

REPORT

DE-DEMOCRATISATION AT THE TIMES OF COVID-19

by

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Executive Summary

The Covid-19 crisis raised concerns of organisations monitoring the quality of democracy (Freedom House, V-dem Institute, EIU or Idea) that the pandemic could be used in a long term to justify the permanent strengthening of incumbents' power leading to the weakening of democracy. The report is aimed at investigating potential threats to liberal democracy in connection with the adopted mechanisms to combat the coronavirus pandemic, basing on two cases of EU members – Italy and Poland in the period 2020-summer 2021. The qualitative research on implemented laws ("Covid-19 legislation") in both countries and focus interviews with lawyers have been conducted to assess the impact of the regulations and the governments' practices on the state of democracy.

The report consists of two main parts – the theoretical framework and empirical study. The former section presents the notion of democratic backsliding and autocratisation, the issue of connection of democratic backsliding/autocratisation processes with states of emergency and possible scenarios of impact of Covid-19 on democracy. The empirical part – on Italy and Poland – includes a review of major features of political systems of the analysed states and the state of democracy before the Covid-19 pandemic, an outline of the basic data on Covid-19 and analysis of legal instruments adopted at the time of coronavirus in terms of their impact on democracy, basing the relevant section on three dimensions in which democratic backsliding and autocratisation can take place: public contestation, political participation and executive limitation.

As far as the main finding is concerned, the analysed cases of Italy and Poland prove that the Covid-19 pandemic can, but does not always have to, negatively affect the state of democracy. Much depends on the question whether the democratic backsliding occurred already before the pandemic. If it did, the Covid-19 crisis can strengthen the previous de-democratisation processes. It is possible even without the formal introduction of a state of emergency (which often has a potential to generate undemocratic tendencies), as it was indicated in the case of Poland.

1. Introduction

On 11 March 2020, WHO declared the coronavirus disease (Covid-19) caused by SARS-CoV-2 virus, firstly noticed a few months before in China, a pandemic. The Covid-19 pandemic, although not over yet and still very deadly (January 2022), is already the largest epidemic since 1920¹ and one of the largest in all human history (Piret & Boivin 2021). Despite the alerts of scientists in the last few years about a possible outbreak of the pandemic that would be able to destroy health systems and public management processes (cf. Schmidt & Undark 2020), we can notice that societies and governments were not prepared for such a calamity. When the pandemic broke out, almost all aspects of the functioning of states were affected an unprecedented scale (as could be foreseen). From

¹ Spanish flu in 1918-1920 took according to various data from 17 to even 100 million of lives. Covid-19, as of January 2022, officially killed 5,5 million of people. If we count HIV/AIDS as a pandemic (as suggested by some specialists) then Covid-19 is not the biggest pandemic since Spanish flu because the death toll of HIV/AIDS is more than 36 millions.

the point of view of political science, it is interesting to investigate how the pandemic influenced governing processes and citizen freedoms.

In the era of global mobility and connections, the first response of governments (in the 1st and 2nd quarter of 2020) was an introduction of measures to temporarily restrict people's mobility by orders to stay at home, closing schools and workplaces, banning public transport, forbidding mass events and public gatherings or closing national borders (cf. Hale, et al. 2020; V-Dem, 2020). The legal measures to manage this extraordinary situation became a prominent issue. The constitutions of many states provide "states of emergency" to deal with the situations in which ordinary constitutional measures are inadequate. But many states, even having appropriate legal provisions were not ready to deal with such a crisis, also because the Covid-19 pandemic is a much broader crisis and may last longer than any so-far encountered natural catastrophes or technological accidents.

These were not only stories from dystopian books (e.g. V for Vendetta), but also a real concern of organisations controlling the quality of democracy. They were afraid that the pandemic could be used in a long term to justify the permanent strengthening of incumbents' power, and thus leading to the weakening of democracy. These worries were justified by the fact that in "the era of Covid-19 pandemic" many governments have strengthened a state surveillance to control the spread of the virus or have shifted many responsibilities for managing the process of combating the pandemic to the executive bodies, limiting at the same time the role of parliaments and civil societies. Some governments have also started to control media to combat fake news.

Thus, many potential threats to democracy have emerged.

In mid-2020, the research team from the University of Warsaw with colleagues from Charles University, Prague and the University of Milano proposed a project "**De-democratisation at the times of Covid-19**"² within the framework of grant scheme of 4EU+ Alliance³. The purpose of the research was to thoroughly investigate selected cases in terms of potential threats to liberal democracy in connection with the adopted mechanisms to combat the coronavirus pandemic.

Italy was one of the most affected countries in the world in the first wave of pandemic. It introduced a state of emergency. Poland, according to the Oxford University research, used initially one of the most restrictive forms of lockdown, although its government did not decide about declaration of the formal state of emergency. Preliminary research related to two countries of the 4EU+ Alliance (Poland, Italy) lets us to test the tools for assessing the impact of national governments in the pandemic era on the challenges for liberal democracy. Although these governments differ in terms of the situation in which they had to act and the scope of measures they undertook, we can observe some similarities in how much they respect or disrespect the democratic rules at the time of coronavirus – the question having much to do with the political (populistic) profile of the parties having a strong position in the governments in both countries (particularly Law and Justice in Poland but also Five Star Movement in Italy).

This report does not address only the issue of de-democratising government practices during the pandemic. Its goal is to assess whether a pandemic is another step on the way to democratic backsliding, if it is used as an "excuse" (also as an argument to build proper narration) to worsen the state of democracy, since the pandemic and struggle with its consequences reduces costs of autocratisation. That is why the assessment is needed of the state of democracy preceding the pandemic in the analysed countries. The authors' aim is also to examine the means of the strengthening of executive power. The qualitative research on implemented laws in two

² In September 2020 Université libre de Bruxelles (ULB) joined the research group.

³ For more about the Alliance, see: <https://4euplus.eu/4EU-1.html>.

countries has been conducted to answer the questions of what types of “Covid-19 legislation” were adopted, what was the procedure to implement it, how many acts were adopted and which areas of human rights they covered.

The report consists of two main parts – the theoretical framework and empirical study. The theoretical framework presents the notion of democratic backsliding and autocratisation. It could be useful to study how the Covid pandemic may influence the quality of democracy and political regime changes. We also show the issue of connection of democratic backsliding/autocratisation processes with states of emergency (even if not understood formally). Moreover, possible scenarios of impact of Covid-19 on democracy are outlined and the “Covid legislation” is presented to follow general patterns in terms of limiting democratic rules in Europe.

The empirical part includes not only the review of major features of political systems of analysed states and the state of democracy before the Covid-19 pandemic to assess the direction of change, but also states of emergency in the analysed countries. We provide the basic data on Covid-19 and conduct the analysis of legal instruments adopted at the time of coronavirus as well as instruments used by the governments. The empirical part finishes with the qualitative research on the impact of the Covid-19 regulations on democracy, basing the relevant section on three dimensions in which democratic backsliding and autocratisation take place according to our theoretical framework (Cassani & Tomini 2019): public contestation, political participation, and executive limitation.

The data of this comparative study come from the desk research as well as focus interviews with the groups of legal experts – academicians and practitioners who were asked to present their opinions on the Covid-19 legislation, including the question of its accordance with the democratic rules and the rule of law.

The time framework of the analysis is 2020 and first part of 2021. The fourth and fifth waves of Covid-19 have not been covered by our report because of its continuous presence at the time of writing of this text and much limited anti-Covid measures taken by the governments of the analysed countries.

2. Theoretical part

Before we present the empirical part, it is indispensable to outline the conceptual/theoretical framework, which will be used in the report. We need to define the main terms such as the democratic backsliding or autocratisation and outline the relationship between the introduction (formally or not) of a state of emergency and changes of state of democracy as well as, basing on the latter aspect, the possible scenarios of impact of the anti-Covid measures on democracy eventually.

2.1 Notion of democratic backsliding and autocratisation

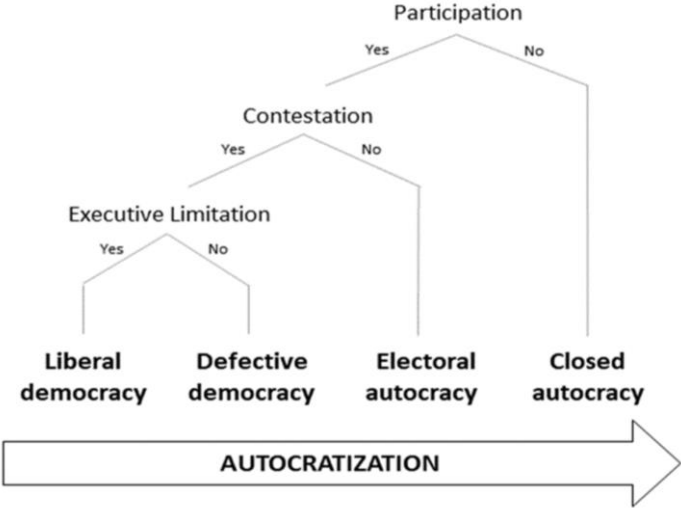
On the following page, we draft a theoretical framework building the notion of democratic backsliding and autocratisation; it could be useful to study how the Covid-19 pandemic may influence changes within the regime or even of the regime to a less democratic one. Both scenarios cannot be excluded eventually, depending on a country.

Crises, such as Covid-19 pandemic, are recognised as triggering factors of the so-called democratic backsliding. It will be a key term used in our report as it suits well the analysed cases of countries. In general terms, it means a deterioration of the state of liberal democracy, specified by Nancy Bermeo as “the state-led debilitation or elimination of the political institutions sustaining an existing democracy” (Bermeo 2016, p. 5). Similar concepts have also been used, for example “de-democratization” (Tilly 2007), “democratic decline” (Plattner 2015) or “democratic erosion” (Paloumpis et al., 2019), just to name a few terms used to describe the same phenomenon.

It does not have to mean the change of the political regime to a less democratic one but it can be about lowering the quality of democracy within the same political regime – in terms of 1) procedures – i.e. a correct operation of procedural aspects of representative democracy; 2) content – the question if citizens, associations, etc. are able to enjoy liberty and equality and 3) results – the question of legitimacy of the democratic regime (Morlino 2011). When we take into consideration, for example, the Economic Intelligence Unit (EIU) democracy index, we can point out such components of the liberal democracy model as: working of the competitive electoral process (electoral integrity) and political pluralism, functioning of the government accompanied by the effective system of checks and balances, guaranteeing individual rights and freedoms, developed political participation and democratic political culture (Economist Intelligence Unit 2020). We should add the working of the rule of law to this, particularly in the context of our research.

Autocratisation is a separate term, even though it is a part of the phenomenon of democratic backsliding. It is about such a deterioration of the state of democracy which means a change of the political regime to a less democratic one, depending on working of three key aspects: executive limitations (control over the executive) as well as participation and contestation opportunities (see Figure 1). They correspond to the components of the liberal model of democracy. They are important indicators of democratic backsliding generally – that is why they will be used in our analysis but when autocratisation occurs, their extensive presence can lead to the change of political regime. Autocratisation, i.e. gradual change towards autocracy, takes place when it makes the exercise of political power more repressive and arbitrary and restricts substantially the space for public contestation and political participation (Cassani & Tomini 2019).

Figure 1. Autocratisation model



Source: Cassani & Tomini, 2019.

