Tomasz Czapiewski¹

Local Government in the Process of Organizing General Elections During the Pandemic – The Experience of the 2020 May Elections in Poland

Keywords: election, local government, pandemic, voting behavior, electoral management

Słowa kluczowe: wybory, samorząd lokalny, pandemia, głosowanie, administracja wyborcza

Abstract

The aim of the text is the analysis of the tasks and activities of the municipal self-government during the organization of the 2020 election of the President in Poland during the period from the beginning of February to May 10, 2020, when, due to the development of the pandemic, the process of preparing the election took a different course. The study is based on documents and five in-depth expert interviews conducted with persons associated with the organization of the elections. This publication draws attention to the lack of knowledge about various aspects of the pandemic, the protraction of the decision-making process, the lack of cooperation, and citizens' fears.

Streszczenie

Samorząd w procesie organizacji wyborów powszechnych w czasie pandemii – doświadczenia majowych wyborów w Polsce 2020

Przedmiotem tekstu jest analiza zadań i działań samorządu gminnego podczas organizacji wyborów Prezydenta Rzeczypospolitej Polskiej w 2020 r. w okresie od początku lu-

¹ ORCID ID: 0000-0002-7861-8455, Assoc. Prof., Department of Political Systems and Public Policies, Institute of Political Science and Security Studies, University of Szczecin. E-mail: tomasz.czapiewski@usz.edu.pl.

tego do 10 maja 2020 r., kiedy to w związku z rozwojem pandemii proces przygotowania wyborów przebiegał w sposób odmienny niż zazwyczaj. Podstawą badania są dokumenty źródłowe oraz pięć wywiadów eksperckich przeprowadzonych z osobami związanymi z organizacją wyborów. Zwraca się w tym kontekście uwagę na ówczesny brak wiedzy na temat różnych aspektów pandemii, przewlekłość procesu decyzyjnego, brak współpracy oraz obawy obywateli.

I. Introduction

The purpose of this study is to analyze the tasks and activities of local government during the organization of the 2020 election of the President of the Republic of Poland (RP) in the period from the date of the announcement of the election to the day originally scheduled for holding the first round. Although it is not always noticed, the local government is considered one of the key factors in election organization. The specificity of 2020 with the sudden development of a pandemic and the related sanitary-epidemiological threat caused the process of preparing the elections to proceed differently than in the past. The analysis of this process was mainly based on the study of documents and five in-depth expert interviews conducted with persons associated with the organization of elections – three representatives of municipal or communal governments and two representatives of the state election administration at different levels.

The electoral system in Poland is based on the close cooperation of several entities. Beginning with the State Election Commission (*Państwowa Komisja Wyborcza*, PKW) and the National Election Office (*Krajowe Biuro Wyborcze*, KBW) operating it, through local government offices and ending with political parties, which by law are obliged to register the required number of precinct election commissions (*obwodowe komisje wyborcze*, OKW) members².

In preparation for the May elections, the Sejm passed the Act of April 6, 2020, which required several actions on the part of the local government de-

² The Act of January 5, 2011, the Election Code (Dz.U. 2020, item 1319), Art. 182 § 2 pt. 1.

spite delays in its entry into force, as will be explained further in the article. The main empowerment of local authorities in the electoral process is contained in Art. 156 §1 of the Election Code³. This provision imposes on the municipalities the obligation to provide comprehensive services to the OKWs and perform tasks related to the organization and conduct of elections in the municipal, district, and province territory. In practice, the 2017 reform of the Electoral Code, introducing, *inter alia*, the institution of an election officer, changed little in this respect⁴. The pandemic has created several challenges and threats to the electoral system, particularly in the first half of 2020, which were particularly acute due to the dynamics of change, lack of time, and the limited knowledge of the mechanisms of the pandemic⁵.

II. Local Government in the Process of Organizing the 2020 Elections

The presidential election was ordered by Order of the Speaker of the Sejm Elżbieta Witek of February 5, 2020⁶. The electoral calendar provided 98 days for the fulfillment of all activities stipulated by the electoral law. The initial period of the electoral calendar in municipalities is started with activities of a technical nature. Election paraphernalia such as ballot boxes, screens, voting booths, overlays anonymizing the voter registers, etc., are reviewed. The first act that the mayor must issue concerns the immediate designation of an appropriate number of places designated for the free placement of official election notices and posters of all the election committees. It is customary to designate announcement posts (Szczecin), especially displayed announcement boards on fences and walls (Łódź) or to erect special con-

³ A. Pytel, *Problematyka treści znowelizowanego art. 156 i art. 191g Kodeksu wyborczego*, "Samorząd terytorialny" 2018, No. 10, pp. 56–65.

