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Selected Issues of Insurgency of the Central Register of Voters (CRV)

[Wybrane zagadnienia związane z powstaniem Centralnego Rejestru Wyborców (CRW)]

Abstrakt

4 sierpnia 2023 roku – zgodnie z art. 15 ust. 1 pkt 7 ustawy z 26 stycznia 2023 r. o zmianie ustawy Kodeks wyborczy oraz niektórych innych ustaw (Dz.U. poz. 497) – uruchomiono Centralny Rejestr Wyborców. Rejestr ten zastąpił ponad 2500 dotychczas funkcjonujących rejestrów. Zmiana w tym zakresie w przekonaniu ustawodawcy podyktowana była przede wszystkim koniecznością wyeliminowania ewentualnych nieprawidłowości związanych z rozbieżnościami danych w poszczególnych rejestrach oraz możliwością powielania danych wyborców, co skutkowałoby błędami w procesie wyborczym. Nie można jednak pominąć innego – równie ważnego – argumentu: zwiększenia dostępności procesu wyborczego i samych wyborów dla wyborców. Powyższe założenia wymagają zbadania i odpowiedzi na pytanie, czy faktycznie zostały one osiągnięte. Odpowiedzi takiej udzielam w poniższym artykule. W badaniu wykorzystano metody dogmatycznoprawną oraz teoretycznoprawną.

Słowa kluczowe: prawo wyborcze, system wyborczy, procedura wyborcza, Centralny Rejestr Wyborców, wybory.

Introduction

Elections are a key process of democracy.¹ On 4 August 2023, pursuant to Article 15(1)(7) of the Act of 26 January 2023 amending the Act – the Electoral

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¹ More about that, J. L. Hall, Policy Mechanisms for Increasing Transparency in Electronic Voting, Berkeley 2008, p. 11, <https://josephhall.org/papers/jhall-phd.pdf>; J. Juchniewicz, K. Kaźmierczuk, Wolności i prawa polityczne [in:] Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej, ed. M. Chmaj, Warszawa 2016, pp. 166 and 167; R. Dahl, Demokracja i jej krytycy, Warszawa 1995, p. 233; M. Rulka, Prawo do głosowania obywateli przebywających poza granicami kraju, „Przegląd Sejmowy” 2012, 2, p. 57; T. Kowalczyk, Znaczenie zasady równości prawa wyborczego w prawie polskim przed wejściem w życie kodeksu wyborczego, „Przegląd Prawa Konstytucyjnego” 2013, 2, 14, pp. 120 and 121.

Code and certain other acts (Journal of Laws, item 497), the Central Register of Voters was launched (hereinafter referred to as CRV).² It replaced approximately 2,500 municipal voter registers, based on various IT systems, each of which contained a list of persons permanently residing in the area of a given municipality with the right to vote in elections and referendums respectively.

The guiding motive for its creation was to simplify the electoral procedure.³

The scattered database led to numerous problems with the organisation of elections and the exercise of voting rights by authorised persons, mainly in the form of difficulties in choosing as a permanent voting place the municipality of residence but other than the municipality of registration and the organisation of elections abroad, as well as the possibility of changing the voting place for a given, already specific, election. The main problem in this area arose from the possibility of multiple duplication of data, which could result in inconsistencies. In practice, the creation of the register is intended to be a kind of remedy for the possibility of a particular voter being listed in more than one register or electoral roll.⁴

According to the new regulation, each voter will be included in only one register, so by analogy the CRV will contain data on all voters, not only Polish citizens, but also foreigners eligible to vote in the electoral register.

Thus, the creation of the CRV is intended to improve the efficiency and functionality of the election system. Based on the experience of the 15 October elections, a natural question arises as to whether this assumption has been fulfilled and whether the CRV has indeed fulfilled its role in the elections. The study uses dogmatic-legal and theoretical-legal methods.

The Idea Behind the Creation of the CRV

The idea of its creation of CRV in January 2023, was not new. It was born more than a decade ago. Indeed, as early as 2012, the State Election Commission, following the 2011 parliamentary elections, reported that the existing

² Amendment of 26 January 2023 on the amendment of the Act – Electoral Code and certain other acts (Journal of Laws, item 497).