2.2. State of emergency vs. democratic backsliding and autocratisation

We should also outline the issue of relationship between the processes defined in the previous section and the introduction of state of emergency. The key question in this context, investigated in many works to date (Ackermann, 2004; Hafner-Burton, Helfer & Fariss, 2011; Criddle & Fox-Decent, 2012; Richards & Clay 2012;

Bjørnskov & Voigt, 2018; Lührmann & Rooney, 2020), is if the introduction of the state of emergency is a favourable determinant for the undemocratic changes.

The state of emergency is usually introduced in democracies according to the relevant provisions of the constitution (with exceptions as in the case of the British constitutional arrangements which, for example, do not include the provisions on the exercise of emergency powers) and other relevant legal acts at the time of instability (Ferejohn & Pasquino 2004, p. 215). John Ferejohn and Pasquale Pasquino write, in this context, about two models of emergency powers: the traditional constitutional (neo-Roman) model – based on the provisions of the constitution and the new, more flexible and controllable (by the parliament) legislative model – with the significant role of emergency legislation (Ferejohn & Pasquino 2004, p. 210-239). The state of emergency can be a result of:

- 1) military invasion, war, revolution or military defeat (traditionally);
- 2) natural disaster, pandemics, terrorist activities, crisis (domestic or international), coup, conflict, protest or rebellion (currently) (Lührmann & Rooney 2020).

It relates to extension of power to executives, who get extra competences to fight against instability and its consequences. “From 1800 to 2012, eighty democracies approved legal provisions for a state of emergency, specifying how the government is empowered to take actions beyond its standard procedures in the event of international or domestic crisis.” (Lührmann & Rooney 2020) For instance, the executives (presidents, prime ministers/chancellors or ministers) can issue decrees, limiting the role of the parliament, censor information or suspend legal processes and rights of citizens (Ferejohn & Pasquino 2004, p. 210). However, the emergency legislation, which is adopted during the state of emergency (according to a new model of emergency powers) and includes the provisions on special competences of state authorities, is still “reviewable by the constitutional court (if there is one) and is regulated in exactly the same manner as any other legislative act.” (Ferejohn & Pasquino, 2004, 215) Moreover, it is temporary, which means that everything should come back to the previous state after the end of state of emergency, including the previously suspended rights. In addition to this, “the legislature is expected to monitor the use of the emergency powers, to investigate abuses, to extend these powers if necessary, and perhaps to suspend them if the emergency ends.” (Ferejohn & Pasquino, 2004, 217)

These special competences of the executive theoretically should not lead then to the democratic backsliding or autocratisation (history shows that the state of emergency can be even a tool to stop the undemocratic processes). Anna Lührmann and Bryan Rooney wrote, if the special competences “are used by the elected executive to effectively and proportionately respond to a crisis situation, the quality of electoral democracy is not at stake.” (Lührmann & Rooney, 2020) The same concerns the constraints put on democracy and human rights – proportionality and limited time of state of emergency (although a short extension is possible, it cannot be extended for an extended period) are favourable conditions for keeping democracy intact (Lührmann & Rooney, 2020).

However, the past political events and processes show that:

- 1) the executive exceptional competences during the state of emergency can become the government standard work afterwards;
- 2) executives can also use the emergency power to strengthen their power and eliminate the obstacles present during the usual time. These constraints put on the executive power are connected with working of democratic procedures and mechanisms, such as division of power or checks and balances system – first of all limiting the use of sources by the executive and creating the accountability tools;
- 3) the state of emergency is an occasion for the executive to reduce the cost of this kind of actions – much higher in a normal situation;

4) the state of emergency gives a good justification for the incumbents to strengthen their power, silencing the opponents, including the opposition which can be accused of being, for example, unpatriotic or irresponsible at this special time when the fast and effective measures must be taken (Lührmann & Rooney, 2020).

The democratic backsliding or even autocratisation is then also possible under the state of emergency in democracies (no matter if formally introduced), particularly in the situation when we had witnessed some democratic backsliding or autocratic changes already before the beginning of the state of emergency (as it will be indicated in the Polish case below). It is confirmed by the aforementioned scholars: Lührmann, and Rooney. The results of their interesting quantitative study “suggest that countries with a state of emergency are indeed more likely to also undergo a period of democratic decline. In fact, we find that democracies are 75 percent more likely to erode under a state of emergency than without, marking a substantial increase in the probability of democratic decline, and this result is robust to a number of alternative specifications.” (Lührmann & Rooney, 2020)

2.3 Covid-19 vs. democratic backsliding and autocratisation – possible scenarios

Having in mind what we wrote in the previous section, we should now consider the case of Covid-19-related actions of incumbents during the state of emergency (*de iure* or *de facto*) and their impact on democracy. We should differentiate between a short- and long-term perspective. As we pointed out, limitations put on the democratic rules and freedoms are justified during the emergency rules – when the introduced measures are proportional and limited in time (i.e. valid in a short-term perspective), which quite often is not the case. However, it is also interesting to ask a question about the time after the emergency period and in a long-term perspective. The steps taken by incumbents may, but do not have to, trigger the democratic backsliding or even autocratisation.

Assuming that we can witness a negative impact of the Covid-19 crisis on democracy, we can claim that in any crisis situation a ruling elite can bypass horizontal checks, limit citizen individual rights, ban demonstrations and other public gatherings, censor media (claiming that the government which fights against coronavirus cannot be criticised) and postpone/cancel elections or organise them at all costs if it is in its favour. In addition, anti-system parties and movements, which must be taken into consideration as well, can fuel violence by their anti-governmental rhetoric and actions.

When we think about crises as drivers of democratic backsliding or autocratisation, we can consider several scenarios. Crises could alternatively be “used”: 1) by the ruling elite to justify democratic backsliding or autocratisation; 2) by other actors (antisystem parties and movements) to delegitimise the ruling elite and the regime in order to take power; 3) by the ruling elite to stabilise the government and the regime, and to marginalise antisystem parties and movements.

Hence, we may identify a few possible scenarios (depending on the scope of changes) triggered by the Covid-19 pandemic:

1. the ruling elite uses the pandemic to
 - a) expand the executive power,
 - b) limit the political competition (i.e. opposition parties and media ability to criticise the government),
 - c) postpone elections or organise them at any cost,
- in addition to what the management of the pandemic reasonably requires;

2. antisystem parties and movements campaign to delegitimise the government and fuel mass revolts to make the government fall, and to replace it.

Alternatively, if none of these scenarios eventually materialise, the Covid-19 pandemic could have:

3. a null effect: the government makes no attempt to make the regime less democratic; antisystem parties and movements do not exist or are too weak to replace the government;

4. an “opposite” effect: the government does not try to make the political regime less democratic; antisystem parties and movements try to delegitimise the government but lose support due to their irresponsible behaviour; and the regime (re-)consolidates.

Of course, we can take into consideration also the possibility of a positive impact of the Covid-19 crisis on democracy. For instance, it may lead to improved governance, strengthening of democratic resilience (Merkel & Lührmann 2021) or limited activities of populists. However, this positive impact is usually ambiguous – as in the case of populists who cannot play so much on the migration issue but are able to find an alternative strategy, attacking the health policy of governments. Moreover, it usually concerns fully democratic countries (in which the democratic resilience may be even strengthened).

3. Empirical study – case of Italy and Poland

3.1 Covid as a driver of democratic backsliding: the case of Italy

In the following part, we describe the Italian political system and the pre-Covid “health status” of democracy in Italy, and we list the main actions the Italian government undertook and the main regulations it adopted till summer 2021 to deal with the pandemic. The last part is devoted to the assessment of the impact of the actions and regulations on democracy.

3.1.1 Italian political system

- Italy is a *parliamentary* republic
- The President of the Republic is the *Head of State*, indirectly elected by the parliament every seven years. It mainly exercises functions of representation and supervision in the formation of the government through the consultation of parties in the parliament. It appoints the prime minister and the ministers (on the recommendation of the appointed Prime Minister), dissolves the chambers, calls the elections. It promulgates the laws approved by the parliament, with a possibility of sending them back to the chambers (once only) for further deliberation.
- The head of the executive is the *Prime Minister*, appointed by the President of the Republic. It directs government policy and receives confidence from the parliament: the PM remains in office as long as he/she enjoys the majority support. When it comes to the PM political responsibility, two options are possible - a motion of no confidence by the parliament (without the need for a new government to be proposed), a confidence vote posed by the PM.
- The *parliament* consists of two chambers. The legislative period lasts 5 years, but the chambers can be dissolved earlier by the President of the Republic, faced with the impossibility of forming a government that enjoys the parliamentary majority support. The lower and upper chambers (Senate) legislate on the same matters and have the same powers. In 2020, a significant reduction in the number of parliamentarians was approved through a constitutional reform, and a consequent constitutional

referendum. The reform reduced the seats in the Chamber of Deputies from 630 to 400, and the Senate seats from 315 to 200.

- Parliamentary *elections* are held every 5 years. The current electoral law configures a "mixed" system: mainly proportional (multi-member colleges with a distribution of seats at the national level for the chamber and at the regional level for the senate), with a 37% majority component (single-member constituencies, single round, first post).
- Currently, the Italian *party system* is characterised by the presence of several parties that essentially align themselves in two opposing poles of centre-left and centre-right. In the centre-left bloc, the Democratic Party (PD) is the dominant party. The centre-right bloc is more heterogeneous and is made up of three main parties – Lega (League), Fratelli d'Italia (Fdi, Brothers of Italy) and Forza Italia (FI, Forward Italy), whose specific weight is constantly evolving, even though the Lega has emerged as the main party in recent years. Within the centre-right bloc, there are parties that might be defined as "sovereigntist" and "Eurosceptic" (Lega and Fdi). Another party that has often been qualified as populist is the Movimento Cinque Stelle (M5S, Five Star Movement), which does not expressly align either to the right or to the left, even though is currently in a centre-left government coalition.

3.1.2 Pre-Covid situation in Italy

At the beginning of the pandemic, Italy was in a period of political instability. A parliamentary election held in March 2018 resulted in a resounding victory for the anti-establishment and "populist" Movimento 5 Stelle (M5S), which won 33% of the vote, a defeat for the ruling centre-left Democratic Party (23%), and a significant growth for the Eurosceptic anti-immigrant Lega, which secured 17%. Following prolonged post-election negotiations, M5S and Lega (which temporarily broke the centre-right alliance with Fratelli d'Italia and Forza Italia) agreed to form a coalition government with the Five Star Movement, clearly populist/sovereigntist oriented, chaired by Prime Minister Giuseppe Conte (a law professor and lawyer, relatively unknown in the political arena).

During the first year of government (2018-2019), Matteo Salvini – leader of the League (the third party in the 2018 elections and the minor partner in the governmental coalition), deputy prime minister and minister of the interior – dominated the political agenda. Skilfully exploiting the margin for action granted to him by the weakness and poor preparation of the M5S government partner, Salvini undertook legislative and media initiatives, especially in the field of migration and security policies, which were worth a robust growth in consensus primarily to the detriment of the governing partner).

Some of these initiatives, for example the proposed legislation which limited the right to demonstrate and various interferences in the activity and prerogatives of other ministries (e.g. transport and justice), jeopardised the country democratic institutions. The tension between the two governing forces increased following the result of the 2019 European Parliament elections, in which the League had a strong electoral success at the expense of the Five Star Movement. In the following weeks, the divide between the two actors became even deeper following the choice of the Five Star Movement to vote for Ursula Von Der Leyen in the European Parliament of for the presidency of the European Commission, while the League strongly opposed her nomination. The crisis was triggered by a parliamentary vote relating to the continuation of the high-speed railway construction, with Lega and Movimento Cinque Stelle once again on the opposite positions.

