

## КОНСТИТУЦІЙНЕ ПРАВО

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### SELECTED INSTRUMENTS OF THE POLISH ELECTORAL LAW ENABLING PEOPLE WITH DISABILITIES TO EXERCISE AN ACTIVE VOTING RIGHT

#### ВИБРАНІ ІНСТРУМЕНТИ ПОЛЬСЬКОГО ВИБОРЧОГО ЗАКОНОДАВСТВА, ЯКІ ДАЮТЬ ЗМОГУ ЗАБЕЗПЕЧИТИ АКТИВНІ ВИБОРЧІ ПРАВА ІНВАЛІДІВ

The Electoral Code gives the disabled voters various opportunities to participate in the general election. Thus, it makes the active voting right real, constitutionally granted also to this group of voters, and provides legal guarantees ensuring the implementation of the principle of universality of elections. Nevertheless, it is still necessary to systematically review existing solutions in order to make the best use of them by people with disabilities. The author's intention was the analysis of specific powers provided for by the Polish electoral law, both those related to obtaining information about the election and the voting itself.

**Key words:** *election, Electoral Code, disabled person, active voting right, Constitution of the Republic of Poland.*

Виборчий кодекс дає виборцям-інвалідам можливість брати участь у загальних виборах. Таким чином він реалізує конституційні принципи активного виборчого права, які також надаються групі виборців з обмеженими можливостями, і забезпечує юридичні гарантії того, що буде реалізований принцип загального виборчого права. Проте так само необхідно систематично переглядати існуючі рішення, щоб найкращим чином використовувати їх людям з обмеженими можливостями. Метою автора було проаналізувати конкретні повноваження, передбачені польським виборчим законодавством, що стосуються отримання інформації про вибори та про саме голосування.

**Ключові слова:** *вибори, виборчий кодекс, інвалід, люди з обмеженими можливостями, активне виборче право, Конституція Республіки Польща.*

Избирательный кодекс дает избирателям-инвалидам возможность участвовать во всеобщих выборах. Таким образом он реализует конституционные активные избирательные права, которые также предоставляются группе избирателей с ограниченными возможностями, и обеспечивает юридические гарантии того, что будет реализован принцип всеобщего избирательного права. Однако по-прежнему необходимо систематически пересматривать существующие решения, чтобы наилучшим образом использовать их людям с ограниченными возможностями. Целью автора было проанализировать конкретные полномочия, предусмотренные польским избирательным законодательством, касающиеся получения информации о выборах и о самом голосовании.

**Ключевые слова:** *выборы, избирательный кодекс, инвалид, люди с ограниченными возможностями, активное избирательное право, Конституция Республики Польша.*

#### Preliminary issues

Art. 62 paragraph 1 of the Constitution of the Republic of Poland guarantees the citizen an active voting right. The Basic Law formulates in this way one of the most important electoral rules – the principle of universality of elections. The principle of universality implies directly the obligation of the state to construct such an electoral mechanism, so that any voter who intends to do so could participate in the vote [1, p. 37]. This does not mean, of course, that each eligible natural person must be entitled to exercise an active voting right, regardless of his/her citizenship, age, state of mind or possession of public rights [2, p. 33]. That is why the electoral procedures of democratic states introduce some kind of restrictions known as electoral censuses [3].

The binding Constitution of the Republic of Poland indicates in art. 62 paragraph 1, that an active voting right is entitled to a Polish citizen who reaches 18 years of age at the latest on the day of the vote. In turn in paragraph 2 of the same article it exhaustively lists those categories of people who are not entitled to this right. These are Polish citizens deprived of electoral rights

by a legally valid court decision and incapacitated or deprived of public or electoral rights.

Referring to the above-mentioned issues, the Constitutional Tribunal has concluded that in a democratic state of law electoral rights are fundamental political rights and therefore every restriction thereof is subject to a particularly strict legal regime. In principle, electoral rights are entitled to all adult citizens who are capable of dealing with their own affairs, and restricting these rights is permissible only when the Basic Law explicitly provides for it, while constitutional provisions establishing restrictions – as provisions introducing exceptions to the general rule – are always subject to strict, literal interpretation. The constitution in force enumerates exhaustively the categories of persons who are not entitled to the right to participate in the referendum and the right to vote. *De lege lata* it is therefore not possible to introduce other restrictions on voting rights, and in particular making it impossible to exercise these rights by persons who have not been deprived of them in accordance with art. 62, paragraph 2 of the Constitution [4]. It is worth noting that this provision can be primarily attributed the

