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**Some Comments on Voting by Post  
in the Pandemic Era – Law and Practice**

**Keywords:** presidential elections, pandemic, election law, voting by post, election day

**Słowa kluczowe:** wybory prezydenckie, pandemia, prawo wyborcze, głosowanie korespondencyjne, dzień wyborów

**Abstract**

The spread of the SARS-CoV-2 virus in Poland and, consequently, the introduction of the epidemic on March 20, 2020, influenced the decision not to hold the election of the President of the Republic of Poland scheduled for May 10, 2020. Therefore, in the face of objective difficulties in the organization of elections, a new voting deadline was set on June 28, 2020. Due to the prevailing global pandemic, the elections for the President of the Republic of Poland, ordered in 2020 with the possibility of postal voting, were conducted and prepared in exceptional circumstances. With this in mind, this article presents a number of various problems, and even limitations, of the electoral rights granted to each voter, which have become a consequence of the legal solutions introduced without in-depth analysis, often in a hurry.

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**Streszczenie****Kilka uwag na temat głosowania korespondencyjnego  
w dobie pandemii – prawo i praktyka**

Rozpowszechnianie się wirusa SARS-CoV-2 w Polsce i w konsekwencji wprowadzenie 20 marca 2020 r. stanu epidemii wpłynęło na podjęcie decyzji o nieprzeprowadzeniu zaplanowanych na 10 maja 2020 r. wyborów Prezydenta RP. W związku z tym, w obliczu obiektywnych trudności w organizacji wyborów, wyznaczono nowy termin przeprowadzenia głosowania, przypadający na 28 czerwca 2020 r. W związku z panującą globalną pandemią wybory Prezydenta RP zarządzane w 2020 r. z możliwością głosowania korespondencyjnego, zostały przeprowadzone i przygotowane w wyjątkowych okolicznościach. Mając to na uwadze, w niniejszym artykule przedstawiono szereg różnych problemów, a nawet ograniczeń praw wyborczych przyznawanych każdemu wyborcy, które stały się konsekwencją wprowadzonych bez pogłębionej analizy, często w pośpiechu, rozwiązań prawnych.

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**I. Introduction**

On August 6, 2020, the 5-year term of office of the President of the Republic of Poland expired<sup>2</sup>. Therefore, on February 5, 2020, the Speaker of the Sejm issued a decision to order the election of the President of the Republic of Poland, setting the election date as May 10, 2020<sup>3</sup>. Unfortunately, due to the spread of the SARS-CoV-2 virus in Poland and the resulting worse epidemiological situation, in mid-March 2020 significant limitations on freedoms and rights were imposed, including those affecting the possibility of free electoral campaigning, freedom of movement, and freedom of assembly<sup>4</sup>. In such a situa-

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<sup>2</sup> State Election Commission, *Information on the Activities of the State Election Commission and the National Election Office in 2020*, p. 9, [https://www.pkw.gov.pl/uploaded\\_files/1625577442\\_informacja-pkw-kbw-2020.pdf](https://www.pkw.gov.pl/uploaded_files/1625577442_informacja-pkw-kbw-2020.pdf) (21.04.2022).

<sup>3</sup> Order of the Speaker of the Sejm of the Republic of Poland of February 5, 2020 on the ordering of elections for the President of the Republic of Poland (Dz.U. item 184).

<sup>4</sup> Ordinance of the Minister of Health of March 13, 2020 on declaring a state of epidemic emergency on the territory of the Republic of Poland (Dz.U. item 433); Ordinance of the

tion, after many heated discussions, in the face of objective difficulties in the organization of elections and discrepancies in the ruling party, a decision was made – a statement stating that voting on May 10, 2020 will not take place and the elections will be held on “another date”<sup>5</sup>. The very next day, the State Election Commission issued an unprecedented announcement indicating that the election on May 10, 2020 would not be held, and in turn, on May 10, 2020, passed a resolution indicating, among others, that the inability to vote for candidates was tantamount to a situation of no candidates, and therefore it would be up to the Speaker of the Sejm to call new elections.

