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**EQUAL OR NOT? ON THE MATERIAL ASPECT
OF EQUALITY OF EUROPEAN PARLIAMENT
ELECTIONS IN POLAND**

Abstract:

This article focuses on the issue of equality of elections, in the context of the 2014 European Parliament election in Poland. Most often the definition of principles of elections' equality comes down to emphasizing its two aspects: the formal one and the material one. The first of them refers to guaranteeing each person with the active voting right the same number of votes. The material aspect of the equality principle is connected with striving to guarantee the same "voting power" to the election participants. Most briefly, it means that a given number of people elect as many representatives as another group with the same numerical strength.

The main aim of this article is focus on the material aspect of implementing the principle of equality in EP elections. In the article will be emphasized three issues decisive for the specific features of the electoral system (electoral districts, election threshold and electoral formula), at the same time influencing the range of implementation of the material equality of elections. General findings will be confronted with empirical data, which will allow to formulate conclusions about the degree to which the European Parliament election conducted in Poland on 25th May 2014 met the principle of material equality.

Key words:

equality of elections, the European Parliament, electoral system

Introduction

Equality is a positive value in democratic regimes. When it is emphasized, the aim is to show that the members of a certain community are treated in the same way regarding their freedoms, rights and responsibilities. So equal

treatment of everybody, regardless of sociodemographic differences between people, is the goal to which the rulers should strive in political systems considered to meet the requirements of democracy.

The essence of equality discussed on the political ground comes down to the fact that the preferences of one citizen are no more significant than the preferences of another one [Dahl, Lindblom 1953: 41]. Hence, the attempts to create an institutional system which will guarantee each citizen an identical opportunity to participate in taking political decisions and controlling the decisions taken by the authorities are completely understandable. Taking into consideration the fact that the contemporary democracy is predominantly representative, the institution of elections is of key importance, especially regarding the way they are organized and conducted. After all, they are the basic form of citizens' participation in taking decisions on who will exercise the authority and as a consequence, whose and what kind of political programme will be chosen for implementation by particular public authority bodies¹ [Wojtasik 2012: 54-77; Wojtasik 2013: 25-38].

Elections are organized at various levels. The highest systemic and social significance is attributed to elections organized at the national level [Wojtasik 2011: 209]. By means of such elections, the citizens of a given country decide about the personal composition of the parliament (or at least one of the chambers in the case of bi-cameral parliaments). In many countries, it is becoming more and more popular to leave the issue of appointing the head of the country to the direct decision of the sovereign. Besides, political practice confirms that in different countries the institution of general elections is used as a way of creating still other national authorities (e.g. the election of the Prime Minister in Israel), which in turn proves the endemic character of many systemic solutions.

The processes of decentralization of power have led to the development of different forms of territorial self-government and/or territorial autonomy [Domagała, Iwanek 2013: 15-29; Domagała, Iwanek 2014: 29-41]. As a consequence, the citizens of certain selfgovernmental communities or autonomic regions also participate – apart from national elections – in elections at the local and regional level.

Finally, it should be noted that internationally – since the 19th century, all the way through the 20th century up to now – interrelation of countries, concerning different areas of their existence, has been more and more obvious. One of its expressions in Europe is integration processes, with their institutional manifestation of the European Union, already including almost thirty states. The formation of supranational European structures resulted in the creation of

¹ Significant differences in the execution of the elections' function are particularly observed in the case of European Parliament elections [Hix 2010: 123; Wojtasik 2012: 300], although the implementation of the Lisbon Treaty leads to the reconsideration of some conclusions.

many bodies making a complicated institutional system of the EU [Hix 2010: 55-183], in which a significant role is attributed to the European Parliament [Domagała 2010: 11-27].

The term “parliament” is of key importance, especially that we cannot imagine the existence of any democratic political system without a parliament elected directly by the sovereign [Antoszewski, Herbut 2001: 237]. At the EU level, the parliament of course does not play such a role and does not serve the functions that national parliaments do, but since it is composed of “representatives of the Union’s citizens”² [*Treaty of European Union...*, Article 14.2], it is worth analysing more thoroughly its election mechanisms. From this perspective, the history of the European Parliament, which started in 1962³, can be divided into two periods. In the first one, lasting *de facto* until 1979, its composition depended on the decisions made by the parliaments of the member states, hence it appeared to be an inter-parliamentary body. The beginning of the second period was the first general and direct election of members of the European Parliament, taking place on 7-10 June 1979. As pointed out by Józef M. Fiszer [2005: 12], thanks to that, this body really became a “supranational institution”. So since 1979, the citizens of several – currently, of most – European countries have been participating in elections to a supranational body, apart from national, local and regional elections [Dalton, Scarrow, Cain 2004: 126-127].

For many states and communities, elections at the European level are a huge challenge. First, they determine the need for the subjects participating in it (citizens who exercise their active and passive voting rights and political parties) to adapt to the new conditions, which especially in the countries of the former Eastern Bloc resulted changes reflecting the dynamics of democratic transformation processes. Second, the subjects responsible for creating the rules of the electoral game should aim at creating an electoral system that would guarantee the recognition of European Parliament elections not only as free but also as fair elections.

This article focuses on the issue of equality of elections, in the context of the 2014 European Parliament election. The very concept of equality of elections is so broad that it must be at least briefly explained. Most often the definition of principles of elections’ equality comes down to emphasizing its two aspects: the formal one and the material one. The first of them refers to guaranteeing each

² On the basis of national law, their status has been defined as “representatives of nations of the European Union” [*Election Code...*, Article 330].

