation where everyone pays taxes is considered as a desirable state, then it is necessary to transform the game in such a way that the behaviour that does not conform to the norm becomes costly. This can be done by using formal sanctions (administrative penalties) or by designing the costs and benefits structure (as it was presented in the above example with invoices) in such a way that the norm becomes self-enforcing, the second strategy usually being more effective, although also more difficult to design.

This relatively sterile picture of regulatory norms “in balance” is of course disturbed by many factors. Continuous active support of norms is necessary particularly in the two following cases:

- 1) In case of a small, non-anonymous community with many informal rules of conduct that are based on a general norm of reciprocity (I will help you today and you will help me tomorrow); in such a situation, for example, one can expect the designed as self-enforcing norm of invoicing to break down if relations between entrepreneurs are frequent and reciprocal, or if they are bound by other types of obligations. In the first case, a particular pair of entrepreneurs may be bound by reciprocity in the form of “today you forgive me the invoice and tomorrow I will do the same for you”. The second case deals with a situation in which multidimensional relations result in the possibility of a specific compensation of behaviours in the form of “today you forgive me issuing an invoice, and tomorrow I will do something for you”. An analogous situation may be encountered in the context of pandemics, where, for example, compliance with contact restrictions may be weaker in small communities, where sanctioning socially unfavourable behaviour is more difficult due to the multidimensional relationships between the addressees of established norms and the entities whose task is enforcing them.

2) When the established institutions act against the power relations or the bargaining power of the subjects whose relations they are supposed to regulate; this is particularly the case in the labour market, where a unilateral violation by an entrepreneur of a norm favouring an employee (payment on time, employment based on a labour contract, etc.) will not be sanctioned due to the low level of bargaining power of the latter. Here the reference to the consequences of the pandemic crisis also seems appropriate. If, as it is argued in the report, the current labour market situation reflects a significant weakening of the bargaining power of employees, stronger enforcement of labour market institutions may be a necessary condition for maintaining the balance of the position of employees *vis-à-vis* the position of entrepreneurs.

In conclusion, it is important to note that institutions have different “durability” in different situations, as it is relatively easy to lose control over individuals' implementation of the previously established norms. There are several possible actions that make the consolidation of norms plausible:

1. Unambiguous communication of norms understood as landmarks (minimisation of ambiguity).
2. Maintaining the conviction among norm addressees of the high ability to enforce them (inevitability of sanctions).
3. Constructing rules taking into account pre-existing norms and practices in the community (reflexivity).
4. Counteracting situations in which the addressees of norms perceive frequent and unsanctioned breaches of norms, especially occurring on the part of groups considered privileged (responsibility).

Failure to meet these conditions (and unfortunately this has been the case quite often in the last several months) may result not only in the failure of a given standard, but also in undermining faith in the normative power of the state. This in turn, in an extreme situation, may lead to the proliferation of coordination institutions failures, and at the same time make it very difficult to rebuild them in the future. The effect of the collapse of coordination institutions is the constitution of “parallel” normative systems, among which the institutions established by the state are just one of many competing types. This promotes the relativisation of institutions that was mentioned in the introduction, whose effective functioning depends on the given social or economic context. On the basis of the presented scheme of thought it may be assumed that if a formal institution replaces a norm functioning originally in a given community, then at the moment of

weakening of compliance with this institution we may witness a situation in which two normative orders start to function parallelly, and the decision to comply with one of them becomes strongly context-dependent.

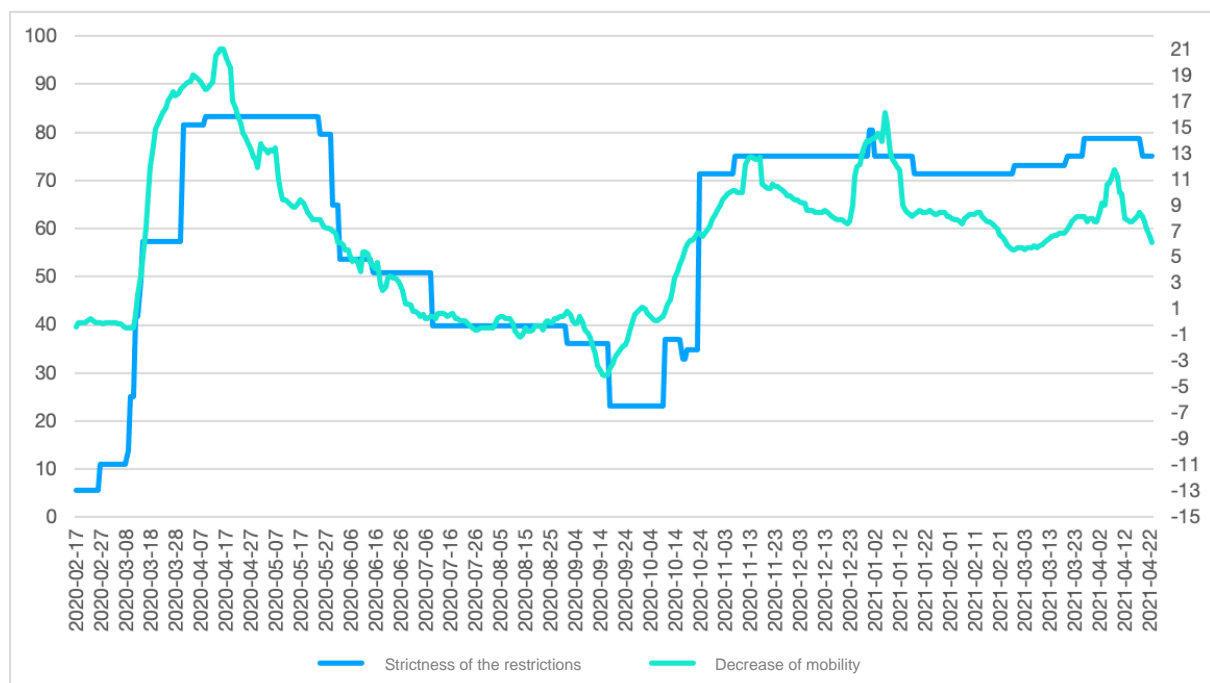


## 2. The dynamics of institutional order in the domain of law and regulations

The pandemic has challenged many paradigms and revised our understanding of how law works. This is especially true for one of the most fundamental questions that legal theorists ask themselves – what makes a legal norm binding? What makes people obey some norms and not others?

In the classical understanding, the threat of a sanction is assumed to be the factor that forces someone to comply with the law. If a norm is commonly violated, it must be assumed that the sanction is too mild or not sufficiently imminent. This reasoning, however, has long been seen as inaccurate. We live in a world of widespread fascination with so called soft law, which influences people through appeals, referring to higher values, logical explanations, popularization of good practices, etc.

**Chart 2.1. Strictness of the restrictions on a scale of 0-100 (left axis) and the decrease of mobility – the percentage change of the time spent at home (right axis)**



Source: an own elaboration based on the data by ourworldindata.org.

The specific strength of soft law can be seen by comparing the level of legal restrictions with an analysis of citizens' mobility. In the spring, one could observe a much greater restriction of citizens' movements than in the following months. Most importantly,

however, those differences occurred in spite of the similar scale of legal restrictions. There are several factors that may explain above-mentioned differences. One of them is the effectiveness of soft law – initially it worked surprisingly well in Poland, but later, as a result of a number of errors analysed below, it lost its power. Another important factor affecting the observance of restrictions was certainly their chaotic and uneven enforcement by the services, especially the police. Although police statistics are, for various reasons, subject to considerable error, it is possible to discern in them a variable strategy for enforcing compliance with the introduced restrictions.