Despite the fact that all solutions applied so far have been in contradiction to democratic, general, equal elections, and the number of patients (30.701) as well as deaths (1.286) in Poland at that time was still increasing, actions were consistently taken to conduct elections. Accordingly, on June 2, 2020, the Act on Special Principles of Organizing General Elections for the President of the Republic of Poland with the Possibility of Voting by Post was passed<sup>6</sup>. The purpose of this act was to create a new type of election of the President of the Republic of Poland, combining the election ordered for May 10, 2020 with another election yet to be ordered, while introducing general voting by correspondence as

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Minister of Health of March 20, 2020 on the declaration of an epidemic state on the territory of the Republic of Poland (Dz.U. item 491).

<sup>5</sup> Pursuant to Art. 293 § 1 and 2 of the Election Code, if in presidential elections voting is to be conducted for only one candidate, the PKW states this fact by way of a resolution which it forwards to the Speaker of the Sejm, makes public and announces in the Journal of Laws of the Republic of Poland. The Speaker of the Sejm re-orders elections no later than on the 14th day after the date of publication of the PKW resolution in the Journal of Laws. See more: A. Rakowska-Trela, *Wybory prezydenckie 2020. Kontekst prawny*, [in:] forumidei, Fundacja im. Stefana Batorego, p. 7., [https://www.batory.org.pl/wp-content/uploads/2020/10/Wybory-prezydenckie-2020\\_kontekst-prawny.pdf](https://www.batory.org.pl/wp-content/uploads/2020/10/Wybory-prezydenckie-2020_kontekst-prawny.pdf) (25.04.2022); Wider: P. Uziębło, *Jak nie stanowić prawa, czyli uwagi na marginesie procesu uchwalania ustawy z 6.04.2020 r. o szczególnych zasadach przeprowadzania wyborów powszechnych na Prezydenta Rzeczypospolitej Polskiej zarządzonych w 2020 r.*, “e-Palestra” 2020, no. 17; K. Skotnicki, *Państwo prawa a tryb uchwalania w 2020 r. ustaw regulujących wybory Prezydenta RP*, [in:] *Dylematy polskiego prawa wyborczego*, eds. J. Ciapała, A. Pyrzyńska, Warszawa 2021, pp. 139–157; P. Tuleja, *Pandemia COVID-19 a konstytucyjne stany nadzwyczajne*, “Palestra” 2020, no. 9.

<sup>6</sup> 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).

a supplementary voting technique. The action taken was supposed to guarantee a fair voting and such determination of the results. Moreover, it was to take into account the public expectations as to the procedures, mechanisms and principles of political representation<sup>7</sup>. At the same time, it was supposed to guarantee participation in a safe and fair procedure. Undoubtedly, the planned new elections became a breakthrough event, which showed that “the mere proclamation of an individual right in a normative act does not determine that it will be respected and that the interested party will be able to enforce it”<sup>8</sup>. Therefore, it was important that the statutory regulations be specific guarantees, which “should be understood as factors and means to ensure their implementation”<sup>9</sup>.

The aim of the article is an attempt to answer the following question: whether the new formula for the organization of elections, which retains the traditional voting, but introduces, different from the solutions adopted in the Electoral Code, general correspondence voting<sup>10</sup>, allowed for efficient, reliable and correct organization and holding of the ordered elections, without generating at the same time a number of problems and difficulties. The basis for the considerations is the analysis of the introduced Polish legal solutions and their application in practice. Due to the size of the article and the scope of the subject matter, selected aspects were discussed.

