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Postal Voting as an Ultimate Rescue Measure for Presidential Election During the COVID-19 Pandemic in Poland

Keywords: correspondence voting, postal voting, presidential election, electoral law, COVID-19 pandemic

Słowa kluczowe: głosowanie korespondencyjne, wybory prezydenckie, prawo wyborcze, pandemia COVID-19

Abstract

The article concerns the Polish regulation and practice concerning postal voting. After presenting some background information on postal voting in Poland, such as the circumstances of its introduction in 2011 and changes it has undergone since then, the author focuses on the latest amendments related to postal voting in the presidential election that were ordered for 10 May 2020. The issue has recently become extremely topical as the ruling party wanted to use postal voting for a large scale as a remedy for problems with holding the traditional election due to the COVID-19 pandemic. That idea was followed by the adoption of a specific law which, however, has aroused many controversies and great doubts about its constitutionality, mainly related to the way it was proceeded.

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Streszczenie**Głosowanie korespondencyjne jako ostatnia deska ratunku dla wyborów prezydenckich w Polsce podczas pandemii COVID-19**

Artykuł poświęcony jest regulacjom prawnym i praktyce związanej z głosowaniem korespondencyjnym w Polsce. Autorka krótko przedstawia genezę tej instytucji w Polsce oraz zmiany, jakim po 2011 roku instytucja ta ulegała, a następnie skupia się na regulacjach zawartych w specustawie dotyczącej przeprowadzenia wyborów prezydenckich zarządzonych na dzień 10 maja 2020 r. Problematyka wyborów korespondencyjnych jako alternatywnej metody głosowania stała się ostatnio niezwykle aktualna. Wobec problemów z przeprowadzeniem tradycyjnych wyborów z okresie pandemii COVID-19, rządzący planowali je przeprowadzić wyłącznie za pośrednictwem poczty. Konsekwencją tego było przyjęcie odpowiednich regulacji prawnych, które wzbudziły jednakże wiele kontrowersji i wątpliwości co do zgodności z Konstytucją, głównie z uwagi na sposób ich procedowania.

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The aim of the article is to present the Polish regulation and practice concerning postal voting in the context of presidential election that were ordered for 10 May 2020. The issue has recently become extremely topical as the ruling party wanted for a large scale as a remedy for problems with holding the election due to the COVID-19 pandemic. That idea was followed by the introduction of changes in electoral law. Nevertheless, the analysis of the frequent changes of that form of voting in Polish law lead to the conclusion that there has never been a clear concept of the shape of postal voting in Poland. From the very beginning the introduction of the possibility to vote by post to the Polish legal order had their supporters and opponents. The aims of the article are, after a brief introduction, to present the scope of regulations and legal changes in relation to voting by correspondence in Poland, the practical use of this instrument, as well as the discussion on the related controversies.

It should be noted that postal (correspondence, absentee) voting² is not a uniform institution as it occurs in various forms in different countries. Traditionally, postal voting was a method complementary to traditional personal voting at a polling station that was usually available to limited groups of voters (usually elderly, disabled, residing abroad, hospitalised or in military service) upon their application. However, as M. Qvortrup has noticed, the new trend is to extend the possibility of voting by this method on general electorate³, which implies sending to every voter his/her ballot paper through the post so that he/she can cast the vote by mail also. There are also examples in the world of the “all-postal voting”, in which voting by mail is the standard mechanism for voting in elections as it is, for example, in the U.S. state of Oregon in local and statewide elections⁴. The organization of voting entirely through the mail instead of traditional voting at polling stations was motivated there mainly by the willingness to reduce costs as well as to respond to social needs and the need to adopt to current times based on electronic technologies.

Postal voting as a method of voting alternative to personal voting at a polling station has been already functioning in many European states like Austria, Belgium, Denmark, Finland, Ireland, Estonia, Lithuania, Great Britain, Germany or Switzerland⁵. In Germany the possibility to vote by mail was introduced in 1957, however, for a long time it was granted only to certain groups (elderly, sick, disabled and living abroad, who had to explain why they could not vote in person at the polling station). In 2008 the electoral law was changed and since then every person entitled to vote who is entered in a voter's register has been allowed to vote by mail without specifying the reasons to exercise

² In relation to Poland, these terms may be used interchangeably, however, due to the fact that in some countries the distribution and return of electoral packages is entrusted not to post office but to other entities, including private ones, the term “correspondence voting” seems to be the most universal one. A. Rakowska, K. Skotnicki, *Głosowanie korespondencyjne – nowe rozwiązanie Kodeksu wyborczego*, “Gdańskie Studia Prawnicze” 2012, vol. XXVII, p. 296.

