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Position of the Batory Foundation's Teams of Experts on the Act of Law amending the Electoral Code

We wish to express our deepest concern, and to draw your attention to the threats connected with the change of electoral rules implemented by the Act dated 11th January 2018 on the amendment of certain acts of law in order to enhance the citizens' participation in the process of electing, functioning and controlling certain public bodies. The Act has been signed by the President of the Republic of Poland despite serious doubts presented by the National Electoral Commission, the Ombudsman, civic organizations and experts. By signing it, the President assumed a joint responsibility for the manner in which the ensuing elections will be held in Poland, as well as for provoking threats for the credibility of the electoral process and party pluralism in our country.

The Act, which has changed the electoral rules and the local government system, contains numerous provisions that are at odds with the Constitution of the Republic of Poland, since it infringes the principles of decent legislation and the rule of law. A good custom has been violated, in accordance with which the electoral rules would be determined by a broad consensus of political factions (the Electoral Code of 2011, amended by the new Act, was passed by the 6th Term Sejm unanimously).

The damage is significant and difficult to reverse, as manipulating electoral rules and destroying an independent electoral administration may lead to undermining and questioning the legally binding nature of the results of future local, central and presidential elections, as well as to a lasting destruction of public confidence in the procedures of electing authorities. This process is extended in time, and embedded in a broader context of systemic changes. Its ultimate outcome might prove to be dramatic: those in power may lose their democratic legitimacy, and the society: faith in peaceful mechanisms of political changes.

Awareness of the body of the electoral law doctrine, as well as of the results of empirical research of polls, brings us to the conclusion that the amendments to the Electoral Code pave the way for actions which may pose a threat to the institution of free elections in Poland.

Here is a list of the gravest problems we have observed:

- Dependence of the electoral administration (National Electoral Commission, National Electoral Office and election commissioners in the field) on the parliamentary majority as well as the executive's interference in the staffing process arouses serious doubts as to the necessary impartiality of those bodies. Such impartiality is not only indispensable for organizing fair elections, but also for a reliable audit of electoral committees' and

political parties' funding (the National Electoral Commission decides on budgetary subsidies, which are the fundamental source of funding for parties in Poland). Against the backdrop of a low social trust level and a high intensity of political conflict, even a completely honest and reliable administration, under the conditions provided by the amended Electoral Code, will not avoid suspicions of electoral manipulations, suppressing the opposition and falsifying the results of the polls.

- A profound change of the electoral administration within less than a year ahead of the local elections, which are the most challenging ones from the organizational point of view, coupled with a simultaneous modification of the principles of managing them, give rise to a threat of another organizational crisis undermining the efficiency and credibility of democratic institutions in Poland. A hasty building of the new electoral apparatus poses a threat in the form of its incompetence, as well as paving the way for clientele-related and corruptive practices. The act does not provide protection from recruiting people who have been active politicians or declared supporters of specific political factions to become election commissioners. Considering the commissioners' competencies, particularly those added to them by the Act, the above might constitute a temptation to abuse the power vested in them.
- Despite curtailing the length of candidate lists, the Act still assumes holding the elections with the use of a brochure ballot. The above is happening notwithstanding the clear evidence that this form of a ballot was one of the sources of the 2014 local election crisis. The use of a brochure ballot, especially in local elections, may result in an increase in the number of invalid votes, as well as a preference for the party list which will have drawn number 1 in the lottery.
- There is no sufficient justification for introducing two precinct electoral commissions: one to manage the polls in the precinct, the other one to determine the voting results. This solution leads to blurring the responsibility, increases the probability of mistakes, or even falsifications. Besides, it is a highly expensive solution.
- Despite the change in the rules of determining the election date, one of the rounds of the local election still coincides with very special public holidays: 1st November or 11th November. Moreover, extending the term of local government bodies to five years means that in autumn 2023, the parliamentary and local elections will take place at the same time. Such a coincidence gives rise to numerous political and organizational problems.

A change in the criteria for a vote to be valid by defining a "tick" in a new way, does not constitute a remedy to the real problems; instead, it paves the way for accusations of abuses (putting additional ticks, correcting the content of the votes). This will complicate a clear interpretation of the votes cast, and it may become a source of potential conflicts in the work of precinct electoral commissions.

In referring to the changes of election management procedures as provided in the Act dated 11th January 2018, and in assessing its effects on free elections, we can hardly omit the fact that the legislator has previously introduced significant amendments to the principles of the Constitutional Court's functioning, as well as changes regarding the National Council of the Judiciary and the Supreme Court. In combination with those alterations, a reform of the electoral administration and procedure can be interpreted as a serious risk to the maintaining of basic standards for free and democratic elections in Poland.

Certain negative outcomes of the new procedures can still be prevented, or at least the damages can be limited. We are convinced of a necessity of a civic monitoring of the ongoing reform of the electoral system and preparation process for the local elections. A meticulous analysis of the candidates and staffing for the new electoral administration posts is also indispensable.

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