Polish Political Science Yearbook, **vol. 47(3) (2018), pp. 467–475**
DOI: dx.doi.org/10.15804/ppsy2018311 PL ISSN 0208-7375
www.czasopisma.marszalek.com.pl/10-15804/ppsy

Anna Rytel-Warzocha, Andrzej Szmyt
University of Gdańsk

Electoral Issues as the Subject of Petitions Submitted to the Sejm of the Republic of Poland of the Eight Term

Abstract: Art. 63 of the Constitution of the Republic of Poland of 2 April 1997 provides everyone with the right to submit petitions to state authorities. The procedure for considering petitions is specified by the Act on Petitions of 11 July 2014. According to the law, petitions can, in particular, take the form of a request to amend the law. The aim of the article is to focus on petitions concerning the amendment of electoral law against the background general information on the legal regulations in this regard. In the 8th term of office of the Sejm, which began on 12 November 2015, there were five petitions submitted to the parliament which concerned electoral issues. The petitioners proposed amendments in regard to the manner of electing senators to the Senate of the Republic of Poland and councilors in the communities of up to 100,000 residents, strengthening mechanisms that would counteract "electoral frauds", electoral thresholds in the elections to the Sejm and mandatory voting.

Keywords: *petition, electoral law, mandatory voting, Committee on Petitions*

I.

Art. 63 of the Constitution of the Republic of Poland of 2 April 1997[1] stipulates that "Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interest of another person – with his consent – to organs of public authority, as well as to organisations and social institutions in the connection of the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statue" (see more: Rytel-Warzocha & Szmyt, 2016). The more detailed regulation of petitions is in

[1] Official Journal of Laws "Dziennik Ustaw", No. 78, item 483, with later amendments

the Act on Petitions of 11 July 2014[2] and in regard to Sejm in the provisions of the Sejm's Standing Order of 1992[3].

The mentioned law on petitions develops a constitutional regulation. In particular, it concretises the subject of petitions (art. 2 p. 3). According to this provision, petitions can, in particular, take a form of a request to amend law, make a decision or undertake other action concerning the petitioner, collective life or values requiring special protection for the common good, falling within the scope of the authority's tasks and competences. Whether the document can be recognised as a petition depends on its content, not on its external form (art. 3). When it comes to the requirements concerning its essential elements, the petition submitted by citizens should, among others, include: the identification of the entity submitting the petition, the identification of the entity which the petition is addressed to and the identification of the subject of the petition. The act on petitions allows for the submission of the so-called multiple petitions, which are further petitions on the same subject (Szmyt, 2017; Rytel-Warzocha, 2017). The scan of the petition is required to be published on the website of the recipient of the petition (art. 4 – art. 8 of the act). The act on petitions provides that petitions submitted to the Sejm (and analogically – to the Senate) of the Republic of Poland shall be considered by that organ *in pleno*, unless the provisions of the Standing Order of the Sejm indicate their recognition by the internal organs of the chamber, competent in this regard. The Sejm is also obliged to publish annual information on petitions that has been already considered.

The normative extension of the regulation of petitions is covered in Chapter 9a of the Standing Order of the Sejm – "Proceedings in regard to petitions" (art. 126 b – art. 126 g). A petition submitted to the Sejm, the Marshal of the Sejm addresses for consideration to the Sejm's Committee on Petitions. At the same time, the Marshal of the Sejm appoints the deadline for Committee's works on the petition. The Committee's consideration of the petition includes the presentation of the petition by an MP appointed by the Presidium of the Committee, a discussion and a resolution on how to deal with the petition. The Committee on Petitions may request other Sejm committees to express their opinion on the petition under consideration. According to the Sejm's Standing Order, the petition may be settled by the Committee on Petitions in several ways, in particular by: 1) the submission of a draft law or a draft resolution to the Sejm by the Committee, 2) the submission of an amendment or a motion (to a draft law or draft resolution being proceeded by the Sejm) during its consideration by another parliamentary committee or during the second reading of the draft legislation; in this case, the Committee shall appoint its representative authorised to propose an amendment or a request, 3) the submission to another parliamentary committee of its opinion on the draft law or draft resolution being considered by it, 4) the submission of the request to conduct an inspection by the Supreme Audit Office, 5) the Committee's refusal

[2] Official Journal of Laws "Dziennik Ustaw", 2014, item 1195.

