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## Compulsory voting\*: is it possible in today's Poland?

### KEY WORDS:

*compulsory voting, attendance, diminishing of attendance, panacea for a diminishing of attendance*

In this article, we refer to the concept of coercion to vote. We will not do this in the comparative legal terms. We are not going to argue either for or against the election coercion from the theoretical law perspective. Both perspectives will be recognized as important sources of argumentative reasoning resources only in terms of sociological research on the public perception of obligatory voting. Simply put, our view is that the claims put forward in argumentative legal discourses – both theoretical and dogmatic – regarding matters of civil rights and liberties should at least partially seek legitimacy in the sphere of social beliefs. *How we justify the need to study social beliefs concerning electoral coercion.* The reasoning behind this position derives from the relationship between the principle of sovereignty of a nation and the subjective rights. To put this relationship, for the purpose of further considerations we need to remember, that the principle of sovereignty of the nation determines a collective entity rule. It is the nation as a community of citizens. The subjectivity of the nation means that the power comes from the people, and in case of representative democracy, that the people choose the rulers whom they are ruled by. In other words, that the nation appoints the group of their delegates appointed to represent the nation. Taking part in the act of election is a subjective right. The terms of its acquisition are to be designed so that the

\* The notion of compulsory voting is also described by authors by the term of electoral coercion.

most important of all the political rights of citizens is a faithful expression of the principle of national sovereignty<sup>1</sup>.

The above depiction is idealistic. The actual relationship between subjective rights and the principle of sovereignty of the nation are the subject of the process reviewed in literature, the beginning of which determines the activity of constitutional courts in the field of the interpretation of fundamental rights. The changes that were begun by the activity of these courts are not evaluated positively. Review of the transformations of the relationship between subjective rights and the sovereignty of the nation which take place in the process, can be reduced to the statement that the modern practice of the operation of state bodies distorts relationships formed according to the original contexts in which these ideas arose. We are talking here about the ideas of the Enlightenment. The justification of this statement constitutes the reason for introducing a discourse on the subjective rights of the components of the study of social beliefs concerning the right to vote.

This is because it is considered that the principle of national sovereignty concerns the allocation of the political power. In other words, this principle indicates the source of the political power in the state. It should be opposed by the monopoly to use coercion in the country. In such relationships the principle of sovereignty settles the right of the community of citizens to make laws determining conditions of the use of coercion by officers of the state. Any use of coercion is limited by the law which is proclaimed by the sovereign people for themselves. The coercion that comes from the state is an instrument to control the social reality. The scope and terms of the control should be determined by the citizens<sup>2</sup>.

At the original terms, the scope of this control over the social reality was limited. It did not include regions of the civic activities which could have initiated changes to the law. Accordingly, the conditions for the use of coercion would be fully determined by the law. To put this relationship in a more communicative form, it can be reduced to a formula, according to which only the government is dependent on the Constitution. The community of the citizens forming a nation is linked to the constitution as long as they do not want to change it. This formula reveals the source of antagonism between the supreme sovereign nation forming a community of citizens and state bodies formed according to the principle of separation of power. For if the power comes from the people, state legislators

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<sup>1</sup> A. Kos, *Istota wyborów w kontekście realizacji zasady suwerenności narodu*, [in:] R. Czarny, K. Spryszak (eds.), *Państwo i prawo wobec współczesnych wyzwań. Teoria i filozofia państwa i prawa oraz aksjologia demokracji i ochrony praw człowieka. Księga jubileuszowa Profesora Jerzego Jaskierni*, Toruń 2012, pp. 503–515.

<sup>2</sup> I. Maus, *Zum Verhältnis von Freiheitsrechten und Volkssouveränität*, [in:] *Ansichten der Gesellschaft. Frankfurter Beiträge aus Soziologie und Politikwissenschaft*, Opladen 1999, p. 279.

