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Democratic Backsliding in Poland on Example Drafts Amendments in Electoral Code During the COVID-19 Pandemic¹

Abstract: The COVID-19 pandemic occurred in Poland during the campaign before the presidential election scheduled for May 10. This non-military threat changed the election campaign's dynamics, leading to an unprecedented failure to hold elections and postponing them. Around the changes in the election procedure, many constitutionalists and political scientists voiced their inconsistency with the law and the provisions of the Constitutional Tribunal. Both the proposed provisions and the manner of their organization raised objections. The article classifies these changes as manifestations of democratic backsliding, weakening democratic institutions and leading to a decline in the quality of democracy. The research goal is to analyze the records in the selected source material and relate them to the selected theoretical category (democratic backsliding). In the course of the research, the following hypothesis is verified: in the face of the COVID-19 epidemic in Poland, attempts by the ruling elite to change the provisions related to organizing the presidential elections scheduled for May 10 are an example of democratic backsliding, which, by weakening democratic institutions, has threatened the constitutional provisions and the essence of the democratic system.

Keywords: *democratic backsliding in Poland, presidential elections in Poland, amendments in Electoral Code*

¹ This work was supported by the National Science Centre, Poland under Grant 2018/31/B/HS5/01410 [Contentious Politics and Neo-Militant Democracy].

Introduction

Regularly held free elections in which citizens elect their representatives to exercise power on their behalf are the fundamental principles of a democratic system. The coronavirus pandemic turned out to be a non-military threat, paralyzing public life and making it difficult to hold legal elections. When the first confirmed case of infection was recorded in Poland on March 4, the campaign before the presidential elections scheduled for May 10 was conducted for almost a month. The decisions made by the Council of Ministers to introduce a lockdown and limit certain civil liberties made it impossible to conduct campaigns in a traditional style. Political agitation was transferred to the Internet, but activities in cyberspace could not replace mass rallies and face-to-face meetings with voters. Also, the conditions for conducting campaigns in public media were not equal – the incumbent President enjoyed clear support from the state media, including the most influential Polish Public Television. That made it difficult for the remaining candidates to reach a part of the electorate, who were forced to look for new platforms that had not been tested and had a much smaller reach than the state media.

Along with the spread of the pandemic and the introduction of further restrictions in the public space, the postulate of postponing the presidential election was raised. At the end of March 2020, the first parliamentary act amending the Electoral Code appeared, which proposed significant changes to the election procedure. That was the beginning of a lively discussion on their constitutionality and compliance with the judgments of the Constitutional Tribunal. However, the experts' votes did not dissuade the ruling elite from sending the acts to the legislative path.

This article aims to evaluate the provisions contained in three draft laws (March 31, April 15, and May 11) regarding their role in the democratic backsliding process. The following research questions will be answered to achieve this goal: (I) What proposed changes in the election procedure were included in the three analyzed projects? (II) To what extent do these proposals meet the essential features of the democratic backsliding process? (III) What were the implications for democratic institutions and the quality of democracy in adopting two out of the three acts? On their basis, the following research hypothesis was formulated: in the face of the COVID-19 pandemic in Poland, the attempts by the ruling elite to change the provisions related to the presidential elections scheduled for May 10 are a manifestation of democratic backsliding. The analyzed acts infringed the constitutional qualities of the elections, which are one of the foundations of the democratic system, and were the basis for questioning the legality of the elections held due to the procedure and proposed changes that were inconsistent with the judgments of the Constitutional Tribunal. The introduced changes implied doubts about the validity of the election procedure due to abuses that could affect the final result. The main allegation to final regulation and hold the election to another date violated constitutional provisions and features of the election. The author uses qualitative analysis of sources (the three draft acts) as a research method.

In terms of research techniques, qualitative content analysis will be used. The study results comply with the current reflection on the condition of democratic political systems in the face of the coronavirus pandemic.

Democratic Backsliding as a Theoretical Category

The crisis of liberal democracy that arose in the wake of the economic recession of 2008 resulted in the emergence of new proposals for the exercise of power. According to the data presented by V-Dem, among the countries classified in 2006 as liberal democracies, the dominant trend was the weakening of their liberal character and the shift toward the category named by V-Dem *electoral democracy* (Mechkova, Lührmann & Lindberg, 2017, p. 165). In such systems, general elections are maintained, but the liberal foundations (the tripartite division of powers) and the laws accompanying the election process are limited (Mechkova, Lührmann & Lindberg, 2017, p. 163). Researchers of political systems and representatives of international organizations involved in the promotion of democratic values draw attention to specific changes in Central and Eastern Europe toward hybrid systems combining democratic and authoritarian elements, pointing to Poland and Hungary as the main examples (Buras, 2018; Abramowitz & Puddington, 2020). Anna Gwiazda (2015, p. 152) proposed analyzing the quality of democracy in Poland based on four dimensions: representation, participation, competition, and accountability. Democracies with a low degree of representation and participation, ineffective accountability, and irregular patterns of competition are low-quality democracies. As an example of irregular patterns of competition, the author recognizes some solutions included in draft amendments in Electoral Code during the COVID-19 pandemic.

