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Criminal law regulations in electoral law ensure the protection of the secrecy of voting in elections to the office of the President of the Republic of Poland in 2020

Introduction

In this paper, I will analyse selected legal regulations related to the organization of elections for the office of the President of the Republic of Poland in 2020 in the situation of the COVID-19 pandemic caused by the Sars-CoV-2 virus. In my opinion, the issue of the law enacted in 2020 in the field of criminal law protection of voting deserves a study, also in the context of the massive threat of spreading a virus causing a previously unknown disease.

This study aims to analyse the problem of the protection of electoral rights in Poland during the time of the COVID-19 pandemic. It has become a priority to characterize the episodic Act of 6 April 2020 in the field of criminal law protection of the correctness of the conduct of correspondence voting, resulting from the pandemic threat, and to verify the adopted institutions with the postulates previously reported by the doctrine of law and court jurisprudence about the elements that construct them. In the course of the research, the following hypotheses were formulated:

1. The state is responsible for ensuring that the correctness of the voting process is protected by criminal law.

2. The criminal law regulation contained in the Act of 6 April 2020 on the right to criminal law protection of the correctness of voting has not been adjusted to the conditions of the pandemic, and as a result, there may be doubts as to its precision, which may hinder its application.

In the case of this study, the answer to the following questions can be indicated as a research problem: does the Act of 6 April 2020 adequately meet the needs of criminal law protection of voting in a pandemic?

The issue of criminal-law protection of voting in elections during a pandemic

The provisions governing the responsibility of voters are specified in Article 18 of the Act of 6 April 2020 on Special Rules for Holding General Elections of the President of the Republic of Poland were ordered in 2020¹. Under Article 2, the Act envisaged holding the elections for the presidential office ordered in 2020 (and possibly the second round of voting) only by post. The legislator enacted two types of prohibited acts, the subject of which was a voting card or a declaration form used in the procedure of postal voting.

Theft of a voting card or declaration form

Under Article 18 (1) of the Act, “whoever steals the voting card or the declaration form referred to in Article 3 (3) (5) shall be punishable by imprisonment of up to 3 years”. The declaration of personal and secret voting on the ballot paper is one of the elements of the electoral package. The wording “whoever” indicated that the perpetrator of a prohibited act could be anyone capable of incurring criminal liability. The definition of the causative act contained in this legal norm raised doubts regarding its interpretation. According to the Polish Penal Code², theft is defined by seizure, which should be understood as taking a thing out of a person’s control (owner, possessor, holder) and transferring it into one’s possession. It is about having actual control of the thing, which as a result of the seizure is violated against the will of the owner. In effect, however, such a seizure violates the right of ownership, because the perpetrator acts to appropriate the item seized, i.e., to include it in his possession or to unlawfully dispose of it for the benefit of another person³. As emphasized by the Supreme Court, the seizure (which is the essence of theft) occurs unlawfully, without any reason for it and without the consent of the owner or the person whose thing is taken⁴. The stolen object cannot be anyone’s property⁵. Therefore, it is reasonable to ask who in the situation described in Article 18 (1) of the Act would own the electoral package? On the face of it,

¹ Journal of Laws of 2020, item 827.

² Pursuant to Article 278 (1) of the Act of 6 June 1997 – Penal Code (consolidated text in Journal of Laws of 2020, items 1444 and 1517), “whoever takes away someone else’s movable property for the purpose of appropriation is subject to imprisonment from 3 months to 5 years”.

³ A. Marek, *Komentarz do artykułu 278 k.k.*, [in:] A. Marek (ed.), *Kodeks karny. Komentarz*, Warszawa 2007, pp. 506–507.

⁴ Judgment of the Supreme Court of 18 December 1998, IV KKN 98/98, “Orzecznictwo Sądu Najwyższego, Sądów Apelacyjnych, Naczelnego Sądu Administracyjnego i Trybunału Konstytucyjnego” (supplement to “Prokuratura i Prawo”) 1999, no. 7–8.

⁵ A. Marek, *op. cit.*, p. 507.

from the perspective of civil law, the “robbed person” would not be the voter, but the post box owner.

The statutory act of causing the “stealing” of a voting card or a declaration form might take place not only on the voting day. It should be noted that by Article 3 (1) of the Act, “the designated operator within the meaning of the Act of 23 November 2012 – Postal Law⁶, ensures that in the case of voting in Poland, within the period from 7 days to the day preceding the day of voting, delivery of the electoral package directly to the voter’s letterbox or to the address of the voter indicated in part A of the electoral roll referred to in Article 26 (6) (1) of EC⁷.