³ M. Qvortrup, *First past the Postman: Voting by Mail in Comparative Perspective*, The Political Quarterly Publishing Co. Ltd. 2005, p. 414.

⁴ J.A. Karp, S.A. Banducci, *Going postal: How All-Mail Elections Influence Turnout*, “Political Behavior” 2000, vol. 22, No. 3.

⁵ A. Krasnowolski, *Głosowanie przez pełnomocnika, głosowanie antycypowane i głosowanie korespondencyjne w krajach europejskich i Kanadzie*, Warsaw 2006.

his/her electoral right that way. Nevertheless, in order to vote by mail a voter must apply to the municipality of his/her main residence for sending a polling card with the attached postal ballot documents⁶. In Switzerland the correspondence voting was introduced in 1965 at the cantonal level. In Hungary the postal voting is limited to voters living abroad who do not have an official address in Hungary. Also, in Italy it is limited to citizens living abroad who have notified a relevant consulate about that fact. In Finland since 1970 voters can cast their vote by mail during the month preceding the election day. After confirming their electoral rights in the electoral register, voters throw their voting cards in a sealed envelope into a special ballot box in the presence of a postal official. Then, a stamped ballot box is delivered by the post office to the precinct election commission. Voters who have not previously voted by mail may vote in person at the polling place on the election day. The introduction of postal voting was motivated by the Finnish legislator by the difficulty in reaching polling stations, especially by voters living in sparsely populated areas. In practice, about a quarter of all voters use the possibility to vote by mail⁷.

For a long time, in Poland the only way to cast a vote in elections was traditional personal voting at a polling station. The adoption of the current constitution on 2 April 1997⁸ and its entrance into force on 17 October 1997 did not change anything in this regard. Although the first attempt to introduce postal voting were made while working on the electoral law to the European Parliament, the Act adopted on 23 January 2004⁹ did not provide for voting by mail¹⁰. The alternative methods of voting for the first time were regulated in the Electoral Code of 2011¹¹. During the legislative works this issue

⁶ Sections 27, 28 of the Federal Electoral Regulations (BWO).

⁷ M. Grzybowski, *Finlandia: zarys systemu ustrojowego*, Cracow 2007, p. 70.

⁸ The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483).

⁹ Act of 23 January 2004, Electoral law to the European Parliament (Dz.U. No. 25, item 219).

¹⁰ K. Eckhardt, *Kodeks wyborczy w świetle poglądów doktryny i orzecznictwa Trybunału Konstytucyjnego. Wybrane problemy*, "Polityka i Społeczeństwo" 2015, No. 3, p. 24; J. Mordwilko, *W sprawie ustanowienia z polskim prawem wyborczym instytucji pełnomocnika oraz możliwości głosowania drogą pocztową (głosowania korespondencyjnego)*, "Przegląd Sejmowy" 2001, No. 1.

¹¹ Act of 5 January 2011 Electoral Code, consolidated text: (Dz.U. 2019, item 684, as amended).

aroused great interest, which resulted in numerous scientific studies devoted to the analysis of submitted projects and seeking optimal solutions for Poland¹². The main argument in favor of introducing postal voting was the desire to increase citizen participation in elections¹³. Taking steps in this direction was particularly important because in Poland the average voter turnout is relatively low¹⁴. At the same time, the introduction of postal voting (as well as the possibility to vote by a proxy) and widening that way the alternatives of casting ballots, was perceived as a guarantee of universal suffrage. Nevertheless, the critics also pointed out the dangers concerning the possibility of fraud and abuse of that method of voting. Since 2011 the legal regulation of the institution of postal voting has undergone several amendments which in particular related to the scope of persons entitled to cast votes by mail.