Many approaches to this problem indicate the dynamics and complexity of changes within contemporary democratic systems, implying the need for further research on changes within democratic systems. A variable that requires special attention is the global threat in the form of the COVID-19 pandemic, which implies several challenges for the democratic order and stability of governance. However, the already published studies on the subject consider this threat. Therefore, this research pursues to formulate new conclusions that will provide practical knowledge on the erosion of democracy in the context of the coronavirus pandemic.

Nancy Bermeo conducted the first considerations on democratic backsliding. She pointed out that the decline in the quality of democracy is a weakening of the fundamental systemic institutions – free elections, tripartite division of powers, independence of the judiciary, protection of civil rights, and freedoms. Different forms of threat to the democratic system raise reflection on the dynamics within the system and different degrees of threat to democratic institutions. Democratic backsliding may lead to an authoritarian breakthrough or systematically weaken the democratic foundations (Bermeo, 2016, p. 6). Nowadays, this process takes place less spectacularly, using legal means, such as influencing electoral

processes (Eisen et al., 2019, p. 9). According to Bermeo, the author recognizes as one of the essential features of democratic backsliding is manipulation and falsification of votes during the election procedure, undermining the free, fair nature of elections (Bermeo, 2016), and illegal changes of the legal framework of the election, changing liberal democracy into electoral democracy. It will be helpful to remind Robert Dahl's (2012, p. 161) understanding of democratic processes to use democratic backsliding as a theoretical category. Dahl argued that classifying decision processes as democratic requires five criteria to be met: effective participation of every citizen, equality of votes, enlightened understanding, agenda control, and equal opportunities, meaning guaranteeing political equality of all citizens (Dahl, 2012, p. 192). Thus, in the context of democratic backsliding, a violation of these features of the democratic process (all at once or individually): limiting the actual participation of citizens or a specific part, violating the equality of votes, limiting the control of the agenda, limitation of equal opportunities, weaken the democratic regime.

Democratic backsliding in Central and Eastern Europe strengthens the executive power and anti-liberal nationalism, which is an antithesis to the consolidation of the democratic system (Cianetti, Dawson, & Hanley, 2018, pp. 243-247). In the case of Poland, this problem was introduced by Radosław Markowski (2018), who presented the strategy of the ruling elite after 2015 as authoritarian clientelism. According to this approach, the turning point was the seizure of power by *Prawo i Sprawiedliwość* (Law and Justice), a conservative episode of drifting toward the destruction of the democratic order in Poland (Markowski, 2018, p. 97). In turn, Wojciech Sadurski (2019) called the changes the constitutional breakdown in Poland. In the V-Dem report for 2020, Poland falls into the category of countries that have moved toward electoral democracy in the last ten years due to the restriction of press freedom and the limitation of civil society functioning (Varieties of Democracy, 2020, p. 16).

The article focuses on the amendment proposal to the Election Code on the eve of the presidential election, bringing new conclusions to the consideration of democratic backsliding. The study adopts the definition of democratic backsliding offered by N. Bermeo. The stages of the practice mentioned by Bermeo may coincide on the qualitative level or in a cause-and-effect relationship. For candidacy, electoral manipulation undermines the fairness of the elections. It is the interference in electing a representative of a sovereign nation that will be an essential feature that will be processed in the empirical part due to its importance for the legitimacy of the operation of the entire democratic system. If interference in the procedure threatens democratic standards, the political elite in power has no marked legitimacy to perform the entrusted functions. It is explored in the empirical part. At this point, it is necessary to indicate an innovative approach in the article. General elections in various parts of the world in the pandemic era require new solutions. Political science researchers should analyze them and evaluate their implementation and impact.