Placing a modified or forged ballot paper or declaration form in the postbox

The legislator, in the same act, in Article 18 (2) penalized the second prohibited act, stating that “the same penalty shall be imposed on anyone who places in the post box referred to in Article 5 (2) a modified or forged ballot paper or the declaration referred to in Article 3 (3) (5)”.

Article 5 (2) of the Act defined the voting procedure as follows: “After filling out the voting card, the voter puts it in an envelope for the ballot paper which he seals and then puts the envelope in the return envelope together with the signed declaration form referred to in Article 3 (3) (5), and places it, alone or through another person, not earlier than 6:00 a.m. and not later than 8:00 p.m. on the voting day, in a post box specially prepared for this purpose of the operator designated in the commune where he is listed in the electoral roll. The requirements concerning the post box of the designated operator, designed to hold a return envelope shall be determined by a regulation of the minister competent for state assets, to appropriately protect post boxes, in particular, to guarantee the secrecy of voting”.

Therefore, the statutory permission to place a voting card and a signed declaration form through another person by 8 p.m. on the voting day in a post box specially prepared for this purpose, owned by the designated operator, allowed a broad interpretation of the causative act, consisting in “forging” or “modifying” – both in personal and temporal terms. A situation could be envisaged where the perpetrator of a prohibited act is, for example, an adult son of the entitled person, his colleague, neighbour, or any other person capable of incurring criminal liability, who commits the act not only on the voting day

⁶ Act of 23 November 2012 – Postal Law (Journal of Laws of 2020, item 1041) abbreviated here as PL.

⁷ Act of 5 June 2011 – Electoral Code (consolidated text in Journal of Laws of 2020, item 1319), abbreviated here as EC.

but from the moment when the voting package is delivered to the letterbox of the entitled person.

The legal regulation so shaped led to the conclusion that the voter would cast a vote against his will, that is, an invalid one. It should be recalled that the Constitutional Tribunal⁸ concluded that voting takes place not when the voter fills in the ballot paper, but when it is thrown into the ballot box. This principle applies to both voters voting at a polling station and those voting by post. In the latter case, the act of filling in the ballot paper precedes the act of throwing it into the ballot box. However, the act which takes place on the election day constitutes the casting of a vote. Thus, the provision of Article 18 (2) of the Act penalized the causative act of “forging” or “modifying” the card is slightly more specific temporal terms than in paragraph 1.

Under Article 5 (7) of the Act of 6 April 2020, “electoral packages and return envelopes are unregistered letters within the meaning of PL”. It should be noted that – pursuant Article 15 (2) of PL includes a statutory delegation which was implemented by the Ordinance of the Minister of Administration and Digitization of 14 March 2014 on postal boxes⁹. In line with § 3 (1), “the design of the letterbox and the material from which it is made ensure the protection of the letter correspondence placed inside it, in particular against theft and regarding confidentiality, fire and weather protection”. And according to paragraph 2, “the box has a locking device, the design of which provides access to the contents of the box for the removal of letter correspondence only by an authorized postal operator”.

Under PL, electoral packages used in postal voting in general elections cannot be classified as universal services, as they do not represent courier mail, including registered mail. And as such, under Article 3 point 23 of PL, a postal item accepted by receipt and delivered by receipt should be considered. As a consequence, it should be assumed that the legislator provided for sending the completed ballot paper as part of the electoral package by regular post. Therefore, the voter would assume the risk of not being able to effectively prove the actual date of posting electoral papers¹⁰. Therefore, if the voter threw the electoral package with the completed documents into a post box, having no receipt for their posting, the date of sending would not be even the date displayed by the postmark or an annotation on the envelope made by the interested person, stating the exact moment of posting the parcel to a post box¹¹. Undoubtedly, the confirmation of receipt of registered mail would be undisputed

⁸ Judgment of the Constitutional Tribunal of 20 July 2011, K 9/11 (Journal of Laws of 2011, No. 149, item 889).

⁹ Journal of Laws of 2014, item 381.

¹⁰ See the Judgment of the Supreme Administrative Court of 13 July 2017, I OSK 2708/15.

