

Judgment of 8th February 2005, [K 17/03](#)
PROPORTIONAL ELECTIONS TO SOME COMMUNE COUNCILS

Type of proceedings: Abstract review Initiator: City Council of Poznań	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
The principle of the proportional allocation of mandates in elections to commune councils, where the commune has more than 20,000 inhabitants, and to city councils, where the city enjoys district status [Electoral Law to Commune Councils, District Councils and Regional Assemblies Act 1998: Articles 98(2) point 1 and 2, 100(1), 117(1), 118(1), 122(1), 123(1), 192(1) and 194(1)]	Authorisation to specify, by statute, the principles and procedure for the conduct of the elections to constitutive organs of local self-government units [Constitution: Article 169(2)]

The Constitution envisages that elections to the constitutive organs of local self-government units, including the commune councils (commune is a basic unit of local self-government), shall be universal, direct, equal and conducted by secret ballot (the first sentence of Article 169(2)). The principles and procedure upon which elections are conducted are to be specified by statute (the second sentence of the said Article).

Since the Constitution does not specify the electoral system to be employed in local elections – unlike in the case of elections to the Sejm (i.e. the first chamber of the Polish Parliament) whose proportional character is enshrined in Article 96(2) of the Constitution – the legislator differentiated between mechanisms for the allocation of mandates following commune elections on the basis of the number of inhabitants thereof. Thus, pursuant to Article 87, read in conjunction with Article 88, of the Electoral Law to Commune Councils, District Councils and Regional Assemblies Act 1998, the elections taking place in communes of no more than 20,000 inhabitants are conducted on the basis of the majority principle, whereas larger communes and cities enjoying district status (i.e. possessing the rights of a district) are subject to the principle that the allocation of mandates be proportional.

According to the initiator of the proceedings in the present case, i.e. the City Council of Poznań, the absence of a constitutional indication as to the electoral system in local elections excludes the possibility of proportional elections being introduced at the level of the ordinary statute. In the applicant's view, this signifies that the legislator exceeded the limits of the constitutional authorisation to specify the principles for the conduct of elections.

RULING

The challenged provisions conform to Article 169(2) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. A considerable degree of generality and abstractness is a feature of constitutional norms. Substantive constitutional norms do not always represent detailed regulation of all the issues relating to a given matter. Sometimes constitutional norms only indicate a certain framework whose furnishing with specific content is a task for the ordinary legislator or entities applying the Constitution. There is therefore a fundamental difference between constitutional provisions ordering the regulation of specific issues by statute and statutory provisions authorising the issuance of executive acts.
2. The first sentence of Article 169(2) of the Constitution establishes four fundamental principles regarding elections to constitutive organs of local self-government: universality, equality, directness and conduct by secret ballot. The determination of the principles and procedure for submitting candidates (i.e. announcing candidatures) and the conduct of elections, as well as of the requirements for the validity of elections, is amongst the competences of the ordinary legislator (the second sentence of Article 169(2) of the Constitution). The principles governing the conversion of votes into mandates are among the set of “principles for the conduct of elections”. The difference in the formulation of the second sentence of Article 169(2) of the Constitution (“principles for the conduct of elections”) and Article 169(3) thereof (“principles and procedures for election”) does not contradict this statement. The Constitution vests discretion as regards the choice of electoral system at the local level in the legislator and, accordingly, does not seek to prejudge in respect of the priority enjoyed by any such system. Assessment of the appropriateness of an adopted solution falls outside the Constitutional Tribunal’s tasks.

Provisions of the Constitution

Art. 96. [...] 2. Elections to the Sejm shall be universal, equal, direct and proportional and shall be conducted by secret ballot.

Art. 169. [...] 2. Elections to constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot. The principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, shall be specified by statute.

3. The principles and procedures for the election and dismissal of executive organs of units of local self-government shall be specified by statute.