nature of the procedural guarantee, as it allows for the deprivation of electoral rights only on the basis of a judicial decision, while fully respecting the constitutional right to court (art. 45 paragraph 1 of the Constitution) and two instances of proceedings (art. 78). The Tribunal also draws attention to the fact that the Constitution does not specify substantive conditions for issuing a decision depriving a citizen of public<sup>1</sup> or voting<sup>2</sup> rights. The legislator, however, does not have complete freedom in this regard. The Act specifying in which situations the court may deprive a citizen of voting or public rights must meet the conditions set out in art. 31, paragraph 3 of the Constitution [4].

Taking the above into consideration, it should be stated that a disabled person who is a Polish adult citizen, and is not deprived of public rights or incapacitated, has a fully guaranteed right to exercise his/her constitutionally granted voting rights. However, the question arises whether in practice such a person is actually able to exercise electoral rights equally with a healthy person. In the case of people with limited physical or mental abilities, this may raise serious doubts especially in the context of “equality in law”. This equality implies the requirement that, as L. Garlicki points out, “legal provisions recognize the rights and duties of an individual in a manner free from discrimination and without introducing unjustified privileges” [5, p. 13]. In turn, according to the Constitutional Tribunal, “equality in law” means a requirement of shaping the provisions of law in such a way that it takes into account all the consequences of the principle of equality (cf. among others the judgment of October 24, 1989, K. 6/89, OTK ZU 1989, item 7).

The principle of equality can not be identified with the prohibition of differentiation. It is worth emphasizing here that the Constitutional Tribunal in its jurisprudence drew attention to the fact that it is consistent with the Constitution to introduce by the legislator normative regulations which are aimed at application of solutions *de facto* favoring a specific group of entities. It must be remembered that from the point of view of assessing the constitutionality of the adopted solutions, it is particularly important to determine the characteristic that the legislator has taken as a basis (criterion) for the introduction of specific differentiation. As the Constitutional Tribunal noted, “if the differentiation of the legal situation concerns entities uniformly characterized by a particular significant feature, it will mean a departure from the abstractly conceived equality, but it does not always have to take on a discriminatory or favoring nature in the above mentioned sense” [6]. Thus, the adoption in legislation of regulations making it easier for disabled people

to exercise an active voting right can not be considered as a solution discriminating against healthy people. It is worth emphasizing, however, that in the jurisprudence of the Constitutional Tribunal, the position has already been stipulated that deviations from equal treatment of similar situations by law are acceptable, but providing that certain conditions are fulfilled, namely relevance (direct relation to the purpose and essential content of the provisions in which the controlled norm is contained), proportionality (the importance of the interest, which should be served by differentiating the situation of the addressees of the norm, must be in a right proportion to the importance of interests violated by unequal treatment of similar entities) and relationship with other norms, principles or constitutional values justifying the different treatment of similar entities (one of such principles is the principle of social justice). If these conditions are met, legal differentiation can not be treated as a – constitutionally forbidden – discrimination [7]. As a consequence, therefore, solutions favoring people with disabilities also have to meet these conditions, including their rights and obligations in a non-discriminatory manner and they can not introduce unjustified privileges.

#### **A disabled voter in the light of the Constitution of the Republic of Poland**

Lack of accurate estimates of the number of disabled citizens with the right to vote does not allow for precise indication of what percentage of the general population they constitute. More importantly, this lack may lead, in consequence, to taking no action to increase the participation of these people in the elections. According to data from the National Census of 2011, the number of disabled people, both in legal and biological terms, amounted to approximately 4,7 million, which is 12,2% of the country’s population [8, p. 63–67]. Labor Force Survey (BAEL) in 2015 indicates a group of approximately 3,3 million people over the age of 15 with a legal disability certificate [9]. However, according to the estimates of the NEC, the number of citizens with disabilities and at an advanced age who do not exercise electoral rights due to the so-called compulsory absence [10, p. 9] can reach 2 million [11].

