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Evolution of Election Law in the Senate of the Third Republic of Poland

Abstract: This article presents evolution of the election law in the Senate of the Third Republic of Poland (1989-2011). The issue of electoral formula applied during election to the 'second house' of the Polish parliament was given particular attention. For the purpose of the study, it was assumed that the electoral formula is the principle of transforming votes into seats.

Nowadays, three electoral formulas are applied – i.e. majority, proportionate and mixed. The majority formula is used for election to the Polish Senate; however, it was not until 2011 that one-seat constituencies were used (multi-seat constituencies were previously applied). It is worth emphasizing that the adopted legal solutions result in the necessity to hold by-elections, which receive little public attention. Therefore, the possibility of establishing a mixed formula ought to be taken into consideration in order to reduce negative impact of currently applied legal solutions, such as the difficulty in obtaining seats by smaller political parties and the need to hold by-elections.

Keywords: The Senate of the Third Republic of Poland, election law, electoral formula

Słowa kluczowe: Senat III RP, prawo wyborcze, formuła wyborcza

1. Initial assumptions

Given the way in which the sovereign exercises power, we can distinguish between two basic forms of democracy, namely direct democracy and representative (indirect) democracy¹. In the case of direct democracy, citizens themselves make decisions (or they express opinions), while representative democracy is about electing representatives who make decisions in specific issues on behalf of their sovereign. In today's world, due to the territorial extent of countries and the large number of citizens, democracies are representative in nature. According to R. Legutko, 'we are now dealing with indirect democracies, therefore, citizens are kept away

1 See more: P. Uziębło, *Demokracja partycypacyjna. Wprowadzenie*, Gdańsk 2009, pp. 13-19.

from decision-making centers². In view of the circumstances indicated, it should be stressed that elections are an extremely important instrument for the citizens of modern democratic states to influence the functioning of the political system. Thanks to this procedure, once every few years, the sovereign has a real impact on politics and real power over the political elites. In this context, Jan Jakub Rousseau expressed a rather extreme view, stressing that 'the English people think that they are free, but they are wrong; they are free only during the election of parliamentary members; as soon as they have been chosen, they become slaves, they become nothing'³.

In the context of the functioning of modern democracies, it should be remembered that the possibilities of citizens' influence on the political system do not end with elections, because there are several institutions of direct democracy such as: people's assembly, referendum, plebiscite, people's initiative, people's veto, social consultations, as well as the participatory budget (civic), which has been developing intensively in recent years (also in Poland). However, the weakness of the current forms of direct democracy is the fact that they usually remain under the control of political elites⁴. Therefore, their use is not determined by citizens but by representatives (e.g. parliamentarians).

As rightly pointed out by G. Bingham Powell Jr., 'Elections are not the only instruments of democracy. They must support organizations and rules encouraging congruence and cooperation. Nonetheless, elections seem to be a key instrument of democracy, which is supposed to create connections that force or strongly encourage politicians to take citizens into account. There is a general consensus that elections based on the principle of political rivalry, more than anything else, in today's times determine the democratic character of the political system of a national state'⁵.

Election procedures draw the attention of political elites, for whom it is a competition for power and the possibility to implement their own electoral program, as well as that of the citizens and mass media. At this point, it should be emphasized that elections can be carried out according to different rules, which significantly affects their final result. Therefore, the political elite, and in particular political parties with the right majority in parliament, try to shape the electoral system in such a way that it is appropriate from the point of view of their interests. As emphasized by Z. Jackiewicz, 'analyzing the changes in the electoral law and the course and results of the next elections, we find a lot of data proving that the Polish policymaker plays a special role in the field of elections: he is not only the creator of

2 R. Legutko, Problemy demokratycznej partycypacji, (in:) J. Miklaszewska (ed.), *Polityka i świat wartości. Uczestnictwo obywateli w życiu społeczno-politycznym*, Kraków 1998, p. 34.

