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The normative grounds and technical conditions of the secrecy of voting in Polish electoral law in the first years after the “Round Table”

Key words: history, electoral law, the Republic of Poland, secrecy, voting, Roman law tradition

Introduction

In this article I will examine how the normative acts ensured the observance of the secrecy of voting in the first years after the Round Table. The chronological framework of this article covers the years 1989–1992.

In the countries of Central and Eastern Europe in the late 1980s and in the first half of the 1990s has began the process of democratization of social and political life. One of the important elements of the changes was the introduction of new electoral provisions that would allow the selection of representative bodies by free, universal, equal, direct and secret elections. The first elections were held under ordinances that were a compromise between the outgoing but still viable communist party and the opposition organized in various political organizations¹.

¹ M.P. Gapski, *Prawo wyborcze państw Europy Środkowo-Wschodniej. Wybrane przykłady*, Lublin 2006, p. 5; A. Zoll, *Moje wybory*, [in:] *10 lat demokratycznego prawa wyborczego Rzeczypospolitej Polskiej (1990–2000)*, F. Rymarz (ed.), Warszawa 2000, p. 7; F. Rymarz, *Udział sędziów w organach wyborczych*, [in:] *ibidem*, p. 34; Z. Szonert, *Sądowa kontrola procedur wyborczych, wyników wyborów i referendów*, [in:] *ibidem*, p. 59–60; K. Wojtyczek, *Konstytucyjna regulacja systemu wy-*

The year 1989 was one of the most important watersheds in the history of post-war Poland. As a result of the changes made in 1989 The Third Republic was created². The “Round Table” communiqué stated that

borczego w III Rzeczypospolitej, [in:] *ibidem*, p. 117–118, 121. The Citizens’ Committee was transformed into an election committee, whose task it was to prepare the opposition for its participation in the general election to be held on June 4, 1989. See: J. Regulski, *Local government reform in Poland: an insider’s story*, Budapest 2013, p. 32; A. Sokala, B. Michalak, P. Uziębło, *Leksykon prawa wyborczego i referendalnego oraz systemów wyborczych*, Warszawa 2013, p. 276–277.

² Article 1 of The Act of 29 December 1989 on amendments to the Constitution of the Polish People’s Republic (J.L. of 1989 No. 75, item 444); J. Kucharczyk, *Introduction: Polish democracy and the challenge of populism*, [in:] *Democracy in Poland 1989–2009 Challenges for the future*, J. Kucharczyk, J. Zbieranek (eds.), Warsaw 2010, p. 9; F. Rymarz, *Udział sędziów w organach wyborczych*, [in:] *ibidem*, p. 40; J. Mordwilko, *Ewolucja prawa wyborczego i wyborów do samorządu terytorialnego w latach 1990–2000*, [in:] *ibidem*, p. 153, 155–156, 158, 163, 183; K.W. Czaplicki, *Głosowanie elektroniczne (e-voting) – wybrane zagadnienia*, [in:] *Demokratyczne standardy prawa wyborczego Rzeczypospolitej Polskiej. Teoria i praktyka*, F. Rymarz(ed.), Warszawa 2005, p. 35; T. Dominczyk, *Cywilna ochrona dóbr osobistych uczestników procesu wyborczego*, [in:] *ibidem*, p. 83; S.J. Jaworski, *Wybrane problemy prawa wyborczego w świetle orzecznictwa Trybunału Konstytucyjnego*, [in:] *ibidem*, p. 123;

„the basis of the agreement is the rules of the future political system, arising from the inalienable right of citizens to live in a state that fully implements the sovereignty of the nation. This means the democratic system of appointing all civil authority bodies to ensure that those who exercise authority are actually elected by the voters”³. The provisions of the „Round

A. Sokala, *Prawne ramy prowadzenia samorządowej kampanii wyborczej w III Rzeczypospolitej Polskiej*, [in:] *ibidem*, p. 259; Z. Szonert, *Kryteria osobowe (aksjologiczne) w polskim systemie wyborczym*, [in:] *ibidem*, p. 370; A. Zoll, *Prawa wyborcze w świetle doświadczeń Biura Rzecznika Praw Obywatelskich*, [in:] *ibidem*, p. 401; P. Winczorek, *The Polish constitutional system and the law making proces*, [in:] *Democracy in Poland 1989–2009*, *op. cit.*, p. 13, 24; M. Kallas, *Historia ustroju Polski*, Warszawa 2006, p. 267. One of the most fundamental reforms undertaken in 1989 was the amendment to the Constitution of 1952 and by stating that the Republic of Poland is a democratic state ruled by law, as well as guaranteeing that the judiciary is one of the branches of power, separate from the executive and legislative branches. This constitutional underpinning of the judiciary allowed for the process of its smooth transformation towards the judiciary of the democratic state ruled by law. It is specific for Poland that in 1989 there was no radical or revolutionary move with respect to judiciary. Since 1989 the judiciary has remained, both structurally and politically, the least transformed branch of the government. A. Bodnar, *The judiciary in Poland after 20 years of transformation*, [in:] *Democracy in Poland 1989–2009*, *op. cit.*, p. 32; L. Garlicki, M. Brzeziński, *Polish Constitutional Law*, [in:] *Legal Reform in Post-Communist Europe. The View from Within*, S. Frankowski, P.B. Stephan III (eds.) Dordrecht-Boston-London, 1995, p. 21–50, on p. 44; P. Swianiewicz, *Local democracy*, [in:] *Democracy in Poland 1989–2009*, *op. cit.*, p. 101; G. Makowski, *Civil society in Poland – challenges and prospects*, [in:] *ibidem*, p. 116; J. Roaf, R. Atoyan, B. Joshi, K. Krogulski and an IMF Staff Team, *25 Years of Transition Post-Communist Europe and the IMF Regional Economic Issues Special Report*, Washington 2014, p. 7 (pay attention to the collapse of communism in 1989); J. Regulski, *op. cit.*, pp. 92, 103, 183, 185, 190 „The peaceful revolution of 1989” (*Ibidem*, p. 191), „the political breakthrough in 1989” (*Ibidem*, p. 194, 215), „in order to establish standards of a democratic state, it was necessary to make crucial changes” (*Ibidem*, p. 205) „Those postulates, defined after the Round Table talks in 1989, became an element of the Citizens’ Committee’s election program” (*Ibidem*, p. 218), „at the end of 1989 the pressure for changes clearly indicated public expectations had exceeded the pace of reforms” (*Ibidem*, p. 225).