To this day, one commonly accepted definition of disability has not been established. According to art. 5 point 1 of the Electoral Code [12] a disabled voter is a voter with limited physical, mental, intellectual or sensory abilities, which makes it difficult for him/her to take part in elections. This formula is modeled on the definition adopted in the Convention on the Rights of Persons with Disabilities [13], of which art. 1 stipulates that a disabled person has a long-term physical, mental, intellec-

<sup>1</sup> Cf. judgment of the Constitutional Tribunal of November 24, 2008, ref. K 66/07, OTK ZU № 9A/2008, item 158, according to which, according to art. 40 of the Penal Code, the decision of a punitive measure in the form of deprivation of public rights depends on the court’s discretion and this measure may be ruled in the event of a prison sentence for not less than three years for an offense committed as a result of an incentive deserving special condemnation. Whereby this measure – pursuant to art. 43 § 1 point 1 of the Penal Code – is adjudicated for a period of one to ten years. Therefore, there is no obstacle for the legislator to expand the circle of persons who may be deprived of electoral rights by a court ruling, but this can be done only through appropriate regulations authorizing or obliging the court to adjudicate this kind of punitive measure, if there are specific substantive reasons for this (protection of other constitutional values).

<sup>2</sup> Cf. judgment of the Constitutional Tribunal of February 20, 2006, ref. K 9/05, OTK ZU № 2A/2006, item 17, in which it stated that “the principle of universality of elections applies in the elections of the local self-government’s bodies. It means that the establishment of additional requirements in ordinary acts without constitutional authorization leads to a contradiction between these requirements and the constitutional regulation. The ordinary legislator can not prejudice the deprivation of the right to vote (and derivative rights) if it is granted in the Constitution itself”.

tual or sensory disability, which may, in interaction with various barriers, hinder his/her full and effective participation in social life, on the principle of equality with other persons. It must be remembered that such a person, in order to be able to exercise an active voting right in national elections (with the exception of elections to the European Parliament) must be a Polish citizen, at least 18 years of age at the latest on the election day and can not be incapacitated or deprived of public rights.

It is worth noting that there are also other definitions of a disabled person in the Polish legal system [14]. You can also meet with alternative terms for a disabled person, such as “invalid”, “war disabled veteran” or “veteran of the struggle for independence” or “combatant”. As K. Kurowski rightly observes, one should strive to resign from these alternative terms in favor of the unified concept of a disabled person, because they depersonalize and objectify the individual [15, p. 21].

This kind of terminological confusion partly results from the Constitution of the Republic of Poland itself. It is enough to indicate art. 19 providing that the Republic of Poland takes special care of veterans of the struggles for independence, particularly war disabled veterans.

In addition to the aforementioned art. 19, the Constitution also refers to persons with disabilities in art. 67, paragraph 1<sup>3</sup>, 68 paragraph 3<sup>4</sup> and above all in art. 69<sup>5</sup>, which imposes on public authorities the obligation to provide assistance to disabled people in securing their subsistence, adaptation to work and social communication.

Although in existing constitutional regulations one can see the reference to different concepts, they all still refer to persons characterized by long-term limited physical, mental or intellectual abilities. Thus, the distinction on the one hand is important from the point of view of acquiring material resources by these people, but on the other hand it limits their full and effective participation in social life on an equal basis with others.

Undertaking an attempt to answer the question whether the regulations of the Electoral Code do not violate the electoral rights of disabled people is not possible without an analysis of specific powers provided for by the Polish electoral system. The rest part of the study is an attempt to look at these regulations. It will discuss the rights related both to obtaining information about elections and the voting itself.

#### **The right to obtain information about elections**

The first right of people with disabilities is the right to obtain information about elections, including solutions facilitating the participation of disabled people in the elections (art. 37a of the Electoral Code). This right is implemented by enabling disabled voters to get acquainted with information about elections. It's about the following information: 1) on the proper electoral district and the voting circuit; 2) on the polling stations

of the district electoral commissions located closest to the place of residence of the disabled voter, including the stations adapted to the needs of the disabled; 3) on the conditions of adding a voter to the electoral register in the voting circuit; 4) on the date of the election and the voting time; 5) on electoral committees taking part in elections and registered candidates and lists of candidates; 6) on the conditions and forms of voting. At the request of a disabled voter, the commune head (mayor, president of the city) is obliged to provide him/her with the necessary information: verbally at the office during working hours, by phone or in writing, by sending relevant materials via mail or e-mail. What is important, the method of providing this information is defined by the disabled person himself/herself. It needs to be emphasized that a disabled voter as a person entitled to demand the information in question does not have to document his/her disability in any way. It is enough if he/she indicates his/her name and place of permanent residence. It should be stressed, however, that a direct contact between an official and a voter is only allowed at his/her request. The lack of an application submitted by the voter prevents the commune head or an employee of the commune office from making contact, for example by phone, with a voter who does not wish to do so. Especially in the case of local government elections, such information passed directly by the commune head who runs for the office or by a commune office employee subordinate to him could be perceived by the voter as a form of electoral agitation [16, p. 115].