¹¹ Judgment of the Supreme Administrative Court of 28 May 1997, I SA/Gd 1944/96, Lex no. 30251; Judgment of the Supreme Administrative Court of 29 May 1998, I SA/Gd 2206/97, Lex no. 35971.

proof of the date when the sending of the return envelope is ordered¹²; however, should the voter not be able to use this option, the consequences of stamping the envelope with a date stamp reflecting a date other than the date of placing the return envelope in the post box are borne by the voter who would have to use only the unregistered form of mail.

An attempt to assess the legal regulation

In light of Article 18 (1–2) of the Act of 6 April 2020, a common problem arose: how to ensure compliance with one of the basic rules governing the elections – the secrecy of voting. As regards the regulation at hand, it should be recalled that the Constitutional Tribunal ruled in the above-quoted judgment as early as 2011 that: “For state authorities, the secrecy of voting principle implies an obligation to organize a polling station in a way that allows voting in a way that no one knows the decision made by a specific voter. In a situation where the voter decides to vote outside the premises of the precinct electoral commission, they will consciously waive this guarantee of the secrecy of voting created by the state, assuming at the same time the obligation to organize for themselves appropriate conditions ensuring the secrecy of voting. For this reason, an element of the electoral package received by voters voting by post is a declaration of personal and secret voting using the ballot card. (...) This way of regulating the procedure of voting outside the polling station does not infringe the principle of secret voting, as the legislator indicated the entities responsible for the implementation of this principle at various stages of the electoral process as well as creating an extensive mechanism described above, which ensures that the content of the decision of a specific voter will not be known to third parties”.

By way of analogy, we can state that upon placing an electoral package in the post box, by the 2020 Act, the package became the property of the state, not the voter. An argument supporting the thesis that post boxes are the property of the postal operator is Article 63 (2) of PL, according to which: “post boxes and machines for postal customer service should be placed, operated and maintained in a way that is the least inconvenient for the owner and the entity making use of the premises on which they are located”.

On the other hand, as regards the form of voting under the Act of 2020, voters found themselves in a situation where they could not decide on their own to vote outside the premises of the precinct electoral commission and did not consciously waive the guarantee of the secrecy of voting created by the

¹² Pursuant to Article 3 point 22 of PL, a registered item is a letter which is registered, transported and delivered in a manner that protects it against loss, depletion of the contents or damage.

state. All the more so, they could not take over the obligation to provide their appropriate conditions ensuring the secrecy of voting, but also the safety of the vote and the electoral package placed in the post box of the designated operator.

It should be recalled that the Code of Good Practice in Electoral Matters states that “secrecy of voting is one of the aspects of voters’ freedom, the purpose of which is to protect voters from the pressure they might be subjected to if other people found out who they were voting for. Secrecy must apply to the entire procedure, in particular voting and counting of votes. Voters have the right to secrecy, but they must also respect it themselves, and non-compliance should be sanctioned”¹³. Moreover, “violations of the secrecy of elections must be punished in the same way as infringements of other aspects of voters’ freedom”¹⁴.

Since the examined procedures and institutions serving to ensure the security of the voting cards sent due were never implemented it was impossible to evaluate them in practice. The Act of 6 April 2020 was repealed under Article 27 of the Act of 2 June 2020 on the Special Rules for the Organization of General Elections for the President of the Republic of Poland ordered in 2020 with the possibility of voting by post¹⁵, which did not contain any penal provisions. This may be because the criminalization and penalisation of new areas is a civilization choice¹⁶. Measures to prevent and contain the spread of COVID-19 and the 2 June Act impacted the operations of NEC and introduced the option of postal voting in addition to in-person voting¹⁷.

The amendments in the Polish electoral criminal law in 2020 involved enacting penal provisions. They typified new prohibited acts. The 2020 amendment was introduced through the adoption of an act addressing the rules of holding elections for the office of the Polish President in 2020. The scope of the changes consisted in strengthening the criminal law protection of the voting card or the declaration of personal and secret voting. Newly defined prohibited acts were designed to be an important instrument for controlling the correctness and fairness of the electoral process. The enactment of criminal law provisions was justified; first, because the ballot paper is a medium

¹³ In accordance with point 52 of the Explanatory Report of the Code of Good Practice in Electoral Matters adopted by the Venice Commission at the 52nd Session (Venice, 18–19 October 2002), <https://demokracjapl.wordpress.com/publikacje/kodeks-dobrej-praktyki-w-sprawach-wyborczych/kodeks-raport-wyjasniajacy/> (accessed: 2.04.2021).

¹⁴ In accordance with point 55 of the Report.

¹⁵ Journal of Laws of 2020, item 979.

