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Postal Voting In the 2020 Presidential Election – How Did Electoral Participation Evolved During the COVID-19 Pandemic?

Abstract: Issues related to electoral participation are extremely complex, not least because of the different approaches of researchers to the issue. The COVID-19 pandemic has contributed to specialists, lawyers, political scientists addressing the issue of electoral participation in the context of public health risks and the implementation of the principle of universality of elections.

In order to provide greater guarantee of the principle of universality, many countries are introducing additional forms of voting in elections other than voting at the polling station. Postal voting is one of the alternative voting methods that appears to be the most popular in terms of participation in elections. It exists in different forms in different countries. In Poland, in 2020, there were attempts to implement all-postal voting at first, and then – after the second elections were held – it was decided to use hybrid voting.

The aim of this article is to analyze the Polish experience with postal voting in 2020 in the context of the implementation of this tool during the pandemic.

Key words: participation, elections. postal voting, all-postal voting pandemic, COVID-19, elections, Poland

Introduction

Issues pertaining to electoral participation are extremely complex, not least because of the different approaches presented by researchers. Attempts to find answers to questions such as whether popular vote should have a high turnout or whether it is sufficient for members of parliament to make decisions on behalf of citizens has for many years greatly interested scholars who dealt with elections, civic engagement and the theory of democracy. Therefore, this article fits into the topic by addressing issues related to electoral participation and one of alternative voting procedures, namely postal voting.

The year 2020 was extremely important in this context, as, following the outbreak of the coronavirus pandemic (COVID-19) in the first quarter and the inability to hold national elections voting in its traditional form (at polling stations), many governments considered how to conduct elections that are safe for voters, as well as all those responsible for the operation of polling stations.

The rapid spread of the disease and the impact of the pandemic (number of deaths) forced governments to implement hastily often far-reaching steps. According to the International Institute for Democracy and Electoral Assistance (International IDEA), from 21 February 2020 to 21 February 2022, i.e. at various stages of the pandemic, at least 80 countries and territories worldwide decided to postpone their national and regional elections due to COVID-19. Of these countries and territories at least 42 decided to

postpone national elections and referenda. In 160 cases, states and territories decided to hold national or regional elections despite concerns about the pandemic (with at least 130 holding national elections or referenda). According to IDEA International, at least 65 states and territories held elections that were initially postponed due to COVID-19 (in at least 33 cases these involved national elections or referenda) (International IDEA).

In order to guarantee the highest possible voter turnout (Musiał-Karg, 2021; Malužinas, 2021, p. 2016), which was extremely difficult due to a rapidly spread of the unknown virus and common fear of getting sick and dying, states had to decide on the safest way to participate in the vote or to use exceptional security measures (social distancing, disinfectants, masks, or other solutions recommended by epidemiologists). Particularly in the first period of the pandemic, this task was extremely difficult, as the new coronavirus claimed thousands of lives all over the world. This caused the spread of fear, uncertainty and a sense of imminent hazard, which in turn translated into the reluctance of eligible voters.

In Poland, despite the pandemic and initially predicted peak of the disease at the end of April, the presidential election scheduled for May 10, 2020 was not postponed, and finally it was decided to hold it as an all-postal voting. The difficulty with all-postal voting translated into the failure to hold the vote on its original date and the need to call a new election (Pyrzyńska, 2022). The new election involved a hybrid voting, which was a combination of traditional ballot box voting and postal voting. The latter was used mainly by the Polish community abroad. As regards the very process of preparing the election and forms of voting, both the first and the second round of the presidential election in Poland aroused many controversies and objections of both national organizations and institutions (Ombudsman, State Electoral Commission) and foreign bodies (Venice Commission). Many objections were also raised by voters who used postal voting.

This chapter deals with issues related to postal voting in Poland during the pandemic crisis. Thus, one of the purposes of this chapter is to identify irregularities and objections to the implementation of 2020 all-postal voting as it coincided with the emergency situation and to analyze the experience with postal voting in the presidential election.

