

Dominik Szczepański¹

Proposals for Constitutional Changes in the Presidential Election Campaign in Poland in 2020

Keywords: constitutional change, election campaign, presidential election 2020, Poland

Słowa kluczowe: zmiana konstytucji, kampania wyborcza, wybory prezydenckie 2020, Polska

Abstract

The article discusses the proposals for changing the constitution, which were officially presented during the presidential election campaign in Poland in 2020. The article consists of two main parts. The first part focuses on the presented proposals of laws concerning the regulation in question, while the second focuses on the postulates resulting from the activity of candidates running for the office of President in Poland in 2020.

Streszczenie

Propozycje zmian konstytucyjnych w kampanii prezydenckiej w Polsce w 2020 roku

W artykule omówiono propozycje dotyczące zmiany konstytucji, które zostały oficjalnie przedstawione w trakcie prezydenckiej kampanii wyborczej w Polsce w 2020 r. Artykuł składa się z dwóch zasadniczych części. W pierwszej z nich uwagę skoncentrowano na przedstawionych propozycjach ustaw dotyczących omawianej regulacji, natomiast

¹ ORCID ID: 0000-0001-9026-1447, PhD, Department of Political and Media Systems, Institute of Political Science, College of Social Sciences, University of Rzeszow. E-mail: szczepanski@ur.edu.pl.

w drugiej skupiono się na postulatach będących wytworem aktywności kandydatów ubiegających się o urząd prezydenta w Polsce w 2020 r.

✱

I. Introduction

The proposals to amend the Basic Law are already a permanent element of contemporary political discourse. It results from different visions of socio-political circles and political formations denying the existing political reality and making a more or less radical attempt to adjust the provisions of the Constitution of the Republic of Poland to the shape and desired images of the political system².

This issue was also the subject of many debates initiating the need to reform or amend the Basic Law, which has been most actively undertaken in Poland since 2015 in connection with winning the presidential elections and the coming to power of the United Right (ZP) camp, which main core was Law and Justice (PiS) supported by Solidarna Polska Zbigniew Ziobro (SPZZ) and the Jarosław Gowin Agreement (PJK)³.

One of the most important criteria taken into account when discussing proposals for changes to the Polish Constitution, in addition to the parliamentary work mainly appointed by the Sejm, were electoral campaigns, especially presidential campaigns in which candidates running for the highest office in the country presented a number of changes aimed at changing the Constitution.

² These issues were discussed in detail in the papers: M. Kallas (ed.), *Projekty konstytucyjne 1989–1991*, Warsaw 1992; R. Chruściak (ed.), *Projekty konstytucji 1993–1997*, part 1, Warsaw 1997; R. Chruściak (ed.), *Projekty konstytucji 1993–1997*, part 2, Warsaw 1997; R. Chruściak, *Prace konstytucyjne w latach 1997–2007*, Warsaw 2009; R. Chruściak, *Prace konstytucyjne w latach 2008–2011*, Warsaw 2013; J. Marszałek-Kawa, D. Plecka (eds.), *Dictionary of Political Knowledge*, Toruń 2019; Marszałek-Kawa J., *The Institutional Position of the Sejm of the Republic of Poland after the Accession to the European Union*, Toruń 2016.

³ T. Litwin, K. Łabędź, R. Zyzik, *Aktualna debata wokół zasad ustrojowych w Polsce*, Kraków 2019, p. 123.

It is also worth adding that the presidential elections in Poland in 2020, according to the election calendar, were set by the Speaker of the Sejm for May 10, 2020, while a possible second round was to take place on May 24, 2020⁴. As a result of the developing COVID-19 pandemic and numerous appeals from the legal and academic circles, including the candidates running for president, it was postponed. On May 7, 2020, the State Election Commission (PKW) announced in a special announcement that the regulations in force in Poland suspended the PKW's powers to determine the model ballot papers and to order their printing⁵.

It was announced that the election silence on election day, May 10, 2020, will not apply. It was also announced that the polling stations were closed on that day. In connection with the PKW's resolution of May 10, 2020 on stating that it is not possible to vote for candidates in the election of the President of the Republic of Poland, on June 3, the Speaker of the Sejm issued a new order setting the elections for June 28, 2020, and a possible second round for July 12, 2020⁶.