## II. Voting by correspondence on the basis of the new statutory regulation

It is obvious that in the Polish electoral and referendum law an important role, apart from such principles as directness, equality, secrecy and proportionality, is played by the principle of general election, which is an integral part of “the principle of national sovereignty and the principle of representation as

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<sup>7</sup> A. Stelmach, *Zmiana i stabilność prawa wyborczego w Polsce*, p. 121, <https://repozytorium.amu.edu.pl/bitstream/10593/24713/1/Zmiana%20i%20stabilno%C5%9B%C4%87%20prawa%20wyborczego%20w%20Polsce.pdf> (26.04.2022).

<sup>8</sup> B. Banaszak, A. Bisztyga, K. Complak, M. Jabłoński, R. Wieruszewski, K. Wójtowicz, *System ochrony praw człowieka*, Kraków 2005, p. 17.

<sup>9</sup> B. Michalak, A. Sokala, P. Uziębło, *Leksykon prawa wyborczego i referendalnego oraz systemów wyborczych*, Warsaw 2013, p. 170.

<sup>10</sup> A. Rakowska-Trela, op.cit., p. 7, [https://www.batory.org.pl/wp-content/uploads/2020/10/Wybory-prezydenckie-2020\\_kontekst-prawny.pdf](https://www.batory.org.pl/wp-content/uploads/2020/10/Wybory-prezydenckie-2020_kontekst-prawny.pdf) (25.04.2022).

the basic form of exercising political power in the state, as well as the special role it has in the electoral process<sup>11</sup>. Although the principle of universality is recognized as the foundation of elections in a democratic state, and it is the duty of everyone to organize elections in such a way that everyone who has a subjective right to vote has the opportunity to exercise it<sup>12</sup>, there were still concerns as to whether the universal suffrage by post would be able to ensure fulfillment of the constitutional conditions for election of the President and also to minimize health risks for citizens.

On the basis of the new regulation voting by post abroad could not be carried out in countries where there was no organizational, technical or legal possibility to conduct voting in such a form (Art. 2 sec. 3 of the Act). For many Polish people living abroad, due to the SARS-CoV-2 virus pandemic in other countries, participation in voting at a polling station or by post turned out to be objectively impossible<sup>13</sup>.

The right to vote by post was given to all voters in Poland and abroad. The applicable statutory regulation explicitly indicated that the intention to vote by correspondence should be notified orally, in writing, or in electronic form via a service made available by the minister responsible for information technology, no later than the 12th day before election day – in the case of voting in the country. However, in the case of persons who on election day were in quarantine, isolation, or isolation in home conditions – no later than the 5th day before election day (Art. 3 sec. 1 of the Act). For voters whose mandatory quarantine, isolation or home isolation began after June 23, 2020 – by the 2nd day before Election Day (Art. 3 sec. 2 of the Act)<sup>14</sup>. Notification of the in-

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<sup>11</sup> K. Skotnicki, *Udział w wyborach i referendach osób głuchych i niedosłyszących*, “Gdańskie Studia Prawnicze” 2018, vol. XL, p. 315.

<sup>12</sup> B. Michalak, A. Sokala, P. Uziębło, *op.cit.*, p. 170.

<sup>13</sup> The Polish community, due to the Covid-19 epidemic, could not vote in such countries as Kuwait, Peru and Chile, where the authorities of these countries did not agree to elections. The governments that have agreed to hold correspondence elections are the United States, the United Kingdom, and Germany, among others. Read more: *Głosowanie korespondencyjne za granicą nie wszędzie możliwe. MSZ podaje powody*, <https://www.tvp.info/48530530/wybory-prezydenckie-za-granica-nie-wszedzie-mozna-bedzie-zaglosowac-korespondencyjnie-msz-wyjasnia-dlaczego-wieszwiecej> (28.04.2022).

<sup>14</sup> As Bartłomiej Michalak rightly notes: “According to the data of the Ministry of Health, as of March 24, 2020, over 55 thousand people were quarantined, and over 95 thousand were

tention to vote by correspondence (before the first round) also applied to possible re-voting (the so-called second round of elections) (Art. 7 of the Act).