[3] Official Journal of Laws "Monitor Polski", 2015, item 31, with later amendments

of the request subject to the petition. After the consideration of the petition, the Committee on Petitions submits to the Marshal of the Sejm – with an explanatory note – information on how the petition has been settled or information about the circumstances justifying leaving the petition without consideration. Subsequently, the Marshal of the Sejm informs the petitioner about the manner of handling the petition.

Art. 126 g of the Sejm's Standing Order, which provides for the exclusion of the rule of discontinuation of parliamentary work is particularly important. If the proceeding regarding the petition is not completed before the end of the term of office of the Sejm, it is conducted by the Committee on Petitions of the next term of office of the Sejm.

In the parliamentary practice, there is a rule that all petitions submitted to the Sejm are reviewed by the relevant analytical units of the Chancellery of the Sejm. This role is performed by the Sejm's Bureau of Analysis through experts in the field of legislative, constitutional and parliamentary analysis. The request for an opinion submitted to the Sejm is made by the chairman of the Committee on Petitions. However, if the petition is addressed to the Marshal of the Sejm as the recipient of the petition, the request for the opinion shall remain at the discretion of the Social Communication Office at the Chancellery of the Sejm.

Opinions prepared at this stage of the Sejm's proceedings in regard to petitions are assumed to be of a preliminary nature and include: 1) characteristics of the overall content and purpose of the petition, 2) answer to the question whether the petition falls within the scope of tasks and competences of the entity it is addressed to (art. 2 p. 3 of the act on petitions), 3) assessment of the petition's compliance with formal requirements (art. 4 p. 1- 2, art. 5 p. 1), 4) presentation of issues considered by the expert as important in regard to the petition, 5) conclusions and recommendations concerning the petition (Szmyt, 2017).

II.

In the 8th term of office of the Sejm, which began on 12 November 2015, the parliamentary proceedings have been initiated in regard to six petitions concerning electoral issues (by July 2018). These were successively: 1) petition of 4 November 2015[4], 2) petition of 26 January 2016[5], 3) petition of 2 August 2016[6], 4) petition of 22 September 2016[7], 5) petition of 9 August 2017[8], 6) petition of 10 January 2018[9]. All these petitions concerned amendments to the act of 5 January 2011 – the Electoral Code[10]. Therefore, all of them fell within the

[4] Case No. BKSP-145-19/15

[5] Case No. BKSP-145-57/16

[6] Case No. BKSP-145-106/16

[7] Case No. BKSP-145-124/16

[8] Case No. BKSP-145-269/16

[9] Case No BKSP-145-316/18

[10] Official Journal of Laws "Dziennik Ustaw", No. 21, item 112, with later amendments

scope of the addressee's tasks and competences (art. 2 p. 3 of the act on petitions), as the amendment of statutes falls within the Sejm's competences. All these petitions met formal requirements determined by law – the petitioner, the addressee (Sejm) and the subject of the petition (amendment of the Electoral Code) were clearly indicated. All of them have also been marked as submitted in the public interest. In line with the statutory requirement, each petition was addressed by the Marshal of the Sejm to the Committee on Petitions for consideration (all the petitions were reviewed by the Sejm's expert Krzysztof Skotnicki). The meeting of the Committee concerning the petition took place on average after approximately 4 months from the date of its receipt by the Sejm.