³ This procedure is the implementation of Article 62 of the Constitution of the Republic of Poland of 2 April 1997, (Journal of Laws 1997 no 78, item 483). More about active voting rights in Poland: M. Zubik, *Prawo konstytucyjne współczesnej Polski*, Warszawa 2023, p. 135; M. Chmaj, Art. 61, 62 [in:] *Komentarz do Konstytucji RP*, Warszawa 2020, p. 157 et seq. B. Naleziński, *Komentarz do art. 62 Konstytucji RP* [in:] *Konstytucja RP*, tom 1. *Komentarz*. Art. 1–86, ed. M. Safjan, L. Bosek, Warszawa 2016, p. 1432 et seq. M. Florczak-Wątor, *Komentarz do art. 62 Konstytucji RP* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019, pp. 211–213; W. Sokolewicz, K. Wojtyczek, *Komentarz do art. 62 Konstytucji RP* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. L. Garlicki, M. Zubik, Warszawa 2016, pp. 514–550; L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2023, p. 176 et seq.

⁴ A. Matlacz, 4 sierpnia ruszył Centralny Rejestr Wyborców, „Prawo.pl” <https://www.prawo.pl/samorzad/centralny-rejestr-wyborcow-uruchomienie,522515.html> [accessed: 15.10.2023].

way of regulating the voter register requires changes. The document indicated that the register needs to be changed in connection with the abolition of the registration obligation from January 1, 2014, and the abolition of the residents' registers. It was proposed that the maintenance of the voter register by municipalities should remain. However, in the absence of an official register of residents in the municipality, it was noted that it would be necessary to introduce the principle that entry in the register of electors would be made at the request of the voter. Such an application was to be submitted to the municipality in writing or electronically. Entry into the electoral register would result in the voter being deleted, *ex officio*, from the electoral register in which he or she was previously included. In addition, it was proposed to introduce the possibility of deleting a voter from the register at his or her request; under the current legislation, only European Union citizens who are not Polish citizens had this possibility. In order to exchange information between municipalities on a voter's entry in the register and on the deprivation of the right to vote, it was to be necessary to set up a central register of electors kept by the State Electoral Commission. The central register was to be a collection of data from the municipal voter registers. (...) At the same time, since the voter register is the only official confirmation of a voter's right to vote, it was proposed to set up voter registers maintained by consuls. Also these registers were to form part of the central register of voters (...)."⁵

A response to the above need was the amendment of 26 January 2023 amending the Act – Electoral Code and certain other acts (Journal of Laws, item 497), on the basis of which the Central Register of Voters, which was entrusted with collecting data on voters, including whether or not they have the right to vote, in order to confirm the possibility of participation in elections in the Republic of Poland and abroad, when verifying signatures submitted to the competent authority in connection with the intention to hold a referendum or submission of a legislative initiative by citizens, was established.⁶

Voters Register vs. Electoral Register

The electoral registers which were in operation under the previous state of the law contained a register, of all persons permanently residing in the area of the municipality who were entitled to vote, in other words, entitled to

⁵ Letter from the State Election Commission, ZPOW-430-5/12. More about that: B. Banaszak, *Kodeks wyborczy. Komentarz*, ed. B. Banaszak, Warszawa 2018, pp. 51 and 52.

⁶ More on the work on CRV after 2018: M. Pietrzak, *Wybrane doświadczenia związane z organizacją wyborów w latach 2018–2020 z perspektywy Krajowego Biura Wyborczego* [in:] *Dylematy polskiego prawa wyborczego*, ed. J. Ciapała, A. Pyrzyńska, Warszawa 2021, pp. 26 and 27.

vote in the municipality.⁷ The current CRV replaced them and thus became the basic instrument confirming the right to vote of individual voters in the elections (Article 18 § 2 El. Code).

