

Expert opinion by the Stefan Batory Foundation on the bill amending the Electoral Code

An expert group from the Stefan Batory Foundation delivered a unanimous critical opinion of the changes in the Electoral Code proposed by a group of MPs from the parliamentary majority in their bill to amend certain laws for the purpose of increasing citizen participation in the selection, functioning and oversight of certain public bodies.

The experts believe an independent and properly functioning electoral administration is the foundation for civic confidence in the honesty of elections. Meanwhile, the proposals put forward in the bill carry the risk of politicisation of institutions responsible for preparing and conducting elections, and of chaos in their organisation. They also undermine the stability of electoral rules, and make drastic changes to the rules of competing for power in local governments, without the appropriate debate and immediately before the elections. It is unacceptable to introduce such fundamental changes less than a year before an election.

The primary objectionable elements are:

- the attempt to subordinate the State Electoral Commission (PKW) to MPs

Beginning with the next parliamentary elections, the Sejm (the lower house of parliament) is to designate seven of the nine members of the PKW, and the head of the National Elections Bureau is to be appointed from among three candidates presented by the Sejm, the Senate (the upper house of parliament) and the President. It is not indicated how such a solution serves the transparency and honesty of the electoral process. The regulation is imprecise.

It is worth recalling that the PKW's responsibilities include not only elections, but also oversight of the financing of political parties and electoral committees. The changes in the PKW would mean that representatives of political parties will be the judges in their own cases.

- the appointment (by the PKW, which starting in 2019 is to be selected by politicians) of province and county electoral commissioners

The commissioners will be granted powers allowing them to arbitrarily interfere in the work of municipal governments during election campaigns; they will be able to review and overturn decisions by municipal councils and mayors. This would be an unconstitutional broadening of the scope of oversight over local governments.

The commissioners will also take over local-government councils' authority to set the boundaries of electoral districts and the number of mandates from each district. The number of mandates in a district in local-government elections of all levels may range from three to seven, which gives the commissioner great freedom in shaping the

districts. The draft also did not take into account the requirement for consultation of decisions on district boundaries with local communities and local-government authorities, insofar as it does not lead to a division of lower-level units. There is also a lack of clear criteria for making decisions on district size, even though this can influence the outcome of elections.

- unrealistic organisational challenges

These include: building a new IT system, recruiting and training a new cadre of election officials as well as members of district committees (in 2014 there were 260,000; in 2018, as a result of the concept of appointing two commissions in each district there would be two times as many), purchasing equipment, establishing new procedures for appointing committees and counting votes in districts. Introduced less than a year before the elections, all this creates a high risk of another crisis similar to the one surrounding the announcement of the 2014 elections.

The experts also had serious reservations about the proposals concerning the method of selecting representatives:

- shrinking of electoral districts

The argument for the proposal to abandon Single-mandate Electoral Districts is based on the disproportionality of this system (the mandate goes only to the winner; large groups of residents are deprived of representation). But research shows that a proportional representation system applied in small districts has properties similar to majoritarian systems: To win a mandate, it is not sufficient to exceed the 5 percent statutory threshold. The lower the number of mandates there are in the district, the higher the natural electoral threshold (the level of support that a group must achieve in order to win a mandate). The candidates of the winning group have the best chances of winning mandates.

- the proportional representation system with candidate lists in small municipalities

The proportional representation system first of all takes into account votes for each party (or other grouping), and only then – after the division of mandates between parties – does it take into account voters' preferences for individual candidates. It also forces candidates from the same party to compete with each other. Meanwhile, in smaller municipalities, which are not dominated by parties, the voters are guided primarily by their knowledge of a specific candidate. Party discipline in voting on councils is not as visible as at the higher levels of local government and in parliament. Forcing through the logic of competition from larger units and higher levels of government may cause harm to local democracy. Voting for party lists, particularly in the case of brochure ballots, may also lead to a drastic increase in the number of invalid votes in elections for municipal councils, which again may lead to a political crisis.

- candidates from outside the municipality and county

The bill would remove the requirement that candidates come from the territorial units in which they are running. Until now, local government has meant that the local community selects rulers from within. While it seems justified, in the case of a metropolis, to enable people who live in municipalities that create a single functional area to run for council seats, broadening this to include candidates living anywhere in

the same province is unjustified. This opens the door to charges that candidates are being “shipped in” from outside.

The draft includes interesting solutions that would serve to include citizens in the life of local-government groups and decision-making processes, and strengthening the role of council members, but it must be stated that introducing them does not require a radical reconstruction of the electoral system, which may undermine confidence in elected leaders.

Confidence in the honesty of elections and the entire electoral process is essential for the functioning of democracy. Justifying changes by appealing to the thesis that results were falsified during the 2014 election is irresponsible and unacceptable. Checks of ballots from the 2014 province assembly elections carried out by a team of experts from the Stefan Batory Foundation did not confirm this thesis. According to the team’s knowledge, there have been no other empirical studies on the ballots that would allow a different understanding of the 2014 results. The ballots from these elections remain available in the state archives, and before formulating accusations, they should be examined.

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