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Analysis of the Standpoint of the Polish Opposition Concerning Presidential Elections

The Marshal (Speaker) of the Sejm called the presidential elections for 10 May 2020. It was in compliance with Art. 128 (2) of the Constitution of the Republic of Poland which provides that elections shall be set on the date not earlier than 100 days before and not later than 75 before the end of the term of office of the incumbent President. Apart from certain doubts of a political nature (e.g. whether Marshal Elżbieta Witek deliberately waited with calling the elections until the very end of the constitutional period), the legitimacy of electoral actions did not provide a basis for political disputes and the opposition did not raise any objections.

Until the end of February it seemed that the elections will be held in compliance with the regulations of the Constitution and the 2011 Electoral Code, as well as in the timeframe set by the so-called electoral calendar (published in the Official Gazette “Monitor Polski” together with the decision of the Sejm Marshal on calling the elections).

At the beginning of March, a special law was passed which introduced extraordinary solutions in connection with the spread of the coronavirus. The solutions adopted therein indicated the possibilities of restricting the democratic character of presidential elections. The basic element in this respect was, first of all, the introduction of a legal regime similar to a state of emergency though without its formal proclamation; moreover, it was introduced for 180 days, that is a period longer than provided for in the Constitution for a state of emergency and a state of natural disaster. These aspects – of a terminal or material nature – was noted by actually all opposition parliamentary groupings. They stressed the anxiety connected with the possibility for the government (president, parliamentary majority) to treat arbitrarily the period within which the authorities could grant themselves extraordinary powers (whereas the duration of states of exception has its constitutional grounds). The

Civic Coalition (Koalicja Obywatelska, KO), the Polish People's Party – Polish Coalition (Polskie Stronnictwo Ludowe - Koalicja Polska, PSL-KP), the Left (Lewica) and the Confederation (Konfederacja) in various ways (parliamentary interventions, press conferences) questioned the fact of the factual introduction of a state of exception regime without employing formal solutions laid down in Chapter XI of the Constitution of the Republic of Poland and legislation concerning states of exception. They accused the government of having sidestepped the legal issue – non-introduction of a state of emergency made it impossible to change the date of presidential elections. The postulate to introduce a state emergency (a state of natural disaster) was one of the fundamental arguments of the opposition (initially with some sort of circumspection by the KO) in the discussion on the optimum conditions for carrying out the elections so that they met constitutional standards. The opposition assumed that postponement of the elections by several months would overlap with the process of phasing out the pandemic and therefore the elections would be fully safe.

Moreover, the possibility of introducing the quarantine and restrictions as to e.g. public gatherings in the areas threatened by the virus brought about substantial restrictions as regards the freedom of running the electoral campaign. This restriction affected particularly opposition candidates since the activity of incumbent president is dictated by their function – therefore the lines between official and electoral actions become abstruse. Those regulations were overlapped by two states: from 14 March the state of epidemic threat, and from 20 March – the state of epidemic. In accordance with the provisions of the Act on Prevention and Control of Infections and Infectious Diseases in Humans a state of epidemic threat is a legal situation arising in connection with the risk of an outbreak of an epidemic in order to undertake certain preventive measures, while a state of epidemic is a legal situation introduced in connection with an outbreak of an epidemic in order to undertake certain anti-epidemic and preventive measures to minimize the consequences of the epidemic. Both of the above mentioned states following one another considerably limited the possibilities of running the electoral campaign properly. Thus, the opposition candidates declared suspension of the standard campaigning procedure (first of all meetings

with the constituents, organization of conventions, debates open to the public) at the same time turning attention to the fact that Andrzej Duda remained extremely active, visited numerous places in the country in the capacity appropriate for members of government and government administration, but not for the president who is not empowered to run state policy. Therefore, on the opposition side it was concertedly acknowledged that they are of no meaning for state policy though they assume campaigning qualities.

Secondly, the state of epidemic threat and the state of epidemic fell on the period of collecting signatures of the constituents for the candidates – in accordance with the so-called electoral calendar one hundred supporting signatures should be submitted to the National Electoral Commission by 26 March (until midnight). Restrictions connected with the regime of the above mentioned states could significantly affect the effectiveness of this operation specifically favouring candidates supported by large and efficient organization (primarily main parliamentary parties). This may be recognized as the limitation of the principle of universality of elections from the viewpoint of exercising the right to be elected.

Another major dilemma concerned the work on the act on special rules for carrying out universal elections for the President of the Republic of Poland to be held in 2020. Reservations were aroused by total departure from the traditional model of holding elections: in local polling stations with the simultaneous employment of alternative means (authorized representatives of voters, voting by correspondence). The opposition blamed the parliamentary majority for breaching fundamental principles of electoral law: universality, directness, equality and secrecy of voting. It was raised that electoral packages would not reach all constituents at correct addresses; people who are on quarantine or stay in isolation hospitals would not be able to take part in the voting freely; Polish citizens residing abroad would be deprived of the possibility to receive and send out the electoral package; it would be possible to identify the voter with the content of their vote; and finally, life and health of citizens would be threatened (postmen contacting a large number of people, virus transmitted on paper, activating people on quarantine). On the other hand, the opposition indicated unconstitutionality in the procedural sense: a significant change in

electoral law was made at a time shorter than six months before calling the elections (see the judgments of the Constitutional Tribunal) and the electoral code was changed without keeping the specified specific time limits.

An important element of the opposition's attitude as regards the plans to hold elections by correspondence was the dilemma whether they should be boycotted. The Civic Coalition was especially determined to boycott, but the behaviour of this chief opposition formation was highly inconsistent – its candidate called for not going to the polls though did not declare clearly that she would withdraw her candidature. Małgorzata Kidawa-Błońska also took part in the TV debate of candidates on 6 May. Other groupings: PSL, Lewica and Konfederacja assumed different positions anticipating that boycott of the elections would increase the chance for monopolising the chief centres of power by PIS – Zjednoczona Prawica.

Summing up, the stance of the opposition in the dispute as to the election concerned both the issue of defending the constitutional order, defending such values as the life and health of citizens, as well as the choice of the optimum formula for running an electoral campaign during the pandemic.