

Title

“VOTING PER INTERNET IN THE POLISH LEGAL SYSTEM – FROM POLICY DESIGN TO POLICY PRACTICE”

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Abstract

The main aim of this paper is to analyze the institution of the voting per Internet, which – as a special form of e-voting – is based on the use of the Internet in the casting votes by the electorate in elections. Considerations are conducted from the perspective of the Polish legal system and the Polish public administration. For the purposes of presented paper, the institution of voting per Internet will be considered as one of the challenges of contemporary electoral law and as one of the challenges of modern public administration in Poland. In this paper will be presented and verified a significant research hypothesis, assuming the legitimacy of introducing in the future – in the long-term perspective – the discussed institution in the Polish policy practice.

Points for Practitioners

Results of the paper can be applicable for practitioners, especially for public authorities, which will undertake reform of electoral system in Poland in the area of the voting per Internet.

Key words

alternative voting procedure, electronic voting, e-voting, electoral law, elections (voting) per Internet, distant electronic voting

Intruduction

My paper is centred around an analysis of the institution of the voting per Internet in the Polish legal system¹. In my opinion, it is appropriate at the outset to answer the fundamental question why is voting per Internet in Poland a topic worth presenting in this paper?

In my opinion, undertaking consideration in the presented area is particularly important because in the Polish law and in the doctrine of public administration this topic has not been comprehensively discussed and described so far. It must be also emphasized that this paper is an essential component of research in the field of the institution of voting per Internet.

At the same time, it should be emphasized that currently there are formulated in Poland sometimes policy projects which are based on the use in the future the institution of voting per Internet in the Polish public administration system and in the Polish political practice (both at the national level – e.g. during

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¹ The institution of voting per Internet can be also, among others, described as “Internet-based elections” or “elections over the Internet”. For the purpose of this paper, the term “voting per Internet” will be used to identify this institution (as indicated in the title).

parliamentary and presidential elections, as well as at the local level). This research approach will additionally take into account the fact that introduction of voting per Internet to the Polish policy practice is supported by various factors including *inter alia* the policy of public authorities, gradual implementation of reforms aimed at creating and developing modern public administration system (e-Government), both in the country and on the EU level, as well as considerable support for this mechanism among the public in Poland.

In addition, however, the following factors should also be considered and taken into account in this regard: 1) previous experiences of other countries in the implementation of voting per Internet; 2) the fact that we can observe a slow process of introduction of e-voting systems across Europe; 3) the fact that voting per Internet (as well as all e-voting procedures) are quite a controversial issue and require a comprehensive cost-benefits analysis and in-depth research.

From the point of view of presented paper the institution of the voting per Internet will be in this context analysed both at the stage of policy design and the policy practice in Poland (with simultaneous consideration of other countries e-voting projects and compare them to Poland's case). An important research hypothesis which posits the appropriateness of introducing of this institution in the future in Polish policy practice – in the long run – on a large scale will be presented and verified.

Main Body of Paper – Methodology

The research methodology assumes the application of, in particular, an analytical method. In the field of analytical method the author of this paper analyzes contemporary Polish legal regulations, Polish policy practice and key doctrinal views on institution of the voting per Internet. What's more, the comparative method will also be used to a limited extent (in order to present other countries e-voting projects against the background of Polish activities in this field).

Main Body of Paper – Titles und Subtitles

1. THE MAIN ASSUMPTIONS OF THE INSTITUTION OF VOTING PER INTERNET AND E-VOTING

Voting per Internet is an institution known in electoral law and in public administration systems from a relatively short time. This institution can even be considered a novelty.

