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Articles

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Popular Sovereignty during the COVID-19 Pandemic: Lessons from the Visegrád Countries. National and Local Elections in the Shadow of the Coronavirus*

Suwerenność narodu podczas pandemii COVID-19. Wnioski z doświadczeń państw Grupy Wyszehradzkiej. Wybory parlamentarne i samorządowe w cieniu koronawirusa

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ABSTRACT

The coronavirus crisis led to severe restrictions of numerous fundamental rights almost globally, amongst which the right to vote was also concerned. Our research article aims to integrate the experience of the Visegrád region into the emerging strand of international legal scholarship from the long-term impact of the public health emergency on electoral frameworks. Based on a research collaboration funded by the International Visegrád Fund, the study presents the adaptative measures implemented by the four Visegrád countries to hold national or municipal elections in the shadow of the global pandemic, and contextualizes these interventions in the light of the global electoral tendencies. Finally, based on our research, the expected features of post-COVID electoral frameworks in the Visegrád region were also provided. Alternative electoral regimes are discussed for the promotion of flexibility and resilience, which are grounded on the combined elements of the traditional voting system, on additional public health requirements, and also on the extensive application of postal- and electronic voting.

Keywords: COVID-19; public health emergency; elections; Visegrád region

INTRODUCTION

This contribution is part of an extensive effort undertaken globally by the academic community of constitutional law to reflect almost immediately on the extraordinary and unprecedented constitutional challenges posed by the coronavirus concerns.[1] Despite the fact that in the last three years several academic works have been published on these issues within a relatively short timeframe, we are still in the initial stages of assessing the constitutional implications in their entirety and complexity.

Moreover, the academic scholarship in the four Visegrád countries has provided only sporadic feedback on pandemic-related electoral adaptation and its estimated long-term consequences;[2] therefore, this region has yet to be included in this new

Visegrád Countries in the Shadow of the COVID-19 Pandemic". Especially the country reports and the regional policy brief were for the authors important points of reference (available at https://jog.tk.hu/en/policy-briefs, access: 12.12.2023). This study has been also supported by the Hungarian Authority for Research, Development and Innovation under the project no. 138366, as well as the by Hungarian Academy of Sciences under the research project no. 05016764.

[1] For one of the earliest contributions, see E. Asplund, T. James, *Elections and COVID-19: Making Democracy Work in Uncertain Times*, 30.3.2020, https://www.democraticaudit.com/2020/03/30/elections-and-covid-19-making-democracy-work-in-uncertain-times (access: 12.12.2023).

[2] Only the Polish presidential elections has been discussed in detail. See V. Vashchanka, *Political Manoeuvres and Legal Conundrums Amid the COVID-19 Pandemic: The 2020 Presidential Election in Poland. Case Study*, 3.7.2020, https://www.idea.int/sites/default/files/political-manoeuvres-and-legal-conundrums-2020-presidential-election-poland.pdf (access: 12.12.2023); A. Pyrzynska, D. Skoczylas, *Elections during COVID-19 Pandemic in the Light of Democratic Values and International Standards of Human Rights Protection*, "European Research Studies Journal" 2020, vol. 23(2); A. Lipiński, *Poland: 'If We Don't Elect the President, the Country Will Plunge into Chaos'*, [in:] *Populism and the Politicization of the COVID-19 Crisis in Europe*, eds. G. Bobba, N. Hubé, Cham

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strand of literature.[3] In Poland very controversial presidential elections took place in June–July 2020;[4] in the Czech Republic regional and partial senatorial elections were held in October 2020; in Hungary parliamentary elections were organized in April 2022; while in Slovakia, regional and municipal elections were scheduled for October 2022. These are only the most significant elections in the Visegrád region, which have been severely affected by the global pandemic, but there have also been several interim elections, some of which should have been postponed and rescheduled due to public health circumstances. As a result, scholars could rely on valuable points of reference for outlining the main features of the post-COVID electoral framework in the Visegrád region. Nevertheless, no serious attempt has been made to address this challenge and, therefore, our paper aims to fill this gap by integrating the Visegrád region and its recent electoral experience into this emerging strand of literature.

METHODOLOGY

We conceptualize the electoral policies implemented in the four Visegrád countries since the beginning of the pandemic, as well as the impact of the special measures on the fundamental electoral principles. Based on this analysis, the recent developments were evaluated in the light of the applicable international standards, and some alternatives are proposed with regard to the forthcoming democratic elections in the Visegrád region. Our article presents how the four Visegrád countries have organized elections in the post-COVID period and also provides a comparative perspective both from an intra-regional and inter-regional perspective. First, we use traditional dogmatic analysis to identify the main electoral difficulties posed by the public health emergency. Then, we assess, whether these challenges were also experienced in the Visegrád region, how the four countries have adapted their electoral policies to the needs of the post-COVID environment, and how these changes could be evaluated in the light of the applicable international standards. Finally, some policy recommendations are put forward to facilitate full compliance with these requirements.

2021; R.G. Magdin, *Do Elections Facilitate the Fight against the COVID-19 Pandemic?*, "Polis. Journal of Political Science" 2020, vol. 8(4).

[3] N. Chronowski, *General Policy Brief. Crises and Democracy: Elections in the Visegrad Countries in the Shadow of the COVID-19 Pandemic*, 30.3.2023, https://jog.tk.hu/uploads/files/Policy_brief_General_N_Chronowski.pdf (access: 12.12.2023).

[4] I. Hoffman, J. Kostrubiec, *Political Freedoms and Rights in Relation to the COVID-19 Pandemic in Poland and Hungary in a Comparative Legal Perspective*, "Białystok Legal Studies" 2022, vol. 27(2), p. 37.

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LITERATURE REVIEW

As Knight showed in detail, the pandemic resulted in the relativization of several constitutional principles and the constitutionally acceptable scope of state intervention in emergencies,[5] particularly in relation to public health, remains to be elaborated. Joseph further highlighted that the COVID-related measures have led to the severe limitation of fundamental rights,[6] a distortion of the traditional understanding of the separation of powers, and a reconsideration of the rule of law in a number of respects. The impact of these tendencies affects all areas of constitutional law, but among the most important, as Macfarlane has argued, the conduct of elections constitutes a key consideration, since the democratic legitimacy of legislatures and governments must be ensured despite the special restrictions.[7] Several authors have provided a deeper understanding of some of the electoral experiences during the pandemic, but a complete and systematic analysis remains to be published. Almost four years have passed since the beginning of the pandemic, and a large number of elections have already taken place, or are expected to take place during this year, so it may be the time to turn to general assessment in order to draw constructive conclusions for future reference.

Landman and Splendore raised the primary question, whether the organization of elections during a public health emergency with traditional in-person voting constitutes a significant thread on the life and health of voters.[8] Birch et al. convincingly demonstrated this causal link,[9] while Bach, Guillouzouic, and Malgouyres argued that an electoral process during the post-COVID period may also endanger the life and health of politicians.[10] To test these hypotheses, Bertoli, Guichard, and Marchetta,[11]

[5] D.R. Knight, *COVID-19 and States of Emergency: Lockdown Bubbles through Layers of Law, Discretion and Nudges – New Zealand*, 7.4.2020, https://ssrn.com/abstract=3566873 (access: 12.12.2023).