In the original text of the Electoral Code adopted in January 2011, postal voting was provided only for voters voting abroad. However, four months later on 27 May 2011¹⁵ the parliament adopted an amendment which extended the right to vote by mail to people with severe or moderate disabilities. Nevertheless, even during their *vacatio legis* the provisions concerning the correspondence voting were questioned before the Constitutional Tribunal. The main allegation of their unconstitutionality was a violation of the principle of direct election and the secrecy of voting. The Constitutional Tribunal on 11 July 2011 decided that postal voting provided for by the Electoral Code complies with the Constitution¹⁶. Therefore, in the parliamentary elections that took place on 9 October 2011, the correspondence voting method

¹² A. Żukowski, *Głosowanie korespondencyjne – wskazówki dla Polski?*, “*Studia Wyborcze*” 2009, No. 7, p. 25 and next; K. Skotnicki, *Przebieg prac nad Kodeksem wyborczym*, [in:] *Kodeks wyborczy. Wstępna ocena*, ed. K. Skotnicki, Warsaw 2011.

¹³ The analysis of the effects of postal voting on the level of voter turnout in other countries proves that it can increase the citizens’ participation in the elections. S. Luechinger, M. Rosinger, A. Stutzer, *The Impact of Postal Voting on Participation: Evidence for Switzerland*, “*Swiss Political Science Review*” 2007, No. 13, p. 167 and next.

¹⁴ In parliamentary elections it was 43,20% in 1991, 52,13% in 1993, 47,93% in 1997, 46,29% in 2001, 40,57% in 2005, 53,88% in 2007, 48,92% in 2011, 50,92% in 2015, 61,74% in 2019.

¹⁵ The Act of 27 May 2011 on the amendment of the law – Electoral Code and the law – provisions introducing the act – Electoral Code (Dz.U. No. 147, item 881).

¹⁶ The judgement of the Constitutional Tribunal of 11 July 2011, Case ref. 9/11.

was for the first time in Polish history used in practice¹⁷. I will not describe the detailed regulations concerning postal voting provided for the Electoral Code, as it is not the main purpose of the article but above all because these issues have been already discussed in detail and exhaustively also on the pages of the *Constitutional Law Review*¹⁸.

An essential amendment in this regard was adopted on 11 June 2014¹⁹ as it expanded the possibility of correspondence voting by granting the right to vote by mail to each voter. The main arguments for that was to fully implement the constitutional principle of universal suffrage and make an attempt to increase voter turnout. Three years later, the solutions proposed by Law and Justice in 2017 were aimed in a completely different direction. In autumn 2017, the deputies from the ruling party submitted a bill on the amendment of the Electoral Law in which they proposed the total abolition of the possibility of correspondence voting. The bill was adopted by the Sejm on 14 December 2017, however, considering critical remarks from, inter alia, the disabled and the Polish Commissioner for Human Rights the Senate adopted an amendment to this law restoring the possibility of correspondence voting for voters with severe and moderate disabilities²⁰. At the same time, the Senate rejected

¹⁷ Statistics on voting by mail by Polish voters in the parliamentary elections in 2011, elections to the European Parliament in 2014, presidential election in 2015 (in the first and the second round) and parliamentary elections in 2015 have been presented in: K. Korycki, *Alternatywne techniki głosowania a frekwencja wyborcza*, "Studia Wyborcze" 2017, vol. 23, p. 95 et seq.

¹⁸ A. Rakowska, K. Skotnicki, op.cit.; M. Florczak-Wątor, *Status prawny wyborcy niepełnosprawnego*, "Przeгляд Prawa Konstytucyjnego" 2011, No. 3, p. 110; A. Jackiewicz, *Głosowanie korespondencyjne oraz głosowanie przez pełnomocnika jako alternatywne metody głosowania w świetle polskiego Kodeksu wyborczego*, "Białostockie Studia Prawnicze" 2016, vol. 20/A; A. Błaszczak, J. Zbieranek, *Gwarancje korzystania z czynnego prawa wyborczego przez osoby starsze i osoby z niepełnosprawnościami*, "Biuletyn RPO. Źródła" 2012, No. 8; J. Zbieranek, *Nowe procedury: głosowanie korespondencyjne i przez pełnomocnika*, [in:] *Kodeks wyborczy. Wstępna ocena*, ed. K. Skotnicki, Warsaw 2011; J. Zbieranek, *Alternatywne procedury głosowania w Polsce na tle państw Unii Europejskiej*, "Studia Biura Analiz Sejmowych" 2011, No. 3; M. Czakowska, M. Czakowski, *Alternatywne sposoby głosowania w świetle przepisów ustawy – Kodeks wyborczy*, *Studia z Zakresu Nauk Prawnoustrojowych*, "Miscellanea" 2012, No. 2; M. Gapski, *Nowe techniki głosowania w świetle zasady bezpośredniości wyborów*, "Przeгляд Sejmowy" 2009, No. 2.