The chapter has been structured in such a way as to first outline the theoretical context related to electoral participation and then discuss an attempt to introduce all-postal voting in spring 2020. This is followed by an analysis of the experience with postal voting on demand during elections on 28 June (first round) and 12 July (second round). The last part of the chapter outlines the most important conclusions drawn from Poland's experience with the implementation of postal voting as an alternative voting method, as well as the most important challenges related to the process.

Civic participation

Civic participation is an important element of modern democracy and its importance has been growing since the end of the second half of the 20th century. It is seen as a panacea for the steady decline of civic participation in political and public life (Komito, 2005). It is, however, difficult to define participation in terms of its scope and in identifying actors involved in the process. In the most general terms, the term is understood

as a more or less direct participation of citizens in social (public, political) life. It is also synonymous with civic power, which allows to cover people excluded from decision-making, political and economic processes (Arnstein, 2011). Participation can also be seen as a way of involving citizens in public life, as well as a form of “redistribution of power to its different levels” (Wójcicki, 2013).

Numerous definitions and analyses of the term ‘civic participation’ allow us to adopt a broad understanding of the term as all forms of participation in public life, including elections, referendums and consultations, various forms of protest, and civic social or political initiatives (Kapsa, Musiał-Karg, 2020). According to Daniel Mider, in a broad sense political participation means instrumental or expressive action, voluntary or mobilized, both legal (legitimized) and illegal (illegitimized), conventional (legitimized) or unconventional (illegitimized), carried out with or without violence, undertaken by an individual in the role of a citizen or exercising political power, for social or particular purposes, addressed to state bodies or other entities exercising political power (Mider, 2008, p. 99). Civic participation is thus regarded as the participation of citizens in the process of political decision-making and implementation (Kapsa, 2017, p. 79).

Participation in a civic context, on the other hand, is understood as engaging in social activities aimed at the common good. It is worth distinguishing between social, community (horizontal) participation and civic (vertical) participation. Vertical participation refers to the relationship between authorities and citizens, while horizontal participation is primarily about different groups and individuals working together to achieve a common goal (e.g. neighbors wanting to develop a common courtyard or different organizations for people with disabilities taking joint action) (Brodie, Cowling, Nissen, Paine, Jochum, Warburton, 2009). Undoubtedly, participation can take many forms, but each of them fosters the development of democracy – not only at the state level, but also at the local and even supranational level (e.g. the European Citizens’ Initiative). It is a top result of, among other things, strengthening grass-roots civic initiatives, stimulating integration of various environments, social groups, which by taking action can pursue common goals. Participation is also an effective way to solve problems in public life: it provides an opportunity to listen to opinions of all parties interested, resolve conflicts, work out a compromise and to make a final decision.

Public participation (referred to as civic participation) is supported by four main types of civic engagement: public participation, citizen involvement, electoral participation, compulsory participation (Kaźmierczak, 2011). From the point of view of these considerations, attention should be drawn to electoral participation, which is an important form of citizen participation in representative democracy. It involves nomination of candidates and electing those who will exercise decision-making functions at different levels of the structure. Civic participation is also the realization of citizen involvement using direct democracy tools. In this case, decisions taken or consulted, e.g. in referendums, pertain to issues that do not usually concern the election of state representatives (president, member of parliament, councilor, etc.).

Today, two concepts of democracy are associated with participation: participatory democracy and deliberative democracy. The former involves a process of collective decision-making, combining both elements characteristic for direct democracy and representative democracy (Aragonès, Sánchez-Pagés, 2008, p. 78). It is an inclusive system

in which citizens are involved in decision-making processes concerning various public solutions and actions. According to this model, the role of politicians is to implement decisions made with the participation of citizens. It is worth noting politicians in their actions are explicitly limited in participatory democracy, and the involvement of citizens and their influence on policy-making is an expression of the degree to which they choose to be involved in the process. Deliberative democracy is related to the concept of improving the quality of democracy not so much by stimulating and enlarging political participation as such, but by increasing its quality and improving its nature and forms (Held, 2010, p. 300; Noworól, 2020, p. 12).

