

Health Emergency as a Challenge for Democratic Elections on the Example of “Ghost Elections” in Poland

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Abstract: Health Emergency as a Challenge for Democratic Elections on the Example of COVID-19 Pandemic

The COVID-19 pandemic, which spread across the globe in 2020, affected many important areas of life, including elections. One of the biggest challenges related to the pandemic was the risk of insufficient legitimacy. State authorities had to balance such fundamental values as the need to provide appropriate legitimacy of democratic institutions and the credibility of electoral processes on one hand and the protection of health and lives of citizens on the other. Taking it into account they had to decide on the conducting, postponing, or delaying elections. Each of these solutions had both advantages and drawbacks. An extraordinary situation that has been brought about by the ongoing pandemic has also caused a danger that some of the political leaders might abuse the state of emergency and reduce public scrutiny for serving their particular political interests. The “ghost election” in Poland in May 2020 served here as an example.

Keywords: Democratic Elections, Free Elections, COVID-19 Pandemic, Health Emergency.

Summary: 1. Introduction – 2. Electoral standards and their limitations – 3. Elections during the pandemic – to hold, postpone or delay? – 4. “Ghost election” in Poland – 5. Final remarks

1. Introduction

In 2020 when the COVID-19 pandemic appeared the discussion on legal measures to be implemented by states in response to extraordinary situations resulting in health emergencies gained a completely new dimension. In particular, the emergency measures implemented in response to the pandemic provoked a debate on their adequacy, consequences, impact on human rights, legal bases, and their constitutional compliance in the vast majority, if not all, of European states. Since March 11, 2020, when the World Health Organization (WHO) announced a COVID-19 pandemic, more than 3 million people have died¹ and nobody doubts

¹ On 16 April 2021, 3 010 014 had been reported, <https://www.worldometers.info/coronavirus/>, [Consultation date: 16/04/2021].

that these statistics would be even more tragic if there were no drastic measures taken by states to limit the spread of the virus. However, these extraordinary measures (which were different in different countries – from compulsory quarantine and curfew to measures that stopped the economy), in many cases significantly interfered with the rights and freedoms of an individual, as well as the fundamental constitutional standards. The pandemic affected almost all areas of our life, including national and local elections. The article aims to determine the challenges and threats that the pandemic has posed on electoral processes. The necessity of holding elections during a pandemic, on the one hand, caused a number of organizational difficulties that had to be met by state authorities, and on the other hand, extraordinary circumstances threatened the fundamental right of citizens to elect their representatives in free and fair elections.

From March 2020, when the pandemic was officially declared and broke out also in Europe, till the end of the year, national elections were held in 11 states of the Council of Europe (Serbia, Iceland, Poland, Croatia, North Macedonia, Montenegro, Romania, Czech Republic, Lithuania, Georgia, Moldova) while local elections were organized in 12 states (Switzerland, Germany, France, Spain, Austria, Russia, Italy, Czech Republic, Armenia, Portugal, Ukraine, Bosnia, and Herzegovina)². In some of these states, a state of emergency was imposed in Spring 2020 (the Czech Republic, Italy, Lithuania, Romania, Spain), while in others elections took place under the conditions of other statutory or *ad hoc* adopted emergency measures, including the epidemic state (Austria, Croatia, France, Germany or Poland). Nevertheless, in all states, the Covid-19 pandemic has undoubtedly caused great disruptions in the electoral processes.

2. Electoral standards and their limitations

In the face of the spreading virus, the implementation of some restrictions concerning elections was undoubtedly necessary. However, it should be kept in mind that the rule of law and other fundamental principles of a democratic state must be also respected during critical extraordinary situations. So, all extraordinary measures introduced to protect public health must always have a clear legal basis as even such extraordinary circumstances as a pandemic do not absolve the organs of public authority from acting on the basis of, and within the limits of, the law. A state of emergency does not imply a temporary suspension of the rule of law, nor does it authorize those in power to act in disregard of the principle of legality, by which they are bound at all times. It also applies to electoral processes which should meet international standards and be in line with the principles underlying Europe's electoral heritage. In other words, a democratic

² <https://www.coe.int/en/web/electoral-assistance/2020-electoral-calendar>, [Consultation date: 15/04/2021].

state cannot freely sacrifice free and fair elections, which are the foundation of contemporary representative democracy, even in the name of preventing such a threat as COVID-19.