¹⁹ Act of 11 July 2014 on the amendment of the act – Electoral Code and some other statutes (Dz.U. item 1072).

²⁰ The resolution of the Senate of the Republic of Poland of 21 December 2017.

the amendment to the law proposed by the opposition to restore correspondence voting in the current scope. The amendment adopted by the Senate in regard to postal voting was accepted by the Sejm. The President signed the law on 15 January 2018²¹, it was published and entered into force.

Nevertheless, the most far-reaching, but at the same time the most controversial legislative proposal concerning postal voting was submitted by the deputies of the ruling Law and Justice party on 6 April 2020²². According to the Draft Act on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020, the presidential election was to be carried out solely by means of postal voting²³. The act was adopted by the Sejm (by the narrow majority of votes: 230 for, 226 against and 2 abstentions) on the same day as it was submitted²⁴. According to the Art. 121 of the Polish Constitution of 1997²⁵, a bill passed by the Sejm shall be submitted to the Senate by the Marshal of the Sejm. The Senate, within 30 days of the submission of the bill, may adopt it without amendments, adopt amendments or resolve upon its complete rejection. A resolution of the Senate rejecting a bill, or an amendment proposed in the Senate's resolution, shall be considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of deputies.

On 5 May 2020 the Senate decided to reject the Act. In the explanatory note to its resolution the Senate outlined several arguments against the proposed regulation. First of all, it was noticed that the law was adopted with a violation of lawmaking rules, including those regarding codes and laws regulating elections, which should be considered particularly carefully. Importantly, the rules for conducting election were changed after ordering the election, during the election campaign, with the planned entry into force just a few days before

²¹ Act of 11 January 2018 on the amendment of certain laws in order to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies (Dz.U. item 130).

²² Sejm's document No. 328, <http://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=328>.

²³ Other provisions of the draft provided the Marshal of the Sejm with the power to change the date of election under the "state of epidemic", changed the structure of election administration and the allocation of responsibilities for administration the election.

²⁴ Act of 6 April 2020 on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020 (Dz.U. item 827).

²⁵ Constitution of the Republic of Poland...

the election day. The law also neglected the President's right to consider a statute submitted to him by the Marshal of the Sejm and sign it within 21 days, as it required the President to sign it immediately. Then, it was emphasized that the Act contains significant factual, legislative and legal errors. It provides for passing voter cards to voters in the form of an ordinary postal item, without the voter confirmation that he/she has received it. Apart from postal voting, also other issues were questioned, such as the fact that the new regulation makes voting outside the voter's place of residence and voting abroad difficult or it limits the competences and changes the composition of previously independent electoral bodies, such as the National Electoral Commission and precinct electoral commissions by delegating their important powers to the minister representing the ruling party. It was also pointed out that the act removes the guarantees of hitherto secret voting as family members or other persons submitting an envelope with a voting card to the electoral commission will be able to take advantage of the temptation to get to know what the voter's vote is. The Senate noticed that the Act also contains editorial errors resulting from its too hasty adoption. It was also emphasized that the Act was based on the erroneous conviction that election can be conducted in the epidemic state, and there are many indications that it was specially adopted to take advantage of the state of the epidemic during which the election campaign would take place in the Polish Television and Radio promoting only the candidate of the ruling party. Under the conditions of the epidemic, the government should introduce a state of natural disaster, and elections should be postponed, according with the Constitution. The Senate stated that instead of giving voters a real chance to choose the best candidate and providing the President with proper legitimacy and authority, election conducted in the current situation and on the basis of the proceeded Act may become a technical ritual that creates only the appearance of free, universal, secret and democratic election.

Despite these allegations, on 7 May 2020 the Sejm rejected the Senate's resolution. On the very next day the Marshal of the Sejm submitted the act to the President of the Republic who signed it immediately and, on the same day, the new law was published in the Official Journal of Laws. According to its Art. 21, it entered into force on the day following its publication that was on the 9 May 2020 – a day before the election day.