The number of petitions on electoral matters and their selection for analysis should be labeled with a comment. It includes – as we pointed out – the period until the end of July 2018 of the current (VIIIth) term of office of the Sejm and, formally, the last four months of the previous term. It is not possible, however, to refer these data to previous terms of the Sejm, nor to accept the statement that the VIIIth "term" was chosen to be analysed in the article for a particular reason, as the instrument of petition is a "young" instrument since the Petitions Act entered into force on 6 September 2015. The only reference point that can be adopted is the total number of petitions in the period under consideration. So, in 2015, a total of 40 petitions were submitted to the Sejm, in 2016, 136 petitions, and in 2017 the Petitions Committee considered 160 petitions (www.sejm.gov.pl/pracesejmu/petycje). By the end of July 2018, 66 new petitions were received by the Sejm. Sejm statistics group them on average in a dozen or so subject groups (on average there are six petitions on each matter), including distinguished electoral issues. The latter – with six petitions indicated – are both typical and systemically significant. This fully justifies covering them with a separate analysis, especially in reference to the Sixth International PPSY Symposium of December 5, 2017 in Toruń titled "The future of electoral systems: good practices versus abuse", from the borderline of political and legal sciences. It is worth remembering here, that the detailed analysis of the list of problems raised in "electoral" petitions could be a subject of a separate monograph. For the purpose of the article, it was only purposeful to indicate the main directions of the analysis of a given electoral issue and the position taken by the Sejm Committee on Petitions. For methodological reasons, it should be noted that the merits of the analysis refer to "electoral" matters, not the institution of "petition" itself. In this respect, however, one can refer to the literature on the subject (Rytel-Warzocha and Szmyt, 2016, Rytel-Warzocha, 2017, Wójcicka, 2008, Wójcicka, 2015, Balicki and Jabłoński, 2015, Zięba-Załucka, 2010).

The subject of the petition of 4 November 2015 was a request to amend the Electoral Code in regard to the manner of electing senators to the Senate of the Republic of Poland and councilors in the communities of up to 100,000 residents. The petitioner proposed a return to electing senators in multi-mandate constituencies, ranging from 2 to 4 seats, and the simple majority electoral system. The purpose of the petition was to increase the representativeness of the Senate and municipal councils thanks to the departure from elections in single-mandate constituencies. This would limit the number of "lost" votes, which

are given to candidates who fail to obtain a mandate. In electoral practice, many examples of this kind can be indicated. From the constitutional point of view, the postulated change would be acceptable, as the Constitution of the Republic of Poland does not determine the electoral system to the Senate or the authorities of local government. Therefore, the petition has to be perceived above all in the context of the "eternal" dispute about the advantages of single-mandate and multi-mandate constituencies as well as majority and proportional electoral systems. Pros and cons of each of these solutions are predictable, but above all they are of a political nature. The concept of "representativeness" has its connections not only to the creation of the organ itself, but also to its legitimisation, disclosure and the scale of fidelity or deformation of real program and personal preferences of the electorate. The state of social awareness reflected in opinion polls is not without significance. Taking into account the popularity of the idea of single-member constituencies, and as a consequence also the majority electoral system, the aims of the petition would be in conflict with them. After all, the Committee on Petitions decided not to take into account the request subject to the petition (the Committee's meeting took place on 12 April 2016).

The petition of 26 January 2016 included a request to amend the Electoral Code in order to - according to the petitioner – strengthen mechanisms that would counteract "electoral frauds". In particular, the postulates expressed in the petition included: 1) ensuring the participation of the representatives of all political parties represented in the Sejm in electoral commissions at all levels, 2) accepting that voting cards are prints of strict accountancy, marked – before being given to voters – with a stamp and signatures of two members of electoral commission, 3) strengthening the legal status of trustees (by granting them the right to control votes counted by electoral commissions and to check ballot papers after the end of the activities of electoral commissions as well as granting them the same amount of allowances as given to the members of electoral commissions), 4) changing the method of counting votes by electoral commissions in a way that the number of votes obtained by each candidate shall be determined by two members of the electoral commission and confirmed by their signatures; they shall bear legal responsibility for it; the number of votes obtained by individual candidates shall be subject to verification by two other members of the electoral commission, 5) changing the manner of sealing bags with electoral documents by using metal seals and storing them in police stations or other units preventing their improper use, 6) increasing the number of electoral commissions abroad, 7) introducing the obligation of special reports prepared by electoral commissions for political parties. The petitioner emphasised that the requests put forward in the petition are based on his own experience gained as a member of electoral commissions and as a trustee.

