

4 NOVEMBRE 2015

Elections in Poland: the legal
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landscape

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Summary: 1. Introduction. 2. Historical overview. 3. The electoral system. 3.1. Common provisions. 3.2. The electoral system for the two houses of the Parliament. 3.2.1. Elections to the Sejm. 3.2.2. Elections to the Senate. 3.3. The electoral system for the President of the Republic. 4. The political system. 4.1. Constitutional and legislative framework. 4.1.2. The evolution of the political parties' legislation. 4.2. Political parties and programs. 4.2.1. Traditional parties. 4.2.2. Newly formed political parties. 5. The 2015 parliamentary elections. 5.1. The electoral campaign. 5.2. The electoral outcomes. 6. Conclusions.

1. Introduction

The main purpose of this article is to analyse the Polish electoral system, and how it has contributed to shaping the overall political system.

Section 2 below provides a historical overview of the evolution of the political scenario, while Section 3 provides an in-depth analysis of the constitutional and legislative framework governing parliamentary and presidential elections.

The electoral system will be considered in tandem with the political system, and in particular in conjunction with the party system (para. 4). This paper examines the general provisions regulating political parties (which remain among the core issues of the political debate), and the actual configuration of the current party system.

From a wider perspective, the 'mechanisms of representation' in Poland has demonstrated itself capable of supporting the successful completion of the country's transition to democracy. This analysis aims to produce a theoretical framework in order to understand major changes in the resulting political scenario, and to identify the key elements of continuity and discontinuity.

^{*} Articolo sottoposto a referaggio.



The rapid sequence of electoral cycles in the last two years is undoubtedly of significant interest to researchers and an important indicator of the political climate.

Following the expected victory of the governing party, Civic Platform, in the May 2014 European elections and a narrow victory in the administrative elections of November 2014, the governing party's era - which commenced in 2007 - was surprisingly derailed in the 2015 Presidential elections. Indeed, the Freedom and Justice party candidate, Andrzej Duda, achieved a landslide victory over the Civic Platform candidate Bronisław Komorowski.

On October 25, 2015, the Law and Justice party consolidated this result with a landslide victory in the parliamentary elections.

2. Historical overview

In 1989, major changes in the international context combined with general national unrest led to the collapse of the communist regime. The so-called 'Round Table Talks'¹ held between the Communist Government and the Solidarity-led opposition² defined the first steps towards Poland's transition to democracy³.

As a result of these negotiations the Constitution was amended on April 7, 1989 and an agreement on partially-free parliamentary elections was finally reached. All the seats of the newly created Senate and 35% of the seats of the Sejm were to be democratically elected, while the remaining 65% were reserved for the Communist Party (United Polish Worker's Party, or *Polska Zjednoczona Partia Robotnicza*, PZPR) and its allies⁴.

The political wing of the Solidarity movement, called the Solidarity Citizens' Committee, or *Komitet Obywatelski Solidarność* (KOS), took part in the 1989 elections and achieved a significant

¹ The Round Table Talks commenced in February 6, 1989, and the final agreement was signed on April 5, 1989. J. WAWRZYŃIAK, *La Polonia e le sue costituzioni dal 1791 ad oggi. Le radici istituzionali della svolta polacca*, Rimini, 1992.

² Solidarity, or *Solidarność*, was born in 1980, as an independent Workers Union, under the leadership of Lech Wałęsa. After the imposition of martial law, in 1981 and the subsequent political repression Solidarity started to operate clandestinely. In 1989, after the fall of the Communist regime, it became a legal political movement, and one of the major players in the Polish transition to democracy.

³ W. OSIATYŃSKI, *A brief History of the Polish Constitution*, in M. WYRZYKOWSKI (Edited by), *Constitutional Essays*, Warsaw, 1999; S. GEBETHNER, *Free Elections and Political Parties in Transition to Democracy in Central and Southeastern Europe*, in *International Political Science Review*, Vol. 18, No. 4, 1997, pp. 381-399.

⁴ The Sejm elected in 1989 was defined as 'Contract Sejm' or '*Sejm kontraktowy*'. BANASZAK - R. BALICKI - M. BERNACZYK - I. BISTA (Edited by), *Constitutional Law in Poland*, The Hague, 2012, pp. 23-24.



victory⁵. As part of the Round Table Agreements Jaruzelski was elected as President of the Republic by both chambers in a joint session.

The Constitution was amended once again in December 1989 to remove from the text all provisions regarding the socialist character of the State and, instead, a democratic system of government was introduced⁶.

The political fragmentation of Polish society during this transition process was further exacerbated by the lack of homogeneity in the political wing of the Solidarity movement⁷. The loss of a 'common enemy' generated an internal split in the Solidarity Citizens' Committee representing their diverging interests. This schism was clearly underlined by the 1990 presidential election (in which a conservative faction supported Wałęsa, while the liberals nominated Mazowiecki) as well as by the following parliamentary elections in 1991⁸.

The 1993 parliamentary elections were ordered by the President of the Republic earlier than required in order to consolidate his parliamentary majority. Surprisingly, it was won by the Social Democracy of the Republic of Poland, or *Socjaldemokracja Rzeczypospolitej Polskiej* (SdRP), heir to the Communist party (UPWP).

Moreover, the SdRP candidate, Aleksander Kwaśniewski, won the presidency in 1995 and again in 2000⁹. The situation evolved further in 1996 when the Solidarity Electoral Action of the Right, or *Akcja Wyborcza Solidarność Prawicy* (AWSP), was founded and brought together more than thirty right-wing parties. The AWSP, heir to the Solidarity movement, won the parliamentary elections in 1997. In the meantime, in 1992, a Provisional Constitution was introduced although it still required major changes to the fundamental laws. The new Constitution was adopted in 1997, following a period of reflection and a nation-wide debate¹⁰.