[6] S. Joseph, *COVID-19 and Human Rights: Past, Present and Future*, "Griffith University Law School Research Paper" 2020, no. 20-3.

[7] E. Macfarlane, *Public Policy and Constitutional Rights in Times of Crisis*, "Canadian Journal of Political Science" 2020, vol. 53(2).

[8] T. Landman, L.D.G. Splendore, *Pandemic Democracy: Elections and COVID-19*, "Journal of Risk Research" 2020, vol. 23(7–8).

[9] S. Birch et al., *How to Hold Elections Safely and Democratically during the COVID-19 Pandemic*, August 2020.

[10] L. Bach, A. Guillouzouic, C. Malgouyres, *Does Holding Elections during a COVID-19 Pandemic Put the Lives of Politicians at Risk?*, "Journal of Health Economics" 2021, vol. 78.

[11] S. Bertoli, L. Guichard, F. Marchetta, *Turnout in the Municipal Elections of March 2020 and Excess Mortality during the COVID-19 Epidemic in France*, "IZA Discussion Papers, Institute of Labor Economics" 2020, no. 13335.

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Noury et al.,[12] Haute et al.,[13] as well as Cassan and Sagnier[14] examined the impact of COVID-19 on voting turnout in the 2020 French municipal elections. Moreover, Joe assessed the post-COVID electoral participation in South Korea,[15] while Morris and Miller conducted the same research in Wisconsin.[16] Gronke et al. warned of the risk of excluding older people from the electoral process,[17] while Matteo and Santolini addressed the issue of post-COVID voter turnout from a more general perspective.[18] The global pandemic as a clear risk factor called for the partial reconsideration of current electoral policies, however, the full compliance with the applicable international standards was required.

Turning to those international legal instruments of electoral law, which might be relevant to epidemiological restrictions, the requirements arising from Article 25 of the International Covenant on Civil and Political Rights (ICCPR) on the right to vote[19] are detailed in the general comment on this article adopted by the United Nations Human Rights Committee,[20] and analysed meticulously by Taylor as a legal scholar.[21] These requirements can be divided into three main groups: (1) the requirement to hold elections regularly, (2) the standards relating to the exercise of the right to vote, and (3) the right to an effective remedy as far as electoral matters are concerned.

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[12] A. Noury, A. François, O. Gergaud, A. Garel, *How Does COVID-19 Affect Electoral Participation? Evidence from the French Municipal Elections*, "PloS One" 2021, vol. 16(2).

[13] T. Haute, C. Kelbel, F. Briatte, G. Sandri, *Down with COVID: Patterns of Electoral Turnout in the 2020 French Local Elections*, "Journal of Elections, Public Opinion and Parties" 2021, vol. 31(1).

[14] G. Cassan, M. Sangnier, *The Impact of 2020 French Municipal Elections on the Spread of COVID-19*, "Journal of Population Economics" 2022, vol. 35.

[15] D.-H. Joe, *Turnout in the Time of Corona: Evidence from the Legislative Elections in Korea*, "Applied Economics Letters" 2023, vol. 30(8).

[16] K. Morris, P. Miller, *Voting in a Pandemic: COVID-19 and Primary Turnout in Milwaukee, Wisconsin*, "Urban Affairs Review" 2022, vol. 58(2).

[17] P. Gronke, P. Manson, J. Lee, C. Foot, *How Elections under COVID-19 May Change the Political Engagement of Older Voters*, "Public Policy & Aging Report" 2020, vol. 30(4).

[18] M. Picchio, R. Santolini, *The COVID-19 Pandemic's Effects on Voter Turnout*, "European Journal of Political Economy" 2022, vol. 73.

[19] "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country".

[20] See Office of the High Commissioner for Human Rights, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12 July 1996, CCPR/C/21/Rev.1/Add.7, https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf (access: 12.12.2023).

[21] P. Taylor, *Article 25: Right to Participate in Public Affairs, Electoral Rights and Access to Public Service*, [in:] *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge 2020.

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However, in a broader context, paras 8,[22] 12,[23] and 26[24] of the General Comment also establish the freedoms of assembly, association, expression of opinion, the press, and movement in order for the candidates to be able to spread their views freely, and the voters to be informed about the programmes of the candidates and organizations without restrictions. Recently, a number of epidemiological measures have been taken that constitute an extraordinary interference in the exercise of these rights. In most countries, face-to-face campaign meetings have been banned or allowed only with a very small number of participants at the most;[25] citizens' freedom of movement has been severely restricted; in some countries the epidemic situation has also led to restrictions on freedom of the press or freedom of expression.[26] For example, the huge impact of campaign restrictions was reported in case of the Polish presidential elections in 2020, when the restrictions imposed were not applicable to the incumbent President of the Republic, who could benefit significantly as a candidate from this differentiation.[27]

With regard to the elections themselves, first, the duty to organize elections at regular intervals is laid down in para. 8 of the General Comment,[28] and also emphasized in Article 3 of Additional Protocol No. 1 to the European Convention on Human Rights,[29] as well as by the European Court of Human Rights.[30] This does not necessarily mean that the same period of time must elapse between every two elections. Even before the public health emergency, there had been early or even

[22] "Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves".

[23] "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected".

[24] "The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25".

[25] E. Asplund et al., *Elections and COVID-19: How Election Campaigns Took Place in 2020*, 2.2.2021, https://www.idea.int/news/elections-and-covid-19-how-election-campaigns-took-place-2020 (access: 12.12.2023).

[26] A. Zakharova, *Searching for Balance: Freedom of Expression and the Use of Criminal Measures to Combat COVID-19*, 3.5.2021, https://legal-dialogue.org/searching-for-balance (access: 12.12.2023).

[27] M. Florczak-Wątor, G. Kuca, *Policy Brief. Crises and Democracy: The Long-Term Impact of COVID-19 on V4 Countries' Electoral Systems. The Case of Poland*, https://jog.tk.hu/uploads/files/Policy_Brief_Poland_Florczak-Wator_Kuca.pdf (access: 12.12.2023).

[28] "Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors".

[29] "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

[30] D. Kurnosov, *Pragmatic Adjudication of Election Cases in the European Court of Human Rights*, "European Journal of International Law" 2021, vol. 32(1).

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postponed elections.[31] However, their number has increased in recent years, and the frequency of postponements is particularly striking. As Gunnarsdóttir et al. have excellently demonstrated, the question in this case is whether it is really justified to change the date of the elections in view of the epidemic, or whether some political forces are behind it in order to influence the election results in their favor.[32] Of course, those in favor of changing the date always reference the public health emergency, while the opponents of the measure suspect political considerations in the background.[33] There is also the question of whether, in the event of a postponement, the mandate of the ruling bodies will be extended for the transitional period, or whether a temporary expert or unity government will take office, whose task is specifically to bridge the period until the subsequent elections.[34]

Secondly, acceptable restrictions affecting the specific exercise of the right to vote, which are subject to strict standards of justification, should also respect the fundamental electoral principles such as universality, equality, directness, and secrecy.[35] Anuar divides the measures arising here into two main categories based on whether their application leads to *de facto* exclusion from the right to vote, or whether they just concern the exact circumstances of voting for the sake of protecting human life and health.[36] In the former category, on the one hand, in certain countries, people infected with COVID-19 were practically deprived of their right to vote, as they were forbidden to enter the polling stations, and no alternative way of voting was provided for them. On the other hand, in several countries, due to travel and other organizational difficulties, the conditions for voting were not created for citizens living or staying abroad, so in such cases this group of voters was also practically disenfranchised. In the second subcategory, the rules surrounding the exercise of the right to vote, i.e. the casting of votes, have been adapted to the virus situation in various countries in several ways: increasing the number of polling stations; prolonging their opening hours; extending the election to several days; a separate voting time slot for the most vulnerable social groups;

[31] T. James, S. Alihodzic, *When Is It Democratic to Postpone an Election? Elections During Natural Disasters, COVID-19, and Emergency Situations*, "Election Law Journal: Rules, Politics, and Policy" 2020, vol. 19(3).

