# Presidential Elections in the Republic of Poland in 2020

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#### Abstract:

**Purpose:** The aim of this article is the analysis of normative aspect of Presidential Elections in the Republic of Poland in 2020, conducted under conditions of coronavirus epidemics SARS-CoV-2.

**Design/Methodology/Approach:** The research analysis mainly focused on normative acts (also their projects), as well as official announcements of National Electoral Commission, which resulted in adopting the analytical method.

**Findings:** Performed analyses allow to conclude that the trial to realize voting in Presidential Elections as of 10<sup>th</sup> May 2020 had been impossible in those legal and actual conditions. This state could have been anticipated already, a least the previous month.

**Practical implications:** Performed analysis gives legitimacy to state that interfering in electoral action's regulations during its duration is not only objectionable from the point of view of fundamental rules of democratic law-governed state, but also counterproductive. Implementation of changes into nationwide electoral action during its term only brings irreparable damage. In case of repetitive extraordinary situations, which result in electoral action's fiasco, information policy ought to be performed in a transparent way on the basis of announcements of specialized (election oriented) administration organs.

Originality/ value: Presidential Elections in 2020 were the first nationwide electoral action in the history of the Republic of Poland, during which legal and factual circumstances made voting in initially planned term impossible. At the same time, till the last day before elections called for 10<sup>th</sup> May 2020, public authority tried to perform elections through subsequent normative changes. However, it occurred to be impossible – which had been anticipated by National Electoral Commission a few days before. Conclusions and values which stem from the nationwide electoral fiasco, allow to manage risk more effectively in the times of unforeseeable circumstances, disturbing seriously social life.

**Keywords:** Absentee ballots, the state of epidemics, Presidential Elections in the Republic of Poland.

JEL codes: K16.

**Paper type:** A research article.

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## 1. Introduction

SARS-C0V-2 coronavirus epidemics (further called 'coronavirus') is an example of circumstances, proving immanent feature of life in individual, social and political dimension: people are involved in contexts of contradictory vectors of values and rules. Dilemmas connected with such state of matters have been known for a long time and accompany decision making processes.

Usually, operationalized values conflict is solved through finding optimal 'intersection point', in which the same contradictory values are realized in possibly maximal range.

Extraordinary situations (coronavirus epidemics belonged to such situations) have a common feature: actual state of matters created as their follow-up require, like in academically considered state of higher necessity, reducing the realization degree of one (few) of values/rules protected legally to a minimal level if there is no any other way of maximal realization ('saving') of goodness recognized as more threatened and preferred prior to devoted goodness. This naturally complex matter is additionally complicated by the issue of hierarchy and prioritization of aims, also in the public administration.

General elections in 2020 should be placed in such a context, since public administration determined to minimize threats related to coronavirus, was obliged to conduct nationwide electoral action to elect the President of the Republic of Poland. The way electoral action was performed and conclusions arising from this issue is the topic of this article.

# 2. Materials and Methods

Normative rudiments of Presidential Elections in Poland are based on the Constitution of the Republic of Poland of 2nd April 1997 approved by National Assembly on 2nd April 1997, nationally adopted in constitutional referendum on 25<sup>th</sup> May 1997 and lastly signed by the President of Poland on 16<sup>th</sup> July 1997. Provisions of article 127 and 128 of Polish Constitution are of great significance in the discussed subject matter.

In the remaining scope there is a reference to 'the act', and basically to the act of 5<sup>th</sup> January 2011 – Elective Congress, which is especially meaningful in the context of elections performed in 2020. In chapter V the act provides for comprehensive, detailed regulation of elections: general rules, ways of nominating candidates, rules related to voting papers, the way of voting and conditions of vote's validity, establishing results of the votes and results of presidential elections, establishing the validity of elections, the way electoral campaign is conducted in public TV and radio and financing electoral campaign.

Obviously, except for detailed regulation included in chapter V, Electoral Code formulates, on general basis, a number of normative patterns applicable in Presidential Elections in Poland. To mention regulation concerning the system of electoral administration and its tasks, to regulations of criminal law.

The beginning of a normative process – understood as a sequence of legal entities' activities provided for by commonly governing law – nationwide electoral action during the Presidential Elections in Poland, in the initial phase manifested typical features, and actions undertaken by legal entities – public administration and electoral committees – remained under the general constrains of electoral action.

