

THE LEGAL AND PRACTICAL ASPECTS OF IMPLEMENTING UNIVERSITY STUDENTS' ACTIVE ELECTORAL RIGHT IN POLAND

Radosław Zych, Ph.D.

Institute of Legal Sciences at the University of Szczecin

e-mail: radoslaw.zych@usz.edu.pl; <https://orcid.org/0000-0002-1221-9136>

Summary. The purpose of this article is to analyse the current legal status regarding the implementation of the active electoral right exercised by students in Poland. The article examines in detail the legal norms of the Electoral Code in this regard. Other generally applicable provisions of the law, documents of the National Electoral Commission and judicial decisions will also be examined. The author tries to determine to what extent the current legislation guarantees a practical implementation of the active electoral right by students?

Key words: active electoral right, voting circuit, students, universal suffrage principle

INTRODUCTION

The essence of the principle of universality as the basic principle underlying elections implies a requirement to organize voting procedures that ensure the possibility of exercising subjective electoral rights by the widest possible range of entitled persons. This article seeks to analyse the Polish electoral law with respect to its exercise by university students. The legal basis for granting voting rights to this group of citizens will be examined, as well as some documents issued by the National Electoral Commission and the 2014 regulation of the Minister of the Interior. Our considerations will include conclusions drawn from the practice of the parliamentary elections of 2019. In addition, we will try to determine to what extent the legal aspects guarantee the application of student's voting rights?

1. LEGAL BASES RESULTING FROM THE ELECTORAL CODE

In accordance with Art. 12, para. 7 of the Electoral Code,¹ “a separate voting circuit may be created in a hall of residence or student housing complexes run by universities or other entities on the basis of contracts concluded with universities, if at least 50 persons entitled to participate in elections inform in writing the rector of the university maintaining a hall of residence or a university with which another entity has concluded a contract for the maintenance of a hall of residence of the intention to stay in the hall of residence on the voting day.” Therefore, this le-

¹ Act of 5 January 2011, the Electoral Code, Journal of Laws of 2019, item 684 as amended [henceforth cited as: EC].

gal norm lays the ground for the option to create a separate voting circuit. The possibility of creating separate voting circuits in student housing facilities has not always been legally guaranteed in respect of elections.²

Meanwhile, the establishment of a closed voting circuit is intended to implement³ the constitutional principle of universal suffrage. Elections in Poland are generally held as general and direct elections, in which the citizens, except those excluded by law, can vote directly [Bielski 1995, 43]. Therefore, this is intended to ensure the greatest possible number of voters [Sokala and Uziębło 2013, 146]. The possibility of creating this type of circuit is an expression of one of the statutory principles of electoral law [Jaworski 2013, 38]. Under the current legal framework, this is a codified principle.

The electoral commissioner, after obtaining the consent of the university rector, creates voting circuits referred to in para. 7 (Art. 12, para. 9 EC). However, it is not legally possible in elections to legislative bodies of local government units in the elections of a commune [Pol. *gmina*] head (Art. 12, para. 8 EC). Probably this derogation results from the specific nature of local elections, perceived as being the “closest” to voters. By establishing voting circuits, the electoral commissioner sets their numbers, boundaries and the seats of circuit electoral commissions (Art. 12, para. 11 EC). He does so in the form of a resolution which is published in the voivodship’s official gazette. Apart from that, they are made public in the usual manner. One copy of the resolution is immediately forwarded to the voivode and the National Electoral Commission (Art. 12, para. 12 EC). The establishment of separate voting circuits needs to take place not later than on the 35th day before the election day (Art. 12, para. 10 EC). The literal wording of the legal norm does not reflect the practice. Probably, the *mens legislatoris* should be applied to the day of voting, given the complexity of the electoral process. Making the resolution available to the public in a customary manner is intended to inform the entitled persons as effectively as possible about the location where their active electoral right can be exercised. The Wielkopolska Voivode, in supervisory decisions issued in 2012, pointed out that “the date of entry into force of the resolution [to establish voting circuits] cannot be linked to the lapse of 14 days from its announcement in the official gazette, as the EC links the effectiveness of the resolu-