[32] H.D. Gunnarsdóttir. M.S. Sinha, S. Gerke, T. Minssen, *Applying the Proportionality Principle to COVID-19 Antibody Testing*, "Journal of Law and the Biosciences" 2020, vol. 7(1).

[33] R. Rambaud, *Holding or Postponing Elections during a COVID-19 Outbreak: Constitutional, Legal and Political Challenges in France. Case Study*, 15.6.2020, https://www.idea.int/sites/default/files/publications/holding-or-postponing-elections-during-a-covid-19-outbreak-v2.pdf (access: 12.12.2023).

[34] T. Giommoni, G. Loumeau, *Lockdown and Voting Behaviour: A Natural Experiment on Postponed Elections during the COVID-19 Pandemic*, "Economic Policy" 2020, vol. 37(111).

[35] Office of the High Commissioner for Human Rights, *op. cit.*, paras 10, 11 and 15.

[36] H.M. Anuar, *Election during COVID-19 Pandemic: Constitutional Perspectives*, "International Journal of Law Government and Communication" 2020, vol. 5(21).

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keeping a distance, wearing a mask, hand disinfection; use of own pen and regular ventilation; determining the maximum age of vote counting for members of the counting committee; encouraging the use of alternative, non-personal voting methods (postal, electronic, ballot box).

Thirdly, effective remedial mechanisms available even under extraordinary periods should be implemented to monitor continuously the compliance with all the requirements set for electoral frameworks.[37] Although the fact that, on a global scale, meaningful supreme/constitutional court rulings have dealt with electoral matters linked to the global pandemic,[38] such rulings have been missing in the Visegrád region, which shows the deference of constitutional courts in this field when emergency measures are concerned. Due to the lack of meaningful judicial decisions, the country-specific analyses focuse on the first two main elements of the identified standard.

RESEARCH

To integrate the experience of the Visegrád region into the described scientific discourse, in the following sections, we outline briefly the electoral development of each four Visegrád countries in the post-COVID period, then we examine whether the new measures comply with international standards and also with the main tendencies identified at the global level.

[37] "The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes".

[38] See Federal Constitutional Court of Austria, VfGH W I 14/2020, 25 February 2021; Constitutional Court of Bosnia and Herzegovina, AP 542/21, 7 April 2021; Supreme Court of Brazil, ADI 6359 MC-REF, 14 May 2020; Constitutional Court of the Central African Republic, 5 June 2020; Constitutional Court of Croatia, no. U-VII-3311/2020, 16 July 2020; Constitutional Court of the Dominican Republic, no. TC/0358/20, 29 December 2020; Constitutional Council of France, no. 811/2020, 21 December 2020; Constitutional Council of France, 849 QPC/2020, 17 June 2020; Constitutional Court of Gabon, no. 017/CC, 26 March 2020; Supreme Court of India, SLP Civil Diary no. 10698/2021, 1 May 2021; Supreme Court of Justice of Mexico, acción de Inconstitucionalidad 165/2020, 5 December 2022; Constitutional Court of Niger, no. 04/CC/MC, 15 June 2020; Singapore Court of Appeal, no. 2020 SGCA 60, 29 June 2020; Constitutional Court of South Africa, CCT 245/21, 3 September 2021; Supreme Court of the United States of America, *Moore v. Circosta*, 592 U.S. (2020) 1, 28 October 2020; Supreme Court of the United States of America, *Committee v. Wisconsin State Legislature*, 20A66, 26 October 2020; Supreme Court of the United States of America, *Andino v. Middleton*, no. 20A55, 8 October 2020; Supreme Court of the United States of America, *Republican National Committee v. Democratic National Committee*, no. 19A1016, 4 June 2020.

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1. Czech Republic

During the public health emergency, four important elections took place in the Czech Republic seriously affected by the COVID-19 pandemic. None of the cases resulted in the postponement of the vote, despite the fact that the 2020 and 2021 elections were still held at a time of various severe restrictions. In 2020, Czech citizens were able to vote for the Senate as well as for regional governments; in 2021, elections were held for the Chamber of Deputies of the Parliament.[39] At the beginning of September 2022, municipal elections[40] and partial senatorial elections[41] took place, however, without adaptative measures, probably because of the more favorable public health situation. Finally, in early 2023, direct elections were organized to select the new President of the Czech Republic. In three of the four cases, the Czech Parliament reflected on the public health concerns with the enactment of special, so-called ad-hoc laws. These laws relied mostly on the same approach to electoral management; nevertheless, the implemented measures differed considerably, depending on the exact phase of the epidemic.[42]

The electoral legislation in force before the pandemic[43] recognized the obstacle to the exercise of the right to vote, which applied to persons whose personal freedom was restricted for reasons of public health protection. In this case, the forms of restricting personal freedom were not regulated by the Electoral Act, but by the Act on the protection of public health.[44] The extraordinary measures of the state here concerned persons confined in isolation and quarantine.

The elections after 2020 were expected to involve not just a few hundred affected citizens, but millions of them. The Czech Parliament has been innovative in dealing with the electoral consequences of the epidemic and has considered several

[39] G. Vartazaryan, *Report from the Roundtable on the Impact of COVID-19 on Czech Elections and Electoral Law*, 15.8.2022, https://jog.tk.hu/blog/2022/08/report-roundtable-covid-19-czech-elections-electoral-law (access: 12.12.2023).

[40] See Municipality of Vestes, *The Second Round of Elections to the Senate of the Parliament of the Czech Republic Will Take Place on 30 September and 1 October 2022*, https://vestec.cz/en/obec-vestec/volby/volby-do-senatu-parlamentu-cr (access: 12.12.2023).

[41] See China-CEE Institute, *Czech Republic Political Briefing: Municipal Elections Are Over: Results & Consequences*, 13.10.2022, https://china-cee.eu/2022/10/13/czech-republic-political-briefing-municipal-elections-are-over-results-consequences (access: 12.12.2023).

[42] J. Grinc, M. Antoš, *Crises and Democracy: The Long-Term Impact of COVID-19 on V4 Countries' Electoral Systems. The Case of the Czech Republic*, August 2022, https://jog.tk.hu/uploads/files/Policy_Brief_Czech_Republic_Grinc_Antos.pdf (access: 12.12.2023).

[43] Zákon No. 247/1995 Sb.: Act on elections to the Parliament of the Czech Republic and on the amendment and addition of certain other laws. The Act is available at https://www.zakonyprolidi.cz/cs/1995-247 (access: 12.12.2023).

[44] Zákon no. 258/2000 Sb.: Act on the protection of public health and amendment of certain related acts. The Act is available at https://www.zakonyprolidi.cz/cs/2000-258 (access: 12.12.2023).