The centre-left coalition formed by the Democratic Left Alliance or *Sojusz Lewicy Demokratycznej* (SLD)¹¹, and the Labour Union (*Unia Pracy*, UP) won the parliamentary elections in 2001¹². That

⁵ The KOS candidates won all the 161 Sejm seats in the democratic elections and ninety-nine out of 100 seats in the Senate, in countrystudies.us.

⁶ L. GARLICKI, *Constitutional Law*, in S. J. FRANKOWSKI (Edited by), *Introduction to Polish Law*, The Hague, 2005, p. 3.

⁷ F. MILLARD, *The Shaping of the Polish Party System, 1989-93*, in *East European Politics & Societies*, Vol.8, No. 3, 1994, pp. 467-494.

⁸ More than one-hundred parties competed in the 1991 elections, and 29 of them won representation in the Parliament, leading to the formation of a minority government comprised of centre-right parties.

⁹ A. BOZÓKI - J.T. ISHIYAMA (Edited by), *The Communist Successor Parties of Central and Eastern Europe*, Armonk - New York, 2002.

¹⁰ W. OSIATYNSKI, *A brief History*, cit.

¹¹ The Democratic Left Alliance was formed in 1991 as a left-wing coalition of parties among which was the SdPR. It became a single party in 1999.

same year, an internal split in the AWSPP gave birth to the Civic Platform, or *Platforma Obywatelska* (PO), and to the Freedom and Justice Party, or *Prawo i Sprawiedliwość* (PiS), which entered Parliament for the first time as an opposition party.

Starting from 2001, the political scenario changed radically, evolving from a ‘post-Communist party system’, based on a confrontation between centre-left and centre-right parties, to a ‘post-Solidarity’ one¹³. The new bipolar equilibrium was dominated by two right-wing parties, one liberal (PO) and the other conservative (PiS).

In the 2005 parliamentary elections, in fact, the Democratic Left Alliance was soundly defeated by the Civic Platform and the Law and Justice Party¹⁴. That same year, the Law and Justice party candidate, Lech Kaczyński, won the presidency.

The Civic Platform won the following parliamentary elections in 2007 and 2011 and their candidate, Bronisław Komorowski, won the presidential elections in 2010¹⁵. The appointment of Donald Tusk, the Civic Platform leader, as Prime Minister for a second consecutive term, in 2011, provided continuity to the political system¹⁶.

3. The electoral system

3.1 Common provisions

The 2011 Elections Code introduced unified legislation for elections. It replaced a number of acts in particular;

- 27 September 1990 Act governing the election of the President of the Republic;
- 23 January 2004 Act regulating elections to the European Parliament;
- 12 April 2001 Act regulating elections to the Sejm and to the Senate;
- 16 July 1998 Act regarding elections to municipal councils, provincial councils and regional councils;
- 20 June 2002 Act regulating the direct election of the mayor.

¹² For the election results, see the European Electoral Database, in eed.nsd.uib.no.

¹³ A. GWIAZDA, *Democracy in Poland: Representation, participation, competition and accountability since 1989*, London, 2015.

¹⁴ In the 2005 elections, the right-wing parties achieved a landslide victory: 27% of valid votes for PiS and 24% for PO. Difficulties in forming a new government were further exacerbated by the competition in the presidential election, planned for that same year. R. MARKOWSKI, *The Polish elections of 2005: Pure chaos or a restructuring of the party system?*, in *West European Politics*, Vol. 29, No. 4, 2006, pp. 814-832.

¹⁵ In 2007, corruption allegations against the junior coalition partner of the governing party (PiS), led the Parliament to vote for its own dissolution. The early elections were surprisingly won by the Civic Platform. D. NOHLEN - P. STÖVER (Edited by), *Elections in Europe: A data handbook*, Baden - Baden, 2010.

¹⁶ *Country Report*, in freedomhouse.org.



The most significant innovations introduced by the Act, common to all types of elections, include the possibility of voting by mail by Polish citizens residing outside the territory of the Republic of Poland (Art. 62-68, EC); the inclusion of international observers invited by the National Electoral Commission to participate in the electoral proceedings (Art. 50, EC) as well as voting by proxy for people with disabilities or older than 75 (Art. 54-61, EC)¹⁷.

Special attention must be given to one of the electoral bodies (Section II) i.e. the National Electoral Commission, or *Państwowa Komisja Wyborcza*, defined as ‘the permanent, supreme electoral body, competent on elections and referendums’ (Art. 157-167, EC). The NEC is composed of nine judges of which three are from the Constitutional Court, three from the Supreme Court and three from the Supreme Administrative Court all of whom are selected by their respective Presidents and appointed by the President of the Republic (Art. 157, EC)¹⁸. At a lower level, elections are managed and overseen by the District Commissions, or *Okręgowe Komisje Wyborcze* (Art. 170-173)¹⁹ and by the Circuit Commissions, or *Obwodowe Komisje Wyborcze*, (Art. 182-186, EC) respectively.

It is worth noting that the electoral law explicitly requires, for all types of elections, the creation of electoral committees or *komitety wyborcze*, to nominate candidates and to perform other electoral activities (Art. 84, EC).

The Supreme Court adjudicates upon the validity of parliamentary and presidential elections, as required by the Constitution (Art. 101 and Art. 129) as well as by the Election Code (Art. 241 and Art. 321).

¹⁷ B. BANASZAK - R. BALICKI - M. BERNACZYK - I. BISTA, *Constitutional Law in Poland*, cit., pp. 230-233.

