



Jarosław Zbieranek, PhD

# Participation of Persons with Disabilities in Elections in Poland





JAROSŁAW ZBIERANEK, PhD

PARTICIPATION OF  
PERSONS WITH  
DISABILITIES  
IN ELECTIONS  
IN POLAND



The following article is a translation of a chapter 'Participation of persons with disabilities in elections' by Jarosław Zbieranek, PhD in *Main challenges following the ratification by Poland of the UN Convention on the Rights of Persons with Disabilities (Bulletin of the Ombudsman. Sources 2012, 10, pp. 68–80)*

ORIGINAL TITLE

Udział osób z niepełnosprawnościami w wyborach

TRANSLATION PROOFREADING

Hazel Pearson

Marek Sobczyk, PhD

TYPESETTING AND COVER DESIGN

Piotr M. Kozanecki

© Copyright by the Office of the Ombudsman, Warsaw 2012

© Copyright for this edition by the Centre of Electoral Studies of the Nicolaus Copernicus University, Toruń 2013



CENTRE OF ELECTORAL STUDIES OF THE  
NICOLAUS COPERNICUS UNIVERSITY  
ul. Władysława Bojarskiego 3, 87-100 Toruń, Poland  
phone +48 56 611 41 29  
csw@umk.pl • www.csw.umk.pl

## INTRODUCTION

ELECTIONS in a democratic state are an act of immense importance. It is essential to ensure that all eligible voters are able to participate in them. In this article I will focus on the legal and organizational aspects of the electoral participation of people with disabilities. In particular, I will present and evaluate mechanisms aimed at removing all obstacles and difficulties that may be encountered by this group of voters. I will also formulate recommendations for further developments in this field.



# 1

## THE GUARANTEES UNDER THE CONSTITUTION OF THE REPUBLIC OF POLAND AND INTERNATIONAL INSTRUMENTS

ARTICLE 62 § 1 of the Polish Constitution guarantees citizens the right to vote. The Constitution establishes a very important principle of universal suffrage. It implies that the State is simply obliged to construct such a mechanism of election that each voter who has the intention to vote will be able to participate in the voting. Constructions of electoral law and other acts should therefore remove any obstacles met by disabled voters, in order to effectively include this group of voters in political life. In this context, the importance of article 2 as well as article 32 of the Polish Constitution should also be emphasized, because these provisions indicate the obligation of the State to introduce additional safeguards to enable disabled people to participate in public life on an equal footing with other citizens.

The obligation to ensure the voting rights of people with disabilities is also imposed by international law. The United Nations has repeatedly paid attention to this issue. Article 25 point (b) of the International Covenant on Civil and Political Rights (hereafter called the Covenant) states that ‘every citizen has the right to vote and be elected at genuine elections’, and that states are obliged to prevent any signs of discrimination, including the difficulties that disabled voters may encounter.

In the light of these provisions, the differentiation of voters due to the level of their disability and the lack of effective legal mechanisms, including an ineffective or badly designed system of electoral law,<sup>1</sup> are a violation of human rights set forth in the Covenant. In 2006 the General Assembly of the United Nations adopted the Convention on the Rights of Persons with disabilities, which is a very important act of international law. Article 29 of the Convention explicitly imposes on States a duty to create real guarantees that persons with disabilities will be able to use their political rights. In particular these guarantees should assure the possibility of full and effective participation in political and public life on an equal basis with other citizens—directly or through a freely chosen representative. The Convention obliges States-Parties to ensure that the procedures and facilities and election materials are appropriate, accessible, understandable and easy to use and that voters with disabilities can participate in elections and referendums in secrecy, free from any influence and intimidation. It should also be noted that States are obliged to allow voters with disabilities to take advantage of new technologies in the electoral process.

1. In 2002 the report of the High Commissioner for Human Rights indicated that failure of polling stations to provide access for disabled people in wheelchairs, and the lack of special ballots for the blind or visually impaired means that such elections cannot be considered to be in accordance with Article 25 of the Covenant. For more, see P. Chybalski, 'Rights of voters with disabilities', *Infos*, 12 (2007), p. 2.