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alternative voting methods. In three out of four elections between 2020 and 2023, the electoral framework was accommodated to the needs of voters either infected or suspected of being infected by providing three different ways for them to submit their votes.[45] In social and health care institutions subjected to lockdown due to public health concerns, special polling stations were organized, the availability of mobile ballot boxes was covered by special rules, and the drive-in mode was also established.[46] The latter was the most significant innovation, as it allowed voters to vote from their cars two days before the regular polls without contacting directly with the electoral staff.

In all three cases, the mobile ballot box was considered as complementing or as an alternative to drive-in voting. This option was therefore open to those who, for some serious reason, were unable to vote at a drive-in station. For each special voting method, the authorities set up separate polling districts and different electoral commissions. The votes were collected in separate ballot boxes but were mixed and counted together with votes cast through traditional means. Apart from universality, the Czech legislator also aimed at safeguarding the secrecy of the vote; for this reason, detailed rules were adopted as guaranties of the drive-in option.[47]

Each of the three ad-hoc laws on special voting arrangements (which were only applicable to a specific election as apparent already from the title of the law) are really not significantly different from each other. The most important development are the adjustments of their personal scope. The 2021 and 2023 laws: (1) opened the voting in residential care facilities also to the staff present there on election day (for convenience), and (2) extended the possibility of using the special voting arrangements to voters who presented a positive COVID test, even when they were not formally quarantined or isolated (and thus subject to the legal voting obstacle).

2. Hungary

In Hungary, regarding the periodical holding of elections, in the spring of 2020, the emergency rules stipulated that elections should not be held during a public health emergency; however, any similar provision did not appear during the second state of emergency announced in November 2020.[48] In October 2020, an interim parliamen-

[45] R. Beran, *Czech Chamber of Deputies Elections in 2021 in the Shadow of the COVID-19 Pandemic*, 2.6.2022, https://jog.tk.hu/en/blog/2022/06/czech-chamber-of-deputies-elections-in-2021 (access: 12.12.2023).

[46] J. Skacel, *Czechs in COVID Quarantine Head to Drive-in Polling Stations for Regional Vote*, 30.9.2020, https://www.reuters.com/article/us-health-coronavirus-czech-vote-idUSKBN26L291 (access: 12.12.2023).

[47] J. Grinc, M. Antoš, *op. cit*.

[48] I. Hoffman, I. Balázs, *Administrative Law in the Time of Corona(virus): Resiliency of the Hungarian Administrative Law?*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), p. 109.

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tary election was held in one of the 106 districts, this was followed by an opposition primary election not sanctioned by state authorities in the fall of 2021. In the spring of 2022, the parliamentary election combined with a national referendum could be organized in a relatively favorable public health situation, while in June 2022, several interim municipal elections took place with a delay of more than two years.[49]

The Hungarian oppositional primary elections were not sanctioned by state authorities, this was organized as a private initiative based on the cooperation agreement of six oppositional parties with the active involvement of various civil stakeholders. Three main novelties of the primaries are noteworthy as significant electoral developments. Firstly, the Hungarian oppositional primary amounted to the very first private initiative in Europe, which aimed at not only the prior selection of a prime ministerial candidate, but also at deciding, by a direct universal vote in each of 106 individual districts, the joint parliamentary candidates of the six allied political parties.[50] Secondly, the possibility of electronic voting constituted an unprecedented step towards creating a more flexible and complex electoral framework, where citizens were enabled to choose between more alternatives in casting their votes.[51] Despite the fact that many difficulties were reported in the functioning of e-voting during the process, opening up this innovative perspective should be seen as a major step forward, especially in the light of the public health concerns, which are likely to influence the landscape of future elections as well.[52] Thirdly, the oppositional primary was the first occasion, when those young people, who were under eighteen at the period of the primary elections, but have attained their eighteenth year before the date of the upcoming parliamentary elections (3 April 2022) could also submit their votes.[53] However, the primaries not only extended, but also restricted the circle of voters. In the parliamentary elections, Hungarian citizens without permanent Hungarian residence are allowed to vote at least to the lists of political parties, nevertheless, in the primaries, permanent Hungarian residence was a requirement of participation.[54]

[49] K. Gál, *The Visegrád Group and Covid-Induced Election Postponement: A Slight Sacrifice for Safety?*, 13.10.2022, https://jog.tk.hu/blog/2022/10/the-visegrad-group-covid-induced-election-postponement (access: 12.12.2023).

[50] T. Skoric, Friedrich Naumann Foundation for Freedom, *Lessons from the Hungarian Opposition Primaries*, 26.10.2021, https://4liberty.eu/lessons-from-the-hungarian-opposition-primaries (access: 12.12.2023).

[51] A. Kis-Benedek, *Voting Tents at the Primary Election of the Hungarian Opposition*, [in:] *Hungarian Politics in 2021*, ed. A. Bíró-Nagy, Budapest 2021, pp. 40–41.

[52] C. Fazekas, K. Kálmán, B. Szentgáli-Tóth, K. Szerencsés, J. Takács, *Demokrácia a pandémia árnyékában: választások a világjárvány idején a környező országokban – Magyarország számára hasznosítható tapasztalatok és perspektívák*, "MTA Law Working Papers" 2021, no. 31, p. 35.

[53] L. Karácsony, *Primary Election in the Shadow of the Pandemic*, 18.4.2022, https://jog.tk.hu/blog/2022/04/primary-election-in-the-shadow-of-the-pandemic (access: 12.12.2023).

[54] *Ibidem*.

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In the elections held in Hungary by state authorities so far in the shadow of the COVID-19 virus, the voting based on personal presence was adapted to the special circumstances: it was mandatory for the members of the vote counting committees and recommended for the voters to wear a mask; disinfection points were placed at the entrance to the polling stations; voters were asked to keep their distance and for everyone to bring their own pen to vote.[55] The parliamentary elections in April 2022 were accompanied by favorable epidemiological data, and, in contrast with Poland, at least from a procedural perspective, were not heavily influenced by the constitutional crisis that has characterized Hungary since 2012.[56] Accordingly, the applied public health measures were also limited: the Electoral Office recommended the wearing of masks to the vote counters, and made additional resources available to finance potential protective measures.[57] The sole significant challenge from this point of view was the organization of the voting abroad, since, due to the travel restrictions still in force in certain countries, many Hungarian citizens could not approach the nearest Hungarian diplomatic mission, e.g. in China, and thus could not exercise their right to vote.[58] This resulted in certain minor concerns regarding the universality of the elections.

3. Poland

During the COVID-19 pandemic, only one national election was held in Poland, namely for President of the Republic of Poland, in 2020. Throughout this period, however, local elections were regularly organized in various cities and municipalities.[59] Both the presidential and the local elections were held in the absence of an

[55] C. Fazekas, K. Kálmán, B. Szentgáli-Tóth, K. Szerencsés, J. Takács, *Demokrácia a pandémia árnyékában: választások a világjárvány idején a környező országokban*, "Közjogi szemle" 2021, vol. 14(4), p. 62. A very similar package of higienic measures have been also implemented in the Czech Republic.

[56] Z. Szente, *The Myth of Populist Constitutionalism in Hungary and Poland: Populist or Authoritarian Constitutionalism?*, "International Journal of Constitutional Law" 2023, vol. 21(1), pp. 129–130.