are commanded to pursue the good or the public interest, and it is prohibited to provide separate regulations for the protection of particular interests. The judiciary and the executive, which can resolve the situation of an individual against their will, are prohibited to create regulations, i.e. to change the general and abstract standards for the settlement of a particular case, in which this standard should be applied. This guarantees freedom and civil rights. The essence of these guarantees is not a matter of differences at the level of the structure of authority. Freedoms and rights of citizens are protected by an observed and well-thought-out conflict between the sovereign law-making nation and executive authorities and the judiciary. Ingeborg Maus who describes this conflict, describes the asymmetry of the principle of sovereignty of a nation and highlights its importance to the proper understanding of subjective rights. On one hand, the principle of national sovereignty grants statutory subordination of all to the legislative authority derived from the people, who after all create laws for themselves, whilst on the other hand, the dependency is increased with respect to the judiciary and the executive, which have a true monopoly on coercion in the country, but are prohibited to change the law. Maus notes that the guarantees of civil rights and liberties are rooted in this pre-programmed asymmetry. Justification of rights and freedoms of individuals links them to the pre-state units, from which they have become non-transferable. This way, the justification of civic rights and freedoms associates these rights with the principle of sovereignty of a nation as a community of individuals who carry these rights. This way, the principle of national sovereignty achieves a pre-positive character as it is primordial to all positive law. In other words, the justification based on the properties associates with an entity form a prestate state which establishes the continuity of the mentioned rights and principles of popular sovereignty – a community made up of citizens who are carriers of the inalienable rights and subjects to be protected by the state authorities. The essence of this relation is described as a continuum of rights and freedoms of members of the national community whilst a civic principle of the sovereignty of a nation is in a state based on the supposition that only the bearers of these rights can decide what are the contents of those rights. Coercive apparatus must not change them. The rights and freedoms of citizens forming a sovereign community which is the source of all power do not lose their pre-positive character in the process of creating norms by the legislative authority. They remain – according to Maus – the principles a priori and at the same time, the derivatives of the highest power of the legislative sovereign people<sup>3</sup>.

These observations justify examinations of beliefs of the members of the public regarding mandatory participation in elections. Ingeborg Maus's accurate stance can

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<sup>3</sup> I. Maus, *Ibid.*, pp. 280–281.

serve as a voice on the terms of a discourse in matters of individual rights and the sources of the arguments. These conditions – as the author's reconstructed argument proves – must primarily relate in a positive sense to the social base. On the other hand, the arguments concerning the contents of the subjective rights of individuals should seek legitimacy in beliefs of the bearers of those rights and freedoms. It must be remembered that these requirements cannot be treated as substitutes, regarding for example, that the legitimacy of the arguments exhausts the demands of the conditions of the discourse. The difficulty lies in the fact that the convergence of these two conditions will be argumentatively extremely demanding and rare in practice, while the unilateral situations will be extremely frequent. Legitimizing arguments will then originally apply to an isolated case, however legitimizing claims will be put forward according to doctrinal connections of the normative act with the socio-economic reality and the system of values. It is confirmed by the statements of the leading observers and reviewers of transformations in the relationship between the normative sphere and social reality. Ingeborg Maus, already cited, writes for example, about the distortion of the relationship between rights and freedoms and the principle of sovereignty of people, which is the guarantee of civil rights and liberties. The author argues that the decisive impetus to change comes from the jurisprudence concerning fundamental rights. However, the practice of the courts and the executive power depreciates the social base as a source of practices and beliefs that shape subjective rights. This is because the courts and the executive usurp – as she says – the right to formulate supra-positive arguments, finding in them a justification to shape the contents of individual rights – these rights are defined and created in a specific case which is being currently settled. This way the social base is subjected to the control of the state apparatus, and the constitution in which the rights were uttered and ceases to be a model of the control of the apparatus of power by the social base<sup>4</sup>. We believe that this diagnosis indicates a discourse closed within a legal framework and deprived of socially established dynamics of adjustment of legitimacy of the rights and freedoms, resulting in reduction of importance of the discourse on the above mentioned rights – conditions reconstructed on the basis of the principle of national sovereignty. One may mention remarks of Bohdan Zdziennicki who referring to the role of legal discourse in the constitutionalization of law, states that the law is a complex and very dynamic phenomenon. He stresses the importance of so-called legislative facts pointing out that “they are composed not only of normative material, but also of the purposes (interests) of individuals, social interests and different values”. He notes as well, immediately, that “the study of these matters requires error-free operation of the achievements of all– the jurisprudence of concepts, interests and values. These three types of jurisprudence should be used together

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<sup>4</sup> I. Maus, *Ibid.*, pp. 282–283.

as they are complementary to one another in the debate on the constitutionality of certain regulations<sup>5</sup>. Such practice – let us bring up Ingeborg Maus again here – changes the nature of the claims of individual citizens against the state apparatus, which was the original *ratio* of modern freedom rights, and strengthens the effect of the transition of these rights to an objective order of values. Progressive (under the conditions of a closed legal discourse) objectification of rights and freedoms is not without importance for the application of the principle of popular sovereignty, which boils down to the influence of citizens on the state rule<sup>6</sup>.