The postulates presented in the petition raised doubts about their purposefulness, practicability and legal admissibility. The postulate concerning the composition of the electoral commission departed from its "judicial" character and politicised its composition. The proposals omitted the right of the representatives of "non-parliamentary" parties and the representatives of the voters' electoral committees to become members of electoral com-

missions. They also disregarded the realities concerning the potential number of members of electoral commissions and the number of relevant polling stations as well as the possibilities introduced by the amendment of the Electoral Code of 28 July 2015 allowing trustees to register the activities of electoral commissions[11]. The proposal of signing voting cards by the members of electoral commissions and treating them as the prints of strict accountancy poses a risk of violating the constitutional principle of secrecy.

The request concerning the change of the competences of trustees would change their role which is clearly different from the role of electoral committee members. The idea of diets for trustees is not compatible with the assumption that their activities are not a part of electoral process organised by the state. The proposed method of counting votes significantly complicates and extends the time of determining election results. It is also not adequate for counting votes in the proportional electoral system. The postulate related to the storage and sealing of electoral documentation with the use of police stations – or units of a similar type – seems to be exposed to a significant accusation of the excessive influence of governmental administration on determining the results of voting and elections. The request to introduce an obligation to prepare reports for political parties by the members of electoral commissions and trustees are also questionable. Doubts concerning proposals included in the petition concerned specific issues, but they could influence the way of the implementation of fundamental constitutional principles. Therefore, the Committee on Petitions again did not take into account the requests subject to the petition (the Committee's meeting took place on 12 May 2016).

The petition of 2 August 2016 concerned the amendment of art. 371 § 1 of the Electoral Code in regard to the determination of the date of local elections. The petitioner pointed out that according to applicable provisions, the next local elections are going to take place on November 2018. For political reasons, he perceived this as a danger and postulated to change the rules of determining the date of elections. The petitioner acknowledged the advantages of the introduction of alternative solutions (flexible rules). He proposed to introduce a rule that the Prime Minister orders local elections on a non-working day falling within 30 days after the end of the term of office of the local councils. It would give the Prime Minister the opportunity of choosing a specific date for elections from among several ones that are possible. Today's solution is rigid and does not allow for maneuver. The reasons of the petitioner's arguments have an element of rationality. They are not an arbitrary idea but concern a significant problem that is – in various configurations – repeated in the context of various national or religious holidays. The constitutional regulation in regard to local elections also does not eliminate the petitioner's proposal. Although it can lead to the so-called gap between subsequent terms of offices, the proposed solution should be treated as an example. Therefore, other legal variants may be considered, compatible with the constitutional principle of the continuity of functioning of public authorities (see: the

[11] Official Journal of Laws "Dziennik Ustaw", item 1043, with later amendments.

judgement of the Constitutional Tribunal of 23 March 2006, Case No. K 4/06). Art. 98 para. 2 of the Constitution which refers to parliamentary elections can serve as an example. Elections to the Sejm and the Senate shall be ordered by the President of the Republic no later than 90 days before the expiry of the 4 year period beginning with the commencement of the Sejm's and Senate's term of office, and he orders such elections to be held on a non-working day which shall be within the 30 day period before the expiry of the 4 year period beginning from the commencement of the Sejm's and Senate's term of office. The argumentation presented above is convincing so the request presented in the petition should be carefully considered. Therefore, the Committee on Petitions decided to adopt a desideratum in the subject matter at the meeting on 22 February 2017.

The petition of 22 September 2016 concerned the amendment of the Electoral Code in regard to the so-called electoral thresholds in elections to the Sejm of the Republic of Poland. The petitioner (Mariusz Nowak) postulated the elimination of the 5% electoral threshold for individual political parties and 8% threshold for the coalition of political parties. Instead, he proposed to introduce a 20% threshold for individual political parties and a 23% threshold for coalitions of political parties. The clear aim of the demand was to allow for the creation of a two-party system in place of a multi-party system. The petitioner suggested large budget savings also by abolishing subsidies for political parties which do not exceed the electoral thresholds proposed in the petition. The proposed changes would also apply to the abolition of the current provision that guarantees the subsidy to political parties which exceed a certain threshold (today it is 3%) despite the fact that they do not have their representation in the Sejm. According to the petitioner, the proposed changes "will shorten the pathology and perturbations on the political scene", and the money saved would allow to increase the state's financial support for the economically weakest groups. The United States, Great Britain and Japan have been mentioned as good examples. According to the petitioner, the proposed solutions favor stabilisation, balance and the seriousness of parliamentarism, as well as have a positive impact on the quality of public life.