At this point the natural question arises as to how this CRV differs from the electoral register? On the basis of the CRV, among other things, the electoral register is drawn up. In other words, the electoral register, i.e. the list of voters entitled to vote in a given election, is drawn up on the basis of the data contained in the CRV (Art. 26[3]). Each voter according to Art. 26 § 1 El. Code is, on the basis of the data from the CRV, assigned to a permanent polling district either *ex officio* or on application. The register of electors is thus a list of electors assigned to a specific vote, in a specific PEC (Article 26 § 3). Significantly, as the data contained therein may be by application, the register may include persons who have their permanent place of residence elsewhere, but in connection with their residence in the area of a particular polling station declare their willingness to vote therein; this applies, for example, to persons working away from their place of residence or travelling. However, in that situation, it should be borne in mind that in order to be added to the register, you must submit an application to be added to the register.

Crucial in this respect is that the voter is only included in one electoral register (Article 26 § 4). In the case of the recently held elections, the electoral register was regulated by the Decree of the Minister of Digitalisation of 3 August 2023 on the electoral register, published on the same day in the Journal of Laws, which contained, in parallel, a model electoral register;

- ◆ the procedure and method for compiling the register of electors, as well as for updating it;
- ◆ the template of the list of electors residing, respectively, in medical institutions, social welfare homes, correctional institutions and detention centres and the external wards of such institutions and detention centres, as well as student residences and student residence complexes in which voting districts have been established.⁸

Regulation of the CRV

Central to the regulation of the CRV is Article 18 of the Electoral Code, which indicates the objectives and tasks facing it and the entities responsible for the implementation of these objectives and tasks. In addition, this provision also defines the scope of access to the CRV by authorised bodies.

⁷ A. Kisielewicz, *Komentarz do art. 18 [in:] Kodeks wyborczy. Komentarz*, K. W. Czaplicki et al., Warszawa 2023, pp. 102 and 103.

⁸ A. Matlacz, 4 sierpnia... [accessed: 15.10.2023].

The Central Register of Voters, as already indicated, covers persons who have the right to vote; persons who are at least 18 years old; persons without the right to vote, i.e. persons deprived of public rights by a final court decision; deprived of the right to vote by a final decision of the State Tribunal; incapacitated by a final court decision. Ultimately, the CRV is to be used to determine the number of inhabitants in the permanent electoral districts and in the electoral wards, as many provisions of the Electoral Code still make certain activities dependent on the number of inhabitants (Article 18 § 1).⁹

On the other hand, the register does not include information about a person's candidacy in an ordered election.¹⁰

The maintenance of the Central Register of Voters has been entrusted to the Minister in charge of information technology, which is assumed by the legislator to be conducive to ensuring the security of personal data. In particular, it was entrusted with ensuring protection against unauthorised access to the Central Register of Voters; ensuring data integrity in the Central Register of Voters; ensuring accessibility of the ICT system in which the Central Register of Voters is kept for entities processing data in the register; preventing damage to the ICT system in which the Central Register of Voters is kept; determining the security principles of the processed data, including personal data; determining the principles of personal data breach notification; ensuring accountability of the actions performed on the data stored in the Central Register of Voters; ensuring the correctness of the data processed in the Central Register of Voters.¹¹

Access to the CRV within the framework of the tasks imposed by the legislator was granted to mayors, permanent electoral authorities, the minister in charge of information technology, the minister in charge of foreign affairs, as well as consuls.¹²

In turn, the obligation to update the data contained in the CRV has been entrusted to municipalities as a delegated task. The State Election Commission is to provide funds for this task, analogous to the existing obligation to keep local voter registers. The updating of the register is to include each change to the register. Therefore, the register will be updated each time new, changed data is entered into the CRV. It is worth noting, however, that these tasks have not been recognised as tasks delegated from the scope of government administration. Pursuant to the content of Article 8(1) of the Act of 8 March 1990 on municipal self-government (Journal of Laws of 2022, item 559, 1005,

⁹ Explanatory memorandum to the bill, print 2897, <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=2897> [accessed: 15.10.2023].

¹⁰ More about that I wrote in: B. Stępień-Załużka, *Komentarz do art. 18 [in:] Kodeks wyborczy. Komentarz*, B. Banaszak, J. Michalska, B. Stępień-Załużka, Warszawa 2023, p. 44.

¹¹ Cf. Article 18 § 4 of the Electoral Code.