## Notes on alternative justifications

The outlined above justification of the need of research on the views of members of the civic community on the contents of rights and freedoms refers to the relationship between these rights and the principle of sovereignty of the nation. We believe that this justification is strengthened by the review process of changes in matters of civil rights and liberties initiated by the judicature. Distortions of the primary relationship present themselves as legitimate from the perspective of practitioners and the doctrines of the constitutional law, however, they lose their legitimacy in confrontation with the positions of observers of the changes, who are not restricted by the fragmented thought structure of a doctrine or the practice of implementation of the law. Their analysis, however, must be approached with caution. The difficulty here lies in the fact that what generally can be considered a legitimate statement of progressive transformations of the relationship between subjective rights and the principle of sovereignty of the people, and regarded as an argument in favor of sociological research on the rights and freedoms, is difficult to approve outside of the “legal” context. In some respect, this situation reinforces the justification of the research on beliefs in rights and freedoms from the perspective of the relationship of these laws to the principle of the sovereignty of the nation. To put it simply, there is no obvious alternative for this justification as such. They are in fact (alternative proposals) related to, if not involved in, the ever temporary theories of social order. The limits of their scientific accuracy will be different from the framework of the legal discourse (which is a part of the autocreative mechanisms of the development of the law). In such a situation, the justification is almost doomed to the use of the source concepts, institutionalized in the political system of the given country. Establishing after all, demands for

<sup>5</sup> See: B. Zdziennicki, *Skuteczność prawa z perspektywy Trybunału Konstytucyjnego*, [in:] T. Giaro (ed.), *Skuteczność prawa. Konferencja Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, 27 lutego 2009 r.*, Warszawa 2010, pp. 26–27.

<sup>6</sup> I. Maus, *Ibid.*, pp. 282–283.

changes in the legal system with reasoning referring to fundamental ideas of the given political system, i.e. promises of freedom, equality, justice and sovereignty of the nation, the reasoning of this kind should be included in legal discourse.

## Available sociological research

We could refer to sociological reviews of these transformations, or even forecasts of absorption of social change at the level of awareness of the rights and freedoms of the citizens. However, we will limit ourselves here to assess them only in the context of the justification as was previously mentioned. In this respect one usually very boldly goes beyond “the language of the rights of an individual” and empowerment of citizens in this sense as well as one enhances the analytical importance of sociological factors, which are considered crucial for civil experience of this form of political mechanisms<sup>7</sup>. Such approach is often accompanied by “easy” pragmatism of the reflection over the sphere of motivation of citizens who are denied the consciousness of their role as an institution, reason, common sense and forward thinking, confidence, civil courage, tolerance and obedience to the law, that is everything that is described as virtues of the citizenship. These virtues are considered to be past when talking about the characteristic of modern societies<sup>1</sup>. This concerns – mildly speaking – the “openness” of the moral horizons of members of these societies, combined with the triumph of mood and temperament over the social norms<sup>8</sup>. The variable domain characterized this way, freed of the virtues of public awareness would reveal the circumstances that have not been previously considered among the prime sources of support for the principles of organization of societies in liberal democracies<sup>9</sup>. Without denying their sociological relevance, they are difficult to adapt to the arguments of rights and freedoms of citizens, including the study of electoral coercion. In other words, all the anticipations of these categories regarding the issue of beliefs in the meaning of civil rights and liberties would require a huge and probably unproductive labor. This is to indicate the extreme difficulty in the translation of sociological findings into the language of a legal discourse as

<sup>7</sup> See: M. Turowski, *Liberalizm – między ideologią a metapolityką*, „*Studia Philosophica Wratislaviensia*” 2007, No. II 1, pp. 77–80. Also see: B. Wittrock, *Menschliches Handeln, Geschichte und sozialer Wandel: Rekonstruktion der Sozialtheorie in drei Kontexten*, [in:] B. Hollstein, M. Jung, W. Knöbl (eds.), *Handlung und Erfahrung. Das Erbe von Historismus und Pragmatismus und die Zukunft der Sozialtheorie*, Frankfurt/New York 2011, pp. 344–369.

<sup>8</sup> See: J. Fest, *Die schwierige Freiheit. Über die offene Flanke der offenen Gesellschaft*, Berlin 1993, pp. 34–35.

