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DISTRICTING IN THE 2023 SEJM ELECTIONS AND THE PRINCIPLE OF EQUALITY OF REPRESENTATION — SELECTED ASPECTS

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Abstract
This scientific article examines the system of electoral districting in the 2023 Sejm elections and its impact on the principle of equality of representation. The main objectives of the study are to analyse the relationship between the principle of equality of representation and electoral districting in Sejm elections, evaluate the compliance of current constituency boundaries with this principle, and assess the potential consequences of any changes in districting in the 2023 Sejm elections in terms of electoral representation. The research questions guiding this study are as follows: (1) How should constituencies be determined for the 2023 Sejm elections and what legal criteria should be applied in electoral districting? (2) Does the current districting system align with the principle of equality of representation? (3) Are there disparities in the size or demographics of constituencies that could result in unequal representation in the Sejm? (4) What are the potential implications of the current districting system for the representation of different political parties? (5) How do alternative scenarios of districting affect the principle of equality of representation in the context of the 2023 Sejm elections? The research employs an institutional-legal analysis, along with statistical data analysis and simulations, to model alternative districting scenario and evaluate their effects on the principle of equality of representation. The findings of this study contribute to a comprehensive understanding of the implications of districting on the principle of equality of representation in the 2023 Sejm elections. The research emphasises the significance of fair districting for ensuring equal representation and provides valuable recommendations for policymakers.

Keywords
electoral districting, electoral systems, 2023 elections in Poland, equality of representation, electoral tourism

Introduction

Districting plays a crucial role in electoral systems, as it determines the allocation of political representation and shapes the democratic outcomes of elections. In the case of the 2023 Sejm elections in Poland, districting was once again a critical aspect of the electoral process in Poland. The principle of equality of representation, which calls for fair and equitable representation, is central to democratic systems and raises important questions regarding the number of mandates allocated to constituencies. This research article aims to examine districting in the 2023 Sejm elections and its relationship with the principle of equality of representation.

Ensuring the principle of equality of representation requires that each vote carries equal weight and that citizens have equal access to representation. Electoral districting, which determines the boundaries and sizes of constituencies, can significantly impact the distribution of representation and the fairness of the electoral system. It is imperative to assess whether the current districting system in Poland adheres to the principle of equality, and if not, to identify potential disparities and challenges that may arise.

This scientific article examines crucial aspects of districting in the 2023 Sejm elections and its impact on the principle of equality of representation. The main objectives of the study are to analyse the relationship between the principle of equality of representation and electoral districting in Sejm elections, evaluate the compliance of the current constituency boundaries with this principle, and assess the potential consequences of any changes in districting for the 2023 Sejm elections in terms of representation.

The research questions guiding the study are as follows:

1. How should constituencies be determined in the 2023 Sejm elections and what legal criteria should be applied in electoral districting?
2. Does the current electoral districting system align with the principle of equality of representation?
3. Are there differences in the size or demographics of constituencies that could potentially lead to unequal representation in the Sejm?
4. What are the potential implications of the current districting system on the representation of different political parties?
5. How do alternative districting scenarios, based on different criteria or methodologies, affect the principle of equality of representation in the context of the 2023 Sejm elections?

These research goals and questions provide a comprehensive framework for examining the relationship between electoral districting, the principle of equality of representation, and the 2023 Sejm elections.

The research employs an institutional-legal analysis to examine the relevant provisions of electoral law, court decisions, and governmental interpretations. Statistical data analysis is conducted to assess the demographic distribution within constituencies. Additionally, simulations are employed to model different districting scenarios and evaluate their impact on the principle of equality of representation.

The results of the study contribute to a comprehensive understanding of the implications of districting on the principle of equality of representation in the context of the 2023 Sejm elections. The findings highlight the criteria used in districting, identify any disparities in constituency demographics, and propose alternative districting scenarios

that better uphold the principle of equality of representation. The research underscores the importance of fair districting for ensuring equal representation and provides valuable recommendations for policymakers.