³ The emergence of the European Parliament should be analysed from the processual perspective. True, a body called “the European Parliament” appeared in 1962, but even before, within the framework of European Communities, there had been a body identified with the contemporary European Parliament (with different names whose evolution was connected with the dynamics of integration processes) [Dydak 2003: 11-12].

person with the active voting right the same number of votes. This essentially means a demand to create mechanisms which prevent any group of people from having a higher number of votes because of the value of property they own, belonging to a certain social class, education level or other characteristics used to determine people's social status [Żukowski 1999: 22-23]. The material aspect of the equality principle is connected with striving to guarantee the same "voting power" to the election participants. Most briefly, it means that a given number of people elect as many representatives as another group with the same numerical strength [Glajcar, Okrzesik, Wojtasik 2006: 14]. This, so to say, rudimentary approach to the electoral equality principle is currently being extended, and in two directions. First, we can see the extension of application range of this principle. This is proved for example by identifying the third aspect of the discussed principle apart from the formal and material ones, referred to as the equality of electoral opportunities [Uziębło 2013: 218-327]. Second, each of the mentioned aspects is connected with a growing number of elements which determine its implementation. Thus, the scope of definitions of its particular aspects is sometimes broadened⁴. The aim of this article, however, is not to carry out conceptual analysis but to focus on one – particularly important from the point of view of election results – material aspect of implementing the principle of equality in EP elections. Further in the article will be emphasized three issues decisive for the specific features of the electoral system (electoral districts, election threshold and electoral formula), at the same time influencing the range of implementation of the material equality of elections. General findings will be confronted with empirical data, which will allow to formulate conclusions about the degree to which the European Parliament election conducted in Poland on 25th May 2014 met the principle of material equality. Obviously, absolute compliance with the principle is very unlikely in a dynamic social system, but getting possibly close to the ideal will allow us to assume that the said principle has been accomplished.

Assuming that legal norms are the framework within which the election participants should operate, it is worth making a few comments on the normative character of European Parliament elections. In Europe, the regulations are general in character, and detailed issues are decided by the legal acts of each state. As a consequence, significant differences are sometimes observed between the voting systems applied in individual member states. As part of the analysis, it is worth noticing that it was determined at the level of primary European Union law that European Parliament elections should only be general and direct,

⁴ Piotr Uziębło [2013: 59-60] points out e.g. the necessity to extend the definition of formal election equality: "... it is becoming necessary to analyse not only its fundamental element, meaning whether voters are entitled to an equal number of votes, but also their other rights connected with elections, because even in these aspects some unjustified, discriminating differentiation of rights of individual voters may appear".

and the ballot should be free and secret [*Treaty on European Union...*, Article 14.3]. In addition, aiming at the unification of election procedures, by Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage [2002] it was provided that in each Member State, members of the European Parliament shall be elected on the basis of proportional representation, using the list system or the single transferable vote (STV).

It is easy to notice, then, that no declaration concerning equality of elections was included in the above regulations. It is not surprising, especially that the distribution of seats between the member states where they are later allocated leads to the material aspect of the elections equality being significantly disturbed. The data in Table 1 show the difference in the voting power between voters in particular EU member states. Of course we also need to remember that the presented data only indicate what Jerzy Jaskiernia [1992: 23] calls “potential voting power” in contrast to the “actual voting power”. This distinction is worth highlighting not only because of the importance of the turnout aspect for the evaluation of material vote equality but also because the citizens of the European Union can participate in elections of MEPs on the territory of each EU member state, not only the one of which they are citizens. The use of this opportunity, then, may modify the findings concerning the “potential voting power” presented in the table. However, taking into consideration for example the Polish experience from 2009 [Glajcar 2010: 57], this phenomenon may be regarded as marginal, not affecting the data presented in the table in any significant way.

There are 503.6 million citizens in the European Union. Taking into account the fact that in 2014, 751 European Parliament representatives were elected, there is one representative to almost 670,600 citizens (the norm of representation). The fourth column of Table 1 shows the disproportions of the voting power among citizens of the member states. We can see that the vote of a citizen of Malta is thirteen times stronger than the vote of a citizen of France. So, noticeably, deviations from the material aspect of equality are considerable. The votes of citizens of demographically smallest member states of the EU are the most powerful. And conversely, the votes of largest states have the lowest power. It is connected with the adopted principle of degressive proportionality, unfavourable for the citizens of EU largest states. In addition, apart from the demographic potential, the smallest states are guaranteed the minimum number of seats (six), thus consciously violating the proportional pattern of seat distribution. The fact that this clause contradicts equality is beyond doubt. It is enough to disregard the smallest member states (Malta, Luxembourg, Cyprus, Estonia) to see that the difference between the voting power of citizens of France and Slovenia is much lower (the votes of the latter are “only” 3.5 times stronger).

The general character of the European legal norms concerning European Parliament elections resulted in the necessity to regulate the principles of electoral competition at the level of national law. What is interesting, in Poland one of the principles of election law regarding European Parliament elections is equality [*Election Code...*, Article 328]. Remarkably, this principle did not apply in the elections of 2004 and 2009. So the decision included in the Election Code is a novelty, changing the essential aspect of the European Parliament election system valid in the territory of the Republic of Poland. Since 2014, the elections should be conducted in a way which guarantees the implementation not only of the formal but also the material aspect of equality. Therefore, it is even more justified to try and find out to what extent this other aspect was present in the election of 25th May 2014. Actually, not only the code requirement is important. In literature of the subject it is emphasized that “Failure to observe the equality of elections ... may lead to the distortion of voters’ will, and this undermines the fundamental goal of free elections: appointing the representative composition of the representative assembly reflecting the actual structure of interests and views occurring in the society” [Kryszewski 2007: 103]. Another argument for seeking the mechanisms that guarantee the implementation of election equality principle (even in the situation it is not part of the constitutional or statutory catalogue of election law principles) refers to Polish electoral tradition, in which it is deeply rooted [Michalak 2010: 13].

Analysis

The issue of the material aspect of equality of elections is closely related to the necessity to analyse the selected elements of the electoral system. The first of them is electoral districts. The determination of their territorial range and size is – first of all – one of the most politically controversial issues, and secondly, as a consequence of that, it may promote equal representation but may also violate it, favouring certain parts of the country or territorial communities. Further, it may result in benefits for some groups and limit the electoral opportunities of others. Hence, the beneficiaries of the current solutions will try to retain the *status quo*, while other political actors will strive to change it.