The right to obtain information about elections is also implemented by publishing information: in the Public Information Bulletin, on the website of the National Electoral Commission, as well as by preparing relevant information materials, including those in the Braille alphabet (art. 37b of the Electoral Code), and by appropriate placement of election announcements, so that they are easily accessible to people with reduced mobility (art. 37c of the Electoral Code). It is the duty of the district electoral commissions which implement it in the polling station in which the voting takes place.

The regulations provided for in art. 37a of the Electoral Code seem to be substantially complete and fully implement the right of the disabled voter to obtain information about the elections. Certain doubts can only arise in the case of obtaining it by a deaf-mute voter who, due to the obvious limitations of sensory abilities, will not be able to get acquainted with the necessary information. As far as obtaining information on the initiative of a disabled voter does not seem to raise doubts, acquiring it by means of the Public Information Bulletin can pose serious difficulties. It must be remembered that this solution, without simultaneous implementation of appropriate accessibility standards in all communes, is apparent in nature and does not allow the disabled voter to effec-

<sup>3</sup> This provision states that “a citizen has the right to social security in the event of incapacity for work due to illness or disability and after reaching the retirement age. The scope and forms of social security are specified in the Act”.

<sup>4</sup> Under this provision, “public authorities are obliged to provide special health care to children, pregnant women, disabled people and the elderly”.

<sup>5</sup> According to this provision, “public authorities provide disabled persons, pursuant to the Act, with assistance in securing their subsistence, adaptation to work and social communication”.



tively reach and get acquainted with the information he/she needs [17, p. 180–181].

Art. 37b of the Electoral Code, or rather its implementation, should be assessed very positively. The obligation imposed on the National Electoral Commission is carried out through its website, however, unlike in the case of the Public Information Bulletin, it contains multimedia presentations and short films that explain in an interesting way the meanders of exercising electoral rights [18]. There is no doubt that a disabled voter should be satisfied with this form of obtaining information. All that remains is the issue of proper exposition of this information, because currently it is not easy to reach it. It would also be worth considering enabling the individual voter to apply to the NEC with a request to prepare specific information for an individual voter in the Braille alphabet.

It is also worth taking a look at the practice of using the above-mentioned information rights by disabled voters. The study conducted by Centre for Public Opinion Research (CBOS) in 2014 indicates that the knowledge about the possibility of obtaining information materials by disabled people is small, both among all respondents and among those potentially interested, the recipients of adopted solutions. The survey shows that the vast majority of disabled people do not know who to turn to in order to obtain detailed information about the elections. People with disabilities also have expectations that go beyond the rights resulting from the regulations adopted in the Electoral Code. Well, every third person with disabilities would like to receive information by post or e-mail about the voting before each election, without the need to submit an application in advance in this case [19].

#### **The right to vote in a polling station without architectural barriers**

The Electoral Code obliges commune heads to provide special polling stations adapted to the needs of disabled voters. Currently, 1/2 of all polling stations in the commune must meet the accessibility requirements for people with disabilities. In the last parliamentary elections of 2015, 10,756 polling stations adapted to the needs of disabled people operated nationwide. It is worth noting, however, that ultimately all the polling stations of district electoral commissions should be fully accessible to elderly and disabled voters. These premises very often serve as public buildings (schools, clinics, cultural centers, offices, etc.). There is no doubt, therefore, that adapting them to the needs of people with limited mobility will be important for the local community and will enable them to actively use these premises not only on the day of voting, but also on a daily basis.

The detailed conditions to be met by the polling station of the district electoral commission adapted to the needs of disabled persons are specified in the Regulation of the Minister of Infrastructure [20]. The regulation introduced new requirements regarding the technical conditions of premises adapted to the needs of disabled persons (i.e. the obligation to mark the edges of steps and glass partitions, non-slip floors, additional lighting in a place ensuring the secrecy of voting). The regulation also imposes on the commission responsible for the

premises adapted to the needs of voters with disabilities the obligation to check, not later than 7 days before the election day, whether the polling station and elements of its equipment meet the conditions referred to in this regulation.