[57] E. Szilágyi, *Crises and Democracy: The Long-Term Impact of COVID-19 on V4 Countries' Electoral Systems. The Case of Hungary*, https://jog.tk.hu/uploads/files/Policy_Brief_Hungary.pdf (access: 12.12.2023).

[58] J. Takács, *Voting at Embassies and Consulates during the 2022 Parliamentary Elections in Hungary – New Problems Caused, and Long-Existing Concerns Intensified by the COVID-19 Pandemic*, 10.5.2022, https://jog.tk.hu/blog/2022/05/voting-at-embassies-and-consulates (access: 12.12.2023).

[59] See the schedule of local elections and referendums available on the website of the State Electoral Commission: https://pkw.gov.pl/uploaded_files/1678757219_terminarz-wyborow-w-trakcie-kadencji-2018-2024-wow.pdf (access: 12.12.2023).

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officially declared state of emergency under the 1997 Constitution.[60] One of the main reasons for not declaring a state of emergency was that such a declaration would have activated the constitutional prohibition of organizing elections during a state of emergency and within the period of 90 days following its termination,[61] while the ruling party wanted to hold the presidential election on the scheduled date in May 2020. It was assumed that postponing the elections would weaken the chances of the ruling party's candidate being re-elected, as public dissatisfaction with the ever-increasing restrictions imposed by the pandemic grew. Therefore, instead of announcing a state of emergency, the Polish authorities decided to declare a state of epidemic threat followed by a state of epidemic.[62] During these two special legal regimes, general elections at central and local levels were not banned.

The presidential elections scheduled for 10 May 2020 was initially to be held in person. The possibility of voting by post was only provided for two groups, those "who were subject to compulsory quarantine, isolation or isolation at home on the day of vote" and "voters who have reached the age of 60".[63] However, in April 2020, the Parliament decided that the presidential election would be conducted by post only, with no possibility of voting in-person.[64] This solution raised serious constitutional doubts and public discontent, especially as the printing and distribution of ballot papers was entrusted to the government-dependent Polish Post Office while the State Electoral Commission, as an independent constitutional body, was deprived of any real influence over the electoral process.[65]

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[60] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.12.2023).

[61] Article 228 (7) of the Polish Constitution. See also J. Kielin-Maziarz, K. Skotnicki, *Restrictions on the Right to Vote in the Pandemic during the Election of the President of the Republic of Poland in 2020*, "Białystok Legal Studies" 2022, vol. 27(2), pp. 178–179; K. Eckhardt, *Konstytucyjny zakaz przeprowadzania wyborów w czasie trwania stanu nadzwyczajnego – kilka wątpliwości*, "Gdańskie Studia Prawnicze" 2014, vol. 31, p. 783 ff.

[62] A state of epidemic threat was introduced on 14 March 2020, while a state of epidemic was announced on 20 March 2020. See Regulation of the Minister of Health of 12 March 2020 on the proclamation of a state of epidemic threat on the territory of the Republic of Poland (Journal of Laws 2020, item 433); Regulation of the Minister of Health of 20 March 2020 on the cancellation of a state of epidemic threat on the territory of the Republic of Poland (Journal of Laws 2020, item 490).

[63] See Article 40 of the Act of 31 March 2020 on the amendment of the act on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, as well as some other acts (Journal of Laws 2020, item 568).

[64] See Act of 6 April 2020 on special rules for conducting universal elections of the President of the Republic of Poland (Journal of Laws 2020, item 827). See also M. Skrzypek, *Democratic Backsliding in Poland on Example Drafts Amendments in Electoral Code during the COVID-19 Pandemic*, "Polish Political Science Yearbook" 2021, no. 2, pp. 44–46.

[65] M. Florczak-Wątor, G. Kuca, *op. cit*.

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Just before the voting day, the presidential election was postponed, calling into question the holding of regular elections. This was announced during a press conference held on 7 May 2020 by the leaders of the two ruling political parties. Although the official reason given for the postponement of the election was a sudden increase in the incidence of COVID-19 infections in Poland, it was obvious that this was a purely political decision resulting from disagreements within the ruling coalition.[66] A month later, the Parliament decided that the presidential elections would be held in June/July 2020 and that voters would be able to vote not only at polling stations but also by post.[67]

The elections were finally held on 28 June 2020 (the first round) and 12 July 2020 (the second round), and resulted in a victory for the incumbent president. On polling days, several special arrangements were applied to maintain the integrity of the elections: all polling stations followed special sanitary security rules set by the Minister of Health, including the obligation to wear masks, disinfect hands and keep a distance from others. Voters were also advised to bring their own pens. Polling stations, which were to be aired every hour, could accommodate one voter per four square metres of room space. Members of the electoral commissions worked with gloves and masks and were required to keep a distance of at least 1.5 meters. Prior to the second round of the elections, priority service at polling stations was introduced for people over the age of 60, pregnant women, people with a child of up to three years of age, people with a disability certificate and anyone who was unable to move independently due to a medical condition.[68]

The presidential elections were conducted without any major problems, and the Supreme Court upheld the result despite the highly controversial background, which once again illustrates the deferential approach of high judicial bodies to COVID-related electoral issues in the Visegrád region.[69]

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[66] P. Jablonska, *Report on Policy Roundtable: "Crises and Democracy: The Long-Term Impacts of COVID-19 on V4 Countries' Electoral Systems*, 5.8.2022, https://jog.tk.hu/blog/2022/08/report-on-policy-roundtable-crises-and-democracy (access: 12.12.2023).

[67] Decision of the Marshall of the Sejm of 3 June 2020 on ordering the election of the President of the Republic of Poland (Journal of Laws 2020, item 988). More than 143,000 voters applied for postal voting, and in two municipalities – Baranów and Marklowice – elections were held solely by post, due to the areas' high infection rates. See also M. Musiał-Karg, *Correspondence Voting during COVID-19 Pandemic: Experience of Polish Presidential Election in 2020*, "Przegląd Prawa Konstytucyjnego" 2021, no. 2, p. 31 ff.; A. Rakowska-Trela, *Wybory prezydenckie 2020. Kontekst prawny*, Warszawa 2020.

[68] J. Flis, M. Kaminski, *Multi-Player Electoral Engineering and COVID-19 in the Polish Presidential Elections in 2020*, "Mind & Society: Cognitive Studies in Economics and Social Sciences" 2022, vol. 21.

[69] M. Pronczuk, *Poland's Supreme Court Declares Presidential Election Valid*, 3.8.2020, https://www.nytimes.com/2020/08/03/world/europe/poland-court-presidential-election.html (access: 12.12.2023).

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4. Slovakia

In Slovakia, elections have not been rescheduled, however, several adapting measures were implemented during the public health emergency. The 2020 parliamentary elections in Slovakia had taken place just a few days before the first COVID patient was identified: the new government set up after the elections found itself in a very difficult position, facing an unprecedented crisis.[70]

In 2014, the Slovak Parliament adopted a unified Electoral Code[71] and the Electoral Campaigning Act.[72] The Electoral Code constituted the relevant legislation, which was then in force for the 2020 parliamentary elections and the local by-elections between 2020 and 2022. The Electoral Code acknowledged illness of voters as an obstacle of exercising the right to vote, when the mobility of sick voters had to be limited on public health grounds. In 2021, the Parliament amended the Electoral Code,[73] the provision on public health restrictions of the right to vote was completed by an additional clause "unless otherwise provided by a special law adopted at the time of the pandemic".