³ *Okrągły stół*, cz. 2, PAP Zeszyty dokumentacyjne. Seria monograficzna 9–10/262–263, Warszawa 1989, p. 26–27. See: A. Ajnenkiel, *Konstytucje Polski 1791–1997*, Warszawa 2001, p. 321. The parliamentary, presidential and local elections meant the end of the epoch of plebiscite elections, so characteristic for the system of real socialism. They initiated, in the countries of the region, the initial step in the development of political systems based on multi-party competition. The need for free elections, particularly parliamentary, was the result of the fact that the current political system based on the monopoly

Table” became the basis for the issuance of many legal acts, which meant the legal sanctioning of the reform program⁴. One of the necessary conditions for political reform was to agree for changes to the rules of the electoral law in forming the composition of the bicameral parliament⁵. Two days after the completion of the „Round Table” session, on April 7, 1989, the Sejm passed the law amending the Constitution and related acts – the electoral law to the Sejm and the electoral law to the Senate. The Senate was the upper house of the parliament, restored then (in 1989), and composed of 100 senators elected in multi-seat constituencies in a majority system. The speaker of the Senate bears the traditional title of the Marshal of the Senat (Marszałek Senatu)⁶. Citizens were supposed to get the right to influence for the fate of the Republic by freely elected representatives to the Senate, in part to the Sejm, and finally to local self-government⁷.

The Act of 7 April 1989 – Electoral Ordinance for the Sejm of the Polish People’s Republic for the 10th Tenure, 1989–1993 and the Act of 7 April 1989 – the Electoral Ordinance to the Senate of the Polish People’s Republic

The Act of 7 April 1989 Electoral Ordinance for the Sejm of the Polish People’s Republic for the 10th Tenure, 1989–1993⁸ in article 6 stated that elections were held by a secret ballot, the polling place should have a room with the veil to ensure the secrecy of voting, and ballots cards were put into a sealed ballot box⁹. Electoral card, according to article 54, could be printed only

of a single party, has become inappropriate. See: S. Gebethner, *Niedoskonałe wolne wybory w Środkowej i Wschodniej Europie: lata 1989–1990*, [in:] *Wybory i narodziny demokracji w krajach Europy Środkowej i Wschodniej*, J. Raciborski (ed.), Warszawa 1991, p. 22.

⁴ M. Kallas, *op. cit.*, p. 286.

⁵ *Ibidem*, p. 359.

⁶ J. Regulski, *op. cit.*, p. 239.

⁷ A. Ajnenkiel, *Konstytucje...*, p. 342.

⁸ The Act of 7 April 1989 – Electoral Ordinance for the Sejm of the Polish People’s Republic for the 10th Tenure, 1989–1993 (J.L. of 1989 No. 19, item 102). Repealed with effect from July 3, 1991.

⁹ According to J. Pietrzak, „the positive of this ordinance was the establishment of an obligation to vote secretly”. See: J. Pietrzak, *Sejm RP. Tradycja i współczesność*, Warszawa 1995, p. 44. And, according to W. Skrzydło, „the obligation secret ballot was introduced by ordination of 1985”. See: *Prawo konstytucyjne*, W. Skrzydło (ed.), Lublin 1996, p. 184.

on one side. In addition, it was provided with the seal of the appropriate election commission. Voting details were included in the eighth chapter of the ordinance. According to article 56 the voting was held in the constituency office of the electoral commission, without interruption. The Act in article 58 provided a peripheral electoral commission with the possibility (after agreement with the county commission) to interrupt, prolong or delay the vote until the following day. The basis for this was extraordinary events that could cause the transient stopping of voting. On the other hand, before the start of the „basic” vote, the local electoral commission was required to examine whether the ballot box was empty, whether voters’ lists were in place and the number of voting cards needed, and whether there was appropriate number of the seats to ensure the secrecy. Then the commission closed the ballot box and sealed it. From that moment on, until the end of the voting, it was forbidden to open ballot box. Another guarantee of the proper conduct of voting was the requirement (according to article 60 of the Ordinance) that at least 3 people being part of a constituency electoral commission should be present in the polling station at the time of the voting. One of whom should be the chairman of the commission, the deputy or the secretary. In addition, the Trustees were entitled to be in the polling station on the basis of the authorization issued by the constituency electoral commission. The legislator has made the chairman of the constituency election commission responsible for ensuring the secrecy of voting and maintaining order during voting, hence he was able to issue the appropriate orders. In addition, at the request of the chairman of the commission, the local government body with the jurisdiction of the general primary level provided the guard. Those provisions were aimed to ensure an effective enforcement of the ban on campaigning at the polling station on the voting day. The voter, before voting, was obliged to present an electoral commission an identification document. A voter included in the *census* (voters’ list) but not having the documents regarded by the commission as sufficient to establish identity, could rely on the testimony of two reliable persons known to the commission. Then, the committee checked whether the person was included in the voters’ list. In case of positive verification, the voter received a voting card from the committee. The voter, in order to prevent multiple voting by the same person, confirmed receipt of the ballot through the signature by his name in the list of voters. Then, after the election, the voter casted a ballot paper in the presence