The basic principles concerning elections include the right and opportunity to participate in public affairs, to vote and to be elected on equal bases, the principle of periodic elections, universal suffrage, equal suffrage, or secret ballot. The standards of free and democratic elections have been guaranteed not only by national constitutions but also by international conventions and commitments that must be respected even during crises, just to mention Art. 3 of Protocol No. 1 to the European Convention on Human Rights which provides that “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.

Although the above principles are not absolute and may be limited in extraordinary situations under certain conditions, their core (essence) must remain intact. The limitations should be subject to parliamentary and judicial review. They should also have strictly defined temporal limits or there should be a possibility of their termination.

3. Elections during the pandemic – to hold, postpone or delay?

After March 2020 several states in Europe faced the problem of how to reconcile the above principles and requirements with the need to ensure public safety and to protect public health. Primarily, they had to decide whether to hold, postpone or delay elections. Each of these solutions has different consequences. Regardless of the decision, it was a challenge to balance such fundamental values as the need to provide appropriate legitimacy of democratic institutions and the credibility of electoral processes on one hand and the protection of health and lives of citizens on the other. That was even more difficult as the political decisions regarding elections had to respond to new COVID-19 circumstances immediately.

In case of postponement or delay the problem of extending the term of office of incumbents may arise. While many of the delays were implemented according to law and were justified by the need to protect public health, they also provoked several legal questions and triggered political disputes between ruling and opposition parties. For example, in France there was significant opposition when president E. Macron proposed to delay the municipal elections for 35,000 mayors in March 2020 and this proposal was called by the opposition leaders a *coup d'état*. As a result, the first round of the elections was finally held as scheduled and a delay of the second round of elections required the adoption of a new law

extending the term of current mayors³. Also in other states, opposition parties raised concerns that incumbents try to use delays to prolong and further consolidate their power⁴.

Holding elections during pandemic may also pose a risk of insufficient legitimacy, in particular, due to difficulties to keep high turnout of voters' participation. They were caused by social distancing regulations which extended the voting procedure and caused f. ex. long queues in front of polling stations, travel restrictions, voters' reluctance to use public transport, voters' reluctance to enter crowded indoor premises, etc. E.g. in the above-mentioned local elections in France in March 2020, despite the implementation of several safety measures, the voter turnout dropped 18 percentage points and was the lowest-ever participation rate for municipal elections. To prevent negative implications of low voter turnout, the government allowed voters to vote by proxy for the second round of municipal elections⁵. A noticeable decline in turnout also took place in Croatia (by 6 percentage points), Serbia (by 7 percentage points), and Iceland (by 9 percentage points). Nevertheless, in Poland, where the political scene, as well as the political beliefs of citizens, are highly polarized, the turnout increased by 13 percentage points compared to the previous presidential election⁶.

Elections in pandemics can also undermine the principle of equality of candidates by considerable limitation of the electoral campaign. The unequal campaign was caused by the restrictions of public events, difficulties to communicate with citizens, restrictions on the freedom of assembly⁷ which made incumbents be in a much better position⁸. This is especially true in those states

³ A. Quarcoo (2021), "Can Elections Be Credible During a Pandemic?", in *Carnegie*. Recovered from <https://carnegieendowment.org/publications/82380>, [Consultation date: 15/04/2021].

⁴ Only 55.4% took part in the first round of the elections, S. Allemandou (2020), "Low voter turnout in French local elections tells a tale of disillusionment", in *France24*. Recovered from <https://www.france24.com/en/20200629-low-voter-turnout-in-french-local-elections-tell-a-tale-of-disillusionment>, [Consultation date: 15/04/2021].

⁵ On local elections in France in 2020 see more: R. Rambaud, *Holding or Postponing Elections During COVID-19 Outbreak: Constitutional, Legal and Political Challenges in France. Case Study*, International Institute for Democracy and Electoral Assistance, Strömsborg, 2020.