3 J.J. Rousseau, *Umowa społeczna*, Warszawa 1966, pp. 112-113.

4 See more: M. Rachwał, *Demokracja bezpośrednia w Polsce – fikcja czy rzeczywistość?*, "Przegląd Politologiczny" 2010, No. 1, pp. 103-114.

5 G. Bingham Powell, Jr., *Wybory jako narzędzie demokracji. Koncepcje większościowe i proporcjonalne*, Warszawa 2006, p. 8.

the legal rules under which elections are held but also the entity co-deciding on the results of the elections⁶.

The aim of the article was to present the evolution of electoral law to the Senate in the Third Polish Republic (1989-2011). The issue of the electoral formula used in the elections to this chamber of the Polish parliament has taken a special place in the deliberations. For the purposes of this draft, it was assumed that the electoral formula means the principle of transforming the votes of voters into mandates⁷. In addition, attention was paid to the issue of supplementary elections to the Senate.

In the discussed period, elections to the Senate were held according to the majority formula; however, single-mandate districts apply only since 2011 (previously several-mandate districts were used). What is significant, since 1991, getting a senator's mandate was dependent on obtaining a relative majority. At this point, the question arises about the influence of the adopted electoral formula on the composition of the 'second chamber' of the Polish parliament. Taking into account the experience of other countries, it was hypothesised that the established solution resulted in a deformation of the voters' will, i.e. the winning committee had a much greater representation in the Senate than the obtained percentage result.

2. A few comments on the election formula

As pointed out by K. Polarczyk, in the general and direct elections 'two basic electoral formulas are used: majority and proportional, while two parliamentary formulas can be used for the election of parliamentarians to a particular chamber, which means that part of the parliamentary seats of the chamber are filled according to the majority rule and part according to the principle of proportionality. This is referred to as a mixed formula. The majority formula is the most-used and to this day predominant. The proportional formula was first used in Belgium in 1889⁸. Thus, in fact, we can distinguish three basic electoral formulas, i.e. majority, proportional, and mixed, which do not have a uniform character and occur in different variants.

In the case of the majority system, the mandate is obtained by the candidate who has the most votes in the single-mandate constituency. The majority system occurs in two forms, i.e. the majority may be sufficient to obtain a mandate (most votes in the district) or an absolute majority (over 50% of the validly cast votes in the district)

6 Z. Jackiewicz, Wpływ prawodawcy na wyniki wyborów, "Państwo i Prawo" 1995, z. 3, p. 44.

7 In some elaborations, an electoral formula is called also a general name 'electoral system'. In this article a distinction was made, in accordance with a wording of the 'electoral system' entry in a publication: *Leksykon politologii*. See more: R. Herbut, System wyborczy, (in:) A. Antoszewski, R. Herbut (eds.), *Leksykon politologii*, Wrocław 2002, pp. 441-444.

8 K. Polarczyk, *Parlament polski na tle parlamentów innych państw. Analiza statystyczna, Raport nr 214 Biura Studiów i Ekspertyz Kancelarii Sejmu*, Warszawa 2003, p. 42.

must be obtained. Choices conducted using the relative majority always end with the first round; however, this means that the winning candidate may have the support of a minority of voters. Thus, the elections carried out according to the indicated formula are cheaper, although the social standing of the winning candidate may be some kind of weakness. On the other hand, the acceptance of an absolute majority often involves the necessity to conduct a second round of elections, which occurs when none of the candidates during the first round receives more than 50% of the votes. In the second round, those entitled to vote choose one of the two candidates who obtained the most votes during the first round of the election. It should be added here that the majority system can also be used in multi-mandate districts. Then, 'the voter has as many votes as there are seats to fill in the given district. Those candidates who have obtained the most votes in succession shall be considered as elected'⁹.

