

Statement by the Political Accountability Foundation on the possible restriction of rights of citizen observers

We, the Political Accountability Foundation, express our deepest concern with regard to the possible restrictions of rights of citizen observers as a result of the draft „Detailed Rules on the General Election of President of the Republic of Poland in 2020” Act of 6th April 2020 (hereinafter: the Act of 6th April), which is currently under deliberation by the Polish Senate, as Bill No.99.

The Act in question sets up the procedure of exclusive postal vote in the upcoming presidential election, while at the same time introducing a new electoral body, inexistent under the current provisions of the Electoral Code – a municipal precinct election commission (gminna obwodowa komisja wyborcza).

Until now, the default way to hold an election under Polish law was to carry out voting at polling stations. All relevant activities at the polling stations were managed by precinct election commissions (obwodowa komisja wyborcza - PEC), which was responsible for:

- Verification of the voter's identity in order to guarantee the principle of formal equality and personal voting,
- Handing ballot papers over to voters,
- Maintaining the secrecy of voting and ensuring that the votes are correctly placed in the ballot box,
- Vote counting and determining the results.

Introduction of the exclusive postal vote and new rules for printing and distribution of ballot papers take the majority of these crucial activities away from the hands of established electoral bodies. This raises questions whether citizen observers would still be allowed to observe the above-mentioned activities in accordance with the current electoral law? It should be noted that similar doubts arise regarding the rights of candidate proxies.

As citizen observers, we are deeply concerned that the regulations proposed in the Act of 6th April might lead to the marginalization, if not outright exclusion of observers from the electoral process. Article 103c of the Electoral Code guarantees the right of authorized organisations to delegate a single observer to each precinct and district election commission during a presidential election. An observer has the right to: be present during all the activities undertaken by the commission, including: opening, voting, closing and counting, determining the results and drafting of the protocol.

If the provisions of the Electoral Code would apply accordingly in the upcoming election (based on articles 13 and 20 of the Act of 6th April) allowing us to delegate observers to the election commissions, these observers would nonetheless be at a disadvantage for the following reasons:

- Observers would be unable to observe the ballot papers being handed over to voters or the actual casting of votes into the postal ballot box, since these activities would happen without participation of an electionl commission, thus depriving observers of the legal basis to justify their presence on site,
- Observers would be unable to conduct proper observation in those precincts where municipal precinct election commissions will consist of up to 45 members, as a single observer would be overwhelmed with the task of monitoring the work of so many people, not to mention that the counting procedure in such big commissions might last several days and require the commission to work in shifts,

- Observers would be forced to request from their delegating organisation, or to secure themselves, the appropriate personal protective equipment, due to the on-going COVID-19 pandemic. The act of 6th April requires local authorities to provide means of protection, but only to members of election commissions (Article 12.5). Procurement of protection equipment by NGOs or by observers themselves could mean significant additional costs and discourage or even exclude certain organisations and persons from observation,
- Observers could be denied access to the election commission by the chairman of the commission on the grounds of health and safety.

At the same time, it is not certain that Article 103c of the Electoral Code will be interpreted as applying to the new type of election commissions created by the Act of 6th April, the municipal precinct election commissions, since this type of commission was not added to the list of established election commissions outlined in Article 152.2 of the Electoral Code. This could provide grounds for *de iure* prevention of observers and candidate proxies¹ from exercising their rights and duties.

Currently, the final interpretation of the above-mentioned provisions is yet unknown, which is not only unacceptable under the principle of legal certainty, but also detrimental to the public trust in electoral law and the electoral process.

Preparation of the observation begins well ahead of the election day and is essential for the proper execution of our duties as observers. Legal uncertainty is therefore a big limitation with regard to proper organisation of our activities. Regardless of the interpretation of the relevant provisions, we can already tell that in the upcoming election citizen observers will have less rights than what has been previously established in relevant legislation. What is more, last-minute changes to the schedule and voting procedure could still occur during the last few days before the election day, thus making it impossible, also for international observers, to adjust their plans accordingly.

While we acknowledge the fact that the nature of the current situation might necessitate the introduction of certain extraordinary measures, we must stress that such measures should not violate the fundamental principles governing the conduct of elections in a democratic state governed by the rule of law. In particular, such measures should not infringe upon the principles of freedom and fairness of elections, and should guarantee the secrecy of the ballot. In order to secure this and ensure the proper monitoring of elections, the Polish legislature introduced the institution of citizen observers in 2018. If, however, the Act of 6th April is adopted in its current form, it will most likely deprive the 2020 presidential election of an important aspect of civic oversight - namely the presence of citizen observers, candidate proxies and – possibly – even international observers.

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¹ See: Article 103a.1 of the Polish Electoral Code