The aim of the article is to analyze the proposals of constitutional changes presented during the presidential campaign in Poland in 2020 and to verify two hypotheses: 1) the proposal to amend the constitution presented by the emerging ZP group was based on the need to overcome the crisis related to the impossibility of holding presidential elections in May; 2) in 2020, candidates running for the office of president presented radically new solutions to amend the current Basic Law. The following research questions proved helpful in this regard: 1) did the groups that were part of ZP obtain consensus on the need to change the Constitution of the Republic of Poland?; 2) were the opposition groups willing to support ZP's proposals or did they prepare their own assumptions for changing the Basic Law?; 3) did the candidates for the office of President of the Republic of Poland try to implement the prepared proposals to change the Constitution of the Republic of Poland or should they

⁴ *Postanowienie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 5 lutego 2020 r. w sprawie zarządzenia wyborów Prezydenta Rzeczypospolitej Polskiej* (Dz.U. item 184).

⁵ The legal basis limiting the activity of PKW was: Act of April 16, 2020 on specific support instruments in connection with the spread of SARS-CoV-2 virus (Dz.U. item 695).

⁶ Decision of the Marshal of the Sejm of the Republic of Poland of June 3, 2020 on ordering the election of the President of the Republic of Poland (Dz.U. item 988).

be considered as an exclusive element of the election campaign and thus try to gain more public support?

Among the research techniques used in the article, the main focus was on the analysis of draft laws concerning the change of the constitution and the proposals submitted by candidates, as well as the retrospective method, which was used to show that many of the solutions presented in 2020 were not new, but were already a permanent element of contemporary political discourse.

II. The Projects of Laws on the Change of the Constitution Submitted in 2020

During the presidential election campaign in Poland, two bills on amending the Constitution of the Republic of Poland were submitted to the Polish Parliament, i.e. MPs and presidents. Before they were officially submitted, on April 6, 2020, the Sejm passed an act on special rules for the organization of universal suffrage for the President of the Republic of Poland ordered in 2020 with the possibility to vote by correspondence⁷. 230 MPs of ZP voted for its adoption, 226 MPs voted against, including 133 from the Civic Coalition (KO), 49 from the Left, 30 from the Kukiz'15 coalition and the Polish Peasant Party (PSL), 11 from the Confederacy, 2 from the United Right and Ryszard Galla, non-attached Member⁸. Two representatives of PJG abstained from voting⁹.

On 27 April 2020, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE) issued an opinion on the law, stating that the presidential elections in Poland planned by correspondence do not meet the OSCE requirements to be considered democratic¹⁰. On the same day, the same opinion was issued by the

⁷ Act of June 2, 2020 on the special rules for the organization of general elections for the President of the Republic of Poland ordered in 2020 with the possibility of voting by correspondence (Dz.U. item 979).

⁸ They were: Michał Wypij and Wojciech Maksymowicz.

⁹ They were: Iwona Michałek and Magdalena Sroka.

¹⁰ OBWE: *wybory prezydenckie w Polsce w obecnej formie nie będą demokratyczne*, https://wiadomosci.onet.pl/kraj/obwe-wybory-prezydenckie-w-polsce-w-obecnej-formie-nie-beda-demokratyczne/4hy6s5m?utm_source=pl.wikipedia.org_viasg_wiadomosci&utm_medium=referal&utm_campaign=leo_automatic&srcc=ucs&utm_v=2 (22.09.2020).

Supreme Court in Poland, stating that the procedure in which the law was passed by the Sejm and as a result of numerous defects of substantive nature, the draft should not be subject to further legislative work¹¹. On 5 May 2020, the Senate of the Republic of Poland passed a resolution to reject the bill, and then addressed it to the President of the Republic of Poland, who signed the bill on 6 May 2020.

The first of the two bills on the amendment of the Constitution was submitted to the Sejm late in the evening on 6 April 2020. Its authors were PJG politicians, but it is worth noting that its main originator and initiator was Jarosław Gowin¹². The project was also signed by many leading Law and Justice (PiS) politicians, including Jarosław Kaczyński, Mateusz Morawiecki, Piotr Gliński and Ryszard Terlecki, which formally supported this initiative by the groups that are co-founding the ZP camp and are looking for a way out of the impasse connected with the presidential elections. The project consisted only of three articles and concerned the amendment of the Article 127 of the Polish Constitution. The new wording of the article assumed extending the term of office of the President of the Republic of Poland to 7 years and limiting his term to one. Importantly, the draft's explanatory memorandum contained a reservation regarding the application of this provision only to the term of office of the incumbent President of the Republic of Poland, which, as we read in the draft, "will end at the end of the period set out in the amended provisions of the Constitution" and that "elections ordered before the entry into force of the law become ineffective"¹³.