The notification of the intention to vote by correspondence should include the surname and first name(s), father's name, date of birth, voter's Personal Identification Number (PESEL), telephone number or e-mail address, designation of the election to which the notification relates and indication of the address to which the ballot package is to be sent or a declaration of personal receipt of the ballot package (Art. 3 sec. 4 of the Act). The notification of the voter who votes in the country should also include a statement that the voter is entered in the register of voters in the municipality (Art. 53b § 4 of the Election Code). In the notification the voter could request that a ballot overlay in Braille be sent together with the ballot package (Art. 3 sec. 6, p. 1 of the Act) and that the ballot package be delivered to the door of the polling station whose address was indicated in the notification (Art. 3 sec. 6, p. 2 of the Act).

If the required data were missing in the application, the voter could be summoned to supplement the application within one day of summons delivery. This could be done by phone or electronically. The voter could do it by phone or e-mail. If the notification was not submitted by the deadline, it would not be considered and the voter was informed about it (Art. 4 sec. 1 and sec. 2 of the Act).

The Act allowed for three modes of delivering the ballot package to the voter. Firstly, the package could be delivered by the designated operator within the meaning of the Act of November 23, 2012 – Postal Law<sup>15</sup>, i.e. Poczta Polska S.A. Secondly, the ballot package could be delivered to the voter by an authorized employee of the municipality office (Art. 5 sec. 3). Thirdly, the voter could also collect the ballot package in person at the lo-

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reported to be in quarantine for returning to the country” (see more: B. Michalak, *Koronawirus a wybory prezydenckie. Czym grozi głosowanie podczas epidemii?*, [in:] forumidei, Fundacja im. Stefana Batorego, pp. 5–6, [http://archiwum.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/B\\_Michalak\\_Koronawirus%20a%20wybory.pdf](http://archiwum.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/B_Michalak_Koronawirus%20a%20wybory.pdf) (23.04.2022). Moreover, the number may even reach, according to the Head of the Chancellery of the Prime Minister Michał Dworczyk, even 100 thousand Polish citizens (see more: L. Rudziński, *Koronawirus w Polsce. Dworczyk: Kwarantanna może objąć nawet 100 tys. osób*, <https://polska-times.pl/koronawirus-w-polsce-dworczyk-kwarantanna-moze-objac-nawet100-tys-osob/ar/c1-14859065> (23.04.2022).

<sup>15</sup> Act of November 23, 2012 on postal law (Dz.U. item 2188).

cal election office if he or she declared it in the notification of the intention to vote by post (Art. 5 sec. 4).

The voter could receive all the documents necessary to cast a vote (including instructions for voting by post) until June 23, 2020. In the case of a voter under mandatory quarantine on the voting day, the delivery of ballot package took place until June 26, 2020.

As a general rule, the local election office sent the voter a ballot package through the Polish Post Office, which was required to deliver the election packages to the Post Office no later than the 8th day before Election Day<sup>16</sup>. The package was delivered directly to the voter's mailbox. It is worth noting that after the package was delivered to the mailbox, the user of the mailbox, i.e. the voter, was responsible for the package (Art. 5 sec. 5 of the Act). If there was no mailbox, the postal operator issued a notice to collect the ballot package at the post office appropriate for the address (Art. 5 sec 6 of the Act). The notice was left at the voter's door giving them one day from the date of the notice to collect the package.

In the case of voters quarantined on the day of voting or isolated who declared their intention to vote by correspondence from 12 days before election day – the local election office delivered the ballot packages to the designated operator no later than 4 days before election day. Ballot packages not delivered to the operator by that date were delivered to voters in quarantine or isolation on election day by an authorized employee of the municipality office<sup>17</sup>.

If the voter was in quarantine, immediately after receiving the ballot package, completing the voting card, placing it in an envelope for the ballot, sealing it, and then placing that envelope in a return envelope together with a completed and signed statement, addressing the return envelope to the address and number of the relevant PEC, the voter could give that return envelope to an authorized employee of the operator or an authorized employee of the municipality, respectively.

