
Elections during COVID-19 Pandemic in the Light of Democratic Values and International Standards of Human Rights Protection

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Abstract:

Purpose: The aim of the paper is to establish whether in the light of international standards holding elections during the COVID-19 pandemic at a time resulting from constitutional regulations should be treated as an absolute instrument of protection of democracy and of personal political rights, or should such a circumstance be considered as an extraordinary premise that allows changing the date of the elections.

Design/Methodology/Approach: The research was based on the method of interpretation of norms of applicable law and the comparative method was used as subsidiary. In the first part standards of human rights protection and standards of organization of elections resulting from acts constituted by the UN and the Council of Europe are analysed. The second part analyses decisions of selected countries in which election-related activity fell for the period of the COVID-19 pandemic.

Findings: Research results have confirmed a thesis according to which in an extraordinary situation, where it is necessary to choose between the value in the form of human life and health and the implementation of political rights, priority should be given to the former.

Practical Implications: The research presented in this paper is of a particularly significant dimension. On the one hand, it points to the absence of real preparedness of national legal orders for extraordinary situations which threaten not only the operation of states as organizations, but also human life. Secondly, they point out how states may handle such situations in the absence of solutions at the constitutional or statute level. This issue is so significant because situations similar to the COVID-19 pandemic may occur also in the future. The experience to-date may thus become a *sui generis* determinant for activity in the future and provide an impulse to amend regulations.

Originality/Value: According to the authors the pandemic, as a state in which public life and health becomes threatened requires competent public authorities to take specific organizational and legal measures, sometimes also in reference to fundamental principles of the functioning of the state and the entire administrating apparatus.

Keywords: COVID-19, democracy, human rights, elections.

JEL codes: H1, I18, K10, K16. **Paper Type:** Research article.

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1. Introduction

In November 2019 the world heard worrying news about the emergence of a new virus, not known to-date and of dangerous consequences. It is SARS-CoV-2 causing a disease officially named COVID-19 (Coronavirus Disease, 2019; Singer, 2020). The virus's first outbreak was noted in the Chinese Hubei province (city of Wuhan) from where the disease spread at a drastic pace onto other regions of China and Asia and then also to Europe, America, Africa and Australia (Hui *et al.*, 2020, Velavan and Meyer, 2020). Due to the nature of this phenomenon and the dynamics of its development, on 30 January 2020 Tedros Adhanom Ghebreyesus, WHO Director-General, decided to announce the state a public health emergency of international concern (WHO Director-General, 2020). A few dozen days later, on 11 March 2020, COVID-19 was named as a pandemic (WHO Director-General, 2020). The following days showed that the virus became a serious threat and not in all cases states were able to implement appropriate mechanisms to limit its spread at the right time (Graham, 2020).

There is no doubt that the emergence of the COVID-19 pandemic caused problems in numerous areas of states' functioning. The virus, apart from a significant number of infections, causes difficulties in spheres such as organization of health care, economy and transport. Financial and organizational problems have been noted in all of these areas. The spheres which were particularly affected by COVID-19 also included politics and the functioning of state authorities. Local or general elections had been scheduled for the first half of 2020 in many countries. Such a state of affairs - in the face of a vast number of infections and a potential risk entailed by organizing such a project - put a number of countries before a serious dilemma. Those in power had to make a choice between the need to ensure continuity of state power and implementation of the principle of state sovereignty on the one hand, and protection of health and life of citizens on the other. The adopted solutions turned out to vary, similar to the results of decisions taken in this regard.

Referring to the above, the aim of this paper is to establish whether in the light of applicable international standards holding elections at the time of the COVID-19 pandemic at a precisely specified time, resulting as a rule from constitutional regulations, should be treated as an absolute instrument of democracy protection which guarantees personal political rights, or might such a circumstance be treated as an extraordinary premise that allows changing the date of an election. In other words, it needs to be examined whether in the situation of a pandemic threat primacy should be given to the implementation of the right to participate in elections or to the protection of life and health of citizens. Going further - one needs to answer questions of the nature of elections held under such - exceptional - circumstances and about the level of legitimacy of representatives elected in this way. A question about the significance and the scale of application of extraordinary measures as a premise that allows changing the date of an election in the event of extraordinary

situations in the country also arises. As it seems, holding an election should be treated in each case as an event implicating the constitutional obligation of finalizing the electoral process in a strictly defined time limit.

However, in an extraordinary situation, where it is necessary to choose between the value in the form of human life and health and the implementation of political rights, primacy should be given to the former. In order to verify the above hypothesis and to find answers to the above research questions, the first part of the paper contains an analysis of standards of protection of human rights and organization of elections resulting from acts constituted within the UN system and the Council of Europe. International law standards, both in terms of protection of human rights and the related organization of elections, need to be treated as a special type of legal norms that do not only formally affect national legal orders but also form a set of shared values, a result of a consensus worked out for years by the international community.