⁴ T. Czapiewski, R. Mischczuk, *The impact of changes in Polish electoral law in 2018 on the process of preparing and conducting elections*, "Acta Iuris Stetinensis" 2019, No. 3, pp. 53–80.

⁵ S. Birch et al., *How to hold elections safely and democratically during the COVID-19 pandemic*, London 2020; T.S. James, *New development: Running elections during a pandemic*, "Public Money & Management", vol. 41, No. 1, pp. 65–68; A. Leininger, A. Wagner, *Wählen in der Pandemie: Herausforderungen und Konsequenzen*, "Zeitschrift für Politikwissenschaft" 2021, vol. 31, pp. 91–100.

⁶ Dz.U. item 184.

structions made of boards in the most crowded places in the city (Poznań). These were the only duties incumbent on municipalities until the epidemic emergency was declared in the Polish territory on March 13, 2020⁷. Paragraph 8 of this regulation introduced the possibility of limiting the performance of duties by a public administration office or an organizational unit performing public duties.

Shortages of essential personal protective equipment (PPE) in wholesalers prompted the government to issue an epidemic emergency decree prohibiting the PPE export, such as surgical masks, gloves, or disinfectant liquids outside Poland. The main threat voiced by municipalities was linked to the approaching deadline of April 10, by which the notifications to OKWs were accepted. Initially, the number of applications increased at a reasonable rate, but the situation changed when the applications of people willing to work stopped with the outbreak of emergency epidemic situation,

Moreover, the election regulations did not confirm readiness to work for previously registered individuals. The problem with the formation of election commissions was greatest in larger cities, where the total number of vacancies was counted in hundreds.

The prospect of the election commissioners supplementing the incomplete composition of the commissions under Art. 182 §8c of the Election Code also raised doubts, as the commissioner, in practice, could only use a list of persons who had volunteered to work, and there was a shortage of such persons⁸.

⁷ Dz.U. item 433.

⁸ It is worth noting that in the previous year the PKW decided to increase the number of allowances for the members of election commissions. The increase was justified by the desire to better appreciate the effort made by the chairmen, deputies and members of the OKWs in the organization of the elections after the allowances had remained unchanged for several years. The increase at that time removed the problem with the number of commissions, moreover, in many cases there was an oversupply of candidates and the need to draw lots for the composition of persons. Resolution No. 6/2019 of the National Electoral Commission of February 27, 2019 on monetary claims due to members of election commissions in elections to the Sejm of the Republic of Poland and the Senate of the Republic of Poland, the President of the Republic of Poland and the European Parliament, and the method of documenting days off work, https://pkw.gov.pl/uploaded_files/1551277588_Uchwala_nr_62019_Panstwowej_Komisji_Wyborczej_w_sprawie_naleznosci_pienieznych_przyslugujacych_czlonkom_komisji_wyborczych_w_wyborach_do_Sejmu_RP_i_do_Senatu_RP_Prezydenta_RP_i_Parlametu_Europejskiego.pdf (15.06.2021).

Another problem that arose was the organization of training of commission members, which was complicated due to the changing sanitary regime guidelines. It was also noted that a considerable number of IT operators or persons who prepared polling stations (so-called polling station hosts) resigned during the previous elections. The organization of closed polling stations in social welfare homes and hospitals, prepared against the first wave of illnesses, also remained questioned. The mere restriction or, in several places, exclusion of municipal offices from face-to-face service may have affected limiting electoral rights through obtaining a certificate of inability to vote, issuing a proxy deed, or adding to the electoral register. In response to the submission of ZMP and UMP of March 30, 2020, the President of the PKW⁹ declared that the PKW is not competent in ordering elections and setting the electoral calendar. Despite simplifying the nomination submission procedure to the commissions, it did not affect their number.

By-elections for the mayor of the municipality of Jarosław in Podkarpackie Province were held on March 22, 2020, with a turnout rate of less than 30%. The guidelines of the State District Sanitary Inspector in Jarosław were very restrictive¹⁰. During the election, the following precautions had to be taken at polling stations in Jarosław: 1) disposable pens must be provided, 2) persons serving on the committee should wear disposable gloves, 3) the voting room must be ventilated every 2 hours, 4) during ventilation, the floor, tables, and handles must be washed and disinfected, 5) the committee members must work with gloves and masks, which must not be worn for more than 2 hours.