<sup>9</sup> J. Fest, *Ibid.*, p. 33.

well as to show the barriers of negotiation of such distant mental structures of sociology and contemporary social phenomena which are neither novel nor do they break the traditional conceptual and ideological opposition as such.

## **Introductory issues**

Can we talk about democracy with one specific political system in mind? Obviously not as individual political institutions and their modes of operation may differ significantly depending on the characteristics of the given society. Searching for a common denominator for those democracies we may conclude that the participation of citizens in taking decisions and political choices through direct or indirect representation is such a denominator. The democracy and hence the active participation of citizens in the life of the state is accepted by us, the Poles. This, however, does not translate onto actions aiming at practicing it. The question then arises whether low attendance in elections is actually of importance for the democratic system. Mikołaj Cześnik<sup>10</sup> highlights that low attendance is important, first of all, in two situations. First, when the people from lower social strata do not vote and consequently their interests are represented less violating one of the pillars of the democracy – the equality. Second, low attendance is important when it means delegitimization of the system. This means no less and no more that refusal to participate in elections may indicate that politicians are unable to express the interests and preferences of the citizens or the rejection of the democratic procedure as such.

## **Results of the studies conducted**

Taking the above reflections concerning compulsory voting for the starting point, we are presenting the results of our survey conducted on the population of 235 respondents. With those studies we would like to contribute to initiating further, deeper considerations concerning the behaviours of the given community, in this case the Poles. Our studies aimed at providing an answer to the question whether in the political and social reality of the present day it would be possible and purposeful to introduce compulsory voting in Poland and in what categories the Polish society perceives compulsory voting.

To obtain answers to the formulated questions we applied the procedure of lustration as at this stage of studies we only wanted to diagnose the phenomenon of compulsory

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<sup>10</sup> M. Cześnik, *Prawomocność władzy i uczestnictwo wyborcze w demokracji postkomunistycznej: przypadek Polski*, [in:] R. Backer, J. Marszałek-Kawa (eds.), *Drogi i bezdroża ku demokracji*, Toruń 2005, pp. 59–60.

voting. We used the description of the phenomenon studied. That is why we applied the public poll method that allows tracing the phenomenon in people living under diversified social conditions. We realise that application of the methodology assumed creates certain shortcomings such as the possibility of ambiguous interpretation of the material obtained from the poll survey and that the type of theoretical generalisations is sometimes of doubtful quality. Nevertheless, as we have already pointed out, we treat our studies as a contribution to deeper analyses and the fact that no studies concerning the institution that was subject to our analysis were conducted in Poland seems to be the argument supportive for initiation of work on that phenomenon.

More than thirty years have passes since the first election following the period of systemic transformation in Poland. During that time, the Poles voted eight times to identify their representatives / members of parliament. During that period, the attendance during the individual parliamentary elections (only those elections were considered) has been decreasing. This is reflected by the following table<sup>11</sup>.

ATTENDANCE IN POLAND PARLIAMENTARY ELECTIONS
1989 – 62,11%
1991 – 43,20%
1993 – 52,08%
1997 – 47,93%
2001 – 46,18%
2005 – 40,57%
2007 – 53,88%
2011 – 48,92%

As we have already pointed out, elections are the inseparable component of the democracy as during the act of voting the citizens legitimize their representatives to act on their behalf. However, different opinions on what the participation of citizens in the election is and whether that participation should be treated in the categories of freedom or duty exist.

It has been accepted generally that compulsory voting is the institution where the voters are required to vote or participate in the elections. If the person eligible to vote does not participate in the election then he/she is subject to sanctions provided by legal norms.

With the results of the studies we wanted, first of all, to answer the question on what the purposes of introduction compulsory voting in the democratic political system are. Based on the considerations made and taking into account the results of

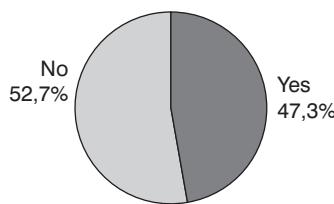
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<sup>11</sup> The detailed data is available at website [<http://www.idea.int/vt/countryview.cfm?CountryCode=PL>]. Accessed on 22.09.2013].