Thus, they are an expression of universally accepted concepts, a model of conduct for constituting and implementing the law. As practice has shown - they should also be an important determinant of activity for states in exceptional circumstances. The second part of this study analyses decisions of selected countries in which election-related activity fell for the period of the COVID-19 pandemic. Taking into account in the investigated case study the legal and health consequences associated with postponing an election or holding it on time, was to help in determining whether the situation of a pandemic threat allows an adoption of the primacy of the right to participate in an election, or the protection of life and health of citizens. The research carried out for the needs of this paper was based mainly on the method of interpretation of applicable law, whereas the comparison method was used as subsidiary. Investigating the theoretical (based in the methodology of interpretation of applicable law) and practical (bases on the comparative research methodology) possibility of carrying out the election process during a pandemic will allow confirmation of the research hypothesis according to which in an extraordinary situation, where it is necessary to choose between the value in the form of human life and health and the implementation of political rights, primacy must be given to the former. Various legal orders became a basis for the analysis. Due to the reach of the COVID-19 pandemic and countries in which election-related activity happened to take place, it was deemed legitimate to refer also to countries from outside Europe.

The research presented in this paper is of a particularly significant dimension. On the one hand, it points to the absence of real preparedness of national legal orders for extraordinary situations which threaten not only the operation of states as organizations, but also human life. Secondly, they point out how states may handle such situations in the absence of solutions at the constitutional or statute level. This issue is so significant because situations similar to the COVID-19 pandemic may occur also in the future. The experience to-date may thus become a *sui generis*

determinant for activity in the future and provide an impulse to amend regulations (which in a lot of cases are not perfect).

2. Basic Principles of Electoral Law in the Light of International Standards vis-a-vis the COVID-19 Pandemic

Elections, in every democratic state, play a special role. It is a basic form of indirect democracy, thanks to which citizens gain real influence over the choice of their representatives, and then also over managing the country's matters. In other words, thanks to elections the principle of sovereignty is implemented, and the most important political decisions are seen as those which - though in fact taken by representatives - derive from the citizens' will. Elections are also an essential tool for assessing the ruling elites (Courtney, 2004) and they are often directly called "the lifeblood of democracy" (LeDuc *et al.*, 2002). Thanks to them, it is not only creation of representative bodies that take place, but also stimulation of the ever-so-important public debate and shaping of directions of the conducted policy.

Given the above, and primarily the creation- and legitimization-related function of elections, it needs to be concluded that in essence they are a foundation of democracy. However, in order to fully implement their aims, they must meet basic standards anchored both at the level of national legislations and in acts of international reach. The latter have a special character since they are a reflection of common values, universally acknowledged by the international community. It is commonly assumed that democratic elections are elections that are first and foremost held with respect to the so-called constitutional principles of electoral law (universal, equal, free, secret and direct suffrage) and secondly, correspond with the principle of a democratic state based on the rule of law. This, in turn, means that electoral law should be relatively stable and should guarantee protection of personal electoral rights and constitute effective procedural guarantees (Code of Good Practice in Electoral Matters, 2002). In order to talk about democratic elections, these requirements should be met jointly, regardless of conditions in which the voting must be organized.

Given the current situation, a thesis must be put forward *prima facie*, according to which far-reaching limitations and restrictions, which aim to impede the spread of the COVID-19 pandemic, significantly hinder the holding of elections which would meet the afore-mentioned standards. In this scope, it is worth referring first to the principle of free elections which is universally acknowledged to be one of the prime principles that rule the election process (Mackenzie, 1958, Elklit, 1994, Elklit, 2000, Padilla and Houppert, 1993, Chandalia and Lekhi, 2013 and Lécuyer, 2014), which is legitimized in acts such as the Universal Declaration of Human Rights or the Additional Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; art. 3). Its essence boils down to such organization of

elections in which there is freedom to propose candidatures and promote manifestos, but also freedom in terms of expressing voting preferences. Already in this scope the possibility of unrestricted proposing of candidatures, which in many legal systems is dependent on collecting a specified number of signatures supporting a candidate or a list of candidates, needs to be considered doubtful. Collection of signatures amid isolation commonly adopted during a pandemic seems practically impossible. An exception may come only as a situation in which legal provisions stipulate for a different procedure for confirming support for the candidate even in the form of a deposit (Bezúbik and Olechno, 2016). What is more, it needs to be emphasized that such a restriction - apart from violating the principle of free elections – also involves interference in candidates' passive electoral right. Lack of a real opportunity to gain support is equal to closing the possibility of taking part in further stages of the electoral process, which in turns is contrary to the principle of universal suffrage.