In 2012, both the Commissioner for Human Rights [21] and the Supreme Audit Office [22] carried out inspections in order to adjust the organization of parliamentary elections in 2011 for the service of people with disabilities. The conducted inspections show that most irregularities concerned the fulfillment of technical requirements contained in the above-mentioned regulation. This means that the communes responsible for preparing polling stations did not verify their condition before including them in the list of the polling stations adapted to the needs of disabled voters and did not check whether the existing polling stations met the new requirements. In order to ensure real accessibility of polling stations for elderly and disabled voters, it is necessary to check every time the current technical condition of the building where such a polling station of the district electoral commission is located before each subsequent election. The conducted inspections also showed serious deficiencies in the organization of the polling station itself, i.e. places ensuring the secrecy of voting, dimensions of the ballot box and the disposition of the NEC's announcements. These irregularities can be considered as so-called human error. Surely, they could have been avoided if only members of the electoral commissions knew how the polling station should be organized. Unfortunately, such irregularities indicate that members of the commissions often do not know the provisions of the above-mentioned regulation and are not informed in advance about the obligations resulting from it.

The conducted inspections also indicate another problem. Although the regulation of the Minister of Infrastructure does not refer to the area of the polling station of the commission, in practice even the polling station which is best adapted for people with disabilities may turn out to be inaccessible if it is located in the area where disabled people will encounter obstacles such as: high curbs in front of the gate leading to the polling station, narrow wickets in the fence, construction works that prevent free access to the building, as well as the lack of parking spaces intended exclusively for the disabled.

It is a regrettable but quite common practice for communes to include in the lists of the polling stations adapted to the needs of disabled voters premises which have the status of so-called closed circuits (organized, for example, in hospitals or social welfare homes). There is no doubt that a disabled voter has the opportunity to sign in on the electoral register in the electoral circuit of his choice (in the area of the commune competent for his/her place of permanent residence), where the polling station adapted to his/her needs is located. However, he/she will not be able to use this right in the so-called closed circuits. Thus, polling stations adapted to the needs of disabled voters located in the so-called closed circuit are not available for those voters who on the day of voting are not e.g. patients of a given hospital or residents of a social welfare home.

It is worth noting that according to art. 13a of the Electoral Code, it is permissible to change the existing seat of the polling station of the district electoral commission adapted to the needs of disabled people (e.g. in a situation where in the vicinity of the existing polling station there is a renovated or new facility better adapted to the needs of people with disabilities) at the request of the interested person submitted to the head of the commune (the mayor/president of the city) at least 55 days before the election day. The head of the commune is obliged to immediately place the submitted proposals in the Public Information Bulletin. Changes to the seats of the district electoral commissions shall be made no later than 45 days before the election day. Whereas, the final information about the designated seats of the district electoral commissions and the polling stations of the district electoral commissions adapted to the needs of disabled voters is made known to the voters by the head of the commune in the form of a notice no later than 30 days before the election day. This notice is published in the Public Information Bulletin.

To make this presentation complete, it should be added that a disabled voter has also the possibility of joining the electoral register in the electoral circuit of his/her choice (in the area of the commune competent for his/her place of permanent residence), where the polling station adapted to his/her needs is located. It should be emphasized that the legislator used here the phrase “disabled voter” without indicating the degree of disability within the meaning of the Act on occupational and social rehabilitation and employment of the disabled. Considering the definition of such a voter by art. 5 point 11 of the Electoral Code, it should be assumed that this right applies to all voters with limited physical, mental, intellectual or sensory abilities, which makes it difficult for them to take part in elections, without the need to show a disability certificate. Past practice indicates, however, that disabled voters rarely use this option. The necessity of appearing at the office in person (often inaccessible to people with disabilities) means that these people do not decide to exercise their rights in this area.

#### **The right to vote at the polling station with the use of overlays to voting cards prepared in Braille (art. 40a of the Electoral Code)**

A disabled voter may vote using overlays to voting cards prepared in Braille. On the election day, in the polling station the voter receives, together with the voting card, an overlay enabling him to cast his own vote. Voting with the use of overlays to voting cards prepared in Braille also takes place when the voter votes by post. In the latter case, in the notification about the intention to vote by post (made until the 21st day before the election day), the disabled voter should demand sending him overlays to voting cards together with the election package. There is no doubt that this form of voting is a great facilitation for blind and partially sighted voters. Until now, these people had to use the assistance of other people during the voting. In practice, in the case of blind

people, this meant filling in the ballot by another person, which made it impossible for the voter to check whether the vote was actually cast for the person indicated by him/her. After the elections to the European Parliament on June 7, 2009, blind people questioned the validity of the elections before the Supreme Court, arguing that the necessity of using another person’s help while voting in the polling station violates the constitutionally guaranteed secrecy of voting and the directness and equality of elections – compare E. Siedlecka [23].