¹⁸ The list of functions of the NEC is given in the Election Code, Art. 160-165. As specified in Art. 160, the primary functions of the NEC include:

- supervising the compliance of the electoral proceedings with election law;
- oversight of the maintenance and update of the register of voters;
- setting up district and regional electoral commissions and dissolving district, regional, and precinct electoral commissions, after they have performed their statutory tasks;
- appointing and dismissing election commissioners;
- taking into consideration eventual complaints;
- establishing models of official forms and election forms;
- determining and announcing voting results and results of elections;
- after every election, presenting to the President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate and the Prime Minister any information about the implementation of the code, and any possible proposal for amendments;
- promoting informative activities, raising awareness among nationals of the election law, in particular of voting rules.

¹⁹ The words ‘Constituency Commission’ and ‘District Commission’ have been used as synonyms.



The Court also considers complaints in non-litigious proceedings and verifies the validity of the allegations. The Court determines whether a breach of the Code took place and whether it had an influence on the outcome of elections (Art. 242 and Art. 323, EC). According to Art. 244 and Art. 324 of the Election Code, the Supreme Court – with sections for Labour Law, Social Security and Public Affairs – makes decisions on the validity of the elections and on the election of single candidates on the basis of the reports submitted by the National Electoral Commission and its own judgements on complaints²⁰. The decision, while indicating whether the election is considered invalid, or needs to be repeated, must be published in the Official Gazette (Art. 246 and Art. 325, EC).

3.2 The electoral system for the two houses of the Parliament

3.2.1 Elections to the Sejm

The legislative power in Poland is exercised by a bicameral Parliament²¹. The Sejm of the Republic of Poland is the lower house of Parliament and consists of 460 deputies elected for a four-year term, while the Senate is the upper house of Parliament and is comprised of 100 senators. Although simultaneously elected (art. 98, Constitution), the Sejm and the Senate have different competences as the latter, the upper house, is not involved in the day to day control over the activities of the Council of Ministers (Art. 95, para. 2) or in the no confidence vote (Art. 157-160)²².

The Constitution lays down the legal framework for parliamentary proceedings, regulated in detail by the 2011 Election Code²³. According to the Constitution (Art. 96) and to the Election Code (Art. 192), elections to the Sejm must be based on five main principles. The principle of universality grants every Polish citizen the right to elect and to be elected. The equality of the vote, more clearly defined by the formula ‘one person, one vote’, implies a balanced relationship between the population and the number of candidates to be elected in the constituencies. The

²⁰ See the official website of the Network of the Presidents of the Supreme Judicial Court of the European Union, in www.network-presidents.eu. As set down in Art. 1, ‘the Supreme Court is the judicial body appointed to perform the task of (...) examination of protests concerning the elections, and determination of the validity of the elections to the Sejm, the Senate, the election of the President of the Republic, and the validity of the national or the constitutional referendum’.

²¹ Art. 10, para. 2 and Art. 95, para. 1 Constitution.

²² L. GARLICKI, *Constitutional Law*, cit., p. 17 *et seq*; J. SAWICKI, *La Costituzione della Polonia (1997)*, in M. GANINO (Edited by), *Codice delle Costituzioni*, Padova, 2013, Vol. III, p. 162.

²³ For in-depth analysis of the evolution of the legislation on elections to the Sejm (1989, 1991, 1993, 2001 and 2003), see H. HARDMAN, *Electoral System Change in Europe since 1945: Poland*, in www.electoralsystemchanges.eu.



principle of the direct vote ensures that voters express their preferences directly for candidates (i.e. ‘preference vote’). The principle of secrecy regulates the actual proceedings of the electoral process, to grant the voters the highest degree of freedom in expressing their vote. Last, but not least, the Constitution introduces the principle of proportionality for the allocation of seats, which is probably one of the most basic rules of the Polish electoral system and at the same time one of the most intensely debated in the present phase of development.

The Election Code stipulates that the 460 deputies are elected on the basis of the proportional system, in multi-member constituencies²⁴, using the D’Hondt method for the allocation of seats. ‘Elections to the Sejm are called by an order of the President of the Republic’, every four years (Art. 194, EC). Shortening the term of office of the Sejm, by its own resolution or by an order of the President of the Republic, results in early elections, to be held within 45 days of the dissolution of the Parliament (Art. 195, EC).

In the allocation of seats there is a fixed threshold of votes to be reached i.e. 5% for parties and 8% for coalitions, below which a party’s or a coalition’s results are excluded (Art. 196, EC). The only exception is for organizations of national minorities who are not subject to any threshold for allocation of parliamentary seats.

The small size of individual constituencies strongly mitigates the effect of the proportionality of the system, as is the case for the Spanish system. In fact, the constituency sizes in terms of population densities combined with the electoral thresholds produce majoritarian outcomes, strengthening the representation of two major parties²⁵.

The determination of the number of deputies elected in each territorial district (constituency) has to comply with norms on uniform standards of representation, which is calculated by dividing the number of inhabitants of the country by the total number of deputies to be selected in the constituencies (Art. 202, EC).

Electoral committees may be created by political parties, coalitions, and voters (Art. 204, EC), and must respect spending limits for election campaigning (Art. 199, EC).

The electoral committee may submit a list of candidates for each seat, in each constituency. However, a candidate may only stand for election in one constituency, and in only one list of

²⁴ Art. 193, para. 1, EC.

²⁵ For further details on the Spanish electoral system for the Congress of Deputies, see M. JACOMETTI, *La Spagna*, in A. BARDUSCO - F. FURLAN - M. IACOMETTI - C. MARTINELLI - G.E. VIGEVANI - M.P. VIVIANI SCHLEIN (Edited by), *Costituzioni comparate*, Turin, 2013, pp. 253-293; J. HOPKIN, *Spain: Proportional System with Majoritarian Outcomes*, in M. GALLAGHER - P. MITCHELL (Edited by), *The Politics of Electoral Systems*, Oxford, 2008.



candidates (Art. 208, EC). The list of candidates should be supported by at least 5,000 signatures of voters residing permanently in the constituency (Art. 210, EC) and it must be submitted to the Constituency Commission for examination and registration. After completing the list of candidates, the Constituency requests the Minister of Justice for information about candidates, which is garnered from the National Criminal Register (Art. 214, EC).