⁶ L. Maizland (2020), "How Countries Are Holding Elections During the COVID-19 Pandemic", in *Council on Foreign Relations*. Recovered from <https://www.cfr.org/backgrounder/how-countries-are-holding-elections-during-covid-19-pandemic>, [Consultation date: 15/04/2021].

⁷ In Europe ahead of elections in 2020 e.g. political rallies or events were banned in Croatia, Poland, Serbia. At the same time, there were limits on the number of participant at public gatherings – in Croatia, it was 10 people indoors, in Poland it was 50 people indoors and 150 outdoors, in Serbia 50 and 500 respectively, in Romania it was 20 and 50; See: E. Asplund, F. Ahmed, B. Stevense, S. Umar, T. James, A. Clark, Elections and COVID-19: How election campaigns took place in 2020, 2.02.2021, <https://www.idea.int/news-media/news/elections-and-covid-19-how-election-campaigns-took-place-2020>

⁸ See more: E. Asplund, F. Ahmed, B. Stevense, S. Umar, T. James, A. Clark (2021), "Elections and COVID-19: How election campaigns took place in 2020", in *IDEA*. Recovered from <https://www.idea.int/news-media/news/elections-and-covid-19-how-election-campaigns-took-place-2020>, [Consultation date: 15/04/2021].

where the government controls the media. As the Office for Democratic Institutions and Human Rights noticed in its report, during the electoral campaign in the presidential election in 2020 the Polish public broadcaster failed to provide impartial coverage and acted “as a campaign vehicle for the incumbent”⁹.

Then, holding elections during pandemic forces states to seek and implement new or expand already existing alternative methods of voting (including postal voting, voting by proxy) and modify electoral procedures f. ex. in regard to the registration of voters. All of them can pose new threats. In particular, regarding postal voting, a wide range of problems appeared, some because election administrators lacked sufficient time and staff to efficiently organize correspondence voting. Staff shortages in postal and shipping companies also contributed to delays in delivering election mail which in many cases led to the situation in which citizens were deprived of their voting rights. The risks and dangers associated with expanding postal voting can be illustrated by the Polish experience with the attempt to introduce universal postal voting in the presidential elections supposed to take place on May 10, 2020. Special procedures and new methods of casting a vote were provided for voters infected with coronavirus or those in isolation or quarantine. In Italy, they could vote from home, if the request was made five days before election day to the authorities. In the Czech Republic and Lithuania people in COVID-19 or isolation could vote in drive-thru/curbside polling stations¹⁰.

Holding elections during a pandemic requires to undertake several public health safety measures, in particular in case of in-person voting (social distancing, the requirement of mask-wearing, increasing ventilation, sanitizing voters’ hands and different surfaces, etc.) which generated extra costs on the side of the state necessary to guarantee the safety of election staff and voters¹¹.

Elections during pandemic create challenges to election administration – f. ex. in Poland there was a problem with the establishment of district electoral commissions (which according to law shall be composed of judges) as well as precinct electoral commissions (which are composed of citizens). In the case of the former, the law had to be changed to enable the appointment of citizens with appropriate qualifications who are not judges.

The extraordinary circumstances of pandemic limit the possibility of independent control throughout the electoral process and electoral observation

⁹ The Republic of Poland. Presidential election 28 June and 12 July 2020, Office for Democratic Institutions and Human Rights, Warsaw, 23 September 2020, p. 3.

¹⁰ E. Asplund, L. Heuver, F. Ahmed, B. Stevense, S. Umar, T. James, A. Clark, P. Wolf (2021), “Elections and Covid-19: How special voting arrangements were expanded in 2020”, in *IDEA*. Recovered from <https://www.idea.int/news-media/news/elections-and-covid-19-how-special-voting-arrangements-were-expanded-2020>, [Consultation date: 15/04/2021].

