

## Election law and elections in Poland in relation to European standards

### **Elections as the core democratic institution**

In the modern world where the progress of globalisation unifies many structures, systems and principles, democracy also becomes a social category that is perceived as one of the fundamental features of a global society. Although the very notion of democracy is easily defined, the particular features that distinguish this category raise certain doubts. One could enumerate at least the most fundamental adjectives that describe democracy, yet even in this case we may encounter problems. If we focus on a single aspect of democracy, that is political democracy, the problems of definition will probably not disappear, yet the category itself will become easier to determine. If the notion is narrowed to only the ruling processes, there is an opportunity to find some universal features of democracy. It is composed of four fundamental elements concerning the political participation of citizens.

The first one concerns the guarantees that the society takes part in decision-making procedures. Depending on the scope of authority and technical facilities to exercise this authority direct and indirect democracy may be distinguished. In the former a citizen takes part in making a decision, which is ultimate in character. In the latter the individual participation in making decisions is relinquished and the individual vests his/her rights in a trusted person who will make an independent decision on that individual's behalf or will become part of a collective body to make a certain decision.

Another element that is closely connected with indirect democracy is appointing the people who represent the citizens and make the decisions that

concern them for government posts. A very significant issue concerns the method of making such appointments. This is connected both with the acknowledgement of such general values as equality, popular elections, secrecy, etc., and with the technology of selection. Both of these first two elements are extremely significant since they exert significant influence on the level of democratisation of social life and on the ultimate result of the election.

A third highly significant element of democracy, which is also its guaranty, is the mechanism of affecting changes in the structures of power. Firstly, the decisions of the electorate cannot be irreversible. Secondly, the election for each post or function must be effective for a certain term stipulated in advance. After this term expires the next elections are to be held. This is a self-evident procedure and in no way does it constitute a vote of no confidence in the persons elected. It is a natural sequence of events. A fourth element of the effective political participation of citizens is control. Every power has a tendency to alienate. In order to constrain it in respect to political authorities it is necessary to develop efficient mechanisms of social control over the authorities. Such mechanisms are indispensable in a democratic society, the more so since it is a principle that the individuals in power execute the will of the majority of the citizens. It is by their empowerment, on their behalf and for their benefit that authority should be executed.

What follows from the above is that one of the most significant elements of political democracy is how members of society express their opinions and how the decisions are made. These aspects are enforced by election law. It has to provide for an actual reflection of different opinions in society. The competition of various social groups in order to meet their particular objectives results in their representatives taking power. Primarily the objectives of the majority that won this competition are met. Authority is vested in those individuals or political forces that were victorious in the elections. They enjoy the support of the majority or of the largest social group. The next election gives an opportunity to change rulers and implement a different political platform. Election cycles are a significant condition for democratic society.

The holding of periodic elections in itself does not provide for full democracy. Election procedures have to meet certain additional criteria to be considered fully democratic. The actual competitiveness of political platforms and the possibility of their effective differentiation are important elements of democratic elections. In practice it means the presence of various interests and ideologies of organized political parties. The presence of alternatives means that when the majority elects a determined political option, it is this option's platform that will be implemented by those candidates who won the support required.

Another equally important guaranty of democratic election procedures are the mechanisms ensuring that the electorate will not be distorted by means of certain election techniques. The election law has to guarantee that the majority decision be respected and effectively executed.

There are several basic requirements that allow for a given election system to be acknowledged democratic. The following are among the commonly accepted standards:

- elected representatives have constitutional control over the political decisions of the executive,
- the representatives are elected and dismissed by free and fair elections held with no violence,
- all adult citizens have an active election right,
- most of them are able to be candidates,
- the citizens have real freedom of speech, particularly with respect to politics, criticism of the government, the method of ruling, the economic and social system and the dominating ideology,
- citizens have free access to all information sources that cannot be monopolized by the government or any particular group,
- citizens have real rights to form independent organizations and associations, e.g. political parties, interest groups that try to exert influence on the policy of the government by means of the electorate and other peaceful methods.<sup>157</sup>

<sup>157</sup> Compare: A. Żukowski, *Systemy wyborcze. Wprowadzenie*, Olsztyn 1999, p.12.

Elections are a significant element of democratic mechanisms. If they are conducted in conformity with certain principles of equality, justice and clear standards they become a core institution of a democratic state. As a result of the election a certain group that represents the largest proportion of society is vested with formal authority to rule. Democracy is characterized by the rotation of power. This means that it is a natural sequence of events that the authorization to rule expires at a certain time and new elections are held.