² In 2005, the National Electoral Commission, with respect to the possibility of holding elections to the Sejm and Senate of the Republic of Poland and a nationwide referendum, deemed it advisable to signal to the Speaker of the Sejm the need to amend the Electoral Code for the Sejm and Senate, the Act on election of the President of the Republic of Poland and the National Referendum Act. At that time, attention was drawn to the fact that only the provisions of the said act provide for the establishment of voting circuits in halls of residence, see “Przegląd Wyborczy. Biuletyn Informacyjny” 2 (2005), p. 20–21. In 2007, during a council held by electoral practitioners, some journalists’ opinions were mentioned, who reported that students living in halls of residence showed a great deal of interest in voting. Some surprise was pointed out that a voting circuit had not been established such locations, “Przegląd Wyborczy. Biuletyn Informacyjny” 9–10 (2007), p. 19.

³ See the report of the National Electoral Commission on the elections of the President of the Republic of Poland held on November 5, 1995 and on November 19, 1995, “Przegląd Wyborczy. Biuletyn Informacyjny. Wydanie specjalne. Wybory Prezydenta Rzeczypospolitej Polskiej w 1995 r.”, p. 7–8.

tion to its publication in a customary manner and after the expiry of the time limit for registering an appeal, counted from the promulgation date or the end of the complaint procedure regulated by Art. 12, para. 13 EC.”⁴ This idea seems to apply to Art. 12, para. 12 EC under the currently applicable legislation.

As mentioned above, the possibility of setting up voting circuits in student housing facilities has not always been legally guaranteed. This study covers research resulting from the wording of the electoral code adopted in 2011. However, it is worth remembering that the National Electoral Commission stated in 1998 in its explanation that: “the discretionary nature of the decision on the establishment of a separate voting circuit imposes on commune executive bodies the obligation to carefully consider each case regarding the creation of such a circuit, in consideration of criteria of equity and purposefulness, after prior determination of the number of voters residing in the establishment”.⁵ I believe that although that explanation was formulated in a different, out-of-date legal reality, they may constitute some guidelines showing the path to follow when interpreting the provisions of the currently binding law.

2. DOCUMENTS OF THE NATIONAL ELECTORAL COMMISSION

According to the document issued by the National Electoral Commission of 2019 regarding the conditions for participation in elections to the European Parliament, voters who would be staying on the day of the election in halls of residence or student housing complexes in which voting districts were created, would be recorded on the lists of voters drawn up for the circuits created in those housing facilities and would be able to vote. The director of such an establishment would notify the residents about their inclusion in the voter list. Voters recorded on the voters' list in those locations would be *ex officio* removed from the register in their place of permanent residence. Persons who would come to such locations on the election day would be able to vote in these units only on the basis of certificates confirming the right to vote.⁶ It should be noted that the person who has been granted a voting certificate would be deleted from the electoral register.⁷ Based on the certificate, the voter may vote in any voting circuit of their choice.⁸

⁴ Supervisory decision of the Wielkopolska Voivode of 4 October 2012, KN-I.4131.1.263.2012.16, Official Gazette of Wielkopolska Voivodeship of 2012, item 4207, Legalis no. 752615; supervisory decision of the Wielkopolska Voivode of 4 October 2012, KN.I.4131.1.262.2012.16, Official Gazette of Wielkopolska Voivodeship of 2012, item 4174, Legalis no. 752619.

⁵ Explanation provided by the National Electoral Commission, Wyb. 0101-3-T-25/98. *Prawo Wyborcze. Samorządowe prawo wyborcze. Zbiór aktów prawnych oraz wyjaśnień i opinii Państwowej Komisji Wyborczej (stan na 30 kwietnia 1999 r.)*, p. 259.

⁶ Letter from the National Electoral Commission, file ref. ZPOW-501-19/19 – Information on the conditions for the participation of Polish citizens in voting in voting circuits created in the country in elections to the European Parliament scheduled on 26 May 2019 (updated), p. 3–4.

⁷ “Przegląd Wyborczy. Biuletyn Informacyjny” 5 (2010), p. 29.

⁸ *Ibid.*, p. 23.