Fulfilling the duty stemming from the article 289, paragraph 1 of the Electoral Code, according to which *elections are called by the Marshall of the Parliament not before* 7 *months and not later than* 6 *months before the end of the term of office of the President-in-office. The Marshal establishes the date of elections on a day free from work, taking place not before 100 days and not later than 75 days before the end of the term of office of the President of Poland, the Marshall of the Parliament, by virtue of the decision of* 5<sup>th</sup> February 2020 determined the date of elections for Sunday, 10<sup>th</sup> May 2020 and specified terms of fulfilling particular electoral operations (OJ 2020, item 184).

Chronologically first actions, resulting from electoral calendar were: informing National Electoral Commission about creation of electoral committees of candidates for the President of the Republic of Poland (till 16<sup>th</sup> march 2020), appointing district electoral commissions (till 23<sup>rd</sup> March 2020), submitting a candidate for a President of Poland to National Electoral Commission (till 26<sup>th</sup> March 2020 till the end of the day, to midnight).

Obviously calling elections for a President of the Republic of Poland caused taking a lot of actions, mainly by National Electoral Commission. It is enough to mention that till 23<sup>rd</sup> March 2020 National Electoral Commission adopted a lot of resolutions of various character which were indispensible to conduct electoral action (resolutions of National Electoral Commission 20-93/2020).

Typical course of electoral action was interrupted due to actual determinants – the state of coronavirus epidemics, and normative determinants – legislative response of public administration in referring to threats caused by this epidemics. By means of Minister of Health resolution of 14<sup>th</sup> March 2020, the state of epidemic threat was implemented in Poland (OJ 2020, item 433).

It was subsequently, from 20<sup>th</sup> March 2020, transferred into the state of epidemics (OJ 2020, item491 with amendments). It is worth reminding that there was an increasing tendency to identify epidemics with the state of necessity, understood, as it was mentioned at the beginning of this article, as a situation of advocating ultimately for one of legally protected values at the expense of far-reaching

minimization of the realization range of different values or even 'temporary' suspension of other values. In such extremely shaped state of awareness related to that actual situation, conducting nationwide electoral action could appear to be not only impossible (because of various reasons — with a complexity level similar to nationwide electoral action), but also somehow immoral.

A dilemma between fundamental right of people (article 127, paragraph 1 of the Constitution of the Republic of Poland) to elect the highest authority in Poland, a guarantor of national authority continuity (article 126 paragraph 1 of the Polish Constitution), who ensures compliance with the constitution, who is the guardian of sovereignty and national security, as well as integrity and indivisibility of the state's territory (article 126 paragraph 2 of the Constitution of the Republic of Poland) and actual, as well as normative conditions of the state of epidemic threat and the state of epidemics.

Above described situation can be easily, hypothetically problematized to even greater extent: if parliamentary elections or elections to the Sejm were called in those times, the dilemma would come down to answering the question, how to conduct election determining democratic legitimacy of legislative authority (Sejm and Senate of the Republic of Poland) and executive authority (the Council of Ministers), which at the same time is obliged to manage the state of epidemics in a way directly influencing the actual course of electoral action.

Problems generated in relation with the state of epidemics, on a background of ongoing electoral action, connected with Presidential elections called for 10<sup>th</sup> May 2020 and other electoral operations, concerned fundamental, constitutionally determined matters, at the same time coming down to actual impossibility of joining nationwide action with prevailing conditions (social and normative).

More than 150 claims referring to the date change of the presidential elections entered National Electoral Commission due to lack of possibilities to perform elections on 27<sup>th</sup> March 2020 (report of National Electoral Commission). The Commission, on 27<sup>th</sup> March 2020 explained the possibilities of elections date change and appealed for cooperation in relation to electoral issues taking into consideration health and life of voters, as well as goodness of the Republic of Poland (Information of National Electoral Commission of 27<sup>th</sup> March 2020).

The Commission also explained 'typical' issues related to the number of reported information on electoral committees of candidates for the President of the Republic of Poland, appointing District Electoral Commissions and the number of candidates' applications (not verified at those times). Without discussing the state authorities' choice of 'normative path' of managing the epidemics and reacting to its dynamics by mainly subsequent modifications of executive acts it impossible not to mention that the former Ombudsman stated that, fundamentally constitutional state of

emergency, mentioned by National Electoral Commission, was *de iure* and *de facto* implemented, and the act of law introduction this state had 'different title'.