¹¹ E. Asplund, T. James, A. Clark (2020), “Electoral officials need more money to run elections during COVID-19”, in *Democratic Audit*. Recovered from <https://www.democraticaudit.com/2020/07/14/electoral-officials-need-more-money-to-run-elections-during-covid-19/>, [Consultation date: 15/04/2021].

which is particularly important in developing democracies. International missions are limited due to closed borders or compulsory quarantine for international travelers.

Holding elections during pandemic also triggers questions about the responsibility for the potential threats to voters' health. E.g. in Serbia, where the world's most draconian anti-pandemic measures were introduced, the lockdown was abruptly ended before the parliamentary elections which caused that the government was accused of underreporting COVID-19 cases ahead of elections¹².

Finally, it seems that conducting elections in a period of emergency (including pandemic) is particularly prone to abuse from state executive authorities due to the increase of their powers. There is a danger that some of the political leaders might abuse the state of emergency and reduce public scrutiny for their particular political interests. There is also a risk that the government can use emergency restrictions on rights to repress opposition candidates or critical media and individuals, making elections held under emergency conditions less free and less fair than they should be. It can regard in particular those countries which have recently headed toward illiberal democracy and their political leaders had repeatedly acted against the rule by law even before the pandemic.

4. "Ghost election" in Poland

According to the election calendar, the presidential election was supposed to take place in spring 2020 also in Poland. The first turn was ordered by the Marshal of the Sejm (the speaker of the first chamber of the Polish parliament) for May 10, 2020. Meanwhile, however, the COVID-19 pandemic broke out. The 2020 election was very specific due to several aspects, but above all because, although it was not formally canceled or postponed, it did not take place in fact due to the lack of sufficient time and several problems with their organization. Therefore, it is called the "ghost election" by the media¹³ and perfectly illustrates the problems and dangers associated with holding elections during the pandemic.

Undoubtedly, it was an unprecedented case that public health emergency required a sudden necessity to implement special solutions and modifications of existing electoral procedures on such a large scale. It should be noted, however, that the current Constitution of the Republic of Poland of 1997 contains

¹² L. Maizland (2020), "How Countries Are Holding Elections During the COVID-19 Pandemic", in *Council on Foreign Relations*. Recovered from <https://www.cfr.org/backgrounders/how-countries-are-holding-elections-during-covid-19-pandemic>, [Consultation date: 15/04/2021].

¹³ See e.g. S. Walker (2020), "Poland holds ghost election with 0% turnout", in *Support the Guardian*. Recovered from <https://www.theguardian.com/world/2020/may/11/poland-holds-ghost-election-with-0-turnout>, [Consultation date: 21/04/2021]; E. Schultheis, "What Poland's 'ghost election' can teach us about pandemic-era democracy?", in *CNN Opinion*. Recovered from <https://edition.cnn.com/2020/05/29/opinions/what-polands-ghost-election-can-teach-us-about-pandemic-era-democracy/index.html>, [Consultation date: 21/04/2021].

appropriate regulations in the event of emergencies. Chapter XI of the Constitution entitled “Extraordinary measures” sets out the conditions for three different states of emergency-martial law, a state of emergency, and a state of natural disaster, which are regulated in detail in appropriate statutory laws¹⁴. Regarding the COVID-19 pandemic, the most relevant is the state of natural disaster which, according to art. 232 of the Constitution, can be introduced by the Council of Ministers. “In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster”. Art. 3 sec. 1 p. 3 of the law of 2002 on the state of natural disaster determines that the natural disaster shall be understood as an event related to the action of natural forces, in particular lightning, seismic shocks, strong winds, intense precipitation, the long-term occurrence of extreme temperatures, landslides, fires, droughts, floods, ice phenomena on rivers, the sea, lakes or water reservoirs, the mass occurrence of pests, plant or animal diseases, or infectious human diseases, or the action of another element. However, the government did not introduce any of the constitutionally prescribed emergency states even though in the situation that arose as a result of the coronavirus pandemic both the constitutional conditions for the introduction of the state of natural disaster and the state of emergency were met.

