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**Election Silence in the New Media. The Question of
Whether Election Silence is Justified in the Era of New
Media in the Context of Public Opinion Polls**

Keywords: election silence, Internet, new media, opinion polls, Poland

Słowa kluczowe: cisza wyborcza, Internet, nowe media, opinia publiczna, Polska

Abstract

Election silence is a legally determined period that typically begins directly before Election Day and lasts until the voting comes to an end. During the election silence, it is forbidden to conduct “any form of electoral agitation aimed at promoting a particular candidate, list of candidates or electoral committees participating in the election among voters”. Due to the rapid development of new media, particularly the Internet, many experts argue that in the age of digital media it is no longer enforceable. Thus, the main purpose of this paper is to answer the question of whether or not it is justified to retain the current regulations on election silence. These considerations are supported by quantitative surveys conducted by the author, as well as the survey realized by the Public Opinion Research Center (CBOS).

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Streszczenie**Cisza wyborcza w nowych mediach. Pytania o zasadność funkcjonowania ciszy wyborczej w dobie nowych mediów w kontekście badań opinii publicznej**

Cisza wyborcza jest prawnie ustanowionym okresem, który zwykle rozpoczyna się bezpośrednio przed dniem wyborów i kończy się, gdy głosowanie dobiegnie końca. Podczas ciszy wyborczej zabrania się przeprowadzania jakiejkolwiek formy agitacji wyborczej mającej na celu promocję wśród wyborców konkretnego kandydata, listy kandydatów lub komitetów wyborczych uczestniczących w wyborach. Ze względu na dynamiczny rozwój nowych mediów, zwłaszcza Internetu, wielu ekspertów twierdzi, że w dobie mediów cyfrowych cisza wyborcza nie jest możliwa do utrzymania i że powinno się ją zlikwidować. Głównym celem niniejszego artykułu jest odpowiedź na pytanie, czy w dobie Internetu uzasadnione jest utrzymanie obecnych przepisów dotyczących ciszy wyborczej. Rozważania te są poparte badaniami ilościowymi przeprowadzonymi przez autorkę, a także badaniami zrealizowanymi przez Centrum Badań Opinii Społecznej (CBOS).

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I. Introduction

The issue of whether election silence should be maintained typically is raised in Poland before elections. The primary goal of the debate then is to answer the question of whether or not retaining this instrument makes sense in the era of rapidly developing new media, and when it is difficult to monitor online activity. The topic of this paper concerns the instrument of election silence, which is examined not only in the context of new media observing election silence but also in the context of public opinion polls. The inspiration to address this topic was provided by the increasing number of media reports on online electioneering (especially before elections) and the growing doubts about the sense of retaining the requirement of election silence. Additionally, strong arguments have repeatedly been raised in the public space in favor of abolishing this instrument as an expandable anachronism that has lost its purpose, given the dynamic development of the internet and the variety of online

tools². It is therefore the main purpose of this paper to answer the question of whether or not it is justified to retain the current regulations on election silence. These considerations are supported by quantitative surveys conducted by the author, as well as by the Public Opinion Research Center (CBOS).

II. Election Silence – Its Essence and Operation

Election silence, also called *pre-election silence*, *electoral silence*, or *campaign silence* is a legally determined period that typically begins directly before Election Day and lasts until the voting comes to an end³. During the election silence, it is forbidden to conduct “any form of electoral agitation aimed at promoting a particular candidate, list of candidates or electoral committees participating in the election among voters”. Election silence has been introduced to allow voters to make their electoral decisions under appropriate conditions, that is, in peace and in the absence of any attempts of individual electoral committees at exercising any influence on them. By design, election silence is intended to be a time for the electorate to reflect, and to decide whom to vote for.

Article 107 of the Election Code of January 5, 2011 provides for the election silence – a period between the end of the election campaign and the end of voting, during which it is forbidden to conduct election agitation in the forms listed in the section 1 of this article. The following activities are prohibited under this section: “the convening of meetings, organizing marches and demonstrations, giving speeches and distributing materials and conducting electioneering for the candidates or their lists in other ways”. The following section prohibits “[e]lection campaigning in the polling station and in the building where the premises is located”⁴. According to the Art. 115 of the Election Code, it is prohibited to disseminate to the public the results of pre-election surveys, public opinion polls concerning the expected voting be-

² *Polacy o proponowanych zmianach w prawie wyborczym*, Research communiqué No. 65/2014, CBOS, Warsaw 2014, p. 8.