Regarding European Parliament elections, Poland has been divided into thirteen districts. Seven of them cover the areas of single voivodeships (Pomorskie – district no. 1, Kujawsko-Pomorskie – district no. 2, Łódzkie – district no. 6, Wielkopolskie – district no. 7, Lubelskie – district no. 8, Podkarpackie – district no. 9, Śląskie – district no. 11), four were created on the territory of two adjacent voivodeships (Podlaskie and Warmińsko-Mazurskie – district no. 3, Małopolskie and Świętokrzyskie – district no. 10, Dolnośląskie

and Opolskie – district no. 12, Lubuskie and Zachodniopomorskie – district no. 13), and Mazowieckie Voivodeship was divided into two electoral districts – district no. 4 (including the capital city of Warsaw) and district no. 5. Thus the hybrid model of determining electoral districts was applied. Basically, the authors of the solution referred to the administrative division into voivodeships, but they also used the possibility to combine them, which indicates a distinct (in a way, non-administrative) way of creating electoral districts. The applied mechanism provides the basis for the formulation of twofold observations. First, the fact that decisions in this matter are taken at the statutory level may result in objections concerning consciously combining or dividing voivodeships by the parties which have the parliamentary majority in order to maximize the political benefits [Uziębło 2013: 107]. Second, the adopted mode of division from the perspective of voters from smaller (e.g. Świętokrzyskie or Opolskie) voivodeships constituting districts together with territorial division units which have a higher number of voters may distort their sense of justice concerning the implementation of the traditional model of territorial representation [Michalak 2010: 13]. Besides, we must not ignore the important aspect that members of the European Parliament formally represent the whole collective subject of sovereignty, and in this sense the division into electoral districts may be treated as a technical procedure. Remembering this, we need to emphasize the occurrence of specific ambiguity of the adopted model of representation, with its territorial dimension on the one hand, and the national one on the other.

The adopted division shows that the potential mean size of a district (3.92) is low. It is the result of a relatively low total number of seats to be distributed (51). This was one of the reasons for the interesting proposal of creating only one electoral district covering the area of Poland, presented during the works on the European Parliament electoral system [Głajcar 2010: 57]. Finally, however, it was not approved. Still, when adopting the system of thirteen electoral districts, a specific numbers of seats were not assigned to each district. Hence, the number of the seats a district receives does not depend either on the number of citizens of the territory or the number of people entitled to vote. This results from adopting a two-step mechanism of seat distribution. First, the votes cast on the candidates from the district lists of each election committee are aggregated at the national level. On the basis of outcomes determined this way, the seats are distributed among the entitled election committees (that is why some authors claim that we *de facto* have one electoral district covering the whole country [Antoszewski, Herbut 2006: 327]). After the number of seats of each committee is determined, they are distributed among the district lists of candidates.

Thus the number of seats for each electoral district indirectly depends on the turnout level within the district. Higher turnout in a district increases the

probability that particular committees will achieve better outcomes in this district than their lists achieved in other districts, and as a consequence, will be decisive for the allocation of a higher number of seats in this district. This is confirmed by the results of the election of 25th May 2014 (Table 2). The highest turnout (35.33%) was observed in district no. 4 (as compared to 23.83% at the national level), to which five seats were ultimately allocated. It was significantly more than the potential value calculated for this district, amounting to slightly above 3.6. Analogously, we cannot disregard the fact that the most unfavourable ratio of the potential size of electoral district to the actual number of seats was observed in district no. 3, where the election turnout was the lowest. It was the only district where the turnout did not exceed the 20% threshold. Hence, we must conclude that seeking correlations between a high electoral turnout and the actual size of the electoral district is fully legitimate. At the same time, as post-election data indicate, this relation is by no means absolute. Not always does a high turnout guarantee the increase of the district pool of seats, just like a low turnout does not have to result in its significant decrease in comparison with the potential size of the electoral district. For example in district no. 6 the turnout level was similar to the national one (23.72%). It was the sixth highest result among the thirteen districts. In spite of that, in Łódzkie Voivodeship the second highest negative ratio of actual versus potential district size was observed (-1.389). At the same time, in district no. 5, where the turnout level was one of the lowest (20.08%), this ratio was “only” -0.364 (Table 2.).

So the above-mentioned findings show that the actual size of an electoral district is not absolutely dependent on the election turnout. Hence, there must be another element ultimately decisive for the distribution of seats among the districts. Actually, it is the district distribution of support concerning individual election committees. It is worth checking, then, to what extent it affects the size of particular electoral districts and how the “dynamic”, not “stable”, distribution of seats among them influenced the implementation of the material aspect of equality of the European Parliament election in Poland in 2014.

It is indisputable that the mechanism of creating the electoral district size in European Parliament elections applied in Poland is more dependent on the distribution of support among district lists of a certain election committee rather than the election turnout. It is fully confirmed by empirical data (Table 3). The only election committee which obtained seats in all the thirteen districts was Prawo i Sprawiedliwość – PiS (*Law and Justice*). It is a consequence of relatively even distribution of support among the district lists of this party. It achieved the best result in district no. 10 – over three times (3.18) higher than in district no. 2, where the result of Jarosław Kaczyński’s party was the lowest. The winner of the European Parliament election in 2014, Platforma

Obywatelska – PO (*Civic Platform*), obtained seats in twelve of the districts. Lubelskie Voivodeship (district no. 8) was the only one where PO did not receive a seat in the end. The direct reason for that was the poor result of PO's list from that district (2.86% of all the votes cast on that party in the election), even more clearly seen against the background of support for the party in the other regions. The result of the Lublin list of PO was more than five times poorer (5.2) than the result achieved in Śląskie Voivodeship (district no. 11), where the support was the highest.