Periodic elections are an indispensable condition to treat a given democracy as a democratic one. This element however is not sufficient. Society also has to have real influence on the ruling process. This is manifested by making a joint decision about who is going to rule on behalf of society. This law applies to all organs at every level. In addition, the citizens have to feel that they may take an active part in the political game without serious obstacles.

Some political scientists treat free elections as a fundamental category of democracy. According to Samuel P. Huntington, appointing governments in elections if the very essence of democracy and democracy is true only when those in power are ready to relinquish their power as a result of elections.<sup>158</sup>

## Sources of the democratic election law in Poland

The parliamentary election of 1989 that was considered to be the beginning of the political transition in Poland was based on a special election law.<sup>159</sup> The electoral system that was adopted then was not fully competitive. It was based on the political agreement made by the government and the political opposition on the division of the members of parliament. Those in power at that time obtained 65% of deputies' seats on the basis of this "contract".<sup>160</sup>

<sup>158</sup> *Ibid.*, p. 13.

<sup>159</sup> The April 7, 1989 Law – The election law for the Sejm of the Polish People's Republic in the 10<sup>th</sup> term for the period 1989-1993, Official Journal 1989, No 19, item 102.

<sup>160</sup> The following political groups were included: the Polish United Workers' Party (PZPR), the United Peoples' Association (ZSL), the Democratic Party (SD), the PAX Association, the Polish Catholic and Social Union, and the Christian and Social Union.

The remaining 35% of the seats in the Sejm were to be taken by the people outside of the parties by means of a fully competitive election. Consequently, the allocation of seats in the Sejm did not result from sovereign decisions of the electorate but from a political agreement between the authorities and the political opposition.

One of the fundamental assumptions of the April 7, 1989 law was the distinction of two parallel election procedures. One of them was based on fully democratic and competitive elections. The other provided for an election mechanism that appeared competitive, yet it ensured that only people connected with a certain political option would win the seats. The actual influence the electorate had on the results referred to the personal preferences for candidates.

Only the elections to the newly founded upper chamber of the Parliament – the Senate – were fully competitive.<sup>161</sup> The system of unreserved majority and single-member constituencies was introduced.<sup>162</sup> Formally the constituencies appointed two seats. Only the katowickie and warszawskie voivodships elected three senators each. An elector had two votes (in the katowickie and warszawskie voivodships – three) to be given to various candidates. Votes could not be cumulated. Consequently, it may be assumed that each elector made each vote in two single-member constituencies. Those who won the largest number of votes over 50% and found themselves in the quota of seats for a given constituency were elected.

In the June 4 1989 election to the Senate, 555 candidates were registered. Eight constituencies did not manage to elect senators and the election was repeated on June 18.

The conclusion from the analysis of the election to the Senate is that the principle of unconditional majority combined with single-member constitu-

<sup>161</sup> The Senat was constitutionalized by amending the Constitution of the Polish People's Republic on April 7, 1989, Official Journal 1989, No 19, item 101.

<sup>162</sup> A. Antoszewski, *Ordynacje wyborcze do parlamentu i ich polityczne konsekwencje*, in: *Ewolucja polskiego systemu politycznego po 1989 roku w świetle komparatystycznej teorii polityki*, ed. A. Antoszewski, Wrocław 1994, p.53.

encies results in a significant distortion of the electorate preferences and favours large groups. S. Gebethner claims that Solidarity won 67.69% of votes and obtained 99% of the seats.<sup>163</sup>

A similar phenomenon occurred with the elections to the Sejm. The constituencies were multi-member districts (ranging from 2 to 5 seats) yet there was separate voting for each seat. Consequently, the system worked in a similar way as when combining single-member constituencies with the unrestricted majority of votes. This system results in overt preferences for large, very popular groups. However, it significantly distorts the election results. This follows from the principle that the winner takes it all even when his/her domination over the competitors is minimal. However, the principle that the winner is required to win the support of over half of the voters is a certain restraint here. As a result of this very provision of the election law, the authorities failed to appoint a significant majority of candidates in the Sejm within the quota of seats reserved for them in the first round of the elections.<sup>164</sup> In the second round the principle of relative majority was in force.