However, it should be emphasised that the problem of enforcing restrictions was undoubtedly influenced by the way in which they were introduced. When analysing the Polish government's fight against the epidemic, it is worth noting the far-reaching consistency in disregarding the legal basis for its actions. Even if one applies an authorities-favourable interpretation that the epidemic does not force the introduction of one of the constitutional states of emergency, the failures in the area of legal basis (or, more precisely, the lack of it) were not only noticeable, but also very numerous. The matter is only to a small extent rescued by the "Act on Prevention and Control of Infections and Infectious Diseases among People". It is not capable of sanctioning such strong interference in fundamental rights and freedoms by means of regulations, of which there were many in 2020, which resulted in considerable confusion not only for citizens, but also for the services responsible for monitoring compliance with the law.

Returning to the key problem, however, until recently it was believed that soft law could not be combined with hard law – one should either frighten others with a penalty or at least appeal to social responsibility. The fight against the pandemic, particularly in its Polish version, has been an unprecedented mix of these two approaches. Moreover, it is impossible to unambiguously assess the effectiveness of this policy-mix. Its effects are strongly dependent on the context, which above all includes: the sense of threat, conviction about the adequacy of authorities' actions, or fatigue, increasingly visible in 2021.

So much for the theory. The practice, however, turned out to be more complicated. At the initial stage, a combination of hard legislative measures (not always based on laws, but on regulations) and soft law instruments proved to be surprisingly effective. Poland was one of the first countries in Europe to introduce further tightening of lockdown and

this action was socially accepted. What is more, given the almost zero level of entrepreneurs' rebellion, the shutdown in the first weeks was exemplary. This was not even disturbed by the late, very complicated and sometimes inadequate anti-crisis shields – it is worth remembering that entrepreneurs had to wait until early May for the best-rated, so-called Financial Shield, operated by the Polish Development Fund.

In the first weeks of the pandemic, compliance with the restrictions by the whole of society, even though absurd restrictions were introduced, represented by the ban on entering forests and parks, remained basically unchanged at a high level. This may have been influenced by the fact that the government was quite quick to back down from such controversial measures. The general level of acceptance of the rules was not significantly lowered by spectacular police actions resulting in draconian fines, e.g. a PLN 12 000 fine for a cyclist riding on closed boulevards.<sup>1</sup> In theory, such repressions should have minimised the positive effects achieved with soft law. However, in March and April 2020 this was not the case – although the risk of being punished was not high (the above-mentioned police actions were rather isolated “demonstrations”), the restrictions were in fact accepted with understanding.

In practice, therefore, fire was very effectively combined with water in the spring. The principles of good legislation and, in general, the remnants of a positivist approach to law seemed to have gone by the wayside in the reality of pandemic shock. Press conferences and infographics on the government website were sufficient to regulate human activities. The texts of regulations published later sometimes contradicted them, appeared at the last minute and were repeatedly amended in an extremely illegible manner (for example: “In paragraph 1, the words “Article 15 zzzj and Article 15 zzzk” shall be replaced by “Article 15zzzk and Article 15zzzl”). Nevertheless, such a regulation proved to be effective. As a result, one even had the impression that in such exceptional circumstances as a pandemic, the rules of a state of law were “suspended”. Some, envious of the effectiveness of Asian countries in combating the virus, have even considered that the strong attachment to civil rights and liberties inherent in our culture may be a threat and a relic.

If the pandemic had been limited to a single wave, many analysts would certainly have found such conclusions to be true. However, the autumn and winter have shown that

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<sup>1</sup> <https://wiadomosci.onet.pl/krakow/koronawirus-krakow-zlamal-zakaz-i-pil-piwo-w-parku-trafil-do-zakladu-karnego/l565t0r>

it was premature to write off the principles of good legislation and, more broadly, the rules of the state of law, since some social groups affected by the introduced restrictions began to put up fierce resistance. It has turned out that social leniency towards legal bungle can only function for a short time, and in a situation in which h people live in great fear of the unknown.

However, this state of affairs cannot continue for too long, even if the future still holds great uncertainty for us. Over time, a very clear change has begun to take place in society with regard to compliance with the law. The growing relativisation of the law as an institution is primarily the result of a growing public fatigue with restrictions, but also of eroded trust. This process is reinforced by the media, where one can find juxtapositions of completely contradictory, often downright absurd, statements by key decision-makers and people identified as the main experts in the fight against the pandemic.<sup>2</sup>

With this in mind, the public became convinced with each passing month of the pandemic that those in power had broken an unofficial, temporary (but, as the spring of 2020 showed, very effective) social contract. In a legal context, this agreement would have to be reduced to the following statements:

- the speed of response is more important than a formalistic approach to the legal basis;
- we will submit to lockdown, even if it is party chaotic, as long as the overall course of action seems rational and is well communicated (empathetically, not legally);
- the state will cover the financial losses resulting from the bans;
- draconian restrictions will be short-lived and removed as soon as possible.

This social contract has been broken, among other things, by the persistence in the absence of a legal basis, even when the quiet months offered a chance to work it out. Additionally, the authorities did not respond to public opposition to regulations considered absurd, such as the obligation to cover both mouth and nose in the open air, which at one point was even exacerbated by the ban on headscarves, tube scarves

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<sup>2</sup> [www.rmf24.pl/raporty/raport-koronawirus-z-chin/polska/news-juz-nie-trzeba-sie-jego-bac-czyli-jak-politycy-i-eksperci-zm,nld,5085857](http://www.rmf24.pl/raporty/raport-koronawirus-z-chin/polska/news-juz-nie-trzeba-sie-jego-bac-czyli-jak-politycy-i-eksperci-zm,nld,5085857)

and shawls. In this context, the elementary lack of solidarity should be mentioned – the blatant violation of prohibitions by politicians and their families, but also the passing of laws in the particular interests of their milieu. An example of this is the Christmas and New Year period, when an exception allowing people involved in the preparation of content used by licensed broadcasters to use hotels was introduced.

In this way, the frivolous treatment of institutions opened the way for them to be disregarded by citizens and entrepreneurs. Legislative chaos began to be used as an opportunity to minimise lockdown inconveniences with impunity. The collapse of the authority of legal institutions was accelerated by the courts that challenged penalties imposed on the “cardboard” legal basis. This itself is a very interesting phenomenon, because although there is no precedent law in Poland, because of such judgments even the lowest level courts started to create or derogate legal norms.

The natural consequence of the breach of another element of the aforementioned temporary social contract in the autumn, i.e. compensation for lockdown losses, was a change in the attitude of entrepreneurs. Also in this area, the government could not count on the same leniency as in spring 2020. Why? Firstly, there was time to prepare further anti-crisis shields in the summer of 2020. Secondly, the condition of many companies was becoming more and more difficult with each passing month. Thirdly, the other elements of this social agreement were also working increasingly badly.

As if this were not enough, the government has made communication errors increasingly often, the crowning example being the setting of the lockdown exit thresholds in November, which were “forgotten” after a few weeks. In this context, the explanation that it was unwise to rely on this indicator alone only shows the scale of the collapse of institutions that require at least a substitute for strategic thinking. The question therefore remains unanswered as to why it was not known at the time these thresholds were announced that other data had to be taken into account.

In conclusion, the springtime rumours of the imminent death of the formal approach to law, which was to make way for looser and more modern communication typical for press conferences or infographics, proved to be premature. Accepting ad hoc measures without a proper legal basis was acceptable only conditionally and for a very short time. There are many indications that, thanks to this, we will be reminded of the so-called sophisticated legal positivism, which does not reduce law to a mere order of

the sovereign, which has to be obeyed regardless of the circumstances (by the way, it is worth mentioning that even the early positivism emphasised the importance of observing law-making procedures). For, as Herbert L.A. Hart proclaimed, reducing law to a norm and sanctions is an aberration. Then, the citizens obedience to the law is no different from obedience to a bandit who puts a gun to someone's head.

Assuming such a perspective, the citizen should adopt a “critical-reflective” attitude, and only after such a critical reflection recognise (or not) a particular legal norm as binding. One should be aware, however, that such an approach opens the door to the chaos of interpretation that is associated with the law of nature, to which positivism was, after all, supposed to be an answer. However, without going into details, the circumstances of the Polish pandemic legislation undoubtedly justified the weakening of the effectiveness of norms, even in the strict understanding of the mentioned concept of Hart.

