

Citation

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The Right to Vote in the Light of an Individual's End of Life¹

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Słowa kluczowe: kodeks wyborczy, śmierć człowieka, prawa człowieka, zmiany w prawie, prawo materialne

Abstract

This paper has the following research thesis: An individual's end of life has far-reaching legal effects, also in the sphere of the person's subjective rights. The research problem consists in reflecting on the right to vote, understood as a human right, in the light of a set of legal norms that undergo changes quite frequently. The aim of this paper is to examine what concepts the legislator uses to describe the death of a person and what effects it brings in the sphere of substantive law? Does the current legal state require amendments? If so, what kind of changes? To determine this, I will examine two fundamental normative acts in the Polish system of sources of law: the Constitution and the Electoral Code. In the research conducted, I will apply the formal-dogmatic method. Apart from legal regulations, I will examine the opinions of legal scientists and some relevant judicial decisions.

¹ Dedicated to the memory of my Father.

The Constitution does not link the consequences in the sphere of the electoral law to the end of individual's life. Electoral Code uses the terms "death" and "died" directly providing for the end of life in special situations confirming the natural consequence of a given state of affairs and requiring various procedural steps. The author expresses the hope that his findings will become the basis for further profound research on the issues of electoral procedures related to the death of a person as: a voter, candidate or member of electoral bodies.

Streszczenie

Prawo do głosowania w świetle końca życia osoby fizycznej

W niniejszym artykule postawiono następującą tezę badawczą: zakończenie życia przez osobę fizyczną wywołuje daleko idące skutki prawne, także w sferze praw podmiotowych tej osoby. Problem badawczy polega na refleksji nad prawem do głosowania, rozumianym jako prawo człowieka, w świetle zespołu norm prawnych, które ulegają dość częstym zmianom. Celem artykułu jest ustalenie, jakimi pojęciami posługuje się prawodawca na określenie śmierci człowieka oraz jakie skutki ona wywołuje na gruncie prawa materialnego? Czy obecny stan prawny wymaga zmian? Jeśli tak, to jakich? Aby to ustalić, zbadam dwa podstawowe w polskim systemie źródeł prawa akty normatywne: Konstytucję i kodeks wyborczy. W prowadzonych badaniach zastosuję metodę formalno-dogmatyczną. Oprócz przepisów prawnych, zbadam opinie przedstawicieli nauk prawnych oraz niektóre istotne orzeczenia sądowe.

Konstytucja nie wiąże konsekwencji w sferze prawa wyborczego z zakończeniem życia jednostki. Kodeks wyborczy posługuje się pojęciami „śmierć” i „zmarł” wprost przewidując zakończenie życia w szczególnych sytuacjach potwierdzających naturalną konsekwencję danego stanu rzeczy i wymagających podjęcia różnych czynności proceduralnych. Autor wyraża nadzieję na to, że jego ustalenia staną się podstawą do dalszych pogłębionych badań nad kwestiami procedur wyborczych, związanych ze śmiercią człowieka jako: wyborcy, kandydata czy członka organów wyborczych.

I. Introduction

In a society with a high legal culture, a rational and fair legislative process legitimizes the norms established in this process². Normative acts are never perfect and finished once and for all as they are the result of human mental effort, so it is desirable to reflect on them³. All the more so because the role of law is to protect certain values⁴. This axiology is expressed most fully with respect to human rights. In the opinion of Jerzy Zajadło, human rights themselves are one big axiology, because every right and every individual freedom implies a value⁵. Human rights are heterogeneous – not only do they have their juridical dimension, but they can also be viewed in moral and political terms⁶. According to Mirosław Granat, it is impossible to abstract the laws from the normative side of the Constitution simply by including them in the sphere of its application⁷. The laws that are the fabric of the Constitution even shape what the Constitution is⁸. It is not entirely independent of laws⁹, such as, doubtlessly, the Electoral Code¹⁰. As Maria Jarosz noted, only clear and precise laws can be communicative. Legal clarity should derive from the correctness of legal language¹¹. The word spoken by the legislature has a tremendous impact on the status of individuals, human rights and civil rights¹². As the Con-

² G. Wierczyński, review, A. Bielska-Brodziak, *Śladami prawodawcy faktycznego. Materiały legislacyjne jako narzędzie wykładni prawa*, Warszawa 2017, Wolters Kluwer, pp. 598, “Państwo i Prawo” 2018, no. 9, p. 134.

³ E. Gołębiowski, *report: Konstytucja III RP w 20-lecie jej wejścia w życie (Ogólnopolska Konferencja Naukowa, Warszawa 17.10.2017 r.)*, “Państwo i Prawo” 2018, no. 3, p. 125.

⁴ J. Podkowik, *Moralność publiczna jako przesłanka ograniczenia konstytucyjnych wolności i praw*, “Państwo i Prawo” 2019, no. 8, p. 23.

⁵ J. Zajadło, *Jaka aksjologia praw człowieka?*, “Państwo i Prawo” 2019, no. 11, p. 3.

⁶ *Ibidem*, p. 7.

⁷ M. Granat, *O paradoksach pojęcia nieformalnej zmiany Konstytucji (polemika)*, “Państwo i Prawo” 2019, no. 12, p. 135.

