



FUNDACJA
BATOREGO

IM. STEFANA

ul. Czerniakowska 10a
00-215 Warsaw
tel. 22 536 02 00
fax 22 536 02 20
batory@batory.org.pl
www.batory.org.pl

Warsaw, 10 January 2018

Amendments to the Electoral Code may be inconsistent with the Constitution of the Republic of Poland and international standards

Piotr Uziębło, PhD, in an expert opinion drawn up for the Stefan Batory Foundation negatively assesses the modifications to the legislation proposed by the parliamentary majority. He underlines that they raise serious doubts, not only from the point of view of their effectiveness and purpose, but also consistency with the Constitution and the international standards of free elections.

In the opinion of the expert: "The doubts primarily concern the politicization of electoral administration, breaching the principles of equality and universality of elections, as well as proper legislation and limitation of transparency of financing politics. Many provisions are imprecise and incoherent with other solutions binding under the Electoral Code and other normative acts."

The draft proposes solutions contrary to the principle of a democratic rule of law and the principle of proper legislation arising therefrom. Establishing rules without a precise analysis of purposes, consequences and possibilities of introduction, ones that are ambiguous and such that do not allow a citizen to envisage the legal consequences of his or her conduct is - in the light of jurisprudence of the Constitution Tribunal - in breach of the Constitution. Due correctness, precision and clarity of legal regulations is of crucial importance for the protection of constitutional rights and freedoms of individuals and citizens.

Politicization of electoral administration

Abandoning the model of administration based on judges and introducing new criteria of appointing officials will lead to electoral administration being party-based and to taking control over the State Election Commission (SEC) by the parliamentary majority. 7 out of 9 members of the SEC will be elected by the Sejm, which means that they will be subject mostly to a political and not a substantive assessment. Their dismissal will be effected on the request of the Sejm,

which may lead to removing from the panel of the SEC those inconvenient for the party which holds the parliamentary majority and to a violation of equal representation of parties in the composition of the SEC.

Head of the National Electoral Office (executive body of the SEC) will be appointed from among the candidates proposed by the minister of the interior. A person holding a university degree in law will be allowed to become an electoral commissioner. Any earlier party membership does not pose a problem, even if resignation is filed directly before the appointment.

The changes are tantamount to leaving international standards regarding impartial supervision and organizing free elections formulated by the Venice Commission in the Code of Good Practice in Electoral Matters.

Breach of the principle of equality of elections (Article 32 of the Constitution)

The proposal that 6 out of 9 members of precinct election commissions be appointed by members of the parties and coalitions which already have their representatives in the Sejm or regional councils (3 – by other committees) raises serious doubts. One may state that we are dealing with a significant restriction of the constitutional principle of equality of elections, and more precisely, the equality of electoral chances arising therefrom by differentiating the position of electoral committees basing on the results of earlier elections.

Additionally, an increased possibility for natural persons to support the committees free of charge: by giving them access to certain objects, devices, cars and locations for exposing election materials, will also lead to the limitation of the principle of equality. That will grant privileges to the largest political groups, having an extended membership base. It will be particularly favorable for the ruling parties, which influence public institutions functioning in legal transactions; they may also count on the “assistance” of those holding “politically appointed” positions.

Breach of the principle of universality of elections (Article 62, Article 169, Article 31 Section 3 of the Constitution)

Since 2014, voting by correspondence has been universal. It allowed, among others, those living abroad and the elderly to actively exercise the right to vote. That possibility will be limited to the group of the disabled.

Such a regression raises doubts in the context of Article 31 Section 3 of the basic law, which provides that limitations in exercising constitutional liberties and rights may be established only when “they are necessary in a democratic state for its security or public order, or for environmental protection, health and public morality”.

Infringement of the principles of a democratic rule of law (Article 2 of the Constitution)

The term of the members of the present SEC will expire in 2019 upon the first day of the term of office of a newly elected Sejm.

„In practice, it will result in a paralysis of the works of the SEC, which among others will be unable to complete the procedure of parliamentary elections, for instance, in the sphere of verification of financial statements of electoral committees.”, as explained by the expert.

The postulate to broadcast the voting on the Internet looks good on paper, however, in practice is not quite viable.

„Technical preparation of the transmission from all polling stations not only requires significant financial outlays, but primarily preparation of a system which will ensure conditions to properly conduct it, which due to the timeline remaining until the next elections - local government elections - seems to be a task that is practically non-feasible,” as the professor assesses.

Another objectionable issue is a change regarding the validity of a vote. Broadening the definition of the “x” mark (“at least two lines which cross within a box”) together with the possibility to make annotations in other voting fields, may cause difficulties for the commission to unequivocally assess whether a given vote is valid or not.

Breach of the principle of transparency of financing politics (Article 11 of the Constitution)

The Constitution provides that “the financing of political parties is transparent”. New regulations will make it possible to circumvent these provisions. The catalogue of legal, intangible support for electoral committees has been expanded. Unfortunately, there are no regulations on the necessity to disclose information on such support in the financial statements of electoral committees.

The amended law also abolishes penalties for electoral agitation without written consent of a committee’s representative. Information on such activities - formally illegal - will not be disclosed in financial statements and will not be included in the limit of expenses incurred by an electoral committee. This is another back-door excuse, encouraging disregard of law.

The expert opinion available at: http://bit.ly/OpiniaPrawna_Zmiany_Kodeksu_Wyborczego