The amendment opened up the possibility for the legislator to implement additional restrictions on exercising right to vote, however only during the period of a public health emergency for those people who would be subject to a limitation on their freedom of movement.[74] Nevertheless, the Electoral Code did not define what is meant by a restriction of personal freedom. In this respect, the Act on the protection of public health constitutes the applicable law in this regard.[75] Isolation and quarantine were therefore the form of restricting personal freedom envisaged by the Electoral Code. Indeed, persons in isolation and quarantine were not able to vote in the plebiscites held between 2020 and 2022, especially on 3 October

[70] S. Henčeková, Š. Drugda, *Slovakia: Change of Government under COVID-19 Emergency*, *VerfBlog*, 22.5.2020, https://verfassungsblog.de/slovakia-change-of-government-under-covid-19-emergency (access: 12.12.2023).

[71] Zákon NRSR no. 180/2014 Coll.: Act on the conditions for exercising the right to vote and on amending and supplementing certain laws. The Act is available at https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2014/180/ or https://www.zakonypreludi.sk/zz/2014-180 (access: 12.12.2023).

[72] Zákon NRSR no. 181/2014 Coll.: Act on electoral campaigning and amendment of Act no. 85/2005 Coll. on political parties and political movements as amended. The Act is available at https://www.zakonypreludi.sk/zz/2014-181 (access: 12.12.2023).

[73] Zákon NRSR no. 512/2021 Coll.: Act amending the Act no. 180/2014 Coll. on the conditions for exercising the right to vote and on amending and supplementing certain laws. The Act is available at https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/512 (access: 12.12.2023).

[74] S. Gaňa, *Zásah do základných práv a slobôd počas núdzového stavu*, [in:] *Obmedzovanie ľudských práv*, ed. T. Lalík, Bratislava 2021, pp. 143–144.

[75] Zákon NRSR no. 355/2007 Coll.: Act on the protection, support and development of public health and on amendments and supplements to certain acts. The Act is available at https://www.zakonypreludi.sk/zz/2007-355 (access: 12.12.2023).

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2020, 15 May 2021, 23 October 2021, and 22 March 2022. Apart from the general elections, a huge number of bi-elections were also scheduled, e.g. on one occasion 48 municipalities had to hold such by-elections.[76]

After these precursors, in May 2022 the Law on the special voting method was adopted to accommodate the voting mechanism to the special needs of infected persons.[77] This was an ad-hoc piece of legislation that applied only to the local and regional elections held on 29 October 2022. The law covered exclusively those persons whose personal freedom had to be restricted due to COVID-19 infection, it therefore was not applicable to those affected by the monkeypox epidemic already on the horizon, other potential public health grounds were also neglected.[78]

The 2022 Law created special constituencies and special electoral commissions, each of them covered several municipalities. Moreover, the special electoral commissions had a larger number of members than the ordinary ones. The latter were required by the Electoral Code to have at least five members (seven in Bratislava and Košice). By contrast, special electoral committees were required to have at least eight members, but the mayor could increase this number if more voters than planned requested to be involved in the special voting method.[79]

The 2022 Law also provided for a special electoral role and a special voting method, which was available only in case of prior application rather than *ex officio*. The latter could only be done by the person affected by the restrictions or by his proxy and only by telephone. The special voting method shows huge similarities with the ordinary urn voting regime. Two members of the special committee have to approach the indicated residence of the person concerned with the mobile urn. These members are provided with protective equipments to be safeguarded against the risk of contamination. The votes collected in this manner would then to be counted together with the other votes submitted through traditional paths to maintain the secrecy of the vote. The Law itself was quite detailed and therefore voluminous in comparison with other ad-hoc laws; however, voting from a car as an option broadly used in the Czech Republic has not been established in Slovakia.[80]

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[76] D. Kuchárová, *How Has the Pandemic Affected Electoral Issues in Slovakia?*, 27.6.2022, https://jog.tk.hu/blog/2022/06/how-has-the-pandemic-affected-electoral-issues-in-slovakia (access: 12.12.2023).

[77] Zákon NRSR no. 185/2022 Coll.: Act on a special method of voting in elections to municipal self-governing bodies and in elections to self-governing regional bodies. The Act is available at https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/185 (access: 12.12.2023).

[78] S. Gaňa, *op. cit.*, p. 141.

[79] D. Krošlák, T. Gábriš, *Electoral System and COVID-19 Pandemics in the Slovak Republic*, https://jog.tk.hu/uploads/files/Policy_Brief_Elections_in_Slovakia.pdf (access: 12.12.2023).

[80] M. Domin, *Priame a „reťazené" obmedzenia volebného práva v čase krízových situácií*, [in:] *Obmedzovanie ľudských práv*..., p. 110.

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DISCUSSION

1. Czech Republic

The most frequently discussed difference between the aforementioned Czech elections was the extent of military involvement.[81] In the 2020 Senate and regional elections, which happened in the first year of the pandemic, the army's role was much greater. Special electoral commissions were organized by the regional offices so that there was at least one for each district and each commission had four members. The secretary was appointed by the director of the regional office and the three other members, who had direct contact with the electorate, were provided by the Czech army from among active soldiers. The role of the military was no longer so decisive in the work of ballot counting committees; however, drive-in polling stations were also entirely organized by the army. This was also the case in the 2021 elections to the House of Representatives, but the three members of the counting committees were appointed by the director of the regional office, and were exclusively civilians eligible to fill these positions. This trend continued in the 2023 presidential elections, where the fire and police services were also appointed to the drive-in voting.[82] It should not be forgotten that since 24 February 2022, the army has been forced to devote more weight to its original tasks, which are more in line with its profile, due to the Russian-Ukrainian conflict.

Apart from this, several commentators pointed out that the Czech and Slovak parliaments have responded to the electoral challenges of the pandemic in similar ways. This was probably caused by the closely linked legal traditions of the two countries and their general willingness to listen to each other's legislative solutions. The Czech legislator was deemed to be more innovative by reflecting on the dramatically changing environment earlier, and by the creation and extensive application of the drive-in voting option. Slovakia also considered introducing a drive-in voting mode, but eventually relied on the traditionally elaborated electoral framework with limited and delayed adaptations. Ad-hoc regulation constitutes a common feature between the Czech Republic and Slovakia, in spite of the fact that both countries had to organize several votings during the public health emergency and the authorities were aware of them in advance.

[81] World Health Organization, *Czechia Pandemic Situation*, https://covid19.who.int/region/euro/country/cz (access: 12.12.2023).

[82] J. Grinc, M. Antoš, *op. cit*.