Legal basis and actual practice

The principle of equal rights for individuals, including their right to vote, holds significant importance in modern democracies (Chmaj 2015, 49). The Constitution of the Republic of Poland, established in 1997, enshrines the general principle of equality under the law and equal treatment by public authorities for all individuals within the jurisdiction of the Polish state, as stated in Article 32, paragraph 1. Furthermore, paragraph 2 of the same article specifies that no one should face discrimination in political, social, or economic aspects of life for any reason. These overarching principles are further elaborated upon in various provisions of the Constitution and other legislative acts. For instance, Article 96, paragraph 2 of the Constitution outlines the key characteristics of elections to the Sejm (the lower chamber of the Polish parliament), emphasising their universality, equality, directness, proportionality, and the use of secret ballots (Garlicki 2014, 94–96, see Shugart, Taagepera 2017, 3–6).

The natural consequence of having a general and foundational constitutional principle of equal rights and equality under the law is its *lex specialis* – the establishment of specific rules governing equal voting rights. In essence, this ensures that all participants in the electoral process, ranging from the election campaign to casting votes, tallying results, and getting a seat in the parliament, participate on an equal footing and receive fair treatment from public authorities.

Currently, scholars studying electoral systems generally agree that the principle of equal voting rights should be considered separately in relation to active and passive suffrage across three dimensions: universality of suffrage (also known as the formal equality), equality of representation (also known as the material equality), and, more recently, equality of electoral opportunities. The universality of suffrage refers to each voter having the same number of votes during the voting process. Equal representation primarily involves ensuring equal voting power, which means that each vote carries the same potential influence on the election outcome. Achieving equality of representation requires appropriate delineation of electoral districts and the allocation of seats (Nohlen 2004, 402, see Herron, Pekkanen, Shugart 2018, 5–6). Finally, equality of electoral opportunities means that voters should be provided with equal conditions and opportunities to participate on equal terms (Jagielski 2013, 266–267; Michalak, Sokala 2010, 209).

In a ruling by the Polish Constitutional Tribunal (Judgment of the Constitutional Court of 20 July 2011) on the compatibility of certain provisions of the Electoral Code (related to Senate elections, for which the Constitution does not explicitly require equality), the tribunal stated that the only essential aspect for democratic elections in this context is the universality of suffrage. However, in elections for Senate conducted through a majority formula in single-member districts, maintaining complete equality of representation is neither feasible nor necessary. This is due to significant distortions caused by both the division into electoral districts and the allocation of mandates. Nonetheless, the Constitutional Tribunal made a general observation, recognising that "equality of representation is a guiding principle that the legislator should strive to achieve, while being aware that

full realisation is not possible." Based on this statement, electoral districting that blatantly contradicts the principle of equality of representation should be considered contrary to the fundamental principle of elections (see Shugart, Taagepera 2017, 35–36).

The provisions that specify the principle of equality of representation for Sejm elections, ensuring its practical implementation, are found in Articles 201–203 of the Electoral Code (Chapter III, Section 2; Czaplicki, Dauter, Jaworski, Kisielewicz, Rymarz, Zbieranek 2018, 494–500). These articles formulate rules for electoral districting, along with Appendix No. 1 to the aforementioned law, which describes individual constituencies. The principles used for determining the Sejm electoral districts are a consequence of the need to ensure that, in practice, each vote carries the same weight (or as similar as possible). This can be achieved through an appropriate procedure and the resulting practice of creating electoral districts, where each district maintains the same proportion between the number of residents and the number of mandates assigned to that district. However, as rightly stated by the Constitutional Tribunal in the aforementioned ruling of July 20, 2011, achieving identical proportions in each district is not practically feasible. Nonetheless, the mentioned procedure outlined in Articles 201–203 of the Electoral Code aims to achieve the closest approximation to the "ideal equality of representation." One of the key factors that determine the attainment of this desirable state is the uniform standard of representation, stipulated in Article 202 § 1 of the Electoral Code, which is used to "determine the number of the members of the Sejm elected in individual electoral districts and the division of voivodships into electoral districts." It is calculated by dividing the country's population by the overall number of members of the Sejm elected in the electoral districts, taking into account the following principles:

> 1. Fractions of the number of seats for the members of the Sejm elected in electoral districts that are equal to or greater than 1/2, resulting from the application of the uniform standard of representation, are rounded up to the nearest whole number.
>
> 2. If, as a result of the procedure referred to in point 1, the number of seats in electoral districts exceeds the number stipulated in Article 193, excess mandates are deducted in those electoral districts where the representation norm calculated for the district is the smallest. In cases where the number of seats is less than that determined in Article 193, additional mandates are allocated to those electoral districts where the representation norm calculated for the district is the largest (Article 202 of the Electoral Code).