It should be noted that the discussion on political activism, and thus on various forms of involving voters in the processes of consultation and political decision-making in many countries in the world, including Poland, has been going on for many years. Citizen activity in public life is the essence of democracy, and the involvement of eligible citizens may take on various forms. The most important of these is arguably participation in popular voting. (Kapsa, Musiał-Karg, 2020).

The increased interest in political participation of citizen is, among other things, the result of changes that have been taking place in contemporary democracies (Lubik-Reczek, Kapsa, Musiał-Karg, 2020). The need to increase mature participation and deepen civic political awareness by informing, educating citizens about important public issues. Citizen participation in political life is capable of developing responsibility in society, ability to cooperate and self-organization, and as a consequence can translate into increased civic competence and more rational actions and decisions.

While considering the essence of sovereign participation, it is worth recalling Benjamin Barber (1984, pp. 179–180) who maintains that civic engagement generates the sense of community and it is one of crucial conditions for the proper functioning of a democratic state. The most important expression of civic engagement is electoral participation, which manifests itself primarily through voting in general elections. According to many theoreticians and practitioners, elections are the quintessence of democracy and they largely determine the level of citizens' involvement in political decision-making. This also translates into the level of legitimacy of power and decisions taken.

In the context of the deliberations on the essence of participation and its importance in democratic states, it is worth mentioning that electoral participation is an expression of one of the fundamental democratic principles – the principle of sovereignty of the people. This rule is considered to be the most important democratic principle and the pivotal feature of all democratic systems of power (Musiał-Karg, 2016).

Postal voting – Poland's experience during the pandemic

Poland is one of the countries which decided to hold its presidential election using all-postal voting (Musiał-Karg, Kapsa, 2021, pp. 6–8) on 10 May 2020. It is worth mentioning that such a solution is quite rarely used as it limits valid participation procedures to voting by post. It should also be noted that if postal voting is the only voting procedure, the guarantee of universal suffrage is significantly reduced and the possibility to vote at polling stations is then eliminated. In order to efficiently conduct elections by

all-postal voting, at least several conditions must be met. These include the following: well-prepared election legislation, a guarantee of respect democratic electoral standards and principles, ability of the postal service provider to adequately handle and deliver election packages to eligible voters in the country and abroad, trust to the post as an institution, major role of the State Election Commission in the electoral process as an institution responsible for the conduct of elections, information campaign on the new method of voting, control over the cost of the electoral process and spending of funds allocated for the election, and during the pandemic an additional provision of safety and health measures that protect voters.

This was precisely the solution that was intended in the originally planned presidential election during the COVID-19 pandemic. This decision aimed at maintaining social distance during the election to ensure a higher level of public health and safe election for voters and the election administration. The enactment of the ‘First Crisis Shield’ on March 31 extended the possibility of postal voting to two groups of voters: those who are “subject to compulsory quarantine, isolation or home isolation on the day of voting”, and voters who were over 60 years of age (Ustawa z dnia 31 marca 2020 r., art. 40). Subsequently, on April 6, the Sejm passed a law drafted by the Law and Justice Party concerning the introduction of postal voting in the May presidential election as the only available form of voting. Then on May 7, a Senate veto was overruled and the law passed. According to the new legislation, the all-postal voting was to apply to the 2020 presidential election.

Due to the failure to fulfil the conditions listed above, ultimately the May all-postal voting in the presidential election did not take place. According to the announcement by the State Election Commission (PKW) of 10 May 2020, provisions of the Electoral Code (Dz. U. 2011, Nr 21, poz. 112) related to voting could not apply, voting silence would not apply and polling stations would remain closed. The PKW informed that it had taken all legally admissible actions related to the presidential election, while recalling that on April 16, 2020, the Law on Special Instruments of Support in Relation to the Spread of the SARS-CoV-2 Virus was enacted (Ustawa z dnia 16 kwietnia 2020 r.). Under the law, the PKW’s competence to determine the template of the ballot paper and to order the printing of ballots was suspended. The PKW communication stated that “The law deprived the State Election Commission of instruments necessary to perform its duties” (*Komunikat Państwowej Komisji Wyborczej z dnia 7 maja 2020 roku*). As a consequence of the circumstances, the PKW informed voters, election committees, candidates, election administration and local governments that voting on May 10, 2020 was not possible.