of a member of the constituency election commission. Incapacitated people who came to the polling station could vote with others’ help. Immediately, after the vote, electoral commission determined the results of voting in the circuit. Men of trust could be present at this activity. Pursuant to article 71 of the ordination, the votes other than with official forms, were invalid. However, in relation to the cards including candidates for seats in the constituencies of these cards, the lack of voting by the voters between candidates could cause the invalidity of vote. Such a connection justified the thesis of compulsory secret ballot. As Zdzisław Jarosz wrote¹⁰: „the principle of the secrecy of voting was abandoned, as before in the elections to the councils, from the concept of „right to secrecy” in favor of the widespread use of facilities for the implementation of this principle by all voters (e.g. article 64 (2) of the ordinance – voter, after receiving the ballot paper „go to the cabin (the room with the concealment) ... ”). This was an instructional rule, without any sanction. However, the use of security devices, in opinion of Zdzisław Jarosz, was necessary due to the need to make a choice on the ballot (deletion of candidates for which the voter do not vote) under the threat of invalidity of the vote. Interpretation of article 65 section 2¹¹ in connection with article 71 section 1 of the ordinance¹² in my opinion, led to a *superfluum*, but did not prejudice the legal nature of the secrecy of voting.

The Act of 7 April 1989 – Electoral Ordinance to the Senate of the Polish People’s Republic¹³ in article 1 stated that the elections to the Senate took place with proper application of the provisions of the Sejm’s Electoral Ordinance. This was fully justified because the Senate elections were held in conjunction with the Sejm elections. Consequently, the above-mentioned considerations *mutatis mutandis* should be also apply to the Senate elections.

On June 4, 1989, the first partly free elections since WWII were held in Poland. As a result of the “Round Table” debate it was decided that the ordinance would create an opportunity for 35% of seats in the parlia-

¹⁰ See: Z. Jarosz, *System wyborczy do Sejmu i Senatu*, „Państwo i Prawo” 1989, vol. 5, p. 7.

¹¹ Which states that remain in the ballot more than one candidate names invalidates vote.

¹² According to them, invalid are the votes, which left not deleted more than one candidate’s name (for the ballot papers including candidates for seats iofn constituencies).

¹³ The Act on Election provisions for the Senate of the Polish People’s Republic (J.L. of 1989 No. 19, item 103). Repealed with effect from July 3, 1991.

mentary elections to compete among non-party candidates nominated by independent groups of citizens¹⁴, 65% – the communist party, PZPR¹⁵, and its affiliated groups. The election of all senators was to take place in a completely free manner. 99 of 100 Senate seats were taken by the candidates of ‘Solidarity’. Likewise, all of the 35% of the Sejm’s electoral mandates were obtained¹⁶. The electoral bars have prepared small notes with the names of ‘Solidarity’ candidates to help identify candidates on the lists. Later, they were found in the polling stations, usually left by voters in cabins¹⁷. In my opinion, their finding could only prove the direction of the vote, not the content of votes cast *in concreto*.

The Act of 29 December, 1989 on Changes to the Constitution of the Polish People’s Republic

On December 29, 1989, the Sejm passed the law amending the Constitution of the People’s Republic of Poland¹⁸. This fact is considered to be the ending point of the Polish People’s Republic¹⁹. Thus, the legal premises of qualitative change of the system were created²⁰. The amendment brought the change of the state’s name. Article 1 stating that „the Republic of Poland is a democratic State governed by the principles of social justice” affirms the departure of the existing formula of the State²¹. The term entity sovereignty – „the working people of towns and villages” was replaced by the concept of „nation” and the leading role of the communist party gave way to the principle of political pluralism²². After the political transformation the principle of the

secretory of voting has become a realistic. It is worth to quote Jerzy Buczkowski’s statement that „in the past – fortunately, it was a period when the secrecy of the vote had rather a role of decoration not of practical importance. In People’s Republic of Poland, this situation has resulted from the plebiscitary nature of the election and the preferential arrangement of the lists²³”. Thus, not only strictly technical factors or legal procedures but also the adopted political system were affected by actual observance of this principle. According to the already quoted J. Buczkowski, „the transition to the democratic state with a pluralistic political system knocked from the hands of the doctrine and the public need calls for the introduction of compulsory secrecy of voting, fortified sanctions for its violation, as to the multiplicity of parties participating in the elections, because there was no force that would be able to monitor voters’ behaviour during voting²⁴”.

April Novelization²⁵ from 1989 introduced into the text of the Constitution a new chapter regulating the principles and procedures for appointment of the President by the Sejm and the Senate combined in the National Assembly²⁶. The constitutional rules of electing a president have undergone fundamental changes as a result of amendment of the Constitution made in 1990²⁷. For the first time in Poland the amendment introduced general presidential elections, stating that they

²³ J. Buczkowski, K. Ekhardt, D. Kuźniar, *Ustrój konstytucyjny Rzeczypospolitej Polskiej (instytucje wybrane)*, Przemysł 2000, p. 78.

²⁴ *Ibidem*, p. 79.

²⁵ The Act of 7 April 1989 amending the Constitution of the Polish People’s Republic (J.L. of 1989 No. 19, item 101).