In an electoral district, a minimum of seven members of the Sejm are elected, and its boundaries must not violate the boundaries of the voivodship, counties, and cities with county rights that it encompasses (Article 201 of the Electoral Code). The aforementioned rules allow for a realistic division of the country into electoral districts and provide some flexibility while acknowledging that achieving complete equality of representation is practically impossible. The authorities are only obligated to strive for the closest approximation to the "ideal equality of representation" in this context.

The procedure aimed at achieving this approximation is regulated by Article 203 of the Electoral Code, which requires the National Electoral Commission (PKW) to submit a proposal to the Sejm regarding „changes in the boundaries of electoral districts and the number of members of the Sejm elected in them if such changes are necessary due to alterations in the fundamental territorial division of the country or changes in the pop-

ulation in the electoral district or the country. The lower chamber of parliament, no later than 3 months before the deadline for announcing the elections to the Sejm, implements the aforementioned changes."

Based on these provisions, the PKW has approached the Sejm three times – in 2014, 2018, and 2022 – highlighting the need to introduce changes in the allocation of mandates among districts. In a letter dated December 22, 2014, the need for the following changes was indicated:

- Increasing by 1 the number of members of Sejm elected in Districts: 3 (Wrocław), 20 (Warsaw II – suburban), 25 (Gdańsk), and 26 (Słupsk).
- Decreasing by 1 the number of members of Sejm elected in Districts: 9 (Łódź), 32 (Sosnowiec), 33 (Kielce), and 34 (Elbląg).

In a subsequent proposal dated November 19, 2018, the National Electoral Commission (PKW) advocated for the aforementioned changes and additionally:

- Increasing by 1 the number of members of Sejm elected in District 39 (Poznań).
- Decreasing by 1 the number of members of Sejm elected in District 31 (Katowice). (Haman, *Podział*, 5)

In its latest communication on October 21, 2022, the main electoral body in Poland reiterated the need for the same changes proposed earlier, and added the following:

- Increasing by 1 the number of members of Sejm elected in Districts: 13 (Kraków II), 19 (Warsaw), 20 (Warsaw II – yet another mandate), 23 (Rzeszów), 37 (Konin), and 38 (Piła).
- Decreasing by 1 the number of members of Sejm elected in Districts: 1 (Legnica), 2 (Wałbrzych), 5 (Toruń), 6 (Lublin), 7 (Chełm), and 40 (Koszalin) (Application of the National Electoral Commission, 3–4).

These changes have not been implemented to date and are not part of the current amendment to the Electoral Code, which is currently being processed by the parliament, despite all the aforementioned proposals by the PKW specifying the timeframe for their implementation (by May 10, 2015; May 14, 2019; and May 14, 2023, respectively). Therefore, achieving compliance in the distribution of mandates among districts according to the norm stipulated in Article 202 of the Electoral Code would require redistributing seats among the districts in the 2015 Sejm elections by four seats, in 2019 by five seats, and in the 2023 elections by six seats. As a result of these omissions, there has been a certain accumulation, as changes necessary to ensure equality of representation in the 2023 elections and compliance with the provisions of the Electoral Code should affect 22 parliamentary mandates in 21 districts, i.e. the majority of districts in Poland (2 mandates should be added in the suburban district in Warsaw). In nine districts, one mandate should be added, and 11 districts should lose one elected position.