Gender quotas for lists of candidates to be elected to the Sejm is one of the most significant innovations introduced by the Election Code (Art. 211, EC)²⁶. Furthermore, the electoral committee, while submitting the list of candidates, must attach a statement requested by the Act of 18 October 2006, the so-called ‘Lustration Law’²⁷ (Art. 212, EC).

According to Art. 227 of the Election Code, voters can only vote for one candidate from a list, putting an ‘X’ on the ballot paper²⁸, in the box to the left of the name of the preferred candidate. This indicates the candidate’s priority in obtaining the mandate (so-called ‘preference vote’). While an ‘X’ marked next to the names of two or more candidates from the same list gives priority to the first candidate on the list. The vote is invalid or ‘spoiled’ if the tick has been placed next to the names of candidates from different lists or if marked next to the name of the candidate excluded from competition or if no mark has been placed at all.

The Election Code regulates the vote counting processes and procedures as well as the assessment of the election results (Art. 228-237, EC).

The District Commission, verifies the accuracy of counting operations carried out by the Circuit Commission (Art. 229) and determines the outcomes of voting in the constituency (Art. 230, para. 1, EC). Election data is immediately forwarded to the NEC, which verifies their correctness (Art. 230, para. 6 and para. 9, EC). On the basis of the results in the constituencies the NEC determines the number of valid votes, the valid votes cast for each list of candidates and finally the lists that meet the conditions for taking part in the allocation of seats (Art. 231, EC).

The District Commission allocates the seats among the eligible lists of candidates using the D’Hondt method (Art. 232, EC). The mandates are assigned to candidates in the order of the

²⁶ As set down in Art. 211, in each list of candidates the number of female candidates cannot be less than 35% of the total. See A. BODNAR - A. SLEDZINSKA-SIMON, *Gender Equality from Beneath: Electoral Gender Quotas in Poland*, in *Canadian Journal of Law and Society*, Vol. 28, No. 2, 2013, pp. 151-168; F. MILLARD, *Not much happened. The impact of gender quotas in Poland*, in *Communist and Post-Communist Studies*, Vol. 47, No. 1, 2014, pp. 1-11.

²⁷ The procedure will be later explained with reference to presidential elections.

²⁸ K. MARCINKIEWICZ, *Electoral context that assist voter coordination. Ballot position effects in Poland*, in www.sciencedirect.com. In this article, the author supports the thesis that in the open list proportional system all contestants - independently of their ballot position - have the same chance of winning a mandate. However, in practice, candidates placed at the top of the ballot enjoy a large surplus of votes.



number of votes received (Art. 233, EC). The electoral system for the Sejm has therefore been defined as an ‘open-list’ proportional system given that the order of the candidates on the list is not previously determined by political parties or coalitions. Finally, the District commission publishes the election results in the constituency (Art. 235, EC). Having verified the fairness of the electoral process, the NEC announces the outcomes of the elections to the Sejm, to be published in the Official Gazette of the Republic of Poland (Art. 238, EC).

3.2.2 Elections to the Senate

Elections to the Senate are based on the principles of universality, direct vote, and secrecy of vote (Art. 97, Constitution) and they are to be held simultaneously with elections to the Sejm (Art. 257, EC) based on the first-past-the-post system²⁹. For specific issues not directly regulated by Section IV on ‘elections to the Senate’, it is necessary to make reference to the above mentioned regulations for the Sejm (Art. 258, EC).

The regulations for elections to the Sejm and the Senate are almost identical. Electoral committees impose spending limits for election campaigning, as for the Sejm (Art. 259, EC).

Moreover, the single member constituencies cannot violate the boundaries of the Sejm’s electoral districts (Art. 260, EC)³⁰. Finally, the same electoral commissions operating in the elections to the Sejm are deemed competent to manage and oversee elections to the Senate (Art. 262, EC). It is worth noticing that a political party that is part of an electoral coalition is precluded from independently presenting candidates (Art. 263, EC).

Electoral committees can submit only one candidate from each constituency and a candidate can stand for election in only one constituency (Art. 264, EC). Each candidate must be supported by at least 2,000 voters and registered by the District Commission to have his or her name on the ballot paper. The voter expresses his or her preference for a candidate putting an ‘X’ on the ballot paper to the left of their preferred candidate’s name. If only one candidate has been registered, the voter selects that candidate by placing a ‘X’ in the box marked with the word ‘YES’ to the left of the name of the candidate. A ‘X’ in the box marked with the word ‘NO’ indicates a valid vote against the candidate (Art. 268, EC).

The District Commission verifies the accuracy of the operations immediately after receipt of voting data from the Circuit Commission and determines voting results and electoral outcomes

²⁹ The first-past-the-post system has been introduced by the Election Code, in 2011. Previous elections were held with plurality block voting system, see A. REYNOLDS - B. REILLY - A. ELLIS, *Electoral System Design: the New International IDEA Handbook*, Stockholm, 2005.

³⁰ Art. 260 of the Election Code sets out rules on the creation of electoral districts.



(Art. 271). The candidate who obtains the highest number of valid votes is elected. If only one candidate has been registered for election they have to receive more than half of the valid votes (Art. 273, EC). Finally, the results of the elections to the Senate are published in the Official Gazette of the Republic of Poland (Art. 276, EC).