The essence of the proportional system is that the number of seats obtained by the election committee reflects the percentage of votes gathered by the candidates of a given committee. Therefore, if 10% of the votes were cast for party X, it should receive 10% of the seats. In practice, however, no version of the proportional formula guarantees the achievement of such an ideal state, which in effect leads to a certain disproportion between the size of social support and the number of mandates obtained in the created representative body¹⁰. The size of the difference in question depends, among others, on the adopted method of converting the votes of voters into mandates. It should be emphasized that the use of a proportional formula requires that constituents vote on party lists, and a larger number of representatives are elected in the district. 'The methods of proportional distribution of seats used in practice belong mostly to one of two groups:

- methods based on a fixed quota, such as the Hamilton/Hare-Niemayer method;
- divisional methods (based on *a posteriori* quota), like the Jefferson /d'Hondt or Webster/Sainte-Laguë method¹¹.

From the point of view of this draft's subject, the most important is the majority formula, because elections to the Senate in Poland take place in accordance with this solution. That is why the basic advantages and disadvantages of the subject election formula are presented below.

In practice, the majority system excludes smaller groups from the competition. 'It is a system adapted to the situation in which two strong, nationwide political parties compete, as in Great Britain or the USA. Then, its virtues are most fully

9 A. Antoszewski, R. Alberski, Systemy wyborcze, (in:) A. Antoszewski, R. Herbut (eds.), Demokracje zachodnioeuropejskie. Analiza porównawcza, Wrocław 1997, p. 231.

10 R. Herbut, System..., *op. cit.*, p. 442.

11 J. Haman, Demokracja. Decyzje. Wybory, Warszawa 2003, p. 74.

revealed, the main ones boiling down to stabilizing the political scene by eliminating weak parties and strengthening the bond between the constituent and the member of parliament. The former casts his vote not for an abstract program or ideology but for a specific person¹². The above-mentioned advantages cause huge popularity of the majority formula in Poland as well as of the postulate to adopt this solution, inter alia, in elections to the Sejm. In a survey conducted in 2008, 64% of respondents voted for the introduction of single-mandate electoral districts, and only one-eighth (12%) was against such a solution¹³.

The relative majority system shows serious disadvantages when many political parties (electoral committees) participate in the competition. Then, a situation may arise where the majority of voters will not be represented in the created representative body. To illustrate the shortcomings mentioned, the example can be cited of a district with five candidates, among which the winner received 21%, three more 20% each, and the last candidate 19% of votes. In the described situation, up to 79% of voters will not have their representative. 'If this effect is repeated in a larger number of districts, it may happen that a party supported by a minority of voters will become the government'¹⁴.

3. The evolution of electoral law to the Senate

After the Second World War, a unicameral parliament was established in Poland, which was the result of the official results of the 1946 referendum. Discussions on the restoration of the second chamber were initiated in the 1980s, but the proposal for the restitution of the Senate (submitted during the 'Round Table') resulted rather from the need for political compromise than from model thinking¹⁵. The final decisions adopted at the 'Round Table' resulted in the restoration of the Senate to the Polish political system. During the deliberations of the government side with the opposition, the principles of elections to both chambers of the parliament were also agreed. In relation to the Senate, among others, the following entry was included: 'In the Senate elections, two senators are elected from each province, and in the capital and Katowice provinces – 3 each'¹⁶. Thus, each province at that time (49) was an electoral district to this house of parliament. In 47 districts (provinces), two senators were elected, and in the Warsaw and Katowice provinces – three each. Essentially, this

12 A. Antoszewski, R. Alberski, *Sytemy wyborcze...*, *op. cit.*, p. 231.

13 Data quoted after: Centrum Badania Opinii Społecznej, *Polacy o proponowanych zmianach w systemie politycznym*. Komunikat z badań, Warszawa 2008.

14 A. Antoszewski, R. Alberski, *Sytemy wyborcze...*, *op. cit.*, p. 231.

15 See more: R. Mojak, *Transformacja ustroju politycznego w latach 1989-1997*, (in:) W. Skrzydło (ed.), *Polskie prawo konstytucyjne*, Lublin 2000, pp. 69-93.