However, by analogy to *falsa demontratio non nocet* (wrong title does not determine the content of actually performed legal action) the content of the act is crucial, and not its form (including -name/title). Such argumentation was presented by the Ombudsman along with legislative works connected with special act of law discussed in the remaining part of this article (Information on the Ombudsman's activity in 2020 and on respecting freedom, human and citizen's rights). However, the Ombudsman's opinion was not shared by public authorities which aimed at performing elections in the term called for 10<sup>th</sup> May 2020.

Epidemic situation and connected social attitude and normative solutions only aggravated situation of 'lockdown' in many areas of social, economic and political life. In the context of the electoral action being in progress at that time, it is impossible not to mention the amendments of Electoral Code provisions implemented by means of the act of 31st March 2020 on the change of the action special solutions connected with preventing counteracting and fighting COVID-19, other infectious diseases and related crisis situations and some other acts (OJ item 568 with amendments).

The right to absentee ballots was extended to people who, on the day of elections, were subjected to mandatory quarantine, isolation or isolation at home, specified in the act of 5<sup>th</sup> December 2008 on prevention and fighting human infections and infectious diseases (OJ 2021, item 2069,2120 of 2022, item 64,655,974) and to people who, no later than on the day of the vote, reach the age of 60.

In case of the first group of people, the justification was related to the possibility of realization of constitutionally guaranteed right to take active part in the presidential elections by people who could not go to the polling station due to a decision on the quarantine or isolation. It should be borne in mind that such decisions often referred to hundreds thousands of people at the same time. In case of the other group of people — people who turned 60 at the latest on the day of the elections — the justification based on the belief that the risk of serious course of the disease caused by coronavirus radically increases in elderly people. Personal voting in polling station is a factor favoring pathogen transmission.

However, formally the date of next electoral activities resulted from the appendix to the resolution of the Marshal of the Sejm from 5<sup>th</sup> February 2020 – that is the electoral calendar calculated for elections called for Sunday 10<sup>th</sup> May 2020. Consequently, National Electoral Commission was obliged to recognize submissions and submit candidates for the President of the Republic of Poland.

However, similarly to the National Electoral Commission case of 27<sup>th</sup> March, in the information of 9<sup>th</sup> April the Commission did not limit to communicating about

candidates' registration. The National Electoral Commission paid attention to special challenges related to elections called during epidemics (Information of the National Electoral Commission of 9<sup>th</sup> April 2020).

Emphasis of complex nature of 'electoral process', to remind: understood as a sequence of legal entities' actions scheduled by commonly governing law, which cannot be reduced to actions on the day of elections. However in such situation it can be reduced to a petition related to lack of possibility to conduct elections in such actual and legal conditions.

Contrary, changes in the Electoral Code indicated before were quickly referred to as far insufficient, despite of already advanced electoral action related to the elections of the President of the Republic of Poland called for 10<sup>th</sup> May 2020. Already on 6<sup>th</sup> April 2020 Sejm of the Republic of Poland received a draft of the Act on special rules of performing general elections for the President of Poland planned in 2020.

Short description of draft Act indicated its essence: the draft refers to legislating absentee ballots in general elections for the President of the Republic of Poland called for 2020 as the only form of voting. The progress of legislative works was very quick: the draft entered Sejm on 6<sup>th</sup> April 2020. On the same day there were all three readings of the bill and with the result 230 votes 'for' and 226 votes 'against' and 2 abstains from voting, the Sejm approved of the bill and transferred it to the Senate.

By the means of Senate resolution on 5<sup>th</sup> May 2020 there was a motion to reject the bill. The Sejm rejected the Senate' bill on 7<sup>th</sup> May 2020. The bill was passed on to the President for his signature, which he did on the same day. The special act entered into force on 9<sup>th</sup> May 2020. The most significant elements of this act, except for common absentee ballots (commonly referred to as 'envelope elections') are as follows: creating only one electoral commission for one municipality which postal operator was to supply the envelopes with every absentee ballot, delegating rights to specify, by means of resolution, among others the model of ballot paper, including the way its authenticity is proved and elements of electoral package to the Minister responsible for state assets.

It is worth explaining that before indicated authorization, mission-critical in the electoral action – that is determining the model of ballot paper, which, according to special act, was granted to the Minister responsible for the state assets, were not distributed among any public entity since 18<sup>th</sup> April 2020 to 9<sup>th</sup> May 2020. This situation was still observable in presidential elections called for 10<sup>th</sup> May 2020. Such state of matters was a consequence of provisions of the act of 16<sup>th</sup> April 2020 on special support instruments related to spread of SARS-CoV-2 virus (OJ 2020, item 695).