The second doubt associated with the implementation of the principle of free elections concerns the directive of ensuring unrestricted competition between candidates in the course of the electoral campaign. There is no doubt that in order to assess the candidates and the programmes promoted by them, the voters' opportunity to follow the electoral campaign is key. Each candidate, in turn, should be given the opportunity to present their views in the broadest possible way, applying all legally admissible forms of electoral agitation. It is difficult to imagine truly democratic and free elections where there are no rallies, assemblies or pre-election debates between candidates. Conducting a campaign is often based on candidates' direct contact with the electorate and involves travel in which candidates try to reach the broadest possible circle of voters. Such forms most fully enable voters to form their opinions or to verify their knowledge about the persons pursuing the office (Merloe, 2008). However, conducting a campaign understood in this way in the face of restrictions in maintaining direct interpersonal contact in almost all countries affected by COVID-19 and in travel is practically impossible. Meanwhile, as pointed out by the OSCE/ODIHR Director who assessed the preparation to the presidential election in Poland: *A genuine campaign and real public debate are just as important for democratic elections as the opportunity to vote* (OSCE Office for Democratic Institutions and Human Rights, 2020). A campaign that does not employ characteristic tools of political marketing ceases to fulfil its function, remaining only a formal, but "frozen", stage of the electoral process. In consequence, such elections cannot be called free and competitive, and most of all they cannot be called elections that enable the full use of political rights.

When discussing the impact of the pandemic on the implementation of the principle of free elections, one needs to point to one more crucial aspect. It is commonly assumed that free elections must be secured with appropriate procedural guarantees that ensure protection of voters' subjective rights (Goodwin-Gill, 2006). Also, in this case it is difficult to acknowledge that the current situation will encourage these mechanisms or even - at least in a basic cope - guarantee them. The development of

COVID-19 caused significant changes in the functioning of individual organs, including courts, in many countries. These, in turn, are indeed responsible for the protection of these rights in the course of the electoral process (e.g. in the event of violation of personal interests in the course of the campaign or omitting a voter in the official electoral roll). A change in the organization of courts and slowing their work down may involve failure to be able to examine cases, which, given the tight electoral schedule, will need to be resolved in a very short period of time. Therefore, it needs to be expressly emphasized, that even those difficulties that are beyond the control of state bodies, which lead to the closure of the possibility to turn to a court, will not only be contrary the principle of free elections but also to the internationally recognized standard of the right to justice, resulting even from Article 6 ECHR or Article 8 UDHR.

The possibility of implementing the principle of universal election constituted *expressis verbis* in Article 21 UDHR or Article 25 of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights, 1966) in the time of a pandemic must be assessed similarly critically. This principle, as a rule, is to encourage the use of electoral rights by the broadest possible circle of eligible persons and regulations should not unjustifiably restrict these rights (Nohlen, 2004). During a pandemic, when the only measure to counteract the COVID-19 disease *de facto* is social isolation, a question arises of how to implement this principle in practice. It is because it is difficult to ensure the possibility of using the right to vote safely by quarantined persons, by sick and hospitalized voters or even citizens who are abroad on the day of the vote. Even the application of correspondence voting is not able to ensure sufficient guarantees of safety of voters, and most of all of election services. It needs to be additionally noted that such a state of affairs may affect the election's result itself and the legitimization of the representatives elected under such circumstances.

A significant - real - restriction of the circle of voters may result in low voter turnout, and the resulting not representative outcome of the vote. This, in turn, may translate into the level of democratism of elections carried out like that, but it may also become the basis for questioning the "quality" of the gained office, which *de facto* will not be filled in universal elections. The principle of universality may also be violated by organizational problems associated with appointing appropriate commissions to conduct the vote. A potential risk associated with the performance of tasks assigned to these bodies may prove a factor that discourages involvement in the commission's work. In effect, staff shortages in electoral commissions may prevent or significantly impede the implementation of the right to vote by the interested voters.

Another rule the implementation of which in the age of the spread of SARS-CoV-2 is at stake is the principle of equal suffrage, which is a specification of a broader principle of actors' equality before the law. This principle, similar to the ones

discussed earlier, is proclaimed in acts of international law, including in Article 25 ICCPR and Article 21 UDHR. It may be examined in various terms, where the most common approach seems to involve the application in the Code of Good Practice in Electoral Matters of a distinction of formal and material aspects and of the equality of electoral opportunities (Clerfayt, 2005). And it is the third aspect of equality in the context of the discussed issue that seems particularly problematic. It assumes that all participants of electoral competition should have equal opportunities in the electoral process, which should be mostly associated with the stage of the electoral campaign. As has already been mentioned, the COVID-19 pandemic has gravely impeded and in many cases prevented the conduct of electoral agitation. An essential problem arises in reference to those candidates, who while holding high state offices run for re-election in the voting held in this particular time. In this scope it is difficult to distinguish whether their public appearances are associated with conducting tasks falling under the office they hold, or whether they become an element of an ongoing campaign and candidate's promotion. In the second case, one may assume that there is a case of discrimination of other candidates who, due to e.g. restrictions in travel and the requirement of home isolation, do not have real possibilities of conducting agitation on equal terms. This problem is not insignificant also in the context of financial clearance of campaigns.