State of Emergency as Extraordinary Time and Democracy's Principles

COVID-19 pandemic as extraordinary time, caused by a non-military threat, requires unique solutions to ensure the protection of the health and life of citizens. For this purpose, according to the recommendations of, inter alia, the World Health Organization, many measures have been taken to limit social mobility and social distancing all around the world. In such circumstances, the efficient functioning of the state requires the introduction of emergency solutions of a legal nature. Modern democratic systems regulate changes in their constitutions and subordinate acts in the event of circumstances such as the COVID-19 pandemic. In this part of the work, the author will consider the functioning of democracy, especially the process of conducting elections during a state of emergency. John Armitage pointed out that in the modern orthodox state of emergency, we are dealing with a state-declared situation in which military strategies and tactics were used legally and with coercion to achieve political goals. This understanding applies to threats of a military nature, such as terrorism (Armitage, 2020, p. 27). In the case of an infectious disease pandemic, it seems insufficient, so the author makes direct references to Polish national legislation for this purpose.

In the Polish legal system, the highest-ranking act – the Constitution of the Republic of Poland of 1997 provides for three such states: the state of emergency, martial law, and a state of a natural disaster. They are to ensure the effective functioning of the state in crisis conditions in the internal sphere and bringing about the restoration of the normal state as soon as possible. Marcin Kazimierzczuk (2018, p. 111) points out that from the legal point of view, the essence of any extraordinary state consists in the fact that it is introduced in a situation of a special threat. Such states are considered situations in which ordinary legal measures and systemic institutions are insufficient, so it is necessary to temporarily suspend or limit civil liberties and rights, and change the constitutional organs' competences by an extraordinary increase in the power of the executive. In the analyzed period from March 2 (introduction of the Special Act) until July 12, 2020 (second round of presidential elections), the state authorities decided not to introduce any of them, limiting civil rights and liberties with PRM regulations, and violating constitutional deadlines for the election process based on the amendment to the Election Code. It resulted in the introduction of an unconstitutional state of emergency, despite the existence of constitutional grounds for the introduction of a state of emergency – due to the safety of citizens (Article 230).

In the conditions of a state of emergency, it is necessary to develop good practices in the scope of performing the basic tasks of state bodies, which include the organization of elections under the constitutional provisions. This problem has also become the subject of scientific research, in which some researchers undertook to present their recommendations in this regard. As Toby S. James and Sead Alihodzic (2020, p. 344) point out, “holding elections during natural disasters will often lead to severely compromised opportunities for deliberation, contestation, participation, and election management quality”. They pointed out that the motives and causes of not holding elections are varied and complex (James, Alihodzic, 2020,

p. 346). They distinguished seven types of non-elections: cancellations, crisis postponements (in the case of Poland during COVID-19 pandemic), transition postponements, technical delay, candidate death, humanitarian postponement, annulled (James, Alihodzic, 2020, p. 347). They pointed out that the elections, which do not take place, have crucial importance because canceled “elections do equate to more blatant power grabs. In their opinion, “election postponement may be democratically legitimate in a variety of circumstances, including where there are natural disasters” (James & Alihodzic, 2020, p. 358). In another paper, T. James (2020, p. 3) confirmed that “putting mechanisms in place to adjust the election for COVID-19 will often require new legislation”. In his opinion, holding a presidential election in Poland “creating huge political instability”, which was raised by OSCE / OHIDR. He pointed out that late legislation will undermine the administrative capacity of electoral officials to deliver the election.

In the case of election during COVID-19 pandemic research on postal voting (adopted in Poland) conducted by Robert Krimmer, David Duenas-Cid, and Iuliia Krivonosova. They analyzed three scenarios: traditional voting in polling points with health protection measures, postal voting, and internet voting (Krimmer et al., 2020). In summary, they noticed that “there is no easy ‘quick fix’ to deal with this challenge. They pointed out “introducing postal voting would require wider resources and a very swift revision of electoral legislation, as well as transforming the administrative processes for organizing elections” (Krimmer et al., 2020, p. 4). In its report, the British Academy formulated two main recommendations about holding elections during the COVID-19 pandemic: electoral practices should, where possible, build on strategies that have already been used in the context in question, rather than implementing new techniques and technologies from scratch and ensuring means of electoral security, in the case of a country, where disruption is likely before (Birch S. et al., 2020). In a short analysis of an idea of postal voting in the context of the presidential election, Magdalena Musiał-Karg and Izabela Kapsa (2020, p. 7) pointed out that this solution was technically unconstitutional because it was adopted during the ongoing election process. Moreover, delivering ballot papers to all voters was impossible because Polish Post did not have the addresses of all eligible voters. Following obstacles were: voting outside Poland because many countries were in lockdown and reduced international post services. They pointed out the risk of violating secrecy – anyone could read what was written on ballot papers because envelopes were so thin.