Additionally, it should be noted that without implementing the required changes specified in Article 202 of the Electoral Code, the standard of representation in individual districts varies significantly (by over 10,000 in extreme cases). It ranges from 73,602 in District No. 40 (Koszalin) to 83,968 in District No. 2 (Wałbrzych), while the uniform standard of representation in Sejm elections is 78,424 residents per mandate (calculated as the country's population of 36,075,160 divided by 460 mandates) (own calculations based on: Proposal by the State Electoral Commission on 2022/10/21). Detailed data regarding the changes in electoral districts are presented in Table 1.

Table 1. Changes in mandates in constituencies proposed by the National Electoral Commission.

District No.	District	The current number of seats specified in Annex 1 of the Electoral Code	30 September 2022					
			Number of inhabitants	Number of inhabitants in the district / uniform standard of representation	Rounding of results	Uniform standard of representation	Result – number of seats determined according to the number inhabitants as of 30 Sept 2022	Change
1	Legnica	12	893 996	11.40	11	81 272	11	–1
2	Wałbrzych	8	587 775	7.49	7	83 968	7	–1
3	Wrocław	14	1 200 619	15.31	15	80 041	15	1
4	Bydgoszcz	12	932 918	11.90	12	77 743	12	–
5	Toruń	13	976 275	12.45	12	81 356	12	–1
6	Lublin	15	1 135 941	14.48	14	81 139	14	–1
7	Chełm	12	888 630	11.33	11	80 785	11	–1
8	Zielona Góra	12	937 294	11.95	12	78 108	12	–
9	Łódź	10	698 658	8.91	9	77 629	9	–1
10	Piotrków Trybunalski	9	686 481	8.75	9	76 276	9	–
11	Sieradz	12	912 747	11.64	12	76 062	12	–
12	Kraków I	8	627 784	8.00	8	78 473	8	–
13	Kraków II	14	1 139 569	14.53	15	75 971	15	1
14	Nowy Sącz	10	788 549	10.05.2023	10	78 855	10	–
15	Tarnów	9	726 505	9.26	9	80 723	9	–
16	Płock	10	788 281	10.05.2023	10	78 828	10	–
17	Radom	9	674 912	8.61	9	74 990	9	–
18	Siedlce	12	934 096	11.91	12	77 841	12	–
19	Warszawa I	20	1 646 386	20.99	21	78 399	21	1
20	Warszawa II	12	1 115 626	14.23	14	79 688	14	2
21	Opole	12	910 700	11.61	12	75 892	12	–
22	Krosno	11	844 713	10.77	11	76 792	11	–
23	Rzeszów	15	1 225 218	15.62	16	76 576	16	1
24	Białystok	14	1 116 422	14.24	14	79 744	14	–
25	Gdańsk	12	1 002 786	12.79	13	77 137	13	1
26	Słupsk	14	1 178 785	15.03.2023	15	78 586	15	1
27	Bielsko-Biała I	9	740 988	9.45	9	82 332	9	–
28	Częstochowa	7	552 071	7.04.2023	7	78 867	7	–
29	Katowice I	9	681 636	8.69	9	75 737	9	–

District No.	District	The current number of seats specified in Annex 1 of the Electoral Code	30 September 2022					
			Number of inhabitants	Number of inhabitants in the district / uniform standard of representation	Rounding of results	Uniform standard of representation	Result – number of seats determined according to the number inhabitants as of 30 Sept 2022	Change
30	Bielsko-Biała II	9	675 054	8.61	9	75 006	9	–
31	Katowice II	12	864 547	11.02.2023	11	78 595	11	–1
32	Katowice III	9	616 773	7.86	8	77 097	8	–1
33	Kielce	16	1 178 159	15.02.2023	15	78 544	15	–1
34	Elbląg	8	582 539	7.43	7	83 220	7	–1
35	Olsztyn	10	747 176	9.53	10	74 718	10	–
36	Kalisz	12	963 132	12.28	12	80 261	12	–
37	Konin	9	746 870	9.52	10	74 687	10	1
38	Piła	9	749 262	9.55	10	74 926	10	1
39	Poznań	10	864 830	11.03.2023	11	78 621	11	1
40	Koszalin	8	588 812	7.51	8	73 602	7	–1
41	Szczecin	12	951 645	12.13	12	79 304	12	–
	Poland	460	36 075 160	x	461	x	460	x

Source: *Application of the National Electoral Commission on changing the boundaries of electoral districts and the number of member of the Sejm elected in them as of October 21, 2022*, 3.