The need to ensure that all people with disabilities have a real opportunity to participate in elections was also emphasized by other international organizations. Due to the length constraints of this article, I mention only the efforts of the Council of Europe, which made a number of recommendations in the Venice Commission's documents (including the *Code of Good Practice in Electoral Matters*<sup>2</sup>). The Council of Europe's *Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006–2015* includes guidelines on the adaptation of the electoral process to the needs of voters with disabilities, indicating, *inter alia*, that the procedures and equipment used for voting are available to them. People with disabilities should have the right to ask another person, freely chosen by them, to help them in voting. This plan also stresses the need to ensure the availability of information about elections in all possible formats.<sup>3</sup>

Numerous evaluations and recommendations regarding procedures aimed at ensuring the real participation of disabled voters in elections were drawn up by the Organization

2. *Code of Good Practice in Electoral Matters*, adopted by the Venice Commission of the Council of Europe at 52<sup>nd</sup> Session, Venice, 18–19 October 2002.

3. This document also indicates the need to encourage political parties and other civil society organizations to share their information, and to organize their meetings in a manner accessible to persons with disabilities.

for Security and Cooperation in Europe (OSCE). Reports that evaluate the electoral legislation and the organization of individual elections<sup>4</sup> are also important.

4. Among other things, the monitoring report of the parliamentary elections in the Republic of Poland, which took place on 9 October 2011.

## 2

### THE LAW MECHANISMS THAT ENABLE THE PARTICIPATION OF PERSONS WITH DISABILITIES IN ELECTIONS IN POLAND

ALTHOUGH the principle of universal suffrage is considered to be the foundation of elections in the democratic State, Polish electoral law for many years did not provide effective mechanisms to enable people with disabilities to participate in elections. Few structures (such as the obligation to adapt one place in the community for people with disabilities) are responsive to the needs; moreover, they were not used in all types of elections.<sup>5</sup> Meanwhile, since the early 90s the National Electoral Commission (NEC) and the Ombudsman have regularly pointed to the need for new effective mechanisms and procedures for voting. Since the beginning of the twenty-first century, research institutes and community organizations have been very active in the debate on facilities for voters. However, their demands met considerable resistance from legislators and from some experts who represent many concerns of an organizational, legal and political nature [*sic*]. The technical barriers to voting were still considered to be a marginal issue.

5. The inconsistency of electoral law was one of the main arguments for the preparation and adoption in 2011 of one act regulating elections in Poland—the Electoral Code.

The situation has begun to change since 2009. The possibility of people with disabilities voting in a different way than at the polling station led to voting by proxy being introduced for the first time.<sup>6</sup> After the positive experience of its application in the 2010 election, the Electoral Code, which was introduced in 2011, constituted a substantial package of various mechanisms designed to facilitate the participation of persons with disabilities in elections. These solutions will be briefly described below.

### *Procedures of voting*

Voters with disabilities can use the new voting procedures, including the alternative methods of voting that allow them to vote without having to go to a polling station (voting by proxy and voting by correspondence).

In the Electoral Code, adopted on 5 January 2011, voting by proxy is included in Chapter 7,<sup>7</sup> in articles 54–61. The option to appoint a proxy can be used by voters who have been officially declared by the competent authorities to have a significant or moderate degree of disability or who are at least 75 years old.

6. See more in J. Zbieranek, 'Alternative voting procedures in Poland in the context of European Union countries', in *Selected problems of electoral systems*, ed. by D. Dziewulak, *Parliamentary Research Bureau Study*, 3 (2011), pp. 93–120.

7. More in J. Zbieranek, 'New procedures: voting by correspondence and by proxy', in *Electoral Code. A preliminary assessment*, ed. by K. Skotnicki, Warsaw, 2011.

Power of attorney is granted before the head of the commune (mayor, president of the city) or other official of the commune authorized by him or her, as a rule in the place of residence of the voter. This is a very important provision, as it facilitates the process significantly. In addition, according to article 56 § 6 of the Electoral Code, the power of attorney may be granted, at the request of voter, in another place convenient for him or her within the area of the commune.

As a rule, the proxy may not hold the power of attorney for more than one voter. There are exceptions to this rule, which relate to members of the family (ascendant, descendant, spouse, brother, sister) or persons in the relationship of adoption, custody, or guardianship. In this case the proxy may accept a power of attorney from two voters if one of them belongs to these groups.