It is worth mentioning that back on May 6, 2020, Jarosław Kaczyński and Jarosław Gowin, the leaders of Law and Justice and Jarosław Gowin’s Agreement, declared that they would do everything to guarantee that all Poles would have the opportunity to vote in the democratic presidential election. The proposed solution was that after May 10, 2020 and the anticipated cancelation of the election by the Supreme Court due to the failure to hold the election, Elżbieta Witek, the Speaker of the Polish Sejm, was to announce a new presidential election on the first possible date (*Będzie nowy termin wyborów prezydenckich...*, 2020). Accordingly, the Sejm passed a new law, according to which it was assumed that voting in the 2020 presidential election would be held traditionally at polling stations and by means of postal voting.

The Act of June 2, 2020 (Ustawa z dnia 2 czerwca 2020 r.), concerning the organization of the 2020 presidential election, provided for a hybrid method of voting in the presidential election – traditional and by post. According to the new regulations, the voter could vote by post, provided that voting by post abroad would not be carried out in countries which prohibit voting due to organizational, technical or legal reasons. According to Article 3.2 of the law, in Poland, the voter had to notify his/her intention to vote by post 12 days before the election at the latest, and the voter subject to mandatory quarantine, isolation or isolation at home on the voting day had to do the same 5 days before the election (Article 3.1.1). On the other hand, voters abroad had to notify their intention to vote by post to the consul 15 days before the election. If the voter was covered by compulsory quarantine, isolation or home isolation after the deadline specified in paragraph 1.1, he or she could notify the committee of the intention to vote by post up to 2 days before the election.

In this situation, postal voting was used as an alternative voting method, complementary to the primary procedure. When the traditional voting at the polling station is combined with remote voting procedures (usually in “emergency” situations) and, as a result, the voter can choose use one of several procedures, the principle of universality is strengthened. In this sense, postal voting is an alternative voting procedure that, together with the other procedures, reinforces the principle of voting universality (*Wylączne głosowanie korespondencyjne...*).

Postal voting in practice – the 2020 presidential election

Following the failure to introduce all-postal voting in the May 2020 presidential election, postal voting on demand was introduced for all voters interested. Table 1 shows voting results for both rounds of the presidential election held on June 28 and July 12, 2020. According to information from the State Election Commission, the percentage of postal votes in relation to all votes cast in the first and second rounds of the election was 2.43% and 2.96% respectively. This is the highest result in the history of Polish experience with postal voting.

Table 1

Summary results for the 2020 presidential election

	2020 presidential election	
	First round	Second round
1	2	3
Eligible to vote	30,204,684	30,268,460
Valid votes cast	19,026,600	20,047,543
Number of electoral packages sent	536,821	704,111
Number of return envelopes received	483,898	614,631
Number of return envelopes without proof of personal and secret ballot	17,785	18,990
Number of return envelopes in which the statement was incorrectly filled in or not signed by the voter	625	629
Number of return envelopes without a ballot envelope	2,082	1,364
Number of return envelopes containing an unsealed ballot envelope	824	523

1	2	3
Number of ballot envelopes put into the ballot box	462,807	593,269
Percentage of ballot envelopes deposited in the ballot box (in relation to packages issued)	86.21%	84.26%
Percentage of postal votes invalid due to procedural errors	4.41%	3.50%
Percentage of postal votes to all votes cast	2.43%	2.96%
Percentage of election packages sent out to all eligible voters	1.78%	2.33%

Source: State Election Commission, www.pkw.gov.pl, 20.08.2020.

The 2020 experience allows us to conclude that voting by post was received with much interest among voters voting abroad. At the same time, it should be noted that some of the postal votes were declared invalid due to procedural errors.

The most common errors included return envelopes without a certificate confirming in person and secret voting, return envelopes without a ballot envelope, return envelopes with statements incorrectly filled or not signed by the voter, and return envelopes that contained an unsealed ballot envelope (see Table 1 for details).

