

Institute of Political Science Foundation

The Position of Authorities Concerning the Date Of Elections for the President of the Republic of Poland

The Polish authorities acknowledge that as regards the date of elections for the President of the Republic of Poland first of all taken into account should be the applicable provisions of the Polish Constitution and the decisions adopted on their basis.

The Constitution of the Republic of Poland entrusts the Sejm Marshal with setting the date of voting in presidential elections (Art. 128 (2)). At the same time, the Constitution specifies that residential election must be held on a day free from work, and the voting should take place not later than 100 and not later than 75 days before the end of the term of office of the incumbent president. Respecting the principle that the term of office of the president starts on the date of his taking office (Art. 128 (1)), namely the date of his taking an oath before the National Assembly (combined houses of parliament) (Art. 130), it follows that the term of office of the incumbent president end on 6 August 2020. On 5 February 2020, Marshal of the Sejm Elżbieta Witek issued a decision calling the voting in presidential election for 10 May (and – if needed – the second round for 24 May). It should be emphasized that that carrying out elections according to the time limits specified in the Constitution is the duty of the authorities, additionally confirmed by the principle of legalism (Art. 7), rule of law (Art. 2), efficacy of public institutions (Preamble) and effective exercise of the electoral rights of citizens (Art. 62). The Polish doctrine of constitutional law emphasizes, at the same time, that the carrying out of elections at the appointed time limits is safeguarded by the principle of term of office limits of elected bodies which is an element of the principle of democracy and rule of law.

The principle of term of office limits means that the duration of mandates of public authorities is permanent and known a priori. At the same time, this principle prohibits – with the exceptions specified in the Constitution itself – earlier ending of the term of office as well as its prolongation.

One of the constitutional reasons for a possible prolongation of the term of office of an elected body is proclamation of one of the states of exception. Those states are regulated in Chapter XI of the Constitution of the Republic of Poland and include: state of martial law, state of emergency and state of natural disaster. At the same time, in its Art. 228 (1) the

Constitution clearly provides that a state of exception may be introduced only when “ordinary measures are insufficient”. A consequence of introduction of a state of exception is impossibility to hold elections during such state and – additionally – within 90 days from its ending. At the same time, the Constitution provides that in such case also the term of office of the bodies whose elections are postponed shall be appropriately prolonged.

It should be noted that with respect to the regime of the states of exception the Constitution formulates certain principles which should be observed. One of them is the principle of necessity which means that introduction of a state of exception always constitutes *ultima ratio*. This means that as long as possible public authorities should employ other measures in order to avoid introduction of a state of exception. Hence legislative efforts are made, including amendment of electoral law, to carry out the elections within the constitutionally prescribed time limit. There is also the principle of proportionality which traditionally means selection of state in proportion to the type of actual threat. There is also the principle of optionality. It assumes that it is executive authorities which ultimately can – though must not – introduce one of the states of exception.

Finally, it should be remembered that introduction of a state of exception in Poland is very negatively perceived by the public. Introduction of the state of martial law in 1981 by General Jaruzelski’s junta discredited a state of exception as an institution of constitutional law; hence, after the coming into force of the Constitution of the Republic of Poland the possibilities offered by Chapter XI of the 1997 Constitution have never been utilized.