As the electoral protest in the autumn of 2019 was officially recognised, the District Electoral Commission argued that in accordance with Art. 29, para. 1 EC list of voters in the housing facilities referred to in Art. 12, para. 4 and 7 EC should be drawn up on the basis of lists of persons who will stay in them on the day of elections. A voter placed on such a list is removed from the list of voters in the place of permanent residence and can vote in elections only in a separate circuit created in such a location.⁹

3. REGULATION OF THE MINISTER OF THE INTERIOR OF 2014

A template list of voters staying in a hall of residence or a student housing complex in which voting circuits have been created, as well as those leaving them, form Appendixes 3 and 4, respectively, to the Regulation of the Minister of the Interior of 2014.¹⁰ The following information is provided: the surname and first name (names), father's name, date of birth (year, month, day), PESEL (Polish national identity number), and – in the case of EU citizens who are not Polish citizens – citizenship and passport or other identity document number, current residence (as recorded in the electoral register): town and commune, street, house number, and apartment number.

According to para. 6, sect. 1 of the Regulation, the list of voters for the circuit created in a workplace is drawn in alphabetical order, based on the list of people who will be staying in the workplace on day of the election. Under sect. 2, in elections to the European Parliament and elections to legislative bodies of local government units and commune heads, the list of persons referred to in sect. 1 is to be prepared separately for Polish citizens and EU citizens who are not Polish citizens and who: 1) permanently reside in the territory of the Republic of Poland – in the case of elections to the European Parliament; 2) permanently reside in the territory of a given local government unit whose constituent body is being elected – in the case of elections to legislative bodies of local government units and elections of commune heads.

On the basis of sect. 3 of the Regulation, the list of persons who will be staying at their workplace on the election day is prepared by the person managing the facility in which the voting circuit has been created, and submits it to the commune office which is territorially competent for the seat of the facility no later than on the fifth day before the day of the election. It follows from sect. 5 that the manager of the facility in which the voting circuit has been created notifies the listed persons that they will be removed from the electoral register in the place of their permanent residence and will be able to vote only in the voting circuit created in that workplace, and in another voting circuit if they obtained a voting certificate from the office of the commune in which the facility is located.

⁹ Order of the Polish Supreme Court of 20 November 2019, I NSW 186/19, LEX no. 2755989.

¹⁰ Regulation of the Minister of the Interior of 29 December 2014 on voters' lists, Journal of Laws of 2015, item 5.

It transpires from sect. 6 of the Regulation that if it is necessary to extend the voters' list for the circuit created in the workplace by names of individuals who came to it after the list was drawn up, but not later than 2 days before the election day, the manager of that facility is to immediately submit to the appropriate commune office an additional list of these voters. The same is provided under sect. 7, but if it becomes necessary to delete from the voters' list compiled for the circuit created for the facility those voters who permanently reside in the commune where the facility is located and who left this workplace after the list was drawn, the head of that establishment is to immediately submit the list of those voters to the competent commune office. In both cases, sect. 2 and 5 are applied accordingly.

We should bear in mind that the National Electoral Commission in its letter of February 1, 2016¹¹ and of January 21, 2019¹² proposed the creation of the Central Electoral Register. According to their proposals, it would be a dataset based on commune electoral registers, to be maintained by the National Electoral Commission. Importantly, a central register of this kind would provide centralised information on the entry of a person staying in a hall of residence on a voters' list. In addition, the creation of such a central register of voters would ensure better exchange of information among commune offices, which would improve the standard of the electoral register and the correctness of voters' lists.

As argued in the past by the Polish Ombudsman, the proper safeguarding of the right to vote and also assurance of the correctness of elections have caused special problems that concerned young people, especially university students. This was caused by the fact that they found it hard to decide whether they would vote at the place of their permanent residence or study. This concerned parliamentary, presidential and EP elections, as well as a national referendum. On many occasions, as the Chairman of the National Electoral Commission, Andrzej Zoll received complaints from students who wanted to vote outside the place of permanent residence, without providing them with the appropriate certificate of the right to vote and thus preventing them from voting several times. However, Zoll did not believe that issue would be solved by a central electronic register of voters because, as he argued, not only is the state authority to provide the citizens with the option to exercise that right, but also the citizen should make sure that his or her rights can be exercised [Zoll 2005, 405–406]. Undoubtedly, all legal regulations and technical solutions aimed at increasing the possibility of implementing active electoral right should be assessed favourably, for one of the aspects showing the degree of citizens' involvement in state affairs is their participation in elections [Stelmach 2011, 17].