Faced with the resistance of the M5S against his initiatives and electoral promises, Matteo Salvini opened the political crisis in August 2019: the League presented a motion of no confidence against Conte's government asking for elections, and trusting that the opposition actors (primarily the Democratic Party) would support the motion to bring down the government and have snap elections. However, faced with a possible electoral victory by

Matteo Salvini, the Democratic Party proposed to create a coalition government with the Five Star Movement and with other minor leftist parties (including Liberi e Uguali LeU - Free and Equal). In compliance with the constitution, and considering the parliamentary form of government which characterises Italy, the President of the Republic started consultations between the parties represented in the legislature. After a couple of weeks, this process led to the formation of a new coalition government encompassing M5S, PD, and LeU with Giuseppe Conte still as the Prime Minister. The new government was born weak, both for the ideological distance between the parties that compose it (previously fierce political opponents), and for its fragmentation, especially following the fracture within the PD and the formation of a new party led by former secretary and prime minister Matteo Renzi, who still supported the government, though.

Therefore, at the beginning of 2020, Italy was characterised by a strong political instability. On the one hand, a recently installed coalition government supported by a precarious government alliance (having already experienced a coalition change since the 2018 elections). On the other hand, a relatively united opposition front, which had various electoral successes in 2018 and 2019 (both at European and local level), hegemonised by one party which, due to its programme and international alliances, could be considered a challenger for the stability of Italy’s democratic regime and its international standing (as a member of the EU and NATO). At the same time, the Italian institutional system once again demonstrated a remarkable resilience, an evident propensity for the preservation of constitutional balances, and a strong capacity for moderation in the face of extreme political trends.

3.1.3 State of democracy in Italy 2010-2019⁴

This chapter outlines the state of Italian democracy before the pandemic crisis.

EIU: Italy has been a “flawed democracy” since 2010. In the 2018 report, EIU defines the Italian anti-establishment government coalition as a “threat to civil liberties”, as deep disillusionment with political institutions, including the parliament and political parties, fed through into increasing support for “strongmen” who bypass political institutions. Accordingly, Italy suffered a substantial drop in its Democracy Index global ranking (from the 21st to 33rd place). Between 2018 and 2019, the country recorded a further 0.46 drop (on a 1-10 scale) in its aggregated democracy score, mainly referring to the dimensions “quality of government”, “political culture”, and “civil liberties”.

Table 1. Italy’s democracy trend according to EIU, 2010-2020

Category/Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Overall score (10=best)	7.83	7.74	7.74	7.85	7.85	7.98	7.98	7.98	7.71	7.52 (35th)	7.74 (29th)
Electoral process and pluralism	9.58	9.58	9.58	9.58	9.58	9.58	9.58	9.58	9.58	9.58	9.58
Functioning of government	6.79	6.43	6.43	6.43	6.43	6.43	6.43	6.43	6.07	6.07	6.43
Political participation	6.11	6.67	6.67	7.22	7.22	7.22	7.22	7.22	7.78	7.78	7.22

⁴ Data sources in this subchapter: Varieties of Democracy (V-Dem); Freedom House (FH); Economist Intelligence Unit (EIU).

Political culture	8.13	7.50	7.50	7.50	7.50	8.13	8.13	8.13	6.88	6.25	7.50
Civil liberties	8.53	8.53	8.53	8.53	8.53	8.53	8.53	8.53	8.24	7.94	7.94

Other democracy indexes:

- FH: Italy is an “electoral democracy” and a “free country”. The country does not record any notable change in the aggregate index and in its disaggregated indicators.
- V-Dem: Italy is a liberal democracy. Both the electoral democracy and the liberal democracy indexes record a relatively negligible worsening in the 2018-2019 period (respectively, -0.028 e -0.044). More specifically, the recorded worsening refers to indicators of judicial constraints to the executive, freedom of association, freedom of expression and civil society participation.

3.1.4 Covid management in Italy (Jan 2020 – June 2021)⁵

These are the main measures adopted in Italy to deal with the pandemic:

31 January 2020: Declaration of state of emergency to last six months, then extended twice (30 July, 7 October, in force until 31 January 2021).

23 February 2020: Lockdown in the "red areas", mainly in the northern part of the country.

8 March 2020: Extension of the lockdown nationwide.

In the following weeks, the rigidity of specific prohibitions (e.g. commercial and industrial activities, movement between regions and municipalities, movement of people on the street) became gradually tighter, with new decrees. Then the measures were also extended.

4 May 2020: End of lockdown.

Progressive return to normality with rules to avoid resumption of infections afterwards.

13 October and 24 October 2020: Semi-lockdown nationwide, with varying levels of restrictions depending on the situation of each region (“red”, “orange”, “yellow” areas).

18 December 2020 to 10 January 2021: Strengthening of measures and limitation to travel.

2 January 2021: Launch of the national Covid-19 vaccination plan, with identification of first and second phase priority groups and vaccination points.

14 January 2021: State of emergency extended until 30 April 2020 (new “white” areas).

In the following weeks, travel restrictions were tighter and extended nationwide while vaccination campaign was extended to teachers and the police.

⁵ Main sources in this subchapter: <http://www.governo.it/it/coronavirus-misure-del-governo>
<https://www.mef.gov.it/en/Covid-19/The-measures-introduced-by-the-Italian-government-to-support-families-00001/>

2 March 2021: New measures regarding schools, museums, theatres, cinemas, and business activities were introduced with varying levels of restrictions depending on the situation of each region (national curfew at 10 p.m. until 6 April 2021). Travel limitations nationwide extended until 27 March.

10 March 2021: New criteria to identify priority groups in the national COVID-19 vaccination plan.

12 March 2021: Travel restrictions nationwide extended for the period 3 April – 6 April.

Astra-Zeneca vaccine suspended for the period 16 March – 18 March.

22 March 2021: Allocation of €32 bn to fight poverty and social exclusion, improve health conditions in the country and support firms, third-sector companies and local agencies.

1 April 2021: Extension of all the measures adopted on 2 March 2021 until 30 April 2021 and mandatory Covid-19 vaccination for healthcare workers.

22 April 2021: Launch of the national Covid certificate (“Green Pass”) and state of emergency extended until 31 July 2021 (with new a schedule on re-opening activities nationwide).

In the following weeks, progressive return to normality with rules to avoid the resumption of infections and foster vaccination campaign

20 May 2021: Allocation of €40 bn to support the economy, ease access to credit for firms, improve socio-economic conditions and re-organize school activities.

In the following weeks restrictions were progressively lifted nationwide (all regions eventually classified as “white” areas)

3.1.5 Legal framework⁶

On 31 January 2020, the Italian government formally declared the state of emergency at the national level (Canestrini 2020), one day after WHO announced that the coronavirus was a public health emergency on international scale and asked all its members to monitor the situation in their respective territory. ([https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))).

The state of emergency was declared based on article 7 of the Legislative Decree 1/2018, Civil Protection Code. Hence, it was taken under regular legislation. More specifically, by declaring the state of emergency, the Italian government recognised that Covid-19 had to be considered an “emergency of national importance (...) which, by reason of its intensity or extension, must, with immediate intervention, be faced with extraordinary means and powers to be employed during limited and predefined periods of time” (Article 24 and 25, Legislative Decree 1/2018).

⁶ The following discussion is based on these sources:

<http://www.protezionecivile.gov.it/en/transparent-administration/legal-measures/detail/>

https://temi.camera.it/leg17/post/app_emergenza_e_ordinanza.html?tema=temi/sistema_protezione_civile;

http://www.senato.it/japp/bgt/showdoc/18/DOSSIER/0/1149282/index.html?part=dossier_dossier1-sezione_sezione1;

<https://euideas.eui.eu/2020/03/25/the-italian-state-of-emergency-responses-and-consequences-for-fundamental-freedoms/>

The main purpose of a declaration of state of emergency is to give the central government the possibility to intervene directly in the affairs of the sub-state administrations (regions, provinces, metropolitan cities and communes). The necessity of a coordinated response to the crisis bypasses the principles of subsidiarity and division of competences applicable in normal times. More specifically, the above article rules that the Council of Ministers can declare a state of national emergency, which must be limited in duration (12+12 months maximum), and determine its territorial scope.

In particular, the government initially declared the state of emergency of six months (until 30 July 2020). In late July, the State of Emergency was extended to 15 October. On 7 October, it was decided to extend it yet again, to 31 January 2021. On 14 January 2021, it was extended again until 30 April (<http://www.governo.it/it/articolo/comunicato-stampa-del-consiglio-dei-ministri-n-90/16024>).

The declaration of emergency authorises the issue of “civil protection orders”, which can be adopted “in derogation to any current provision, within the limits and with the methods indicated in the resolution on the state of emergency and in compliance with the general principles of the legal system and the European Union rules.”

Non-derogable rights (International Convention Civil and Political Rights) include: Right to life (Article 6); Freedom from torture and cruel/inhuman treatment (Article 7); Prohibition of slavery and servitude (Article 8, I and II); Prohibition of imprisonment due to inability to fulfil a contractual obligation (Article 11); No conviction for a crime which was not a crime at the time of commitment (Article 15); Right as a person before the law (Article 16); Freedom of thought, conscience and religion (Article 18). A temporary ban on religious services does NOT count as a violation of freedom of religion as long as all religions are targeted equally.

After the declaration of state of emergency, the government became competent to take any relevant measure to solve the crisis. However, the above mentioned article does not rule specifically on health-related emergency, nor does it explicitly empower the Government to limit rights and freedoms.

Since the Italian Constitution rules that restrictions to some of the fundamental freedoms cannot be enacted nor regulated by means other than laws and acts having the force of law, on 23 February 2020, Decree Law no. 65 was issued. It provides for urgent measures relating to the containment and management of the COVID-19 emergency, and granting the “competent authorities” the power to order “any appropriate restrictive measure” on those living in affected areas (<https://www.gazzettaufficiale.it/eli/id/2020/02/23/20G00020/sg>).

The decree-law provided for a non-exhaustive list of measures to be taken depending on the spread of the coronavirus on the national territory: prohibitions on entering or leaving the area, the suspension of public events, the suspension of educational and cultural services, the application of quarantine measures, the suspension of all non-essential commercial and public activities, etc. The decree-law provides for a penal sanction based on article 650 of the penal code of 3-month imprisonment accompanied by a fine in the event of non-compliance with the measures.

The decree-law was programmatic. The implementation of measures was progressive: 4 March (closure of schools and universities), 9 March (closure of public spaces nation-wide), 11 March (closure of non-essential businesses), 22 March (suspension of non-essential economic activities).

Initially, only ten municipalities in Lombardy and one in Veneto were declared “red areas”. Rapidly, measures were extended to the whole Lombardy and fourteen provinces of other Regions. Finally, on 9 March 2020, restrictive measures applying to “red areas” were extended to the entire Italian territory until 3 April 2020 by the head of the Italian Government, the President of the Council of Ministers, through an administrative order called ‘Decree of the President of the Council of Ministers’ (DPCM).