To conclude, the members of the Sejm and the Senate are considered representatives of the entire nation, not just of the citizens who elected them (Art. 104, Constitution). They enjoy immunity from personal accountability for the votes cast or opinions expressed, except in the case of violating the rights of third parties. Moreover, they cannot be deprived of their freedom or prosecuted for committing a common crime without the consent of their house (Art. 105, Constitution)³¹.

3.3 The electoral system for the President of the Republic

The President of the Republic is the Head of State and one of the executive power bodies (Art. 10, Constitution). According to Art. 126 of the Constitution ‘the President is the highest representative of the Polish State and the guarantor of the continuity of the State’s authority’. The Constitution lays down key principles governing the electoral system for the President of the Republic, while the Election Code regulates the technical issues. In particular, ‘the President of the Republic shall be elected by the Nation, in universal, equal and direct elections, conducted by secret ballot’, as stated in Art. 127 of the Constitution and in Art. 287 of the Election Code. The President is elected for a five-year term and cannot serve for more than two terms (Art. 288, EC). A presidential candidate must have the proper exercise of civil and political rights, has to be at least 35 years old, and be supported by 100,000 citizens (Art. 296, EC).

In order to be elected, a candidate must receive more than a half of the valid votes and if none of the candidates for the Presidency meets or exceeds that threshold, elections must be repeated on the 14th day after the first ballot. The two candidates who have received the largest number of votes will be eligible to take part in the second ballot in which a simple majority is required to win the election (Art. 292, EC).

The electoral committees responsible for electoral activities on behalf of citizens, such as parliamentary elections, may only be created by voters (Art. 84 and Art. 297, EC).

³¹ L. GARLICKI, *Constitutional Law*, cit., p. 19.



According to Art. 297 of the Elections code, candidates for the Presidency born before 1 August 1972 must produce a statement, or information, as mandated by the Act of 18 October 2006³², about their prior employment, service, or collaboration with State Security Organs, in the period from 22 July 1944 to 31 July 1990 (defined as ‘Vetting Declaration’)³³.

The NEC sends the aforementioned statements, or information obtained in the context of the election procedure, to the Provincial Court (with jurisdiction over the place of residence of the candidate), and to the Director of the Vetting Office of the Institute of National Remembrance - Commission for the Prosecution of Crimes Against the Polish Nation. As a consequence, Lustration Court proceedings are initiated *ex officio*. Finally, the NEC applies to the Minister of Justice asking for information about the candidate, in the National Criminal Register (Art. 298, EC).

The establishment of an electoral committee must be notified to the NEC in order to be registered and its rejection can be appealed against in the Supreme Court (Art. 299-300, EC). Only registered committees are allowed to nominate a candidate to stand for election to the office of the President, which has to be screened by the NEC (as previously described) in order to be enrolled in the official list of candidates. The decision of the NEC can be appealed against in the Supreme Court (Art. 304, EC).

The ballot paper lists the names of the candidates to the Presidency in alphabetical order (Art. 308, EC). Voters express their preference by placing an ‘X’ in the box to the left of the preferred candidate’s name. Votes are considered not valid if more than one mark or no marks have been put on the ballot paper (Art. 311-312, EC).

The procedures to assess the outcomes of voting are the same as those set out for the Sejm and the Senate. In case that none of the candidates obtains an absolute majority of the votes (art 292, para. 1 and para. 3, EC), the NEC indicates the names of the two candidates running for Presidency in the second ballot (Art. 318, EC). The NEC announces the final results, to be published in the Official Gazette (Art. 319, EC).

The President of the Republic assumes office by taking an oath in the presence of the National Assembly (Art. 130, Constitution). In case the office of the President is vacant, or the President

³² The Act on the Disclosure of Information on Documents of the State Security Agencies from the period between the years 1944-1990 and the Content of such Documents, in ipn.gov.pl.

³³ According to Art. 7, para. 1 and para. 3a of the Lustration Law, the Vetting Declaration must be submitted by persons listed in Art. 4, i.e. deputies, senators, members of the EU Parliament, and other relevant figures holding public offices.



of the Republic is temporarily unable to discharge the duties of his office, the Marshal of the Sejm temporarily assumes his functions (Art. 131, Constitution).

The person discharging the duties of the President is entitled to all presidential prerogatives, with the only exception being the right to shorten the Sejm's term of office³⁴. At the same time, it is worth noting that the complete lack of legitimization of the aforementioned person would entail a restriction of his/her potential activities, which must be limited to 'indispensable' functions³⁵.

The vacancy of the office of the President implies a direct obligation on the Marshal of the Sejm to order new elections by at least the fourteenth day after the office has been vacated, and new elections must be held within sixty days after the order (Art. 128). The aforesaid provision was implemented in 2010, as a consequence of the tragic air incident in Smolensk.

4. The political system

4.1 Constitutional and legislative framework

The political system of the Republic of Poland relies on the general principles laid down in the Constitution. According to Art. 4 of the Constitution, the 'Supreme power in the Republic of Poland shall be vested in the Nation. The Nation shall exercise such power directly or through their representatives'. Moreover, the Constitution guarantees freedom of association (Art. 12, Constitution), with the only limitation being in relation to political parties or movements based on the Nazi, Fascist or Communist ideology (Art. 13, Constitution).

The political party therefore assumes a core position in the constitutional framework, while specific provisions are set out in the Act of 27 June 1997 on Political Parties, also known as the APP (and its subsequent amendments)³⁶.

The political party is 'a voluntary organization, acting under a specific name, which aims to participate in public life - through democratic means - and to exert influence on State policy, or to directly exercise public authority' (Art. 1, APP).

The political parties' structure and operating rules shall be inspired by the principles of democracy, transparency and majority rule (Art. 8, APP). The Statute of the political party shall indicate its purposes, structure and the operating rules, which are to be adopted by the general assembly of the party (Art. 9, APP).