The presented factual situation clearly indicates that without any changes to Appendix No. 1 of the Electoral Code, the elections to the Sejm took place in violation of the constitutional electoral principle of equality of representation. Such a situation had significant consequences in both political and legal dimensions.

Political implications and simulation of 2023 election results based on 2019 results

The primary political consequence of the lack of changes to the required number of parliamentary mandates in over half of the electoral districts, resulting from the 12-year inaction of the Sejm, was the unjustified acquisition of additional parliamentary seats by some electoral committees, coupled with the loss of mandates by other competing political groups. Of course, it was not possible to predict the exact gains and losses in the parliamentary elections, as they were influenced by the current trends of support for individual political parties, as well as the methods of calculating election results (primarily the D'Hondt method) and the shape and size of the electoral districts, among others.

However, it is possible to anticipate certain tendencies that would result from amending the number of seats in 21 out of 41 districts. These tendencies may be indicated by the level

of support received by electoral committees in these 21 districts during the 2019 elections, as well as simulations (based on an analysis of the results of those elections) of how the proposed changes to the distribution of parliamentary mandates would affect the results of individual electoral committees (Flis, Michalak 2019, 82).

In the last elections to the Sejm, the individual electoral committees achieved the following results: Law and Justice (PiS) received 43.59% of the votes and 235 mandates; Civic Coalition (KO) received 27.40% and 134 mandates; the Left Democratic Alliance (SLD) received 12.56% and 49 mandates; Polish People's Party (PSL) received 8.55% and 30 mandates; and Confederation (KWiN) received 6.81% and 11 mandates (source: https://en.wikipedia.org/wiki/2019_Polish_parliamentary_election). Meanwhile, their results in the aforementioned 21 districts were as follows:

Table 2. Voting results in districts where the number of mandates should be changed (all data expressed as percentages).

District with a reduced number of mandates							District with an increased number of mandates						
No.	**District**	**PiS**	**KO**	**SLD**	**PSL**	**KWiN**	**No.**	**District**	**PiS**	**KO**	**SLD**	**PSL**	**KWiN**
1	Legnica	**42.40**	25.02	16.43	7.17	5.85	3	Wrocław	**34.67**	32.80	15.41	6.46	7.45
2	Wałbrzych	**40.54**	32.09	12.35	7.25	5.42	13	Kraków II	**39.56**	30.48	13.01	7.27	7.99
5	Toruń	**40.38**	26.42	14.83	10.88	6.33	19	Warszawa I	27.49	**42.05**	18.19	4.75	7.51
6	Lublin	**55.39**	19.30	7.81	9.10	7.07	20	Warszawa II	**40.89**	28.61	13.09	8.60	6.63
7	Chełm	**59.50**	14.80	6.83	11.86	5.84	23	Rzeszów	**62.38**	14.39	6.59	7.79	8.25
9	Łódź	32.90	**35.82**	20.10	4.53	6.65	25	Gdańsk	32.10	**41.31**	13.47	5.90	7.21
31	Katowice II	**39.19**	37.20	11.92	4.37	7.33	26	Słupsk	**36.43**	35.85	12.47	7.94	7.30
32	Katowice III	**37.13**	29.66	21.90	4.85	6.45	37	Konin	**47.29**	20.48	15.04	9.81	6.74
33	Kielce	**55.18**	16.65	9.95	9.88	5.95	38	Piła	**35.64**	30.60	13.28	13.86	6.62
34	Elbląg	**40.86**	28.43	11.64	10.89	5.66	39	Poznań	25.33	**45.38**	16.49	6.20	6.61
40	Koszalin	**36.83**	32.31	15.44	9.43	5.98							

Source: *Own elaboration based on: https://sejmsenat2019.pkw.gov.pl/sejmsenat2019/en 2023/02/15.*

Polish political parties abbreviations used in the tables:

- PiS – *Prawo i Sprawiedliwość* (Law and Justice)
- KO – *Koalicja Obywatelska* (Civic Coalition)
- SLD – *Sojusz Lewicy Demokratycznej* (Democratic Left Alliance) – since the 2019 parliamentary election it has been called *Lewica* (The Left)
- PSL – *Polskie Stronnictwo Ludowe* (Polish People's Party)
- KWiN – *Konfederacja Wolność i Niepodległość* (Confederation Liberty and Independence).