16 *Stanowisko w sprawie reform politycznych*, (in:) W. Salmonowicz (ed.), *Porozumienia Okrągłego Stołu*, Olsztyn 1989, p. 8.

led to a situation in which the provinces, which were significantly different in terms of the number of inhabitants, had the same representation in the Senate. As a result, the elections to the Senate were not equal in the material aspect. At this point it is worth recalling that the agreements concluded at the 'Round Table' gave the Senate a strong democratic legitimacy, because, unlike the Sejm, it was elected in 1989 in a completely free election¹⁷.

In legal terms, the process of fundamental systemic reconstruction was started on April 7, 1989 with a thorough change of the Constitution of the Polish People's Republic¹⁸. The subject of this amendment¹⁹ reflected the content of the agreement concluded at the 'Round Table' on political reforms²⁰. Among others, provisions regarding the Senate were added to the text of the Constitution of the People's Republic of Poland. Its Article 2 sec. 1 was replaced by the following: 'The working people exercise state power through their representatives elected to the Sejm, the Senate and the national councils.' In addition, the text of the Constitution of the People's Republic of Poland included other regulations pertaining to the Senate; when focusing on the most important laws regarding electoral law, there are several issues to be noted.

In terms of the size of the Senate and the length of its term, the following provision was introduced: 'The Senate consists of 100 senators and is elected for the term of office of the Sejm'²¹. However, sec. 2 was added to Article 94, reading as follows: 'Senate elections are common, direct and take place in secret ballot'²². Therefore, the principle of equality and proportionality was not mentioned among election adjectives. It resulted from the content of the agreement concluded at the 'Round Table'.

The elections to the Sejm and the Senate in 1989 took place in two rounds, according to the majority vote. The condition for filling the mandate of a member of parliament and senator in the first round was to obtain an absolute majority of votes in the constituency. The relevant provision was as follows: 'Two candidates who received the highest number of votes are deemed elected to the Senate in the

17 Compare: J. Wawrzyniak, *Sejm i Senat w latach 1989-1997*, (in:) J. Bardach (works coordinator), *Dzieje Sejmu Polskiego*, Warszawa 1997, p. 311.

18 See more: W. Sokolewicz, *Kwietniowa zmiana Konstytucji, Państwo i Prawo* 1989, z. 6, p. 3.

19 Ustawa z dnia 7 kwietnia 1989 roku o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej (Dz.U. Nr 19, poz. 101) [Journal of Laws No. 19 item 101].

20 At the 'Round Table' a political 'contract' was entered into covering: 1) A position on political reforms; 2) A position on social and economic policies; 3) A position on union pluralism. These acts were also called social agreements; M. Kallas, A. Lityński, *Historia ustroju i prawa Polski Ludowej*, Warszawa 2003, p. 190.

21 Constitution of the Polish People's Republic *Konstytucja Polskiej Rzeczypospolitej Ludowej* enacted by the Legislative Sejm on 22 July 1952 (tekst. jedn. Dz.U. z 1976 r. Nr 7, poz. 36 z późn. zm.) [The uniform text Journal of Laws of 1976 No. 7 item 36 as amended].

22 *Ibidem*, Article 28 section 1.

2-mandate electoral district, provided that each of them received more than half of the valid votes. Three candidates who received the highest number of votes are deemed elected to the Senate in the 3-mandate electoral district, provided that each of them received more than half of the valid votes²³. In order to fill seats in constituencies where candidates for members of parliament and senators did not obtain in the first round the required, absolute majority of validly cast votes, a second round of elections was held.

Elections to the Senate, which were held in 1991, 1993 and 1997, took place on the basis of the new electoral law²⁴ according to the majority system, but instead of the absolute majority, a system based on a relative majority was introduced. The issue of electoral districts and the number of senators elected in them has not changed. '100 Senators are elected to the Senate, according to the majority rule, in electoral districts. The electoral district for the Senate is the area of the province. Two senators are elected in each electoral district, and three senators are elected in each of the districts covering the area of the Warsaw Province and the Katowice Province'²⁵.