³ J. Pérez Colomé, *La ‘jornada de reflexión’ es un invento español*, 25.06.2016, “El País”, https://elpais.com/politica/2016/06/24/actualidad/1466780026_862426.html (10.05.2020).

⁴ Art. 107 sec. 2 of the Act of 5 January 2011, the Election Code (Dz.U. No. 21, item 112).

havior and election results, and the results of polling conducted on Election Day (exit polls). A person violating this prohibition is subject to a fine of half a million to one million zlotys⁵.

The prohibition on electioneering can be viewed as a violation of freedom of speech, which is why many Western democracies consider it unconstitutional. Election silence is a feature of many young democracies in which it is justified to curtail political debate immediately before elections as a measure preventing the escalation of conflict shortly before and during voting. In many countries, election silence is legally established by election law. There are, however, states in which the leading political forces are bound by a gentlemen's agreement which obliges them to run the campaign following specified standards and to abstain from electioneering during a defined period before the elections⁶. This is the case with Sweden, for instance. Interestingly, the term *election silence* is absent or rare in English, because election silence is not a practice in Anglo-Saxon countries. Election silence is something completely unknown there. "If someone tried to impose election silence in America, (...) both the left and the right would be alerting the public that the sacred First Amendment to the U.S. Constitution, which provides citizens with complete freedom of speech, is being violated". Additionally, in the *Burson v. Freeman* case, in 1992 the U.S. Supreme Court ruled that campaigning on Election Day is prohibited solely in the polling place or within a short distance from the polling place (100 feet)⁷. The rules of election silence apply to all the media, including the internet⁸.

Compliance with election silence regulations is a serious challenge for new media, in particular the internet, in connection with the dynamic development

⁵ Art. 500, *Ibidem*.

⁶ *Campaign silence*, The ACE Electoral Knowledge Network, <http://aceproject.org/electoral-advice/archive/questions/replies/699408090> (15.05.2020).

⁷ *Burson v. Freeman*, 504 U.S. 191 (1992) – Charles W. Burson, Attorney General and Reporter for Tennessee, *Petitioner v. Mary Rebecca Freeman Certiorari* to the Supreme Court of Tennessee, No. 90–1056, Argued October 8, 1991, Decided May 26, 1992; Find Law, <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=504&invol=191> (2.06.2020); LII, Legal Information Institute, Cornell University Law School, <http://www.law.cornell.edu/supct/html/90-1056.ZS.html> (2.06.2020).

⁸ M. Musiał-Karg, *The Election Silence in contemporary democracies. Questions about the sense of election silence in the Age of Internet*, "Przeгляд Politologiczny" 2013, No. 3, p. 102.

of ICT (Information & Communication Technologies). Steady progress in social communication technologies provides innovative, formerly unknown, and hitherto non-existent possibilities and methods of influencing the opinions, attitudes, and political behavior of voters. The internet, in particular, offers the considerable potential of abusing electoral silence because “it is not easy to subject the news and statements transmitted and exchanged through the internet, regardless of time differences and state borders, to global and comprehensive monitoring by state authorities; laws aiming for electoral silence to be observed may turn out pointless”⁹.

Significantly, the Election Code does not regulate the matter of election silence in the new media (broadly understood). As already indicated, however, the prohibition on campaigning and the dissemination of polls applies to all kinds of media, including online media, which are treated like printed ones¹⁰. In one of its explanations from 2010, the National Electoral Commission in Poland provided guidelines on maintaining election silence, stating that the prohibition on election campaigning during the period of election silence includes all online activities. This means that even news items of a campaigning nature that are posted online 24 hours before the voting day, in other words, posted by the end of the election campaign, may remain online. During the election silence, however, only news items that do not promote the candidates can be posted online¹¹. This quite laconic definition does not encompass the entire range of activities that can potentially infringe on election silence. There are many examples of how election silence can be bypassed on the internet. Actions that involve infringing on election silence include liking posts of a campaigning nature on social media, sharing such posts on social media, writing posts encouraging readers to support a particular politician, political party, or election committee, and publishing the results of pre-election polls.

⁹ G. Kryszewski, *Standardy prawne wolnych wyborów parlamentarnych*, Białystok 2007, p. 186.