It was the only document addressed to any municipality. The authorities issued no guidelines during the May 10 elections. The enquiries of the municipalities to the local SSEs ended with the response that the work on the guidelines was in progress. It should also be noted that the subsidy provided to municipalities for the organization of the elections did not finance the costs of taking sanitary security measures. Even if this had been the case, products such as masks, gloves, or visors were difficult to obtain nationwide and were primarily sent to hospitals. More by-elections were scheduled nationwide, but

⁹ <https://www.metropolie.pl/wp-content/uploads/2020/03/30.03.2020r.-PKW-odpowied%C5%BA-na-wsp%C3%B3lne-wyst%C4%85pienie-UMP-i-ZMP-w-sprawie-organizacji-wybor%C3%B3w-prezydenckich10.05.2020-r..pdf> (15.06.2021).

¹⁰ Letter from PPIS in Jarosławiu dated March 18, 2020, marked PSE.410-U-1-140/20.

all were canceled. The rising number of viral infections in March 2020, the shutdown of the economy, widely implemented remote working, cancellation of local elections, and referendums resulted in explicit declarations of local governments about the possibility of organizing the elections.

III. Change to the Form of Voting

During the preparations for the elections ordered on May 10, the Sejm, on April 6, 2020, passed the Act on Special Principles for Conducting General Elections for the President of the Republic of Poland Ordered in 2020. The purpose of this Act was to organize elections with all-postal voting¹¹. During preparations for the elections on May 10, a draft law on diametrically different assumptions for the organization of the process and the voting itself in the election of the President of the Republic of Poland appeared.

On April 16, 2020, Prime Minister Mateusz Morawiecki referred to Art. 11 (2) in connection with Art. 11 (2a) (3) of the Act of March 2, 2020 on specific solutions to prevent, countermeasure, and combat COVID-19, other infectious diseases and crises caused by them and instructed the Polish Post to perform activities in the field of fighting against COVID-19, consisting in undertaking and implementing necessary actions to prepare for the elections of the President of the Republic of Poland in 2020 and all-postal voting, especially by preparing the organizational structure, providing necessary infrastructure and acquiring necessary material and human resources.

On April 17, 2020, the Law of April 16, 2020 on specific support instruments about the spread of the SARS-CoV-2 virus¹² was promulgated. The scope of the law was huge, but part of it also included a revolutionary change to the electoral system for the 2020 presidential election¹³. Article 102 of the same Act provides that, during a state of epidemic emergency or a pandem-

¹¹ J. Flis, W. Ciszewski, *Nieudane samobójstwo polityczne – ustawa o powszechnym głosowaniu korespondencyjnym w wyborach prezydenckich 2020*, "Studia Socjologiczno-Polityczne. Seria Nowa" 2020, No. 1, pp. 99–120; J. Flis, K. Marcinkiewicz, *Głosowanie korespondencyjne – wzory i ostrzeżenia z Bawarii*, Warsaw 2020.

¹² Dz.U. item 695.

¹³ M. Karg-Musiał, I. Kapsa, *Debate: Voting challenges in a pandemic-Poland*, "Public Money & Management", vol. 41, No. 1, pp. 1–2.

ic, the provisions of the Act of January 5, 2011 shall not apply to the conduct of the general elections for the President of the Republic of Poland ordered in 2020 – Electoral Code to the extent¹⁴: 1) making the information referred to in Art. 16 § 1 available to the electorate in the form of a notice; 2) issuing certificates of the right to vote; 3) providing the electorate with the information referred to in Art. 37d §1; 4) voting by mail as referred to in Article 53a; 5) voting by proxy; 6) the establishment by the PKW of a specimen ballot paper and its management of the printing of such papers.

Points 1, 3, and 5 are directly related to electoral tasks performed by the local authorities. Civil registration units ceased to issue voting certificates from April 17, 2020. The provision contained in point 6 took away the key competence of the PKW, which was to order the printing of ballot papers, and was intended to halt the preparation of traditional elections effectively.

The incomplete legislative process on all-postal voting law meant that just over three weeks, from April 17 to the scheduled election date of May 10, no authorized entity could order the printing and distribution of ballot papers. Entry into force of the Act, which took away PKW's competencies, coincided with the announcement of the MZ Łukasz Szumowski's recommendation indicating that in the traditional form, the earliest elections could be held in two years, assuming a vaccine is still available. The doubts were finally resolved only in the PKW Communiqué of May 7, 2020¹⁵, which stated that the PKW had undertaken all the activities related to the preparation of the election of the President of the Republic of Poland to which it was legally obliged.

During the night of April 22–23, 2020, all municipalities in Poland received requests from the Polish Post at their email addresses. Referring to Art. 99, the Polish Post (*Poczta Polska*) requested the municipalities to provide data from the electoral roll. Local governments across Poland faced a difficult decision. Officially, as of April 23, 2020, Polish Post had no statutorily assigned tasks related to the election process. As we read in a legal opinion prepared for the ZMP, making the requested data available to perform tasks related to the organization of the election of the President of the Republic of Poland was not justified.