To sum up, COVID-19 pandemic as extraordinary times need to implement special rules and regulation for correct and smooth operation functioning of democratic institution, especially election process, without abusing constitutional provisions. Implementing postal voting or a hybrid system of voting should be lawful and not abusing constitutional terms. Draft amendments to Election Code in Poland will be analyzed after a short review of the presidential election framework in Poland.

Presidential Elections Are a Special Type of Elections in Poland After 1990²

Due to the relatively high turnout in elections, the elected head of state enjoys high legitimacy from citizens³. Their attributes were defined in the Constitution of the Republic of Poland of 1997 by indicating that the Nation elects the President in universal, equal, direct, and secret voting (Constitution of the Republic of Poland, 1997, art. 127). This provision allows the conclusion that the manifestations of democratic backsliding in the context of presidential elections threaten precisely the universality, secrecy, directness, and equality of voting. Detailed provisions concerning presidential election holding are specified in the Election Code (Election Code, 2011, art. 287-327). The race for the presidential officially began on February 5, 2020, when the Marshal of the Sejm, Elżbieta Witek, issued a relevant decision, ordering the first round on May 10 (*Postanowienie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 5 lutego 2020 r...*, 2020). The well-known model of political agitation was interrupted by the COVID-19 pandemic, which made traditional forms of meetings impossible. However, this did not interrupt collecting signatures by candidates necessary to register the election committee, and the campaign moved to the Internet space. Ultimately, the National Electoral Commission (NEC) announced the registration of ten candidates on April 15 (*Uchwała nr 121/2020 PKW z dnia 15 kwietnia 2020 r...*, 2020). Along with the introduction of further restrictions of fundamental rights and civil liberties, the possibility of holding safe and lawful elections was questioned.

At the end of March, the first draft amending the Electoral Code was submitted to the Sejm. A few days later, a draft amending the Polish Constitution was submitted. The protracted legislative process resulted in a political crisis in the Zjednoczona Prawica (United Right). Ultimately, the election did not take place, and on May 10, in its resolution, the NEC recognized that it was due to the lack of candidates (*Uchwała nr 129/2020 PKW z dnia 10 maja 2020 r...*, 2020). Therefore, the most important event in the election calendar and the campaigns preceding it coincided with the COVID-19 pandemic, making it impossible to implement the well-known procedure of electing the head of state provided for in the legislation. It also forced the political elite to seek new solutions, creating a precedent in the recent political history of Poland.

² Presidential elections in Poland in this formula have been organized since 1990. Earlier, the first President of the Third Republic of Poland in 1989 was selected by a vote of the National Assembly.

³ Turnout in the presidential elections is regularly the highest compared to other elections, both in the first and second rounds: 1990: 60.63%, 53.40%; 1995: 64.70%, 68.23%; 2000: 61.12%; 2005: 49.74%, 50.99%; 2010: 54.94%, 55.31%; 2015: 48.96%, 55.34%.

Parliamentary Projects of Law to Hold Presidential Elections During the COVID-19 Pandemic

The analyzed draft acts, due to the provisions or the legislative process, raised doubts of constitutionalists and political scientists who pointed to non-compliance with constitutional provisions regarding the date of elections and their attributes (free, equal, universal, secret), as well as non-compliance with the decisions of the Constitutional Tribunal. The analysis begins with evaluating an atypical, sometimes non-compliant with the rules of the Sejm and the exceptionally dynamic legislative process.

It should be mentioned here that, according to the Regulations of the Sejm of the Republic of Poland, the first reading of a draft amendment to the code or draft amendments to the provisions introducing the Code may take place no earlier than on the fourteenth day after the delivery of the draft to the deputies (*Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 30 lipca 1992 r...*, art. 89.2). Therefore, due to the procedural changes in the Electoral Code, the parliamentary draft of March 31 should reach the Sejm on the night of March 13-14. Analyzing the mentioned acts, two of which entered into force in the form of an act, attention should be paid to the inconsistency of their provisions with the judgments of the Constitutional Tribunal. One of its tasks is to assess the conformity of the law in force with the Constitution. The judgment of November 3, 2006 says: *enactment of changes in the election law should take place at least six months before the next elections, understood not only as of the voting act itself but as all activities related to the so-called election calendar* (*Wyrok z dnia 3 listopada 2006 r. Sygn. akt K 31/06*). It was indicated that possible exceptions to such evaluation result only from extraordinary data obtained from the objective examination. The Tribunal confirmed that in the judgment of October 2009 (*Wyrok z dnia 28 października 2009 r. Sygn. akt Kp 3/09*) and July 2011 (*Judgment of July 20, 2011, file No. K 9/11, 2011*).