It should also be borne in mind that postal voting introduced during the pandemic involved many organizational difficulties, experienced mainly by Poles voting abroad. Some of the voters were not able to vote as they did not receive election packages. Moreover, about 45,000 votes did not reach election commissions in due time. Before the deadline in the second round, a failure of the online e-election system was detected and voters abroad could not register. Additionally, voters themselves reported that, although ballots they received in the election package had the embassy stamp, they did not have the PKW stamp on them. Moreover, there was a lot of controversy about the fact that return envelopes with ballots were so thin that one could read for whom the vote had been cast without opening the envelope. This failed to guarantee the secrecy of voting (*Wybory 2020. Problemy w głosowaniu za granicą...*; Oworuszko, 2020).

It is worth noting that the initial idea of organizing all-postal voting and then holding a hybrid voting in the 2020 presidential elections raised many objections and doubts among electoral law specialists and international organizations, not to mention medical doctors (Musiał-Karg, Kapsa, 2021, pp. 6–8). These concerns were related to the preparation of new solutions that involved a number of technical and organizational problems. In addition, experts from the Polish Society of Epidemiologists and Infectiologists spoke about the need to safeguard the health of election committee members, technical setting, and voters themselves. The risk that infection is transmitted in election packages was also discussed (*Opinia w sprawie ustawy o szczególnych zasadach...*). Additionally, in relation to the organization of the 2020 voting by post in Poland, international organizations and institutions, such as the Office for Democratic Institutions and Human Rights (ODIHR), the Venice Commission, or the European Commission expressed their concerns. On top of this, Polish institutions, e.g. the State Electoral Commission and the Ombudsman for Civil Rights, had many reservations about changing the electoral law and organizing presidential elections during the pandemic. They warned that under such conditions the election of the president would not meet international democratic standards (Martin-Rozumilowicz, 2020; Wądołowska, 2020).

Summary

The introduction of postal voting to the Polish electoral system should be considered a very important step to guarantee universality of elections. It should be noted, however, that Poland's experience prior to 2020 was very limited, and voting by post enjoyed negligible interest among eligible voters. It was not until 2020 that the significant increase in the number of voters interested was due to the COVID-19 pandemic and the need to organize voting that can be safe for voters and members of election commissions.

In conclusion, it is worth pointing out that voting by post is an important aspect of the Polish electoral system and the strengthening of universality of elections. As figures indicate, although the popularity of this form of voting in the country is low, in the case of Poles voting abroad the number of election packages sent and votes cast by post increased (Korycki, 2017, pp. 95–97). Although conducted during the pandemic, the 2020 presidential election also showed that this alternative method of electoral participation can be an effective by including different groups of voters in the electoral process.

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Głosowanie korespondencyjne w wyborach prezydenckich roku 2020 – jak kształtowano partycypację wyborczą w czasie pandemii COVID-19?

Streszczenie

Zagadnienia związane z partycypacją wyborczą są wyjątkowo złożone, m.in. ze względu na różne podejścia badaczy do tej problematyki. Pandemia COVID-19 przyczyniła się do podejmowania przez specjalistów, prawników, politologów kwestii partycypacji wyborczej w kontekście zagrożenia zdrowia publicznego i realizacji zasady powszechności wyborów.

Aby zapewnić większą gwarancję zasady powszechności, w wielu państwach wprowadza się dodatkowo inne niż głosowanie w lokalu wyborczym formy oddawania głosu w wyborach. Głosowanie korespondencyjne jest jedną z alternatywnych metod głosowania, która wydaje się najbardziej popularną w kontekście udziału w elekcjach. W różnych państwach występuje ona w różnych formach. W Polsce w 2020 usiłowano wdrożyć najpierw all-postal voting, a następnie – po rozpisaniu drugich wyborów – zdecydowano się na głosowanie hybrydowe.

Celem niniejszego artykułu jest analiza polskich doświadczeń z głosowaniem korespondencyjnym w 2020 r. w kontekście zastosowania tego narzędzia w czasie pandemii.

Słowa kluczowe: partycypacja, wybory, głosowanie korespondencyjne, wyłączone głosowanie korespondencyjne, pandemia, COVID-19, Polska