Among 60 amended legal acts, the act in article 105 (page 77 of the normative act) significantly excluded applying provisions of the Electoral Code, including competences of the National Electoral Commission, to determine the model of ballot paper and ordering these papers printing. It should be also added that the above mentioned act of 16<sup>th</sup> April 2020 entered into force two days later.

It ought to be reminded once again that formal actions planned in the electoral calendar of presidential elections called for 10<sup>th</sup> May 2020 were being performed at that time, and the national Electoral Commission repeated and reminded that nationwide electoral action had been extended in time process which engaged a lot of entities. Any kinds of 'shortcuts' is not only unacceptable in the perspective of democratic rule of law standards, but also pointless – the assumed goal (performing elections) cannot be achieved in situation of complete normative uncertainty or even existing loopholes in electoral law system.

Nevertheless, elections formally called for 10<sup>th</sup> May 2020 'were not cancelled' which meant that there was a duty of taking actions according to the electoral calendar on the part of legal entities, even though these actions could be doomed to fail in advance.

Such striking example was realization of the duty to appoint district electoral commissions by 21 days before elections at the latest (so on 19<sup>th</sup> April 2020 at the latest) by competent electoral officers. However, electoral officers were able to establish only part of district electoral commissions which was not surprising due to the fact that social distance and maximal limitation of professional, social, and even family and recreation activity was recommended. It is not possible to perform voting and settle the voting results in an electoral district by any other organ than district electoral commission.

Lack of 'complete commission' of all district electoral commissions makes it impossible to conduct elections, and, what follows, establishing the results of elections. Also this actual issue — establishing only a part of district electoral commissions by electoral officers — constituted a barrier to perform elections on 10<sup>th</sup> May 2020. It should be also added that this state of matters took place simultaneously with legislative works (in Senate) related to the act on special rules of conducting general elections for the President of the Republic of Poland called for 2020, which did not anticipate district electoral commissions in presidential elections planned for 2020.

In such legal and actual state, which should be repeated, there was no possibility to perform elections planned for 10<sup>th</sup> May 2020. The National Electoral Commission informed about this fact (announcement of the National Electoral Commission of 7<sup>th</sup> May 2020).

Whereas, on  $9^{th}$  May 2020, the act on special rules of conducting common elections for a President of the Republic of Poland called for 2020, entered into force. However, it would be an euphemism to state that the time remaining to planned elections (for the next day  $-10^{th}$  May 2020) did not allow to conduct electoral action according to its content, which was anticipated by the National Electoral Commission in before quoted announcement.

Consequently, the presidential elections in Poland *de iure* called for 10<sup>th</sup> May 2020, *de facto* did not take place. The National Electoral Commission was faced with a dilemma of this situation assessment from the point of view of governing provisions of law, while passing an appropriate resolution (OJ 2020, item 967).

The National Electoral Commission stated, in the content of this resolution, which is the most important, that there was no possibility to vote for candidates in elections called for 10<sup>th</sup> May 2020, and consequences of such state of matters should be identified with repercussions of situation discussed in article 293, paragraph 3 of the Electoral Code – which means: the lack of possibilities to vote due to lack of candidates.

Such interpretation of the National Electoral Commission related to actual lack of voting on 10<sup>th</sup> May 2020 (despite of registered candidates) opened the possibility to call elections for the next time by the Marshal of the Sejm on the basis of article 293 paragraph 2 of the Electoral Code.

Meanwhile the subsequent draft of a special act was submitted to the Sejm: individual member's bill on special rules of general presidential elections organization called for 2020, with the possibility of absentee ballot. Faster, but also more consensual legislative path (among others, Senate proposed amendments which were partly adopted by the Sejm), led to completion of governing provisions of the Electoral Code with resolutions adequate in those circumstances of epidemics. The 'unfortunate' act of 6<sup>th</sup> April on special rules of conducting general elections for the President of the Republic of Poland called for 2020 was repealed.

Taking advantage of the normative path determined by the resolution of the National Electoral Commission 129/2020, elections (renewed) were ordered by the Mashal of the Sejm for 28<sup>th</sup> June 2020 (OJ 2020, item 988). Results in the first round of the elections required performing subsequent voting, which took place on 12<sup>th</sup> July 2020. The validity of elections, according to the governing model, was determined by the Supreme Court (OJ 2020, item 1335).