At the end of this part of the reflections, one cannot omit one more particularly important aspect. Apart from the difficulty in implementing democratic standards of elections in the time of the COVID-19 pandemic, protection of life and health of voters is a key issue. Holding an election in such difficult and dangerous circumstances should first be assessed from the point of view of protection of these values. The fact that the right to protection of life has a fundamental character is an indisputable question (Dragne and Balaceanu, 2013). It falls under the category of basic rights, which was proclaimed as one of the first, and along with the right to the protection of health it holds the highest place in the hierarchy of legally protected goods today. Such a state of affairs leads to a conclusion that in every case that involves weighing these values against the protection of political rights, primacy should be given to the former.

3. Elections vis-a-vis COVID-19 - Experience of Selected Countries in the Aspect of Holding Elections in the time of a Pandemic

The starting point for the reflections in the context of characterizing the way the pandemic affects the process of organizing and carrying out elections is a conclusion that one of the basic aims of a democratic rule of law should involve the protection of life and health of citizens. Hence, extremely important issues associated with selecting representatives to state authorities or local government in the context of universal, equal and free suffrage, must take into account the current state of facts, existing restrictions in terms of movement, assembly or application of specific measures of sanitary protection. In democratic countries the freedom to express

one's opinion, to conduct discussions, to exchange views or to access public information is also key. Therefore, it needs to be assumed that all forms of communication, including political discourse in the course of an electoral campaign, are subject to strict legal protection (Howie, 2018).

The uniqueness of the situation, and at the same time the need to hold elections in the time of the COVID-19 pandemic, led to a state where some countries decided to carry out elections, while others postponed them to a more or less defined date. In both cases different types of argumentation were adopted. Some countries concluded that the condition of appropriate operation of public administration structures, despite the pandemic, will involve carrying out elections according to fixed dates. Engagement in the electoral process in these cases must, however, take into account protection measures that ensure the safety of the entire electoral process and the stage of voting itself. Others, in turn, deemed it a priority to postpone elections to another date, justifying it with the needs to protect the life and health of voters and the need to observe the correctness of the procedures at each stage (in terms of the operation of electoral commissions, campaigns and voting).

The countries which have not yet carried out elections planned for the near future like to refer to the experience of those countries in which elections have already been held. Depending on the government policy, they adopt arguments for or against carrying out the electoral process. It seems that the best solution would be to keep the balance between values protected by the constitution and regulations of international law and the regulatory policy of the state in terms of protection of political and personal rights of a man and citizen. Public authority bodies in states which have democratic systems are responsible towards a broad circle of citizens for the decisions they take, especially those which take place during the so-called extraordinary situations (Besley and Kudamatsu, 2006). Undoubtedly, the global dimension of the pandemic has serious consequences for the conducted policy. Currently, not only the safe and legal conduct of elections but also the safety of life and health of citizens must have strategic importance in the organization of elections (Kayser, 2007). Searching for an answer whether the state of a pandemic allows for conducting elections in a safe way or whether elections in the course of a pandemic should be postponed, it is worth presenting examples of a few countries which faced this dilemma.

As has already been pointed out, due to the SARS-CoV-2 pandemic causing the COVID-19 disease, authorities of some countries have decided to postpone elections (presidential, parliamentary, or local) or even referenda. A new date for conducting the vote was pointed out indirectly only in some cases, whereas in majority of them it still has not been specified yet. The following countries, among others, decided to change the date of elections and referenda:

- Australia (local elections), the Autonomous Region of Bougainville (nation-wide elections);

- in Europe: Austria (local), Armenia (referendum), the Czech Republic (senate by-elections), France (second round of local elections), Gibraltar (referendum), Spain (local), Italy (referendum and local elections), Latvia (local), Poland (presidential elections), Northern Macedonia (parliamentary), Northern Cyprus (presidential), Romania (local), Serbia (parliamentary), Switzerland (local), Great Britain (local);
- in Africa: South Africa (local by-elections), Ethiopia (parliamentary and presidential), the Gambia (by-elections to the National Assembly), Cameroon (local), Kenya (local), Libya (local), Nigeria (local and senate), Tunisia (local), Zimbabwe (local);
- in Asia: India (parliamentary), Indonesia (local), Iran (second round of parliamentary elections), Kyrgyzstan (local), Maldives (local), Sri Lanka (parliamentary), Syria (parliamentary),
- in North America: Canada (local), the United States of America (presidential primaries moved in, i.a., the following states: Georgia, Hawaii, Kentucky, Louisiana, New York or Ohio),
- in South America: Argentina (local), Bolivia (presidential), Brazil (local), Chile (referendum), the Falklands (referendum), Colombia (local), Mexico (local), Paraguay (local), Peru (local), Uruguay (local) (International Foundation for Electoral Systems, 2020).