Pursuant to article 59 of the Electoral Code, on the election day the proxy goes to the polling station, where he or she shows the power of attorney, which is attached to the electoral register, and then—after giving his or her signature—receives the ballot paper(s) to vote on behalf of the voter(s) who gave him or her the power of attorney. In other aspects, the proxy voting on behalf of a voter is subjected to the same rules of voting at the polling station as other voters.

Amendments to the Electoral Code by the Act of 27 May 2011 introduced the ability to vote by correspondence (by post). This mode is covered by chapter 7b of the Electoral

Code. It entitled voters with a significant or moderate disability to vote by correspondence. It should be noted that in comparison with voting by proxy, the circle of entitled persons is narrower—it does not include elderly persons.

In accordance with article 61c § 1 of the Electoral Code, the intention to cast an absentee vote should be submitted to the head of the commune up to 21 days before the election day. No later than 7 days before the election day, the voter with a disability should receive an electoral package (article 61f § 1). It consists of a ballot paper (papers) to vote, instructions for voting by correspondence, a statement as to the personal and secret casting of the ballot and a return envelope and—if the voter so requests—a Braille template to superimpose on the printed ballot. The electoral package must be delivered exclusively into the hands of the voter, upon presentation of his or her identity card and written acknowledgment of receipt. The voter, after casting the ballot, puts it in the envelope for the ballot and then seals the envelope. He or she puts this envelope together with the signed statement as to the personal and secret casting of the vote in the return envelope. Then he or she sends this return envelope (free of charge) to the appropriate Constituency Electoral Commission (CEC).

The Electoral Code also introduced the possibility of voting in polling stations using a Braille template, which is addressed to blind and visually impaired voters. The intention to vote by means of this template should be notified to the head of the commune up to 14 days before the

election day. The notification should mention the voter's electoral constituency. It is worth noting that the ability to use the Braille template is provided for both for voting at a polling station and—as mentioned above—voting by correspondence (the need to use the template should be notified together with the declaration of voting by correspondence, which must take place 21 days before the election day).

### *Polling stations*

The Electoral Code significantly increases the number of polling stations adapted to the needs of people with disabilities. They should constitute at least  $\frac{1}{3}$  of all polling stations in the commune. This level will be reached gradually; the head of the commune shall adapt at least  $\frac{1}{5}$  of stations<sup>8</sup> by 31 December 2014.

A disabled voter may subscribe to the voter's register in the voting constituency chosen by him or her within the area of the commune of his or her residence, where there is a polling station adapted to his or her needs.

A disabled voter should submit a written request to the appropriate commune office no later than 14 days before the polling day.<sup>9</sup>

8. Article 15 of the *Act of 5 January 2011—the Provisions implementing the Electoral Code* (Journal of Laws, No. 21, item 113, as amended).

9. *Ibidem*.

A new solution is the ability to change the existing seat of the constituency electoral commission's (CEC) premises, including premises adapted to the needs of people with disabilities (for example, in a situation where in the vicinity of the existing premises there are renovated or new premises more responsive to the needs of people with disabilities). Proposed amendments to polling station localizations may be submitted by anyone concerned to the head of the commune in writing at least 55 days before the election day. The head of the commune is obliged to publish immediately all submitted proposals in the Public Information Bulletin. A change of seat of electoral committees shall be made no later than 45 days before election day. However, the final information about the designated localization of the polling station adapted to the needs of disabled voters is published by the head of the commune in the form of an announcement no later than 30 days before election day. The announcement shall be run in the Public Information Bulletin.

As far as the voting in a polling stations concerns—according to article 53 of the Electoral Code, voters with disabilities can ask another person, except members of the electoral committees and electoral committee observers, to help them in voting. The National Electoral Commission indicates that this aid may be purely technical and it cannot involve any suggestion of voting for a particular candidate or voting instead of the voter. It is permissible, however, that at the request of a disabled voter the assisting



person goes with him or her to the voting booth behind the curtain.