# 3. Results

The analysis showed that the lack of possibility to perform presidential elections in the Republic of Poland, in the initial term was not only the result of too late entry of the special act on general absentee ballot into force. Actually, at least from the moment of depriving the National Electoral Commission competences to determine the model of the ballot paper and to order its printing (18<sup>th</sup> April), as well as not appointing all district electoral commissions by the competent electoral officers (to 19<sup>th</sup> April at the latest), fiasco of elections called for 10<sup>th</sup> May 2020 was almost one hundred per cent probable. The trial to change this state of matter through the act on 6<sup>th</sup> April should be assessed as naïve, inefficient and consequently – only harmful.

## 4. Discussion

Described above 'adventures' and normative turns of events which accompanied the presidential elections in Poland in 2020 may constitute a good example of crisis management in the scale encompassing the whole public administration functioning. Solutions adopted by particular organs of the state authorities can be differently assessed. However, it is impossible not to notice that extreme uncertainty related to legal and actual situation around the elections called for 10<sup>th</sup> May 2020 did not help appropriate celebration of 'democracy festival', which always are or should be elections.

Adopted solutions, mainly the resolution of the National Electoral Commission on the results of the failure to perform elections on 10<sup>th</sup> May 2020, as well as episodic solutions of the special act of 2<sup>nd</sup> June 2020 could not sanction completely the state created in the previous months of the electoral action. This situation reevaluated many comments related to regulation connected with presidential elections. The requirement to submit a candidate by at least 100 000 citizens with electoral rights, which in normal conditions does not seem to be an excessive requirement (Bosek and Safjan, 2016) limiting the principle of passive electoral law, in circumstances of epidemics becomes much more problematic.

In the times of epidemics, public administration popularized a security rule: 'distance, disinfection, masks' in order to protect citizens' health and life. Instruments at the disposal of public administration sometimes made this 'recommendation' a pattern of behavior sanctioned by administrative and/or criminal law provisions.

It should be also mentioned – even though, it is not the topic of this article – about far-reaching developing limitations within the range of freedom to relocate or conducting business and social activity. In such circumstances, 'submitting a candidate by at least 100 000 citizens with electoral rights', limited to entering personal data and signing a support list, could be reversely understood than in 'typical times', it means, as a requirement excessively limiting passive electoral rights.

The other perspective of this subject matter, in reference to 'short terms' of electoral calendar planned on the basis of the decision of the Marshal of the Sejm of 3<sup>rd</sup> June

2020, the Supreme Court was faced with a dilemma of considering a complaint of an electoral attorney of one of electoral committees concerning the National Electoral Committee resolution on rejection to register the candidate for the President of the Republic of Poland.

This problem was related to comparison of electoral committees situation. It concerned the committees which submitted candidates in elections called for 10<sup>th</sup> May 2020 and were at a disposal of longer time to collect required support of at least 100 000 citizens with electoral rights. This time resulted from 'the initial electoral calendar'.

Committees which declared their willingness to take part in elections called for 28<sup>th</sup> June 2020, and which at the same time were not registered in the process of elections called for 10<sup>th</sup> May 2020 had much less time (The Ordinance of the Supreme Court – Extraordinary Audit and Public Affairs Chamber of 12<sup>th</sup> June 2020, I NSW 63/20). It is only one example of dilemmas which were created on the basis of circumstances accompanying the presidential elections in Poland in 2020.

# 5. Conclusions

The assessment of public administration activity is not just without taking into consideration extraordinary circumstances accompanying the first months of coronavirus epidemics. Nevertheless, the naïve trial to perform elections in the initially planned term of 10<sup>th</sup> May 2020, illustrated with passing the special act which entered into force the day before the elections, must arouse astonishments.

Meanwhile, the National Electoral Commission signalized that due to organizational, legal and actual reasons, performing elections in the initial date was not possible. Lack of establishing district electoral committees and stopping the electoral action as a consequence, together with depriving the National Electoral Commission the right to determine the model of ballot papers from 18<sup>th</sup> April unambiguously announced fiasco of elections planned for Sunday 10<sup>th</sup> May 2020.

The faster this circumstance was communicated, the less significant normative turmoil and social anxiety would be. This seems to be the fundamental result of nationwide electoral action – the elections for the President of the Republic of Poland in 2020.

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