As for elections and referenda held despite the pandemic, the following states may be mentioned:

- March 2020: parliamentary elections in Israel (2 March 2020); local elections in France (15 March 2020), local elections in Bavaria in Germany (first round on 16 March 2020 and second round on 29 March 2020); local elections in Queensland in Australia (29 March 2020), local elections in Lucerne in Switzerland (29 March 2020);
- April 2020: second round of local elections in Geneva in Switzerland (4 April 2020), parliamentary elections in Kiribati (14 April 2020) and South Korea (15 April 2020).

There are also countries in which elections planned for the upcoming months will probably be held according to the previously adopted schedule (presidential elections in the USA - November 2020, parliamentary elections in Latvia - 11 October 2020). In these cases, the governments only suggest introduction of legislative changes which are to enhance the security of voters e.g. by introducing or expanding the application of correspondence voting (Global overview of COVID-19, 2020).

It needs to be noted, that in the event of the emergence of an epidemic threat, political or legislative responses are mostly determined by medical issues. There is no doubt that the opinion of bodies competent for cases of protection of public health should be crucial for the possibility of conducting elections in such a specific

scope. Specialist knowledge should be a basis for government reactions, which on the one hand should take into account efficient holding of elections that is compliant with the principles of the democratic rule of law, on the other - the life and health of citizens. This - as a rule - caused the need to adopt specific legal solutions (Baekkeskov and Rubin, 2014). It is also worth noting that recommendations prepared by international institutions and organizations which deal with electoral matters on a daily basis should also provide some sort of support in taking a decision on organizing elections in the time of the COVID-19 pandemic or on changing their date. Guidelines prepared by the ACEEEO are an example of such recommendations.

The Association of European Election Officials recommends that governments of countries in which elections should be held should first analyse comprehensively the risk associated with organizing or postponing elections falling for the time of the pandemic. In the Association's opinion, it is also important to ensure that voters have the widest possible access to public information in this context and to eliminate the dangerous phenomenon of disinformation. The ACEEEO also thinks it essential to constantly monitor the current epidemic situation in the country, and also to conduct consultations with specialists in the field of health protection and with representatives of science who deal with the issues of electoral law. Moreover, the Association recommends special attention to upholding voter turnout, especially among those voters that have limited possibilities to vote; introduction of special voting arrangements, corresponding with the infrastructural prerequisites and ensuring appropriate safety standards and an adequate level of trust among the voters; adopting special procedures in terms of protection of health of persons participating in the election; providing on-going information to voters and other participants of the electoral process about individual stages of the elections.

Finally, the ACEEEO notes that if a change of electoral legislation is needed, it should take place only when it is a *sine qua non* requirement to hold the elections and all relevant stakeholders - on equal terms - should be involved in a meaningful debate. Whereas postponing elections should in each case be based on a clear legal basis and the new date for the elections should be fixed as soon as it is possible (ACEEEO, 2020). The last of the aforementioned guidelines seems particularly important in the context of ensuring appropriate operation of the state. In such cases it seems reasonable also to take certain specific measures that ensure continuity and stability of the functioning of state and economy structures (e.g. introduction of a state of emergency). In the light of the above, it is worth analysing how the wording of these recommendations relates to the electoral practice.

One of the countries which decided to hold nation-wide elections in the time of the pandemic was South Korea. The vote was held on 15 April 2020. Such a solution was a measure that ensured stability of the government and strengthened its legitimation to hold power (Croissant, 2002). The main task of the organizers, apart

from ensuring an appropriate course of elections, was to guarantee precaution measures to voters and members of commissions which served to limit the risk of infection. As part of the so-called Code of Conduct for Voters a number of specific rules were introduced, such as: obligatory face covering while voting; checking voters' temperatures before they entered the polling station (persons with a temperature higher than 37.5 degrees Celsius or displaying respiratory difficulties were directed to special - separate - polling stations); keeping a safe distance of at least one meter between voters; obligatory hand disinfection; use of gloves. Upon entering the polling station (for the time of voter identification) the recommendations allowed temporary lowering or taking off of the mask, after which both the mask and the gloves were to be put back on again. Leaving the polling station involved removing the gloves and discarding them in a specially prepared disposal box (Spinelli, 2020). It seems that it is too early to pass a judgement on whether holding elections in such conditions significantly affected an increase in contracting COVID-19 in South Korea. However, at the moment we know that:

- over 10,000 of COVID-19 cases were confirmed in South Korea before the election; special correspondence voting arrangements were made for those who had contracted the disease and the so-called voting stations were set up at COVID-19 patient centres;
- people in quarantine could take part in the election (approximately 46,000 people);
- the time limit to register for correspondence voting expired on 28 March 2020 and as a consequence, it brought about a crucial problem in ensuring ballots before the date of the elections to those in quarantine who did not manage to file an appropriate request within the time limit specified;
- close to a half of those eligible for voting in South Korea who live abroad did not have the opportunity to vote at embassies or consulates (more than 88,000 of South Koreans live overseas; Lee, 2020).

It is also worth noting that South Korea's example demonstrated great mobilization of the voters themselves. Despite the restrictions and special conditions under which they had to give their vote; the turnout was over 66%.

France's case also seems interesting, where despite the danger associated with SARS-CoV-2, it was decided to organize the elections on 15 March 2020. It was local elections, which in no way diminishes their importance or affects the lowering of standards in terms of elections' organizers' ensuring appropriate safety measures. It was important for the French to hold the March elections on time, even though it was an exceptionally difficult task i.a. due to the limited possibilities in terms of mass testing for the virus (Moatti, 2020). A decision on holding the elections in the course of the pandemic, backed up mainly by the interest of local democracy, entailed the need to introduce numerous restrictions. One of the ways to cast one's vote was to vote by proxy. A requirement for such voting involved submission of an appropriate request at their respective area's police station or first-instance tribunal.

It is worth noting that in the course of the pandemic, the circle of persons who were eligible to use this right changed by extending it also to voters in quarantine or sick persons. Such a measure was to ensure protection of voters and to contribute to an increase of the turnout. It also specified special requirements for voting, including a one-meter distance between voters while the minister competent for internal affairs deemed it reasonable that voters should use their own pens, which was to prevent the spread of the virus. Special guidelines were also drawn up for the composition of electoral commissions, for the mode of collection of election materials before the date of the vote and for the very procedure of casting votes and counting them. New guidelines also covered the issue of using measures of individual protection and equipment and layout of polling stations (International Foundation for Electoral Systems, 2020).

The election held on 15 March 2020 caused significant chaos in terms of the epidemic situation in the country. While on 14 March 2020 4,500 infections were confirmed and more than 91 deaths, on 16 March 2020 the number rose to 5,423 cases (400 patients were in intensive care units). The election was held despite a number of restrictions associated with obligatory limitation of activity in the sphere of public life (closing bars, clubs or theatres). There were also many new cases of violation of rules concerning the quarantine introduced by public authorities. On 17 March 2020 it was decided to introduce a nation-wide policy of limiting the spread of COVID-19 (Ghanchi, 2020). Thus, the activity of the French authorities seems surprising - on the one hand they decided to hold local elections on 15 April 2020, on the other, only two days later, restrictions throughout the country were tightened. In the end, 45.5% of those eligible for voting took part in the elections (which is not a satisfying result in France).

However, a day later France's President Emmanuel Macron announced a change of the date of round two of the polls. Even though results of round one is considered valid (Sloat, 2020), all points to the fact that despite special precautions some members of electoral commissions and voters could not be protected against the virus. According to some French constitutionalists, an increase in infections, amended standards of holding elections and the change of the date of the second vote, despite all, question the reliability and correctness of the elections. Taking the above into account, it may be a matter of time before the validity of the elections is questioned by the verifying court. Moreover, the French government is planning to draw up regulations that serve to recognize the validity and incontestability of results of the first round of the elections before the second vote is held (Conley, 2020).

Most countries in which elections were to take place in the time of the pandemic decided to postpone them, having regard to the need to protect not only the health but also life of citizens but also to the respect for the rule of law. The above guided i.a. the government of the Czech Republic in the moment of taking the decision on changing the date of the elections. However, it turned out that moving the date of the

vote in senate by-elections in Teplice done during the state of emergency was questioned by the Supreme Administrative Court. In the Court's opinion, *the government moved the election due to the pandemic without the consent from the House of Deputies, that is acted beyond its jurisdiction, and such a decision should only be taken by the parliament - as the whole assembly* (Irozhlaz, 2020).