¹⁶ P. Chlebowicz, *Przejawy populizmu penalnego w polskiej polityce kryminalnej*, “Studia Prawnoustrojowe” 2009, no. 9, p. 502.

¹⁷ Republic of Poland Presidential Election 28 June and 12 July 2020 ODIHR Special Election Assessment Mission Final Report, p. 2, <https://bip.brpo.gov.pl/sites/default/files/Poland%20Presidential%20Election%202020%20%20final%20report.pdf> (accessed: 19.02.2022).

on which a vote cast is recorded¹⁸. Second, proper voting protects and inspires public confidence in electoral procedures¹⁹. The principle of secret voting has a well-established place in general history²⁰, including Polish legal history²¹. Despite the lack of constitutional and code regulations regarding the principle of fairness of elections, the requirement to comply with the demands arising from it results from international documents binding also Poland²². The amendment under my scrutiny aims to ensure the implementation of the principle of fairness of elections and, indirectly, the secrecy of voting. However, the prohibited acts typified in 2020, expected to ensure criminal-law protection of the voting card or the declaration on personal and secret voting, were repealed under the Act of 2 June 2020.

The considerations presented in this study concern the law enacted during the COVID-19 pandemic in 2020 about the issue of ensuring appropriate criminal law protection by voting as an element of the electoral process. One should agree with the statement that “the quality of the law or the way it is made or amended has a significant impact on how voters perceive a given electoral process”²³.

By adopting the Act in April 2020, the legislator did not comply with the rule set out in the case-law of the Constitutional Tribunal that no significant changes to the Electoral Law should be made at least six months before the

¹⁸ R. Zych, *Istota i gwarancje zasady tajności głosowania w polskim prawie wyborczym*, Toruń 2016, p. 127; this view was echoed in A. Frydrych-Depka, *Karta do głosowania: kilka refleksji z punktu widzenia polskiego wyborcy*, [in:] A. Sokala, A. Frydrych-Depka, P. Rażny (eds.), *Wokół wyborów i prawa wyborczego*, vol. 2, Toruń 2019, p. 66.

¹⁹ D. Dudek, *Konstytucyjna aksjologia wyborów*, [in:] F. Rymarz (ed.), *Iudices electionis custodes. Sędziowie kustoszami wyborów. Księga pamiątkowa Państwowej Komisji Wyborczej*, Warszawa 2007, pp. 45–46, 56; M. Chmaj, W. Skrzydło, *System wyborczy w Rzeczypospolitej Polskiej*, Kraków 2005, pp. 58–59; B. Engelen, T.R.V. Nys, *Against the secret ballot: Towards a new proposal for open voting*, “Acta Politica” 2013, vol. 48, no. 4, p. 495.

²⁰ A.S. Gerber, G. A. Huber, D. Doherty, C. M. Dowling, *Is there a secret ballot? ballot secrecy perceptions and their implications for voting behaviour*, “British Journal of Political Science” 2012, no. 43(1), p. 77.

²¹ W. Kozielewicz, *Przestępstwa przeciwko wyborom w ustawodawstwie II Rzeczypospolitej Polskiej*, [in:] F. Rymarz (ed.), op. cit., p. 123; A. Mączyński, *Konstytucyjne podstawy prawa wybierania*, [in:] F. Rymarz (ed.), op. cit., p. 133; Z. Szonert, *Krytycznie o systemie wyborczym z perspektywy doświadczeń*, [in:] F. Rymarz (ed.), op. cit., p. 277; A. Sokala, s.v. *tajności głosowania zasada*, [in:] A. Sokala, B. Michalak, P. Uziębło (eds.), *Leksykon prawa wyborczego i referendalnego oraz systemów wyborczych*, Warszawa 2013, p. 248; Z. Szonert, *System wyborczy fundamentem demokracji*, [in:] S.J. Jaworski, K.W. Czaplicki (eds.), *Księga pamiątkowa obchodów 20-lecia demokratycznych wyborów w Polsce*, Warszawa 2011, p. 162.

²² L. Garlicki, *Sędzia europejski – kustoszem wyborów*, [in:] F. Rymarz (ed.), op. cit., p. 59; G. Kryszewski, *Uczciwość wyborów jako zasada prawa wyborczego*, “Studia Wyborcze” 2016, vol. 21, p. 20; M. Chmaj, A. Rakowska-Trela, *Komentarz do Konstytucji. Artykuł 97, 98*, Warszawa 2020, pp. 22–24, 46.