the poll surveys conducted by us, we will try to answer the question whether public feelings in Poland allow currently introduction of compulsory voting. As we have already signalled, our survey was conducted on the population of 235 respondents. In vast majority – in 167 cases – the respondents were women. The men formed a group of 68. The surveys were conducted in two voivodships: Mazowieckie and Warmińsko-Mazurskie. The choice of voivodship was not random. Those are two different regions in both economic and social aspects. Mazowieckie voivodship with the capital of the country is among the best economically developed areas in Poland. The unemployment rate is one of the lowest in the country (in June 2013 it was 11.1%) while in Warmińsko-Mazurskie voivodship the unemployment rate is one of the highest in the country (in June 2013 it was 20.2%)<sup>12</sup>. The respondents from the two voivodships surveyed belong to two different social groups. In Warmińsko-Mazurskie voivodship, since the end of the World War II the population has been settled with migrations from other units. On the other hand, Mazowieckie voivodship with its settled population and the individuals migrating into it represents the area of continual transfer of new contents, thoughts and technologies. The surveys conducted in two different areas were to give a cross section of the society and hence represent its preferences/approach.

The population of respondents from each voivodship was the same. In the survey we considered the gender and age. We asked the question whether compulsory voting understood as consistent with the law measure of influencing the citizens applied by the law aiming at making the citizens participate in the elections should be introduced in Poland. The response was to be justified in one sentence.

Among our respondents the majority was against compulsory voting. The results are presented in the following figure.

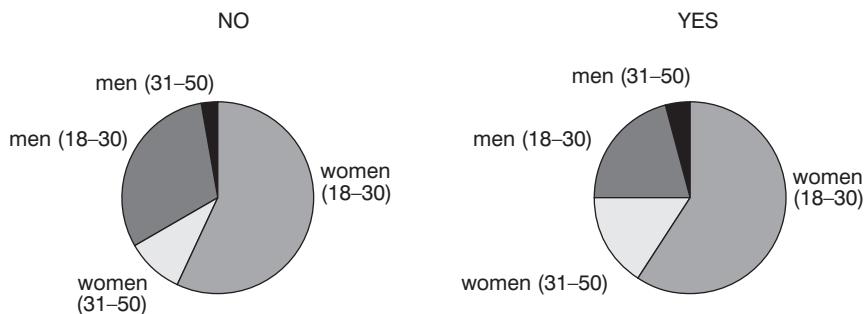


Source: own studies.

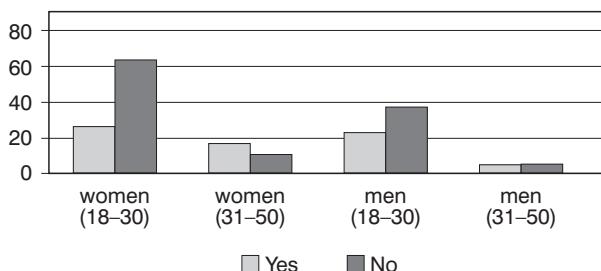
The results are represented by the following figure. A higher number of female than male respondents was against compulsory voting. Young people belonging to the 18–30 years age group were the major group of respondents that was against the compulsory voting.

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<sup>12</sup> Statistics of unemployment in Poland are available from the website of the Central Statistical Office [[http://www.stat.gov.pl/gus/5840\\_1487\\_PLK\\_HTML.htm?action=show\\_archive](http://www.stat.gov.pl/gus/5840_1487_PLK_HTML.htm?action=show_archive)]. Accessed on 22.09.2013].



Source: own studies.



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The decreasing attendance that represents the expression of the decreasing support for the system is, as we highlight, dangerous for the democracy as it may result in the increase in popularity of antidemocratic movements. The decreasing attendance in each consecutive election causes that Polish society is facing the necessity of changing the lifestyle, interpretation of the role of the state and realising its own role in social and public life. The existing situation forces a change of behaviours, opinions and attitudes, contributes to increasing civic awareness which currently does not translate into participation in elections. Lack of recipients for the current representative power is the cause of its major weakness as highlighted by Andrzej Waśkiewicz<sup>13</sup>, that is insufficiency of responsibility of the representatives to the represented.