¹⁰ *Cisza wyborcza na portalu Emito.net*, http://www.emito.net/wiadomosci/wielka_brytania/cisza_wyborcza_na_portalu_emito_net_1031720.html (5.06.2020).

¹¹ Clarifications of the National Electoral Commission of 18 June 2010 on the so-called election silence, <https://pkw.gov.pl/wybory-i-referenda/wybory-prezydenta-rzeczypospolitej-polskiej/wybory-prezydenta-rp-w-2010ampnbspr/informacje-ogolne/wyjasnienia-panstwowej-komisji-wyborczej-z-dnia-18-czerwca-2010-r-w-sprawie-tzw-quotciszy-wyborczejquot> (5.06.2010).

Where is it possible to break election silence (in which online spaces)? Election silence can be broken, or at least bypassed, on internet websites, on blogs, via social media, and various communicators¹². Other forms of breaking election silence can encompass sending text messages by phones which encourage the recipient to vote for a particular candidate, sending internet memes (an internet genre consisting of a pictorial message built following a construction pattern which uses conventionalized elements related to the culture and history of the internet¹³), as well as placing sites with agitation messages on foreign servers and using these sites during election silence. An interesting case of similar activities involves providing the results of pre-election polls on foreign websites, which is not a formal break of election silence, but it is beyond any doubt that such messages can affect the attitudes of voters abroad.

Given the subject of this paper, namely election silence, the question arises of whether or not it is still justified for campaigning to continue on Polish-language sites located on foreign servers, and for foreign news sites to report the results of exit polls. Although these actions do not constitute an attempt at breaking election silence (but only bypassing it)¹⁴, they are examples of the possibility of election information influencing the attitudes of voters. Given the increasing access of Polish society to the internet, it is certain that voters who want to find the information which should not be disseminated during election silence can easily access it. After all, the purpose of election silence is to ensure that voters have peaceful conditions in which to make decisions concerning the electoral offer; decisions which should not be made under the influence of any publications of election-related content. Nevertheless, in the age of the internet, maintaining election silence appears to be a very difficult endeavor, bordering on the impossible.

Interestingly, the discussions on how to change election silence regulations – whether concerning its length or abolishing it altogether – are infrequent in Poland. One of the significant drafts that were debated by the Polish parliament was the amendment to election law submitted by the Modern party in 2016.

¹² J. Marszałek-Kawa (ed.), *Współczesne oblicza mediów*, Toruń 2005.

¹³ M. Żytkowiak, *Definicja memu*, “Memy polskie”, <http://mempolskie.pl/memy/definicja-memu> (5.06.2020).

¹⁴ Election silence applies only to the territory of a given country.

The party put forward a bill to lift election silence. The proposal took into account changes that had occurred in the course of the development of social relations and electronic media. They argued that election silence is absent in a number of EU member states, many of which have had long democratic traditions. The restrictions imposed by the Polish election system are absent in the United Kingdom, Belgium, the Netherlands, Sweden, Finland, Estonia, and Ireland, among others. The same applies to the United States. Nevertheless, democracy is assessed as functioning well in these countries¹⁵. The Modern party's draft provided for lifting the ban on electioneering and conducting an electoral campaign outside of the polling place on the day before the Election Day or a referendum, and on the Election Day, as well as for lifting the ban on the dissemination of election and referendum polls on voters' behavior on the day preceding the Election Day¹⁶.

Online electioneering has a lot of advantages but it also poses numerous challenges. The examples and statistics confirm the fact that social media are increasingly used as tools of political communication. An election campaign conducted on social media requires the electoral staff to be responsible for monitoring the content posted by persons visiting the candidate's website, and for their supporters and opponents complying with election silence, first and foremost. Interestingly, the "combined, private-and-public character of social media inhibits the assessment of the extent to which individual behavior of their users qualifies as infringing on election silence"¹⁷. The bill was rejected by the parliament on February 25, 2016, by 244 votes against, with 192 votes for and 4 abstentions. Law and Justice was against the changes and moved for them to be dismissed, with the support from the Polish People's Party. Civic Platform and Kukiz'15 had their reservations about the bill but declared their intention to continue working on the changes in parliament¹⁸.

¹⁵ *Projekt ustawy o zniesieniu ciszy wyborczej*, <https://nowoczesna.org/projekt-ustawy-o-zniesieniu-ciszy-wyborczej> (15.05.2020).

¹⁶ *Ibidem*.