The issue of diversification in the distribution of support for election committees is even better shown by the level of extreme deviation from the mean result of district lists determined for each of them. This way we can compare not the level of support for each party but first of all their popularity in the given district against the background of the all-Poland result. The district mean for Platforma Obywatelska was 8.86%, and for Prawo i Sprawiedliwość it was a little higher, 9%. The medians for both parties are also similar in both cases: 7.02% and 7.32% respectively. But the fundamental difference occurred in extreme deviations from these values, which were 6% for PO (the highest among the parties which received seats) and 4.69% for PiS. This index best shows that the votes cast for PO, which had the greatest support in the election of 25th May 2014, were distributed more unevenly than in the case of Prawo i Sprawiedliwość. As a result, the latter party obtained seats in all the districts, and PO, “only” in twelve.

In the case of the other parties, the level of extreme deviation was also varied. The lowest value of the index was observed for Koalicyjny Komitet Wyborczy Sojusz Lewicy Demokratycznej-Unia Pracy – SLD-UP (*Democratic Left Alliance-Labor Union election committee*): 4.55%. For Komitet Wyborczy Nowa Prawica (*Congress of the New Right election committee*) of Janusz Korwin-Mikke, it was 5.23%, and for Polskie Stronnictwo Ludowe – PSL (*Polish Peasants' Party*), 5.75%. Due to the relatively low number of seats obtained by these three committees at the national level, none of the district lists managed to achieve support equal to the calculated Hare quota. Hence, the final distribution of seats was determined by the value of the rest, which means that the seats fell to those district lists which achieved the highest support, in the order of support level (in the case of SLD-UP this referred to five district lists, and in the case of Nowa Prawica and PSL, four lists each).

On the basis of the previous findings, we must assume that the factor which directly affects the size of the electoral district is the distribution of support among the districts for the election committee which accomplished the election threshold at the national level. The factor which acts in favour of increasing the size may be high election turnout, especially if its level is considerably

higher than in the other districts. However, it is not an absolute relation, since the votes in such a district may be distributed proportionally among the lists of different committees, not improving significantly the result of any of them in comparison with the results of the committee in the other districts. Another element which weakens the influence of the turnout effect on the size of the electoral district is concentration of support for parties not exceeding the national election threshold. This issue is discussed in greater detail further in the article.

At this stage of the analysis, we need to conclude that the adopted way of determining the size of electoral districts in European Parliament elections in the Republic of Poland does not guarantee the implementation of the material aspect of the equality principle or generates deviation from the ideal reflection of each voter's voting power. The ambiguity in the evaluation of the effect of the way of determining electoral districts regarding the observing of the elections' material equality, signalled in the previous sentence, results from the fact that no document specifies what level of diversification of voters' voting power means the violation of the material equality principle. On the basis of "*Code of Good Practice in Electoral Matters*": I.2.2.4] we can only assume that the number of voters per seat within a given district should not be higher or lower than 10% (in special cases, 15%) of the computed electoral quota, indicating the number of voters per seat on average in the scale of the whole country. Yet, in the analysed election, the deviations were much greater (Table 2.). Votes cast in district no. 3 had the lowest power. In this case, the deviation from the norm of representation at the national level was almost 76%. The opposite extreme was district no. 4, where the votes proved to be by over one fourth stronger than the national standard. If we were to compute mean deviations, for the districts in which the voting power was weaker than the national norm of representation (five districts), it amounted to 45%. For the districts where the voting power proved to be higher than the norm of representation computed at the national level (eight districts), the mean deviation was slightly over 11%. These data show that the levels of acceptable deviations provided in the "*Code of Good Practice in Electoral Matters*" were exceeded, but not significantly. Of course, this evaluation is subjective, but it is impossible to ignore the fact that in the case of four districts the described deviations are within the 0-10% range suggested by the Code, in other four, 10-15%, and "only" in five districts the norms determined in the Code were obviously violated (this concerned approx. 1/3 of persons entitled to vote).

Therefore, it is proper to think whether as part of electoral engineering it would be possible to use solutions more effectively influencing the implementation of the material aspect of equality. It seems that understanding the role and significance of a MEP is of key importance in this matter. Thus, the attention must be focused on the question of representation model [more: see *Cf.*

Szymanek 2005: 223-236; Szymanek 2013: 1-22]. The basic problem is that the assumptions of who a Member of the European Parliament represents are not fully confirmed at the level of electoral practice. On the one hand, by the fact that from the point of view of election outcome determination (in the political party dimension) Poland is actually one electoral district, a seat of a representative receives the general national character or is connected with representing the citizens of a member state of the EU⁵. On the other hand, the final repartition of seats among the district lists determines the way of conducting electoral campaigns by individual committees and candidates. It is also reflected in the binding ballot mode (technique) and it often also affects the voting tactics use by voters. Finally, the question of personal seat allocation is settled at the district level. These are the premises to recognize that a special bond is created between the representative and the voters, which may be cemented by both sides' attachment to a specific territory. This may lead to emphasizing the territorial aspect of representation at the expense of its national character. This dual nature of representation, created as a result of electoral engineering, has a negative impact on the observance of the material aspect of equality of European Parliament elections. In the face of the fact that the goal of elections conducted on the territory of a state where over thirty million citizens have the active voting right is to fill only fifty one seats, from the perspective of implementation of the material aspect of equality it would be more justified to create one electoral district covering the area of the Republic of Poland. It would allow to approximate the ideal reflection of the voting power of all the voters as accurately as possible. But was/is this the aim of the political actors deciding of the adoption of solutions within the framework of the binding electoral system?

It is worth mentioning another of its elements, namely the election threshold. This issue is even more interesting as in the election of 25th May 2014 nearly 900 thousand votes were cast for candidates of the committees which did not achieve the five per cent statutory threshold as the national level. It was 12.7% of all valid votes, so approximately every eighth voter decided to support a party which finally was not taken into account in the seat distribution procedure.

Of course the basic issue is why a certain solution is introduced to the set of rules regulating the electoral competition. In the case of the election threshold, the wish to avoid excessive fragmentation of the political representation body is most often pointed out. This is justified especially when such a body is one of the links of a longer representation chain, e.g. when its political composition is of key importance for the formation and operation of the government

⁵ The element which might confirm the fact of perceiving the seat of MEP this way is the strategy used by the election committees of some parties, which involves placing a candidate "from outside" on the district list, not connected in any way with the particular territory.

