



Policy Alert Poland

High-speed changes to electoral law disregard international norms

On 6 April, the Polish *Sejm* (lower house of the Polish parliament) approved a draft law "On special rules for the conduct of general elections for the President of the Republic of Poland scheduled in 2020".¹ This draft law provides for postal voting to be the only means for all eligible citizens to cast their vote. It also foresees to replace existing electoral commissions with new ones that previously were not present in the Electoral Code.

Legal and electoral experts indicate that the bill contains loopholes, inconsistencies, and legislative errors. Conducting presidential elections on its basis would not meet a number of democratic standards and would violate the universality, integrity, and secrecy of the vote.²

Currently, the *Senat* (upper house of Parliament), has 30 days to consider and introduce possible amendments. Provided that the *Senat* makes its decision on the last possible day and the President of the Republic of Poland signs the law on the first possible day, the introduction of the law regulating elections will take place 3 days before the regular day of elections, scheduled for 10 May. The law will come into force without *vacatio legis*, which is usually 14 days.

There are obvious doubts about security issues concerning the organization of the vote during the Covid-19 pandemic. The draft law will place the burden of safeguarding the health and lives of committee members on local self-government bodies without providing any compensation from the state budget for costs incurred.

Experts point out that procedures around this bill occurring directly ahead of the election go against national and international standards. The Code of Good Practice in Electoral Matters of the Council of Europe's Venice Commission provides that "the fundamental elements of electoral law should not be amended less than one year before an election" in order to guarantee the stability of the electoral law and the credibility of the electoral process.³

The Polish Constitutional Tribunal also emphasized the need to maintain the so-called legislative silence, i.e. the need to maintain at least six months between the entry into force of significant changes in the election law and the official beginning of the election campaign.⁴

¹ <http://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=328>

² https://www.hfhr.pl/wp-content/uploads/2020/04/opinia-hfpc_druk-sejmowy-328_fin-1.pdf
http://archiwum.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/Stanowisko_Zespolor_Ekspertow_Prawnych_i_Wyborczych_ws_glosowania_korespondencyjnego_fin.pdf,

³ Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report", European Commission for Democracy through Law (Venice Commission), October 2002

⁴ <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20062021493/T/D20061493L.pdf>



Moreover, the act on the special measures to combat the Covid-19 epidemics of 20 March 2020⁵, representing a de facto state of emergency⁶, introduces a number of significant restrictions, e.g. on gatherings and people's movement, which directly affects the possibility to conduct full-fledged election campaigns by the candidates. In her statement, ODIHR Director Ingibjörg Sólrún Gísladóttir stated that "genuine elections require an authentic campaign in which voters can hear the programmes and opinions of all candidates in order to make a well-informed choice". (...) "The current limitations on public gatherings due to the pandemic make campaigning close to impossible."⁷ Notably, due to the current travel restrictions, ODIHR will not be able to deploy a monitoring mission to the presidential election in Poland.

According to experts, one of the most controversial aspects of the new draft law includes an expansion of the competence of the Speaker of the Sejm to postpone the election date, which contradicts the Constitution of the Republic of Poland (Article 128, paragraph 2). Experts fear that such regulations may lead to legal chaos and violate citizens' rights.⁸

The draft law marginalizes the role of the State Election Commission by transferring the competence to determine key aspects of election law to the Minister of State Assets, i.e. the government's representative. He, along with the Polish Post Office, would play the main role in the organization of the presidential election by e.g. issuing key regulations on the electoral process, and specifying the design and ordering the printing of the ballot. These solutions clearly contradict the recommendations of the Venice Commission, which indicates that an institution independent from the executive should be responsible for organizing the elections.

The draft law provides for postal voting without introducing appropriate safeguards for the distribution and collection of ballots. Due to the short period of time between the entry into force of the law and the election day (three days), there are serious doubts about the correctness of the data contained in voter registers (e.g. for voters who want to change their place of voting).

The law lacks regulations concerning the precise location and security of the special boxes into which ballot envelopes are supposed to be handed in to. According to experts, this regulation, along with other provisions, can make it difficult for certain groups of citizens to vote both in the country (e.g. in special voting districts such as hospitals or military units) and abroad. Voting for people with disabilities is also not regulated.

The project significantly interferes with provisions of the Electoral Code by dissolving all previously established election commissions and delegating their competences to the newly established "municipal precinct election commissions". The election commissioners will be arbitrarily appointed by the State Election Commission at the request of the Minister of the Interior. There are serious doubts that, even with a relatively low turnout, the newly established "municipal precinct election commissions" will be able to effectively process the vote counting on election day and do so in compliance with all procedural requirements, which may endanger the timely announcement of the election result.

⁵ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200000374>

⁶ A state of emergency would allow for the postponement of elections according to the Constitution of the Republic of Poland. The state of emergency, however, has not been introduced despite growing criticism and calls for this by experts and the political opposition.

⁷ <https://www.osce.org/odihr/elections/449695>

⁸ https://www.hfhr.pl/wp-content/uploads/2020/04/opinia-hfpc-druk-sejmowy-328_fin-1.pdf



There are also no criminal law procedures in the draft law that would effectively sanction possible violations of the election procedure.

Finally, the draft law lacks any precise regulations concerning the competence of election observers. Experts are concerned that Article 103c of the Electoral Code may not be applied to the newly established “municipal PECs”, which would deprive both domestic observers and candidates’ proxies from observing the work of municipal PECs.⁹

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This text is part of a series of EPDE Policy Alerts on election processes. It focuses on legal framework, performance of election management bodies and positions of main political actors. Please feel free to forward and share our analysis.

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⁹ http://odpowiedzialnapolityka.pl/wp-content/uploads/2020/04/Ograniczenie-praw-obszawatorow-spolecznych_Stanowisko-FOP.pdf