*Information on issues related to elections*

The Electoral Code introduced a package of provisions regulating the process of informing disabled voters about the most important issues related to the election. The procedures introduced are covered *inter alia* in section 5a of the Electoral Code. In accordance with this regulation, the disabled voter is granted the opportunity to obtain information on the proper constituency that is the closest to the place of his or her residence and the localization of the adapted polling station; conditions of subscription to the voter's register in this voting circuit, date and hours of voting, electoral committees taking part in the elections, registered list of candidates, as well as the conditions and forms of voting (article 37a of the Electoral Code). The Act lists several ways to provide the information. Firstly, it is given to the voter by the head of the commune or by an authorized employee during office hours; it can also be given by phone. Secondly, printed materials or materials in electronic form are sent to the voter. The circle of persons entitled to receive information in this manner includes all voters with disabilities—regardless of their degree of disability. The Electoral Code also obliges the head of the commune to publish this information in the electronic Public Information Bulletin and announce it in the usual manner in the commune.

According to the new procedure, at the request of the voter the contents of electoral announcements can be orally presented to the voter by a member of the Constituency Electoral Commission (CEC). The NEC's guidelines specify that this information can be read out by the chairperson or deputy chairperson of the CEC in the presence of a committee member who has been notified by another election committee.

The Act also imposes on the National Electoral Commission an obligation to prepare information for people with disabilities. The NEC shall publish information on its website about the rights of this group of voters. This information should be provided in such a form as to take into account different degrees of disability, also in Braille, which is sent to a person concerned at his or her request.

New procedures for giving information are regulated in section 5a of the Electoral Code. They relate also to electoral announcements and the announcement of election results at polling stations and outside in places easily accessible for people with physical disabilities.

## CONCLUSIONS AND RECOMMENDATIONS

THE analysis of legal regulations adopted in 2011 and the practical application of the package of new solutions designed to facilitate participation in elections allows me to make an initial assessment and outline directions for further changes.

Parliamentary elections were held on 9 October 2011. A total of 12,427 voters nationwide cast their ballot by proxy at these elections. There were no major disruptions or confusion. The ability to vote by correspondence was used by 807 people (to whom an electoral package was sent). However, the committees received only 801 return envelopes. Unfortunately, in 119 envelopes there was no statement as to casting a personal and secret ballot, and in 4 envelopes that statement was not signed. In 4 return envelopes the ballot was not placed in an envelope, and 4 envelopes were not sealed. As a result, only 672 envelopes were cast into ballot boxes effectively (671 ballots were drawn from them). Among those people who expressed a wish to vote by post, 43 voters notified the need to receive a Braille template.

In the next part of this article I will present conclusions that follow from the Parliamentary elections of 2011 and formulate recommendations for both changes in legal regulation (Electoral Code and other laws), as well as organizational and technical issues.

*Procedures of voting*

In assessing the application of the procedure of voting by proxy, it should be noted that in spite of many concerns and complaints expressed in the legislation process (also formulated in the complaint of a group of deputies to the Constitutional Court) about the security of this procedure, its application ran without considerable troubles (what is important, this remark concerns three elections which took place in 2010 and 2011). It is worth noting that the deadline for submission of a voter's intention to vote by proxy is relatively late (up to 10 days before the election day), which certainly can be regarded as beneficial to the voters. It shows, among others, the very nature of the procedure, when the power of attorney can be given (and it is done in the presence of the head of the commune or an authorized official of the commune) even a few days before election day. Unfortunately, the application of the procedure and drafting of the power of attorney act is formal and subjected to a significant number of conditions. However, their task is to ensure the fairness of the procedure and, *inter alia*, this role of these procedures in their approved form was indicated by the Constitutional Court. It does not seem reasonable to introduce major changes in the procedure for voting by proxy.

The application of procedures for voting by correspondence for voters with disabilities in the country<sup>10</sup> also deserves

10. The absentee voting procedure also included the voters residing outside the country.

a generally positive assessment. It is noted, however, that some elements clearly caused problems to voters, so a change to them should be considered. First of all, the time limit for notification of the intention to vote by post by voters with disabilities is very short (up to 21 days before the election day). It seems that in combination with the little knowledge about the procedure (and late information campaigns conducted by the state institutions and NGOs) this fact contributed to the relatively small number of voters who took advantage of this procedure in the country (note: several times fewer than in the case of the proxy voting procedure).

Another important issue related to voting by correspondence. One procedure that caused problems to voters was the need to enclose in the return envelope a signed declaration as to the personal and secret casting of the vote. According to the law, the lack of such a statement (or the absence of a signature) meant that the envelope with the ballot was not cast into the ballot box and the vote was not taken into account in calculating the results of the election — thus the voting process was ineffective.