The new Act has a status of “one-off act” as it sets out specific rules for conducting correspondence voting in the election of the President of the Republic of Poland ordered in 2020, in connection with the announced state of epidemic on the territory of the Republic of Poland. The essential provision is that the voting, as well as the possible re-voting in this election, shall be conducted exclusively by mail. In order to prevent any interpretative doubts, the law provided that voting by correspondence is a personal voting. A voter does not need to submit a request to vote by mail. The ballot documents were to be delivered to voters by the designated operator within the meaning of the Act of 23 November 2012 – Postal Law²⁶ within seven days before the day of voting directly to the voter’s postal mailbox or to the voter’s address. Election packages not delivered in this manner should be forwarded to the municipal electoral commission until the end of voting and, if it is not possible, to the competent director of the delegation of the National Electoral Office.

The electoral package shall include, in particular, a return envelope, a voting card, an envelope for a voting card, correspondence voting instructions and a statement on personal and secret voting. The ballot paper shall bear a mark ensuring its authenticity. According to the instruction, after completing the voting card, a voter puts it in the envelope which he seals and then puts it in the return envelope together with the signed statement on personal and secret voting. Such a package must be placed in a mailbox located in the municipality in which the voter appears on the electoral roll. The voter can do it himself/herself or through another person, not earlier than at 6.00 and no later than 20.00 on the day of voting. Requirements that should be met by the mailboxes dedicated for affixing a returnable envelope are to be determined, by way of a regulation, by the minister competent for state assets, which should consider the appropriate security measures that would in particular guarantee secret voting.

From the very beginning the new regulation aroused great controversies and doubts about its legality and constitutionality, in particular, when it comes to procedural issues.

First, it must be emphasized that the draft was submitted to the Sejm just a month before the date of the presidential election that was ordered for 10

²⁶ Act of 23 November 2012 Postal Law (consol. text: Dz.U. 2018, item 2188, as amended).

May 2020. As it was noted by the external observers, “introducing such substantial changes so close to the date of an election, and at the time when electoral preparations were already underway, diverges from the principles of stability of electoral legislation and legal certainty”²⁷. The rule that the electoral law cannot be amended in six months before the election has been confirmed in several judgements of the Polish Constitutional Tribunal which derived it from the Art. 2 of the Constitution providing the principle of a democratic rule of law. In the judgement of 2006 the Tribunal stated that the significant changes to electoral law should be enacted at least six months before the next elections understood not only as the act of voting itself, but as all actions covered by the so-called election calendar²⁸. That statement was repeated in later judgments²⁹.

Second, despite the fact that the submitted draft has a form of a separate specific statute *de facto* it amends issues regulated by the Electoral Code. The Standing Orders of the Sejm of the Republic of Poland³⁰ in part II chapter 4 provides for special legislative proceedings in relation to the drafts of codes, as well as the drafts of the amendments to codes. According to Art. 89, the first reading of a draft code or introductory provisions to a draft code may be held no sooner than on the 30th day following the delivery of a copy of the draft to the deputies and the first reading of a draft of amendments to a code or a draft of amendments to introductory provisions to a code may be held no sooner than the 14th day following the delivery of a copy of the draft to the deputies. Additionally, Art. 90 requires to appoint a Special Committee to consider these drafts, which may create subcommittees in order to consider a draft in detail, as well as working groups and a team of permanent experts. In case of the discussed act, none of these requirements was met. However, as it has already been pointed out, the whole legislative procedure (the first, the second and the third reading of the bill) was conducted in one day.

²⁷ Opinion on the draft act on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020 (Senate paper No. 99), OSCE Office for Democratic Institutions and Human Rights, Opinion Nr ELE-POL/373/2020, p. 2.

²⁸ The judgement of the Constitutional Tribunal of 3 November 2006, Case ref. K 31/06.

²⁹ See the judgement of the Constitutional Tribunal of 20 July 2011, case ref. K 9/11.

³⁰ The Standing Orders of the Sejm of the Republic of Poland (consolidated text: M.P. 2019, item 1028).

In my opinion, the act which excludes the application of the Electoral Code (suspend its provisions) should be adopted according to specific rules provided for that particular type of statutes.

Third, there were no public consultations conducted prior to the submission of the draft which are also required by the provisions of the Standing Orders of the Sejm. According to its Art. 34 p. 3, an explanatory statement to the bill shall refer to the results of prior consultations. In case of a bill submitted by a Sejm's committee or deputies (as it was in that case) in respect to which no consultations have been held, the Marshal of the Sejm shall send such a bill for consultations before the referral thereof for the first reading, according with procedures and principles specified in separate statutes.

