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Considerations on the Subject of Electoral Law

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As is well known, the state's electoral system is made up of provisions regulating the manner of holding elections, with particular emphasis on the method of counting votes. This element is of particular importance in parliamentary elections. Importantly, other regulations are generally in force in elections to different houses of parliament in the same country.¹ Considerations on the advantages and disadvantages of electoral systems lead to the conclusion that the commonly used electoral systems have a number of disadvantages.² They accompany both the majority and the mixed system.

The simplest form of majority system, ie a relative majority in single-member constituencies, assumes the victory of the candidate who obtains the greatest support from voters. This solution has many advantages but also a number of disadvantages.³ The main ones are: 1) the so-called lost votes – votes cast for unsuccessful candidates are “lost”, 2) pressure to which the voter is subjected to the phenomenon of lost votes – he may

¹ J. Filip, *Inżynieria wyborcza i system wyborczy w kontekście zmian ordynacji wyborczych*, „Przegląd Prawa Konstytucyjnego” 2010, no. 1, p. 31.

² W. Sokół, *Zmiana systemu wyborczego jako problem badawczy*, „Przegląd Prawa Konstytucyjnego” 2021, no. 5, p. 19, <https://doi.org/10.15804/ppk.2021.05.01>

³ J. Buczkowski, *Podstawowe zasady prawa wyborczego III Rzeczypospolitej*, Lublin 1998, p. 304.

fear that his vote will be “lost”, vote for the most popular candidate or the strongest political party, 3) tendency to vote for candidates identified with parties, especially strong ones – as a result, the chances of independent candidates decrease, the regionalization of support, especially when the region is the “mainstay” of one of the parties, 6) the majority of seats in the parliament may be filled by a party that obtained fewer votes than the other parties combined.

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152 The creation of a proportional system was intended, in the intention of its creators, to eliminate these drawbacks. The advantage of this system is that seats are allocated to political parties in proportion to the number of votes obtained. The disadvantage of this solution is the necessity to count the votes. However, individual methods (d’Hondt, Sainte-Laguë, Hare, Droop, Hagenbach-Bischoff) distort the election results. The d’Hont method favors large political parties, while discriminating against the smallest. Sainte-Laguë, in turn, reduces the differences between the number of seats won by individual parties. The choice of the vote counting method thus becomes one of the most important factors influencing the election results. The proportional system also has other disadvantages. These are: 1) the dismemberment of the parliament due to the large number of small and medium-sized political parties, 2) the use of prohibitive clauses (so-called election thresholds) to prevent the dismemberment of the parliament, 3) facilitating the entry of parliament by populist parties, 4) minimal chances of gaining a mandate by an independent candidate, 5) lack of ties between the holder of the mandate and voters, 6) “illegibility” of the rules for assigning seats, 7) creating lists of candidates by political parties allows them to manipulate the election results – only candidates who are trusted by the party authorities are placed on them, and obtaining a mandate is often determined by the position on the list.

Despite the fact that neither the majority nor the proportional system is free from disadvantages,⁴ it is the proportional system that dominates in modern European countries. It seems that in order to take advantage of the advantages of both these systems, while rejecting their disadvantages, mixed systems should be created. You can even come

⁴ *Ibidem*, pp. 327–328.

across the opinion that the mixed system will dominate in the 21st century.⁵ This idea, although correct, faces one basic problem: the lack of an indisputable definition of a mixed electoral system. The fact that the combined system has the features of majority and proportional systems does not raise any doubts. Arkadiusz Żukowski claims that in the mixed system “depending on the needs, the features of the majority or proportional system prevail”.⁶ The fact is, however, that there are majoritarian systems with elements traditionally assigned to proportional systems (e.g. dual-mandate districts in Egypt, multi-mandate districts in Mali, the national list in Morocco), or proportional systems with elements of majoritarian systems (e.g. the stop clause). However, despite the often large number of such “borrowed” elements, we still deal with majoritarian systems, or with proportional systems, not with mixed ones.⁷ Incidentally, it can be said that in practice “pure” electoral systems are very rare, as most electoral regulations differ from the textbook pattern of the majority or mixed system. The exceptions are the Netherlands and Israel, whose proportional electoral systems are described as “pure”.⁸

The above doubts are reinforced by D. Nohlen, who proves that there is no mixed electoral system, but only combined systems. It indicates majority systems with elements of proportional systems and proportional systems with elements of majority systems as combined. In this context, another conclusion by D. Nohlen seems interesting, as he believes that the only authentic mixed electoral system was proposed by Sartori, and that it should be correctly defined as a segmental system.⁹ At the same time, it is not only a theoretical construction, as it is possible to indicate a number of countries whose electoral systems can be described as segmental.¹⁰

⁵ S. Gebethner, *Aksjologiczne aspekty systemów wyborczych w ujęciu porównawczym*, [in:] *Międzynarodowa Konferencja Naukowa nt.: Prawo wyborcze do parlamentu w wybranych państwach europejskich*, eds. S. Grabowska, R. Grabowski, Rzeszów 2006.