From the data presented in Table No. 2, it can be seen that in 10 out of the 11 districts where there should be a decrease of one parliamentary mandate, the ruling party, PiS, which has a parliamentary majority, won in the 2019 elections. Furthermore, in most of

these districts, the ruling party had a significant lead over the second-place party, KO. Only in two of these districts did the lead fall within a range of 5–6 percentage points (Districts No. 31 and 40 – Katowice II and Koszalin). On the other hand, in the districts where there should be an increase of one (or two in Warsaw II), in three out of the 10 districts, KO emerged as the winner in the 2019 elections, while in the next three districts (Districts No. 3, 26, and 38 – Wrocław, Słupsk, and Piła), PiS's victory did not exceed 5–6 percentage points. From this analysis, it is clear that the proposed changes to the number of mandates in the indicated districts by the State Electoral Commission (PKW), based on Article 202 of the Electoral Code, would benefit opposition parties while maintaining the status quo would reward PiS.

Further data in this regard are provided by the election simulation results from 2019, with the hypothetical addition/subtraction of mandates in the districts indicated by the PKW. They are presented in Table 3.

Table 3. Simulation of 2019 Sejm election results with hypothetical addition/subtraction of seats in 21 districts as indicated by the National Electoral Commission.

District with a reduced number of mandates							District with an increased number of mandates						
No.	**District**	**PiS**	**KO**	**SLD**	**PSL**	**KWiN**	**No.**	**District**	**PiS**	**KO**	**SLD**	**PSL**	**KWiN**
1	Legnica	–1					3	Wrocław		+1			
2	Wałbrzych	–1					13	Kraków II		+1			
5	Toruń		–1				19	Warszawa I			+1		
6	Lublin	–1					20	Warszawa II	+1				+1
7	Chełm			–1			23	Rzeszów	+1				
9	Łódź	–1					25	Gdańsk			+1		
31	Katowice II					–1	26	Słupsk	+1				
32	Katowice III	–1					37	Konin	+1				
33	Kielce	–1					38	Piła		+1			
34	Elbląg	–1					39	Poznań		+1			
40	Koszalin				–1								

Source: *Own study and calculations based on: https://sejmsenat2019.pkw.gov.pl/sejmsenat2019/en accessed on 15 Feb 2023.*

Based on the data in Table 2, if the number of the mandates had been increased by one in five districts, compared to the official results of the 2019 Sejm elections, both KO and PiS would have gained additional seats (in Districts No. 3 and 39; Districts No. 20 and 26), and SLD would have gained one seat (District No. 25). On the other hand, if the number of mandates had been decreased by one, compared to the official results of the 2019 Sejm elections, PiS would have lost four seats (Districts No. 9, 32–34), and Konfederacja would have lost one seat (District No. 31). In summary, if the required correction to the number of mandates in 10 districts had taken place, KO would have gained two seats and SLD would have gained one seat, while PiS would have lost two seats and Konfederacja would have lost one seat (the current fragile majority of the ruling party is based on these two mandates).

Extrapolating the results of the 2019 Sejm elections to the proposed changes in the number of mandates in the next 11 districts as suggested by the PKW in 2022, if the number of mandates were increased by one in six districts, compared to the official results of the 2019 Sejm elections, both KO and PiS would gain additional mandates (in Districts No. 13, 38; Districts No. 23 and 37), and SLD and Konfederacja would each gain one mandate (District No. 19 and District No. 20 – the second proposed additional mandate). On the other hand, if the number of mandates in six districts was decreased by one, compared to the official results of the 2019 Sejm elections, PiS would lose three seats (Districts No. 1, 2, and 6), and KO, SLD, and PSL would each lose one seat (Districts No. 5, 7, and 40). In summary, if the required correction to the number of mandates in 21 districts were to take place, KO would gain three seats, while PiS would lose three seats and PSL would lose one seat. The number of members of the Sejm from SLD and Konfederacja would remain unchanged.