²³ T. Gašior, *Protesty wyborcze w wyborach do Sejmu RP i Senatu RP w 2019 r. – analiza przypadku*, [in:] A. Bielecki, D. Szafranski, T. Gašior (eds.), *Problemy prawa polskiego i obcego w ujęciu historycznym, praktycznym i teoretycznym. Cz. 11*, Warszawa 2020, p. 101.

elections are ordered²⁴, nor did it ensure the application of a single legal regime for elections a new electoral law entered into force after their ordering, which took place on 5 February 2020²⁵. However, due to the sudden and particularly unpredictable threat caused by the spread of the SARS-CoV-2 virus, a juridical justification of such a legal state could be a fragment of the Constitutional Tribunal's ruling that "the adequacy of the electoral law to the conditions in which it is binding is, therefore, an equally important constitutional value as its stability"²⁶.

Conclusions

The analysis carried out in this article allows for a positive assessment of the hypothesis that the state is responsible for ensuring the correctness of voting and therefore it should be protected by the provisions of criminal law. Therefore, the second hypothesis has been verified – the criminal law regulation contained in the Act of 6 April 2020 on the right to criminal protection of the correct voting has not been adjusted to the conditions of the pandemic, and therefore doubts as to its precision could arise, which could hinder the application of legal provisions. Thus, the Act of 6 April 2020 did not meet the needs of criminal law protection of only postal voting in circumstances caused by the pandemic.

Under Article 18 (1) of the Act, theft of a voting card or declaration of personal and secret voting is punishable by imprisonment of up to 3 years. The legislator provided for a similar criminal threat, under Art. 18 (2) of the Act, for placing a modified or counterfeit voting card or statement in the outbox. The proposed term of imprisonment (up to 3 years) was the same as under Art. 248 of the PC, about "electoral abuses". In turn, the sanction resulting from Art. 251 of the PC, there was a penalty of up to 2 years' imprisonment for reading the voting content, as a consequence of violating the provisions on the secrecy of voting, against the will of the voter. Moreover, under Art. 513a (1) of the EC, "whoever without authorization opens an electoral package or a sealed return envelope – shall be subject to a fine". And under Art. 513a (2) of the EC, "the same penalty shall be imposed on anyone who destroys an election package or a sealed return envelope without authorization". Taking into account the above findings, I consider the penalty for prohibited acts that

²⁴ Judgment of the Constitutional Tribunal of 3 November 2006, K 31/06, OTK ZU 2006, No. 10/A, item 147.

²⁵ Decision of the Marshal of the Sejm of the Republic of Poland of 5 February 2020 on ordering the election of the President of the Republic of Poland (Journal of Laws of 2020, item 184).

²⁶ Judgment of the Constitutional Tribunal of 20 July 2011, K 9/11 (Journal of Laws of 2011, No. 149, item 889).

infringe correspondence voting in the context of the type of penalties and their ailments proposed by the legislator as severe.

It should be underscored that the Polish electoral law can hardly be regarded as stable. This standpoint has been valid for many years, not only in the context of subsequent elections and incidental factors determining “states of emergency”. The legal regulation analysed in this paper concerning the criminal-law protection of the voting card and the written declaration of personal and secret voting has not found its implementation, because forbidden acts specified in Article 18 of the Act of 6 April 2020, aimed at ensuring criminal law protection of the ballot card or declarations on personal and secret voting, were repealed by the Act of 2 June 2020.

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Summary

Criminal law regulations in electoral law ensure the protection of the secrecy of voting in elections to the office of the President of the Republic of Poland in 2020

Keywords: criminal law, COVID-19 pandemic in 2020, elections, President of the Republic of Poland, protection of voting.

Under § 2 of the Decision of the Marshal of the Sejm of the Republic of Poland of 5 February 2020 on ordering the election of the President of the Republic of Poland²⁷, the date of the election was set for Sunday, 10 May 10 2020. However, under § 1 of the Regulation of the Minister of Health of March 20, 2020, “in the period from 20 March 2020 until further notice, an epidemic is announced in the territory of the Republic of Poland in connection with SARS-CoV-2 virus infections”²⁸. Thus, the state of the epidemic covered the previously appointed date of voting in the elections ordered based on the earlier decision of February 5, 2020. In these circumstances, the legislator decided to pass the episodic law. Under Art. 2 clauses 1 of the Act of 6 April 2020 on Special Rules for Holding General Elections of the President of the Repub-

²⁷ Journal of Laws of 2020, item 184.