⁶ A. Żukowski, *Systemy wyborcze. Wprowadzenie*, Olsztyn 1999, p. 67.

⁷ K. Składowski, S. Grabowska, *Podstawowe pojęcia z zakresu prawa wyborczego*, [in:] *Prawo wyborcze do parlamentu w wybranych państwach europejskich*, eds. S. Grabowska, K. Składowski, Kraków 2006, pp. 11–20; B. Michalak, *Polish Electoral System to the European Parliament: Its Drawbacks and Alternatives*, „Przegląd Prawa Konstytucyjnego” 2019, no. 5, p. 109, <https://doi.org/10.15804/ppk.2019.05.05>

⁸ D. Nohlen, *Prawo wyborcze i system partyjny. O teorii systemów wyborczych*, Warszawa 2004, tab. 24.

⁹ *Ibidem*, p. 131.

¹⁰ *Mixed-Member Electoral Systems. The of Both Worlds?*, eds. M. Shugart, M.P. Wattenberg, Oxford 2001.

3.

A characteristic feature of the system referred to as the segmented system is the possibility of gaining a seat in a particular chamber of parliament either through elections conducted according to the majority system or according to the proportional system. For this purpose, the ordinance should indicate the number of seats in single-member constituencies (majority system) and the number of seats in a multi-member constituency covering the entire territory of the state (proportional system). In the segment system, voters have two votes. When organizing elections to fill seats in the House, two parallel votes are held. Each of them takes place under a different system. Thus, the electoral system of a country applying such a solution consists, to some extent, of two segments. This solution seems to be not only an interesting solution to the problem of the superiority of the majority or proportional system, but also has a number of advantages, primarily from the point of view of the voter.¹¹

It seems that the segment system has a future, also in Poland, which is clearly facing the problem of changing the law on elections to the Sejm.¹² The confirmation of this thesis can be found in the statistical data. Out of 44 European countries, 34 countries use the proportional system, the majority system is used by 3 countries (Great Britain, France and Belarus),¹³ the compensation system is close to the segment system, and 3 countries are used (Albania, Hungary, Italy).¹⁴ The segment system is used in 4 European countries: Lithuania, Macedonia, Ukraine and Russia.¹⁵ This solution was also introduced by Azerbaijan and Georgia, benefiting from European models. Many features of the segment system can be found in the German law.¹⁶

¹¹ F. Thames, A. Edwards, *Differentiating Mixed-Member Electoral Systems*, „Comparative Political Studies” 2006, no. 1.

¹² B. Michalak, *Mieszane systemy wyborcze. Cele, rozwiązania, konsekwencje*, Toruń 2013.

¹³ A. Kazuła, *System wyborczy do niższej izby parlamentu i jego wpływ na system partyjny – przykład Polski i Wielkiej Brytanii*, „Studia Wyborcze” 2014, vol. 18, pp. 33–50.

¹⁴ A.T. Nagy, *Hungarian Electoral System and Procedure*, Budapest 2015.

¹⁵ D. Sześciło, *Mieszany system wyborczy w państwach Europy Środkowej i Wschodniej*, <https://www.batory.org.pl/upload/files/Programy%20operacyjne/Masz%20Glos/Politycy%20Paper%20Dawida%20Szescilo.pdf> (accessed: 10.02.2022); M. Jarentowski, *Mieszany system wyborczy w wersji „kombinacyjnej” jako sposób wzmocnienia dużych partii politycznych na przykładzie Litwy*, „Przegląd Polityczny” 2013, no. 4.

¹⁶ J.A. Karp, *Political Knowledge about Electoral Rules: Comparing Mixed Member Proportional Systems in Germany and New Zealand*, „Electoral Studies” 2006, no. 25.

4.

The functioning of the segment system can be assessed by referring to the example of a country close to Poland – Lithuania in many respects.¹⁷ The Republic of Lithuania is divided into 71 single-member constituencies with a majority system. In single-member constituencies, only voters entered on the electoral lists in a given constituency vote. The Central Electoral Commission shall divide the territory of the state into single-member constituencies. When determining the boundaries of these districts, the Central Electoral Commission takes into account the following criteria: 1) the number of inhabitants in the constituency (the number of voters in the constituency must be between 0.8 and 1.2 of the average number of voters in all single-member constituencies), 2) the division of the territory of Lithuania into single-member constituencies during the previous elections to the Seimas, 3) territorial division of the Republic of Lithuania.