(parliamentary regimes). But does this argumentation correspond to the functions and role of the European Parliament in the EU institutional system? While with reference to the previous terms the answer would be clearly negative, the 2014 election is a significant landmark in this respect. It is connected with the Treaty of Lisbon of 13 December 2007, which came into force on 1 December 2009. Among other things, it introduced changes in creative powers of the European Parliament [Galster, Knade-Plaskacz 2010: 194-195], including those concerning the European Commission, referred to as the “main executive body of the EU” [Hix 2010: 35]. It concerns the president of the Commission, who had been nominated by the Council of the European Union before, then approved by the European Parliament, and finally, appointed together with the other members of the Commission by the EU Council. The Lisbon Treaty changed this procedure, increasing the importance of the European Parliament. First, the European Council presents a candidate for the position of the European Commission president to the European Parliament. Pursuant to Article 17 section 7 of the Treaty on European Union, it does so “taking into account the elections to the European Parliament and after having held the appropriate consultations ...”. Second, the indicated candidate is **elected** by the European Parliament by a majority of its members. Thus, the new procedural solution can be perceived as tackling the problem of legitimization deficit in the European Union [Kubin 2007: 11]. In the present legal state, the European Parliament was entrusted with the election of the president of the European Commission, which means authority broader than just “approving”. However, it does not change the fact that the only body at the European level being the result of general and direct elections still cannot present its “own candidate” but takes a decision as to the nominee previously indicated by the European Council. What is even more important in the context of European Parliament elections, when indicating the candidate the European Council must “take into account the elections to the European Parliament”. This expression is at least unclear [Adamiec, Wąsowicz 2014: 15-16]. Not attempting to interpret it thoroughly, we need to assume that the political configuration of the European Parliament as a consequence of its democratic election should be reflected in the process of nomination of the candidate for the president of the European Commission. It does not mean that the current solutions are closer to those known from national parliamentary or premier-presidential regimes. After all, the institutional system of the EU is formed on a different basis. Still, the outlined procedure indicates the increasing importance of the results of the European Parliament elections in the context of creating the European executive.

Having written these short comments, let us return to the issue of election threshold. Poland is one of fifteen EU countries that apply the election threshold in European Parliament elections. It has been established at the maximum

possible level of 5% of valid votes in the whole country. The above-mentioned changes introduced with the Lisbon Treaty caused an increase of importance of the European Parliament election results for the election of the president of the European Commission, which – applying the national measure – might suggest the legitimacy of emphasizing the effectiveness of ruling rather than representative character of the representative body. This would justify the introduction of elements limiting the probability of political fragmentation of the electoral system. In this situation, however, it is important to differentiate between the national level of political competition from the European one so as to understand that the basic phase of the elections, connected with voters expressing their preferences and then with the transformation of votes into seats, is not necessarily reflected in the political landscape of the European Parliament⁶. Firstly, the electoral campaign is conducted at the level of member states, and the voters cast their votes for lists presented by national political parties or their coalitions. Thus they express their approval of particular ideological and policy options but only those defined within the national system. Secondly, the relations between political parties acting on the national political scene and supranational political groups operating in the European Parliament must be taken into consideration. The affiliation of a national party to such a fraction is the result of a post-election decision. Especially in the situation when the level of institutionalization of political parties is relatively low, it cannot be excluded that the choice of a fraction in the European Parliament will not correlate with the voters' expectations [Wiszniewski 2008: 271, 273]. So we cannot say that the results of European Parliament elections in individual member states aggregated at the European level (in the ideological and policy dimension) will be reflected in the strength of supranational political groups functioning within this body. Thus, the election threshold applied at the level of the national electoral system is not directly translated into the level of political fragmentation of the European Parliament.

The applied election threshold might also be perceived from the perspective of protection of national interests at the level of an important European authority. It would mean aiming at the formation of mechanisms to guarantee that the pool of seats allocated to Poland will be distributed among the parties which will constitute real powers within the framework of supranational political groups in the European Parliament. Such argumentation seems legitimate, especially in the situation of a multi-party system in an extremely pluralized version. However, when the multipartyism is only moderate, the strength of such arguments is lower.

⁶ Literature of the subject refers to the stance of the Federal Constitutional Court in Karlsruhe, which decided that the introduction of the election threshold in European Parliament elections is unconstitutional. The court justified it with the lack of necessity to form stable parliamentary majority, connected with the functions this body serves [Uziębło 2013: 202-203].

The election threshold definitely corrects the decisions taken by the voters. Yet, we may think to what extent it affects the distribution of seats among the subjects participating in elections. We need to remember that the power of the election threshold depends not only on the level at which it is applied (national or district) or its height (expressed in per cent or determined by calculating the electoral quota) but also on the situation context, particularly on the number of subjects taking part in the electoral competition and their social support, as well as on whether and to what degree voters use tactics in casting their votes. So as to determine it, we can – considering the outcome of voting of 25th May 2014 – compare the official results of the election with the hypothetical distribution of votes between the election committees, disregarding the election threshold. It is not surprising that in the latter case the number of subjects receiving the seats would increase. The seats would be distributed not among five but among eight election committees. However, a shift would only occur in the case of five seats (10%). PO and PiS would lose two seats each, and PSL would receive one seat less. The beneficiaries would be the parties which achieved support at the level of 3-4% (Table 4.), and the natural threshold⁷, when treating Poland as one electoral district (the distribution of seats at the national level) would be lower than 2%. It proves, then, that the election threshold does not radically change the election results at the level of parties having the greatest voters' support, but is a significant barrier in the case of smaller subjects participating in the electoral contest. So Arend Lijphart is right when he writes that “District magnitudes and electoral thresholds can be seen as two sides of the same coin: the *explicit* barrier against small parties imposed by a threshold has essentially the same function as the barrier *implied* by district magnitude” [Lijphart 1999: 153].