¹⁴ Dz.U. 2019, item 684, 1504, Dz.U. 2020, item 568.

¹⁵ Communication from the State Election Commission of 7 May 2020, <https://prezydent20200510.pkw.gov.pl/prezydent20200510/pl/aktualnosci/37893> (15.06.2021).

The opinion also showed that the Prime Minister's order issued to Polish Post, just like the orders issued to local government units and their bodies by provincial governors under Art. 11.1 of the COVID Act, may only be issued in connection with counteracting COVID-19, which should be understood as all activities related to fighting the virus, preventing its spread, prevention and combating the effects, including the socio-economic effects, of the disease caused by the SARS-CoV-2 virus.

These decisions must comply with the generally applicable provisions of law, including Art. 99¹⁶. In conclusion, a similar opinion was also prepared by the Krakow Institute of Criminal Law.

On April 25, 2020, the Citizens' Network Watchdog Polska asked all municipal offices how many provided the requested data to *Poczta Polska*¹⁷. Two thousand two hundred fifty-eight municipalities responded (91%) to the poll. According to the analysis of the responses, only 15.5% (351) of the municipalities and cities transferred voters' data to the Polish Post. As a result of the complaint lodged by the Ombudsman, the Provincial Administrative Court (*Wojewódzki Sąd Administracyjny*, WSA) in Warsaw annulled the decision of the Prime Minister to entrust the organization of correspondence elections to *Poczta Polska*¹⁸. The WSA, on the date of issuance of the decision, stated that the only body authorized to organize elections based on the legislation in force was the PKW, while the body providing its services was the KBW.

At the same time, there were no provisions of statutory rank that would exclude the application of the provisions of the Election Code. It cannot be concluded that such provisions were the provisions of the Act of March 2, 2020 on special solutions to prevent, counteract, and combat COVID-19, other infectious diseases, and crises caused by them. At the same time, the WSA emphasized that the indicated provisions of the Election Code leave no doubt as to how they should be interpreted. There was no legal basis for the Prime

¹⁶ K. Ziemiński, M. Kielbus, *Opinia prawna na zlecenie Związku Miast Polskich*, 23.04.2020, https://www.miasta.pl/uploads/attachment/file/3369/Opinia_Poczta_Polska_24-04-2020.pdf (15.06.2021).

¹⁷ K. Batko-Tołuć, M. Bójko, A. Zdanowicz, *Wydane dane, czyli co nam państwo prawa*, <https://siecobywatelska.pl/wydane-dane-czyli-po-co-nam-panstwo-prawa> (15.06.2021).

¹⁸ Judgment of the Provincial Administrative Court in Warsaw of 15 September 2020, ref. No. VII SA/Wa 992/20.

Minister to give any instructions regarding the execution of the elections. The verdict of the WSA in Warsaw and the report of the NIK clearly showed that the local authorities made no mistake by not making the electoral roll available to the Polish Post Office.

IV. Conclusions

In the light of the analysis, several conclusions can be drawn. The development of the sanitary-epidemiological threat destabilized the system of electoral organization and disrupted the whole process in March and April 2020. In the first place, this had to do with the lack of knowledge at the time about the pandemic, the mechanisms for combating it, and anticipating further developments. Related to this was the problem of making an adequate decision by the legislature, which was not facilitated by the fact that changes to electoral law immediately before elections are usually assessed critically. The lack of a decision by the state authorities and pressure from local governments to establish sanitary safety rules resulted in a growing lack of trust between the parties, which was not facilitated by the existing strong political polarization and the opposition affiliations of most of the large cities' mayors.

One factor that is underestimated today, which probably made it impossible to hold elections in the traditional or similar form in May anyway, was the common fear of pandemonium among citizens, which resulted in a lack of willingness to participate in the work of, for example, OKW. The system of organizing elections cannot function without the voluntary participation of tens of thousands of citizens.

The most controversial moment of the whole process was applying to the municipalities to transfer the electoral rolls. However, it seems that irrespective of the assessments on the legal grounds (which indicate that there was no legal basis for such an action at the time), even with the immediate transfer of the registers, the effective organization of all-postal elections in such a short period would not have been possible given Poland's limited experience with such an election. A surprising conclusion from the analyses is the lengthy and even protracted failure to prepare uniform sanitary-epidemiological security rules strictly for the conduct of voting and several other ac-

tivities connected with the preparation of elections. Finally, it should be noted that although the organization of the May elections was a failure, barely seven weeks later, despite the still existing sanitary and epidemiological threat, it was possible to conduct the elections effectively and safely, despite subsequent changes to the Electoral Code. This process was based on effective cooperation between the state election administration and municipal self-governments.

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