¹² Cf. Article 18 § 8 of the Electoral Code. M. Małecki, *Centralny Rejestr Wyborców, bezpłatne przewozy dla gmin bez transportu. Sejm uchwalił nowelizację kodeksu wyborczego*, <https://forsal.pl/gospodarka/prawo/artykuly/8646904,sejm-nowelizacja-kodeksu-wyborczego.html> [accessed: 15.10.2023].

1079 and 1561), acts may impose on a municipality the obligation to perform tasks delegated to it from the scope of government administration, or from the scope of organisation of preparation and holding of general elections and referenda. In this respect, the legislator considered that the commissioned tasks of local government units set out in the Election Code are precisely such tasks, and not tasks of government administration, and they are defined in this way both in the Election Code and in other provisions of the draft (cf. Article 1[15] concerning Article 26 § 2 of the Code).¹³

The CRV is divided into two parts, Part One A concerning data of Polish citizens and Part Two B concerning personal data processed in the CRV of European Union citizens who are not Polish citizens and data of citizens of the United Kingdom of Great Britain and Northern Ireland who are entitled to exercise their electoral rights in the Republic of Poland.¹⁴

Among the data included in the register are: first name(s), surname, PESEL registration number, father's name, date of birth, address of permanent residence, address of permanent residence registered in connection with the change of the voting district, address of residence, information on deprivation of the right to vote. In addition, the register also contains information on the polling district which is relevant for a given person due to the place of registration or residence, as well as on the electoral district which is relevant for elections to the Sejm, Senate, European Parliament and commune councils, county councils and voivodship assemblies. It is important that the basis for including a given voter in a given precinct and ward is the address of his/her registered office or residence. In practice, it will come down to the fact that a given voter votes in that ward and precinct, the boundaries of which include the given address (Art. 18a of the El. Code).¹⁵

The correctness of the personal data in the CRV is ensured by compatibility with the PESEL register. The effect of this is that when a person turns 18 their data automatically feeds into the CRV and, similarly, any change of data in the PESEL register results in a change in the CRV (Art. 18 c § 3 El. Code).¹⁶

The data in the register shall be deleted *ex officio* in the event of death or loss of Polish citizenship (Art. 18 c § 2 El. Code), and in the case of European Union citizens who are not Polish citizens and data of citizens of the United Kingdom of Great Britain and Northern Ireland who are entitled to exercise voting rights in the Republic of Poland, also in the event of loss of citizenship of a European Union Member State other than the Republic of Poland or of

¹³ More about that I wrote in: B. Stępień-Załucka, *Komentarz do art. 18...*, p. 44.

¹⁴ *Ibid.*

¹⁵ More on yet the assumptions of the draft law in this regard, J. Borowski, *Zmiany w Kodeksie wyborczym. Projekt trafi do komisji sejmowej*, <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8610729,zmiany-kodeks-wyborczy-centralny-rejestr-wyborcow.html> [accessed: 15.10.2023].

¹⁶ More on yet the assumptions of the draft law in this regard, K. Kostrzewa, *Zmiany w Kodeksie wyborczym w Sejmie. Czy powstanie Centralny Rejestr Wyborców?*, <https://www.infor.pl/prawo/wybory/parlamentarne/5659064,zmiany-w-kodeksie-wyborczym-w-sejmie.html> [accessed: 15.10.2023].

citizenship of the United Kingdom of Great Britain and Northern Ireland; or filing of an application for removal from the Central Register of Voters.¹⁷ In practice, the above will result in data relating to Polish citizens being processed in the CRV for a period of time from their 18th birthday until their death or loss of Polish citizenship. In the case of citizens of the Member States of the European Union or of the United Kingdom of Great Britain and Northern Ireland, the data will be processed respectively from the moment of submission of an application for inclusion in the permanent electoral register to the moment of submission of an application for removal from that register or until death or loss of citizenship of any Member State.¹⁸

Functionality of the CRV

Based on the regulation of the CRV presented above, it is necessary at this point to ask the key questions about what the unified register has changed and whether it has really, as the legislator intended, led to a simplification of the electoral procedures for the voter. First of all, it should be noted that the legislator, in order to meet public expectations, created a register that is accessible at any time to the voter, as the register has online access. Using the login and password of a trusted profile, an e-card or the mCitizen application, it is possible to check one's data in the register free of charge at any time. In addition to the online form, it is also possible to check the data in the register at the municipality. Likewise, it is possible to change the data contained in the CRV or to change the voting precinct. This can also be done online.¹⁹