Instead, on 12 March 2020, an epidemic emergency state was introduced in Poland under the Act on preventing and combating infections and infectious diseases in humans¹⁵ and as the pandemic developed on 20 March 2020, an epidemic state was announced. This aroused considerable controversy and questions about the legality of government actions, also regarding the election. The introduction of any state of emergency would postpone the election according to art. 228 par. 7 of the Constitution, during a period of introduction of extraordinary measures, as well as within 90 days following its termination elections to the Sejm, Senate, organs of local government or election for the President cannot be held, and the term of office of such organs shall be appropriately prolonged. Failure to introduce the emergency state for political

¹⁴ Act of 29 August 2002 on martial law and on the competences of the Supreme Commander of the Armed Forces and the principles of his subordination to the constitutional organs of the Republic of Poland (*Ustawa z dnia 29 sierpnia 2002 r. o stanie wojennym oraz o kompetencjach Naczelnego Dowódcy Sił Zbrojnych i zasadach jego podległości konstytucyjnym organom Rzeczypospolitej Polskiej*), consolidated text: Official Journal of Laws „Dziennik Ustaw” 2017, item 1932; Act of 21 June 2002 on the state of emergency (*Ustawa z dnia 21 czerwca 2002 r. o stanie wyjątkowym*), consolidated text: Official Journal of Laws „Dziennik Ustaw” 2017, item 1928; Act of 18 April 2002 on the state of natural disaster (*Ustawa z dnia 18 kwietnia 2002 r. o stanie klęski żywiołowej*), consolidated text: Official Journal of Laws „Dziennik Ustaw” 2017, item 1897.

¹⁵ Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (*Ustawa z dnia 5 grudnia 2008 r. o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi*), consolidated text: Official Journal of Laws „Dziennik Ustaw” 2020, item 1845 with later amendments.

reasons caused that the government's decisions related to presidential elections in 2020 lacked a proper legal basis. As the opinion polls showed expected big advantage of the ruling party's candidate, the decision to conduct elections in May at any cost can be perceived as a result of political calculation.

In the face of a developing pandemic resulting in an increased threat to public health, on 6 April 2020, the deputies of the ruling Law and Justice party submitted a legislative proposal which was to enable the conduct of the presidential election solely using postal voting. The proposal proceeded immediately and the new law was adopted by the Sejm on the same day it was submitted. It was politically possible because the ruling parties have an absolute majority of seats in the current parliament (the act was adopted by the narrow majority of votes: 230 for, 226 against, and 2 abstentions).

According to the legislative procedure provided for in the Constitution, the act passed by the Sejm was next submitted to the Senate for consideration. Art. 121 p. 2 of the Constitution states that "The Senate, within 30 days of submission of a bill, may adopt it without amendment, adopt amendments or resolve upon its complete rejection. If the Senate fails to adopt an appropriate resolution within 30 days following the submission of the bill, it shall be considered adopted according to the wording submitted by the Sejm". In that particular case, the Senate used the entire 30-day period to consider the draft, indicating that due to the extremely accelerated procedure in the Sejm, it must be handled with particular care and requires detailed consideration, including appropriate consultations and obtaining expert opinions. As the opposition holds most seats in the Senate, the ruling party accused the Second Chamber of deliberately prolonging the proceedings to prevent the solutions proposed by the Sejm from entering into force. On 5 May 2020, the Senate voted on the rejection of the act pointing out several arguments against that regulation.

The further proceedings were pending in the Sejm which rejected the Senate's resolution on 7 May 2020. The Marshal of the Sejm submitted the adopted act to the President of the Republic for signature on the very next day. President A. Duda (supported by the ruling party) signed it immediately and on the same day (8 May) the government published the new law in the Official Journal of Laws. Under the provisions introducing the act (its art. 21), the new Act on special rules of conducting the general election of the President of the Republic of Poland ordered in 2020¹⁶ entered into force on 9 May 2020 that was exactly one day before the election day.