According to the Constitution of the Republic of Poland of 1997: 'Elections to the Senate are common, direct and take place in a secret ballot'²⁶. The omission of the principle of equality and proportionality in the case of elections to the Senate 'should be understood only as leaving a regulatory freedom to an ordinary policymaker, and in no case can it give grounds for a *contrario* interpretation, that is to say that the constitution excludes the reference of equality and proportionality to the Senate elections'²⁷. Thus, in the electoral law, on the one hand, solutions can be introduced which will mean establishing the principle of equality, and on the other hand, accept any election formula. Here, it is worth adding that the Constitution of the Republic of Poland of 1997 (as opposed to the Small Constitution of 1992²⁸) did not maintain the requirement to link the Senate with the structure of the existing provinces.

On 1 January 1999, the territorial reform of the state came into force, according to which the number of provinces decreased to sixteen, which required changes to be made in the electoral law. The creators of the new electoral law had a great deal of freedom in shaping the electoral system to the Senate, as there were no constitutional

23 *Ibidem*, Article 94 section 2.

24 Ustawa z dnia 7 kwietnia 1989 roku – Ordynacja wyborcza do Senatu Polskiej Rzeczypospolitej Ludowej (Dz.U. z 1989r. Nr 19, poz. 103, art. 11) [Journal of Laws of 1989 No. 19 item 103, Article 11].

25 Dz.U. z 1991 r., Nr 58, poz. 246, z późn. zm [Journal of Laws of 1991 No. 58 item 246 as amended].

26 Ustawa z dnia 10 maja 1991 r. – Ordynacja wyborcza do Senatu Rzeczypospolitej Polskiej (Dz.U. z 1991 r. Nr 58, poz. 246 z późn. zm., art.b2) [Journal of Laws of 1991 No. 58 item 246 as amended, Article 2].

27 Constitution of the Republic of Poland of 2 April 1997 (Dz.U. z 1997 r. Nr 78, poz. 483 z późn. zm., art. 97 ust. 2) [Journal of Laws of 1997 No. 78 item 483 as amended, Article 97 section 2].

28 L. Garlicki, Komentarz do art. 97, (in:) L. Garlicki (ed.), Konstytucja Rzeczypospolitej Polskiej. Komentarz, Tom I, Warszawa 1999, p. 8.

obstacles to introduce elections in one hundred single-mandate electoral districts or a proportional system. Finally, on 12 April 2001, the Electoral Law was passed to the Sejm and the Senate of the Republic of Poland²⁹. However, it was not decided to introduce significant changes in the regulations governing how the Senate is elected. Of the 40 constituencies formed, there were two to four elected senators – on a relative majority basis³⁰. So the representatives to this chamber were still elected in the majority system from the multi-mandate electoral districts. The electoral law of 2001, however, departed from the previously functioning system, in which each province was an electoral district to the Senate³¹. It distributed senatorial seats between sixteen provinces, and then twelve of them were divided into smaller districts. The number of senators representing individual provinces resulted from a uniform representation standard. ‘In this way, the vivid inequality that existed during the time the electoral regulations were in force for the Senate in 1989 and 1991 were removed’³².

On 5 January 2011, the Electoral Code was adopted, which specifies, among other things, the rules and procedure for the submission of candidates, conduct and terms of validity of elections to the Senate of the Republic of Poland³³. An important change regarding the creation of the ‘second chamber’ was the introduction of single-mandate constituencies³⁴. As mentioned earlier, the establishment of elections in single-mandate constituencies in Poland has a large group of supporters. In this regard, it is worth mentioning, for example, the activities of the Civic Movement for Single-Mandate Electoral Districts³⁵. However, the basic goal of civic postulates is to introduce such a formula in the elections to the Sejm of the Republic of Poland.

29 The Senate shall be composed of 100 senators elected in voivodeships for a period of the term of the Sejm in free, general, direct elections, in secret ballot’; Ustawa konstytucyjna z dnia 17 października 1992 roku o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz samorządztwem terytorialnym (Dz.U. z 1992 r. Nr 84, poz. 426 z późn. zm., art. 3 ust. 2) [Journal of Laws of 1992 No. 84 item 426 as amended, Article 3 section 2].