²⁶ Adopted mode of election of the president was applied once on 19th July 1989, when General Wojciech Jaruzelski was elected as a president. See: S. Bożyk, *Konstytucyjne zasady wyboru Prezydenta RP, [in:] Konstytucja. Wybory. Parlament. Studia ofiarowane Zdzisławowi Jaroszewi*, L. Garlicki (ed.), Warszawa 2000, p. 26. During the drafting of the Rules of Procedure of the National Assembly setting out the rules for selecting the president, an advocate of open vote was the communist party. The inter-club did not reach a compromise on voting. Finally, after a turbulent debate and many votes, it was decided that the president’s election would take place in open voting, using ballot papers bearing the name and surname of a member of the National Assembly. See: M. Chmaj, *Sejm „kontraktowy” w transformacji systemu politycznego Rzeczypospolitej Polskiej*, Lublin 1996, pp. 56–57. After the 1989 election and establishment of the President’s office, the National Assembly elected gen. Jaruzelski president with a majority of one vote. See: J. Regulski, *op. cit.*, p. 48.

²⁷ The Act of 27 September 1990 on amendments to the Constitution of the Polish People’s Republic, (J.L. of 1990 No. 67, item 397).

¹⁴ A. Ajnenkiel, *Konstytucje...*, p. 341.

¹⁵ Polska Zjednoczona Partia Robotnicza / Polish United Worker’s Party – the communist party governing Poland from 1948 to 1989.

¹⁶ *Ibidem*, p. 347.

¹⁷ See: A.K. Piasecki, *Wybory i referenda 1989–2000*, Zielona Góra 2001, p. 13.

¹⁸ The Act of 29 December 1989 on amendments to the Constitution of the Polish People’s Republic (J.L. of 1989 No. 75, item 444).

¹⁹ *Konstytucyjny system władz publicznych*, P. Chmielnicki (ed.), Warszawa 2009, p. 48.

²⁰ W. Sokolewicz, *Rzeczpospolita Polska – demokratyczne państwo prawne. Uwagi na tle ustawy z 29.XII.1989 o zmianie Konstytucji*, „Państwo i Prawo” 1999, vol. 4, p. 12–29.

²¹ A. Ajnenkiel, *Konstytucje...*, p. 349.

²² A. Adamczyk, *Konstytucja lipcowa z 1952 r., [in:] Konstytucyjny system władz publicznych*, P. Chmielnicki (ed.), Warszawa 2009, p. 45.

are held in secret ballot²⁸. On September 27, 1990, the Sejm passed a law on election of the President of the Republic of Poland²⁹, defining the principles of conducting general presidential election. It adopted, among others, the principle of presidential elections conducted by a secret ballot³⁰.

The Act on Election provisions for the President of the Republic of Poland

The Act regulating the election for the office of the President of the Republic of Poland³¹ in article 6 stated that the elections took place in a secret ballot³². There had to be an appropriate number of the seats to ensure the secrecy of voting. The ballot cards were put into a sealed ballot box. The statutory guarantees of secrecy were *inter alia* the provisions governing the appearance of the ballot paper. Pursuant to article 47 section 2 of the Ordinance there was the place for the stamp of the local electoral commission³³. In addition – in accordance with section 4 – the voting card could be printed on one side only. The size and type of the fonts should be the same for the names of all candidates. Detailed provisions relating to the act of voting were included in a chapter seven of the Act. Pursuant to article 49 section 7 the voting took place in the premises of the electoral commission in one day without interruption. The

voter, before voting, was obliged to present an electoral commission an ID. Then, the voter received from commission a ballot bearing the seal. The voter confirmed the receipt of the ballot paper with own signature in a dedicated section on this list (*census*). Afterwards he/she went to a place of secrecy. The wording of the legal norm expressed in article 52 section 2 of the act indicated that the use of this place was a duty of the vote. After making the choice, the voter cast a ballot paper to the ballot box located at accessible and visible place of the polling station. Pursuant to article 54 people with disabilities could vote with the help of other non-members of the constituency electoral commission and the candidates' trustees. Pursuant to article 56 of the ordination electoral commission before voting began, checked whether the ballot box was empty, whether voters' lists (*census*) were in place and the number of ballot cards needed to vote, as well as whether there was an adequate number of easily accessible seats ensuring the secrecy of voting. Then the ballot box was closed and sealed with the seal of the commission. From that moment until the end of voting it was forbidden to open the ballot boxes. At the same time (in order to determine the results of voting) there should be present at least three persons who were the members of electoral commission at the polling station. Thus, the law regulated the circle of persons entitled to be present at the polling station during the voting. Pursuant to article 55 of the ordination, armed people were forbidden to enter the polling station. However, the „men of trust” (the institution of domestic election observers) were allowed to remain at the polling station during voting on the basis of appropriate authorization issued by proxy. The legislator entrusted the chairman of electoral commission with the duty of ensuring that the secrecy of voting as well as the maintenance of order and peace in the time of voting. In order to do so, he could request that the polling place should be removed by the offender. In addition, at the request of the committee chairman, commander of the police station was obliged to provide the necessary assistance. As mentioned above, the voting proceeded without interruption. However, the law allowed an exception as a result of extraordinary events that temporarily prevented the vote.

As a result of the first general democratic elections of the President of Poland in Poland, on December 22, 1990, the office was taken over by Lech Walesa. The new president has contributed to the adoption in parliament postulate holding early, fully democratic parliamentary elections. Finally, it was decided that they

²⁸ S. Bożyk, *op. cit.*, p. 27.

²⁹ The Act of 27 September 1990 on Election provisions for the office of President of the Republic of Poland (J.L. of 1990 No. 67, item 398).