¹⁷ J.M. Zając, D. Batorski (eds.), *Kampania w sieci*, Warsaw 2011, pp. 71–72; J. Marszałek-Kawa, B. Chłudziński (eds.), *Znaczenie informacji w społeczeństwie obywatelskim. Wybrane aspekty prawne*, Toruń 2007.

¹⁸ *Sejm odrzucił w pierwszym czytaniu projekt dotyczący zniesienia ciszy wyborczej*, 25.02.2016, <https://www.tvpparlament.pl/aktualnosci/sejm-odrzucil-w-pierwszym-czytaniu-projekt-dotyczacy-zniesienia-ciszy-wyborczej/24183843> (15.05.2020).

III. Public Opinion Polls

Public opinion polls are worth mentioning in the context of election silence as they reflect the attitudes of Poles to this instrument. This article presents the results of surveys conducted by the author, as well as by the Public Opinion Research Center (CBOS)¹⁹ on changes to the election law. CBOS conducted its research in 2014, immediately before the new Election Code coming into force. The author conducted her survey on a sample of 1,086 Poles, five years later, in February 2019, several months before parliamentary elections.

Both surveys asked for the respondents' opinions on election silence. The research by CBOS demonstrated that the vast majority of respondents (72% of interviewees) believe that election silence is needed. 60% of respondents said that it should remain unchanged, while 7% believed that election silence

Table 1. What is Your Opinion of Election Silence?

Answers	Percentage	Difference between the two surveys
	2014 CBOS	2019
	N = 1028	N = 1086
Election silence is needed and it should be as long as it is at present	60%	-6
Election silence is needed and it should be extended	5%	-1
Election silence is needed but it should be shortened	7%	+4
Election silence is unnecessary and it should be abandoned	18%	+5
Difficult to tell	10%	-2

Source: *Polacy o proponowanych zmianach w prawie wyborczym*, Research communique No. 65/2014, CBOS, Warsaw 2014, p. 8.

¹⁹ The survey on *Current issues and events* (287) was conducted via computer assisted personal interviews (CAPI) (face-to-face) on April 3–9, 2014 on a random representative sample of 1,028 adult Poles; *Polacy o proponowanych zmianach w prawie wyborczym*, Research communique No. 65/2014, CBOS, Warsaw 2014, p. 8.

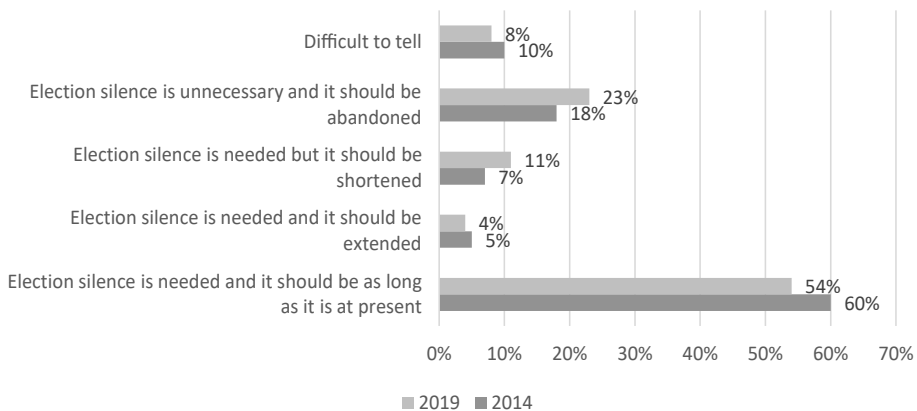
should be shortened. One in five respondents said it should be extended. Interestingly, nearly 18% of respondents declared to be against retaining election silence. The attitudes to election silence were similar across different groups of respondents.

Comparing the answers to the same questions which were asked in both surveys demonstrates that in general Poles are in favor of election silence being retained. In both surveys, there were more supporters than opponents of this institution, although the number of the latter has been shown to have increased by the 2019 survey.

In the 2019 survey, the number of respondents in favor of retaining election silence in the present or an extended form fell by 7 percentage points, while the number of those opposing election silence or in favor of its shortening grew by 9 percentage points. Respondents' opinions on how election silence should operate have evolved over the last few years. The largest changes can be seen in the groups of respondents in favor of maintaining the *status quo* and eliminating election silence altogether. Nevertheless, the majority of respondents believe that election silence is a significant component of the electoral process and should be retained unchanged.