Art. 96 p. 2 of the Constitution provides, inter alia, that the elections to the Sejm are proportional. In the doctrine of law, there is a well-established interpretation of this principle (Buczkowski, 1998; Banaszak, 2012). The pluralistic party system is based on the competition of political parties. The distribution of seats between parties is made according to the method of converting electoral votes into mandates specified by law (Żukowski, 2004; Rakowska & Skotnicki, 2008). However, it is also important to elect a representative and an efficient body. It is related to the institution of the so-called electoral thresholds, which means that the list of candidates must obtain a minimum number of votes (determined by law) on the scale of the whole country in order to participate in a proportional distribution of seats. The purpose of "thresholds" is to avoid the excessive political shattering of the parliament and to allow the creation of a stable ruling majority. Electoral thresholds are known in many countries. Their shape as a legal and political institution is, however, diversified and depends on many conditions. In general, constitutional judiciary recognises the institution

of electoral thresholds as reasonable. However, the problem mainly concerns the amount of votes that need to be obtained. In particular, it is important that the adopted thresholds do not lead to the "elimination" of many political parties despite the fact that they received significant public support in the voting. The hitherto results of electoral support for parties in Poland do not indicate a consensus in terms of approval for a two-party system. This means, therefore, that the petitioner's request does not coincide with social expectations in relation to the political scene. At the same time, the postulate of such a radical increase of thresholds seems to be even blatant. It should be noted that there are rather postulates of lowering the electoral thresholds raised by the society. This would favor the evolutionary stabilisation of the shape of the party system. Similarly, as to the essence, the above remarks are also valid in regard to the postulate concerning subsidies for political parties. As a result, the Committee on Petitions did not take into account the petitioner's requests (the Committee's meeting took place on 14 December 2016).

The petition of 9 August 2017 contained a request to amend the Electoral Code by imposing the obligation to participate in parliamentary elections on citizens with electoral rights under the pain of a financial penalty. The petitioner (Stanisław Porowski) in the explanatory note to the request presented arguments for and against, already known from the literature (Kryszeń, 2007; Żukowski, 2009; Żołądek, 2011; Giżyńska, 2015). In particular, he pointed out the need to increase voter turnout, as well as the fact that citizens have not only rights but also obligations to the state. The petition was also supposed to support the democratic legitimacy and representativeness of the composition of state authorities, as well as to increase the level of socio-political culture of citizens and the balance of the social system. The petitioner also referred to the examples from foreign states as mandatory voting has been already introduced in 28 countries, including several European states (Belgium, Cyprus, Greece, Luxembourg, Turkey and one of the Swiss cantons). For some time, this solution was functioning also in Austria, Czechoslovakia, Denmark and Italy. It is worth noting that in Poland the idea of mandatory voting appears – also in the doctrine – only sporadically. Therefore, it is difficult to accept that the request formulated in the petition conforms to the political and legal culture of our society. Increasing the voter turnout by that means would not automatically mean a real increase of civic involvement in public affairs. By the way, it should be mentioned that the petition was explicitly limited only to "parliamentary elections". Even if we assume that the term "parliamentary" refers to the Sejm, the Senate and the European Parliament, there are still presidential and local elections. In general, the petitioner's argumentation is not convincing. He did not consider in his petition contratypes and all aspects related to the sanction in the form of a financial penalty. However, the implementation of the request would require precise and detailed regulation. Because of that, the petition is rather an attractive topic for a philosophical – legal dispute than its practical implementation. As a result, the Committee on Petitions once more did not take the petition into account (the Committee's meeting took place on 9 November 2017).