³⁰ S. Bożyk, *op. cit.*, p. 29. It is worth recalling that the „Round Table” arrangements provided a way to elect the Head of State by Parliament. R. Chruściak, W. Osiatyński, *Tworzenie konstytucji w Polsce w latach 1989–1997*, Warszawa 2001, p. 24. The issue of presidential elections aroused emotions during subsequent constitutional works in 1992. It was considered „an important element in the political psychology of society”. *Ibidem*, p. 168. Also in 1995, the question of the mode of electing the President of the Republic of Poland triggered an exchange of views. It was reported the proposal to return to election by the National Assembly. *Ibidem*, p. 268.

³¹ Proclamation of the Marshal of Sejm of the consolidated text of The Act of 27 September 1990 on Election provisions for the President of the Republic of Poland, (uniform text: J.L. of 2000 No 47, item 544).

³² According to Stanisław Bożyk, the essence of the principle of secrecy of voting was limited to preventing determine how individual voters voted: unmarked ballots, a sealed ballot box, a room behind a veil at a polling station. S. Bożyk, *op. cit.*, p. 32.

³³ The voting cards were official character. The lack of a seal, pursuant to article 62 paragraph 1 point 1) of the Ordinance, resulted in the nullity of votes.

would be held in autumn of 1991³⁴. The first fully free, democratic elections³⁵ were held on October 27, 1991, and on November 26, 1991 Poland was admitted to the Council of Europe.

The Act of 8 March 1990 on Local Government

Another amendment to the Constitutional Act was made by the Act of 8 March 1990³⁶ about territorial self-government. The amendment reconstituted the institution of local government on the basic level, ie. in the rural municipalities and cities³⁷. Their restoration meant that the national councils ceased to exist³⁸. Breaking up with the current practice of national councils was an expression of practical decentralization of public authority³⁹.

The Act of 8 March 1990 – Electoral law to municipal councils⁴⁰ in article 7 declared that the elections were to take place in a secret ballot. At the polling place there must have been a room with the veil, ensuring the secrecy of voting. Voting cards were thrown into the stamped ballot box. Chapter 10 described the appearance of the ballots. Pursuant to article 67 of Ordination, the ballots should be stamped with the seal of the relevant territorial election commission⁴¹. Also,

³⁴ A. Ajnenkiel, *Konstytucje...*, p. 352.

³⁵ The first democratic parliamentary elections of 1991 were based on a legal framework established by the 1991 electoral law. A positive solution was the change in voting technology. The method of deletion has been abandoned. The vote was given by marking the „x” with the candidate’s name on the electoral list. In the case of failure of any of the candidates, the voter automatically voted for the first candidate on the list. See: A. Żukowski, *Formuła wolnych wyborów a ordynacje wyborcze do polskiego parlamentu w latach 1989–2001*, [in:] *Transformacja systemowa w krajach Europy Środkowej, Wschodniej i Południowej 1989–2002*, T. Godlewski, A. Koseski, K.A. Wojtaszczyk (eds.), Bydgoszcz–Pułtusk 2003, p. 24.

³⁶ The Act of 8 March 1990 on Local Government (J.L. of 1990 No. 16, item 95).

³⁷ A. Frydrych, A. Sokala, *Ewolucja samorządowego prawa wyborczego w III Rzeczypospolitej*, [in:] *Samorząd terytorialny w Polsce i w Europie. Doświadczenia i dylematy dalszego rozwoju*, J. Sługocki (ed.), Bydgoszcz 2009, p. 21.

³⁸ A. Ajnenkiel, *Konstytucje...*, p. 351.

³⁹ M. Bąkiewicz, *Demokratyczny system wyborczy jako gwarant realizacji konstytucyjnej zasady decentralizacji władzy publicznej*, [in:] *Wybory i referendum lokalne. Aspekty prawne i politologiczne*, M. Stec, K. Małysa-Sulińska (eds.), Warszawa 2010, p. 41.

⁴⁰ Act of 8 March 1990 on Election provisions for Gmina Councils (J.L. of 1990, No. 16, item 96).

⁴¹ What was important not only practical but also legal, be-

it could only be printed on one side. The size and type of fonts should be the same for all candidates. The eleventh chapter of the ordinance governed the course of the vote, which was to be held without interruption in the constituency office of the electoral commission. As in the previously referred to provisions, before the start of the vote, the local electoral commission checked whether the ballot box was empty, whether voters’ lists were in place, and the number of ballots needed, as well as whether the polling station was in sufficient quantity⁴² room provide secrecy of the vote and the committee closed and sealed the ballot box seal of the commission. From that moment until the end of voting opening the ballot box was forbidden. In addition, pursuant to article 69 of the ordination, from the start of voting until the end, there should be a chairman of the electoral commission or his deputy and at least two members of the committee in the polling station. Moreover, the „men of trust” and international election observers were to be present at the polling stations, until establishing of the voting results. The legislator entrusted the chairman of the election commission duty was to watch over the maintenance of order during the vote and ensure the secrecy of the vote. For this purpose, he was able to issue appropriate order and, if necessary, in agreement with the territorial electoral commission, could request the appropriate authorities to assign the guard. Prior to voting, the voter presented a local electoral commission an ID. Voter included in the census and not having the document recognized by the commission as sufficient to establish voter’s identity, was able to rely on the testimony of two reliable persons known to the commission. Then the voter covered by the electors census received a ballot from the committee. The electoral commission, in order to rule out the possibility of multiple voting, by issuing the voter a ballot paper, placed a mark at his name on the voters list. A voter, after receiving a ballot card, went into the room ensuring the secrecy of the polling station. Then the voter approached to the ballot box and in presence of commission threw ballot into the box, composed in such a way that the printed side was not visible⁴³.

cause according to Article 78 section 2 ballot papers were not valid other than officially appointed or unmarked stamps of the territorial electoral commission.