The voter could also take the ballot package (or ask another person to do so) to the relevant municipality office (until June 26, 2020 during the office's work-

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<sup>16</sup> Pursuant to § 2(1) of the Ordinance of the Minister of Infrastructure of June 12, 2020 on postal ballots (Dz.U. item 1037).

<sup>17</sup> Pursuant to § 2(2) of the Ordinance of the Minister of Infrastructure...

ing hours) or to the PEC in the precinct where he or she was registered on the voters' register (on Election Day, until the polls close).

Voters staying abroad on voting day could notify their intention to vote by correspondence to the consul until the 15th day before election day, i.e. until June 13, 2020. In the case of voters living abroad, the notification should additionally contain the indication of the voter's place of residence abroad, the number of a valid Polish passport (on the territory of European Union Member States and countries where it is possible to enter on the basis of a Polish identity card, a valid identity card is considered to be a document equivalent to a valid Polish passport). In the case of a Polish citizen temporarily staying abroad – the indication of the place where the voter was registered should be given.

The ballot package should be received by the voter staying abroad no later than 6 days before the election day, i.e. by June 22, 2020, by unregistered delivery mail. Pursuant to Art. 6(2) of the Act, the consul could also deliver the ballot package by other means if the operator providing postal or shipping services in the receiving state would not give a guarantee of proper performance of the unregistered delivery mail service. The voter also had the right to collect the ballot package in person at the consular office if he or she declared it in the notification of the intention to vote by correspondence. The return envelope along with the envelope with voting card, declaration of personal and secret ballot on the voting card should be sealed by the voter. After putting the address of the competent consul on the return envelope, the voter should send such prepared ballot package by traditional mail (not by e-mail) to the competent consul or bring it to the consulate until 2 days before the election day, i.e. until June 26, 2020.

It is worth mentioning that during the 1st round of elections, 536 821 ballot packages were sent all over the country, out of which only 483 989 ballot packages were returned to PECs (including: the citizens did not attach a statement – 17 785 ballot packages; the statement was not signed – 625 ballot packages; the envelope for the ballot was not sealed – 824 ballot packages). On the other hand, in the 2nd round, 223.849 ballot packages were sent across the country, of which the number of return envelopes received was 215.271. Consular posts prepared and sent 343 241 ballot packages in the first round and 480 262 ballot packages in the second round.

### III. Selected practical problems as a result of the introduced legal changes

The lack of a thorough analysis of the problem and of a comprehensive approach by the legislator to the changes in regulations resulted in a number of significant practical problems, including the application of regulations contained in legal acts other than the Electoral Code, but remaining strictly functionally related to it.

As regards voters who vote in the country, the regulation of the way the ballot packages were delivered raised significant doubts. As Anna Rakowska-Trela points out, “the decision was made to maintain the method of delivering the ballot packages to the voters, which did not guarantee universality and posed a threat to the electoral rights. The package was to be sent as a registered mail, but delivered either by an employee of the local election office, or two post office workers to the mailbox”<sup>18</sup>, but without the statutory requirement of confirmation of receipt by the voter, which could raise many concerns as to whether the package really reached a specific addressee of the mail. In practice, many voters reported non-delivery of the ballot package or failure to leave notices at the door or mailbox announcing where and when to pick up the package in person at the post office if the voter was not home at the time<sup>19</sup>. Moreover, the voter could have delivered the filled out ballot package to the mailbox in person or through another person. While this may be reasonable for people who are in self-isolation or who are not yet in mandatory quarantine or in quarantine, in the case of general postal voting, this may give rise to the danger that if such a ballot package is not delivered, someone will want to influence the validity of vote cast<sup>20</sup>, which could give rise to the danger of plurality voting (family voting)<sup>21</sup> or the phenomenon of “vote buying”.