³⁴ L. GARLICKI, *Constitutional Law*, cit.

³⁵ B. BANASZAK - R. BALICKI - M. BERNACZYK - I. BISTA (Edited by), *Constitutional Law*, cit., pp. 114-117.

³⁶ See the official website of the National Electoral Commission, in pkw.gov.pl. For the English translation, see www.partylaw.leidenuniv.nl.



In order to acquire legal status, the political party has to have been previously enrolled in a public register, maintained by the District Court in Warsaw. The application should include the party's name, acronym, and the address of its headquarters, as well as the names and addresses of the members of its governing bodies (authorized by the Statute to represent it and to be liable for any and all financial obligations), the political party's graphic symbol, its Statute and a list of at least 1,000 citizens supporting the application (Art. 11, APP). In the event that the party is compliant with these legal requirements its registration takes effect immediately. If it fails to meet these requirements the party will be requested by the Court to remedy all irregularities within a time period no greater than three months (Art. 12-13, APP). If the party fails to remedy the shortcomings, the Court can deny registration to the party. Finally, any eventual amendment to party's Statute, address, or composition of the governing bodies of the party must be notified to the Court (Art. 19, APP). Failure to comply with the law could lead to the party's exclusion from the register (Art. 20).

If the purposes of the political party³⁷, as set out in its Statute, do not comply with Art. 13 of the Constitution, the District Court in Warsaw suspends the registration procedure and petitions the Constitutional Court (Art. 14 APP).

In accordance with the principles of openness and transparency, as set out in Art. 11 para. 2 of the Constitution and in Art. 23 of the APP, the financial sources of political parties are open to public scrutiny and every year parties are obliged to submit such information to the District Court in Warsaw and to the National Electoral Commission.

Parties are entitled to receive subsidies from the State budget for their statutory activity, and to be compensated for campaign expenses incurred by their participation in parliamentary elections.

A political party can be dissolved as a result of a resolution of its governing body, or following a Court's decision (District Court in Warsaw). The procedure finally leads to the liquidation of the party's assets and to its deletion from the register (Art. 46).

³⁷ See Art. 42-44, APP.



4.1.1 The evolution of the political parties' legislation

Following the fall of the Communist regime the evolution of the legislation on political parties was deliberately aimed at developing a pluralistic system. However, the growing demand for accountability and transparency of political parties' activities and financial sources, as well as the increasing influence of European standards, led to radical changes in the legislation³⁸.

In particular, the 1997 Act on Political Parties, and its following amendments, are deemed to have reshaped the political party system, making it less dependent on private sources of financing and more reliant on public subsidies. This system has promoted a substantive alignment of the resources available for each party, establishing a direct connection between subsidies and electoral results without resulting in a disproportionate amount of resources being committed³⁹.

However, these issues still remain at the core of the political debate. In fact, the 2015 referendum once again asked the voters whether the public funding system should be retained. Even though the quorum requirements of 50% were not met, the majority of those who did vote (i.e. 82%) were in favour of its abolition⁴⁰.

4.2 Political parties and programs

4.2.1 Traditional parties

In the present phase, the party system is still dominated by the Civic Platform and the Law and Justice party⁴¹. The Law and Justice party is a nationalist, conservative, Eurosceptic organisation⁴². Andrej Duda, the Freedom and Justice Party candidate, who won the presidential elections in 2015 was sworn in as President on August 6, 2015. The fight against corruption is at the core of the PiS program, combined with a socially conservative stance. In addition, in the economic field, it has renounced its initial support of liberalism and instead embraces a social-market economy approach with a dependence on interventionism.

The Civic Platform is a liberal, Christian-democratic, pro-European party and it was the majority partner in the governing coalition, from 2007 to 2015⁴³. The Speaker of the Sejm Ewa Kopacz

³⁸ F. CASAL BERTOIA - M. WALECKI, *Party Regulation and its Effects on the Polish Party System (1991-2011)*, in *Working Paper Series on the Legal Regulation of Political Parties*, No. 22/2012, in www.partylaw.leidenuniv.nl.

³⁹ F. CASAL BERTOIA - M. WALECKI, *Party Regulation*, *op. cit.*

⁴⁰ For the official results of the 2015 referendum, we make reference to the official website of the National Electoral Commission, in www.pkw.gov.pl.

⁴¹ W. NORDSIECK, *Parties and Elections in Europe*, in parties-and-elections.eu.

⁴² More information is available on the official website of the PiS, in www.pis.org.pl.

⁴³ For further information on Civic Platform and on its program, see www.platforma.org.



become party leader and served as Prime Minister following the election of Donald Tusk to the Presidency of the EU Council.

The PO ideology combines a liberal economic stance with a conservative position on ethical issues, which includes strong opposition to abortion, same-sex marriages, the decriminalisation of soft-drugs, euthanasia, stem cell research, removal of crosses and other religious symbols from schools and public places. The PO supports the privatization of State-owned companies, reform of the labour laws and a low level of taxation. Finally, the PO is in favour of decentralization and the introduction of a majority electoral system for the lower house of the Parliament as well.

Among minor political parties, the Democratic Left Alliance is worth some attention⁴⁴. The SLD was the largest centre-left party in Poland, but it suffered a significant decline starting in 2005. The hard core of the party (the Social Democracy of the Republic of Poland), rejects concept such as lustration, and de-Communization, supports the introduction of a parliamentary regime with only a representative role for the President of the Republic, and criticizes the economic reforms for the social costs they generated.

Your Movement, or *Twoj Ruch* is a liberal, anti-clerical, left-wing party, founded in 2013⁴⁵. It is the direct heir to the great revelation of 2011 elections, Palikot Movement, which obtained more than 10% of the votes.