The bipolar division of the political stage that stemmed from the contract of the “round table” formally collapsed at the beginning of 1990 as the Polish United Workers’ Party dissolved. This process started as early as in the second half of 1989 which was demonstrated by the collapse of the ruling coalition of PZPR – SL – SD (Polish United Workers’ Party, United Peoples’ Association, Democratic Party). The ZSL and SD withdrawal from the alliance with a communist party was the actual beginning of the collapse of the distribution of power in the Sejm. This process was then yet intensified by a progressing atomisation of the Citizens’ Parliamentary Club (OKP).<sup>165</sup>

<sup>163</sup> S. Gebethner, Wybory do Sejmu i Senatu 1989 r. Wstępne refleksje, *Państwo i Prawo* No 8 of 1989 r., p.10.

<sup>164</sup> The candidates supported by Solidarity appointed all the seats for non-party candidates with one exception. The ruling coalition led by the Polish United Workers’ Party was able to do so only for 3 of the 262 seats reserved for them.

<sup>165</sup> The Citizens’ Parliamentary Club was founded immediately after the 1989 election. It comprised all the deputies and senators who were elected to parliament following Solidarity’s recommendation.

The year 1990 saw a clear division of the Club, which resulted in a number of deputy clubs, and circles set up in the Sejm.

Given the organizational atomisation of the parliament and a number of various, still weak political groups it was necessary to adopt such solutions in the election law that would provide for small political groups participating in government. An additional argument was that the first competitive election should give an opportunity to reflect the political preferences of the citizens in the parliament. Another factor was also the intention of political parties to confirm their social support. In this way the right of the newly elected parliament to pass the Constitution would also be justified.

As a result of the above assumptions, the election law for the Sejm of June 28, 1991 was passed.<sup>166</sup> Its provisions were close to the fully proportional election law. The creation of a national list was continued as in the 1989 election principles. The character of this list, however, was fundamentally changed. Each election committee that registered its lists of candidates in at least five constituencies had the right to apply with a national list. Ninety-six seats from the national lists were appointed. In order for a committee to participate in the allocation of seats from these lists, the committee had to win the support of at least 5% of electors nationwide or to win seats in at least 5 constituencies. The seats were distributed by application of a modified Sainte Lague system.<sup>167</sup> The system to establish the election results in multi-member constituencies was based on the Hare-Niemeyer's formula.<sup>168</sup>

<sup>166</sup> The June 28, 1991 Law – The election law for the Sejm of the Republic of Poland, Official Journal 1991, No 59, item 252.

<sup>167</sup> It consisted in dividing the total number of nationwide votes for a given committee by 1.4, 3, 5, 7 and the next odd numbers. The quotients from such operations in relation to all the authorized committees generated a series of 69 largest numbers. Each list was assigned a number of seats that corresponded to a series of largest quotients related to this list. The seats from a given national list were assigned to the candidates in the order of their names on the list. The candidates who already obtained a seat in a constituency were neglected.

<sup>168</sup> This method results from the modification of Hare's system by a German mathematician Horst Niemeyer. In the literature it is most often called the method of the largest rest or that of mathematical proportion.

The election law provided for multi-member constituencies. There were 35 of them with 7 to 17 deputies elected from each. The total gains of the political parties were consistently calculated in a proportional system. The constituencies were relatively large. Thus the Hare-Niemeyer system applied to determine the election results was a nearly perfect reflection of citizens' electoral preferences.

The June 29, 1991 election law provided highly advantageous conditions for small groups. It has to be borne in mind that such groups prevailed in the Sejm at the time the law was passed. During the election campaign, 85 political parties representing 111 political groups were fighting for seats in the parliament.<sup>169</sup>

The new election law applied also to elections to the Senate. However, the fundamental principles of the first election law for the upper chamber of 1989 were maintained. Instead of the requirement for an unconditional majority, the principle of relative majority was introduced. Thus a potential need for the second round of the elections was eliminated.

In the 1991 election there were 612 candidates to the Senate. Seventeen political groups were represented in the upper chamber of the parliament. They elected 1 to 21 senators. The political stratification of the Senate became a reality.

Further atomisation of the political stage resulted from the parliamentary elections. In the Sejm of the 1<sup>st</sup> term, 29 groups were represented immediately after the elections. They founded 17 parliamentary clubs and circles. Given such a scattered parliament it comes as no surprise that it was difficult to form the government that would enjoy majority support. The mission of government formation that was vested by the president with the representative of the largest group in the parliament – the Democratic Union (UD) failed. The parliament decided to support a minority government headed by Jan Olszewski. The government survived until June 1992. The collapse of the next government headed by Hanna Suchocka made President Lech Wałęsa dissolve the Sejm and announce elections ahead of time.

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<sup>169</sup> *Ibid.*, p. 475.