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2. Hungary

In Hungary, due to the advantageous public health situation, the lack of extensive adaptative measures has not caused significant implications, however, it has been argued that the applicable rules were still uncertain shortly before the elections depending on the potential change of the public health situation.[83] The inclusion of Internet voting in the primaries projects a peculiarity that will presumably remain with us in the longer term. We believe that the time of elections based predominantly on personal presence is coming to an end, in the future we will see election systems that allow citizens to vote in several ways (in person, ballot box, electronic, or postal voting). The OSCE/ODIHR report on the 2022 parliamentary elections combined with a national referendum highlighted that the electoral framework in itself complied with the international standards, however, the broader context raised several concerns.[84]

Furthermore, the pandemic sheds new light on the issue of voting by citizens living abroad or staying there on election day. In Hungary, the situation of persons without a domestic address is relatively favorable, since they can cast their votes by post. However, the public health regulations in force in the country of their residence can cause a serious headache for voters with a Hungarian address but staying abroad on the day of the election.[85] In the case of a curfew, e.g., it is significantly more difficult for them to visit the nearest Hungarian embassy, but even in an ordinary period, this duty imposes heavy cost, time, and energy investment on these voters to submit their votes, especially in comparison with other categories of constituents. This differentiation between the two groups of Hungarian citizens voting from abroad has been subject to heavy discrimination contests; nevertheless, the Hungarian Constitutional Court upheld its validity.[86]

3. Poland

The Polish experience of the 2020 presidential elections, which took place against the backdrop of a constitutional crisis that has been ongoing since 2015,[87] has yielded some important insights for academic research.

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[83] C. Fazekas, B. Szentgáli-Tóth, *A magyar demokrácia néhány közvetlenül előttünk álló nyitott kérdése: a választási eljárásjog várható hazai tendenciái a poszt-Covid időszak kezdetén*, 2021, http://real.mtak.hu/161429/1/a-valasztasi-eljarasjog-varhato-hazai-tendenciai.pdf (access: 12.12.2023).

[84] See Office for Democratic Institutions and Human Rights, *Hungary Parliamentary Elections and Referendum, 3 April 2022: ODIHR Election Observation Mission. Final Report*, Warsaw, 29.7.2022, https://www.osce.org/files/f/documents/2/6/523568.pdf (access: 12.12.2023).

[85] E. Szilágyi, *op. cit*.

[86] 3086/2016. (IV. 26.) AB határozat, IV/01578/2013.

[87] For more on the constitutional crisis in Poland, see, e.g., W. Sadurski, *Poland's Constitutional Breakdown*, Oxford 2019; A. Kustra, *Poland's Constitutional Crisis: From Court-Packing*

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First, the Polish case demonstrates that in a contemporary democratic state, it is both socially and legally unacceptable to completely abandon the traditional form of voting in parliamentary elections, i.e. is voting in person at a polling station. Alternative methods of voting, such as postal voting, should complement,[88] but not completely replace,[89] in-person voting.

Second, the COVID-19 pandemic highlighted the need for the state to provide citizens with alternative voting methods that allow them to cast their votes outside the polling station in a way that is safe for their health. In Poland, only two such methods have been used to date: postal voting and voting by proxy.[90] Broadening the group of eligible voters and introducing other alternative methods of voting, such as e-voting, would certainly be a desirable, pro-frequency measure that could be a remedy for the widely discussed crisis of representative democracy in recent years.[91]

Third, it can be assumed that citizens' positive experience with the application of postal voting during the COVID-19 pandemic will encourage them to make more frequent use of the possibilities offered by alternative voting methods. In turn, this could mean their greater involvement in the state's decision-making processes, including electoral decision-making. Therefore, it would be appropriate to postulate a gradual and consistent expansion by the Polish authorities of the alternative voting methods made available to citizens for the exercise of their active voting rights.

Fourth, the COVID-19 pandemic reinforced the need to create and develop effective mechanisms to protect the freedom, equality and universality of general elections in a democratic state.[92] Far-reaching restrictions on the rights and freedoms of individuals in various areas of their activities may have a negative impact on the exercise of both active and passive electoral rights. Such restrictions should

Agenda to Denial of Constitutional Court's Judgments, "Toruń Polish-Italian Studies" 2016, no. 12; M. Wyrzykowski, *Experiencing the Unimaginable: The Collapse of the Rule of Law in Poland*, "Hague Journal on the Rule of Law" 2019, vol. 11, pp. 417–422.

[88] See, e.g., A. Rytel-Warzocha, *Postal Voting as an Ultimate Rescue Measure for Presidential Election during the COVID-19 Pandemic in Poland*, "Przegląd Prawa Konstytucyjnego" 2020, no. 5, pp. 99–112; A. Stelmach, *Postal Voting: Poland and Solutions in Other Countries*, "Przegląd Prawa Konstytucyjnego" 2020, no. 6, pp. 91–96.

[89] M. Florczak-Wątor, G. Kuca, *op. cit*.

[90] A. Jackiewicz, *Postal Voting and Voting by Proxy as an Alternative Voting Methods in the Light of the Electoral Code in Poland*, "Białystok Legal Studies" 2016, vol. 20/A.

[91] See, e.g., S. Tormey, *The Contemporary Crisis of Representative Democracy*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/Papers_on_Parliament_66/The_Contemporary_Crisis_of_Representative_Democracy (access: 12.12.2023).

[92] Similar comments have been already published before the global epidemic. See J. Czerw, J. Kochanowski, *Legal Position of the Regional Electoral Commission for Conducting Voting in the Circuit and the Regional Electoral Commission for Determining the Results of Voting in the Circuit – de lege lata and de lege ferenda Postulates in the Light of the 2018 Local Self-government Elections*, "Studia Iuridica Lublinensia" 2020, vol. 29(4).

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therefore be made in a way that respects the basic standards of democracy and, moreover, under the control of independent courts.

Finally, the Polish experience shows that elections held under conditions of constitutional crisis will always raise doubts about their fairness,[93] and emergency situations, such as the COVID-19 pandemic, will only exacerbate those doubts. It would be appropriate, therefore, to postulate that during the ongoing constitutional crisis, elections should be held under the highest standards and rules of legality and fairness. The risk of accusations of using general elections to achieve ad-hoc political goals in the ongoing constitutional crisis would then be minimalised.

4. Slovakia

The relevant Slovak discussion focused on the question whether the general Slovak legislation on the exercise of the right to vote by sick people with limited personal freedom is not overly restrictive. This question arose in the case of numerous by-elections organized without the use of a special voting method. In fact, the turnout was usually low, ranging between 28% and 36%, which entailed also critical political reflections.[94] But this does not alter the sensitivity of the issue, since it was only by chance that parliamentary elections did not have to be organized in Slovakia during this period. On 29 February 2020, very shortly before declaring a public health emergency, the voter turnout was 65.80%. The smallest party was elected to parliament and later to government with 166,325 votes, which amount to 5.77% of all votes cast.[95] These figures were compared by Gaňa with the number of people quarantined. During the peak of the pandemic (February 2022), around 15,000 new cases of the disease were detected every day in Slovakia, while about 75,000 people spent their fifth day of quarantine. If such a number of voters were unable to vote in the parliamentary elections, it could have a significant impact on the outcome of the elections, as this number represents almost half of the number of votes needed for a party to enter parliament.[96]

Slovakia also held a referendum on 21 January 2023, the Slovak National Council adopted for the referendum ad-hoc law about the special forms of vot-

[93] On the role of the rule of law in regulating the pandemic see B. van Klink, M. Soniewicka, L. van den Broeke, *The Utopia of Legality: A Comparison of the Dutch and Polish Approaches to the Regulation of the COVID-19 Pandemic*, "Białystok Legal Studies" 2022, vol. 27(2), p. 25.

[94] M. Hudec, *To Raise Turnout, Former Slovak PM Proposes €500 per Voter*, 16.2.2023, https://www.euractiv.com/section/politics/news/to-raise-turnout-former-slovak-pm-proposes-e500-per-voter (access: 12.12.2023).