It is also worth analysing whether (and if so, to what extent) the election threshold influences the implementation of the material aspect of equality. In literature of the subject a negative correlation between a high value of election threshold and the implementation of material equality of elections is pointed out [Uziębło 2013: 215]. The results of the election analysed in this work demand considerable conservatism in formulating such conclusions (Table 5.). First, when ignoring the election threshold, the distribution of seats would cause a change in the size of only four out of the thirteen districts (districts no. 4, 7, 11 and 12). At the same time, 11,742,792 persons had the right to vote in these districts, so the changes would affect over 38% of voters registered in Poland. Second, in two districts the voting power would increase (districts no. 4 and 11), and in two other, it would decrease (districts no. 7 and 12). Third, in the case of three districts the deviation from the national norm of representation would increase, and in one, the voting power would approximate it.

⁷ The natural threshold calculated from the formula proposed by Arend Lijphart [1999: 153].

As we can see, ignoring the election threshold would cause greater diversification of the voting power of voters from different districts. The maximum deviations from the electoral quota, indicating how many voters there are per seat in the whole country on average would be almost 39% in the district where all the voters would have the strongest vote (as compared to less than 27% when taking into account the election threshold) and almost 76% in the district with the lowest voting power (this value would not change). As for the mean deviation for the districts where the voting power proved to be lower, it would be slightly more than 34% (compared to 45% with the election threshold). For districts in which the voting power would prove to be higher than the norm of representation computed at the national level, the mean deviation would oscillate around 15% (compared to 11% with the election threshold).

The above calculations show that the application of election threshold does not have to cause a fundamental disturbance of the implementation of the material aspect of elections' equality. In a particular situation it may even promote the decrease of disproportion in the voting power among voters from different districts. In the analysed case, it turned out that from the perspective of material equality of elections the size of electoral districts is more important than the election threshold. Also, giving up the constant size of districts in favour of their dynamic shaping undoubtedly increases the importance of the election threshold for the implementation of material equality of elections. It is so because the exclusive character of the election threshold, eliminating weaker parties from seat distribution, not only directly translates into the increase of electoral profits of parties with the greatest voters' support but also indirectly influences the ultimate effect of the support distribution. As this analysis has showed, it may cause both increase and decrease of the size of electoral districts. The conclusion is, therefore, that in the situation when the size of the electoral district is determined at the stage of transformation of votes into seats, the election threshold is a factor affecting the implementation of material equality of votes. When the size of electoral districts is determined before the election, the election threshold does not modify the voting power regardless of whether it is referred to all the citizens or only to the part who have full political rights⁸. This conclusion is an effect of differentiation between the material aspect of equality and the equality of electoral opportunities. In the second case, the effect of election threshold is unquestionable.

Still, the above-mentioned distinction should not obscure the fact that the impact of the election threshold on the implementation (or not) of the

⁸ In this situation, we could only speak about the modifying impact of the election threshold on the material equality of elections if the voting powers were computed merely considering persons who actually exercise their active voting right. It should be remembered, though, that the elected person represents all the citizens (voters), also those who did not decide to participate in the voting.

equality of electoral opportunities in the case of European Parliament elections may modify the material aspect of equality of elections. Although the accuracy of this thesis is rather doubtless, it is impossible to measure the range of this effect precisely. On the one hand, it would require the knowledge on the decision-making process of the parties which finally did not decide to contest for seats of Members of the European Parliament, and on the other hand it would be necessary to conduct a study among the voters, concerning: 1) the determinants of their political choice during the said election, 2) the motivations for resigning from participation in voting.

Analysing this issue from the perspective of collective, secondary subjects of politics, we need to note that the election threshold may be an element decisive for their failure to participate in the electoral competition. It especially refers to regional parties, which without the election threshold or the threshold at the electoral district level would have a real chance to obtain seats. Increasing the number of subjects taking part in election competition, in turn, would not only have a positive influence on the increase of election turnout but also probably (at least in some districts) lead to a modification of support distribution. Thus it would indirectly affect the size of electoral districts.

From the perspective of the voter, it should be assumed that a higher number of subjects taking part in competition for seats and lack of institutional barriers to limit the equality of electoral opportunities (such as small electoral districts or the election threshold) lower the probability of tactical voting. And when realizing the fact that a party the voter supports for ideological and policy reasons will have a problem with accomplishing the election threshold level, the voter may vote for a candidate of another election committee which in the voter's opinion has a real chance of obtaining a seat, at the same time representing similar policies. It cannot be excluded either that some of the voters, aware of the institutional barriers incorporated in the electoral system and/or finding no party representing an outlook similar to his among the subjects competing for seats will resign from the participation in the election.

The scale of voting behaviours described here, in the context of the European Parliament election of 2014, is not known. Still, the awareness of the existing conditions allows to see an indirect impact of the election threshold on shaping the size of electoral districts. As a result, it turns out that the strength of its impact on the implementation of the material aspect of election equality may be significant. The basic difficulty lies in the fact that in the analysis we have to refer to a hypothetical situation. This, however, is always connected with high risk. Therefore, because of a lack of objective instruments to measure the defined relations, this work aims at emphasizing their potential, not real, dimension.

Studying the material aspect of equality of European Parliament elections should also involve the question of the electoral formula, i.e. the way of transforming votes into seats. The multiplicity of methods existing in this regard helps to see the different ranges of influence they have on the level of reflection of voters' preferences. Some of them promote a relatively proportional reflection of voters' will, and others deform it to a greater or lesser extent; finally, there are methods which in certain conditions reveal their discriminative character.

Generally, we should conclude that the electoral formula is the element of the electoral system which – when considered in isolation – does not affect the implementation of the material aspect of equality or its impact is negligible. It is so because if we measure the voting power referring it to the number of citizens (residents, persons with the right to vote), not persons actually taking part in the elections, then the way of transformation of the votes into seats can only be evaluated from the perspective of implementation of the equality of electoral opportunities. Only the placing of the electoral formula in a broader perspective (taking into consideration the size of electoral districts and the election threshold) makes its significance concerning the material aspect of equality grow. In the context of the electoral system existing at the European Parliament election in Poland, the importance of the electoral formula is undoubted due to the adopted “dynamic”, not “constant”, size of electoral districts. If a specific number of seats is assigned to each district even before the election, the election threshold cannot directly affect the voting power in any direct way. If, however, the size of electoral districts is connected with the outcome of the election, the choice of the electoral formula is very important.