It should be emphasized that the above-mentioned act was assumed to be a one-off as it was adapted to conduct a particular election. The biggest change introduced by the new act concerned the establishment of postal voting as the sole

¹⁶ Act of 6 April 2020 on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020 (*Ustawa z dnia 6 kwietnia 2020 r. o szczególnych zasadach przeprowadzania wyborów powszechnych na Prezydenta Rzeczypospolitej Polskiej zarządzonych w 2020 r.*), Official Journal of Laws "Dziennik Ustaw" 2020, item 827.

method of voting in the election for the President of the Republic of Poland ordered for May 2020, which was a response to the announcement of the state of epidemic on the territory of the Republic of Poland. Although the Polish electoral law had already provided for the postal voting¹⁷, for the first time it was supposed to be the sole voting method. It provided that voters did not need to submit a request to vote by mail as the ballot documents were to be delivered to all voters by the designated operator within the meaning of the Postal Law¹⁸ within seven days before the day of voting.

Taking into account the date the act was passed and the short time remaining until the election, it was clear that it would not be possible to conduct it based on the new regulations. What is even more important, as the Organisation for Economic Cooperation and Development (OECD) noticed in its opinion, “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”¹⁹. Although the rule prohibiting changes in electoral law in the period immediately preceding the election has not been expressly stated in Polish law, the Constitutional Tribunal has repeatedly confirmed the rule that electoral law cannot be amended in six months before the election, deriving it from the principle of a democratic state ruled by law (Art. 2 of the Constitution). Moreover, the period of at least six months before the election shall be understood as six months not preceding the voting day itself, but all actions covered by the election calendar²⁰.

Such a fast adoption of the legislative proposal (let us remind that the Sejm passed the act on the same day on which the bill was introduced) was also made in breach of the rules of the legislative procedure. As the election procedure is regulated in detail in the Electoral Code all amendments in this regard should be implemented not in a separate specific act but by the amendment of the code regulations. According to the Standing Orders of the Sejm of the Republic of Poland²¹ both the code and its amendment require special legislative proceedings.

¹⁷ Since the introduction of the possibility to vote by post to the Polish Electoral Code in 2011 it has undergone several reforms concerning the circle of voters entitled to use this form of alternative voting, see more: A. Rytel-Warzocho, “Postal Voting as an Ultimate Rescue Measure for Presidential Election During the COVID-19 Pandemic in Poland”, in *Przegląd Prawa Konstytucyjnego*, 57 (2020), n. 5, pp. 102 ff.

¹⁸ Act of 23 November 2012 - Postal Law (*Ustawa z dnia 23 listopada 2012 – Prawo pocztowe*), consolidated text: Official Journal of Laws “Dziennik Ustaw” 2020, item 104, with later amendments.

¹⁹ 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.

²⁰ See e.g. the judgments of the Constitutional Tribunal of 3 November 2006, Case ref. K 31/06, and of 20 July 2011, Case ref. K 9/11.

²¹ Resolution of the Sejm of the Republic of Poland of 20 July 1992. The Standing Orders of the Sejm of the Republic of Poland (*Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 20 lipca 1992 r.*

Art. 89 p. 2 of the Standing Order provides that “the first reading of a draft of amendments to a law code or a draft of amendments to introductory provisions to a law 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 the above drafts, which may create subcommittees to consider a draft in detail, as well as working groups and a team of permanent experts. In the case of the new law on the election in 2020, none of these requirements was met. There were also no public consultations that according to the provisions of the Standing Orders must be conducted before the submission of the draft.

However, not only the procedure but also the content of the act raised doubts. E.g. some interpretative doubts arose from art. 18 and art. 19. The first one provided that whoever steals a voting card or places a converted or counterfeit ballot paper in the mailbox provided for ballots shall be deprived liberty for up to 3 years and according to art. 90, whoever without authorization opens an election package or a sealed returnable envelope, or unlawfully destroys an electoral package or a sealed returnable envelope shall be subject to a fine. In particular, it was unclear if the voter should be also punished for the failure to send back the card, keeping it, or destroying it.