The roll-out of the new restrictions was rather chaotic, as they came from many different sources, including decrees or orders of different Ministers (Minister of Economics and Finance, Minister of Health, Minister of Interior), Head of Government, Presidents of Regions or Autonomous provinces, City Mayors and Civil Protection Department.

In practice, as a result of the emergency legislation, the whole country was put in lockdown. Citizens were prevented from leaving their homes, except for “well-grounded work-related reasons or situations of need or movements for health reasons.” At the same time, school and university activities as well as public events and sport competitions were suspended nationwide. Museums, cultural centres and sport facilities and any non-essential commercial activity different from pharmacies and supermarkets (and a few others) were closed. Trains and public transport were shut down or limited; and religious ceremonies, including funeral ceremonies, were suspended.

In November 2021, a new lockdown was imposed. Differently from the previous one, Italy was divided into zones marked with various colours (red, orange, yellow). In the Orange and Yellow regions, it was prohibited to be present in public places between 22:00 and 05:00, unless necessary. In the Red regions, it was prohibited all the time, unless necessary. In Red and Orange zones, circulation between municipalities and regions was prohibited.

3.1.6 Covid-related legislation in Italy⁷

31 Jan 2020: Declaration of state of emergency

3 Feb: Civil Protection order to address early urgent interventions

21 Feb: Health Minister order to establish quarantine for people infected and people who had contact with other infected people

23 Feb: President of the Council of Ministers decree (DPCM). It provides for urgent measures relating to the containment and management of the COVID-19 emergency, and granting the “competent authorities” the power to order “any appropriate restrictive measure” on those living in affected areas

25 Feb: DPCM to introduce specific measures regarding sports events, schools, prisons, tourism

1 Mar: DPCM to absorb all precedent orders

4 Mar: DPCM to close schools and universities

8 Mar: DPCM to establish lockdown in Lombardy and several confining provinces in Veneto, Emilia-Romagna and Piedmont.

9 Mar: DPCM to establish lockdown nationwide.

11 Mar: DPCM to close any commercial activity other than pharmacies, groceries and a few others.

20 Mar: Health Minister order to close public spaces e.g. parks

22 Mar: Health Minister and Interior Minister order to ban movements between different towns and to close non-essential productive activities

⁷ Subchapter based mainly on: <http://www.governo.it/it/coronavirus-misure-del-governo>

1 Apr: DPCM to extend all the measures adopted until April 13

10 Apr: DPCM to extend all the measures adopted until May 3

29 Apr: DPCM to rule over privacy issue regarding the use of personal data to track people who had contact with infected people.

4 May: "Phase 2" begins, lockdown ended

15 May: DPCM to reopen and reorganise transport and restart economic, social and productive activities.

11 Jun: DPCM to reopen and reorganise further activities

14 Jul: DPCM to extend DPCM issued on 11 June

30 Jul: DPCM to extend the state of emergency until 15 October and the related enabling measures to intervene (see DPCM issued on 23 February)

7 Aug: DPCM to extend until 7 September the Covid-spread prevention basic measures

3 Sept: DPCM to reorganise school activities for school year 2020/2021

7 Sept: DPCM to extend the Covid-spread prevention basic measures until 7 October

7 Oct: DPCM to extend the state of emergency until 31 January 2021

13 Oct: DPCM to introduce new measure to contain the virus spread (second wave)

24 Oct: DPCM to introduce new measures to contain the virus spread

3 Nov: DPCM to establish a new "lighter" lockdown nationwide with different restrictions depending on the situation of each region (red, orange, yellow areas, curfew at 10 p.m.)

2 Dec: DPCM to establish further movement restrictions nationwide for the period 21 December- 6 January.

18 Dec: DPCM to establish further movement restrictions nationwide for the period 24 December – 6 January.

2 Jan 2021: DPCM to launch the national Covid-19 vaccination plan ("Piano strategico nazionale dei vaccini per la prevenzione delle infezioni da SARS-Cov-2")

4 Jan: DPCM to establish further movement restrictions nationwide for the period 7-15 January

14 Jan: DPCM to extend the state of emergency until 30 April

(Since January-February almost all the regions are "yellow" areas)

12 Feb: DPCM to establish travel restrictions nationwide until 25 February

14 February: Health Minister order to ban skiing activities until 15 March

2 Mar: DPCM to establish further travel restrictions nationwide for the period 6-27 March and strengthen Covid-related measures to other sectors (schools, museums, theatres, cinemas, and business activities)

10 Mar: *Ad-interim* Recommendations on Covid-19 vaccination first and second phase priority groups

12 Mar: DPCM to extend travel restrictions nationwide for the period 3-5 April (except for "white areas")

22 Mar: DPCM to allocate €32 bn in order to fight poverty and social exclusion, improve health conditions and help territorial agencies to fight covid-related issues (“Decreto Sostegni”)

1 Apr: DPCM to declare mandatory vaccination for healthcare workers and extend travel restrictions nationwide until 30 April (see DPCM issued on 2 March)

22 Apr: DPCM to launch the national Covid certificate (“Green Pass”), establish a schedule for re-open business activities (“Decreto Riapertura”) and extend the state of emergency until 31 July

17 May: DPCM to establish travel restrictions depending on the situation of each region (red, orange, yellow areas with curfew at 11 p.m. until 6 June and 12 p.m. from 7 till 20 June)

20 May: DPCM to allocate €40bn in order to limit socio-economic consequences of the pandemic

22 May: Health Minister order to classify all regions as “yellow” areas from 24 May

26 Jun: Health Minister order to classify all regions as “white” areas from 28 June.

3.1.7 Did the measures adopted by the government in 2020 to address the Covid-19 pandemic put democracy at risk in Italy?

According to some of the most eminent research centres (V-DEM, IDEA, and Economist Intelligent Unit) that have been monitoring Covid-related challenges to democracy across the world since the pandemic outbreak, the answer is NO.

To be sure, the lockdown in Italy did affect fundamental principles of democracy, such as personal liberty, freedom of movement, freedom of assembly and freedom to profess one’s religious belief. Free enterprise was strongly impacted too; as well as the right to education (due to some difficulties in transitioning to e-learning) and the right to privacy (given the use of surveillance technologies such as cell-phone location tracking, advanced video analytics and biometric surveillance).

However, limitations and/or restrictions to non-absolute rights are allowed even under democracy, when they are prescribed by law, pursuant to a legitimate aim, and when such limitation is necessary and proportionate to a legitimate aim. Limitations allow for the balancing of individual and collective interests and are built into several provisions of the ICCPR and the ECHR (and its Protocols), to which Italy is a party.

More specifically, the **V-Dem** institute classifies Italy as a country with “minor violations” so far in the Pandemic Violations of Democratic Standard Index and as a country at “low risk” in the Pandemic Backsliding Index (<https://www.v-dem.net/shiny/PanDem/>). The recorded minor violations refer to isolated and non-systematic episodes of “abusive enforcement” of the law during the lockdown consisting in the police using excessive force in enforcing the limits on public gatherings in the March-June 2020 period, and to some “restrictions of media freedom” consisting in a limited access to information for journalist. More specifically, the government suspended all non-urgent requests for more than two months as part of its package of laws to tackle the pandemic. Concerning media freedom, besides the above mentioned minor violations, *no de jure or de facto* limitations were imposed during the pandemic on media reporting about Covid-19, about the government response to Covid-19 and about non-Covid-19 related news. No episode of harassment of journalists has been reported. No violation has been recorded regarding the remaining dimensions of the V-Dem Pandemic Backsliding index: “discriminatory measures”, “derogation of non-derogable rights”, “time limits of the state of emergency”, “limitations on legislature”, and “official disinformation campaign”.

IDEA (<https://www.idea.int/gsod-indices/#/indices/countries-regions-profile>) classifies Italy as a “mid-range performance democracy”. More specifically, IDEA notices that in 2020, elections in seven regions and more than a thousand municipalities had to be postponed (but virtually all of them were subsequently held in September 2020). Temporary restrictions on freedom of assembly are still in place. The justice sector and parliament had to limit their activities during the pandemic. Some concerns were raised about personal data protection in the use of tools for infection tracing.

According to the **Economist Intelligent Unit 2020**, Italy is among the only three countries in Western Europe that improved their scores in 2020 (see Table 1 above), whereas eighteen countries recorded a decline. The report stresses that the pandemic caused “coalitions that may have otherwise been at risk of collapse, including those in Ireland, Italy and elsewhere, to endure for longer.” Polling in Italy showed an increase in support for the institutions of government, leading to an increase in its overall score. However, the report considers that “it is unlikely” that political peace will last through 2021, given the political, social and economic consequences of the pandemic.

For a more detailed assessment of Italy’s democratic performance during the pandemic, based on V-Dem and IDEA data, we organise this section based on the three dimensions in which democratic backsliding and autocratisation takes place according to our analytical framework (Cassani & Tomini 2019): public contestation, political participation and executive limitation.

3.1.7.1 Public contestation in Italy during the pandemic

Media limitations

- (VDEM) Neither Reporters Without Borders nor the International Press Institute reported any *de jure* or *de facto* limitations on media reporting about Covid-19, about the government response to Covid-19 and about non-Covid-19-related news imposed during the pandemic, and there was no indication of any such *de jure* limitations in the Italian Government response to Covid-19.
- On journalists’ access to information: the International Press Institute reported that the Italian Government “suspended all non-urgent requests for more than two months as part of its package of laws to tackle the pandemic”.
- On verbal and physical harassment of journalists: no reported harassment of journalists in Italy by the government. To be sure, journalists were subject to harassment by protesters during protests over the Covid-19 measures, but this was not by authorities (<https://rsf.org/en/thematique/internet?countries%5B116%5D=116>; https://ipi.media/countries-see-all/?type_of_content=News%20and%20Monitoring%2CFrom%20Our%20Network&country=Italy; <https://cpj.org/europe/italy/>; <https://ipi.media/access-denied-foi-deadlines-extended-or-suspended-across-europe/>

Government disinformation

- There was no deviation from the information provided by WHO and that of the Italian Government on Covid-19, and no complaints or accusations of any disinformation of this sort were found.

Physical violence by the police

- Amnesty International reported a few isolated incidents of the police using excessive force in enforcing the limit on public gatherings in the March-June 2020 period. However, no reports of any incidents of the police

violence were found for the July-September 2020 period, and the events in the first period seem to be isolated rather than systematic.

- There were reports of violent clashes between police and demonstrators against new lockdown measures in many cities in Italy in late October 2020, but these reports do not indicate any excessive or abusive force from the police (<https://www.amnesty.org/download/Documents/EUR0125112020ENGLISH.PDF>; <https://edition.cnn.com/2020/10/27/europe/italy-coronavirus-protests-intl/index.html>; <https://www.amnesty.org/en/search/?country=38466&resourceType=newsarticle&sort=date>; [https://www.hrw.org/news?country\[\]=9603](https://www.hrw.org/news?country[]=9603) www.bbc.com/news/world-europe-54701042).

Freedom of Association and Assembly

- In early March 2020, Italy became the first country to declare a national lockdown. Public gatherings were forbidden in public or in places open to public, in effect until 31 July 2020.
- From 19 October 2020 till 13 November 2020, streets and squares in city centres could be closed after 21:00 if there was a risk of gatherings.