However, with regard to voters who vote abroad, many of the concerns regarding threats to the regularity of electoral process that were not fully rec-

<sup>18</sup> A. Rakowska-Trela, *op.cit.*, p. 7.

<sup>19</sup> Report on the elections of the President of the Republic of Poland ordered on June 28, Warsaw 2020, p. 27 and 28.

<sup>20</sup> M. Wrzalik, *Wybory prezydenckie – ryzykowne zmiany. Komentarz*, forumidei, Fundacja im. Stefana Batorego, p. 2, [https://www.batory.org.pl/wp-content/uploads/2020/06/Komentarz\\_Wybory\\_prezydenckie\\_ryzykowne\\_zmiany.pdf](https://www.batory.org.pl/wp-content/uploads/2020/06/Komentarz_Wybory_prezydenckie_ryzykowne_zmiany.pdf) (30.04.2022).

<sup>21</sup> A. Rakowska-Trela, *op.cit.*, p. 7.

ognized at the legislative level have occurred. Unfortunately, the experience of introduced regulations concerning voting outside the country was not fully adapted to the contemporary realities. Organizational, technical and logistic problems were accumulating, starting from the stage when the notification should be submitted, up to the stage when the ballot package should be collected and delivered personally to the consulate or with the help of a postal operator.

A serious organizational and logistical problem among the Polish diaspora was to deliver the ballot package to the voters within the established deadline in such a way that the voter had time to collect it, read the voting instructions, decide on the content of vote and finally send it back (due to pandemics personal delivery was impossible in many countries).

It is worth noting that the Polish legislator, in the introduced Act, provided in advance the possibility of not conducting voting by post in the countries where there was no organizational, technical or legal possibility. In practice this regulation deprived a certain group of Polish citizens of the right to vote.

Unfortunately it also happened that the ballot package sent by the consulate or by the voter got “lost” because it was not sent at all or with a delay to the voter or to the consulate. The reasons for this can be found, among others, in the lack of proper coordination of deadlines, in the lack of explicit regulations obliging the consul to send the ballot package by registered mail, as well as in the lack of a specified way of sending the return envelope by the voter which would guarantee timely delivery of the ballot package.

#### **IV. Conclusions**

There is no doubt that the elections for the President of the Republic of Poland ordered in 2020 with the possibility of voting by post were held and prepared in exceptional circumstances related to the pandemic of SARS-CoV-2 virus. For this reason it was necessary to adopt additional legal solutions that would allow efficient, reliable and correct organization and conduct of the elections ordered. However, the experience of these elections, as well as the dynamically changing situation related to the pandemic, showed that some legal solutions, introduced without in-depth analysis, often in haste, caused

a number of different problems, difficulties and even limitations of the electoral rights granted to each voter.

Taking into account the past experience, it would be worth considering the introduction of legal changes, among others, such<sup>22</sup> that would guarantee PECs technical assistance provided by the consul or persons appointed by the consul, which would contribute to more efficient and effective performance of their tasks related to the organization of elections. It would also be worth discussing the restoration of universal postal voting for all voters in the country and abroad who wish to do so (i.e. the model used in the 2015 elections). The technical and organizational solutions related to this procedure should be analyzed and revised, taking into account the experience of the last presidential elections. The Polish legislator should also consider introducing a regulation that would guarantee voters before each election that they would receive information on the telephone about the possibility of voting without a queue for people over 60, pregnant women and people with disabilities, as it was exceptionally during the election silence on Saturday, July 11, 2020, year, just before the second round of elections.

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<sup>22</sup> See more: Information on the implementation of the provisions of the Electoral Code and proposals for their amendment (ZPOW-502-1/21), [https://www.pkw.gov.pl/uploaded\\_files/1613491481\\_2-1-21-informacja.pdf](https://www.pkw.gov.pl/uploaded_files/1613491481_2-1-21-informacja.pdf) (1.05.2022).

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