The above-mentioned two-step mechanism of seat distribution in the European Parliament elections in Poland results in applying two methods of transformation of votes into seats. First at the national level the seats are distributed among the election committees which accomplished the election threshold with the use of D'Hondt method, the one most favourable for the parties with the greatest support among all the divisor methods. The result is a derivative of the fact that between particular divisors shaping the successive electoral quotients there is a small, unitary difference (1, 2, 3, ... 51). And the smaller the difference, the higher value the successive electoral quotients have. Especially in the situation when the difference between the election outcome of the strongest parties and of those with lower support is significant, this method brings measurable benefits to the former. In the context of material equality of European Parliament elections, it must be noted that the ultimate effect of seat distribution at the national level may lead to a change of their distribution among districts. The results of the 2014 election proved that the power of the method of transformation of votes into seats would be especially significant in a situation

of no election threshold. This is illustrated by the data presented in Table 4. The comparison of the effects of seat distribution with the use of D'Hondt and Hare-Niemeyer methods (mathematical proportion system) shows how obvious is the impact of electoral formulas on the ultimate distribution of seats.

After allocating seats to particular election committees at the national level, they are distributed among their district lists on the basis of the Hare-Niemeyer method. This second level of repartition of seats translates directly into the size of electoral districts, which has already been described. Here we need to highlight that the Hare-Niemeyer method promotes more faithful reflection of the voting results at the level of seat distribution. That is why it is more beneficial from the point of view of the districts in which a certain party received weaker support. This method does not protect such districts from a complete lack of seats, but the result of the district list is decisive in this respect.

Conclusions

This study concentrated on the implementation of material equality of European Parliament elections in Poland. Three elements of the electoral system were analysed: 1) the size of electoral districts, 2) the election threshold, and 3) the electoral formula. It turns out that none of them is clearly decisive for the assessment of implementation of the discussed principle. Still, undoubtedly the key issue is the size of electoral districts, essentially affected by the distribution of support among the district lists of election committees that obtain seats. An important determinant, though not necessarily of key importance, is the inter-district election turnout. But both the election threshold and the electoral formula have a modifying impact on the size of electoral districts. This analysis also showed that apart from the formal rules determining the framework of electoral competition, the situation context is significant, especially the character of the party system, the level of institutionalization of political parties, the strategies used by the subjects participating in the elections and the fact that some parties resign from the competition for seats. Voters' behaviours also play a role, especially the issues connected with their political choices.

On the basis of the European Parliament election in Poland of 25th May 2014, it may be said that in contrast to the statutory declaration, the election violates the material aspect of equality. The deviation from the ideal point is not very high, although it exceeds the parameters indicated in "Code of Good Practice in Electoral Matters". But if the legislator decided to adopt the principle of election equality for implementation, they should consistently aim this. At the level of the electoral system it would be possible to adopt rules which would increase the probability of approximating material equality. From this

perspective it would be fully justified to adopt a single level system of repartition of seats within the framework of one (national) electoral district. Taking into account the functions of the European Parliament in the institutional space of the EU and considering the way of participation of national political parties at the European level, it would be fully justified to disregard the use of the election threshold in this election.

The proposals presented above are only an opinion in the discussion. Presenting them, one needs to be aware that a change in the electoral rules is the subject of political competition between the beneficiaries of the current solutions and those who feel harmed by them. Besides, a change of the formal frame of electoral competition may modify the behaviours of potential participants of the election game. This way a complex network of relations appears, showing the multiplicity of interests connected with the competition for the seats of MEPs.

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Table 1. Material aspect of (in)equality of European Parliament elections – pan-European level

State	Number of citizens (in millions)	Seats	Deviations from the European norm of representation
Malta	0.4	6	10.059
Luxembourg	0.5	6	8.047
Cyprus	0.8	6	5.029
Estonia	1.3	6	3.095
Slovenia	2	8	2.682
Latvia	2.3	8	2.332
Lithuania	3.3	11	2.235
Croatia	4.4	11	1.676
Finland	5.3	13	1.645
Ireland	4.5	11	1.639
Slovakia	5.4	13	1.614
Denmark	5.5	13	1.585
Bulgaria	7.6	17	1.500
Sweden	9.2	20	1.458
Austria	8.3	18	1.454
Hungary	10	21	1.408
Czech Republic.	10.5	21	1.341
Portugal	10.6	21	1.328
Belgium	10.7	21	1.316
Greece	11.2	21	1.257
Netherlands	16.4	26	1.063
UE	503.6	751	1
Romania	21.5	32	0.998
Poland	38.1	51	0.898
Italy	60	73	0.816
Great Britain	61.7	73	0.793
Spain	45.8	54	0.791
Germany	82	96	0.785
France	64.3	74	0.772

Own study based on demographic information available from: [*Official portal of the European Union...*].