3.1.7.2 Political participation in Italy during the pandemic

Elections

- Based on the decree of 20 April 2020, the cabinet of ministers postponed elections to councils in seven regions (Veneto, Liguria, Campania, Tuscany, Marche, Apulia and Aosta Valley) and for more than a thousand municipalities across the country. Elections that were originally set for May 2020 were moved to “a Sunday between October and 15 December 2020”. The decree extended terms of elective bodies in cases where they were expiring before 2 August to ensure their mandates were valid until new elections were held. The decree was approved by the Senate on 16 June 2020.
- Elections took place on 20 and 21 September 2020, together with a nationwide referendum on cutting the size of the country’s Parliament by more than a third.
- As of 7 November 2020, the legislative decree of the Council of Ministers, the elections of municipalities - whose bodies had been dissolved due to organised crime - scheduled for 22 and 23 November 2020, were postponed. Local elections in the affected municipalities took place by 31 March 2021.

3.1.7.3 Executive limitations in Italy during the pandemic

Legislative power

- The government did not need parliament’s approval to declare state of emergency. However, the government does need the parliament to approve any decree laws issued within 60 days, and it is through these decree laws that much of the emergency measures were taken.
- The Italian parliament continued its work throughout the pandemic, although at times with several changes to the regular programmes and much work being done remotely or in the plenary/committees consisting of smaller groups.

- Since the state of emergency was declared the Italian government has issued a number of emergency measures through decree laws, which in the Italian legal system is an instrument that allows the government to enact measures that become effective immediately, but which must be voted on by the parliament within 60 days or the decree is terminated. Consequently, while the government has the power to present decrees which are implemented before the parliament votes on it, the parliament can terminate it as soon as it convenes to vote on the decree (Article 77, the Italian Constitution).
- There is no indication that any of the emergency measures themselves have in any way affected the law-making role of the parliament.

Judiciary power

- In mid-June 2020, Prime Minister Giuseppe Conte was questioned as a witness by Bergamo prosecutors about alleged official negligence in imposing lockdowns in one of the areas worst hit by the Covid-19 outbreak. It is part of a judicial inquiry following dozens of complaints that two towns in the northern Lombardy region should have been declared "red zones" much earlier after the virus infection cases were detected.

3.1.7.4 Other issues

Subnational variation

- Sub-national variation: although the Italian government have had numerous national response measures, the regional variation differed substantially in the March-June 2020 period, most notably at the beginning of the spread of the virus where only the Northern regions were in lockdown. Several measures later spread to all Italian regions.
- In July-September and October-December 2020, measures seemed to be more uniform. Although sub-national variations still exist, and some regions have seen the re-entrance of some measures that others have not experienced (red, orange, yellow areas, corresponding to different intensities of lockdown, updated every two weeks depending on the results), there were several nationwide measures implemented (or lifted across the country) during these periods.

Military involvement

Military personnel were deployed in Italy to help enforce emergency measures. In the first period, the army took part in enforcing the lockdown in March 2020. In July, the army was also deployed in specific quarantine centres for migrants and enforced restrictions within these areas. While no reports of this was found in the October-December 2020 period, there was no indication given that this practice ceased, it is assumed to be ongoing (https://www.washingtonpost.com/world/coronavirus-military-enforce-soldiers-armed-forces/2020/03/25/647cbbb6-6d53-11ea-a156-0048b62cdb51_story.html; <http://euromil.org/armed-forces-and-Covid-19/>; <https://www.wsj.com/articles/italy-deploys-troops-to-stop-migrants-breaking-coronavirus-quarantine-11595957404>)

Freedom of Movement

- On 8 March 2020, the authorities passed a decree that empowers the President of the Council of Ministers to take measures to contain the spread of the virus in certain areas of Italy classified as "red zones," including limiting individuals' travel and movement.
- On 12 March 2020, a lockdown was imposed. On 10 April 2020, the lockdown was extended until 3 May 2020.

- With the decree of 26 April 2020, further limitations on intra and inter-regional travel and public gatherings were imposed.
- In mid-May 2020, a decree was enforced restricting Freedom of Movement within the same region until 18 May 2020 and between regions until 3 June 2020.
- In early June 2020, domestic and EU travel restrictions were lifted.
- Starting from 12 August 2020, anyone who travelled from or transited through Croatia, Greece, Malta or Spain had to show a negative PCR test taken in the last 72 hours or undertake a test upon arrival and wait in quarantine for the result.
- As of late September 2020, travel rules varied depending on the country of origin or destination. Movement to/from the European Union (EU) countries had no limitations, including for tourism and without the obligation to self-isolate upon return. Passengers from high-infection EU countries had to undergo mandatory swab tests in the first days upon arriving in Italy. Travelling to/from a select list of low-infection non-EU countries was also permitted without justification, with the obligation to isolate. Travelling to/from other countries was subject to proper justification.

Personal Integrity and Security

- In March 2020, there was a one-day prison protest due to the prison overcrowding during the Covid-19 outbreak. In mid-March 2020, the government allowed early supervised release for those prisoners that had less than 18 months of their sentence left to protect detainees' health.
- From 28 March 2020, all passengers who arrived in Italy had an obligation to communicate in a certificate their name, address and telephone number, as well as their reason for travel.
- In early June 2020, the private contact tracing app "Immuni" was launched.
- The Italian Coalition for Civil Liberties and Rights (CILD) published a report detailing alleged infringements of migrant rights during the lockdown and restrictions designed to fight the Covid-19 pandemic. It says that deprivations of personal liberty became more numerous during the lockdown.

3.2 Covid as a driver of democratic backsliding: the case of Poland

In the following part, we outline the Polish political system and the pre-Covid state of democracy in Poland, and we list the main actions the Polish government undertook and the main regulations it adopted till summer 2021 to deal with the pandemic. The last part is devoted to the assessment of the impact of the actions and regulations on democracy.

3.2.1 Poland's Political System

- 1989 became a symbolic moment of political and economic transition of Poland – the so-called “round table” talks took place then. It was a form of negotiation by representatives of the authoritarian communist government and the democratic opposition, which led to the first partially free elections to parliament in June 1989. Thanks to these elections Tadeusz Mazowiecki, was nominated as the first non-communist prime minister in Poland since the end of the WWII. Democratic and free market reforms were initiated.
- The political system of Poland is based on the constitution, which entered into force in 1997.

- Poland is a parliamentary democracy with a cabinet system.
- The Polish political system is based on the tripartite of power. The legislative power is vested in the two chambers of parliament – Sejm (460 members elected in the proportional system for a term of 4 years) and the Senate (one hundred members elected on the same day that Sejm, in the majoritarian system for 4 years).
- The executive power is based in the institution of the president of the Republic of Poland (elected for a 5 years in the general elections) and the Council of Ministers.
- The president is the supreme representative of the Republic of Poland, supreme commander of the armed forces and “the guarantor of the continuity of state authority”. Although official acts of the President require, for their validity, the signature of the prime minister, the Polish president has thirty prerogatives which makes his/her position stronger than the position of the head of the state in a typical parliamentary system.
- The Council of Ministers conducts the internal affairs and pursues foreign policy of the Republic of Poland. The prime minister and the ministers appointed by the president needs the vote of confidence given by an absolute majority of votes of members of the Sejm.
- The judicial power is vested in courts (the Supreme Court; common courts – regional, district and appeal courts; administrative courts with the Supreme Administrative Court; military courts) and tribunals (Tribunal of State and the Constitutional Tribunal).
- The Constitutional Tribunal adjudicates on whether laws and international agreements comply with the Constitution and other laws. The Constitutional Tribunal can also assess the conformity of the purposes and activities of political parties with the Constitution and decides on competence-related disputes between central constitutional organs of the state.
- The Tribunal of State decides on the constitutional responsibility of top state officials.
- Since 1999 Poland has had the self-government on all three levels of administrative structure of the state. The smallest territorial unit – commune (*gmina*) provides basic needs of the citizens. A district (*powiat*) is an intermediate level of local government. On the highest level of administrative structure – in a province (*voivodeship*) – the self-government works together with the representative of the government (*voivod*). Councils on the level of communes, districts and provinces are directly elected by the citizens of these territorial units. Citizens elect also directly the executive organ of communes.
- The last parliamentary elections took place in October 2019.
- As of the January 2022, there are four parliamentary groupings in Sejm: Law and Justice Parliamentary Grouping, Parliamentary Grouping of the Civic Coalition (Civic Platform, Modern, Polish Initiative, Greens), the Left Coalition Parliamentary Grouping (New Left, Together), Parliamentary Grouping of the Polish Coalition (Polish People's Party, Union of European Democrats, Conservatives). In the Sejm there are also: Confederation's Group of Deputies, Poland 2050 Group of Deputies, Jarosław Gowin's Group of Deputies and three other smaller groups of deputies. There are also non-attached deputies.
- Law and Justice holds power together with a smaller party Loyal Poland - within the so-called United Right.
- President of the Republic Andrzej Duda (2015-2020; 2020-2025) is a former politician of Law and Justice.

3.2.2 Poland's pre-Covid state of affairs

The right-wing Law and Justice (PiS) party won the parliamentary elections in Poland in 2015 and 2019. Before 2015, the government of the centrist Civic Platform (PO) and agrarian Polish People's Party was led by Donald Tusk (2007-2014) and then Ewa Kopacz (2014-2015). The victory of PiS in 2015 was a significant change since the party clearly wanted to contrast its policies from the activities of the former government. PiS announced that its government would follow traditional and Catholic values in the axiological dimension and be more collectivist in the economic dimension. PiS politician Beata Szydło became the Prime Minister in 2015.

The party programme was implemented quickly and brought an extensive criticism from the opposition. The government, for example, abolished compulsory education for 6-year-old children and removed junior high schools, introduced a tax on certain financial institutions and implemented the "Family 500 plus" programme to grant PLN 500 benefit to cover the costs related to raising a child. Other controversies aroused around the environmental policy of the government, establishment of the Territorial Defence Forces (as the fifth branch of Polish Armed Forces), reforms in the health care system and within the policy of decommunisation. In foreign policy, the PiS government focused more on the Central European region and started an assertive policy towards the EU (opposing many EU activities, e.g. climate and migration). PiS also strongly supported Donald Trump's administration in the US.

However, the greatest criticism came with attempts to reform the judicial system, which led to a conflict with the European Union and accusations of breaking the rule of law by the Polish government. For the first time in the history of the EU, Article 7 of the Treaty on the EU was triggered (December 2017).

In 2017, PiS made Mateusz Morawiecki a new prime minister (in office till now), but most of the criticisms of the international community remained. The PiS rule is accused of breaking the Polish constitution, dismantle the independence of the judiciary, politicising the state institutions, taking over the public and independent media, influencing the civil service system, impeding the operation of local governments and practicing the "*divide et impera*" policy toward civil society (also by affecting the freedom of assembly and finances of the NGOs sector). PiS is likewise accused of reducing the Sejm to the role of a "voting machine". Executive aggrandisement and challenges toward rule of law are observable. The Polish society has been strongly polarised.

3.2.3 Poland - State of Democracy Before Pandemic Crisis

3.2.3.1 V-Dem reports

Poland was classified as one of main "autocratising states" in the 2009-2019 period (see Table 2 below). The V-dem Liberal Democracy Index (LDI), embracing Electoral Democracy Index (EDI) – i.e. issues concerning electoral integrity, freedom of association (with reference to political parties and civil society organisations) and freedom of expression as well as Liberal Component Index (LCI) – equality before the law and individual liberty index, judicial constraints on executive index and legislative constraints on executive index (the last two concerning checks and balances system), show that this state was the third country in this context, after Hungary and Turkey. Its LDI decreased from 0.83 in 2009 to 0.50 in 2019 (all results are between 0 – the worst score and 1 – the best score).