The first criterion is clearly aimed at dividing the territory of the state into districts in such a way as to eliminate disproportions between them, which is important as there is one seat to fill in each of the districts. The territory of the entire country is, however, one multi-member district with a proportional system. 70 seats remain to be filled in the multi-member national constituency. All eligible voters have the right to vote in this district.¹⁸

The procedure for proposing candidates to the parliament is determined, in accordance with Art. 55 of the Lithuanian Constitution,¹⁹ law. The nomination of candidates is not restricted to registered political parties and organizations. Every citizen with the right to vote may submit his / her candidacy. However, it can only do so in a single-member constituency, provided that it obtains the support of at least 1,000 inhabitants of a given constituency, who have the right to vote. Lithuanian law prohibits one person from standing in multiple single-member constituencies or from multiple electoral lists submitted in a nationwide multi-member constituency. It does not, however, prohibit the commonly practiced simultaneous standing in a single-member and multi-member constituency.²⁰

A consequence of the operation of the segmental electoral system is that every person entitled to vote is granted two votes. He votes for one

¹⁷ R. Grabowski, *Prawo wyborcze do parlamentu Republiki Litewskiej*, [in:] *Prawo wyborcze do parlamentu w wybranych...*, p. 210.

¹⁸ J. Zieliński, *Seimas parlament Litwy*, Warszawa 2003.

¹⁹ *Konstytucja Republiki Litewskiej z dnia 25 października 1992 r.*, Warszawa 2000.

²⁰ Z. Vaigauskas, *Wybory w Republice Litewskiej: oczekiwania i rzeczywistość*, [in:] *Międzynarodowa konferencja naukowa pt. Prawo wyborcze i system partyjny na Litwie i w Polsce: teoria i praktyka*, ed. Z. Vaigauskas, Wilno 2013, p. 9.

candidate in a single-member constituency, and the other one for one of the lists presented by a party or organization. By voting for a candidate from the list proposed in the national multi-member constituency, the voter may express his preferences. It is possible to vote not only by selecting one of the candidates, but also by deleting unsupported candidates or changing the order of candidates placed on a given list.²¹

The elections are held on the basis of the Seimas Election Law of 1992, amended several times.²² The law provides that each citizen casts two votes: one for a candidate from his constituency, the other for a candidate from the national list. Votes cast for candidates nominated in single-member constituencies are counted according to the majority system. For the elections to be valid, a turnout of 40% is required. The election winner in the single-member constituency is the candidate who was supported by the majority of voters. Second voting is ordered at lower turnout. Votes cast for candidates nominated in the national multi-member constituency are counted according to the proportional system. In addition, there are electoral thresholds: five percent for political parties and organizations, and seven percent for their coalitions formed in order to jointly run in elections. The requirement to exceed a certain election threshold also applies to national minorities, which makes it difficult for them to introduce their representatives to parliament. The minimum turnout in a multi-member constituency is set by the Seimas electoral law at 25%.²³

The method of counting votes is a consequence of selecting a specific system. In the case of 71 single-member constituencies, selecting the winner of the vote is relatively simple. The election winner is the candidate who obtains an absolute majority of validly cast votes (ie 50% + 1 vote), with a minimum attendance of 25%. If none of the candidates obtains such support, an additional vote (second round) is ordered. The 2 candidates who obtained the largest number of valid votes cast in the first vote take part in such voting. The winner of the re-voting is the candidate who obtains a simple majority, so more voters will vote for him.²⁴

If there are only two candidates in a single-member constituency and neither of them obtains an absolute majority, a new vote is ordered. In

²¹ P. Sobik, *Funkcjonowanie mieszanego systemu wyborczego na Litwie*, „Wschodnioznawstwo” 2012, no. 6, pp. 291–303.

²² *Wybory w 2020 r.*, <https://www.vrk.lt/documents/10180/714878/Wybory-5.pdf/df2cdb3a-ef6a-4556-a6d7-cb46c6a9eaff> (accessed: 20.01.2022).

²³ K. Sidorkiewicz, *Wybory do Parlamentu Europejskiego na Litwie w 2014 roku – udział mniejszości polskiej*, „Przegląd Prawa Konstytucyjnego” 2015, no. 3, p. 107, <https://doi.org/10.15804/ppk.2015.03.05>

²⁴ S. Katuoka, *Zasady prawa wyborczego*, [in:] *Międzynarodowa konferencja naukowa pt. Prawo...*, p. 151.

such a case, the entire election procedure, including nominating candidates, should be repeated from the beginning. Thus, such voting may be run by persons who did not apply for a mandate in an earlier vote. In the event of the expiry of the mandate won in a single-member constituency, supplementary elections are ordered.