The Polish Peasant's Party, or *Polskie Stronnictwo Ludowe* (PSL), is an agrarian and Christian-democratic political party⁴⁶. From 2007 to 2015, it was the junior partner in a coalition with the Civic Platform. It is worth noting that the party has its origins in an agrarian party based in Austro-Hungarian-controlled Galician Poland, which sent its representatives to the Parliament in Vienna. The PSL became one of the most important political parties of the 'Second Republic' (1918-1926), until it was marginalized by the *Sanacja* regime. During World War II, the PSL had a part in forming the Polish government in exile, and after the war, the PSL was rebuilt and joined the provisional government. The party hoped to win elections and to establish a parliamentary system in Poland. Nevertheless, the Communists manipulated the 1947 elections, claiming a victory, and then forced PSL to merge with the governing coalition. After the fall of the Communist regime, the party was reconstructed. Today, the party's programme supports State interventionism (especially in agriculture). The PSL opposes abortion, same-sex marriage/civil

⁴⁴ See the official website of the SLD, in www.sld.org.pl.

⁴⁵ For any additional information, see twojruch.eu

⁴⁶ We make reference to the official website of the PSL, in www.psl.pl.



unions, decriminalisation of soft-drugs, euthanasia and the death penalty. It also supports public mandatory education and publicly funded health care.

The Coalition for the Renewal of the Republic - Liberty and Hope, or *Koalicja Odnowy Rzeczypospolitej Wolność i Nadzieja* (KORWiN) is a right-wing, libertarian and Eurosceptic political party, established in 2015 by Janusz Korwin-Mikke. KORWiN was formed following an internal split in the Congress of the New Right caused by a scandal involving its former leader, Korwin-Mikke.

Far-right political movements are still present in Poland, although confined to a small segment of the political spectrum and are comprised, in the main, of the National Rebirth of Poland (*Narodowe Odrodzenie Polski*, NOP), the League of Polish Families (*Liga Polskich Rodzin*, LPR), the Polish National Party (*Polska Partia Narodowa*, PPN), and organizations such as the Association for Tradition and Culture 'Niklot'⁴⁷.

Historical events of the last century have completely destroyed the political representation of national minorities, which were significant at the beginning of the 'Second Republic'⁴⁸, but completely absent by the end of the Communist era⁴⁹. Nowadays, national minorities represent only a small portion of the Polish population⁵⁰, are endowed with negligible political weight but are not subject to any thresholds to elect deputies to the Sejm.

4.2.2 Newly formed political parties

New political forces emerged against the backdrop of the 2015 presidential and parliamentary elections. Kukiz'15⁵¹ is a right-wing political party led by the former musician Pawel Kukiz. The political movement was formed following the 2015 presidential elections in which Kukiz placed third (with 21% of the votes) in the first round. The introduction of a majority system for the lower house of Parliament is the key element of the party's programme. Kukiz'15 gathers protesters' votes, supports low taxes while 'positing an active role for the State in tackling poverty'⁵².

⁴⁷ R. PANKOWSKI, *The Populist Radical Right in Poland: The Patriots*, London, 2011.

⁴⁸ D. NOHLEN - P. STÖVER (Edited by), *Elections in Europe*, cit.

⁴⁹ As a result of the combined effects produced by three main factors: the Second World War (border revision), the *Holocaust*, and the following population transfer policies (First and Second Repatriation). N. DAVIES, *God's Playground: A History of Poland*, Oxford, 2005.

⁵⁰ There are three categories of recognized minorities in Poland: nine national minorities (Belorussians, Czechs, Lithuanians, Germans, Armenians, Russians, Slovaks, Ukrainians, Jews), four ethnic minorities (Karaites, Lemkos, Roma and Tatars), and a regional linguistic minority (Kashubians). For the official data on national minorities' population, see the official website of the Central Statistical Office, in stat.gov.pl.

⁵¹ See kwkukiz15.pl.

⁵² A. SZCZERBIAK, *What does Pawel Kukiz's election success mean for Polish politics?*, in blogs.lse.ac.uk.



Modern, or *Nowoczesna*, is a liberal party founded on May 31, 2015 by the economist Ryszard Petru⁵³. The party supports a free-market economy, simplification of the bureaucracy and the abolition of the public funding system for political parties.

Finally, the Together Party, or *Partia Razem* (PR), is a left-wing political party officially registered on July 21, 2015. The PR supports workers' rights and redistributive measures, combined with a liberal stance on social issues.

5. The 2015 parliamentary elections

On July 17, 2015, President Komorowski called for new parliamentary elections to be held on October 25, 2015⁵⁴. According to Art. 98 of the Constitution, '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 (...) Sejm's and Senate's term of office, and he shall order such elections to be held on a non-working day which shall be within the 30-day period before the expiry of (...) the Sejm's and Senate's term of office'.

The National Electoral Commission published a calendar for electoral proceedings declaring September 5, 2015, as the deadline for notification to the NEC of the establishment of electoral committees⁵⁵ and September 15, 2015 for the submission of the lists of candidates for the Sejm and of the single candidates for the Senate⁵⁶. Furthermore, the NEC set out deadlines for the establishment of electoral commissions and registration procedures for voting in polling stations abroad, on maritime vessels, by mail and by proxy. The end of the electoral campaign was fixed for October 23, 2015⁵⁷.

⁵³ See the official website of Modern, in nowoczesna.org.

⁵⁴ See *Polish President Bronisław Komorowski has announced the date for the upcoming general elections – 25 October*, in www.thenews.pl, 17-7-2015.

⁵⁵ For the list of electoral committees, and information on their status, see *Wykaz komitetów wyborczych*, in parlament2015.pkw.gov.pl/komitety.

⁵⁶ The lists of candidates to the Sejm and single candidates to the Senate, presented in each constituency by electoral committees, and registered by the NEC, are available in parlament2015.pkw.gov.pl.