The institution of voting per Internet – considered as a challenge of contemporary electoral law and as a challenge of modern public administration – is currently very important from the perspective of many modern countries (including Poland), as well as has been the subject of international interest for some time. In this light, it is worth pointing out at the same time that the institution of voting per Internet has been known for a certain time to a greater or lesser extent in the electoral law and in public administration systems of several modern states, including the United States – which are the leader of use of electronic methods of voting² – and Estonia, where in 2005 first state elections (local government elections) with

² Compare: M. Musiał-Karg, *Elektroniczne głosowanie. Wybrane dylematy dotyczące e-votingu*, [in:] M. Marczevska Rytko, *Demokracja elektroniczna. Kontrowersje i dylematy*, Lublin 2013, p. 84; R. Balicki, A. Preisner, *e-Voting – szanse, możliwości, zagrożenia*, [in:] S. Grabowska, R. Grabowski (ed.), *Alternatywne sposoby głosowania a aktywizacja elektoratu. Międzynarodowa Konferencja Naukowa. Rzeszów 26-27 marca 2007 r.*, Rzeszów 2007, p. 59 and the following.; K.W. Czaplicki, *Alternatywne sposoby głosowania (Zarys problemów)*, [in:] S. Grabowska, R. Grabowski (ed.), *Alternatywne sposoby głosowania a aktywizacja elektoratu. Międzynarodowa Konferencja Naukowa. Rzeszów 26-27 marca 2007 r.*, Rzeszów 2007, p. 33 and the following.

the use of Internet were organised (Internet-based elections)³. From the European perspective, it is worth pointing out that the institution of voting per Internet is the subject of research and analysis of such international organizations as, inter alia, The Council of Europe, and in its framework in particular, is the subject of interest of the European Commission for Democracy through Law (and therefore the so-called “Venice Commission”)⁴.

From a theoretical perspective, the term “voting per Internet” can be defined as 1) one of a non-traditional methods of voting and 2) one of the methods of voting by voters (voting in the physical sense) in elections. Institution of voting per Internet is based on the use of the Internet in the casting votes by the electorate in elections.

According to this institution, the votes in the elections are cast remotely from a random location via Internet using a personal computer – or other similar electronic device (mean) – or using a computer or other similar electronic device (mean) located in any public place⁵. In that case admission and counting of votes cast by voters via the Internet occurs through a central computer voting system.

Voting per Internet is one of the techniques of remote electronic voting (also referred to as “e-voting”). It is also worth pointing out that the concept of “remote electronic voting” / “e-voting” – broader from the concept of “voting per Internet” – can be understood as electoral procedures based on the mechanism of voting (in the physical sense) by voters in elections through various electronic devices (means), which remain outside the polling station⁶. E-voting is a non-traditional method of voting.

It is worth emphasizing that e-voting is based on using in the procedure of physical voting in the elections of various types of electronic devices (means) that are not in the polling station itself, but are located outside its immediate area. Among other techniques of e-voting⁷ – apart from voting via the Internet – are techniques such as, in particular, voting using a telephone (including a mobile phone) or other similar device (whereby a voting may take place in this case, among others, using SMS messages) and voting by means of television systems⁸.

Complementing the above considerations, it can be indicated at the same time that the concept of voting per Internet – perceived as one of the e-voting techniques – can also be considered within an even broader category of procedures, which can be described very generally as “electronic voting”. Very widely recognized category of electronic voting involves a voting – or, more precisely, the donation by the voter to vote in the elections (in the physical sense) – using various electronic devices (means): both located in the polling station (e.g. voting machines) and located outside its borders⁹.

³ See also: U. Madise, T. Martens, *E-voting in Estonia 2005. The first practice of country-wide binding Internet voting in the world*, [in:] R. Krimmer (ed.), *Electronic Voting 2006. 2nd International Workshop Co-organized by Council of Europe, ESF TED, IFIP WG 8.5 and E-Voting CC, August, 2 nd-4th, 2006 in Castle Hofen, Bregenz, Austria, Bonn 2006, Gessellschaft fur Informatik*, p.15; R. Balicki, A. Preisner, *e-Voting – szanse...*, p. 70-71; K.W. Czaplicki, *Alternatywne sposoby głosowania...*, p. 37 and the following.