What lessons can be drawn for the legal order from the pandemic? Firstly, the crisis has shown that the society demands to be treated as actors in the law-making process. Secondly, in crisis situations, society is willing to accept far-reaching inconveniences and show great forbearance towards flexibility of action. Thirdly, in a situation of loss of trust towards the authorities, but not only, society may begin to question formal institutions and try to function on the basis of competing norms – created either informally or formally by judiciary subjects. This, in turn, means that while society in a crisis situation is prepared to grant the authorities credit for trust, in the event of a breach of contract it is prepared to ruthlessly demand repayment of this credit, and with interest.

### 3. The dynamics of institutional order in the business sector

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Entrepreneurs have emerged as one of the stakeholder groups most affected by the ongoing COVID-19 pandemic and the restrictions introduced in response to it. In fact, over the last few months, one could even get the impression that they were the most important group, as the public debate has paid much more attention to the impact of the measures on entities from particular industries than to the change in social mood or the deterioration in the situation of employees. It is difficult not to get the impression that the postulates of business owners and organisations representing them, which have a large lobbying power, have resulted in the protective measures of the state focusing mainly on protecting entrepreneurs. Such an approach was supposed to prevent numerous bankruptcies and dismissals, and in the longer term – the collapse of the entire economy due to, among other things, reduced consumer demand.

In the initial phase, support within the framework of anti-crisis and financial shields was praised because of its scale, although there were also voices of criticism resulting, for example, from delays in benefit payments. Now, one year on from the outbreak of the pandemic, as financial support for entrepreneurs dwindles and we face another wave of infections and another lockdown, there is a growing frustration and rebellion among entrepreneurs. The solidarity and concern for the health and lives of others that was visible in the first phase of the epidemic crisis is slowly receding, and the vested interests of desperate entrepreneurial groups are coming to the fore. The aim of this part of the study is to give a synthetic overview of how the last year has been shaped from the perspective of entrepreneurs, taking into account both the restrictions and the support offered by the state.

The key conclusion is an attempt to assess the scale of relativisation of existing institutions as a result of the deteriorating situation of entrepreneurs. At the beginning of 2021, some of them started to create grassroots movements and initiatives aimed at circumventing the imposed controversial legal regulations restricting economic freedom. It is therefore reasonable to ask whether, in the long term, they may lead to the weakening or even supplanting of the hitherto binding norms.

## **The influence of the fluid restrictions on the entrepreneurs**

Following the official emergence of the first case of COVID-19 in Poland in early March 2020, the government acted quickly to reduce the risk of its spread. Along with the declaration of an epidemic state on 20 March 2020, a number of restrictions on doing business were also introduced – in fact, some industries such as events, tourism or culture were closed and limits on the amount of people in shops were introduced. A month later, i.e. on 20 April 2020, the government began to implement a multistage plan for the lifting of restrictions. As a result of these actions, with some stabilisation at the level of several hundred new cases daily, the holiday period allowed most industries to take a breath. Unfortunately, some of them even then had serious difficulties in doing business (e.g. the event industry).

In October 2020, as the daily number of new cases of the disease began to rise rapidly after the summer holidays, the government announced a plan to make the introduction of further restrictions, including those business-related, dependent on how the rates of these diseases develop. If the worst-case scenario came true, the so-called national quarantine was supposed to happen, which in fact meant a hard lockdown. In practice, the implementation of this plan was rather chaotic, which was due, on the one hand, to doubts as to the number of tests to be carried out and, on the other hand, to the fact that even government announcements as to whether or not there was a lockdown in Poland were contradictory. Regardless of the nomenclature used, however, it must be said that in autumn 2020 many industries had to close down again or severely restrict their activities. Unlike in the summer, after the autumn tightening of restrictions, there was no such clear loosening of restrictions – in February 2021 shopping malls and hotels were reopened (with a maximum occupancy of 50%). A few weeks later, Minister Adam Niedzielski announced the new closing of shopping malls in the Warmian-Masurian Voivodeship, as well as museums, cinemas and hotels, and in March the restrictions were extended to the whole country. In practice, therefore, it was a case of a “creeping” lockdown, which, depending on the pandemic situation, will be partially mitigated or tightened. Such a situation, with frequent changes to the rules of the economy, poses a huge challenge for entrepreneurs who are trying to assess the profitability of their business.



## **With a shield or on it? Support for the entrepreneurs and the problems it caused**

In view of the difficult situation of enterprises resulting from the introduction of successive restrictions, the government relatively quickly prepared a large support package in the form of so-called anti-crisis shields and financial shields. As early as April 2020, the first shields were launched, which were aimed, among other things, at discouraging entrepreneurs-employers from taking drastic steps in the form of dismissing their employees or even closing down their businesses. Hence, within the framework of the support, additional provisions appeared concerning, for example, the necessity to guarantee the maintenance of employment for a certain period. In return, employers could count on such forms of support as: subsidising employees' salaries, exemption from paying social security contributions, postponement of certain payments, loans, or provisions allowing for flexible employment due to difficult financial situation. The largest financial envelope came in the first half of 2020, during the first lockdown. Some forms of support lapsed over the holiday period with more loosening of restrictions. Problems arose at the end of 2020, when it became clear that further tightening was needed, while at the same time the deteriorating public finance situation made it difficult to offer as much support as at the start of the pandemic. However, one should bear in mind that new editions of the crisis shields are regularly announced – the latest, numbered 7.0, was launched at the beginning of February 2021 and is accompanied by the Polish Development Fund 2.0 Financial Shield, launched in mid-January.

Those instruments have been of great support to entrepreneurs, but their development and subsequent implementation caused quite significant problems. Outlining them is necessary to better understand the reasons for the current level of frustration among certain groups of entrepreneurs, which, if escalated, could lead to serious economic problems in the longer term.

In designing the various forms of support, the authorities had to take into account several important factors, including, inter alia: the need for quick decisions, the speed of implementation, the state of public finances and the ease of obtaining support by those in need. Reaching a compromise between quick action and avoiding the waste of public funds made it necessary to introduce certain restrictions. As a result of these actions, some entities did not receive sufficient aid although they were in a very difficult

situation. For example, companies that started up just before the outbreak of the pandemic (so, for example, they could not prove a decrease in turnover), as well as those operating in industries whose PKD (Polska Klasyfikacja Działalności – Polish Classification of Activities) was not taken into account when determining groups eligible for support from the shield. The controversial PKD caused, for example, that some entities operating in the event industry could not receive funds from the first shields. A similar situation applied to other entities which operated, inter alia, in closed shopping malls and traded, for example, footwear or electronic equipment, or had a different dominant PKD registered than the one to which their activity referred in practice. Companies that could not show a significant drop in turnover because they had started operations just before the outbreak of the pandemic or were operating in sectors characterised by seasonality (e.g. ski tourism) also found themselves in a difficult situation.

The approach of the authorities to consult proposed changes with interested groups of entrepreneurs was also negatively perceived. There were cases of politicians arguing at press conferences that they consulted given solutions with the representatives of entrepreneurs, after which these groups denied such reports or indicated that their postulates had not been taken into account. Such doubts were raised, among others, in December 2020, when ski slopes or hotels were reopened and closed alternately.

From the point of view of the stability of doing business, one of the greatest challenges in times of pandemic is the uncertainty about the next steps of the authorities in terms of easing and tightening restrictions. There have been situations when changes to the principle of operation of restrictions in a given industry were announced the day before they were to take effect. An example of this was the decision to close cemeteries announced a few hours before 1 November 2020 and the subsequent chaos with buying back flowers and candles from the vendors. Confusion was also caused by legal acts announced a few dozen minutes before they came into force, in which there were discrepancies with earlier announcements, e.g. concerning large furniture shops.