The first draft does not lack provisions confirming the existence of democratic backsliding. Art. 1 stipulated that the presidential elections scheduled on May 10 would be held only by correspondence, which posed a threat to constitutional secrecy. According to Art. 2 *In the elections for the President of the Republic of Poland ordered in 2020 the possibility of voting by correspondence is applicable to all voters* (own translation). The act, extending the right to vote by correspondence included in the Electoral Code to all eligible persons, deprived citizens of the possibility of voting at the polling station (Projekt ustawy, 2020a, art. 2.1).

However, this law did not define the key issue of the nature of the electoral process. According to Art. 4, *Minister of State Assets, in consultation with the Minister of Health and the Minister of the Interior and after consulting the National Electoral Commission, shall determine by regulation: the procedure for receiving return envelopes, the procedure for election preferences, and the procedure for selling return envelopes*. In practice, the former deprived the NEC election powers and entrusted them to the Minister of State

Property. The explanatory memorandum to the draft states that the proposed solutions respond to the state of the coronavirus pandemic, in the face of which citizens should be able to participate in general elections. The authors of the project outline it as an effective mechanism to consider the epidemiological threat (Projekt ustawy, 2020a). After work on this law, the Senate rejected it, justifying its position by violating the law, including codes and laws regulating strategic elections (Uchwała Senatu, 2020). Senate deputies pointed out in their resolution that this draft *contains significant substantive, legislative-legal errors* (Uchwała Senatu, 2020). Substantive, legislative, and legal errors concerning the procedure of handing over and receiving electoral packages were indicated, as well as the limitation of the competences of an independent body, i.e., the NEC (Uchwała Senatu, 2020).

Despite this position of the Senate, the draft was adopted by the required majority of votes in the Sejm and submitted to the President for signature. Therefore, in the first place, the indicated feature of significance was implemented in the threat of secrecy and universality of elections and taking away the agency of a specially appointed body to organize elections. The senators pointed to the possibility of abuse, but their position was not considered when rejecting the veto. The main allegations to these regulations in referring to the time of its implementation, logistic issue, the danger of abusing secrecy. This regulation was adopted during the ongoing election process, abusing constitutional provisions. Polish Post did not have the addresses of all eligible voters, so it may lead to several problems with delivering the election package, especially to voters outside Poland. The form and structure of envelopes including ballot papers did not guarantee secrecy.

In the second discussed draft act, a group of MEPs from the United Right faction proposed to amend the Constitution about the term of office of the Republic of Poland. According to Art. 1 of this draft *art. 127.2 of the Polish Constitution is amended to read: The President is elected for one seven-year term* (Projekt ustawy o Zmianie Konstytucji Rzeczypospolitej Polskiej, 2020). The proposal assumed the extension of the head's term of office to seven years and the prescription of the possibility of holding this office for two terms. In the explanatory memorandum to the act, we read that such a solution increases the independence and impartiality of the President, who is elected only once, but for seven years. MEPs were referring to domestic and foreign states on the qualitative difference in the performance of their functions in the second term. An important premise was the state of the SARS-COV-2 pandemic (Projekt ustawy o Zmianie Konstytucji Rzeczypospolitej Polskiej, 2020). The amendment to the Constitution requires the consent of 3/5 deputies. Even if this law did not force into, this should be seen as a potential threat to the organization of regular elections under pandemic conditions.

Proposing an amendment Constitution instead of adopting other regulations about the state of emergency may become an undemocratic practice in the future, where authority states do not want to hold elections.

The last analyzed project entered into force on June 2 as law and presidential elections for its elections. In the first place, it repealed the law signed by the President of the Republic

of Poland a few days before May 10. It allowed for correspondence voting *with excluding polling stations, such as student or social welfare centers* (Projekt ustawy, 2020b, art. 2), thus restoring the possibility of voting at a polling station. The intention to vote by correspondence within the notification to the commune office twelve days before the election date, in the case of persons in quarantine up to five days. The Act also restored the agency of the NEC. A novelty was the introduction of acquired rights in the case of candidates nominated in the elections scheduled on May 10, allowing the registration of new candidates. The Act excluded the application of time limits for the performance of electoral activities in the Electoral Code. In the draft of this act, we read that the act is to create the possibility of direct voting in a mixed form for each voter and define the democratic legitimacy of the elected office (Projekt ustawy, 2020b). Although it contradicted the judgments of the Constitutional Tribunal, it should be mentioned that this draft enjoyed support not only of the ruling camp but also of the parliamentary opposition. It was probably due to the law, which allowed the last opposition position in parliament to withdraw his candidacy and register a new candidate. It is about a pass that the hybrid solution, which extends the right to vote by correspondence, does not meet the democratic criteria from the perspective of the selected essential feature. The main allegation to hold the election to another date violated constitutional provisions and features of the election. Opposition critics openly agreed to a solution that did not guarantee abuses in the election process.