⁴ See wider: K.W. Czaplicki, *Alternatywne sposoby głosowania...*, p. 34.

⁵ Voting may in this case be carried out using special internet kiosks placed in various public places.

⁶ Compare: K.W. Czaplicki, *Alternatywne sposoby głosowania...*, p. 32, 38; J. Zbieranek, *Alternatywne procedury głosowania w Polsce na tle państw Unii Europejskiej*, „Studia Biura Analiz Sejmowych” 2011, no. 3 (27), p. 102.

⁷ Compare K.W. Czaplicki, *Alternatywne sposoby głosowania...*, p. 32, 38; J. Zbieranek, op.cit., p. 102.

⁸ This is particularly about voting using digital or interactive television.

⁹ Compare: M. Musiał-Karg, *Elektroniczne...*, p. 82.

It should be also noted that voting via Internet forms the most popular method of carrying out electronic voting¹⁰. Moreover, it is thus noteworthy that all forms of electronic voting (including voting per Internet) may be theoretically applied in all kinds of elections (e.g. parliamentary, presidential or to local authorities)¹¹.

Presenting the assumptions of the institution of the voting per Internet, it is worth pointing out in this article that this institution – as well as all other electronic voting procedures – should be treated as an alternative voting procedure, which in the systemic approach shall be differentiated from traditional election procedures known in the law of elections in many countries, which involve electronic voting only in polling stations and solely with the use of traditional voting cards, and where the election outcome is determined by traditional means.

2. THE INSTITUTION OF VOTING PER INTERNET FROM THE PERSPECTIVE OF THE POLISH LEGAL SYSTEM AND THE POLISH PUBLIC ADMINISTRATION (AGAINST THE BACKGROUND OF EXPERIENCE OF OTHER COUNTRIES)

In order to signal the existing experience of Poland and other contemporary states, it is worth presenting a general thesis here and indicating that voting per Internet is not an institution that is too widespread in the systemic practice. It can even be said that voting per Internet is – admittedly – an institution considered in many countries at the theoretical level, but at the same time – in spite of everything – it is not implemented on a large scale (at least at present) in systemic practice. In this context, it is also possible to express the view that generally we can observe a slow process of introduction of e-voting systems across Europe.

Such a tendency is also observable in Poland. In Polish legal system the institution of voting per Internet has not been at all *expressis verbis* admitted, nor prohibited in the Constitution of the Republic of Poland from 2 April 1997. What's more, the institution of voting per Internet has not yet been introduced so far to the Polish legal system in any of the statutes (including the Elections Code).

Presented circumstances do not deny the possibility of verifying the accuracy of the significant research hypothesis, assuming the legitimacy of introducing in the future – in the long-term perspective – the discussed institution in the Polish policy practice. What is important, the systemic experience of several modern countries in the field of voting per Internet – including, above all, systemic experiences in this area of countries such as the United States and Estonia (as well as experience from, among others, Switzerland and Great Britain) – allow provide several valuable proposals regarding the manner in which the institution of voting per Internet can be introduced into the Polish systemic practice.

In this context – in my opinion – the systemic experience of Estonia seems to be worth mentioning above all. Recalling the systemic political experience of this country in the field of voting per Internet seems particularly justified due to this unquestionable fact that in this country – unlike the United States, Switzerland or Great Britain – for several years invariably (and at a national level and in relation to

¹⁰ L. Porębski *Triumf demokracji czy początek prawdziwych kłopotów? Wokół idei głosowania elektronicznego*, [in:] M. Musiał-Karg (ed.), *Demokracja w obliczu nowych mediów. Elektroniczna demokracja, wybory przez Internet, kampania w sieci – teoria, doświadczenia, perspektywy*, Toruń 2013, p. 40.