The analysed results indicate that conducting parliamentary elections without the required legal correction would likely favour PiS at the expense of opposition parties, particularly KO. Furthermore, the mentioned inequality is exacerbated by the fact that the mandate distribution formula described in the Electoral Code does not take into account votes from abroad. However, in the last elections, the number of votes from abroad significantly increased, constituting a significant percentage of the total votes cast in District 19 (Warsaw I). This leads to an additional dilution of voting power in this district and weakens the traditionally dominant opposition parties in Warsaw (Haman 2022, *Korekta*, 4).

Legal consequences

The division of mandates among constituencies in elections to the lower house of parliament, as outlined in the Electoral Code, has been inconsistent with the rational provision of Article 202 of the said law since at least 2015. This is primarily due to the failure of the 7th-9th parliamentary terms to consider the recommendations put forth by the National Electoral Commission. As a result, the constitutional principle of electoral equality in the Sejm has been directly violated. „Determining the appropriate division is straightforward and can be done unambiguously using available statistical data and the content of Article 202 of the Electoral Code. Therefore, rectifying this situation merely requires the parliament to adopt the necessary resolutions – a course of action that, unfortunately, has not been taken in recent years" (Haman 2022, Podział, 4).

The question arises as to the legal consequences stemming from the repeated failure of the Sejm to implement the required adjustments to the number of mandates in the discussed constituencies, as mandated by the Electoral Code.

The primary grounds for potentially invalidating elections are specified in Article 82 § 1 of the Electoral Code. A protest against the validity of elections, the validity of elections in a district, or the election of a specific individual may be lodged in cases of committing offences against elections, as defined in Chapter XXXI of the Criminal Code, or violating provisions of the Electoral Code related to voting, determining voting results, or election outcomes, if such actions influenced the course of voting, the determination of voting results, or election outcomes (in this case, the second criterion) (Czaplicki, Dauter, Jaworski, Kisielewicz, Rymarz, Zbieranek 2018, 237–240).

According to the literal interpretation of the cited provision, it is evident that the potential failure of the Sejm to consider the recommendations of the National Electoral

Commission, as stated in the analysed documents based on the Electoral Code, does not formally impact the validity of elections conducted under the unchanged legal and factual circumstances. However, this disregards the violation of the principle of equality of representation in the 2023 Sejm elections. These elections were held in 21 out of 41 constituencies that were constructed in a flawed manner. The allocation of mandates in these constituencies, accounting for almost 1/20 of the total (22 out of 460 mandates), does not correspond to the requirement of ensuring equal voting power in all constituencies. "This situation raises significant concerns in light of the constitutional principle of electoral equality, as stated in Article 96(2) of the Constitution. Additionally, it is clear that the Electoral Code will suffer from internal inconsistency since the distribution of mandates specified in Annex No. 1 does not align with the principles of districting outlined in Articles 201–203." (Chybalski 2019, 47).

However, as mentioned, according to Article 82 § 1 of the Electoral Code, a successful electoral protest can only be based on the establishment of specific election-related offences or the violation of selected provisions of the Electoral Code itself. It does not include the flaw in the Code itself, such as the absence of an obligation to correct constituencies or potential sanctions for not doing so. This reasoning is supported by a ruling of the Supreme Court issued prior to the 1997 Constitution, in which the court dismissed the claim of unconstitutionality of an electoral law provision in an electoral protest concerning presidential elections, stating that such a criterion was not listed among the legal grounds for filing electoral protests (Resolution of the Supreme Court of December 6, 1995).