⁴² The words „in sufficient quantity” as judges, leaving the committees with a great margin of discretion, drew the attention of M. Bąkiewicz, *System...*, p. 75.

⁴³ Thus, The Act of 1990 specifically defined the conditions for protecting the secrecy of the moment thrown ballots. To

On the basis of article 76 of Ordination, persons with disabilities could vote with help of other people, excluding committee members, plenipotentiaries, and trustees. As mentioned above, the voting could not be interrupted. However, provisions, following the example of his predecessors, covered for the occurrence of extraordinary events. Immediately, after completing the voting, the local electoral commission determined the results of vote in the circuit. The ballot boxes, in the presence of the chairman of the committee, should be open. Then, the committee counted the ballots taken from the ballot box. During those activities the stewards who had the right to put a note on the minutes of the vote with specific allegations could have been present.

Law on Election provisions for the Sejm of the Republic of Poland

In 1991 parliamentary elections were conducted on the basis of the Act passed in June 28, 1991 – Electoral Ordinance to the Sejm of the Republic of Poland⁴⁴. In accordance with article 1 of that Act, the election of deputies to the Sejm of the Republic of Poland was universal, direct, equal and free and conducted in secret ballot. The ninth chapter of the Act the appearance of the ballot was described. Pursuant to article 84 the voting cards could be printed on one side only. The size and type of fonts should be the same for all candidates for deputies. A stamp imprint of appropriate electoral commission was printed on the ballot papsion. The above findings have a legal significance, because in accordance with article 88 section 2 of the ordinance, the ballot papers other than officially established or not stamped by the electoral commission, were invalid. On the other hand, the course of voting was governed by Chapter Fourth of the Act. On the basis of article 23 voting must be made in person. In addition, the vote was held in the constituency office of the electoral commission without interruption. Before the start of voting, the committee was required to check whether the ballot box was empty, then closed it and sealed and determined the number of received ballot papers. From the moment of sealing until the end of voting opening a ballot box was forbidden. At this time at the polling station should have been

present at least three people – members of the election commission, with one of them should have been the chairman or his deputy. According to article 27 of the Ordination, a voter, before voting, was obliged to present an electoral commission an ID. A voter entered in the voter registration list, not having a document confirming his/her identity, could rely on the testimony of two reliable persons known to the members of the committee. Afterwards the voter was given a voting card and could sign the voters' list (*census*). Such a solution was intended to prevent the possibility of multiple voices by the same person. A voter, after receiving a ballot card, went into the room ensuring the secrecy of the polling station⁴⁵. Then, the voter threw the ballot in the ballot box in such a way that the printed side was not visible. Pursuant to article 30 of ordination, voters with disabilities could get help from another person, with the exception of „men of trust”. As mentioned above, the voting was held without interruption. However, as a result of extraordinary events, when the voting was temporarily prevented, the circuit electoral commission could interrupt, prolong or postpone until the following day. The legislature has attached great importance to ensure order and safety in the place of voting. Article 32 of the ordinance forbade agitation in the polling station on the day of voting, while Article 33 banned the entrance to the polling station for the armed persons. This prohibition was left aside in case of violation of order at the polling station. The person responsible for maintaining order and peace during the voting was the chairman of electoral commission. For the effective implementation of these objectives, he could ask a person violating peace and order to leave the polling station. In addition, at request of chairmen, commander of the relevant police station was obliged to provide the necessary assistance. An important guarantee of fair conduct of voting, respecting the rules of the electoral law, was the opportunity to be steward at the polling station on election day during all operations electoral commission.

formulate „a sufficient quantity” as evaluative, leaving a large margin of discretion committees drew attention *Ibidem*, p. 76.

⁴⁴ The Act of 28 June 1991 on Election provisions for the Sejm of the Republic of Poland (J.L. of 1991, No 59, item 252).

⁴⁵ According to Andrzej Szmyt, the obligation of secret ballot was restored by the 1989 parliamentary ordinance. Also the 1991 electoral law in article 29 contained a mandatory order to go by the voter to the place ensuring the secrecy of voting. See: A. Szmyt, *Wprowadzenie do prawa wyborczego, [in:] Konstytucja RP. Ordynacja wyborcza do Sejmu. Ordynacja wyborcza do Senatu*, A. Szmyt, K. Grajewski (eds.), Gdańsk 1991, p. 17.

Law on Election provisions for the Senate of the Republic of Poland

The Act of 10 May 1991 – Electoral Ordination to the Senate of the Republic of Poland⁴⁶ in article 1 stated that elections to the Senate take place with proper application of the provisions of the Sejm's Electoral Ordination. The justification for the adopting of the provisions was that the two elections were held together. Therefore, all the foregoing considerations made with regard to the statutory guarantee of the principle of the secrecy of voting must be repeated. In the Sejm of the first term since its inception, a special team worked on the draft of „law – Constitution⁴⁷”. Seven drafts of the constitutions created in the years 1989–1991 provided that the first chamber elections take place „in a secret ballot⁴⁸, the others, that „the elections are secret⁴⁹”. It was a significant difference, because the secrecy of voting, is related only to one phase of the proceedings of the election – voting. In contrast, the principle of the secrecy of the election does not authorize its use at other stages of the electoral process. On the basis of drafts of Constitution, it was not possible to specify which elements of the election, apart from the vote, the creators of proposals providing „secret elections⁵⁰” had in mind. Perhaps the statements of politicians⁵¹, experts⁵² as well

⁴⁶ The Act of 10 May 1991 on Election provisions for the Senate of the Republic of Poland (J.L. of 1991r. No 58, item 246).