The subject of the last petition of 10 January 2018 was a demand for amendment of the Electoral Code so as to guarantee people with disabilities a "parity" (in relation to non-disabled persons), analogous to the "gender" parity on the electoral lists of candidates. According to the petitioner, the lack of a statutory guarantee of parity for the disabled is a discrimination that is conducive to the social exclusion of this group of people. According to the petitioner, the parity would increase the chance of disabled people with regard to passive electoral law. The assessment of the actual situation allows us to conclude that indeed the participation in the public life of people with disabilities is negligible. However, it is difficult to say that the postulated parity would be a panacea. There is also no doubt that the so-called positive discrimination (compensatory privilege) is legally permissible, however it must have reasonable limits. While gender parity has reference to the almost equal numerical part of society, in the postulated case it looks completely different. As we know, even in the case of the parity of the sexes, there is a high accusation of excessive statutory interference in the principles of freedom of political parties' activity, freedom of elections and equality of elections (Szmyt, 2010). Above all, it should be remembered that the parliament is not a representation of all the "segments" of society, but its political representation. The introduction of the next parity – along with the gender parity – to electoral law may trigger postulates of further parities for socially isolated groups, such as young people, pensioners, unemployed, etc. Parities always undermine the equality of electoral opportunities and strongly limit the rationality of forming electoral lists. The Sejm expert in his opinion shared the above point of view and noticed that the petition should not be taken into account, i.e. it should not lead to the amendment of the Electoral Code. At its meeting of 22 March 2018, the Committee on Petitions did not take into account the petitioner's request.

The examples of petitions to the Sejm presented above show the citizens' interest in electoral issues and their eagerness to inspire the amendment of electoral law. They also confirm the citizens' knowledge of legal measures that can serve the implementation of postulated solutions. The electoral issues raised in the petitions should be classified not as marginal or only organisational and technical, but rather as concerning basic ideas, strongly axiologically based, which construct the principles of electoral law. The petitions – potentially – would be suitable for legislative implementation only in part. However, they would require either new constitutional solutions or the verification of existing ones in terms of the compliance of their content with the Constitution. Taking into account the presented parliamentary practice concerning the petitions, the attitude of political class shows far-reaching restraint. It seems that this phenomenon could be explained by the importance of the petition's requests in a situation where the political class is clearly convinced about the lack of necessity of a significant revision of the current electoral law.

References:

Balicki, R., Jabłoński, M. (Eds) (2015). *Teoretyczne i praktyczne aspekty realizacji prawa petycji*, Wrocław.

Banaszak, B. (2012). *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa.

Buczkowski, J. (1998). *Podstawowe zasady prawa wyborczego III Rzeczypospolitej*, Lublin.

Giżyńska, M. (2015). "Niska frekwencja wyborcza a przymus wyborczy. Skuteczność i adekwatność". In B. Banaszak, A. Bisztyga & A. Feja-Paszkiewicz (Eds.): *Aktualne problemy prawa wyborczego*, Zielona Góra.

Kryszeń, G. (2007). *Standardy prawne wolnych wyborów parlamentarnych*, Białystok.

Rakowska, A., Skotnicki, K., (2008). "Konsekwencje konstytucjonalizacji zasady proporcjonalności wyborów do Sejmu". In R. Grabowski & S. Grabowska (Eds.): *Zmiana ordynacji wyborczej a zmiana konstytucji*, Rzeszów.

Rytel-Warzocha, A., Szmyt, A. (2016). "The right to petition in the Republic of Poland". In *European Union's History, Culture and Citizenship*, Bucharest.

Rytel-Warzocha, A. (2017). "Prawnomiędzynarodowe I europejskie standardy w zakresie petycji a prawo polskie". In M. Błachucki & G. Sibiga (Eds.): *Skargi, wnioski i petycje – powszechne środki ochrony prawnej*, Wrocław.

Szmyt, A. (2010). "W sprawie wprowadzenia parytetów na listach wyborczych", *Przegląd Sejmowy*, No 3.

Wójcicka, E. (2018). "Petycja w prawie konstytucyjnym państw współczesnych", *Ius Novum*, No 2.

Wójcicka, E. (2015). *Prawo petycji w Rzeczypospolitej Polskiej*, Warszawa.

Zięba-Załucka, H. (2010). "Prawo petycji w Rzeczypospolitej Polskiej", *Przegląd Prawa Konstytucyjnego*, No 4.

Żołądek, Ł. (2011). "Przymus wyborczy". *INFOS*, No 18.

Żukowski, A. (2004). *System wyborczy do Sejmu i Senatu RP*, Warszawa.

Żukowski, A. (2009). "Przymus wyborczy – istota, przesłanki, implikacje", *Prawo i Polityka,* No. 1.