This issue is related to the broader problem of communication between the authorities and entrepreneurs in the context of planned and undertaken activities. Listening to the voices of entrepreneurs one can see that in many cases decisions taken by the government are incomprehensible to them. This is the result of several different

factors: occasional contradictory statements by various members of the government, the aforementioned discrepancies between announcements and legal provisions, etc. It is also important that the government gives perfunctory reasons for its decisions on particular restrictions for entrepreneurs based on the results of surveys. For example, in recent days, the Polish Gastronomy Chamber of Commerce has pointed out that in the case of businesses in this sector, the authorities rely on American research, although the Polish specificity is quite different, as fewer people dine out. Also, messages indicating that when it comes to these issues the rulers rely on single scientific articles are not conducive to building trust. As a result, improving the communication of one's activities and the basis for decision-making is important to reduce the negative perception of this activity by companies. It would also facilitate business planning by reducing uncertainty.

### **Mood swing – the entrepreneurs' reactions to the restrictions**

Based on the timetable outlined above for the administration of the restrictions, the support offered and the problems associated with it, it is possible to observe several phases illustrating the mood of entrepreneurs during this period. At this point, it is important to note the limitations in access to data that would allow us to determine exactly how the scale of entrepreneurs' opposition to the restrictions evolved over successive weeks. This is due, among other things, to the fact that only a small number of entities decided to openly oppose the authorities – whether for fear of fines or reduced access to public funds allocated to the fight against the pandemic. For this reason, the observations are mainly based on communications and reports from business organisations and media reports. From this perspective, it is important to conduct anonymous, cyclical surveys on a large group of entrepreneurs (surveys on their attitudes towards the restrictions currently in force) in order to be able to assess the trend.

In the first phase of the pandemic, which began in March 2020 and included the first lockdown, there was generally a sense of solidarity among entrepreneurs. Under the influence of the protective measures, entrepreneurs complied with the restrictions. Although there were voices of dissent or, at a later stage, criticism related to delays in shield payments, given the scale of the challenge we all faced, there was some

understanding. There were reports of hairdressers operating in the grey economy or of the difficult situation of shopping mall owners and tourist companies, but it can be assumed that large protests were avoided. This was also partly due to the fact that no one really knew how long the pandemic would last and the prevailing belief was that it would be overcome by the summer holidays.

This was confirmed by the gradual loosening of restrictions at the end of April 2020, giving companies hope of reopening and making up for losses over the summer. The mood of the tourism industry was also supposed to improve with the promise of a tourism voucher to motivate Poles to take advantage of the domestic offer (instead of spending their holidays in foreign resorts). However, tensions were raised by the fact that the tourism voucher became an element of the presidential election campaign and in practice was implemented in a very limited version after the election. Some hope for normality was also offered by the open catering entities, and the government's announcements that it had won the fight against the virus may have given entrepreneurs some enthusiasm.

Contrary to these announcements, the arrival of the second wave of infections and thus further restrictions were announced at the end of September. Given that some of those restrictions announced at the turn of October and November 2020 have not been lifted so far (e.g. regarding the catering industry in the context of eating on the premises), this has been met with month to month growing frustration by some entrepreneurs. The confusion surrounding the opening and closing of ski slopes in mid-December 2020, coupled with allegations of politicisation of the decision-making process, as well as the failure of some government representatives to comply with the restrictions, clearly deepened the crisis. This has triggered a growing backlash from businesses, including those in tourist ski resorts, for whom the winter period is crucial from a year-round turnover perspective. As a result, more and more caterers began serving meals on site, either citing opaque and controversial legislation or going into the grey market. The fitness industry, which has been overlooked in recent announcements of loosening restrictions, has also been facing a similar situation for some time.

## **Momentary spurt or permanent change of the rules of the game?**

Looking at the events of the last year, it is worth considering how the current moods and situation of entrepreneurs may in the long term affect their functioning and relations with public institutions. Will the current rebellion of some entrepreneurs against the introduction of further restrictions translate into a permanent lack of trust in the state and its suppression, or are we dealing with a temporary objection resulting from impatience and anticipation of the opening up of the economy?

In recent weeks, we have seen, among other things, protests of the catering industry in various cities, as well as announcements (mainly by Podhale region entrepreneurs) that they will open up to customers, contrary to the government's expectations. The first organised forms of opposition began to appear, such as the "Góralskie Veto" (Highlanders Veto) or the "OtwieraMY" (WEopen) action organised by the Strike of Entrepreneurs party. A day of "national disobedience" was held on 18 January 2021. Although the announcements indicated that hundreds of entities would join these initiatives, the government's announcements about depriving them of support from the shields resulted in relatively few entities officially deciding to make such a move.

Observed from this perspective, it can be assessed that, following the ideas-institutions-interests division proposed by M. Blyth (2011), we are still at a stage where the individual interests of the different actors are crucial and strong trends at the institutional level have not yet been clarified. It seems that, as of March 2021, the vast majority of entrepreneurs do not intend to abandon the current ideas of doing business in accordance with the current state of the law, paying all subsidies and functioning in such a shaped market economy as we still faced at the end of 2019. However, institutions (norms) concerning, for example, avoiding the use of legal crooks or solidarity, partnership, when everyone starts fighting for their own survival, start to be in some danger. Thus, one can speak of a certain growing trend of relativising the binding norms. For some of those most affected by the negative consequences of the restrictions, the universally binding rules, which seemed obvious and unquestionable a year ago, are now beginning to evoke ambivalent feelings. They are putting their own future at stake on the one hand and the well-being of the general public on the other... and the choice becomes more difficult with each passing month.

As a result, it must be said that we are now at a turning point, characteristic of the situation described in the theoretical introduction, in which communities are emerging in which bottom-up norms based on, for example, reciprocity, are beginning to function. These can include, for example, sharing information on how to circumvent restrictions in order to avoid criminal liability. If the state does not increase its support for entrepreneurs who find themselves in a particularly difficult situation, compounded by unclear communication about planned follow-up activities and the other problems mentioned, this crisis could get worse. If this situation persists over the next quarters, this relativisation and focus on vested interests may deepen and become institutionalised. At the same time, a snowball effect can occur – when the change of approach is incidental and concerns small groups of actors, the universally valid institutions should defend themselves, but if the scale of opposition gradually increases, they will begin to erode and weaken, and new, undesirable ones will appear replace them.

In practice, this would mean that even after the lifting of restrictions, when the scale of the pandemic can be largely reduced (e.g. through vaccination), negative attitudes will remain. This would result in a growing shadow economy, a chronic crisis of confidence in the state (which, even without the pandemic, has been relatively low in recent years) and other long-term consequences difficult to reverse. Thus, we would be dealing with a kind of regression to the turn of the 20<sup>th</sup> and 21<sup>st</sup> centuries, when in the nascent Polish capitalist economy the main sign of efficiency was a specifically understood resourcefulness – the ability to efficiently conduct business in such a way as to have as little contact with the state as possible. The consequences of this would be very serious for the further development of the Polish economy, if only from the perspective that limiting the scale of, among other things, the widespread corruption of the time was one of the most difficult challenges of the last thirty years.

In conclusion, the presented perspective on the reaction of entrepreneurs to state actions in response to the COVID-19 pandemic shows that the crisis of confidence in the state and its institutions has deepened in recent months. More and more entities are in a difficult financial situation due to restrictions and the introduction of further limitations, and they fear for their future. If the authorities do not improve their communication policy and do not involve a wider range of stakeholders in the decision-making process, we could be in a much worse position in the long term. The current

revolt is a manifestation of powerlessness, exhaustion and a sense of rejection among entrepreneurs (especially in such sectors as catering and fitness). The deepening of these negative emotions may lead to a long-term rejection of universally applicable institutions and, as a result, to an even more serious socio-economic crisis.