In the case of a nationwide multi-member constituency, one can speak of a great complexity when it comes to counting the votes cast. This is due to the majority system in force in this voting, which enables voters to express individual preferences. In Lithuania, the Hare system was used as a method of counting votes (the amount and the largest residuals). The distribution of seats in a multi-member constituency begins with determining whether political parties and organizations that exceeded the election threshold obtained a total of 60% of the votes cast in that constituency. If this requirement is not met, the right to participate in the distribution of seats is granted to subsequent groupings, up to the level of more than 60%. The first step when converting the number of votes obtained into mandates is to determine the so-called amounts. To this end, the sum of the votes cast is divided by the number of seats to be filled. The next step is to divide the number of votes cast on a given list by the amount. As a result of dividing these results by the amount, we obtain information on how many mandates are allocated to individual lists. If as a result of the allocation of seats in accordance with the above rules, there are still vacancies, the largest residual rule applies. Free seats are allocated in order to those parties or organizations which, as a result of the division, have the largest remaining votes, ie the largest “unused” number of votes cast. Candidates receive seats in the order listed in the electoral list of a given party, excluding those who obtained a seat in one of the single-member constituencies.²⁵

5.

It remains an open question whether the segment system, combining majoritarian and proportional systems, contains the disadvantages of both, or eliminates them because they cancel each other out. It is certain, however, that this is a compromise system. Politicians do not have to abandon the

²⁵ R. Piličiauskas, *Podstawowe zasady oraz ograniczenia prawa do wolnych wyborów na podstawie orzecznictwa Litewskiego Najwyższego Sądu Administracyjnego i Europejskiego Trybunału Praw Człowieka*, [in:] *Międzynarodowa konferencja naukowa pt. Prawo...*, p. 124.

proportional system, which they support, due to the great possibility of political parties influencing the final result of the elections by means of an appropriately constructed electoral law. Voters, in turn, can benefit from the advantages of a simple and clear, and thus understandable majority system. Regardless of the opinion of theoreticians, society invariably supports the majority system, valuing in it transparency and clear rules deciding which candidate wins the mandate.

6.

The results of the research show that Poles have similar views on electoral systems. As an example, one can cite the survey no. BS / 143/2004 conducted in August 2004 by the Public Opinion Research Center, under the name of "Majority or proportional elections".²⁶ The first question was: "Some countries have a so-called majority electoral system in which only the single most voting member is elected in a constituency. In other countries, including Poland, the electoral system is proportional, i.e. several or even a dozen deputies are elected in one constituency, and seats are divided proportionally to the number of votes cast on the lists of individual parties. What election system is in your opinion better?" The answers were as follows: the majority system – 43%, the proportional system – 16%, I don't care – 28%, hard to say – 13%

In July 2015, the Public Opinion Research Center again conducted research on this topic, asking the following question: There are different ways of electing members of parliament. What method of selection is, in your opinion, the best and worth applying in Poland? The answers were as follows: majority system – 35%, proportional system – 14%, mixed system 17%, it does not matter to me – 25%, hard to say – 9%.²⁷

The list prepared by A. Gendźwił shows that the majority system was supported by: in 2000 – 44%, in 2002 – 34%, in 2004 – 34%, in 2006 – 36%, in 2007 – 38%, and in 2015 – only 35%; proportional system: in 2000 – 16%, in 2002 – 19%, in 2004 – 16%, in 2006 – 16%, in 2007 – 19%, and in 2015 – only 14%; while the mixed system: in 2006 – 9%, in 2007 – 10%, and in 2015 – as much as 17%.

²⁶ M. Strzeszewski, *Wybory większościowe czy proporcjonalne*, Komunikat z badań, no. BS/143/2004, p. 2, http://www.cbos.pl/SPISKOM.POL/2004/K_143_04.PDF (accessed: 10.01.2022).

²⁷ A. Gendźwił, *Jakiego systemu wyborczego chcą Polacy?*, Komunikat z badań, no. 94/2015, p. 4, https://www.cbos.pl/SPISKOM.POL/2015/K_094_15.PDF (accessed: 10.01.2022).

As the research conducted in 2000-2015 shows, support for the majority system is decreasing, support for the proportional system remains at a similar level, and support for the mixed system is growing.²⁸ The percentage of people who are indifferent to the electoral system remains at a similar level, while the percentage of undecided people is decreasing.

7.

As you can see, the opinion of the public, or perhaps it would be more accurate to say, the opinion of the sovereign differs significantly from the opinion of experts and politicians. This is undoubtedly an area of dispute taking place on the occasion of postulates to change the electoral law to the Sejm. It is interesting that the first official proposals to change the ordinance to “mixed” appear. It cannot be ruled out that when working on changes to the electoral law, politicians and experts will take into account the opinions of the public, and reaching a compromise will facilitate the use of a solution that satisfies everyone – the introduction of a segment system in Poland.

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²⁸ The results for the years 2006-2015 are not fully comparable with the previous ones, because in the latest research the question was asked in a different wording and the category “mixed system” was added to the answer.