It is important to provide instruments that enable a blind or visually impaired person to sign the declaration confirming a personal and secret ballot (e.g. template of the signature box). Practice shows that these voters face huge problems with their signature in the appropriate space.<sup>11</sup>

11. J. Gniatkowski, 'Development of the outcome of discussions of blind people on the introduction and use of Braille overlays in the

After the parliamentary elections of 2011, in the light of these alarming data, there were voices in expert circles that indicated the need to consider the elimination of the requirement to attach a signed statement in the return envelope.

The Electoral Code introduced two ‘alternative’ voting procedures: voting by correspondence and by proxy. They are directed primarily at voters who have difficulty getting to the polls, or who find voting at a polling station impossible. The introduction of the two procedures enables a voter to choose the method which seems to be the most convenient, in which he or she has confidence, which is believed to ensure safe and effective voting. As the results of research show—both quantitative and qualitative research carried out by the Office of the Ombudsman—the assessments of the two procedures are diverse: some respondents have much greater confidence in the procedure for voting by proxy, but some prefer voting by post.<sup>12</sup> It seems, therefore, that if both procedures worked well in practice and did not cause organizational and technical complexity in the process of holding elections in Poland, they should be maintained at least for the next few elections.

At the same time it should be noted that taking into consideration the prospects of development and the ability

election in October 2011’, FIRR, Warsaw [no date].

12. More in ‘Elections for all’, the results of research conducted by TNS OBOP at the request of the Office of the Ombudsman.

to connect it with other mechanisms that facilitate voting, voting by the correspondence procedure has greater potential.

However, it is necessary to take urgent issue of the circle of persons entitled to use these procedures. In particular, voting by the correspondence procedure requires extension. At this point, it is worth mentioning a number of demands that this procedure should be able to be used by any interested voters (also voters with moderate disability).

Hopes and expectations of the electronic voting procedure are formulated very often (also among people with disabilities). However, taking into consideration the work that has been done so far, the development of e-government procedures in Poland (including problems and dismissing the timing of the application of ID cards with an electronic signature) as well as the level of security procedures, the introduction of remote e-voting (Internet voting) should be regarded as real in the longer term (around 10–15 years).

However, it seems possible to introduce much earlier the voting process at the polling station with the use of electronic voting machines. This kind of machine offers a number of facilities for voters, also for blind and visually impaired ones, that enable them to hear (in audio format) the lists of candidates and committees and to receive audio confirmation of the voter's choice. Costs of the development and introduction of these machines seem to be a desirable investment. It is therefore necessary to develop electronic voting procedures (tests).

At least until the introduction of electronic voting machines, a Braille template should function at polling stations. The practical application of this procedure in the election of 2011 is rated positively by its recipients, although demands for its adjustments are formulated. In particular, they relate to the colour of templates. The white colour, combined with the difficulty of putting the sign 'X' precisely in the desired location, may cause contamination (e.g. by pen) of the frame, and thus indicate the preferences of the voter. Therefore, the preparation of a template in black is proposed in the future.

Much criticism was raised with reference to templates that did not fit the ballot papers, because in practice this fact prevented their effective use. This is an important signal for the strengthening of supervision over the technical preparation of the sheets and overlays.

The practice of providing every polling station adapted to the needs of the disabled person with a template deserves a very positive assessment (in accordance with the Schedule to the *Resolution of the National Electoral Commission of 17 August 2011*,<sup>13</sup> there were 3 templates of each type at such polling stations). The further spread of this procedure in

13. 'How to print cards for voting and making the templates on the ballot in the Braille alphabet and transmission to peripheral electoral committees in the elections to the Polish Sejm and the Polish Senate ordered to be held on 9 October 2011', Schedule to the *Resolution of the National Electoral Commission of 17 August 2011*.



subsequent elections is advocated: ensuring templates are present in every polling station.

### *Polling stations*

Despite the introduction of the alternative voting procedures in the Polish electoral system, a significant part of disabled or elderly voters declare that they are willing to vote in a traditional way—at the polling station. The survey carried out in July 2011<sup>14</sup> shows that over 80% of respondents indicated voting at polling stations as the preferred way of voting in an election. A very important issue is the appropriate adaptation of polling stations to the needs of voters with limited mobility.