Table 2. Material aspect of (in)equality of European Parliament elections – whole Poland

No. of electoral district	Number of people with the voting right	Actual electoral district size	Potential electoral district size	Difference between the actual and potential electoral district size	Actual norm of representation	Real voting power	Deviation from the general Polish norm of representation (in %)	Turnout (in%)
1	1,769,312	3	2.945	0.055	589,771	1.018	1.82	26.70
2	1,648,127	3	2.744	0.256	549,376	1.093	8.55	22.59
3	2,110,287	2	3.513	-1.513	1,055,143	0.569	-75.65	19.34
4	2,200,697	5	3.663	1.337	440,139	1.365	26.73	35.33
5	2,020,737	3	3.364	-0.364	673,579	0.892	-12.13	20.08
6	2,036,030	2	3.389	-1.389	1,018,015	0.590	-69.47	23.72
7	2,720,826	5	4.529	0.471	544,165	1.104	9.41	22.42
8	1,750,992	2	2.915	-0.915	875,496	0.686	-45.74	23.49
9	1,710,529	3	2.847	0.153	570,176	1.053	5.08	23.99
10	3,686,945	7	6.138	0.862	526,706	1.140	12.32	25.74
11	3,673,738	7	6.116	0.884	524,820	1.145	12.63	23.75
12	3,147,531	6	5.240	0.760	524,588	1.145	12.67	21.73
13	2,160,786	3	3.597	-0.597	720,262	0.834	-19.90	20.42
Poland	30,636,537	51	3.923	mean: 0.735 (18.7%)	600,716	1	mean: -44.58/11.15	23.83

Author's own study based on the data from [National Electoral Commission...].

Table 3. Distribution of support for district election committees' lists

Electoral district	Turnout	PO			PiS			SLD-UP			NP – J. K-M			PSL		
		Votes	% of votes	Seats	Votes	% of votes	Seats	Votes	% of votes	Seats	Votes	% of votes	Seats	Votes	% of votes	Seats
1	459,105	218,962	9.64	2	117,620	5.23	1	35,164	5.27	0	30,324	6.00	0	14,817	3.08	0
2	358,763	100,430	4.42	1	96,663	4.30	1	74,833	11.21	1	20,753	4.10	0	32,507	6.76	0
3	395,040	105,541	4.65	1	140,342	6.25	1	41,422	6.21	0	28,412	5.62	0	36,221	7.53	0
4	762,886	308,468	13.58	2	216,773	9.65	2	57,010	8.54	0	49,794	9.85	1	19,098	3.97	0
5	392,066	75,369	3.32	1	163,775	7.29	1	24,647	3.69	0	27,671	5.47	0	61,259	12.74	1
6	468,467	149,474	6.58	1	177,654	7.91	1	35,344	5.30	0	29,202	5.78	0	29,615	6.16	0
7	585,119	192,801	8.49	2	142,675	6.35	1	74,695	11.19	1	40,540	8.02	0	61,431	12.78	1
8	399,483	64,889	2.86	0	164,578	7.32	1	21,248	3.19	0	27,482	5.43	0	70,055	14.57	1
9	398,152	73,381	3.23	1	196,247	8.73	2	18,761	2.82	0	28,474	5.63	0	28,927	6.02	0
10	915,211	232,330	10.23	2	307,624	13.69	3	62,748	9.40	0	72,393	14.32	1	58,541	12.17	1
11	847,419	337,478	14.86	3	234,515	10.44	2	79,543	11.92	1	73,573	14.55	1	18,480	3.84	0
12	662,066	252,513	11.12	2	179,432	7.99	2	78,557	11.77	1	47,615	9.42	1	28,087	5.84	0
13	425,708	159,579	7.02	1	108,972	4.85	1	63,347	9.49	1	29,353	5.81	0	21,808	4.54	0
Poland	7,069,485	2,271,215	100	19	2,246,870	100	19	667,319	100	5	505,586	100	4	480,846	100	4

Author's own calculations based on the data from [National Electoral Commission...].

Table 4. Distribution of seats with and without consideration of the election threshold

Election committee	Number of valid votes	Distribution of seats in accordance with the D'Hondt method		Distribution of seats in accordance with the Hare-Niemeyer method	
		with the election threshold	without the election threshold	with the election threshold	without the election threshold
KW Solidarna Polska (Zbigniew Ziobro)	281079	0	2	0	2
KWW Ruch Narodowy	98,626	0	0	0	1
KKW Sojusz Lewicy Demokratycznej-Unia Pracy	667,319	5	5	5	5
KW Prawo i Sprawiedliwość	2,246,870	19	17	19	16
KKW Europa Plus Twój Ruch	252,779	0	2	0	2
KW Polska Razem (Jarosław Gowin)	223,733	0	1	0	2
KW Nowa Prawica (Janusz Korwin-Mikke)	505,586	4	4	4	4
KW Platforma Obywatelska RP	2,271,215	19	17	19	16
KW Polskie Stronnictwo Ludowe	480,846	4	3	4	3
KW Demokracja Bezpośrednia	16,222	0	0	0	0
KW Samoobrona	2,729	0	0	0	0
KW Partia Zieloni	22,481	0	0	0	0

Author's own calculations based on the data from [National Electoral Commission...].

Table 5. Ignoring the election threshold versus the material aspect of (in)equality of European Parliament elections (hypothetical voting power)

No. of electoral district	Hypothetical seat distribution							
	based on the D'Hondt method				based on the Hare-Niemeyer method			
	Electoral district size	Actual norm of representation	Real voting power	Deviation from the general Polish norm of representation (in %)	Electoral district size	Actual norm of representation	Real voting power	Deviation from the general Polish norm of representation (in %)
1	3	589,771	1.018	1.82	3	589,771	1.018	1.82
2	3	549,376	1.093	8.55	3	549,376	1.093	8.55
3	2	1,055,143	0.569	-75.65	2	1,055,143	0.569	-75.65
4	6	366,782	1.638	38.94	8	275,087	2.184	54.21
5	3	673,579	0.892	-12.13	3	673,579	0.892	-12.13
6	2	1,018,015	0.590	-69.47	2	1,018,015	0.590	-69.47
7	4	680,206	0.883	-13.23	4	680,206	0.883	-13.23
8	2	875,496	0.686	-45.74	2	875,496	0.686	-45.74
9	3	570,176	1.053	5.08	1	1,710,529	0.351	-184.75
10	7	526,706	1.140	12.32	7	526,706	1.140	12.32
11	8	459,217	1.308	23.55	8	459,217	1.308	23.55
12	5	629,506	0.954	-4.79	5	629,506	0.954	-4.79
13	3	720,262	0.834	-19.90	3	720,262	0.834	-19.90

Author's own calculations based on the data from [National Electoral Commission...].