⁵⁷ See *Kalendarz wyborczy*, in parlament2015.pkw.gov.pl.



5.1 The electoral campaign

The Law and Justice party led opinion polls from the beginning of the electoral campaign and achieved a landslide victory in the presidential elections of 2015.

The Civic Platform's share of the vote was significantly reduced by their unexpected defeat in the presidential elections and a tape scandal involving PO Ministers⁵⁸, which was further exacerbated by the low turnout in the September 6 referendum call by the PO President Komorowski.

In July 2015, the Democratic Left Alliance, Your Movement, Labour United, or *Unia Pracy* (UP)⁵⁹ and the Greens, or *Partia Zieloni* (PZ)⁶⁰, formed a coalition, known as the United Left, or *Zjednoczona Lewica* (ZL) and campaigned in the 2015 parliamentary elections⁶¹.

It is worth noting that it is only the second time in Europe, following the 1993 Norwegian parliamentary elections, that the three largest parties fielded a woman to stand as Prime Minister, i.e. the PO's Ewa Kopacz, the PiS's Beata Szydło, and the UL's Barbara Nowacka.

The most prominent issues, which dominated the electoral campaign, were related to:

- Social and economic concerns such as the low wages, a new taxation system, high unemployment and changes to the retirement age (all of which have contributed to significant emigration);
- Foreign affairs and security policy particularly with reference to the Ukrainian refugee crisis, the NATO rearmament policy in Eastern Europe and the relations with the EU;
- Institutional reforms which included the introduction of the majority system for the elections to the Sejm, the abolition of the public financing system for political parties and decentralization.

The electoral campaign was concluded with two major electoral debates. On October 19, 2015 the two candidates from the two major parties for the post of Prime Minister, Ewa Kopacz and Beata Szydło, faced each other in a televised debate⁶². This was followed the next day by the leaders of all eight nationwide political parties running for Parliament (i.e. Ewa Kopacz – PO, Janusz Korwin-Mikke – KORWiN, Paweł Kukiz – Kukiz'15, Janusz Piechociński – PSL, Adrian

⁵⁸ *PM Kopacz nominates new ministers in wake of 'Waitegate'*, in www.thenews.pl, 15-6-2015.

⁵⁹ See www.uniaprazy.org.pl.

⁶⁰ See partiazieloni.pl.

⁶¹ Opinion polls suggested that none of the left-wing parties, including the SLD, would have met the 5% electoral threshold, leading to the establishment of a new coalition.

⁶² *Polish PM candidates debate on live TV*, in www.polishnwes.pl, 19-10-2015.



Zandberg – *Razem*, Barbara Nowacka – ZL, Ryszard Petru – *Nowoczesna*, Beata Szydło – PiS) meeting for a televised debate conducted by the public broadcaster TVP⁶³.

5.2 The electoral outcomes

Only five out of the eight nationwide parties (that registered their candidates in all the constituencies) obtained a seat in Parliament. The Law and Justice party won the parliamentary elections with a clear majority by obtaining 235 out of 460 seats in the Sejm (representing 37.58% of the votes) and 61 out of 100 seats in the Senate. The Civic Platform won 138 seats in the Sejm (representing 24.09% of the votes) and 34 in the Senate, followed by Kukiz'15 with 42 seats in the Sejm (representing 8.81% of the votes), *Nowoczesna* with 28 seats in the Sejm (representing 7.60% of the votes), and the PSL with 16 seats in the Sejm (representing 5.13% of the votes) and one in the Senate. The German Minority party, which was not subject to electoral thresholds won a single seat in the Sejm, and various independent candidates gained 4 seats in the Senate. The National Electoral Commission announced a total turnout of 50.92% of the voting population⁶⁴.

6. Conclusions

The current political scenario resulting from the 2015 parliamentary elections highlights several interesting elements of continuity as well as some discontinuities.

The actual configuration of the current government represents a further consolidation of the so-called 'post-Solidarity system' as previously described. The two-party system based on the two right-wing players, PO and PiS, has proven capable of both generating government alternation and of excluding left-wing forces.

For the first time in the history of the 'Third Republic' left-wing parties have no representation or voice in Parliament given that both the United Left coalition (which obtained 7.55% of the votes), nor the newly formed *Razem* party (with 3.62%) respectively failed to meet the 8% and 5% electoral thresholds. Moreover, both the new political forces that emerged successfully from the 2014 and 2015 electoral cycles, i.e. Kukiz'15 and *Nowoczesna*, belong to the right wing.

The PO was defeated for more than merely political considerations as the loss of its charismatic leader, Donald Tusk, was particularly devastating. This was stressed by political analysts who felt that the successful completion of the transitional process, the accession to the European Union

⁶³ *Party leaders in televised debate ahead of Sunday ballot*, in www.warsawvoice.pl, 21-10-2015; *Poland's PM candidates clash in election debate*, in www.thenews.pl, 20-10-2015.

⁶⁴ The official results of the 2015 parliamentary elections are available on the website of the National Electoral Commission, in pkw.gov.pl.



and the positive response to the financial crisis failed to hide significant differences that still exist when compared with Western countries⁶⁵. Furthermore, the social efforts required by the liberal policies of the last 7 years have led, in the present phase, to increased demands for redistributive measures.

For the first time in Polish post-Communist history a single party, the PiS, obtained a clear majority in Parliament thus precluding the much-feared and very likely extremely uneasy coexistence of a PO government with the PiS President of the Republic, Andrzej Duda⁶⁶.

⁶⁵ R. SU, *Pologne: Faut-il craindre l'alternance*, in www.regard-est.com, 11-10-2015.

⁶⁶ *Political Cohabitation: Trouble Ahead?*, in www.warsawvoice.pl, 28-8-2015.