Braille overlays do not fully solve the problem of blind and visually impaired people, but they make the voting much easier. The overlay is a device made of a rigid material (cardboard, thick film) having the same shapes and dimensions as the voting card. It is laid over on the voting card. The square holes are cut in the overlays just where there are boxes on the ballot card, in which a cross should be made. Next to the holes there are embossed numbers of candidates that make it easier to choose the right hole. At the top of the overlay, its title is embossed – information about what election it refers to. At the bottom, under the lists of candidates, there may be a brief instruction on how to vote. The same content, with a more advanced overlay, can also be provided in the enlarged print. Of course, the blind must know the lists of candidates before the vote and decide who to vote for. He/She finds out which number his/her favorite has. During the voting, he/she precisely puts the overlay on the card, finds the Braille number of his/her favorite and pen marks the cross in the box beside.

It is worth adding that at the initiative of the president, the Polish Parliament (Sejm) received the draft amendment to the Electoral Code, which along with many rational improvements in the electoral procedure also envisaged the elimination of the possibility of voting with the use of the Braille overlay [24]. As arguments for the liquidation of this form of voting, the introduction of – as a rule – the use of one-page cards with registered lists of candidates in proportional elections was proposed, which excludes the use of overlays due to the impossibility of unifying the size of a single-page voting card in the whole country. Attention was also drawn to the low interest of this group of voters in voting<sup>6</sup> as well as the high costs of producing overlays in Braille (PLN 0,5 million). After devastating criticism from non-governmental organizations acting for the benefit of the disabled and the disabled themselves, this solution was, however, repealed in the course of the work of the extraordinary commission for changes in codifications.

The manner of printing voting cards and making overlays to voting cards in Braille and the mode of passing them to the district electoral commissions in elections to the Polish Parliament (Sejm) and the Senate for the needs of the last parliamentary elections was determined by the resolution of the National Electoral Commission of June 9, 2015 [25]. The second resolution of the National Electoral Commission, passed on the same day, specified the pattern of voting cards and overlays

<sup>6</sup> It is worth noting, however, that in the justification of the draft law, the president referred to the studies already conducted in 2010, later no reliable research in this area was carried out.

to ballots prepared in Braille in elections to the Polish Parliament (Sejm) and the Senate for the voting circuits established in the country [26].

**The right to the assistance of another person during voting in the polling station (art. 53 of the Electoral Code)**

According to art. 53 of the Electoral Code, a disabled voter, at his/her request, may be assisted by another person, excluding members of electoral commissions and persons of trust. According to the National Electoral Commission, this assistance can only be of a technical nature and can not be based on suggesting the voter how to vote or on voting on behalf of this voter. It is acceptable, however, that at the request of a disabled person, the person providing help would be in the place behind the curtain [27].

It is worth noting here that both the provisions of the Electoral Code and the guidelines of the National Electoral Commission do not directly refer to the possibility of providing assistance to a disabled voter by a member of the commission in other activities than directly related to reading the notices of the National Electoral Commission or filling out the ballot paper (here it is for example about assistance in entering the polling station, or overcoming architectural barriers inside the building). The scope of this assistance has not been specified. Therefore, it may be assistance in casting a vote, but as Florczak-Wątor rightly points out, it is also permissible to help in voting on behalf of a disabled voter by filling in the voting card issued to him/her in his/her presence [16, p. 117]. It seems that we will have to deal with this kind of situation when the voter, because of his/her disability, will not be able to fill in the ballot paper himself/herself. Cf. decision of the District Court in Suwałki of January 18, 2011, I Ns 67/10, "Przegląd Wyborczy" (Electoral Review) 2011, № 1–2 "voters did not vote on their own, the guardian held their hand. <...> held the voter's wrist, it was the case both when signing the electoral list and in the cabin. However, it should be noted that this was not done against the voter's will. Holding the wrist was some kind of technical help <...> legal provisions put some strict requirements on the validity of votes – the cross is to fit within the box. Therefore, the guardian had to hold the hand and guide it sometimes <...>. This was to place the hand next to the name of a particular candidate, so that the cross took place at exactly this point, which would reflect the will of the voter". Even if the members of the commission noticed that the voter's cross was made by a person providing help, "undoubtedly such a vote was cast incorrectly. However, it reflected the will of the voter. Yet, there is no data on who it was given". A person assisting such a voter does so in the presence of the latter and this is how this help differs from the assistance given by the proxy, who also votes on behalf of the disabled voter, but in his/her absence. The circle of people providing such assistance is very wide and it also seems to include people who do not have electoral rights themselves, e.g. minors.