According to the same V-dem data, Poland's political regime changed in 2015 (the year of taking over the power by the United Right in presidential and parliamentary elections) from the liberal democracy to electoral democracy, i.e. the democracy with deficits or, as Wolfgang Merkel put it, "defective democracy" (Merkel 2004, 33-58).

Table 2. Poland Among Top 10 Autocratising Countries 2009-2019 (LDI)

State	Change	LDI 2009	LDI 2019	Regime Type 2009	Regime Type 2019
Hungary	-0.36	0.76	0.40	Liberal Democracy	Electoral Autocracy
Turkey	-0.36	0.46	0.10	Electoral Democracy	Electoral Autocracy
Poland	-0.33	0.83	0.50	Liberal Democracy	Electoral Democracy
Serbia	-0.27	0.53	0.25	Liberal Democracy	Electoral Autocracy
Brazil	-0.25	0.76	0.51	Electoral Democracy	Electoral Democracy
India	-0.19	0.55	0.36	Electoral Democracy	Electoral Democracy
Mali	-0.17	0.48	0.31	Electoral Democracy	Electoral Autocracy
Thailand	-0.16	0.32	0.15	Electoral Autocracy	Closed Autocracy
Nicaragua	-0.16	0.22	0.06	Electoral Autocracy	Electoral Autocracy
Zambia	-0.15	0.42	0.27	Electoral Democracy	Electoral Autocracy

Source: Autocratisation Surges – Resistance Growths. Democracy Report 2020, V-dem Institute, p. 16.

3.2.3.2 EIU Democracy Index⁸

Similar results are presented in the Economist Intelligence Unit (EIU) Democracy Index (see Table 3 below). It shows that the democratic backsliding in Poland is a relatively new phenomenon. Although its prelude was already visible during the Law and Justice rule in 2005-2007 period, first in 2015 the overall score of the Democratic Index as well as category “Functioning of government” – concerning among others the control over the government (by institutions and citizens), its autonomy, accountability and transparent work as well as corruption - went down, with small improvement in 2017-2019. In 2016, we could observe the decline of scores in categories “Electoral process and pluralism” – concerning the electoral integrity, working of political parties (including the role of opposition parties) and civil society organisations as well as “Civil liberties” (for example, freedom of expression and media, freedom of religion, personal freedoms and equality under the law and minorities rights). However, while the former category was still at a high level and did not change in the years 2017-2019, the civil liberties were at an increasingly lower level – it was 8.24 in 2016, 7.65 in 2017 and 7.35 in 2019.

The most problematic category is the “political culture”. However, interestingly, it has been at the same very low level since 2010 (with exception of 2014). It shows that the most important deficit is in the Polish case the perception of democracy, no matter if Civic Platform or Law and Justice governs in the country. All EIU reports from 2010 to 2019 define the Polish political regime as flawed democracy (not full democracy then), but this country was in the last years before the pandemic crisis closer to the group of states with hybrid regimes (with a mixture of democratic and authoritarian components). In Eastern Europe, Poland was ranked ninth (after Estonia, the Czech Republic, Slovenia, Lithuania, Latvia, Slovakia, Bulgaria, Hungary). Since 2015 it has been closer to “hybrid regime” (5.99-4.0) than “full democracy” (8 points and more).

⁸ This subchapter is based mainly on: Democracy Index 2015-2019, Economist Intelligence Unit (EIU), www.eiu.com

Table 3. EIU Democracy Index – Poland 2010-2019 (0- worst score, 10 – best score)

Category/Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Overall score (10=best)	7.05	7.12	7.12	7.12	7.47	7.09	6.83	6.67	6.67	6.62 (rank 57 among indexed countries)
Electoral process and pluralism	9.58	9.58	9.58	9.58	9.58	9.58	9.17	9.17	9.17	9.17
Functioning of government	6.07	6.43	6.43	6.43	5.71	5.71	5.71	6.07	6.07	6.07
Civil liberties	9.12	9.12	9.12	9.12	9.12	9.12	8.24	7.65	7.65	7.35
Political participation	6.11	6.11	6.11	6.11	6.67	6.67	6.67	6.11	6.11	6.11
Political culture	4.38	4.38	4.38	4.38	6.25	4.38	4.38	4.38	4.38	4.38

Source: Economist Intelligence Unit (EIU), www.eiu.com

When we look at Poland's scores in the EIU Democracy Index from the comparative perspective, the Polish government's policy in 2015-2019 can be diagnosed as the one which resembled the practice of such countries as Turkey or Hungary (which corresponds to the V-dem scores presented in Table 2). First of all, it concerns the willingness to tamper with the system of checks and balances and the capture of different state political and economic institutions as well as courts (the Constitutional Tribunal, the Supreme Court, the National Judiciary Council) and the public media by the people connected with Law and Justice (United Right – to be precise). This brings these institutions under the control of the incumbents. Moreover, such issues as a limited political pluralism and discrimination of certain minorities, e.g. LGBT, are also common problems in the aforementioned countries (Szymański 2017; 194-199; Democracy Index 2017).

3.2.4 Covid management in Poland (March 2020 – June 2021)

4 March 2020 – first SARS-CoV-2 case (imported) in Poland

12 March 2020 – first death from Covid-19

10-12 March 2020 – first lockdown type measures implemented (decisions on closing schools, universities, offices, mass events)

15 March 2020 – sanitary cordon on borders and obligatory 14-days quarantine for Polish citizens and workers entering Poland

20 March 2020 – state of epidemic declared

21 March 2020 – five hundred confirmed cases

25 March 2020 – non-essential travels forbidden and allowed only non-family gatherings up to two people

31 March 2020 – first (out of four) so called "anti-crisis shields" (179 pages of regulations).

31 March–1 April 2020 – introducing the rule of physical distancing of two metres, closing parks, boulevards, beaches, hairdressers and beauty salons, and forbidding unaccompanied youth from leaving their homes.

1 April 2020 – higher fines for people breaking the rules of quarantine

8 April 2020 – 5 000 confirmed cases

20 April – the first stage of lifting some restrictions (religious gatherings and funerals allowed for more people; more people allowed in the shops; possibility to leave homes for “recreational reasons”)

4 May 2020 – the second stage of lifting restrictions (e.g. shopping centres, museums, libraries, etc. opened under sanitary regime; kindergartens opened also under special sanitary restrictions)

18 May 2020 – the third stage of lifting restrictions (hairdressers, beauty salons, restaurants opened under the sanitary regime)

30 May-6 June 2020 – the fourth stage of lifting restrictions (e.g. cinemas, fitness opened, weddings allowed)

7 August 2020 – 50 000 confirmed cases

8 August 2020 – regional measures replaced state-wide restrictions (three categories – green districts with no restrictions, yellow – districts with minor restrictions, red – full restrictions)

19 October 2020 – only on-line teaching in high schools in “red areas”,

24 October 2020 – due to the dynamic situation and the second wave the whole Poland became “red area” (masks obligatory also outside the buildings; on-line teaching also for classes 4-8 of primary schools; restrictions on the operation of restaurants, sanatoriums and the organisation of events, meetings and gatherings).

31 October-2 November 2020 – cemeteries closed (to stop gathering of people due to the All Saints’ Day)

7 November 2020 – cultural institutions (incl. cinemas and museums) closed; reduced limit of people allowed in shops and churches; limited activities of shopping malls; hotels available only for business travellers

7 November 2020 – 500 000 confirmed cases

9 November 2020 – on-line teaching also for classes 1-3 of primary schools

28 November 2020 – some restrictions lifted

2 December 2020 – 1 000 000 confirmed cases (as thirteen state in the world with more than million cases)

17 December 2020 – new restrictions announced (from 28 December to 17 January limitation of functioning of shopping malls and hotels; ski slopes closed; 10-day quarantine for people coming to Poland by organised transport; during New Year’s Eve freedom of movement limited)

December 2020-January 2021 – first groups received the first shot of vaccination

6 January 2021 – 30 000 confirmed deaths

February 2021 – lifting a part of restrictions (shopping malls, museums, cinemas, swimming pools opened with sanitary restrictions)

25 March 2021 – shopping malls, kindergartens, hairdressing salons closed once again

9 April 2021 – 2 500 000 confirmed cases

24 April 2021 – 65 000 confirmed cases

May-June 2021 – most restrictions lifted

3.2.5 Legal framework

Polish constitution provides the possibility of introducing one of three *extraordinary measures*: martial law, a state of emergency or a state of natural disaster. Generally speaking, these measures can be introduced only when “ordinary constitutional measures are inadequate”. Extraordinary measures may be introduced only by regulation, issued upon the basis of statute, and additionally they must be publicised. Actions undertaken as a result of the introduction of any extraordinary measure shall be proportionate to the degree of threat. The scope of the freedoms and rights of persons and citizens that can be restricted during the emergency situations is limited by the constitution and the regulations.

The state of martial law (in a part of the state territory or in the whole country) can be declared by the President on the request of the Council of Ministers only in the case of “external threats to the state, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement”.

The state of emergency (in a part of the state territory or in the whole country) can be declared by the President on request of the Council of Ministers in the case of “threats to the constitutional order of the State, to security of the citizenry or public order” for a period of no longer than 90 days (one extension is possible for a period of no longer than 60 days and with the consent of the Sejm).

The Sejm can, by an absolute majority of votes taken in the presence of at least half the statutory number of deputies, annul the regulation of the President on the state of martial law or the state of emergency.

According to the Polish law the epidemic threats can be controlled by the third type of “extraordinary measures” – **a state of natural disaster**. Although the constitution foresees that the state of natural disaster can be introduced by the Council of Ministers in order “to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster”, regulations allow also to introduce this measure in the situation of pandemic. The Council of Ministers may introduce the state of natural disaster on period of no longer than 30 days, in a part of or upon the whole territory of the state. An extension of a state of natural disaster may be decided by the Sejm.

During a period of introduction of extraordinary measures in Poland, the Constitution, the Acts on Elections to the Sejm, the Senate and organs of local government, the Act on Elections to the Presidency, as well as statutes on extraordinary measures, shall not be subject to change. Also during a period of introduction of extraordinary measures, as well as within the period of 90 days following its termination, the term of office of the Sejm may not be shortened, nor may a nationwide referendum, nor elections to the Sejm, Senate, organs of local government nor elections for the Presidency be held, and the term of office of such organs shall be appropriately prolonged.

Despite the premises for introducing a state of natural disaster on the territory of Poland, the government has never decided to implement it. This lack of state of natural disaster is criticised by lawyers, who emphasised that such far-reaching restrictions of civil rights and freedoms, as introduced by the government, can only take place in the constitutionally provided state of emergency and for a limited time. Nevertheless, the government decided to operate on the basis of the act “on preventing and combating infections and infectious diseases”, which allows the Minister of Health to introduce the “**state of epidemic**”.