[95] D. Kuchárová, *Report from the Slovak Roundtable on Constitutional Limits to the Right to Vote under the Impact of the COVID-19 Pandemic*, 25.7.2022, https://jog.tk.hu/en/blog/2022/07/report-from-the-slovak-roundtable (access: 12.12.2023).

[96] S. Gaňa, *op. cit.*, pp. 149–150.

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ing.[97] The model of voting for voters in isolation or quarantine was similar to the case of local and regional elections in October 2022. Moreover, as the most recent development, the Slovak Constitution was also amended as the outcome of a long--term political crisis caused by the global pandemic and the war in a neighbouring country to order early parliamentary elections, which were not previously allowed by the Slovak Constitution.[98] The advance elections took place on 8 October 2023 without serious public health concerns; however, the necessity of the constitutional amendment demonstrates excellently, that the adaptation of the electoral framework to the post-COVID landscape is still an on-going process in Slovakia.

CONCLUSIONS

In the light of the outlined international standards, the following general conclusions can be drawn from the development of the electoral frameworks in the Visegrád region in the context of COVID-19.

Firstly, the requirement of holding elections periodically cannot be fully respected unless the resilience of the electoral framework is developed for times of emergency.[99] The Visegrád countries have organized their scheduled elections without significant delays; however, the lack of specific clauses concerning the potential postponement of elections, and the bridging of such periods resulted in various complications. Despite these features, the elections, which are the foundations of democracy, should be conducted in an environment that is as predictable, transparent and clear as possible for the candidates, nominating organizations and the electorate. To this end, we believe that the most important lesson to be learned from the recent elections in the Visegrád region was the necessity of implementing a mandate for electoral authorities to outline alternative regulatory packages prior to the elections.

With regard to our second main point, i.e. restrictions on the submission of votes, apart from prohibiting substantial changes to the electoral framework within one year preceding the date of the elections, the same moratorium period should also be established for changes to the electoral procedure regulation.[100] Only very

[97] Zákon NRSR no. 395/2022 Zb.: Law on the special method of voting in the referendum announced on the basis of the citizens' petition received on 24 August 2022. The Law is available at https://www.zakonypreludi.sk/zz/2022-395 (access: 12.12.2023).

[98] Associated Press, *Slovakia Parliament Changes Constitution to Enable Snap Vote*, 25.1.2023, https://apnews.com/article/politics-slovakia-government-zuzana-caputova-bdee67a3c96d-635187d8e94d2683ce0b (access: 12.12.2023).

[99] R. Yungs, *COVID-19 and Democratic Resilience*, "Global Policy" 2023, vol. 14(1).

[100] B. Szentgáli-Tóth, B. Bor, *Crises and Democracy: Elections in the Visegrád Countries in the Shadow of the COVID-19 Pandemic. Report from the Main Conference of the Research Project*,

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strongly justified exceptions to this extended moratorium should be allowed, subject to potential prior constitutional review to be conducted within a short deadline. In addition, more flexible rules are recommended to increase the weight of alternative voting methods *vis-à-vis* traditional in person voting,[101] which would also increase the resilience of the electoral system under unexpected or undue external pressure.[102] As a consequence, future elections are supposed to be more expensive,[103] e.g. financial issues have already been raised during the crisis in Bosnia and Herzegovina at the neigbourhood of the Visegrád region.[104]

Thirdly, redress mechanisms such as constitutional or judicial review played a very limited role in the adaptation of the electoral framework to the unprecedented crisis, which resulted in the lack of landmark constitutional rulings from far-reaching adaptative measures, in spite of the fact that several such decisions have been delivered around the world. As a consequence, the Visegrád countries should look for alternative remedies that would allow for timely and effective consideration of any short-term changes to the electoral framework.The known public health requirements imposed additional responsibility on all stakeholders from the legislator to the individual citizen to keep the entire electoral process within the bounds of safety and reliability.[105] Because of the urgency of the situation, decisions have been taken on the basis of practical considerations or real or perceived political ambitions. However, the dogmatic aspects of the new electoral challenges have inevitably not been analysed in depth. After almost four years of experience, we believe that constitutional scholarship has two main tasks in this field: constitutional scholars should identify the pandemic's long-term consequences from an electoral law perspective, and they should elaborate proposals to outline the precise framework of post-COVID elections. This contribution enriches the relevant discourse by integrating the experience of the Visegrád countries into this strand of the discussion.

15.5.2023, https://jog.tk.hu/blog/2023/05/crises-and-democracy-report-from-the-main-conference (access: 12.12.2023).

[101] A. Baringer, M.C. Herron, D.A. Smith, *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus*, "Election Law Journal: Rules, Politics, and Policy" 2020, vol. 19(3).

[102] T. Landman. L.D.G. Splendore, *op. cit.*, pp. 1060–1066.

[103] A. Clark, E. Asplund, T. James, *Electoral Officials Need More Money to Run Elections during COVID-19*, 14.7.2020, https://www.idea.int/news/electoral-officials-need-more-money-run-elections-during-covid-19 (access: 12.12.2023), pp. 65–68.

[104] Associated Press, *Bosnia Postpones Local Elections Due to Lack of Funding*, 23.5.2020, https://apnews.com/508e21947da89657f97f7d8efeccef16 (access: 12.12.2023).

[105] L.O. Gostin, L.F. Wiley, *Governmental Public Health Powers during the COVID-19 Pandemic: Stay-at-Home Orders, Business Closures, and Travel Restrictions*, "JAMA" 2020, vol. 323(21), pp. 2137–2138.

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Zákon NRSR no. 395/2022 Zb.: Law on the special method of voting in the referendum announced on the basis of the citizens' petition received on 24 August 2022.

ABSTRAKT

Kryzys wywołany koronawirusem doprowadził w wymiarze niemal globalnym do istotnych ograniczeń wielu praw podstawowych, w tym prawa do głosowania. Celem artykułu jest wzbogacenie o doświadczenia państw Grupy Wyszehradzkiej rozwijającego się w ramach międzynarodowej nauki prawa nurtu badającego oddziaływanie w dłuższej perspektywie czasowej na rozwiązania wyborcze zagrożenia dla zdrowia publicznego. W opracowaniu, będącym rezultatem współpracy badawczej finansowanej przez Międzynarodowy Fundusz Wyszehradzki, opisano działania dostosowawcze wdrożone przez cztery państwa Grupy Wyszehradzkiej, które miały umożliwić przeprowadzenie w tych państwach wyborów ogólnopaństwowych lub samorządowych w trakcie globalnej pandemii. Środki te przedstawiono w sposób uwzględniający kontekst globalnych tendencji wyborczych. W oparciu o wyniki wspomnianych badań wskazano również spodziewane cechy popandemicznych ramowych warunków przeprowadzania wyborów w państwach Grupy Wyszehradzkiej. Omówiono też alternatywne reżimy wyborcze promujące elastyczność i odporność, łączące elementy tradycyjnego systemu głosowania z dodatkowymi obostrzeniami służącymi ochronie zdrowia publicznego oraz z szerokim zastosowaniem mechanizmów głosowania korespondencyjnego i elektronicznego.

Słowa kluczowe: COVID-19; zagrożenie zdrowia publicznego; wybory; Grupa Wyszehradzka