## 4. The dynamics of institutional order on the job market

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The considerations presented below will be focused on the most significant changes that occurred in the Polish labour market during the pandemic downturn. Due to the institutional perspective adopted throughout this paper, the authors of this chapter will largely refer to the evolution of labour market institutions in Poland. Following Kubiczek, we adopt the following understanding of labour market institutions: these are “institutions related to the shaping of the structural and social order within the labour market”. (Kubiczek 2006: 126). Different catalogues of these institutions can be found in the literature, depending on the research perspective adopted. For example, Boeri and van Ours (2011) point to: legal protection of employment, types of employment contracts, unemployment benefits, minimum wage and tax wedge. In turn, Guzikowski (2016) includes: legislation on minimum wage formation, legislation regulating working time, legal employment protection, passive labour market policy system, active labour market policy system, pension security system, trade union system and labour taxation system.

Analysis of the dynamics of the basic indicators of economic activity in the period Q3 2019. – Q3 2020<sup>3</sup> indicates that, at first glance, the situation on the Polish labour market during the analysed year – surprisingly in relation to the economic phenomena observed during the pandemic – practically did not change: the labour force participation rate (in the 15-64 years group) increased by 0.3 p.p. (while on average in the EU-27 it fell by 0.2 p.p.), the employment rate (15-64 years) increased by 0.1 p.p. (against a fall of 1 p.p. in the EU-27), and the unemployment rate (15-74 years) increased by 0.2 p.p. (with an EU27 average increase of 1 p.p.).<sup>4</sup>

In the analysed period, Poland belonged to the group of countries which distinguished themselves by the increase in the economic activity rate against the background of the decrease in the EU average (see Chart 4.1). Nevertheless, it should be underlined that Poland, in terms of the analysed parameter, belongs to the group of countries with the weakest performance in the entire Union. In Q3 2019, the value of the indicator in Poland was equal to 71.1%, which gave Poland the 22<sup>nd</sup> place in the EU (with the EU

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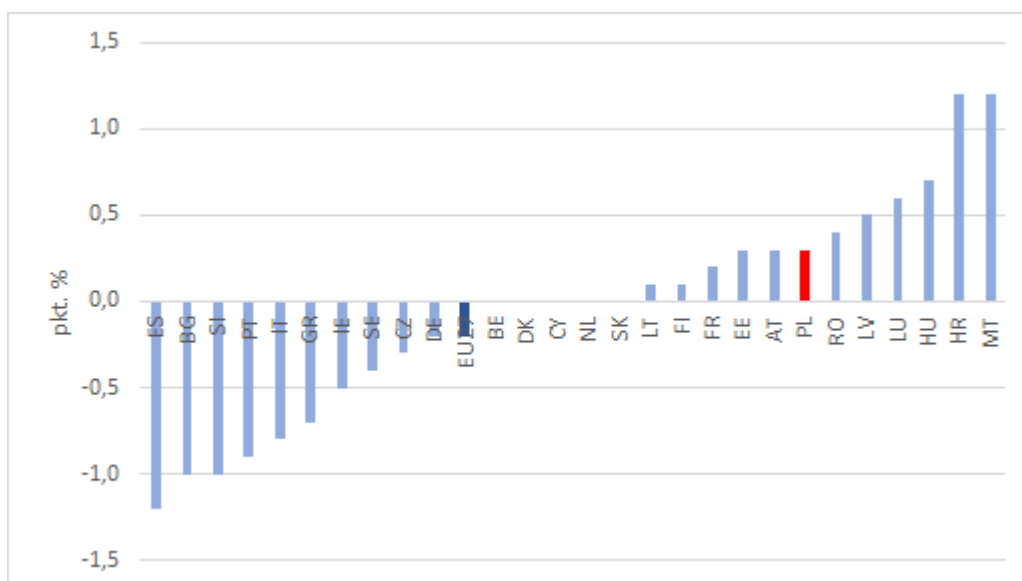
<sup>3</sup> The comparison period adopted is due to the lack of available data for Q4 2020 at the time of this analysis (March 2021).

<sup>4</sup> An own counting on the basis of Eurostat database, <https://ec.europa.eu/eurostat/web/main/data/database> (access: 10.03.2021).



average of 73.6%), while in Q3 2020 it was at the level of 71.4% and again the 22<sup>nd</sup> place in the EU (EU average of 73.4%).

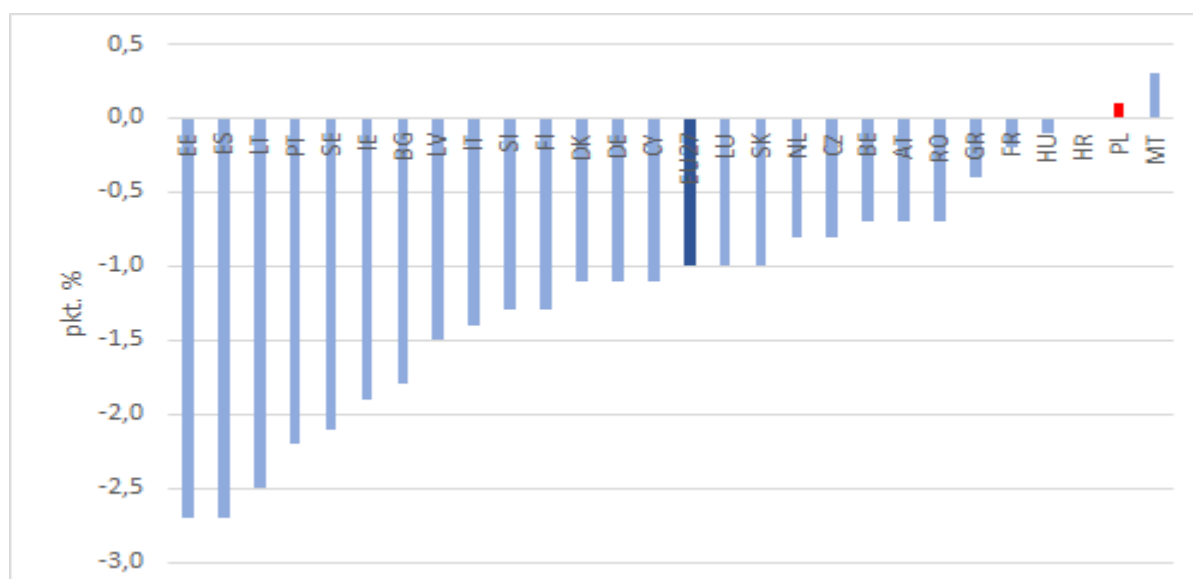
**Chart 4.1. Change in labour force participation rate Q3 2019 – Q3 2020 (in p.p.)**



\* Data for Germany in Q 3 2020 was estimated on the basis of average dynamics in EU 27. Source: an own elaboration based on the data by Eurostat.

Poland, together with Malta, were the only EU countries with an increase in the employment rate (see Chart 4.2). This allowed Poland to slightly improve its position in the ranking of EU countries – while in Q3 2019 with a rate value of 68.9% this gave Poland the 18<sup>th</sup> place in the EU (EU average – 68.8%), in Q3 2020 the rate level of 69.0% moved Poland to the 16<sup>th</sup> place in the EU (EU average – 67.8%).