¹¹ Compare: M. Musiał-Karg, *Elektroniczne...*, p. 84.

various electoral procedures – for example, parliamentary and local elections), Internet elections are successfully carried out¹².

It is also worth pointing out that the Estonian electoral law determines for the Internet elections the same basic conditions as for the traditional voting procedure in the polling station. In this context, it must be pointed out that in the case of voting per Internet – as in the case of a traditional electoral procedure – only the authorized person can cast the vote and – at the same time – the voter can only cast one vote in both cases.

Significantly, an identification card (in other words – an ID card) is used to identify voters in Estonia (who vote through the Internet). Such a card may be an identity card or a driving license equipped with a so-called “chip” (microprocessor adapted to store cryptographic keys). In addition, it is required to use a special reader, which the voter must purchase on their own¹³. This type of ID card – used to identify a particular voter – is very widespread in the systemic practice of Estonia, because – as pointed out in the literature on the subject – it has more than 850 000 citizens (thus the vast majority of those entitled to participate in the elections in Estonia)¹⁴. At the same time, it should be noted that the above mentioned ID card allows the use of a secure electronic signature after voting per Internet.

A voter in the framework of the discussed procedure vote electronically on the website of the state electoral commission in Estonia. Voting takes place via an electronic device – e.g. a computer – equipped with a specific internet browser. In this case, the voter casts a vote on the candidate selected by him from the list of candidates, which is displayed on the computer monitor (device display) and – subsequently – voting is confirmed by the relevant information on this page.

What is important, in order to vote per Internet in Estonia, two passwords are required (one related to the voter register and the other with the ID card). The act of voting itself, in turn, must be accompanied by a secure electronic signature of the voter. The secure electronic signature – filed by the voter for the purpose of secrecy of voting – is then removed after the electoral card has been accepted by the election commission¹⁵.

It is also worth noting that there are several specific Internet-based election rules carried out in Estonia. The specific rules of voting per Internet in Estonian electoral law include, in particular, such principles as: 1) conducting this procedure between 6 and 4 days before the election day; 2) the possibility of electronically repeating the vote (the voter may in this case again cast his vote and the previous one is automatically canceled); 3) the option of canceling an electronically casting vote by means of a traditional vote on the day of the election in the polling station – but this is possible only under special conditions (such as, for example, limiting the possibility of voting in such a situation by 5 p.m.)¹⁶.

Taking into account all the previous considerations regarding the institution of elections via the Internet, I can repeat the already expressed view in this paper that it is justified to introduce *pro futuro* the discussed institution in the current electoral law and in the Polish public administration system.

¹² Regarding the systemic experience of the United States, Switzerland and the United Kingdom in this area, see in particular R. Balicki, A. Preisner, *e-Voting – szanse...*, p. 60 and the following.

¹³ Compare R. Balicki, A. Preisner, *e-Voting – szanse...*, p. 70.

¹⁴ K.W. Czaplicki, *Alternatywne sposoby głosowania...*, p. 37.

¹⁵ Doubts, however, express R. Balicki and A. Preisner. Compare R. Balicki, A. Preisner, *e-Voting – szanse...*, p. 70.

¹⁶ Compare K.W. Czaplicki, *Alternatywne sposoby głosowania...*, p. 37-38.

Bearing in mind the specificity of the institution of voting per Internet, I also express the view that – despite some difficulties and threats related to the introduction of the discussed procedure (e.g. potentially high costs and difficulties in ensuring a high level of security for electoral decisions made during internet voting) – it seems reasonable to introduce the future of Internet-wide election institutions on a large scale in today's electoral law and today's public administration system in Poland.

At the same time, it should be pointed out that the legitimacy of introducing of the institution of voting per Internet on a large scale in today's electoral law may be supported by numerous advantages of such a voting procedure. In this context, it is worth pointing out in particular that voting per Internet increase the convenience of voting and give a chance to offset the phenomenon of compulsory absences¹⁷ and increase voter turnout. These advantages, in my opinion, outweigh the disadvantages of voting per Internet and the risks potentially associated with this form of voting (related, for example, to the possibility of violating the secrecy of voting per Internet or manipulation of cast votes).