According to official data, in the parliamentary elections that took place on 9 October 2011, from the 25,993 polling stations, only 7,720 were adapted to the needs of people with disabilities. However, as indicated by the results of the inspections carried out by both the Ombudsman and the Supreme Audit Office, the vast majority of polling stations designated by the commune as adapted to the needs of people with disabilities are in fact not available for this group of voters. The Supreme Audit Office, after the inspection of 100 selected stations, found irregularities in 62% of them. At 90 polling stations inspected by employees of the Office of the Ombudsman shortcomings were noted in

14. Message from CBOS research 'Poles on the facilitation of voting', BS/84/2011, Warsaw, July 2011.

72, which accounted for 80% of all visited buildings visited. It is therefore necessary to take extensive measures for the real fulfilment of the requirements specified by law.

A significant part of the voters surveyed expressed the view that of all the possible facilities, free transport of voters to the polling station would be the most useful in the next election.

The practice of organizing free transport for voters with disabilities has been successfully implemented by several communes in Poland. From a formal point of view, however, communes are not obliged to transport voters to the polling stations. I recommend the introduction of a statutory obligation for communes to organize free transport of older voters (over 75 years old) and voters with disabilities to polling stations on election day. The ability to take advantage of the free transport should be readily available for the elderly and disabled persons and it requires the introduction of simple and transparent procedures (such as the ability to request transport by phone or e-mail), and the dissemination of knowledge about this type of facility.

#### *Information on issues related to elections*

Assessment of parliamentary elections should take into account the low level of knowledge about the new procedures among voters. It was particularly disturbing that the slightest level of knowledge was presented by the groups surveyed who were the beneficiaries of the new law procedures.

For example, only 15% [*sic*] of the respondents<sup>15</sup> who were at least 75 years old knew of the possibility to vote by proxy shortly before the deadline for notification of intention to make use of this procedure. A similar picture was presented by qualitative research — moderated conversations with voters with disabilities, which were held a few days before the election day in research work undertaken by the Office of the Ombudsman. Many of them had not heard about any facilities that were introduced to the electoral law and when the person who led the discussion gave them some clues, they pointed to the wrong understanding of specific issues related to the procedures. This fact resulted in a negative assessment (for example, in one of the interviews conducted on 30 September 2011, the respondents thought that the proxy voting procedure was based on the selection of representatives from the official general list and only local government officials could be given the power of attorney).<sup>16</sup>

A very important change is that the disabled person is entitled to obtain comprehensive information from the head of the commune (article 37a of the Electoral Code). However, this solution has a serious drawback, because the

15. B. Roguska and J. Zbieranek, 'Knowledge and opinions of Poles about the electoral law and the mechanisms of the campaign' (communication of research), Public Opinion Research Center and The Institute of Public Affairs, Warsaw, September 2011.

16. The results of qualitative research conducted in September 2011 by TNS OBOP at the request of the Office of the Ombudsman.

information is given only at the request of the voter. It is assumed, therefore, that the voter has knowledge about this entitlement and that he or she knows the contact details of the office that allow him or her to submit an application for this information. Thus the initiative to start the whole procedure is shifted to the voter. In practice, this is very risky, because, paradoxically, not every citizen knows how, where and under what conditions he or she can be informed effectively and comprehensively.

Considering the extremely important issue of the initiation of the information procedure, one should recall and repeat the demand to increase the activity of state bodies broadly defined (including local government bodies performing the tasks assigned). In recent years it has been proposed that personalized, printed information be sent to all voters before the election day without the need for their prior application.

However, the attempts to introduce individual notifications about elections,<sup>17</sup> made during the legislative work on the draft of the Electoral Code, ended in a fiasco. This solution assumed that each voter would receive written concise information about the place, time and manner of voting.

It is worth returning to this idea, but with an important modification that such information includes voting procedures (by correspondence, by proxy), the deadline for

17. A. Sokala, 'Voters should be individually notified about the elections', *Analyses & Opinions*, 37 (2005), Warsaw.

notification of intention to make use of them, access to the information portal of the NEC, the NEC's phone hotline for voters, and a reference to the opportunity to obtain comprehensive information from the head of the commune (in accordance with article 37a of the Electoral Code). This concept, however, assumes that the prints with this information have to be sent to the voters (and reach them) relatively early—before the election day.