¹¹ Information from the National Electoral Commission on the implementation of the provisions of the electoral code and proposals for their amendment. Letter from the National Electoral Commission of February 1, 2016, ZPOW 430-8/15, p. 5–6.

¹² Information from the National Electoral Commission on the implementation of the provisions of the electoral code and proposals for their amendment. Letter from the National Electoral Commission of January 21, 2019, ZPOW 502-1/19, p. 8–9.

4. PRACTICE SINCE THE 2019 PARLIAMENTARY ELECTIONS

The deadline for establishing voting circuits in halls of residence and their complexes in the elections to the Sejm of the Republic of Poland and the Senate of the Republic of Poland was September 9, 2019 as September 8¹³ fell on a Sunday (Art. 9, para. 2–3 EC) [Kubicka–Żach 2019]. As we have pointed out, the creation of voting circuits does not take place automatically, so it is extremely important to inform the interested persons about this possibility. In this regard, attention should be paid to the need for proper cooperation by the managing bodies of student housing facilities. In order to fulfil statutory obligations, it is important to convey the information on the will to set up a distinct voting circuit to the administration of a specific hall of residence on a date adjusted to the expiry of the official deadline. In connection with the elections to the European Parliament held on May 26, 2019, separate voting circuits in student housing were to be established by April 21, 2019,¹⁴ but the relevant information was to be provided to those interested within the time limit set by individual universities, for example by March 22, 2019.¹⁵ For the EP elections scheduled on May 26, 2019, the Electoral Commissioner in Słupsk created a voting circuit no. 119, whose boundary lay at the Dom Marynarza Students House No. 2 in Gdynia.¹⁶ In para. 3 of the order, the Commissioner instructed that a minimum of 15 voters had the right to lodge a complaint against the commissioner's decision to the National Electoral Commission within 3 days of the date of its publication by the National Electoral Commission in the Public Information Bulletin. However, the Electoral Code does not expressly provide for such a possibility. In accordance with Art. 12, para. 13 EC, a minimum of 15 voters have the right to register a complaint with the National Electoral Commission about decisions of the Electoral Commissioner referred to in para. 2, 4 and 9 within 3 days from the date they were made public. The National Electoral Commission resolves the matter within 5 days and issues a decision. So, Art. 12, para. 13 EC does not refer to Art. 12, para. 7 EC.

¹³ See https://www.bip.krakow.pl/?dok_id=114324&lid=800255820&vReg=2 [accessed: 27.02.2020].

¹⁴ Announcement of the National Electoral Commission of 27 February 2019 on the decision of the President of the Republic of Poland on the ordering of elections of members of the European Parliament and on constituencies and seats of constituency electoral commissions, https://pe2019.pkw.gov.pl/pe2019/statics/pe2019-obwieszczenia/pliki/1551280598_Obwieszczenie_PKW_o_postanowieniu_Prezydenta_Rzeczypospolitej_Polskiej_w_sprawie_zarzadzania_wyborow_poslow_do_Parlamentu_Europejskiego_oraz_o_okregach_wyborczych_i_siedzibach_okregowyc_h_komisji_wyborczych.pdf [accessed: 27.02.2020].

¹⁵ See <https://hstl.put.poznan.pl/content/wybory-do-parlamentu-europejskiego-26-maja-2019> [accessed: 27.02.2020].

¹⁶ Decision no. 45/16/2019 of the Electoral Commissioner in Słupsk I of 8 April 2019 on the establishment of separate voting circuits in the city of Gdynia in the elections to the European Parliament ordered for 26 May 2019.

In connection with the elections to the office of the President of the Republic of Poland on May 10, 2020, separate voting circuits in students housing are to be created by April 6, 2020.¹⁷

5. THE LEGAL ASPECTS OF STUDENTS' EXERCISE OF VOTING RIGHTS

For many years, the National Electoral Commission has attached great importance to the efficient conduct of elections, both from a formal/legal and an organizational point of view.¹⁸ It is important to thoroughly prepare the members of circuit committees to conduct the vote and process the results. Under the currently applicable procedure of creating circuit electoral committees, the organs appointing them do not have any influence on their composition. Their work can be influenced if committee members are trained suitably. The training should take into account the practical context, raise the awareness of the importance of the electoral act viewed as an important element of the system of democracy.¹⁹

It is important to ensure that utmost caution should be exercised when handling voting cards (their transfer to voting circuits and storage²⁰).