The petitioners' deputies justified the submitted draft amendment to the Constitution not only with the need to increase the stability of the presidential office in Poland and at the same time to guarantee the continuity of state power in a situation of unprecedented threat to the legal and public security of the citizens of the Republic related to the development of the COVID-19 epidemic, but most of all with the common good, which was invoked within the framework of the incidental extension of the presidential term during

¹¹ Opinion on the Act of April 6, 2020 on the Special Rules for Holding General Elections for the President of the Republic of Poland ordered in 2020 (Senate Printout No. 99).

¹² The applicants' representative was Michał Wypij (PJG).

¹³ Print No. 337 (Members' bill on the amendment to the Constitution of the Republic of Poland).

the state of emergency, which, despite everything, was not introduced by the Prime Minister of Poland¹⁴.

With the submission of the project, J. Gowin acting as Deputy Prime Minister resigned. On April 15, 2020, the project was sent for the first reading at the session of the Sejm, after which work on it was discontinued. An important aspect related to the submission of this project was also its partial support by opposition politicians, such as Paweł Kowal or Kazimierz Michał Ujazdowski of KO. The project was also supported by the presidential candidate, Władysław Kosiniak-Kamysz, representing the people, while Paweł Kukiz explicitly stated that the 7-year term would have lasted far too long. This politician therefore suggested changing the presidential term from 5 to 6 years as the most sensible. However, this proposal did not receive any reaction from those in power or the opposition¹⁵. On April 15, 2020, the draft was sent for a first reading, and the legislative process was stopped there.

The second of the submitted drafts was submitted to the Polish Parliament on July 6, 2020 by President A. Duda and concerned the ban on the adoption of a child by persons in a single-sex relationship. The draft of the Art. 72, para. 2a of the Constitution, proposed by the President, stated that the child could be “adopted only for his own good. Only spouses can adopt a child together”¹⁶. The proposed regulation, however, was not new, since it repeated the existing Article 115 §1 of the Family and Guardianship Code¹⁷. The submission of the presidential draft of the constitutional amendment to the Speaker of the Sejm, E. Witek, was preceded by meeting A. Duda with the inhabitants of Starachowice, which took place on the same day. During A. Witek’s speech, Duda emphasized that while preparing the draft of the constitution change, he counted on the support of the opposition¹⁸. Even-

¹⁴ Ibidem.

¹⁵ Kukiz o propozycji Gowina: Jeżeli jeden prezes się nie zgodzi, to sobie możemy planować, <https://wiadomosci.dziennik.pl/polityka/artykuly/6482504,kukiz-gowin-kaczynski-wydłużenie-kadencji.html> (5.10.2020).

¹⁶ Print No. 456 (Presidential bill on the amendment to the Constitution of the Republic of Poland).

¹⁷ The Act of February 25, 1964, Family and Guardianship Code (Dz.U. No. 9 item 59).

¹⁸ Projekt zmiany konstytucji w Sejmie. Duda liczy na opozycję, <https://www.rp.pl/Wybory-prezydenckie-2020/200709638-Projekt-zmian-konstytucji-w-Sejmie-Duda-liczy-na-opozycje.html> (12.10.2020).

tually, the project met with the support of the camp of the United Right and the Confederacy. On the next day, July 7, 2020, the project was sent for first reading.

III. The Positions of Presidential Candidates in the Face of Constitutional Change

Officially nominated and registered candidates running for the office of President in Poland in 2020 by means of various forms of political activity (mainly through election programmes, press conferences, interviews and social media entries) presented a number of more or less radical demands for changes in the Constitution or changes in the Basic Law itself. These proposals can be divided into two categories: 1) amendments to the Basic Law and 2) amendments to the Constitution of the Republic of Poland.

Within the first category, it should be emphasized that only the incumbent President of the Republic of Poland, Andrzej Duda, who is in office and is in favor of re-election, was in favor of a complete change of the Basic Law. This proposal, even though it was enigmatic and was not discussed in more detail, was, in his opinion, related to the necessity of building a strong state. This idea was not new in the case of the incumbent president, as in 2018. A. Duda was the author of the referendum held on November 11, 2018, which referred to a nationwide discussion on amending the Basic Law and adapting it to the needs of changing internal and international conditions, and thus strengthening the role of Poland. This proposal was first rejected by the Sejm and then by the Senate in 2018¹⁹.

The proposal presented by Krzysztof Bosak (Confederation) in his programme entitled *New Order* also proved not entirely clear. The constitutional theses created the outline of a new political system in Poland, based, among others, on religious fundamentalism, nationalism, as well as on hierarchy and liberalization in access to arms²⁰. Although the very title of K. Bosak's pro-

¹⁹ W. Tomaszewski, *Proces przygotowania i uchwalenia Konstytucji RP z 2 kwietnia 1997 roku w aspekcie doświadczeń ustrojowych oraz prac nad nową konstytucją*, Olsztyn 2018, pp. 142–147.