An open issue remains a greater use of modern technology in the procedure of notifying voters—including opportunities offered by the Internet and e-mail.

Along with the demands of 'actively' informing citizens about the election procedures, the optimal solution seems to be to send the above 'notices' to all voters. A *minimum minimorum* is to provide such notice to voters with disabilities<sup>18</sup> and it should contain at least information about the facilities they can take advantage of.<sup>19</sup>

Other mechanisms of 'active' information may be considered, such as the creation by the communes of a register of voters who have made a request for information referred

18. These demands were strongly raised during testing. More in 'Elections for all', the results of research conducted by TNS OBOP at the request of the Office of the Ombudsman.

19. There is a problem concerning the data of citizens who would receive such notices. It is worth mentioning that during the work on the Electoral Code, a proposal was submitted to establish a register of voters with disabilities, but it did not meet with the acceptance of the legislator. More in a deputies' bill to adapt the organization of elections to the needs of persons with disabilities (Print No. 2800).

to in article 37a of the Electoral Code and who submitted a declaration that they wanted to receive information before every election, without having to submit an additional application (this would include both the transmission of information in print, and/or electronically). The register could also be updated on an ongoing basis in the period between elections (information about the chance to subscribe to this register could be given also by NGOs).

An important issue is the circle of persons entitled to receive information on the basis of article 37a of the Electoral Code. Although the circle covers all persons with disabilities regardless of the degree of their disability, a question arises about the possibility of such information being obtained by another person who is not disabled, such as a family member or neighbour. Therefore, the extension of the circle of eligible persons and the introduction of the concept of 'interested persons' analogous to article 37b § 2 of the Electoral Code should be considered.

It is also worth postulating the extension of the scope of the information mentioned in article 37a of the Electoral Code, including procedures to provide free transport of disabled voters and those of advanced age, which is organized by the commune.

The aforementioned demands for more active and personal management of information from the office to the voters are so important that some other information procedures provided by the Electoral Code have a problematic efficiency. In particular this remark relates to the obligation

of the head of the commune to announce information for people with disabilities in the 'usual manner'. Posting information on the Public Information Bulletin of the office seems to be more important; it is worth remembering that finding it on the municipality/town office website and in the appropriate tab might not be an easy task for the average voter.

The traditional procedure for placing notices (article 16) has already been considered to be ineffective.<sup>20</sup>

One should positively assess the introduction of requirements which relate to electoral announcements placed at polling stations and outside them, so that they were in areas accessible for disabled voters with limited mobility.

An important issue is the level of knowledge among the people involved in the process of organizing elections, in particular officials of local governments. Meanwhile, the survey cited above indicates that new facilities and standards, including procedures for persons with disabilities, still remain unknown to them.<sup>21</sup> This is of great importance, because it is precisely the local government officials are responsible for proper preparation of polling stations, including marking them. A very important issue is the proper preparation of the persons who conduct professional training for the thousands of members of constituency electoral

20. A. Sokala, 'Voters should be individually notified about the elections', *Analyses & Opinions*, 37 (2005), Warsaw.

21. Evidenced by, among others, the results of the Association of Friends of Integration research.

commissions (CEC), because they give them instructions on the basis of the guidelines of the NEC<sup>22</sup> and indicate situations that may happen on the election day.

Proper preparation of the members of the CEC is another extremely important issue. Research and reports prepared by non-governmental organizations dealing with problems of persons with disabilities show that members of the commission do not always have the appropriate knowledge and skills to use facilities introduced into the electoral law.

It is worth noting that such persons in everyday life do not have many opportunities to get to know people with disabilities, their needs and expectations. On election day they find it difficult to respond appropriately and constructively to the situations that may happen at the polling station and to give or arrange for optimal assistance.

It is therefore appropriate to alert officials of local governments (involved in the electoral process) and the person conducting the training of members of CEC as to the issue of participation in elections of people with disabilities or of advanced age. A number of actions can be taken to achieve this purpose. For example, the National Electoral Office (part of the NEC) should prepare special instructions for the officials, a kind of 'handbook', which should include recommendations regarding the preparations for

*22. Resolution of the National Electoral Commission of 17 August 2011 on the guidelines for electoral committees, the tasks and procedures for the preparation and conduct of voting in the elections to the Polish Sejm and the Polish Senate ordered to be held on 9 October 2011.*



the elections including, for example, advice to cooperate with and consult public institutions and NGOs which deal with persons with disability and of advanced age (results of tests carried out by the Friends of Integration Association showed that only 2% of local government officials cooperated with such institutions before the election<sup>23</sup>).