**4.2. Change in employment rate Q3 2019 – Q3 2020 (in p.p.)**

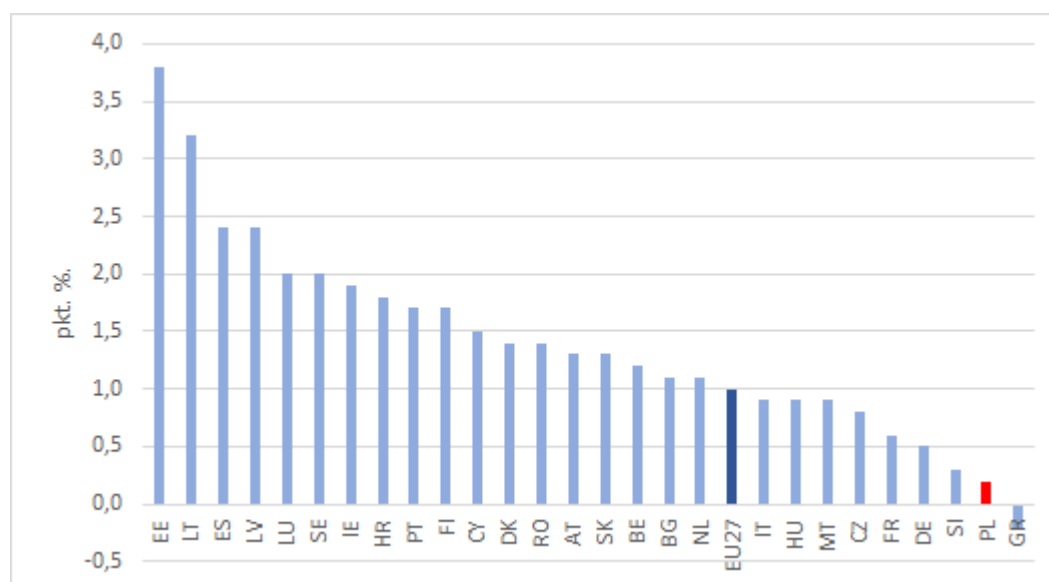


\* Data for Germany in Q 3 2020 was estimated on the basis of average dynamics

in EU 27. Source: an own elaboration based on the data by Eurostat.

As far as the unemployment rate is concerned, Poland is characterised by the smallest increase in the entire EU – apart from Greece which was the only EU country to record its fall (see Chart 4.3). Therefore, the pandemic situation did not cause a jump in unemployment in our country, which was predicted by many analysts a year ago.<sup>5</sup> In recent years, Poland has been among the leading EU countries in terms of the lowest unemployment rate. The value of this indicator in Q3 2019 was equal to 3.1% and gave it the 2<sup>nd</sup> place in the entire Union (EU average – 6.5%), similarly in Q3 2020. – 3.3% and the 2<sup>nd</sup> place (EU average – 7.5%).

**Chart 4.3. Change in unemployment rate Q3 2019 – Q3 2020 (in p.p.)**



\* Data for Germany in Q 3 2020 was estimated on the basis of average dynamics in EU 27. Source: an own elaboration based on the data by Eurostat.

Looking for a preliminary explanation for the surprisingly good condition of the Polish labour market during the pandemic, one may risk a statement that perhaps Poland is currently following a path similar to that accompanying the crisis in 2008. Then, too, at first Poland – in spite of the downward trend recorded in the entire Union – maintained positive developmental dynamics in the labour market. However, the effects of the economic slowdown have reached our labour market as well, albeit with a delay.

<sup>5</sup> The registered unemployment rate sees a slightly larger increase (from 5.2% in December 2019 to 6.2% in December 2020).

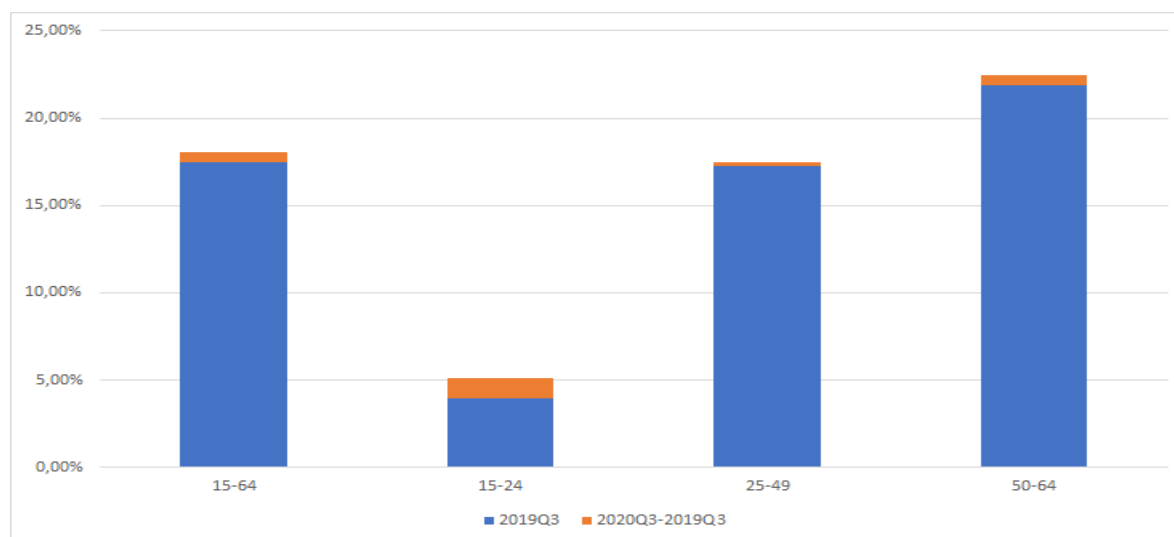
## **The dynamics of the Polish job market changes caused by the COVID-19 pandemic**

The impact of crises on the labour market need not be apparent when analysing only the basic indicators. Structural changes play an important role in adjustment to the crisis. In the context of the specificity of the Polish labour market, i.e. the high percentage of employees working based on flexible forms of employment, the analysis should cover how the relative bargaining power of employees who may take up employment based on more or less stable forms of employment is changing. Such flexibilization may be understood, according to the theoretical lens proposed in the report, as weakening of the institutions that are supposed to protect the interests of employees (although the very availability of flexible forms of employment has a chance to protect against unemployment).

During the current crisis, in contrast to the situation immediately after the 2008 crisis, the percentage of temporarily employed fell in all age groups, which should be assessed as a positive effect of the stabilisation of employment brought about by the crisis shields.

Between the third quarter of 2019 and 2020, the number of self-employed in the economy, estimated on the basis of the BAEL (Badanie Aktywności Ekonomicznej Ludności – The Survey of Economic Activity of People) database, increased by around 68,000, which translated into an increase in the percentage of self-employed by around 0.5 p.p. The current percentage of self-employed (18.04% in Q3 2020) is unprecedented since 2015.

**Chart 4.4. Self-employed as the percentage of the employment (age groups)**



Source: an own elaboration based on the data by Eurostat.

This change may be related to the launch of the “New start” programme by PARP (Polska Agencja Rozwoju Przedsiębiorczości – Polish Agency for Enterprise Development) from June 2020 – for people who want to restart their business. However, it is probably to a greater extent the result of a “push” into self-employment, especially for young employees.

The data presented, although estimated, are reflected in the statistics of insured persons of the ZUS (Zakład Ubezpieczeń Społecznych – Social Insurance Institution) (between Q3 2019 and 2020, the percentage and absolute number of persons insured for non-agricultural economic activity increased).

The scale of change in flexible forms of employment and self-employment is not dramatic. However, what is worrying is the high level of growth in the proportion of self-employment among people under 24, sustained for all quarters of 2020 compared to 2019.

One of the working hypotheses explaining the persistence of Poland's not bad employment performance could be the shift of previously full-time workers to the part-time group. Meanwhile, data for the 15-64 population show that between Q3 2019 and Q3 2020, the share of part-time workers among total workers decreased from 5.8% to

5.6%. The only group where an increase in the share of part-time workers was observed was among 15–19-year-olds (increase in share from 28.8% to 39.9%).

Also in the statistics on the number of hours actually worked, no confirmation can be found for the above working hypothesis. The number of hours worked did not change at all between Q3 2019 and Q3 2020 and amounted to 40.1 h. A slight decrease was observed only among part-time workers (from 21.5 h to 21.2 h).

### **Lack of young people activity**

A significant problem of the Polish labour market is the intensification of segmentation phenomena in the periods of worse economic situation. The group most exposed to deterioration of the employment situation are the youngest people. The consequence of lower chances of finding a job and higher risk of being fired is often a professional deactivation for representatives of this group.