The state of epidemic was introduced in Poland by the ordinance of 20 March 2020 and is still effective. During a state of epidemic, it is allowed to decide, for example, about a temporary restriction of people’s movement; a temporary restriction or prohibition of the circulation and use of certain items or food products; a temporary restriction of the operation of certain institutions or workplaces; prohibition of organising events and other gatherings

of people; an order to provide real estate, premises, grounds and the provision of means of transport for anti-epidemic activities; obligation to carry out preventive vaccinations. In 2020, the number of possible means that can be used during the state of epidemic was even enlarged. New provisions were added, e.g. a possibility of temporary limitation of certain business activities; imposition of obligatory quarantine; temporary limitation of the use of premises or land. In October 2020, the possibility of ordering wearing masks was also added to the act (the requirement to wear masks was imposed by other regulations before).

It is assumed that the government used the state of epidemic as a legal form of restriction of citizens' rights, because the introduction of any constitutional extraordinary measure, as highlighted above, would prevent the organisation of the presidential elections scheduled for 2020. The use of the state of epidemic to control the spread of coronavirus, however, raises many legal doubts. Many experts share the opinion that "in the light of the Constitution, the lack of a state of emergency prevents extraordinary limitation of the rights and freedoms of an individuals. The introduction of such restrictions makes them unconstitutional" (Florczak-Wątor 2020, p. 20). The constitution prohibits discretionary restrictions on civil rights and freedoms. The restrictions imposed by the government in a pandemic are consistent with those of the constitutional state of natural disaster, so the question is why the government did not decide to impose such an emergency measure. What is more, the restrictions can be introduced each time in the law, and not in the regulation based on the law.

3.2.6 Covid-related legislation in Poland

First, the main and specially adopted act that was aimed at combating pandemic in Poland was the Act "on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and the crisis situations caused by them" passed by the Sejm on 2 March 2020. The act is referred to as the "special coronavirus act" as it contains the main instruments adopted in Poland to combat the pandemic. The act entered into force on 8 March 2020 and introduced changes to fifteen legal acts. By 1 February 2021, there were already twenty-six legal acts amending this act, and the consolidated version of the original thirteen pages of the act had already 305 pages in October 2020. "Special coronavirus act" introduced, inter alia, "remote work" into the Polish legal system. It allowed also to create a list of entities providing healthcare services in connection with counteracting Covid-19 and the possibility of setting maximum prices of medicines and food. Other important provisions concern care allowances in the situation of closure of schools and kindergartens or imposing special tasks on local government units or companies in connection with counteracting COVID-19. The Act also changed the regulations regarding the construction of law to omit existing rules when building an infrastructure needed for fight with Covid-19. The act was accused of being an attempt to bypass the introduction of a state of emergency in Poland, and even if it went further than constitutional extraordinary measures in terms of restricting civil rights.

Another act, which was to prepare the health care system for the challenges of the pandemic, was the Act of 31 March 2020. The act introduced, for example, the possibility of establishing financial penalties for those who are non-compliant with restrictions in the state of epidemic and made common medical tele-advice. From the original twenty-three pages of the published text, the Act increased the length to forty-seven pages. The act introduced changes to the fifteen effective legal acts.

The next group of acts is the so-called Anti-Crisis Shields, which were aimed at combatting effects of the pandemic in Poland. The first "Anti-Crisis Shield" was adopted on 31 March 2020 and by May 2021 there were already nine such acts. These "shields" introduced also many permanent modifications to the Polish legal system, including those which seem to be unrelated to the goal of combating the effects of the pandemic, e.g. granting prison warders the right to use tasers. Many changes introduced by these shields were criticised due to lack of compliance not only with the Polish law, but also with international law – e.g. possibility to dismiss members of the Social Dialogue Council during the state of pandemic. The freedoms of trade unions rights are determined by the

provisions of international law, and such a change during the pandemic and limiting the role of the president of the Republic of Poland to making changes in such bodies does not seem to be justified by anything else than the desire to use the pandemic to affect the shape of the statutory state organs. Anti-Crisis Shield 1.0 also limited access to public information. This "Shield" introduced changes to sixty-four existing legal acts. The original 91-page document when consolidated with all changes, had 199 pages.

The Anti-Crisis Shield 2.0 was adopted on 16 April 2020. It has seventy-nine pages (after unification of amendments of these Act with seven other legal acts, it has 165 pages) and itself the Act changes sixty-three existing legal acts regarding many fields of law – e.g. tax, telecommunication, postal, bankruptcy, public procurement, administrative, construction, civil, criminal and electoral law. This Shield introduced e.g. questionable mechanisms of dismissal of public administration employees, which did not guarantee workers rights, and which did not provide for the participation of trade unions. According to the incumbents, the justification was to have a possibility of reducing the burden on the state budget, but this proposal needs to be viewed in a broader context of previous attempts and actions to undermine the civil service by the current government. Interestingly, at the same time the government emphasised maintenance of employment during the pandemic.

The Anti-Crisis Shield 3.0 adopted on 14 May 2020 amended fifty legal acts. Also in that act, we can find provisions that are puzzling in the context of Covid-19 pandemic. For example, the analysed act changed the rules for the selection and dismissal of the president of the Office of Electronic Communications (UKE). The participation of the Senate in the procedure of electing the president of UKE was eliminated, which is of a particular importance in the situation where the majority of the Sejm lost control over the Senate after the last parliamentary elections. The press reported that the willingness to shorten the term of office of the current president of UKE was of a political nature (<https://www.computerworld.pl/news/Prezes-UKE-ofiara-koronawirusa-Aukcja-na-5G-zostanie-anulowana,420794.html>).

The changes concerning the election and dismissal of the president of UKE were introduced to the Shield by MPs motions. Similarly, already at the stage of parliamentary work, the range of people who could sit in the State Commission "for the investigation of cases of actions against sexual freedom and decency against a minor under the age of 15", was expanded. The changes allowed to include persons with the post-doctoral degree or professor, who are academic teachers, have higher pedagogical education, or persons who have been awarded a certain order specified in other regulations. It is really bizarre to justify such a legislative activity with the will to combat the Covid-19 pandemic. What is more, the Act on this State Commission was amended by two later "Covid" acts with regard to remuneration of committee members (<https://businessinsider.com.pl/wiadomosci/zarobki-w-komisji-ds-pedofilii-12-tys-zl-plus-dodatki/bhznjx>).

Shield 3.0 like the previous anti-crisis shield undermined the civil service, cancelling the exams in the civil service system, referring to the epidemic threat related to the organisation of the exam and the travels of those taking it. However, at the same time other events involving numerous groups of people took place in the country, such as presidential elections or secondary school final exams.

A number of objections to the Anti-crisis Shield 3.0 were raised by the Ombudsman, who underlined doubts that the Shield includes "solutions unrelated to the epidemic and the crisis, and are aimed at the concentration of power. For example, it cannot be justified by the epidemic of successive regulations subordinating prosecutors and judges to the Minister of Justice" (<https://www.rpo.gov.pl/pl/content/koronawirus-i-tarcza-3-0-rpo-uwagi-dla-senatu>).

Also the act signed by the President of the Republic of Poland on 22 June 2020 "on interest subsidies for bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19" (known as Shield 4.0), raised some doubts. Although the Shield regulated much narrower scope of matters, nevertheless, it amended fifty-six legal acts, had seventy-six

pages, and introduced regulations not related to the pandemic, e.g. introduced to the criminal code the “audacious theft”. Such an activity is characterised by a disrespectful attitude towards the robbed, using violence or theft in conditions of direct contact with the robbed person. Experts underlined that in existing regulations such a new form of crime was not needed (<https://www.rp.pl/Prawo-karne/200609452-Kradziez-szczegolnie-zuchwala-wraca-do-kodeksu-karnego-przy-okazji-Tarczy.html>).

In the second half of 2020, the legislator continued to introduce a number of normative acts related to attempts to counter the coronavirus pandemic. The most important ones include:

- The Act of 15 July 2020 on the Polish Tourist Voucher, which introduced PLN 500, one-time support for families for each child up to 18 years old and one additional benefit in the form of a voucher supplement, in the amount of PLN 500 for children with a certificate of disability. The voucher entitles you to pay for hotel services or tourist events conducted in Poland. The Act was proposed by the President of the Republic of Poland and was submitted to the Sejm 10 days before the first round of presidential elections in which the incumbent president participated.
- The so-called Shield 5.0 (the Act of 17 September 2020 amending the Act on special solutions related to the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them and some other acts). The act was twelve pages long on the day of its publication and changed eight other acts. Shield 5.0 was used to help selected entrepreneurs. Travel agents, tour pilots and tourist guides could take advantage of the idle time pay. Additional idle time pay could be taken by the people who conduct business in the sectors such: tourist passenger transport; theatre, opera, ballet, circus performances; discos; electronic games parlours; fairs. Entrepreneurs in the tourism and hotel sector, organisation and service of fairs, conferences and exhibitions could take advantage of the exemption from paying social security contributions for July, August and September 2020.
- The so-called Shield 6.0 (the Act of 9 December 2020 amending the Act on special solutions related to the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them, and certain other acts) introduced further solutions supporting the sectors of the economy most affected by the pandemic, including gastronomic, fitness, cultural and entertainment, wedding, educational and transport activities. The support includes, among others additional idle time benefits, exemption from paying social and health contributions for November 2020, one-off subsidies for micro and small entrepreneurs to cover the running costs of a firm and co-financing employee salaries.

3.2.7 Did the measures adopted by the government in 2020 to address the Covid-19 pandemic put democracy at risk in Poland?

The actions taken by the state authorities in Poland during the pandemic increased the threats to liberal democracy, which was already under fire before the outbreak of the pandemic. It seems that the “original sin” was that incumbents did not decide to adopt the state of emergency stipulated in the Polish constitution. Therefore, we had a schizophrenic situation, when, on the one hand, the government emphasised that it is not necessary to introduce a state of emergency, and, on the other hand, it adopted, on dubious legal grounds, actions that often went even further than the constitutional state of emergency. This caused further threats to the quality of democracy, namely questionable legal grounds for limiting civil and human rights. Many courts in Poland already expressed their negative opinions on these forms of restriction of freedoms.

The limitations of people’s freedoms were often unreasonable (such as prohibiting access to forests) and changed too often. It led to situations that citizens *en mass* ignored these restrictions. This, unfortunately, increased the pace of development of the pandemic in Poland. The authorities, as indicated above, also used the situation of

the pandemic to introduce into the Polish legal order provisions not related to the pandemic. These changes in ordinary times would probably be proceeded much longer and could attract the attention of the public opinion.

Therefore, it can be concluded that the standards of “good legislation” have been lowered. In addition to the inferior quality of the adopted regulations, there were also very often announced shortly before they became effective, which made people unable to prepare properly for the changes (lack of “legal certainty”).

A critical issue was also the further executive aggrandisement. The role of the parliament was limited more than before. The problem was not a pandemic but limiting by the speaker of the parliament a possibility of presenting opinions different than those of the parliamentary majority. Also NGOs were practically excluded from the legislative process. It happened that voting was divided into two blocks: first, the amendments proposed by the opposition, which are doomed to fail; second, proposals from the parliamentary majority. That way, even hundreds of amendments proposed by opposition groups could be rejected *en bloc*. We could also notice a practice that government bills were introduced as parliamentary ones, probably to omit a requirement of preparing regulatory impact analysis and to speed up the legislative processes.

The legal experts interviewed during our research project underline that we can name the situation a kind of “hybrid state of emergency”. Despite the lack of a formal state of emergency, the government undertook actions that are characteristic for states of emergency, including the limitation of constitutional rights and freedoms. Unfortunately, according to the experts, these restrictions were introduced on a questionable legal basis, e.g. limitations of freedoms were included in documents of no statutory rank. Another phenomenon named by the experts was a kind of “administratisation of criminal law”. It is about the situation in which responsibility for safety and public order was shifted to the administrative instruments (not penal code instruments).