The legislator excluded from the circle of persons providing assistance only members of the electoral commission and persons of trust. It seems, however, that he

went too far in this regard. This exclusion in practice should only cover filling in the ballot paper, while in other activities, such as assistance in moving to a place that ensures the secrecy of the voting, or to the ballot box, help from members of the commission or persons of trust would be particularly recommended. Such a rigorous wording of the provision means that members of the district electoral commissions are convinced of the need to be fully passive towards the disabled voters in the polling station. Meanwhile, the Electoral Code has already introduced (in art. 37c § 2) the obligation to provide a disabled voter with oral electoral notices by a member of the commission in terms of information on electoral committees taking part in elections and registered candidates and lists of candidates. Similarly, by resolution of August 17, 2011 on guidelines for district electoral commissions regarding tasks and procedures for preparing and conducting voting in elections to the Polish Parliament (Sejm) and the Senate of the Republic of Poland, ordered on October 9, 2011, the National Electoral Commission noted that at the request of the voter, the commission is obliged to explain to him/her the method of voting in elections to the Polish Parliament (Sejm) and the Senate and the conditions of validity of the vote, in accordance with the information provided on the ballot paper [28]. There is no doubt, therefore, that in both cases we are dealing with providing assistance to people with disabilities by members of the commission. Taking this into account, it seems that such a categorical wording of art. 53 of the Electoral Code is unreasonable and on the occasion of the next amendment to the Electoral Code, it should be considered to extend the scope of admissible assistance provided by members of the district electoral commission to voters with disabilities.

**Use of free transport to the polling station of the district electoral commission**

In surveys conducted at the request of the Commissioner for Human Rights among voters above the age of 60, almost 1/3 of respondents indicate that they resigned from their participation in the parliamentary elections, because they had a problem with getting to the polling station. In turn, 26% of respondents stated that among all possible facilities the most helpful would be to provide free transport to the polling station at the next election. A study conducted by TNS OBOP (Public Opinion Research Center) on October 26–27, 2011 at the request of the Commissioner for Human Rights, "Voting availability – survey of people over 60".

The practice of organizing free transport for voters with disabilities is successfully implemented by many communes in Poland [29]. Of course, from a formal point of view, communes are not obliged to take voters to polling stations, however, looking at the causes of electoral abstention repeated in surveys and bearing in mind the already tested practice of many communes, it seems that it would be reasonable to introduce a statutory obligation for communes to organize free transport for older voters (over 75) and voters with disabilities to polling stations on the day of voting. Such a solution will certainly not ruin the commune's finances and, what is very important, will affect the greater identification



of residents with a given local government unit. What is important, it seems that the use of free transport should be maximally disformalized. Such a voter should be able to submit an appropriate demand by telephone or e-mail. In addition, it seems very important to undertake educational activities in which knowledge about this form of facilities will be publicized.

#### An attempt to summarize

The Electoral Code creates various possibilities for voters with disabilities to participate in general elections. Thus, it makes the active voting right real, constitutionally granted also to this group of voters, and provides legal guarantees ensuring the implementation of the principle of universality of elections. Nevertheless, it is still necessary to systematically review existing solutions in order to make the best use of them by people with disabilities. This is not only about eliminating

solutions that in practice limit the active voting right of disabled people, but also about creating solutions that will better take into account the specificity of the conditions in which such persons operate. Currently, it is possible to get the impression that the legislator, by creating specific mechanisms, does not always take into consideration such specificity, being satisfied with the use of previously worked out patterns. Meanwhile, it must be remembered that the changing reality, also in the field of new technologies, allows people with disabilities to function in areas where they have not been able to move until recently. Therefore, it seems very important that the legislator, in the process of creating and establishing law, should listen to the needs of disabled people, taking into account their proposals, because no one better than themselves is able to determine what their needs are.

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