A similar solution was opted for by the authorities of Spain who postponed local elections in the Basque Country and Galicia *because of the extraordinary situation in which the country is due to the coronavirus crisis*. The government's recommendations on moving the date of the elections were adopted by all political parties in the region. It was agreed that organizing them on the previously fixed date could pose a risk to the health and life of a lot of people. Moving the date of the vote was deemed unprecedented in the context of the need to guarantee the safety of the voters and keeping a guarantee of the rule of law (La Vanguardia, 2020).

The example of Great Britain is also an interesting case, where the government seemed to underestimate the epidemic threat caused by SARS-CoV-2 for a long time, which quickly, as a result of restrictions on movement or the need to use personal protection measures, caused a significant increase in coronavirus infections (Prime Minister Boris Johnson and Prince Charles were among those who contracted it). As a result, local elections were moved to the next year (it will be held in May 2021). It was concluded that the peak of the virus spread makes it impossible to hold elections in an appropriate and safe way. It was therefore decided to introduce proportional and reasonable measures to combat the virus (BBC, 2020).

The issue of presidential elections in the United States falling for November 2020 still stays open. As one may assume doubts in terms of the potential postponing of the date of the elections in this country are associated with the likelihood of interference in the voting manner and also result from the changeability of electoral preferences. The change of the date of the elections may be seen by some voters strongly attached to democratic traditions as violating basic principles of democracy (holding elections contrary to the Constitution). On the other hand, the government's negligence as to holding the elections also attracts a wide circle of critics (the president should have strong legitimization to govern at the time of the pandemic). The changes may then significantly affect mostly the preferences of the part of the voters who have not made up their mind yet (Elsasa et al., 2016). Although the US President Donald Trump opposes the postponement of the November presidential elections, the date has already been moved in the following states: Georgia, Louisiana, Maryland, and New York (International Foundation for Electoral Systems, 2020). It is also worth noting that some of the analyses indicate that the current president may not take the office in the November elections. It is because his electorate is composed mainly of elderly persons, more prone to contracting the virus. Whereas in the 2016 presidential elections, the candidate of the Republican Party won overwhelmingly among the voters aged 50 and more, while his counter

candidate of the Democratic Party took a lead in the group of voters below 49 years of age (Johnson *et al.*, 2020). The current situation encourages one to think whether the elections should not be postponed also due to demographic determinants, which in turn confirms the thesis about the prime value of the protection of life and health of citizens. At the end it is worth stressing that despite the indispensability of holding primaries in individual states, it is the state that plays the basic function in terms of managing nation-wide elections, where political and legal diversity of states cannot be irrelevant (Shackelford *et al.*, 2017). Taking the above into consideration, one must conclude that the control of observing the principles of the electoral process and the safety of voters in the time of the pandemic is not only an obligation but also a serious challenge for the USA's central authorities. Regardless of what decision will be taken, it may also significantly affect the geopolitics and decisions of other countries in terms of postponing elections or holding them on time. There is no doubt that the time of a pandemic is an exceptionally difficult period for the government, both in terms of protection of public health and in matters of constituting and applying the law (Brown *et al.*, 2020). What is more, the crisis may deepen significantly, not only in terms of the risk to the health and life of citizens, but also in the context of the state's loss of the ability to respond quickly, to manage appropriately and to observe the principle of legalism in the material, political and procedural sphere.

Summing up the presented case study, on the basis of the examples provided, one needs to point out that the organization and mode of holding elections during an epidemic threat depends on the analysis of the current situation of public health. Gaining knowledge on medical determinants allows drawing a conclusion on whether conducting the electoral process in given circumstances is both feasible and safe for the health of the citizens. The government's response should take into account opinions of institutions competent in matters of health protection, and also provide for the possibility of carrying out the electoral process in a different way to what traditionally takes place, especially in the organizational and technical aspect.

The need to adopt specific solutions for the time of conducting elections in the course of a pandemic must, however, be consistent with provisions of universally applicable law, and also in an auxiliary manner - with recommendations from international institutions and organizations which deal with electoral law. As can be seen in the example of South Korea, despite restrictions and special circumstances in which the vote was held, the turnout was over 66%. However, negative effects also occurred in the form of failure to provide ballot papers to persons in quarantine or no opportunity to cast one's vote at embassies or consulates, which in turn limited the universality and equality of elections held in this way. Whereas in France, during the elections held on 15 March 2020, there were a number of cases of violation of quarantine principle and an increase in the number of infections among certain members of electoral commissions and voters was noted. The elections, nevertheless, were held in accordance with the law - on time and as fully universal.

It is worth mentioning that in the above-mentioned cases it was necessary to introduce special safety measures and voting procedures.