Additional measures related to the preparation of members of electoral commissions should be taken. These measures may include, among others, the formulation of guidelines by the NEC for electoral committees in such a way that the provisions on a variety of facilities for disabled voters are grouped into separate parts and properly highlighted (if it is impossible because of the composition of the text in the main part, a special extract/appendix should be added).

To training for the members of the electoral commissions one should invite representatives of those public institutions and non-governmental organizations who will present the perspective of people with disabilities, indicating the possibilities of such proper preparation of the polling station and patterns of behaviour in diverse situations that may arise on election day.<sup>24</sup>

23. The results of the public opinion survey conducted by SMG/KRC in October 2011 at the request of the Association of Integration.

24. It should be noted that a more comprehensive education of members of CEC, it is necessary for them to fulfill an enormously positive role not only on the election day, which is obvious, but it is a forward-looking action. Training includes nearly 250 thousand people who, in later years (even if they are not members of the CEC) will have the knowledge and pass it on to others — such as family members.

New regulations in the Electoral Code of the role and tasks of the National Electoral Commission in informing citizens about the election should be considered inadequate. The instruments prescribed by law are of a diverse nature and have great potential, but a deep institutional reform is needed to use them optimally. In particular, it is necessary to establish a special institution that will coordinate information and educational campaigns.

Only creation in the wide structure of the NEC—whether in the form of a separate team of the National Electoral Office or in the form of the National Electoral Institute<sup>25</sup> that has been postulated for years (and of course with the provision of adequate funds for its functioning)—will allow action to be taken with the optimum use of the existing possibilities. The tasks of the team will be, *inter alia*: preparation of visually attractive and substantive information materials, with particular reference to people with disabilities, the coordination and inspiration of information campaigns of National Electoral Office Delegations and local government officials.<sup>26</sup>

25. J. Zbieranek, 'Electoral mobilization of citizens. Proposal for establishment of the National Electoral Institute', in *An active citizen, a modern electoral system*, ed. by L. Kolarska-Bobińska, J. Kucharczyk, J. Zbieranek, Warsaw, 2006, pp. 67–72.

26. The National Electoral Institute would deal with complex analytical activities, research, allowing the identification of the most important challenges for information campaigns.

### *Summary*

After many years of efforts a large package of solutions was introduced to the Polish electoral law that is designed to help persons with disabilities to participate in elections. It had a significant impact on the level of the constitutional guarantee of universal suffrage and on fulfilment of the international standards in this regard.

The process of adaptation of electoral procedures to the needs of people with disabilities cannot be considered as completed. Many of the mechanisms postulated during the parliamentary work over the Electoral Code could not be developed in time. Some of the implemented solutions require technical adjustments and modifications. These changes can be made in a relatively reasonable time. It is also worth taking into account, *inter alia*, demographic changes and technological developments; considering the prospects for the evolution of mechanisms in the long term (such as the introduction of electronic voting).

A huge challenge is to ensure effective mechanisms to inform citizens with disabilities about issues related to elections (including the new procedures). The lack of knowledge contributed to a large extent to the unused potential of the facilities in the parliamentary elections of 2011, limiting their effectiveness.





JAROSŁAW ZBIERANEK, PhD—MA in Law and Administration (2003), MA in Political Sciences (2005), PhD in Constitutional Law (2010). From 2004—Head of the Law and Democratic Institutions Department in the Institute of Public Affairs (think-tank) in Warsaw, Poland, Internship of BSSSC, Institut für Management und Unternehmensentwicklung and numerous public institutions, international organizations and research institutes in Poland and abroad. From 2004 participated as an expert in a legislation process of the Polish Parliament (Sejm RP of IV, V, VI Term and Senat RP of V Term). Associate of the Centre of Electoral Studies of the Nicolaus Copernicus University in Toruń. Expert of the Human Rights Defender (Ombudsman) and the Ministry of Labour and Social Policy.