The trends that can be observed among certain age cohorts should therefore be treated as a warning signal. A closer look at narrower age groups reveals very high differences between them in terms of the development of the described economic activity indicators. The youngest labour market participants have been most severely affected by the pandemic slowdown. The labour force participation rate fell the most dramatically in groups: 15-19 years (by 2.8 p.p.), 20-24 years (6.3 p.p.) and 25-29 years (1.2 p.p.). The same was true for the employment rate, which fell in these groups by 2.5 p.p., 5.7 p.p. and 2.8 p.p. respectively. In turn, the unemployment rate increased in these groups by 4.6 p.p., 1.7 p.p. and 1.8 p.p. respectively. Even more telling are the observed changes in the number of those professionally active and inactive in these age groups against the background of demographic changes:

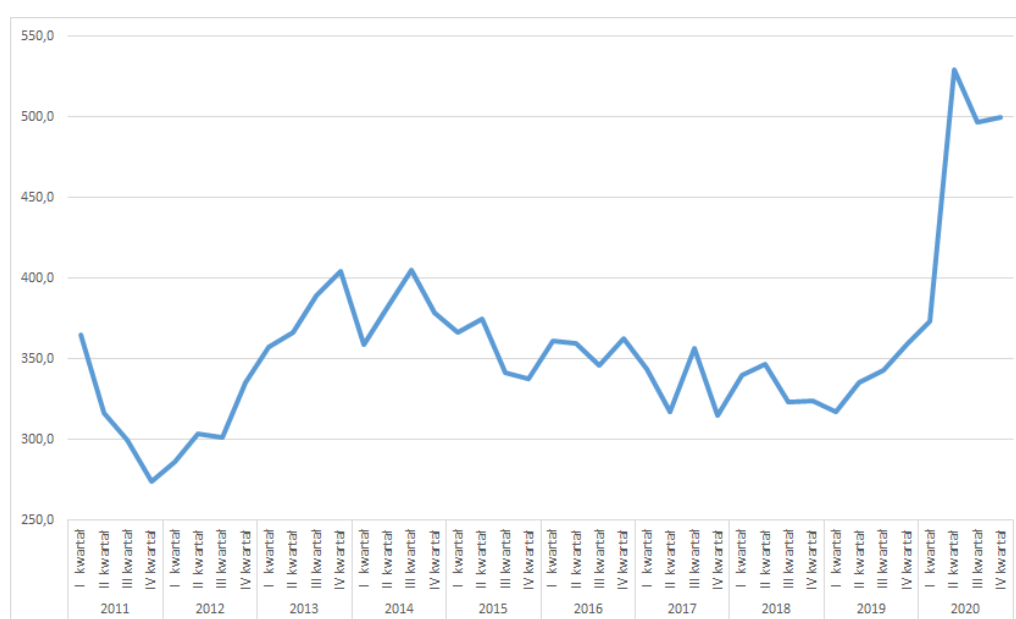
- In the 15-19 age group, the population decreased by 13.1 thousand people (0.8%), while the number of professionally active decreased by as many as 46.1 thousand people (37.2%), and the number of professionally inactive increased by 33 thousand people (2.2%);
- In the 20-24 age group the population decreased by 66.1 thousand people (3.6%), the number of professionally active decreased by 154.6 thousand people (13.2%), and the number of professionally inactive increased by 88.5 thousand people (12.8%);

- In turn, in the 25-29 age group the population decreased by 86.9 thousand people (3.7%), the number of professionally active decreased by 101.9 thousand people (5.2%), while the number of professionally inactive increased by 15 thousand people (4%).<sup>6</sup>

## Grey economy

Another specific change can be observed during the pandemic period. The difference between the number of unemployed registered in labour offices and the number of unemployed estimated on the basis of BAEL data, usually clearly positive, reached unprecedentedly high values [such a large difference has never appeared before (as illustrated by Chart 4.5)]. Taking into account differences in methodology behind both indicators, assuming no changes in the methodology of collecting BAEL data, one may assume that in reality a very large part of the newly registered unemployed, even over 100 thousand people, are either economically inactive or work in the grey economy. This fact, combined with the data on the dynamics of unemployment which indicate that the unemployment rate increased most among the youngest age cohorts, allows us to suspect that the process of “pushing out” to the shadow economy affects this group of labour market participants the most.

**Chart 4.5. Difference between the number of registered unemployed and the number of unemployed estimated on the basis of BAEL (seasonally adjusted data)**



Source: an own elaboration based on the data by Eurostat and GUS (Statistics Poland).

<sup>6</sup> In the population aged 15-64, in the period under study, the number of people (according to BAEL) decreased by 224.3 thousand (1%), the number of professionally active fell by 92.4 thousand (0.6%), while the number of inactive fell by 131.9 thousand (1.9%).

A decomposition of the data for recent quarters by age group shows that the increase in the gap in question affected virtually all employee cohorts, with it being most dramatic, albeit temporary, for those aged 25-34.

The conclusion on the growth of the shadow economy based on the data presented in Chart 4.5 is confirmed by quarterly employment data. Traditionally, the difference between the number of employed estimated on the basis of BAEL data and the number of employed on the basis of “contributory” contracts reflects, to a large extent, employment in the black economy. A compilation of this difference using data on people insured in ZUS and KRUS (Kasa Rolniczego Ubezpieczenia Społecznego – Agricultural Social Insurance Fund) shows that it has been declining from the end of 2014 to the end of 2019, reaching a minimum of 600,000 people. Since then, however, it has started to increase. It can be observed that the estimated gap increased between Q2 and Q3 2020, reaching over 800,000 in Q3 and just under 800,000 in Q4. This is an unprecedented situation and requires careful analysis. If the indicated anomaly persists, it can be concluded that there will be a permanent deterioration in the quality of employment and the bargaining position of employees. It can be assumed that the observed process would have been more pronounced had the anti-crisis and financial shields of the government and PFR not appeared, which treated maintaining (formal) employment as a condition for obtaining support. However, they apparently did not eliminate the problem either.

**Chart 4.6. BAEL employment minus the number of insured in ZUS and KRUS**



a) Repeated data on the KRUS insured people for Q2 2020.

Source: an own elaboration based on the data by Eurostat, ZUS, KRUS.<sup>7</sup>

<sup>7</sup>Insured in KRUS (including spouses and household members) and insured in ZUS under the following titles: Employees, persons collecting a training benefit paid after termination of employment and former appointed employees or former civil servants with whom the employment

## Shifting the institutional balance

The above reflections on the labour market during the pandemic, supported by the analysis of selected indicators of the labour market, point to several clear changes that may affect the permanent deterioration of the situation of the most vulnerable groups of workers.

First and foremost, the data illustrate quite a dramatic deterioration of the youngest people situation, who have been most affected by professional deactivation, unemployment and reduced working hours. This may be – if the pandemic slowdown continues – the beginning of a long-term (institutionalised) process of worsening prospects of professional and social advancement paths for a considerable part of the youngest labour market participants, which is related to the documented long-term deterioration of the employment situation of people who enter the labour market during the recession (cf. Choi, Choi, Son 2020). The probability of such a negative scenario is reinforced by additional factors:

- a general decline in the quality of teaching at all levels of education observed during “remote learning” (Orlov et al. 2020), particularly among disadvantaged groups (Aucejo 2020), which may result in lower levels of human capital among today's youth and, consequently, lower competitiveness in the labour market,
- a definite reduction in the availability to learners of various types of apprenticeships, traineeships, etc.<sup>8</sup> which are very useful ways to increase the effectiveness of the flows from education to the labour market,
- probable increase of economic dependence of youth on their parents during the pandemic period, increase of the phenomenon when adults stay with their parents and the size of the NEET group (young people not in employment, education or training), which may have a significant negative impact on life trajectories and professional paths of young people in Poland.