According to point 38, sect. 1 of the guidelines of the National Electoral Commission²¹ of 2019, before issuing ballot papers, the committee verifies the identity of the voter, for example, by inspecting the voter's student ID. Therefore, he or she can show the committee any document with a photo (e.g., a passport, driving licence, student ID), including an expired document, provided that there is no doubt as to the identity confirmed on its basis.²² The provisions of Art. 52, para. 1 EC²³ and para. 2 EC²⁴ are applied. Thus, whether a voter is entitled to vote in

¹⁷ See <https://wybory.gov.pl/prezydent2020/pl/kalendarz> [accessed: 27.02.2020].

¹⁸ "Przegląd Wyborczy. Biuletyn Informacyjny" 5 (2010), p. 17.

¹⁹ *Ibid.*, p. 11–12.

²⁰ *Ibid.*, p. 14.

²¹ Guidelines of the National Electoral Commission for circuit electoral committees regarding the tasks and mode of preparation and voting in circuits of voting established in the country in elections to the Sejm of the Republic of Poland and the Senate of the Republic of Poland scheduled for October 13, 2019, constituting an appendix to Resolution no. 210/2019 of the electoral Commission of September 2, 2019 on the guidelines for circuit electoral committees regarding the tasks and manner in which to prepare and conduct voting in voting circuits created in the country in the elections to the Sejm of the Republic of Poland and the Senate of the Republic of Poland scheduled for October 13, 2019. https://sejmsenat2019.pkw.gov.pl/sejmsenat2019/statics/uchwaly/pliki/1567438728_Wytyczne_obwodowe_Sejm_2019.pdf [accessed: 28.02.2020].

²² It should be recalled that on 26 June 1995 the National Electoral Commission provided explanations according to which: "the term «ID card number or passport number [...]» should be understood as the official identification marks of the listed documents, i.e., the letter designation of the series and the full digital number", see "Przegląd Wyborczy. Biuletyn Informacyjny" 6 (1995), p. 6.

²³ "Before voting, the voter shall present to the circuit electoral committee a document enabling the identification of the person."

²⁴ "After performing the procedures referred to in § 1, the voter shall receive from the committee a voting card appropriate for the type of the election, bearing its seal. The voter shall confirm the receipt of the voting card with his own signature on the voter list provided for this purpose."

a given circuit is possible to determine after confirming the fact that his or her name has been included in the voters' list. In the event of positive verification, the committee issues a ballot to him.

Pursuant to point 59 of the Guidelines, committees in separate circuits, halls of residence as well as student housing complexes are exempted from the requirement to submit to the National Electoral Commission information on attendance, that is, on the number of persons entitled to vote and the number of voters to whom ballots were issued during the vote, and making them public as at 12:00 and 17:00. Such data is of considerable interest and its publication is anticipated by journalists, politicians and citizens. This procedure requires good organization and discipline, both with respect to the technology used and in terms of personnel involved.²⁵ The exemption of committees appointed for halls of residence is probably justified by the potential, relatively small number of persons entitled to vote in such circuits.

On the other hand, pursuant to point 69 of the Guidelines, in separate circuits and those established in halls of residence and complexes thereof, the committee may order an early conclusion of the vote as long as all voters on the voters' list have cast their votes. An early conclusion of the vote may be ordered not earlier than at 18:00. In the event of an early termination of the vote, it should be remembered that the publication of voting reports by the committee should be made public immediately after their preparation, but not earlier than at 21:00. The chairman of the committee is to immediately notify the managing body of the facility in which the voting circuit has been created, the head of the commune and district electoral commission have been notified of the order to end the vote. The probable reason for the possibility of ordering an earlier termination of the vote is that due to the specific nature of a separate voting circuit, it would be difficult to maintain electoral silence. However, an early termination of voting does not entitle the committee to immediately publish voting reports. In the event of an early conclusion, the committee should be particularly cautious between 18:00 and 21:00 hours and refrain from giving ad hoc information about the result of the vote. The requirement to publish the results of voting in a place that has good visibility and is easily accessible to voters was stressed many times by the National Electoral Commission.²⁶

²⁵ "Przegląd Wyborczy. Biuletyn Informacyjny" 5 (2010), p. 16–17.