²⁰ *Nowy porządek. Tezy Konstytucyjne* [Election Committee of Krzysztof Bosak, candidate for President of the Republic of Poland], Warsaw 2020, p. 7.

gramme suggested the creation of a “new order”, it should be noted that the main assumptions referred to individual systemic solutions, without the need to change the constitution and adapt the provisions of the current Basic Law to the right-wing vision of the Confederation.

A much wider range of systemic solutions was presented under the second of the mentioned categories, i.e. changes in the Polish Constitution. They concerned, among others, the political position of the President, the Sejm and Senate and courts. As far as the office of the President is concerned, the vast majority of the candidates supported the recognition and strengthening of the role of the President as an arbitrator and guardian of the Constitution, which was an argument aimed directly at A. Duda, considered the guardian of the interests of only one political option. This opinion was expressed by S. Holownia, W. Kosiniak-Kamysz, Robert Biedroń, Małgorzata Kidawa-Błońska (and after the change of KO candidate Rafał Trzaskowski), while K. Bosak postulated extending the term of office of the president to 7 years without the possibility of applying for re-election. After the end of his term of office, the president was to become Marshal of the Senate for the next 7 years, and then a senator for life, i.e. in the same way as for the Italian Republic²¹. In the case of the two candidates, there was also an important proposal to appoint, under the President of the Republic of Poland, a Local Government Council as the body determining the direction of the country’s development (R. Biedroń) and a Presidential Council (M. Jakubiak) to support the President in substantive matters and consisting of the Minister of Foreign Affairs, the Minister of National Defense and three members of the Presidential Council (all of whom were to be appointed by the President). A new solution was also to create a new post of vice-president, who was also to be part of the Presidential Council²². Moreover, W. Kosiak-Kamysz postulated the establishment of branches of the Chancellery of the President in the former 49 provincial cities, so that every citizen could get help in solving everyday problems, among

²¹ *Nadzieja dla Polski. Program wyborczy kandydata na Prezydenta Rzeczypospolitej Polskiej Władysława Kosiniaka-Kamysza*, Warsaw 2020, p. 4.

²² *Robert Biedroń obiecuje radę samorządową przy prezydencie RP*, <https://www.wnp.pl/parlamentarny/spoleczenstwo/robert-biedron-obiecuje-rade-samorzadowa-przy-prezydencie-rp,80577.html> (20.10.2020); *Tezy programowe FDR* [Election material of Marek Jakubiak, candidate for President of the Republic of Poland], Warsaw 2020, p. 6.

others, by taking legal advice and obtaining support in contacting state and local government bodies²³.

Of all the candidates, only K. Bosak was the author of the proposal to reduce the number of MPs from 460 to 230. According to this policy, such a number was to sufficiently ensure the representativeness of the Polish Parliament, increase the efficiency of MPs' work and at the same time reduce the costs of functioning of the upper house²⁴. The politician also proposed to extend the term of the Sejm to 5 years and to introduce a mixed electoral law to the Sejm, under which some of the MPs were to be elected in single-mandate constituencies and some in a proportional system, while M. Jakubiak advocated only the introduction of single-mandate constituencies in the elections to the Sejm, promoting the candidates themselves and not political parties²⁵.

In the case of the Senate, the candidates voted in favor of giving this House a new status. Szymon Hołownia postulated that the Senate should adopt the status of a self-government chamber, representing communes and districts. This option could only be introduced if the influence of political parties in local governments was weakened and the role of local government units was strengthened. However, before this could happen, according to the Senate. S. Hołownia, the President should symbolically take over the role of the "Chamber of Self-Government" and become the "representative of self-government in the system of central power" and should veto all those laws that violated the political powers of self-government²⁶.

The leader of the PSL, in turn, postulated the transformation of the Senate into a Chamber of Self-Government, acting as a "stabilizer of the political situation, relieving tensions between the government administration and local government circles"²⁷. Within the framework of such a transformation of the Senate, the senators would perform their function socially contributing to "abolishing the monopoly of political parties in the process of lawmaking in Poland"²⁸. This proposal has been a permanent element of the PSL's pro-

²³ *Nadzieja dla Polski. Program wyborczy...*, p. 4.

²⁴ *Nowy porządek. Tezy Konstytucyjne...*, p. 15.