The NEC referred to the legislative process in the context of the presidential elections and the election procedure itself. Sylwester Marciniak, the head of the NEC, in an interview with the Polish Press Agency, admitted that this body is not entitled to assess the regulations introduced by the legislator but is obliged to implement them, pointing to the apolitical nature of the PKW (*Szef PKW: Skoro trzeba ograniczyć kontakt między ludźmi, to pozostaje głosowanie korespondencyjne albo internetowe*, 2020). In the announcement of May 7, PKW informed that it had performed all the activities necessary to conduct the elections. However, the provisions of the Act of April 16 were taken from the authority to print ballot papers, making it impossible to conduct elections on May 10, therefore that voting cards are a necessary condition for voting (*Uchwała nr 129/2020 PKW z dnia 10 maja 2020 r...*, 2020). At the same time, as a result, other provisions of the Election Code do not apply, including the preparation of voter lists; election silence will be enforced, and polling stations will remain closed (*Uchwała nr 129/2020 PKW z dnia 10 maja 2020 r...*, 2020). Therefore, the NEC, pointing to its apolitical nature, pointed to technical errors and lack of grounds for holding the elections on May 10. This voice is significant because it comes from outside the political elite capable of democratic backsliding in pursuing their goals. The analyzed research problem and the calendar of changes highlighted the weak political position of the NEC, which may be deprived of agency by law. It is the strength of apolitical organs that is the litmus test of democratic systems.

OSCE/ODIHR formulated some remarks on the legal framework of the presidential election. According to their report from September 2020: *Amendments adopted in response to the*

COVID-19 pandemic significantly altered key aspects of the electoral legal framework. The changes were adopted in an expedited manner without meaningful consultation, which is at odds with OSCE commitments. However, they indicated that the administrative activities related to the conduct of the elections were assessed positively (OSCE/ODIHR, 2020).

Conclusions

Summarizing the analysis of three projects proposing new solutions for the presidential elections, it should be noted that they contained provisions that threatened the institution fundamental for liberal democracy, namely, regularly held, free, equal, universal, and secret elections. Doubts were raised not only by the provisions of the acts but also in the case of the acts of March 31 and May 11 because the procedure was incompatible with the rules of the Sejm. Moreover, both acts contradicted the judgments of the Constitutional Tribunal. Another threat that should be taken into account in the first draft is the exclusion from the election procedure of the NEC, an apolitical and independent body established to conduct elections, following democratic standards, and did not guarantee the secrecy of election. A deviation from the previous practice in the presidential election was introducing a law acquired for candidates registered before May 10. It should also be reiterated that the two presented acts did not guarantee the constitutional qualities of the presidential elections, while the draft amendment to the Constitution made it impossible to hold presidential elections this year. In the end, the elections were conducted based on the third draft, which guaranteed fair rules. However, adopting a different solution earlier and discussing the amendment to the Constitution proved that the elite in power had significantly interfered with the election process, contrary to national law and international standards. In the future, this practice may legitimize other forms of abuse of power to influence election procedures.

Conclusions resulting from the analysis allow for positive verification of the research hypothesis on the classification of the analyzed projects as the manifestations of democratic backsliding. The verification of the research hypothesis also confirms that the analyzed projects, processed in exceptional circumstances, constituted a severe violation of democratic standards, considering the essential feature chosen by the author – interference in the election procedure. The first project did not guarantee election secrecy and their efficient conduct. Draft to Constitution excluded the ability of political opposition to gain power through elections in this year. The method of conducting elections based on a selected theoretical category can be classified as a manifestation of democratic backsliding, basing on selected essential features – manipulation or falsification of votes during the election procedure, undermining the free and fair nature of elections and illegal changes of the legal framework of the election. Their level of threat in weakening the democratic principles of holding elections varied, with the first draft being the most dangerous and the third the least. That, in turn, implies a regular decline in the quality of the democratic institutions on which the Polish political system is based.