Polish court rulings also offer a broader interpretation of the issue at hand, one that goes beyond a literal understanding and takes into account systemic and purposive considerations. In this view, the notion of the validity of elections, which can be subject to a protest, encompasses „all elements that make up the electoral process and determine its legality, an aspect that should be considered when interpreting Article 82 § 1 point 2 of the Electoral Code [Supreme Court Resolution (7) of October 18, 2012, III SW 4/12, OSNAPiUS 2013, No. 5–6, item 70; a different position was held by the Supreme Court in previous resolutions, see Supreme Court resolutions of November 3, 2011, in cases: III SW 64/11 (unpublished), III SW 65/11 (unpublished), III SW 82/11 (unpublished), III SW 128/11 (Legalis), III SW 131/11 (unpublished)] (Banaszak 2018, pp. 171–172; Chybalski 2019, pp. 48–49)."

It is difficult to predict the specific stance that the current Chamber of Extraordinary Control and Public Affairs of the Supreme Court would take in the event of electoral protests arising from the 2023 parliamentary elections, based on the aforementioned grounds. However, both an examination of its composition (consisting entirely of judges chosen by the politically influenced National Council of the Judiciary – KRS, see e.g.: judgment of the European Court of Human Rights in the case of *Dolińska-Ficek and Ozimek v. Poland*, applications no. 49868/19 and 57511/19) and previous rulings on the validity of presidential elections in June 2020 and July 2020 (Supreme Court Resolution of August 3, 2020) suggest a potential inclination towards a narrower interpretation of this issue.

Conclusions

The provisions outlined in Chapter III, Section 2 of the Polish Electoral Code were intended to serve two main purposes. Firstly, they aimed to update the allocation of seats in each

electoral district of the Sejm to account for demographic changes, thereby striving towards a concept of "equality of representation." Secondly, they aimed to safeguard against arbitrary adjustments to the seat allocation, which could be made to benefit the current parliamentary majority. However, upon analysing the practical implementation (or lack thereof) of these regulations, it becomes evident that they are not functioning effectively.

The main reason behind this inefficiency appears to be the lack of interest from the current parliamentary majority in correcting the number of seats assigned to individual electoral districts, especially when such corrections could result in the loss of some seats. Additionally, the Electoral Code does not provide practical consequences for the inaction of the Sejm, ultimately leading to a violation of the constitutional principle of equality in elections, particularly in terms of equality of representation. Unfortunately, this situation is all too common, where politicians interpret the aforementioned principle narrowly or even act in opposition to it, allowing themselves to maximise their benefits from the electoral law provisions (Uziębło 2013, 54–58; Shugart, Taagepera 2017, 2–4; *Code of Good Conduct in Electoral Matters*).

One potential solution, suggested in the literature, is to replace the discretionary power of the Sejm in the process of updating seat allocations among districts with an automated mechanism similar to that employed in local elections (Haman, *Podział*, 6). However, it is crucial to consider that such an amendment would significantly reduce the safeguard against arbitrary adjustments made for the benefit of the current parliamentary majority, particularly if one party or political force was to gain control over the National Electoral Commission.

One of the practical responses to the lack of the legally required correction of the number of mandates elected in electoral districts, as described above, was the implementation in the parliamentary elections on October 15, 2023, by opposition supporters of a specific tactic called "electoral tourism" (Gendźwiłł 2023). Article 32 of the Electoral Code was used, which allows citizens to vote outside their place of residence. On the one hand, this is a solution aimed at increasing voter turnout and promoting the principle of the universality of elections (Musiał-Karg 2011, 81, 87). On the other hand, it is a form of electoral manipulation, even if voters "are aware of the manipulation to which they are subjected. They agree to it either for ideological reasons or because they have particular motivations. Among the latter, one can mention the benefits they expect to achieve after the elections, or a sense of agency attributed to their actions." (Wojtasik 2022, 166–168). The implementation of such actions may temporarily, but rather to a limited extent, "correct" the inequalities resulting from the legislative omissions of the Sejm (Flis, Krupa 2023, 52–56; *Nie tylko "turystyka wyborcza"* 2023). However, it should not be forgotten that the conscious and widespread use of the "electoral tourism" tactic is a form of electoral manipulation and may distort the election results and violate the principle of their equality. Such a solution will also not replace systemic legislative changes.

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