30 Dz.U. z 2001 r. Nr 46, poz. 499 z późn. zm [Journal of Laws of 2001 No. 46 item 499 as amended].

31 22 two-mandate circuits, 16 three-mandate circuits and 2 four-mandate circuits were established.

32 In order to conduct elections to the Senate, electoral circuits shall be established in the territory of particular voivodeships. In the electoral circuit, from 2 to 4 senators shall be elected. The electoral circuit covers the area of a voivodeship or its part. Borders of the electoral circuit shall not infringe borders of the electoral circuits established for the elections of the Sejm; Ustawa z dnia 12 kwietnia 2001 roku – Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej I do Senatu Rzeczypospolitej Polskiej (Dz.U. z 2001r. Nr 46, poz. 499 z późn. zm., art. 191) [Journal of Laws of 2001 No. 46 item 499 as amended, Article 191]

33 S. Gebethner, Wybory do Sejmu i do Senatu. Komentarz do ustawy z dnia 12 kwietnia 2001 r. – Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej, Warszawa 2001, p. 279.

34 Dz.U. z 2011r., Nr 21, poz. 112 z późn. zm [Journal of Laws of 2011 No. 21 item 112 as amended].

35 Act of 5 January 2011 Electoral Code (Dz.U. z 2011 r. Nr 21, poz. 112 z późn. zm., art. 260) [Journal of Laws of 2011 No. 21 item 112 as amended, Article 260].

In the discussed context, it is worth pointing to the issue of supplementary elections to the Senate. The indicated procedure usually does not raise the interest of the electorate, which is why the voter turnout is very low. To illustrate the subject matter, it can be pointed out that in the votes held in three districts on 7 September 2014, the turnout did not exceed 10 percent³⁶. Therefore, it seems purposeful to submit a *de lege ferenda* application, so that amendments to the electoral law eliminate (considerably limit) the need to carry out supplementary elections to the 'second chamber'. In this context, one can cite at least an offer to establish an institution of the 'deputy senator', which was proposed while considering the presidential draft amendment of the Electoral Law to the Sejm and Senate of 2001³⁷. According to the initiative, on the electoral sheet, next to the surname of the candidate for senator, the name of his/her deputy would also be entered. Therefore, the constituent would vote at the same time for a given candidate and for the person who (in the event that the chosen senator would be unable to exercise their function) would automatically take their place³⁸. Another way to solve the signaled problem would be to establish a mixed, majority-proportional electoral law. Supplementary elections would then only be carried out if the mandate of the senator elected in the single-mandate constituency had expired and was not assigned to any list of candidates elected in accordance with the principle of proportionality. In other cases (expiration of the mandate occupied in the single-mandate constituency, as well as the electoral list), the Senate would be supplemented by filling the vacant seat with another candidate on the electoral list submitted by the same committee that nominated the senator whose mandate expired.

4. Election practice

Referring to electoral experiences, S. Gebethner pointed out that 'elections to the Senate bring about a clear distortion of voters' will expressed in the act of voting. In the 1997 elections, no more than 40% of constituents voted for AWS candidates, and 51% of AWS senators sat in the Senate. While in 1993, 21% voted for SLD candidates,

36 As we can read at the website of the Civic Movement for Single-mandate Electoral Districts, the said civic movement requests 'introduction of 460 single-mandate electoral circuits (SEC) in elections to the Sejm of the Republic of Poland with equal right to be a candidate for all citizens, regardless of whether they are supported by parties or they run by themselves'; *O co walczymy?*, jow.pl/abc/ (accessed on: 06.01.2015).

37 Obwieszczenie Państwowej Komisji Wyborczej z dnia 8 września 2014 roku o wynikach wyborów uzupełniających do Senatu Rzeczypospolitej Polskiej przeprowadzonych w dniu 7 września 2014 roku (Dz.U. z 2014 r., poz.1208) [Journal of Laws of 2014 item 1208].