What is more, the axiology of the Polish Constitution seems to be prejudicial to the introduction of online voting institutions in Poland in the future. From the preamble to the Constitution of 1997, we can interpret the postulates of providing Polish public institutions with reliability and efficiency, justifying the introduction of such an institution into the Polish legal order and the Polish public administration system (which can, of course, take place only on the condition of creating a secure and stable system enabling voting through voters per Internet).

Having the above in mind, I also express the view that voting per Internet seem to be the more legitimate institution to be introduced on a large scale in the modern electoral law and in the modern public administration system due to the relatively broad public support in Poland for this type of procedure voting in elections. An example may be the results of public opinion polls conducted in this field in Poland and appropriate postulates formulated in relation to voting per Internet in the public debate¹⁸. As results from the available polls in Poland, the possibility of voting per Internet is supported by 76% of Poles¹⁹.

Given the above, it should be additionally stipulated – in spite of everything – that the issue of the possible introduction of large-scale online election institutions in the future in Poland in electoral law and in the public administration system should be considered only in the longer term.

An additional question may also arise in this place: on what principles could possibly take place in Poland rational and effective use of the institution of voting per Internet? In this context I express my opinion that the potential introduction of the institution of voting per Internet into the Polish legal system and to the public administration system in Poland would have to be preceded by – as in Great Britain – extensive and reliable studies of the real possibilities of application, in the Polish systemic conditions, of the above mentioned solutions considering technological requirements (especially security), as well as by a thorough analysis of the costs of implementation of this solution. It would allow to avoid negative consequences of implementation of an underdeveloped, too burdensome for the state budget, procedure of electronic voting. What is important, only if the analysis of the costs of introducing an institution of voting per Internet would be positively completed and if the results of the research and pilot studies – indicated above – would be positive, the introduction of the institution should be considered as fully legitimate in specific systemic and political conditions in Poland.

¹⁷ Compulsory absenteeism occurs when the voter shows the will to vote in the election, however – in spite of everything – for reasons beyond his control, he finally does not take part in the election.

¹⁸ Compare J. Zbieranek, *op. cit.*, s. 115.

¹⁹ Informations are available at:

<http://zmieniacunie.money.pl/ewybory;glosowanie;przez;internet;recepta;na;niska;frekwencje,168,0,1535400.html>.

Recognizing that it is justified to introduce in the future – in long term perspective – an institution of voting per Internet in the Polish electoral law and in the Polish public administration system (of course with the simultaneous consideration of the comments made above) allows me to present the next thesis that the introduction *pro futuro* in Poland of the institution of voting per Internet should be made using – as much as possible – systemic experiences of other countries in this area. At the same time, it can be pointed out in this context that the present system experiences of Estonia can be particularly valuable for Poland at the moment.

Moreover, one should be aware that the introduction of such an institution into the legal system is primarily a political decision and, therefore, it should be taken into account that a significant role in the possibility of actually introducing such an institution into the legal system is played by the politicians.

Conclusion

In conclusion I can formulate a fundamental thesis that it seems reasonable to introduce – in the longer term – the institution of voting per Internet on a large scale in the contemporary Polish electoral law and in the Polish public administration system.

In this context I express also my opinion that the introduction of the institution of voting per Internet in the future in Poland – discussed in this paper – should be preceded by 1) a comprehensive analysis of the costs of introducing this institution in Poland and 2) reliable research, devoted both to the real possibilities of using the discussed procedure in the realities of a specific Polish law and Polish public administration system, as well as technological requirements related to it.

In case of introduction of the institution of voting per Internet in the future in Poland it would be necessary – as much as possible – make use of the existing system experiences in this area (in particular, experiences of Estonia).

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