Only one question was dedicated to election silence in the survey made by CBOS. As the discussion on whether or not to retain this instrument

Graph 1. What is Your Opinion of Election Silence?



Source: own study.

had intensified, the 2019 survey included an additional question about retaining election silence in the internet era. The responses were analyzed regarding party preferences, by asking respondents who they would vote for in the upcoming parliamentary elections (choosing from the political parties represented in the parliament at the time). The question was justified by the assumption that voters' opinions would, to some extent, reflect the opinions of the parties they supported. Table 2 shows that the largest group of advocates of election silence in the present or stricter form could be found among the supporters of Law and Justice – a total of 47%, while the majority of those opposed to the *status quo* and extension of election silence were among the supporters of the Modern party and Civic Platform – 57% and 54% respectively. As regards the supporters of Kukiz'15 and the Polish People's Party, there were more supporters of changes (42% and 39% respectively) than those in favor of retaining election silence and its extension (40% and 36% respectively). It should be stressed that both groups of respondents were strongly polarized and the differences were relatively small.

Table 2. Are You of the Opinion that Election Silence should Apply in the Era of the Internet? (%)

Opinion	Law and Justice	Kukiz'15	Polish People's Party	Civic Platform	Modern
Election silence is needed and it should be as long as it is at present	27	22	23	18	17
Election silence is needed and it should be extended	20	18	13	9	5
Election silence is needed but it should be shortened	27	25	22	29	23
Election silence is unnecessary and it should be abandoned	7	17	17	25	34
Difficult to tell	19	18	25	19	21

Source: own study.

When designing the survey, it was assumed that it might be interesting to collect respondents' answers in different age brackets. It was forecasted that older respondents would be more attached to the present regulations and reluctant to accept any changes, and thus that the share of responses in favor of retaining election silence would increase with their age. The opposite should be observed regarding the abolition of election silence. These assumptions were made based on the characteristics of modern society, the younger members of which tend to be better educated in new technologies, which translates into their greater sensitivity to the difficulties with maintaining election silence in the era of new media.

Table 3. Are You of the Opinion that Election Silence should Apply in the Era of the Internet? (%)

Opinion	18–24	25–34	35–44	45–54	55–64	65+
Election silence is needed and it should be as long as it is at present	18	14	26	29	28	29
Election silence is needed and it should be extended	11	13	11	14	15	15
Election silence is needed but it should be shortened	23	24	24	26	20	20
Election silence is unnecessary and it should be abandoned	29	20	18	17	16	11
Difficult to tell	19	29	21	14	21	25

Source: own study.

The analysis of the data in Table 3 makes it possible to confirm these assumptions, as it demonstrates that the number of supporters of election silence in its present form grows with age while the number of those in favor of its abolition diminishes with age.

When analyzing respondents' answers concerning the extension of election silence, no significant differences have been observed, although the number of those in favor of its extension increases in the 45+ age group. As regards the shortening of election silence, younger respondents are more likely to be in favor.

IV. Conclusions

The advances in new technologies, in particular the internet, produce numerous measurable benefits, but also pose many challenges for election processes. One such challenge involves regulations of election silence, being particularly difficult to observe on the internet, in which it is almost impossible to enforce the ban on campaigning.

Considering the issue of whether or not election silence is useful and justified, it should be observed that, from voters' point of view, election silence can be a useful solution since it facilitates peaceful electoral decision-making. On the other hand, it is fair to say that election Sundays in Poland tend to be quite boring, which is why voters, who frequently are not interested in what is happening in their country, forget to vote. This might be the outcome of mandatory election silence and the absence of election discussion in the media. If it were not for election silence, politicians would probably be able to interest the public in the election and encourage them to go to the polling stations. The ban on campaigning that is in force in twenty-four hours preceding the election seems to be less and less justified, given the increasingly common access to the internet, in which it is unfeasible to monitor election silence.

To a certain extent, this is also confirmed by the presented surveys. While in general Poles support election silence, recent years have seen significant changes in their responses. The main one concerns the fact that although the majority of respondents are in favor of retaining election silence as is, the number of persons who want the period of election silence to be shorter, or for it to be abolished altogether, is increasing. Looking at these opinions concerning the respondents' political preferences or age, certain differences can be spotted: the respondents' opinions are frequently in line with the standpoint of their respective parties, but the support for election silence in its current form drops in the younger age groups.

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