⁴⁷ A. Ajnenkiel, *Konstytucje...*, p. 356.

⁴⁸ These were: a draft prepared by the Constitutional Commission of the Senate of the Republic of Poland, a draft agreement of the Center, a constitutional draft of the new constitution prepared by Mieczysław Huchla, a project developed by Sylwester Zawadzki, Janina Zakrzewska, Jerzy Ciemniowski, Andrzej Mycielski, Waclaw Szyszkowski. See: K. Eckhardt, *Zasady prawa wyborczego do parlamentu w pracach nad Konstytucją III RP, [in:] Reformy prawa wyborczego w Polsce i na Ukrainie*, P. Steciuk, J. Buczkowski (eds.), Przemysł 2004, p. 96.

⁴⁹ These were: the project of the Democratic Party, the project of the Polish Peasant Party, the project of the Confederation of Independent Poland, the project of Józef Lityński. See: *ibidem*, p. 96.

⁵⁰ *Ibidem*, p. 96.

⁵¹ Bronisław Geremek, at a meeting of the Sejm of Poland in October 1991, proposed that „the new Constitution should be adopted by the Sejm elected in free and democratic elections”. See: R. Chruściak, W. Osiatyński, *op. cit.*, p. 29.

⁵² Due to the fact that the Senate came from free elections and the Parliament of the contract, according to some experts, „in spite of formal powers of the Sejm, however, he had less moral basis for the adoption of a new constitution than the Senate”. *Ibidem*, p. 40. Some experts from the Senate Constitutional Committee also argued that constitution should be passed only

as „the lack of constitutional culture in Polish political tradition⁵³” contributed to the adoption in 1992 another, temporary constitutional provision, known as the „small constitution⁵⁴”. Politicians believed that a parliament which did not come from a fully free election should not pass a new constitution⁵⁵.

The political subjugation of the Sejm after the 1991 elections (the Sejm represented 29 parties) reduced the chances of passing the constitution. In this situation, it was decided to adopt a temporary legislative act⁵⁶. In February 1992 Sejm received a draft of the Small Constitution prepared by the Parliamentary Club of the Democratic Union⁵⁷. He projected the elections to the Sejm held by secret ballot, and not prejudice the principles of selecting senators. Parliament established a new Special Committee, which requested the adoption of the Constitutional Act. The Commission proposed, and the Sejm accepted, among others, secrecy of voting in the first chamber election. The rules of election to the Senate were left to be regulated in the electoral law. The Senate⁵⁸ suggested that the elections to the Senate should be held in a secret ballot. This amendment was adopted by the Sejm⁵⁹.

The Constitutional Act of 17 October 1992

The Constitutional Act of 17 October 1992 on mutual relations between the legislative

and executive powers of the Republic of Poland and territorial self-government⁶⁰ in article 3 stated a principle of the secrecy of voting in elections to the Sejm and the Senate. Article 29 section 2 expressed this principle in relation to the election of the President of the Republic of Poland. Article 72 section 1 stated the principle of the secrecy of voting in relation to the elections to the

by the next parliament, elected in the democratic elections. *Ibidem*, p. 66.

⁵³ *Ibidem*, p. 69.

⁵⁴ The small constitution was supposed to regulate the division of power, in particular the relations between the parliament, the government and the president, and the rules for the appointment of each of these authorities. *Ibidem*, p. 117.

⁵⁵ K. Eckhardt, *op. cit.*, p. 99.

⁵⁶ *Ibidem*, p. 101.

⁵⁷ Print No. 126.

⁵⁸ Print No. 464.

⁵⁹ K. Eckhardt, *op. cit.*, p. 101–102.

⁶⁰ The Constitutional Act of 17 October 1992 on Mutual Relations between the Legislative and Executive Authorities of the Republic of Poland and on Local Government (J.L. of 1992 No. 84, item 426); as amended in 1995.

bodies representing local government units. Thus, „the small constitution”, „codified” the principles of electoral law introduced after 1989⁶¹.

Conclusions

The principle of secrecy of voting found its normative expression in general provisions of the constitution. However, the specific guarantees of the examined principle should be sought in the legal norms decoded with special provisions. Such treatment allows the logical integration of individual parts into a whole. The detailed provisions on the ballot papers, ballot box, the course and the organization of the voting rights of the members of election commissions, determination of voting results and the impact of previous items on the validity of the card and cast votes are crucial for the secrecy of the electoral law.

As Kazimierz Biskupski wrote, „the story of suffrage is not a set of documents that have meant the path of humanity in searching for the methods best express (...) the general will, but on the contrary, a set of standards and practices that have always aimed at distortion of that will adapt to the needs and interests of the powerful of this world⁶²”.

In my opinion, normative acts sufficiently guarantee compliance with the principle of secrecy of the vote in elections in the first years after the „Round Table”. The results of the research show that the technical conditions resulting from the normative acts respect the essence of the title principle (the voice of the voter).

The aforementioned electoral normative acts had common standards. In contrast to the norms of local law. Normative character of an act of local law lays in the fact, that it contains directive statements outlying the recipients’ specific behavior, that is, determining interdiction, orders, rights⁶³.

The political transformation that began in Poland in 1989 has added to the secrecy of voting the real dimension.

Undoubtedly, it is good to evaluate the statutory legal norms, according to which „after receiving the ballot, the voter goes to a place which ensures the secrecy”.

In my opinion such provisions eliminated the differences previously occurring in the Polish electoral law. Such a clear requirement was not expressed in the 1957 legislative acts in relation to the elections to the national councils; in 1976 – with regard to the elections to the Sejm of the Polish People’s Republic and the National Councils. In the 1980s, the Polish electoral law gave the voters only the right to go to the room of secrecy.