²⁶ Guidelines of the National Electoral Commission on the tasks of circuit electoral commissions regarding the preparation, conduct and determination of voting results as well as forwarding of voting reports and documents in elections to commune councils, powiat councils and voivodship assemblies as well as the Warsaw City Council, ordered for 11 October 1998, forming an appendix to the resolution of the National Electoral Commission of 22 September 1998 establishing guidelines on the tasks and mode of work of district electoral commissions regarding the preparation, conduct and determination of voting results as well as submission of voting reports and documents from to commune councils, powiat councils and voivodeship assemblies and Warsaw City Council, ordered for October 11, 1998 (Official Gazette of 1998, No. 33, item 480). Cited after: *Prawo Wyborcze. Samorządowe prawo wyborcze. Zbiór aktów prawnych oraz wyjaśnień i opinii Państwowej Komisji Wyborczej (stan na 30 kwietnia 1999 r.)*, p. 174.

In addition, according to the Guidelines, committees in separate circuits as well as halls of residence and complexes thereof, enter the digit 0 in point 5 of the voting report with reference to a proxy (point 76, sect. 6 of the Guidelines). In closed (separate) circuits voting by proxy is not conducted.²⁷

Preventing voting by proxy in halls of residence and student housing complexes [Ściebor–Jońska 2014, 61] is overtly expressed in Art. 54, para. 4 EC. Voting by correspondence is also excluded for a voting circuit created in a hall of residence [Jackiewicz 2016, 276]. Pursuant to Art. 53a, para. 4 EC: “voting by correspondence is excluded for voting circuits created in units referred to in Article 12 §§ 4 and 7.” On the other hand, the possibility of terminating the vote early is undoubtedly a unique attribute of the operation of separate voting circuits and in this respect it distinguishes them from circuit electoral committees set up in permanent voting circuits.²⁸

CONCLUSIONS

Voting circuits in student housing facilities are not created automatically, therefore it is extremely important to inform the interested persons about this possibility. The discretionary nature of a decision to create a separate voting circuit implies an obligation of careful consideration of each case regarding the establishment of such a circuit, taking into account the criteria of equity and purposefulness, after prior determination of the number of voters staying in a student housing facility. Undoubtedly, all legal regulations and technical solutions aimed at increasing the students' ability to exercise the active electoral right should be assessed favourably.

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²⁷ “Przegląd Wyborczy. Biuletyn Informacyjny” 8–9 (2010), p. 61.

²⁸ The report of the National Electoral Commission on the elections of the President of the Republic of Poland conducted on October 8, 2000 shows that the statutory option of an early termination of voting was not used. The cases were exceptional and occurred in closed circuits, “Przegląd Wyborczy. Biuletyn Informacyjny. Wydanie specjalne. Wybory Prezydenta Rzeczypospolitej Polskiej w 2000 r.”, p. 23.

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PRAWNE I PRAKTYCZNE ASPEKTY REALIZACJI CZYNNEGO PRAWA WYBORCZEGO PRZEZ STUDENTÓW W POLSCE

Streszczenie. Celem niniejszego artykułu jest analiza obowiązującego stanu prawnego dotyczącego realizacji czynnego prawa wyborczego przez studentów w Polsce. Autor zbada szczegółowo normy prawne kodeksu wyborczego dotyczące tytułowego zagadnienia. Weryfikacji zostaną poddane także inne przepisy prawa powszechnie obowiązującego, dokumenty Państwowej Komisji Wyborczej i orzecznictwo sądowe. Autor spróbuje określić, na ile stan prawny gwarantuje praktyczną realizację czynnego prawa wyborczego przez studentów w warunkach wynikających z dokonanej analizy.

Słowa kluczowe: czynne prawo wyborcze, obwód głosowania, studenci, zasada powszechności wyborów

Informacje o Autorze: Dr Radosław Zych – Instytut Nauk Prawnych Uniwersytetu Szczecińskiego; e-mail: radoslaw.zych@usz.edu.pl; <https://orcid.org/0000-0002-1221-9136>