²⁸ Regulation of the Minister of Health of 20 March 2020 on the declaration of an epidemic in the territory of the Republic of Poland (Journal of Laws of 2020, item 491).

lic of Poland ordered in 2020²⁹, “elections for the President of the Republic of Poland ordered in 2020 will be conducted only by postal voting”.

This study aims to analyse the problem of the protection of electoral rights in Poland during the time of the COVID-19 pandemic. It has become a priority to characterize the episodic Act of 6 April 2020 in the field of criminal law protection of the correctness of the conduct of correspondence voting, resulting from the pandemic threat, and to verify the adopted institutions with the postulates previously reported by the doctrine of law and court jurisprudence about the elements that construct them.

The implementation of the right to criminal law protection of voting under the Act of 6 April 2020 raises reservations in the event of a pandemic. However, these conclusions are only theoretical. The legal regulation analysed in this study has not been implemented because the prohibited acts specified in Art. 18 of the Act of 6 April 2020 were repealed by the Act of 2 June 2020 on the Special Rules for the Organization of General Elections for the President of the Republic of Poland ordered in 2020 with the possibility of voting by post³⁰.

Streszczenie

Regulacje karnoprawne w prawie wyborczym zapewniające ochronę tajności głosowania w wyborach na urząd Prezydenta RP w 2020 r.

Słowa kluczowe: prawo karne, pandemia COVID-19 w 2020 r., wybory, Prezydent RP, ochrona głosowania.

Na podstawie § 2 postanowienia Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 5 lutego 2020 r. w sprawie zarządzenia wyborów Prezydenta Rzeczypospolitej Polskiej³¹ data wyborów została wyznaczona na niedzielę, 10 maja 2020 r. Jednak na podstawie § 1 rozporządzenia Ministra Zdrowia z dnia 20 marca 2020 r. „w okresie od dnia 20 marca 2020 r. do odwołania na obszarze Rzeczypospolitej Polskiej ogłasza się stan epidemii w związku z zakażeniami wirusem SARS-CoV-2”³². A zatem stan epidemii obejmował wcześniej wyznaczony termin głosowania w wyborach zarządzonych na podstawie wcześniejszego postanowienia z 5 lutego 2020 r. W tych okolicznościach ustawodawca zdecydował się na uchwalenie ustawy epizodycznej. Zgodnie z art. 2

²⁹ Journal of Laws of 2020, item 827.

³⁰ Journal of Laws of 2020, item 979.

³¹ Journal of Laws of 2020, item 184.

³² Rozporządzenie Ministra Zdrowia z dnia 20 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu epidemii (Dz.U. z 2020 r., poz. 491).

ust. 1 ustawy z dnia 6 kwietnia 2020 r. o szczególnych zasadach przeprowadzania wyborów powszechnych na Prezydenta Rzeczypospolitej Polskiej zarządzonych w 2020 r.³³, „wybory Prezydenta Rzeczypospolitej Polskiej zarządzone w 2020 r. zostaną przeprowadzone wyłącznie w drodze głosowania korespondencyjnego”.

Celem niniejszego opracowania jest analiza problemu ochrony praw wyborczych w Polsce w dobie pandemii COVID-19. Priorytetem stało się scharakteryzowanie ustawy epizodycznej z dnia 6 kwietnia 2020 r. w zakresie ochrony karnoprawnej prawidłowości przebiegu głosowania korespondencyjnego, wynikającej z zagrożenia pandemicznego oraz weryfikacja przyjętych instytucji z postulatami wcześniej zgłaszanymi przez doktrynę prawa i orzecznictwo sądowe w odniesieniu do elementów konstruujących je.

Realizacja prawa do ochrony karnoprawnej głosowania na podstawie ustawy z dnia 6 kwietnia 2020 r. w warunkach pandemii budzi zastrzeżenia. Jednak wnioski te mają wymiar jedynie teoretyczny. Analizowana w niniejszym opracowaniu regulacja prawna nie została implementowana, ponieważ czyny zabronione określone w art. 18 ustawy z dnia 6 kwietnia 2020 r. zostały uchylone mocą ustawy z dnia 2 czerwca 2020 r. o szczególnych zasadach organizacji wyborów powszechnych na Prezydenta Rzeczypospolitej Polskiej zarządzonych w 2020 r. z możliwością głosowania korespondencyjnego³⁴.

³³ Dz.U. z 2020 r., poz. 827.

³⁴ Dz.U. z 2020 r., poz. 979.