The normative acts examined in this article, have established a catalog of rules implementing the guarantee of secrecy, which survived until the introduction of alternative voting methods to the Polish legal system.

The guarantees of analyzed principle are largely technical, but they rule its nature. With proper use of those instruments, there is no fear of acquaintance with the content of voting by members of the election commission and others. In my opinion, protection of the electoral rights of individuals requires special technical solutions, using methods that promote not only the universality but also the secrecy of the voice. The purpose of those solutions is to ensure the reliability of the electoral process.

The elections determine the composition of the representative bodies, as well as enable the appointment of individuals to perform the public functions. An important requirement is that the vote should reflect the free will of voters in conditions that ensure the secrecy of the voting. The technical aspects of voting, precisely for this reason, should be subordinated. Both, the creation of conditions for the use of safety devices secrecy of the voting, and the degree of their use, determine the scope of expressing preferences program and personnel in the act of election.

The secrecy of voting goes back to ancient Rome⁶⁴. The guarantee instruments of secrecy were: ballot box⁶⁵, bridge⁶⁶, tables⁶⁷. One of the new laws, called *Lex Gabi-*

⁶⁴ Roman law can be considered as a carrier of ideas. Joachim Lelewel, writing about him, said: „for detailed laws has become a model” (J. Lelewel, *Dziela*, Warszawa 1962, v. VI, p. 230) He recognized this law as a component of Polish culture. Due to the customary nature of the law in „former” Poland, it is difficult to determine the nature of the source of law. See: J. Kodrębski, *Joachim Lelewel o roli prawa rzymskiego w Polsce*, „Czasopismo Prawno-Historyczne”, v. XL, sec. 2/1988, p. 278, 285, 295–296.

⁶⁵ B. Sitek, *Suffragiis ferendis w świetle ustaw municypalnych. Dylematy rzymskiego systemu wyborczego w antycznym Rzymie*, [in:] *Vetera novis augere. Studia i prace dedykowane Profesorowi Wacławowi Uruszczakowi, tom II*, S. Grodziski, D. Malc, A. Karabowicz, M. Stus (eds.), Kraków 2010, p. 935–936.

⁶⁶ E.S. Staveley, *Greek and Roman Voting and Elections*, London 1972, p. 133.

⁶⁷ From the tables the name derives the Leges tabellariae

⁶¹ A. Ajnenkiel, *Konstytucje...*, p. 358.

⁶² See: K. Biskupski, *Władza i lud*, Warszawa 1956, p. 31.

⁶³ See: M. Wincenciak, *Selected problems of enacting and interpretation of local law at the level of local self-government in Poland*, [in:] *Some Aspects of Interpretation of Public Law*, P. Niczyporuk, P. Kołodko (eds.), Białystok 2013, p. 103.

nia of 139 B.C., introduced a secret ballot at the electoral assembly⁶⁸. And the aim of *lex Maria* from 119 B.C. was to exclude the possibility of intimidating the voters. On the basis of them, the bridges have been narrowed. The voters passed the bridges before the vote⁶⁹. Introduction of secrecy was intended to provide an objective result of the election⁷⁰. Despite the differences in legal and social system, objectives of the contemporary provisions may be similar to those of ancient⁷¹. The aim of secrecy of voting principle is to ensure the independence of voters from the influence of other people on the content of a vote casted in the elections.

The guarantees of the principle of the secrecy of voting, presented in this article, are historical. As mentioned above, after the introduction of the so called „alternative voting methods” into Polish electoral law, the law has changed.

– acts in II B.C. introductory secret ballot, with the help of plaques, at the people’s assemblies. See: W. Litewski, *Słownik encyklopedyczny prawa rzymskiego*, Kraków 1998, p. 148.

⁶⁸ S. Hornblower, A. Spawforth, *The Oxford Classical Dictionary*, Oxford 2012, p. 826; Legal and Institutional Chronology of the Roman Republic <http://www.unrv.com/government/legal-institutional-chronology.php> [09.10.2016].

⁶⁹ It was believed that these legal norms would reduce the influence of patricians on the outcome of election. The lack of obligation to speak openly of his voice made it difficult to control the plebeians decisions of election. See: A.W. Lintott, *The Constitution of the Roman Republic*, Oxford 1999, p. 103.

⁷⁰ J. Juchniewicz, P. Pałka, *Ewolucja kryminalizacji zachowań przeciwko wyborom*, „Przegląd Prawa Konstytucyjnego” 2011, no. 3 (7), p. 92.

⁷¹ According to A. Dębiński, „the effect of Roman Law on the present Europe culture may be analyzed, following Ulpian’s criterion of division of law, within the confines of private law (*ius privatum*) or a public law (*ius publicum*). When we speak of the reception of Roman law, we typically mean *ius privatum*. It is worth noting, however, that the many years of research on the Roman public law casts new light on its former assessment. See: A. Dębiński, *Introduction to the Subject of Conference: the Role and Significance of Roman Law in the legal History of Europe* [in:] *Roman Law and European Legal Culture*, A. Dębiński, M. Jońca (eds.), Lublin 2008, p.13. According to Marek Kuryłowicz, „Roman law created a well-designed complex of norms, aimed at skillfully reconciliation of the general and individual interests”. See: M. Kuryłowicz, *Prawo rzymskie. Historia. Tradycja. Współczesność*, Lublin 2003, p. 39. The effects of Roman law covered various routes, including those countries in which it had been re-adopted in the Middle Ages as the law in force and the other areas where such reception had not taken place. See: M. Kuryłowicz, *Prawo i obyczaje w starożytnym Rzymie*, Lublin 1994, p. 8.

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