References:

- Abramowitz, M., Puddington, A. (2020, May 26). *Poland and Hungary Must Not Be Ignored*. Freedom House. <https://freedomhouse.org/article/poland-and-hungary-must-not-be-ignored>
- Armitage, J. (2002). State of Emergency. An Introduction. *Theory, Culture & Society*, 19(4), 27-38.
- Bermeo, N. (2016). On Democratic Backsliding. *Journal of Democracy*, 27(1), 5-19.
- Birch, S., et al. (2020). *How to hold elections safely and democratically during the COVID-19 pandemic*. British Academy.
- Buras, P. (2018, July 11). *Poland, Hungary, and the slipping façade of democracy*. European Council on foreign relations. https://www.ecfr.eu/article/commentary_poland_hungary_slipping_facade_of_democracy
- Calleros, H. (2020). Political Process, Crisis and Legitimacy in Poland. *Polish Political Science Yearbook*, 49(2), 71-91. <https://doi.org/10.15804/ppsy2020205>
- Cianetti, L., Dawson, J., Hanley, S. (2018). Rethinking “democratic backsliding” in Central and Eastern Europe – looking beyond Hungary and Poland. *East European Politics*, 34(3), 243-256. <https://doi.org/10.1080/21599165.2018.1491401>
- Dahl, R. (2012). *Demokracja i jej krytycy*. Aletheia.
- Eisen, N., Kenealy, A., Corke, S., Taussig, T., Polyakova, A. (2019). *The Democracy Playbook: Preventing and Reversing Democratic Backsliding*. Brookings. https://brookings.edu/wp-content/uploads/2019/11/The-Democracy-Playbook_Preventing-and-Reversing-Democratic-Backsliding.pdf
- James, T.S. (2020). New development: Running elections during a pandemic. *Public Money & Management*, 41(1), 65-68. <https://doi.org/10.1080/09540962.2020.1783084>
- James, T.S., & Alihodzic, S. (2020). When is it democratic to postpone an election? Elections during natural disasters, covid-19, and emergency situations. *Election Law Journal: Rules, Politics, and Policy*, 19(3), 344-362.
- Kazimierczuk, M. (2018). Ograniczenie wolności i praw człowieka podczas stanu wyjątkowego w polskim prawodawstwie. *Polski Rocznik Praw Człowieka i Prawa Humanitarnego*, 9, 111-124.
- Komunikat Państwowej Komisji Wyborczej z dnia 7 maja 2020 roku. Państwowa Komisja Wyborcza. (2020, May 7). <https://pkw.gov.pl/aktualnosci/wyjasnienia-stanowiska-komunikaty/komunikat-panstwowej-komisji-wyborczej-z-dnia-7-maja-2020-roku>
- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r. (Dz.U. 1997 nr 78 poz. 483).
- Kowalska, K.S. (2019). The Rule of Law in Poland. *Polish Political Science Yearbook*, 48(3), 517-520. DOI: <https://doi.org/10.15804/ppsy2019309>
- Krimmer, R., Duenas-Cid, D., & Krivososova, I. (2020). Debate: Safeguarding democracy during pandemics. Social distancing, postal, or internet voting—the good, the bad or the ugly?. *Public Money & Management*, 41(1). <https://doi.org/10.1080/09540962.2020.1766222>
- Markowski, R. (2018). Backsliding into Authoritarian. Clientelism: The Case of Poland. In P. Guasti & Z. Mansfeldová (Eds.), *Democracy under stress* (pp. 95-118). Institute of Sociology of the Czech Academy of Sciences.
- Mechkova, V., Lührmann, A., & Lindberg, S. (2017). How Much Democratic Backsliding?. *Journal of Democracy*, 28(4), 162-169. <http://dx.doi.org/10.1353/jod.2017.0075>
- Marszałek Sejmu Rzeczypospolitej Polskiej. (2020, February 5). *Postanowienie Marszałka Sejmu*