Therefore, it is not surprising that due to the current epidemiological situation, some countries decide to change the date of the elections, even though it is a controversial solution from the point of view of constitutional principles and the special character of electoral law. One needs to remember that electoral law is a special field in which dates should be possibly rigid in order to protect the elected institutions against possible and undesirable political influence. Thus, one must be assumed that postponing the date of elections is possible when it becomes an obvious need due to the protection of the safety and life of citizens and when these values cannot be secured by the application of available legal measures (the state is not able to ensure special solutions concerning the vote, adequate infrastructure and safety measures). The change of the date of voting should, in turn, be considered especially carefully in those cases where it could infringe principles ensuring continuity and stability of the functioning of the state and the social and economic development.

4. Summary

The pandemic, as a state in which public life and health becomes threatened, as practice has shown, requires competent public authorities to take specific organizational and legal measures, sometimes also in reference to fundamental principles of the functioning of the state and the entire administrating apparatus. The introduced principles should not, however, infringe or significantly affect political standards, that is they cannot violate the existing legal norms included in particular in basic laws. Reaching the necessary level of safety of voters and of the entire electoral process is particularly important in the democratic system, where using citizens' rights is key. The governments must consider the validity of the introduced legal solutions in order to enable the citizens to fully use the political right they enjoy, including the right to vote, but also (which is associated with elections) the right to a discussion, debate or even critique. It is all so that the possible conduct of the electoral process in such a difficult period was a well-thought and informed action which respects political principles and ensures citizens' safety (Sen, 1999). However, it needs to be firmly stated that implementation of political rights should be seen as an absolute standard in an extraordinary situation, where the right to the protection of people's life and health is at stake too.

Taking into account the above analysis, one needs to conclude that holding an election in the time of the COVID-19 pandemic is an exceptionally difficult task. It is because the real possibility of implementation of the principles of free, universal, and equal suffrage, key to any democratic electoral process, is being questioned. Even adoption of certain specific legal solutions which aim to ensure guarantees associated with these principles is not easy. This involves even a challenge of violation of the standard of the so-called legislative silence, according to which

amendments to provisions of electoral law cannot be done incidentally, and in particular in the course of the year preceding the elections. In the case of a decision to hold elections in the course of a pandemic, avoiding such interference in applicable laws - as the electoral practice has shown - is impossible.

Another important problem which arises against the background of elections carried out in the age of a pandemic is the issue of legitimization of the elected representatives. There is no doubt that the particular circumstances associated with the spread of SARS-CoV-2 in many cases in an objective way made it impossible for the interested parties to participate in the voting (e.g. sick persons or medical staff), whereas in other cases the fear of contracting the virus generated a significant percentage of persons subject to the so-called culpable absence. However, regardless of the reason for abstaining from participation in the voting, these phenomena fundamentally affect the level of voter turnout and in consequence the volume of support given to the representatives elected by the public. Low turnout may be a serious basis to question the “quality” of mandate carried out the by a president, deputy, senator, or a local authority. This is contrary to democratic values and at the same time depreciates the importance of the principle of sovereignty of the nation.

On the other hand, organizing elections in such a difficult period surely contributes to ensuring continuity of public authority and may bring about a sense of a certain legal (at least formal) security among citizens. The change of the date of the election, regardless of its factual cause, may be perceived as instrumental action that is favourable to one or the other side of the political stage. Secondly, in the event of organizing elections in the period of such a serious epidemic threat, it is also difficult to predict the behaviour of the voters themselves, who will not always be likely to observe the highest safety standards outlined by the law or recommendations from state authorities issued for the sake of the good of all.

The above analysis leads to a conclusion that adopting a clear answer to the question whether the state of a pandemic should result in each case in the change of the date of elections or in keeping it is exceptionally difficult. It is determined by a number of factors. However, taking into account the discussed case study, applicable international standards and the hierarchy of values, one needs to assume that ordering elections - as a rule - should be treated as an event implicating the constitutional obligations of finalizing the electoral process on the date specified originally. However, in an extraordinary situation, where it is necessary to choose between the value in the form of human life and health and the implementation of political rights, primacy should be given to the former. However, first, one needs to search for such mechanisms provided for by the law which would provide a solution taking into account both the requirements of a democratic electoral process and standards of human rights protection (application - within the limits of the law - of alternative voting methods or introducing the state of emergency). Whereas it is beyond doubt that the emergence of the COVID-19 pandemic should become an

important impulse for legislators to revise applicable legal solutions, including with regard to electoral law, in terms of adapting their capabilities to the emergence of similar events in the future. The year 2020 showed that there is practically no country whose regulations would make it prepared for such circumstances. It needs to be stressed that possible changes preparing countries for such events cannot be adopted incidentally without an extensive discussion or in a hasty mode. These changes must be the result of in-depth analyses and a seriously treated debate both in the scholarly and political circles and with consideration for the public voice.

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