Hence, among the benefits of the creation of the CRV are:

(1) unification of IT solutions for all municipalities in the organisation of elections - centrally collected data on voters, including those currently added to municipal voter registers;

(2) inclusion of each voter in only one register entered for a particular ward and district;

(3) access to and operation of the central register by municipalities and electoral authorities is to take place in real time;

(4) automatic adding of voters to the polling station on the basis of their address of residence, which will be possible thanks to the integration with the PESEL register as the reference register;

(5) exemption from the need for municipalities to notify each other about adding voters to a polling station according to their place of residence, which

¹⁷ Cf. Article 18 § 4 of the Electoral Code.

¹⁸ B. Stępień-Zalucka, *Komentarz do art. 18...*, p. 50.

¹⁹ The website for this is <https://www.gov.pl/web/gov/zmien-obwod-glosowania-lub-dopisz-sie-do-crw> [accessed: 15.10.2023].

will eliminate the risk of voters being listed twice in two places and at the same time will reduce the costs of the election service;

(6) and finally the de-localisation of the issuing of voting certificates.²⁰

Thus, it should be assumed that the single register makes it easier to sign up to the electoral.

In addition, it is possible at any time to have one's data in the register and to check where the competent electoral commission is located for a given voter. As a result of the above, the CRV simplifies changing the place of voting to the maximum, both at home and abroad.²¹

Summary

The idea of unifying the electoral registers and replacing them with a single register has matured among academics, electoral law practitioners and political elites for more than a decade.²² However, the pandemic times have accelerated the processes of computerisation and electrification of the society's communication with each other but also with the state bodies. The aforementioned processes have also led to the fact that today, as a society, we have become more mobile and electronic. Hence, among societal expectations, those designed to make our everyday life easier are at the forefront, and an integral part of this life is making decisions as sovereigns and thus taking part in elections.

The legislator has recognised society's expectations in this regard and has created the Central Register of Voters. Its introduction into the electoral system has greatly facilitated the possibility of taking part in elections especially for those voters who wished, in the last election. It should also not be forgotten that the elections of 15 October 2023 achieved a turnout of 74.36 per cent, a record result in the history of free Poland. Of course, this result cannot be attributed solely to the introduction of the CRV. However, this does not change the fact that the CRV has lived up to the hopes placed in it and, through easy access to the register and the facilitation of voting outside the place of permanent registration, has also contributed to increasing this turnout.

Nevertheless, it is important to recognise that the public's expectations for the facilitation of the electoral system go much deeper, namely the introduction of e-voting, e-voting, with the CRV appearing to be a step in this direction. Hence, it remains to closely follow the legislature's steps in this regard.

²⁰ A. Matlacz, 4 sierpnia... [accessed: 15.10.2023].

²¹ Ibid.

²² M. Pietrzak, Centralny Rejestr Wyborców musi być przetestowany przed wyborami, <https://www.gazeta-prawna.pl/wiadomosci/kraj/artykuly/8681729,centralny-rejestr-wyborcow-przetestowanie-wybory.html> [accessed: 15.10.2023].

Abstract

On 4 August 2023 – pursuant to Article 15(1)(7) of the Act of 26 January 2023 amending the Electoral Code Act and certain other acts (Journal of Laws, item 497) – the Central Register of Voters was launched. This register replaced more than 2,500 previously functioning registers. The change in this respect – in the legislator’s opinion – was dictated primarily by the necessity to eliminate possible irregularities related to discrepancies of data in individual registers and the possibility of duplication of voter data, which would result in errors in the election process. However, another equally important argument cannot be overlooked, namely to make the electoral process and the elections themselves more accessible to voters. The above assumptions need to be examined and the question of whether they have actually been achieved needs to be answered. I provide such an answer in the following article. The study uses dogmatic-legal and theoretical-legal methods.

Keywords: electoral law, electoral system, electoral procedure, Central Register of Voters, elections.

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