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The issue of substantive equality of elections to commune councils held in single-seat constituencies

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SUMMARY

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The subject of the dissertation is the substantive aspect of the equality of elections to councils of communes comprising up to 20,000 inhabitants, and specifically, its constitutional legitimacy, the mode by which it is safeguarded in the provisions of the Electoral Code, and the manner in which it is implemented along with system of single-seat constituencies. As an exceptionally important component of the theory of democratic elections, the issue of election equality has been addressed so far in a number of studies devoted to the Polish election law (Jaskiernia 1992, Jarecka 2000, Składowski 2001, Uziębło 2013). While the main emphasis of those analyses was placed on parliamentary elections, the arguments presented in this dissertation focus on the regulations concerning the elections to the representative bodies of the lowest-level self-government districts (communes with a population of up to 20,000). A consequence of the demographic structure of the territory of Poland with the corresponding network of Polish small and middle-sized communes is the relatively high number of such bodies - 2146 during the last two local election cycles. The significance of this type of operationalisation of the idea of democratic governance is enhanced by the fact that in Poland communes with populations of less than 20,000 inhabitants comprise approx. 43% of the population inhabiting approx. 93% of the national territory. Significantly, in accordance with the provisions of the Electoral Code, in all these communes elections to local councils are held - unlike in the case of elections to the representative bodies of other self-government units - in single-seat constituencies.

The dissertation is divided into four chapters.

Chapter one discusses the essential meaning of the concept of substantive equality of elections. As part of the analysis of the normative implications of the principle of equality of elections considered in its substantive aspect, a number of factors are examined determining the relevance of these requirements. Among others, the following are discussed: the historical evolution of the principle of election equality, the relationship between formal equality, substantive equality and standards of equal opportunity in elections, the distinction between the classic (potential) equality (equal distribution of seats between constituencies) and effective equality (equality of the actual influence of all members of the electorate on the allocation of seats in the representative body), alternative solutions for identifying the relevant subject of election equality, the relationship between election equality and the principle of free mandate, the significance of unsuccessful votes and invalid votes, the interrelationship between substantive equality and proportionality of elections, the rationale behind the division of the electoral area into constituencies, the models of multi-tier constituency networks as an attempt

to guarantee the proportionality of elections held in small constituencies, the procedures for delimiting constituency boundaries while maintaining political impartiality, and the general formula adopted in the Polish election law for determining the size of constituencies on the basis of their population.

The second chapter analyses the constitutional guarantees of the principle of equality of elections. Election equality is presented – by virtue of its profound affinity with the general principle of equality - as a constitutionally protected right: the right of every voter to have equal voting power in the process of shaping the composition of a given representative body. The argumentation in favour of this interpretation of election equality includes, inter alia: presentation of the principle of equality of elections as a specific manifestation of the principle of equality of all citizens before the law (art. 32 of the Constitution of the Republic of Poland), demonstration of the autonomous character of the right to equal elections in relation to the constitutional provision guaranteeing voting rights (art. 62 of the Constitution of the Republic of Poland), discussion of the relationship between the equality of elections and the idea of fair elections, consideration of the permissibility of limitations imposed on the implementation of the principle of equality of elections without infringement of the 'essence of rights and liberties' (art. 31 of the Constitution of the Republic of Poland), consideration of possible conflicts between the principle of equality of elections and other constitutionally protected values, such as the stability of the functioning of respective representative bodies.

The third chapter explores the current legislation implementing the principle of equality of elections in the elections to councils of small and medium-sized communes. After examining the original version of the regulations safeguarding the substantive equality of this type of elections (contained in the election law enacted in 1990), as well as their subsequent modifications, the respective provisions of the Electoral Code of 2011 are discussed, in which the requirement to form single-seat constituencies for the elections to councils of all communes that were not cities with county rights was reinstated (and thus made applicable in the period of 2011-2018 to commune elections held in 97.7% of the national territory inhabited by 67% of the population of the Republic of Poland). The manner in which the constitutionally guaranteed substantive equality of local elections is implemented is pointed out as a particularly sensitive aspect of the new regulations. Consideration of the content of the relevant provisions of the Electoral Code, as well as the way in which they were applied by commune councils (which until 1 January 2019 were empowered to delimit constituencies for local elections), substantiates the thesis that the substantive equality of elections to commune councils is not

adequately protected in the current legislation. This conclusion is further substantiated by the analysis of the decisions issued in the course of the administrative and judicial review of selected resolutions of commune councils delimiting single-seat constituencies in the respective communes.

The fourth chapter of the dissertation is devoted to presenting the consequences of the application of the current election law in the creation of single-seat constituencies for the elections to councils of small and middle-sized communes. On the basis of the data obtained from the National Electoral Office (Krajowe Biuro Wyborcze), a series of charts are presented illustrating deviations from election equality standards in communes comprising up to 20,000 inhabitants during the 2014 and 2018 local elections. Firstly, the data are collated exemplifying the violations of the principle of election equality in the communes where these deviations were most spectacular. In order to provide a more cross-sectional picture of the violations in question, four indexes are used measuring disparities in the voting power of the inhabitants of the same communes: the index of maximum voting power disparity (the ratio of the population of the largest single-seat constituency to the population of the smallest single-seat constituency delimited in the same commune), the index of 3/3 average voting power disparity (the ratio of the population of the 3 largest single-seat constituencies to the population of the 3 smallest single-seat constituencies delimited in the same commune), the index of 7/7 average voting power disparity (the ratio of the population of the 7 smallest single-seat constituencies to the population of the 7 largest single-seat constituencies), and the index of absolute majority representativeness (the ratio of the number of residents electing an absolute majority of commune council members - i.e. 8 out of 15 councillors - to the number of the other inhabitants of the commune). The final part of the chapter attempts to compare the statutory safeguards and the implementation of the substantive aspect of election equality norms in the case of the elections to the Polish Sejm, the elections to the Polish Senate and the elections to councils of communes not exceeding 20,000.

The dissertation is concluded with a brief summary of the arguments presented and some conclusions *de lege ferenda*.

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