Because due to the ongoing legislative work in the Senate, there was less and less time until the election, the government decided to start preparations for holding elections under new rules, although the law establishing these rules had not yet been passed. As they were to be conducted purely by correspondence voting, the Prime Minister ordered printing the ballot cards. The decision of 16 April 2020 had no legal basis (the law entered into force on 9 March 2021). The Polish Security Printing Works, a national manufacturer of banknotes and securities, spent millions of złotych (Polish currency) on printing ballot papers which appeared to be useless because the election *de facto* did not take place. Given the above, the provisions of the act specifying the authorizations for the minister competent for state assets to prepare election packages, to specify by regulation the specimen of the voting card, including the method of determining its authenticity, specimen, and size of the envelopes were irrelevant. Similar to the Polish Security Printing Works, the Polish Post has also incurred huge costs related to the preparation of the correspondence voting based on the arrangements with the government despite the lack of legal grounds. So far, no one has been held constitutionally, politically, or financially responsible for this.

As it has been already mentioned, taking into account the date of the submission of the bill and the constitutional framework of the legislative procedure it was impossible to conduct the election on 10 May 2020 according to the rules provided by the new law. Due to the lack of any other legal actions, the

Regulamin Sejmu), consolidated text: Official Journal of Laws “Monitor Polski” 2019, item 1184, with further amendments.

election of the President of the Republic of Poland on 10 May just did not take place although it had not been formally canceled or postponed. Polling stations were closed and citizens could not exercise their voting rights. This led to an unprecedented situation.

According to art. 238 of the Electoral Code, the results of the election shall be published by the National Electoral Commission in the Official Journal of Laws. On 10 May 2020, the National Electoral Commission issued a controversial resolution²² in which it stated that the election took place, however, it was not possible to vote for candidates. The Commission indicated that this situation had the same effect as the inability to vote due to the lack of candidates (which is regulated in art. 293 p. 3 of the Electoral Code) therefore 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 2 June 2021, a new law regulating the special rules for the organization of general elections for the President of the Republic of Poland in 2020 was passed²³ which repealed the Act of 6 April 2020 and allowed also other methods of voting provided for in the Electoral Code.

5. Final remarks

The necessity to hold elections during a pandemic is not only a challenge for the state authorities but also entails a number of the above-mentioned dangers. The year 2020 was special in this respect as due to the COVID-19 pandemic disruptions in the electoral process occurred on an unprecedented scale covering the entire world. In particular, states which headed towards illiberal democracy even before the pandemic are deemed more susceptible to that as their political leaders had repeatedly acted against the principle of a democratic state ruled by law, even before the pandemic.

To guarantee political benefits, the ruling party in Poland was striving to hold a presidential election in May 2021 disregarding the legal regulations in force. From the very beginning, the legal solutions proposed by the government

²² Resolution of the National Electoral Commission No. 129/2020 PKW of 10 May 2020 on the impossibility of voting for candidates in the election of the President of the Republic of Poland (*Uchwała Państwowej Komisji Wyborczej nr 129/2020 PKW z dnia 10 maja 2020 r. w sprawie stwierdzenia braku możliwości głosowania na kandydatów w wyborach Prezydenta Rzeczypospolitej Polskiej*)

²³ 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 voting by correspondence (*Ustawa z dnia 2 czerwca 2020 r. o szczególnych zasadach organizacji wyborów powszechnych na Prezydenta Rzeczypospolitej Polskiej zarządzonych w 2020 r. z możliwością głosowania korespondencyjnego*), Official Journal of Laws "Dziennik Ustaw" 2020, item 979.

raised great doubts as to their constitutionality. The constitutional regulations provided for the event of a threat to the health and life of citizens have been completely ignored. Regarding the election, the only solution that would comply with the Constitution was to introduce the state of natural disaster provided in art. 228 of the Constitution. That would allow postponing the presidential elections which due to extraordinary reasons could not take place. However, the ruling party consistently rejected this possibility proposing further unconstitutional solutions instead.

The issue of holding elections during COVID-19 and more general in health emergencies, as well as the threats and challenges associated with this issue, are one of the most current problems of constitutional law both in Poland, which had to face it in practice and other European states, spreading to the international level. The issue is interesting in particular in the context of the challenges and threads it imposes on the rule of law and democracy as well as electoral novelties forced by the pandemic.