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relationship has been terminated, collecting a cash benefit for the period after termination of employment, members of the Agricultural Cooperatives (RSP) and the Agricultural Associations (SKR) and persons equal to them, persons performing contract work, persons performing work on the basis of a mandate contract or an agency contract or another contract for the provision of services to which, in accordance with the provisions of the Civil Code, the provisions on mandate apply (including cooperating persons), persons running non-agricultural business activity and persons cooperating with them, members of parliament and senators drawing a salary (including members of the European Parliament elected in Poland, drawing a salary on that account), sports scholarship holders, persons performing paid work on the basis of a referral to work, during serving a sentence or temporary arrest, if they are not covered by insurance on any other basis, clergymen, persons drawing maternity benefit.

<sup>8</sup> This is evidenced by numerous signals from employers indicating a lack of organisational capacity to deliver internships and apprenticeships during the pandemic period. This is indirectly confirmed by the Ministry of Development, Labour and Technology data on the number of unemployed people employed in internships. While in 2019 it was 101.7 thousand people in total, in 2020 75.8 thousand people used this option, <https://psz.praca.gov.pl/-/14327851-statystyki-strukturalne-grudzien-2020> (access: 20.03.2020)



The second very worrying phenomenon is the probable increase in the number of people working in the shadow economy, which may be indicated by a clear “divergence” of data on employment and unemployment declared in BAEL surveys and registered data.

Especially the trends concerning the increased flexibility of employment of young people and the suggested increase in the number of persons working in the shadow economy indicate the risk of weakening the bargaining position of employees<sup>9</sup> by reducing the subordination of the labour market institutions favouring them. The fact that the State Labour Inspectorate remains an entity poorly subsidised and noticed by entrepreneurs does not seem optimistic. In addition, in 2021 slightly less funds were planned in the state budget for the work of the State Labour Inspectorate than in 2020. (PLN 362,101 thousand against PLN 362,287 thousand). Also, due to epidemic difficulties, 28% fewer inspections were planned than in the previous year (52 thousand vs. 72 thousand in 2020). Due to the fact that the scope of SLI activities has been increased to include inspections of the implementation of anti-crisis shields and employee capital plans, it should be assumed that the capacity to control labour, always not very high, has been further reduced. This, with the worrying institutional trends described in this chapter, raises serious concerns about the state's ability to respond to spontaneous changes in local labour relations.

It is also worth mentioning that in October 2020 there was a change in the minister responsible for the Labour department. As a consequence, the department was transferred from the former Ministry of Family, Labour and Social Policy to the Ministry of Development, Labour and Technology. Those changes – in the short term – can be assessed as potentially unfavourable to maintaining institutional continuity and a high coordination capacity with regard to the labour market area operating in such turbulent conditions.

With regard to the pandemic functioning of a key element of public employment services, namely employment offices, it should be underlined that, after initial problems with their accessibility, from April 2020 a number of facilitations have been introduced for the unemployed, which allow, among other things, remote registration. Overall, there has been clear progress in increasing the range of services provided by these

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<sup>9</sup> This swinging of the pendulum towards employers is also due to the observed decline in demand for new employees. In Q4 2020, employers reported 280.6 thousand job offers to employment offices, which, compared to the situation in Q4 2019, is a decrease of 6.1% (CSO, 2021, Information on the labour market in the fourth quarter of 2020. (preliminary data), 25.02.2021).

institutions electronically.

Referring to another important labour market institution, namely active labour market policies, one can see how atypical the current pandemic situation is. In fact, intensive use of active forms of counteracting unemployment was a typical tool for alleviating labour market tensions occurring in situations of crisis or economic slowdown. Meanwhile, in 2020, one can see a decisive decrease in the number of participants of activation programmes compared to the previous year: intervention works (from 35,500 in 2019 to 26,500 people in 2020), public works (from 18,200 to 16,000 people), measures for starting economic activity (from 32,600 to 29,500 people), settlement voucher (9,800 to 7,100 people), trainings (from 34,200 to 19,800 people), traineeships (from 101,700 to 75,800 people), socially useful work (from 19,900 to 14,700 people).<sup>10</sup> Thus, in the case of the current crisis, one can speak of a significant reduction in the strength of the positive impact on the labour market of active labour market policies.

With regard to the evolution of the institution that is passive labour market policy, it should be stressed that in 2020 a positive evolution of its main instrument was seen, namely unemployment benefit. From 1 September 2020 (as part of an additional increase) the amount of the basic unemployment benefit increased from PLN 881.30 to PLN 1,200 – for the period of the first 90 days of having the right to the benefit and from PLN 692.00 to PLN 942.30 – for the period of subsequent days of having the right to the benefit. One should also mention a new benefit, i.e. a solidarity allowance (PLN 1,400 paid from June to August 2020) which could also be used by the registered unemployed<sup>11</sup>. These changes should be assessed as appropriate from the point of view of both a significant increase in the level of material security of the unemployed, which has been postulated for many years, and a positive demand stimulus for the economy during the pandemic crisis.

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<sup>10</sup> Information based on the Ministry of Development, Labour and Technology data <https://psz.praca.gov.pl/-/14327851-statystyki-strukturalne-grudzien-2020> (access: 20.03.2020).

<sup>11</sup> Information based on: Matłacz A. (2020), *Zasilek dla bezrobotnych w 2021 r.*, 08.12.2020, [www.prawo.pl/prawo/ile-wynosi-zasilek-dla-bezrobotnych-w-2021-r.,500834.html](http://www.prawo.pl/prawo/ile-wynosi-zasilek-dla-bezrobotnych-w-2021-r.,500834.html) (access: 14.03.2021).

## Summary

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The last few months have been marked by unprecedented events in various areas of political, social and economic life due to the COVID-19 pandemic. We see the end of the pandemic on the horizon (or at least we want to believe so) and we await a return to normality. However, this will probably not be the old normality. Just as in the case of the so-called long COVID, i. e. the prolonged side-effects of the SARS-CoV-2 infection, the state and the entire institutional order must also be ready to face the long-term consequences of the pandemic.

The report describes the dynamics of the institutional order in the area of law and regulation, the business sector and the labour market, but similar dynamics could equally well be found in the area of local government and, more broadly, the functioning of public institutions. An in-depth study could be carried out into the way in which different public institutions, operating at the local and regional level, have, on the one hand, responded to the recommendations coming from the central authorities and, on the other hand, interacted with each other from below to better coordinate the implemented measures. On the basis of anecdotal evidence, one can venture to say that there have been varied reactions across the country – importantly, not always due to existing party divisions. It is probably not difficult to identify cases in which the management of various local institutions, often originating from different political backgrounds, coordinated the activities of subordinate units by calling each other “as old friends” and improvising on the spot.

In a sense, it can be argued that Poland after the pandemic has become a, “on call” state, although this phenomenon was probably also partly present before 2020. In the face of the state's inability to ensure a sufficient supply of broadly understood public services (a place in a hospital, vaccines, support for companies, etc.), the guarantor of safety becomes social capital, or, to simplify, having a broad list of contacts in the phone. Such a guarantee may take two forms – either shortening the waiting time for certain rare goods (e.g. a phone call to a doctor friend to arrange several vaccinations), or providing protection in the event of a breach of top-down procedures (e.g. a phone call to a district police officer friend so that he or she is not “overzealous” during an inspection).

This “on call” arrangement, creating a new, bottom-up institutional order, although it may here and now improve the functioning of some processes, in the long term it will undermine trust in universal norms. But this is not the only problem. The social recognition of the dismantling of the existing institutional order seems even more serious. To put it bluntly: circumvention of the law again ceases to be an object of social stigma, and becomes a source of local prestige, the carrier of which is resourcefulness. The experience of recent months allows us to formulate the hypothesis that we are facing a return to a specific “culture of resourcefulness”, so common in the 1990s, and already well known from the communist period. A culture which unfortunately can be very ruthless towards those who do not have sufficient resources to manage.

Therefore although popular improvisations based on connections and common sense have enabled many of us to survive the pandemic crisis, they must be viewed with a great deal of distance. It may well be that our difficulties in building a state that upholds equality and justice are not merely temporary. For if we as a society believe that the state is incapable of solving our problems, we can forget that it will ever be built out of anything other than cardboard.

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