According to the V-dem Pandemic Backsliding Project, both moderate (e.g. abusive enforcement; no time limits) and major violations (e.g. media restrictions) of democratic standards could be observed in Poland. There were concerns about the attitude toward journalists while reporting non-Covid-19 related news, but with reference to the pandemic. One journalist was asked to appear in the court due to covering the protests outside Jarosław Kaczyński’s home (*de-facto* leader of the state) on 29 March 2020. Another journalist was charged by the police while covering some other protests. V-dem noticed also a case of refusing accreditation to two independent journalists to the President’s trip to Italy “due to a lack of space caused by COVID-19 restrictions, in apparent retaliation for critical coverage. The media accused the Office of the President of using the Covid-19 rules to sideline critical media” (IPI 2020). There was also an important issue of limiting access by the government to the public information during the pandemic and the police violence during anti-government protests in Poland.

In the following part, a more detailed assessment is presented, basing on the three aforementioned dimensions in which democratic backsliding and autocratisation take place according to our analytical framework (Cassani & Tomini 2019): public contestation, political participation and executive limitation.

3.2.7.1 Public contestation in Poland during the pandemic

Media limitations

The cases of limiting the impartiality of public media and attempts to affect private TV and press (e.g. the issue of attempts to limit broadcasting by television channel TVN) are reported in Poland. They are dangerous for democracy (since 2015 Poland has been forty-six places lower in the World Press Freedom Index and is already in the 62nd position out of 180 countries) and not directly related to the Covid-19 pandemic. The International Press

Institute which monitors the free flow of news and information during the Covid-19 pandemic noticed in their "IPI COVID-19 Press Freedom Tracker" attacks on eight subjects in four cases regarding Covid-19 pandemic. V-dem assessed restrictions of media freedom in Poland during the pandemic as major violations of democratic standards.

Government disinformation

There are no reports of state disinformation related to the Covid-19 pandemic. However, there have been, some disinformation activities from abroad (Polska na celowniku dezinformacji 2021). The phenomenon of spreading fake news in social media has also emerged.

An important challenge for the quality of democracy in Poland can be e-mails of Michał Dworczyk, the Chief of the Office of the Prime Minister, published since June 2021 on the Internet, which, if real, show the government misinformation actions aimed at certain groups of people, regarding also the Covid-19 pandemic. The e-mails began to be published within anonymous channels on the Telegram platform. As a result of pressure from the Polish government, Telegram removed the channels, but new e-mails still hit the web via website PoufnaRozmowa.com. Although their reliability has never been confirmed, there are individual statements by politicians suggesting they are true. The e-mails reveal, for example, the backstage of manipulation of public opinion by the government.

Physical violence by the police

Research groups and monitoring organisations such as V-Dem or IPI noticed a disproportionate use of force by the police to disperse protests during the pandemic in Poland. Most of the protests in which cases of excessive use of force toward protesting people took place were not directly related to the pandemic as such, but using teargas and beating protestors by the police was justified by the fact that the participants were not complying with the Covid-19 restrictions when protesting. During one of the demonstrations, the participants' arm was broken on arrest, in other demonstrations telescopic batons and tear gas were used by plain clothes police officers; verbal violence was also observable. The Polish MPs were also the object of violence (<https://tvn24.pl/polska/protesty-i-dzialania-policji-kontrowersyjne-interwencje-4774935>).

Freedom of Association and Assembly

Only in 2020, basing its actions on the pandemic, the government repeatedly introduced changes to freedom of assemblies – limiting assemblies to fifty people, then banning it completely and then allowing assemblies again in groups of less than 150 people. Each time the restrictions were introduced by means of an ordinance, which was questioned by lawyers. The Commissioner for Human Rights pointed out that the government's ban on assemblies in the pandemic introduced by regulations violated the essence of the constitutional freedom of assembly. This legal position was supported by the Supreme Court. According to the Ombudsman and the Supreme Court the regulations derived from the law on preventing and combating infections and infectious diseases may not be the legal basis for the prohibition of public gatherings.

The restrictions imposed due to the pandemic coincided in 2020 with numerous protests and important political events. The restrictions in the first half of 2020 coincided with the presidential campaign, which made the promotion of the candidates, who were not as visible in the media as the incumbent president of the Republic of Poland, very difficult. In 2020, protesting entrepreneurs and farmers found it difficult to express their views. The protests against the controversial judgment of the Constitutional Tribunal which significantly limited the possibility of termination of pregnancy had the worldwide coverage. Hundreds of thousands of Poles took to the streets and during some of these protests the police used force.

3.2.7.2 Political participation in Poland during the pandemic

Elections

The main political event that should happen in Poland in 2020 was the presidential elections. The elections should have been scheduled on Sunday between 27 April and 22 May 2020. As indicated above, it is assumed that the ruling PiS did not introduce a state of emergency in Poland because, according to the constitution, elections could not be held not only during the state of emergency, but also 90 days after its end. The polls showed that the later the election was organised, the potentially less favourable was a result of incumbent president Andrzej Duda, supported by PiS. Since a state of emergency was not declared, the elections in Poland could be organised, but at the same time many restrictions were implemented due to the pandemic influencing the electoral process. That is why organising elections became a veritable legal story.

On 5 February 2020, thus before the state of epidemic in Poland, the Speaker of the Sejm (Elżbieta Witek from PiS) ordered, according to the constitutional regulations, presidential elections for 10 May 2020. However, due to the Covid-19 pandemic, at the end of March 2020, candidates in elections and legal experts emphasised, that the pandemic situations do not allow to conduct a normal election campaign as well as the elections.

As a proposal of solving this stalemate, on 6 April 2020, the group of PiS deputies proposed to the Speaker of the Sejm the bill assuming the organisation of presidential elections only by postal voting. On the same day, the whole (!) legislative process was conducted in the Sejm and the draft law was sent to the Senate.

It was widely criticised, for example by the Office for Democratic Institutions and Human Rights of Organisation for Security and Co-operation in Europe (ODHIR). ODHIR emphasised, inter alia, a very short time from the presentation of such radical changes in electoral law to the day of the elections, the lack of proper consultation of the draft, handing over the election organisation from the independent National Election Commission (NEC) to a government ministry. It was also underlined that it was impossible to implement the principle of universality and equality and proper supervision over the election organised in such a hurry. Many public institutions and the Voivodship Administrative Court in Warsaw found also that the collection of voters data by Polish Post, in order to prepare postal elections is a violation of the law.

The legal gridlock was uneasy to be solved, since the election was already legally announced but there was no possibility to organise these elections. On 7 May 2020, an unprecedented situation in the history of Poland occurred, when the National Electoral Commission announced that the vote on 10 May would not take place because the NEC was unable to organise elections as a result of the above-mentioned changes to the law.

In that situation, on 3 June 2020, the Speaker of the Sejm, Elżbieta Witek, set new elections for 28 June 2020. The elections on 28 June were held in a hybrid form.

Again, the failure to introduce a state of emergency in Poland seemed to be the source of all legal problems, chaos and failure to organise elections within the constitutional time.

3.2.7.3 Executive limitations in Poland during the pandemic

Legislative power

The outbreak of the pandemic affected the functioning of the Polish parliament. From 26 March 2020, Sejm meetings and its committees could be held remotely. Voting and making proposals could also be conducted on-line. However, this on-line voting system failed several times. MPs were doubtful about the possibility of casting

votes. After all, it seems that the vast majority of deputies accepted such a voting method and the way of participating in the work of parliament remotely.

A more crucial threat for liberal democracy standards was a restriction put on the participation of representatives of civil society in the work of parliament. Over time, their share was partially recreated thanks to remote work, but during the first months of pandemic, social actors had a limited opportunity to influence the legislative process and exercise public control.

The legislative process of some laws during the pandemic raised doubts; very quick, without proper consultations and without any attempt at even minimal consideration of the comments of the parliamentary opposition. In voting, the parliamentary majority also used its advantage, not discussing the proposals put forward by the opposition and rejecting the comments of the parliamentary minority *en block*.

The practice of submitting, controversial bills, like MPs proposals, needs also a critical reflection. It seems to be used to bypass a long process of inter-ministerial consultations and preparation of regulatory impact analysis. Unfortunately, this leads to a lower quality of the adopted laws.

Judicial Power

The dispute over reforms of the judiciary in Poland, initiated by the PiS government, which led, inter alia, to the first proceeding in the history of the EU against a country under article 7 of the Treaty on the EU, was carried out despite the pandemic.

3.2.7.4 Other Issues

Subnational variation

Since 8 August 2020 sub-national measures of controlling pandemic have replaced nationwide restrictions. Poland was divided into three categories – green districts with no restrictions, yellow – districts with minor restrictions and red – with full restrictions.

Military involvement

Military personnel were involved in controlling if people under quarantine followed the rules of home isolation.

Freedom of Movement

On 15 March 2020, the borders of Poland were closed and only employees and citizens of the Republic of Poland were allowed to enter the country. After crossing the border, the 14-day quarantine was obligatory.

On 25 March 2020, a total lockdown was introduced. Movement was allowed only for those who move to perform professional activities, to satisfy the necessary life needs (e.g. basic shopping) or to participate in religious rituals.

Personal Integrity and Security

As early as January 2020, locator forms for people who entered Poland were introduced.

4. Conclusions

The aim of the research was to verify the scope of response of Poland and Italy to the Covid-19 pandemic and the effect of the government management process on the quality of democracy. We asked the following questions: Did the strong populist parties in both countries affect the ways of solving the crisis? What measures were taken during the pandemic? How did they affect the state of democracy?

Both countries differed in the formal framework adopted to prevent the effects of the pandemic – Italy introduced a state of emergency, Poland decided not to do so. In both countries, populist parties were strongly represented in their governments but despite their presence in political systems and governments of Italy and Poland, there was no discernible deterioration in the quality of democracy during the pandemic in the former country. However, Italy, unlike Poland, showed almost no symptoms of de-democratisation before the Covid-19 crisis. In Poland, the quality of democracy deteriorated during the pandemic but also beforehand. The undemocratic changes already in the pre-crisis time may be then the premise of de-democratisation during the Covid-19 crisis. Since Poland was de-democratising before pandemic, also the further deterioration was more probable during the Covid-19 crisis. The actions of the Polish government show that with the clarification of many uncertainties about the pandemic, the political interest was increasingly important in governing the state than combating the crisis. This is illustrated by the example of activities related to the presidential elections scheduled for 2020 or the implementation of the "Covid regulations" proposals, which would be much more contested in a non-crisis situation.

The Italian government has not used the pandemic to increase its power and introduce regulations not related to the pandemic. Restrictions on civil rights were justified by the situation and were applied without discrimination against selected social groups and followed international regulations. The role of parliament has not been decisively diminished. In Poland, people's freedoms restrictions did not have a good legal basis. At the same time, the Polish government increased its role extensively, at the expense of the Sejm using the pandemic to introduce unrelated regulations and limiting public contestation.

An interesting conclusion concerning both countries refers to the introduction of the formal state of emergency. Although history proves that the introduction of such emergency measures could be an instrument for the de-democratisation of the state, it seems that in Poland the failure to introduce a constitutional state of emergency during the pandemic contributed to the deterioration of the quality of democracy.

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