- Rzeczypospolitej Polskiej z dnia 5 lutego 2020 r. w sprawie zarządzenia wyborów Prezydenta Rzeczypospolitej Polskiej*. Internetowy System Aktów Prawnych. <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200000184>
- Musiał-Karg, M., Kapsa, I. (2020). Debate: Voting challenges in a pandemic – Poland. *Public Money & Management*, 41(1), 6-8. <https://doi.org/10.1080/09540962.2020.1809791>
- OSCE/OHDIR. (2020). Opinion on the draft act on special rules for conducting the general election of the President of The Republic of Poland ordered in 2020 (senate paper no. 99. OSCE/OHDIR).
- Prace Sejmu. (2020a, August 10). *Sejm Rzeczypospolitej Polskiej*. <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=314>
- Prace Sejmu. (2020b, August 10). *Sejm Rzeczypospolitej Polskiej*. <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=DED36818BF3F27E0C125854B0031EFCF>.
- Prace Sejmu. (2020c, August 10). *Sejm Rzeczypospolitej Polskiej*. <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=EB911F83DC8DBCD3C12585650063A0E3>
- Projekt ustawy. (2020a, March 31). *Sejm Rzeczypospolitej Polskiej*. <http://orka.sejm.gov.pl/Druki9ka.nsf/0/1E88BEB6C6239E4C0C125853C0056A47F/%24File/314.pdf>
- Projekt ustawy. (2020b, May 11). *Sejm Rzeczypospolitej Polskiej*. <http://orka.sejm.gov.pl/Druki9ka.nsf/0/011207A602120060C125856500631845/%24File/368.pdf>
- Projekt ustawy o Zmianie Konstytucji Rzeczypospolitej Polskiej. (2020). *Sejm Rzeczypospolitej Polskiej*. [http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-138-2020/\\$file/9-020-138-2020.pdf](http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-138-2020/$file/9-020-138-2020.pdf)
- Rakowska-Trela, A. (2018). Current Amendments to Polish Electoral Law in the Light of European Standards. *Polish Political Science Yearbook*, 47(3), 457-466. DOI: [dx.doi.org/10.15804/ppsy2018310](https://doi.org/10.15804/ppsy2018310)
- Sadurski, W. (2019). *Poland's constitutional breakdown*. Oxford Scholarship Online.
- Sąd Najwyższy stwierdził ważność wyboru Andrzeja Sebastiana Dudy na Prezydenta Rzeczypospolitej Polskiej. (2020, August 3). Sąd Najwyższy. http://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=389-b6b3e804-2752-4c7d-bcb4-7586782a1315&ListName=Komunikaty_o_sprawach
- Nycz, M. (2020, April 25). Szef PKW: Skoro trzeba ograniczyć kontakt między ludźmi, to pozostaje głosowanie korespondencyjne albo internetowe. RMF FM. https://RMF24.pl/raporty/raport-wybory-prezydenckie2020/najnowsze-fakty/news-szef-pkw-skoro-trzeba-ograniczyc-kontakt-miedzy-ludzi-to-po,nId,4460096#utm_source=paste&utm_medium=paste&utm_campaign=chrome
- Uchwała nr 121/2020 PKW z dnia 15 kwietnia 2020 r. w sprawie listy kandydatów na Prezydenta Rzeczypospolitej Polskiej w wyborach zarządzonych na dzień 10 maja 2020 r. (2020, April 15). Państwowa Komisja Wyborcza. <https://pkw.gov.pl/prawo-wyborcze/uchwaly-NEC/2020-r/uchwala-nr-1212020-PKW-z-dnia-15-kwietnia-2020-r-w-sprawie-listy-kandydatow-na-prezydenta-rzeczyposp>
- Uchwała nr 129/2020 PKW z dnia 10 maja 2020 r. w sprawie stwierdzenia braku możliwości głosowania na kandydatów w wyborach Prezydenta Rzeczypospolitej Polskiej. (2020, May 10). Państwowa Komisja Wyborcza. <https://pkw.gov.pl/aktualnosci/uchwaly/uchwala-nr-1292020-PKW-z-dnia-10-maja-2020-r-w-sprawie-stwierdzenia-braku-mozliwosci-glosowania-na-k>
- Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 30 lipca 1992 r. Regulamin Sejmu Rzeczypospolitej Polskiej. (1992, July 30). *Sejm Rzeczypospolitej Polskiej*. <http://www.sejm.gov.pl/prawo/regulamin/kon7.htm>
- Uchwała Senatu. (2020, May 6). *Sejm Rzeczypospolitej Polskiej*. <http://orka.sejm.gov.pl/Druki9ka.nsf/0/536BCA0669269BF6C1258560006F8B3F/%24File/366.pdf>
- Ustawa z dnia 5 stycznia 2011 r. Kodeks wyborczy. (2011). (Dz. U. 2011 Nr 21 poz. 112).
- Varieties of Democracy. (2020). *Autocratization Surges—Resistance Grows. Democracy Report 2020*.

Varieties of Democracy. https://www.v-dem.net/media/filer_public/f0/5d/f05d46d8-626f-4b20-8e4e-53d4b134bfcb/democracy_report_2020_low.pdf

Wyrok z dnia 3 listopada 2006 r. Sygn. akt K 31/06. (2006, November 3). *Internetowy System Aktów Prawnych*. <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20062021493/T/D20061493L.pdf>

Wyrok z dnia 28 października 2009 r. Sygn. akt Kp 3/09. (2009, October 28). *Internetowy System Aktów Prawnych*. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WMP20090720917/T/M20090917TK.pdf>

Wyrok z dnia 20 lipca 2011 r. Sygn. akt K 9/11. (2011, July 20). *Internetowy System Aktów Prawnych*. <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20111490889/T/D20110889TK.pdf>