Fourth, some interpretative doubts arise from the Art. 18 and Art. 19 of the Act. According to Art. 18, whoever steals a voting card shall be subject to the penalty of deprivation of liberty for up to 3 years. The same penalty shall be imposed on anyone who places in the mailbox provided for ballots a converted or counterfeit ballot paper. The following article provides that whoever without authorization opens an election package or a sealed returnable envelope shall be subject to a fine. The same penalty shall apply to anyone who unlawfully destroys an electoral package or a sealed returnable envelope. In particular, it is unclear what the legislator means when it comes to theft. It is not clear if the voter should be also punished for the failure to send back the card, keeping it or destroying.

Fifth, a great controversy associated with the non-legal but practical side of the planned correspondence voting concerned the fact that the Prime Minister had ordered printing ballot cards before the entire legislative process (proceedings in the Senate, signing the law by the President, announcing it in the official journal of laws and entry into force) was finished. According to the new law, the minister competent for state assets, after consulting the National Electoral Commission, shall specify, by regulation, the specimen of the voting card, including the method of determining its authenticity, specimen and size of the envelopes. Election packages are prepared at the request of the minister competent for state assets by the entity or entities he indicates. Immediately after preparation, the electoral packages shall be forwarded to the designated operator. The law came into force on 9 May 2020 and the ballot papers had been printed before that. Therefore, the Prime Minister's decision (tak-

en on 16 April 2020) to order printing the ballot cards had no legal basis. The Polish Security Printing Works, a national manufacturer of banknotes and securities, has spent millions of zlotys on printing ballot papers.

There were also other authorizations provided by the law that had no chances to be applied, such as the authorization for the minister competent for matters of state assets to determine by regulation, in consultation with the minister competent for health, the detailed procedure of delivering electoral packages to voters, returning them to relevant municipal district electoral commissions by placing them in a dedicated mailbox and ensuring respect for principles concerning elections, including the security of the shipments. The minister was also to determine the detailed manner and procedure of delivering electoral packages to voters subject to compulsory quarantine or isolation on the day of voting, voters staying in a medical institution, social welfare homes, penal institutions and detention centers. Similar to the Polish Security Printing Works, the Polish Post has also incurred huge costs related to the preparation for conducting elections by post based on the arrangements with the government despite the lack of legal grounds.

Given the date of the submission of the legislative initiative, as well as the temporal framework for legislative proceedings set out in the Constitution, it was known from the outset that it would not be possible to conduct the election ordered for 10 May 2020 according to the rules provided by the new law. In fact, the election of the President of the Republic of Poland on May 10 did not take place. The National Electoral Commission in its resolution³¹ (which, by the way, was also perceived as controversial) stated that on that day “it was not possible to vote for candidates”. It also stated that this fact has the same effects as provided for in the Art. 293 p. 3 of the Electoral Code concerning the inability to vote due to the lack of candidates so the Marshal of the Sejm shall order elections again no later than on the 14th day from the date of publication of the resolution of the National Electoral Commission in the Journal of Laws. On June 2, a new law regulating the special rules for the organization of general elections for the President of the Republic of Poland in 2020 was

³¹ Resolution of the National Electoral Commission No. 129/2020 of 10 May 2020 on the declaration that it was not possible to vote for candidates in the election of the President of the Republic of Poland (M.P. item 400).

passed³². It repealed the Act of 6 April 2020 and provided for the possibility of postal voting at home and abroad not as the only method of voting but as an alternative to traditional personal voting at polling stations.

From the very beginning, the legal solutions proposed by the government in regard to holding the presidential election during the epidemic raised great doubts as to their constitutionality. The only solution that would comply with the Constitution was to introduce one of the extraordinary measures provided in the Art. 228 of the Constitution – a state of natural disaster or a state of emergency. That would allow to postpone the presidential elections which due to extraordinary reasons could not take place. The Art. 228 p. 7 of the Constitution clearly states that during a period of introduction of extraordinary measures, as well as within 90 days following its termination, the election for the Presidency cannot be held and the term of office of this organ shall be appropriately prolonged. However, the ruling party consistently rejected this possibility, proposing further unconstitutional solutions instead.

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³² Act of 2 June 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 postal voting (Dz.U. item 979).

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