38 Druk nr 2545 [Paper No. 2545], Sejm of the Republic of Poland of IV term.

which gave it 37% of seats in the Senate³⁹. Subsequent choices that were made in 2001, 2005, 2007 and 2011 also confirmed the correctness of the adopted research hypothesis. In 2001, the Coalition Electoral Committee of the Democratic Left Alliance – Labor Union (Sojusz Lewicy Demokratycznej – Unia Pracy) received the support of 41.04% of voters in the parliamentary elections, while in the Senate it had 75 representatives (out of 100), of whom only one obtained more than 50% of votes (Adam Gierek enjoyed the support of nearly 65% of voters in constituency No. 31 Sosnowiec). The elections to the Senate in 2005, 2007 and 2011 were completely dominated by the candidates of two political parties, i.e. Civic Platform (Platforma Obywatelska) and Law and Justice (Prawo i Sprawiedliwość). For example, in 2007, only one independent candidate (Włodzimierz Cimoszewicz) was elected. In contrast, in 2011, after the introduction of single-mandate constituencies for the Senate, the Civic Platform and Law and Justice parties won a total of 94% of seats in the ‘second chamber’ of the Polish parliament. The winning Civic Platform had 63 senators, although the vast majority of candidates of this political party did not receive support in their electoral districts in the order of 50% (only 7 of Civic Platform senators received support of the absolute majority of voters)⁴⁰.

The same thesis can be formulated that the majority voting formula, when using relative majority, results in an unrepresentative composition of the Senate. The largest political groups (electoral committees) have, in the composition of the ‘second chamber’, more representatives than the support expressed in percent. On the other hand, it should be pointed out that the adopted electoral formula has led to the marginalization of smaller political parties and independent candidates⁴¹.

5. Summary

Since the restoration of the Senate to the Polish political system in 1989, it is elected according to the majority rule in accordance with the principle of relative majority (except in 1989, when absolute majority was in force). Until the elections in 2007, multi-mandate electoral districts were in force, which changed in 2011, when 100 single-mandate electoral districts were established pursuant to the Electoral Code. At this point, it should be noted that adopting such an electoral formula is in line with the demands of a large part of the society; however, it applies above all to the Sejm elections. Therefore, we can treat the establishment of single-seat constituencies

39 Biuletyn nr 3862 z posiedzenia Komisji Ustawodawczej Sejmu RP IV kadencji, <http://orka.sejm.gov.pl/Biuletyn.nsf/B4?Open> (accessed on: 06.01.2015).

40 S. Gebethner, *Wybory...*, *op. cit.*, p. XXIV.

41 All data related to the elections of 2001, 2005, 2007 and 2011 were taken from the website of the National Electoral Committee, <http://pkw.gov.pl/wyniki-wyborow-i-referendow/wybory-i-referenda.html> (accessed on: 21.05.2015).

in the Senate elections in 2011 as an excellent opportunity to test the pros and cons of such a system in the Polish socio-political realities. Considering previous experience, it should be pointed out that this solution creates major problems in winning seats by smaller parties and independent candidates, while the largest election committees have more seats in the representative body than the level of public support they have obtained.

To conclude, it seems to be deliberate to submit a *de lege ferenda* application, so that in the future we can consider establishing a majority-proportional electoral law for the Senate (this solution is also worth considering in the Sejm)⁴². In this way, the weaknesses of the majority regulation (e.g. considerable difficulties in obtaining a mandate by smaller groups) can be reduced, and significantly reduce the need to carry out supplementary elections to the Senate.

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42 “Teaching are experiences with the use of such electoral system in Scotland (the majority-proportional compensative system – ref. M. R.). In 1999, in elections to a regional parliament the conservative party received support of 15.5% of the electorate, but received no mandate directly in any of 73 single-mandate circuits. However, thanks to the existence of compensative mandates, conservatives obtained 18 seats, i.e. 14% of mandates”; S. Gebethner, Wybory..., *op. cit.*, p. XXV.

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