²⁵ *Ibidem*, p. 14; *Tezy programowe FDR...*, p. 5.

²⁶ S. Hołownia, *Nowy prezydent. Wizja i konkrety prezydentury*, [b.m.w.] 2020, p. 24.

²⁷ *Nadzieja dla Polski. Program wyborczy...*, p. 23.

²⁸ *Ibidem*.

gramme since 1990. For K. Bosak it was important to transform the Senate into a real Chamber of Reflection, consisting exclusively of representatives of local governments, representatives of business unions, employers, as well as trade unions and other social organizations²⁹.

An important group of changes in the constitution were the proposals for reform of the justice system, starting from the repair of all those aspects that have become part of the ruling camp in Poland since 2015. There were two positions on this matter: defenders of the current state of the justice system (A. Duda) and strong opponents of the so-called deformation of the justice system and courts in Poland (the remaining candidates). Among the interesting proposals there was a change in the way of appointing the General Prosecutor through universal suffrage (W. Kosiniak-Kamysz) or the withdrawal of the so-called Muzzle Law (R. Biedroń).

IV. Conclusion

The discussion on the amendment of the Constitution, which took place during the presidential campaign, once again showed how important a document and a reading of the Basic Law become in the life of every citizen. For some of the candidates, the Constitution of the Republic of Poland was a testimony of an epoch, a political compromise and the fact that regardless of the option in power, it had to be strictly observed, while for others, it was a relic which had to be definitively ended through a nationwide discussion and the adoption of a new constitution.

The conclusions that emerged from the analysis allowed us to conclude that the first of the hypotheses was positively verified. The MP's draft amendment to the Constitution of 6 April 2020 was an attempt at averting the crisis related to the impossibility of holding presidential elections in May 2020, but it can also be pointed out that those in power had many other tools to effectively solve this problem, such as introducing a state of natural disaster or an emergency that was not used. The second hypothesis was verified negatively, as none of the proposals presented during the presidential campaign in 2020 was a new solution and was a repetition of the regulations presented in the contemporary political debate for almost 20 years.

²⁹ *Nowy porządek. Tezy Konstytucyjne...*, p. 11.

In answering the first two questions, it should be stated that the ZP camp obtained a consensus only on extending the term of office of the current President of the Republic of Poland to 7 years, which was reflected in the parliamentary bill on the amendment of the Constitution, with the support of only a part of the opposition. This was also true for the support given by the right-wing circles to the presidential draft amendment to the Constitution regarding the impossibility of adopting children by persons in same-sex couples. The answer to the third question seems to contradict the general idea that the candidates for the office of president would make the proposed proposals come true by creating a certain political image. Such a possibility would only be possible if the presidential election was won. The third question seems to contradict the general idea that the candidates for the office of president, by creating a certain political image, will lead to the realization of their proposals.

Literature

- Chruściak R., *Prace konstytucyjne w latach 1997–2007*, Warsaw 2009.
- Chruściak R., *Prace konstytucyjne w latach 2008–2011*, Warsaw 2013.
- Chruściak R. (ed.), *Projekty konstytucji 1993–1997*, part 1, Warsaw 1997.
- Chruściak R. (ed.), *Projekty konstytucji 1993–1997*, part 2, Warsaw 1997.
- Hołownia S., *Nowy prezydent. Wizja i konkrety prezydentury*, [b.m.w.] 2020.
- Kallas M. (ed.), *Projekty konstytucyjne 1989–1991*, Warsaw 1992.
- Litwin T., Łabędź K., Zyzik R., *Aktualna debata wokół zasad ustrojowych w Polsce*, Kraków 2019.
- Marszałek-Kawa J., *The Institutional Position of the Sejm of the Republic of Poland after the Accession to the European Union*, Toruń 2016.
- Marszałek-Kawa J., Plecka D. (eds.), *Dictionary of Political Knowledge*, Toruń 2019.
- Nadzieja dla Polski. Program wyborczy kandydata na Prezydenta Rzeczypospolitej Polskiej Władysława Kosiniaka-Kamysza*, Warsaw 2020.
- Nowy porządek. Tezy Konstytucyjne* [Election Committee of Krzysztof Bosak, candidate for President of the Republic of Poland], Warsaw 2020.
- Tezy programowe FDR* [Election material of Marek Jakubiak, candidate for President of the Republic of Poland], Warsaw 2020.
- Tomaszewski W., *Proces przygotowania i uchwalenia Konstytucji RP z 2 kwietnia 1997 roku w aspekcie doświadczeń ustrojowych oraz prac nad nową konstytucją*, Olsztyn 2018.