Below we present the arguments from both sides of the survey concerning the compulsory voting. Respondents supporting compulsory voting and its introduction presented the following arguments. First of all, they pointed out that it will increase attendance and hereby cause that a larger group would assume responsibility for the way of functioning of the state (it would participate in decision concerning

<sup>13</sup> A. Waśkiewicz, *Paradoksy idei reprezentacji politycznej*, Warszawa 2012, p. 275.

the fates of the country). The citizens will be responsible fully for whom they voted for and that would decrease the dissatisfaction with those holding the power and hence cause that there would be fewer complaints concerning the authorities. Nobody will have complaints concerning who has been elected. And if the choice of representatives proves wrong that would give everybody the right to criticise the actions taken by those holding the power. The supporters of compulsory voting say that by introducing compulsory voting the parliament will represent preferences of the voters fully. It was highlighted that the important thing is that the citizens must be aware of their responsibility for the country that does not exist now. It was also stated that individuals have real influence on the choice of the authorities even at the expense of "empty votes", i.e. individuals that cast invalid votes. Moreover, the compulsory voting mobilises those that believe that a single vote would change nothing. Such people will be convinced about the strength of their votes.

Poles that were in favour of compulsory voting noticed the link between implementation of it and the electoral campaign and hence increasing the interest in the programmes of political parties, which forces increased activity in the political life and represents a stimulus motivating for activity. It would cause higher interest in the issues concerning the country, the citizens and the changes taking place. Supporters of compulsory voting also notice the field of the economy. It was highlighted that low attendance still generates costs (printing of voting cards) and to avoid empty spending of money compulsory voting should be introduced.

The group of opponents against compulsory voting indicated, on the other hand, that nobody should be forced to do something. Compulsory voting is seen as negation of civil liberty guaranteed in the constitution, contrary to the idea of democracy. The decision on participation in elections should be conscious and voluntary. Voting or not voting is the individual decision of the individual voter. Moreover, adversaries of compulsory voting say that low attendance reflects the attitudes to the political scene. Nonparticipation represents expression of the attitude of the voters to the existing situation and an expression of opposition against the current situation. According to those against compulsory voting, introduction of it forces casting the vote for any person (even unknown). Additionally, it forces undecided voters to take a decision despite unspecified opinions, i.e. the so-called "smaller evil". The wrap up of the arguments against is represented by the simple solution that voting for just anybody is not a good solution. The respondents that were opponents of compulsory voting state that some people do not vote, because they do not see appropriate candidates. Those against compulsory voting do not see any link between it and the result. They say that compulsory voting influences the attendance only.

The forms and intensity of political activity of the society depend on what political system we have, on the historical moment and on the system of values shared by the society. The attitude to own political involvement is linked to the level

of trust in the political system, the existing political parties, institutions of the state and in the politicians. The conducted surveys prove that Polish society does not want the stimulus for activity in the form of the legal norm involving compulsory voting. The majority, however, is not big (the ratio of those against – 52.7% to those for – 47.3% was small). The arguments for and against introduction of compulsory voting in our country indicate that the attitude towards politics and, indirectly, own political participation is linked to the level of trust in the political system. “Participation in elections is a manifestation of political activity. It is described as the lowest or the least intensive level of political involvement related to submission of the individual to the requirements of the system and social norms”<sup>14</sup>. For the majority of people, this is, however, the only form of participation in political life. And even that “the least intensive” form of political participation is not common, as we wrote above. The studies prove that the motivation for participation in elections or electoral passivity results from both the specific pre-election situation on the political scene and the evaluation of that scene. Studies indicate that more people would participate in elections in case the act of casting the vote itself seems to be important, when the situation of elections creates the feeling that participation in the voting involves personal influence on the result and hence the shape of politics and when the costs of participation are not high. The studies indicate that the society pays little attention to pre-election political scene (he parties and their programmes), which might result from the attitude to the representatives (lack of trust in them). Belief in the value of participation in the voting as the act of legitimisation of the power, the possibility of real influence on its shape and at the same time the duty of the citizen in the democratic society encourages participation in voting. The attitude of the Poles to participation in elections shows that it is not seen by voters as the act of real influence on the shape of the political scene, representation in the representative body and hence forcing the individuals to do something by means of legal norms (compulsory vote) is not justified according to the opinions expressed by our respondents.

## ABSTRACT

An article will concern selected issues related to the institution of compulsory voting. The Authors will try to answer a question, what is compulsory voting and what are the aims implementation it in a democratic political systems. Based on making analyses and based on results of survey, The Authors will try to answer a question, is possible to take compulsory voting in Poland taken a political mood in Poland into account and is compulsory voting a panacea for all problems concerning a diminishing of attendance.

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<sup>14</sup> See: K. Skarżyńska, *Psychologia polityczna*, Poznań 1999, p. 36.

As well as, what should be taken the other consequences of political and social character into consideration when we take a discussion about usability this one.

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