⁸ *Ibidem*, p. 135.

⁹ *Ibidem*, pp. 135–136.

¹⁰ Act of 5 January 2011 – Electoral Code (cons. text: Dz.U. 2022 item 655), hereinafter cited as: “EC”.

¹¹ M. Kruk, *Język polski jako narzędzie komunikacji prawodawcy i prawnika*, “Państwo i Prawo” 2017, no. 6, p. 8.

¹² *Ibidem*, p. 16.

stitutional Tribunal stated, “the correctness of a provision implies its proper linguistic and logical structuring; it is a basic condition which permits a provision to be evaluated in terms of the remaining criteria: clarity and precision. Clarity of a provision means that it is clear and comprehensible for its addressees, who have the right to expect of a rational legislator to create legal norms which do not raise doubts as to the content of obligations imposed and rights granted¹³”.

II. How the Electoral Code describes the end of an individual’s life

The EC uses various terms to refer to the end of a person’s life. One of them refers to death. The data of Polish citizens collected in the Central Register of Voters in Part A, as well as the data of citizens of the European Union who are not Polish citizens and the data of citizens of the United Kingdom of Great Britain and Northern Ireland, entitled to exercise voting rights in the Republic of Poland, collected in Part B, shall be deleted immediately in the event of death¹⁴. Proxy authorization expires *ipso iure* upon the death of the person who granted proxy authorization or of the proxy¹⁵; the function of returning officer ceases upon their death¹⁶; the expiry of membership in the National Electoral Commission before the end of the term occurs upon the death of a member¹⁷; the office of electoral commissioner expires upon their death¹⁸; membership in the District Electoral Commission occurs upon the death of a member¹⁹; expiry of membership in the Territorial Electoral Commission

¹³ Judgment of the Constitutional Tribunal of 3 December 2009, file ref. no. Kp 8/09, OTK-A 2009/11/164; *Proces prawotwórczy w świetle orzecznictwa Trybunału Konstytucyjnego. Wypowiedzi Trybunału Konstytucyjnego dotyczące zagadnień związanych z procesem legislacyjnym*, Warszawa 2015, p. 63, https://trybunal.gov.pl/fileadmin/content/dokumenty/proces_prawotworczy.pdf (11.02.2023).

¹⁴ Art. 18c § 1 point. 1 EC, Art. 18d § 1 point 1 EC, see: Art. 1 point 15 of the Act of 26 January 2023 on amendments to the Electoral Code and certain other acts (Dz.U. item 497).

¹⁵ Art. 58 § 2 point 1) EC.

¹⁶ Art. 103a § 5 point 2) EC.

¹⁷ Art. 158 § 1 point 3) EC.

¹⁸ Art. 166 § 7 point 2) EC.

¹⁹ Art. 171 § 1 point 3) EC.

occurs upon the death of a member²⁰; the termination of membership in the Precinct Electoral Commission occurs upon the death of a member²¹; the office of electoral official terminates upon their death²²; the mandate of a member of the Sejm of the Republic of Poland expires upon their death²³; if the removal of a candidate's name from a registered list of candidates is due to their death and leaves that the candidates list with fewer members than the number of deputies elected in the electoral district, the commission notifies the person submitting the list of the possibility of submitting a new candidate; the list is to be supplemented not later than on the 15th day before the election day; in this case, the provisions of Art. 210 § 1 do not apply²⁴; on the basis of information provided by the National Electoral Commission, the Speaker of the Sejm notifies the next candidate from the same list of candidates who received the largest number of votes in succession of their priority to a seat in the event of the death of an MP²⁵; if, in the case referred to in Art. 222 § 1, a senatorial candidate's name has been removed following their death, the commission notifies the person submitting the list of the possibility of submitting a new candidate. Such notification is to be given not later than on the 15th day before the election day; in this case, the provisions of Art. 265 § 1 do not apply²⁶; the expiry of a senator's mandate occurs in the event of their death²⁷, and the President of the Republic orders a by-election to the Senate²⁸; if the removal of a candidate's name from a registered list of candidates is due to the candidate's death and leaves fewer than 5 candidates on the list, the commission notifies the person submitting the list of the possibility of submitting a new candidate; the list is supplemented not later than on the 15th day before election day; in such a case the provisions of Art. 210 do not apply²⁹; a MEP's man-

²⁰ Art. 179 § 1 point 3 EC.

²¹ Art. 184 § 1 point 3) EC.

²² Art. 191d point 2) EC; K. Skotnicki, *Urzędnicy wyborczy. Kilka refleksji o nowej instytucji polskiego prawa wyborczego*, "Krytyka Prawa" 2021, vol. 13, no. 1, p. 93.

²³ Art. 247 § 1 EC.

²⁴ Art. 222 § 2 EC.

²⁵ Art. 251 § 1 point 1) EC.

²⁶ Art. 265a EC.

²⁷ Art. 279 § 1 point 1) EC.

²⁸ Art. 283 § 1 point 1) EC.

²⁹ Art. 346 § 2 EC.

date expires in the event of their death³⁰; the expiry of a councilor's mandate occurs in the event of their death³¹; if in council elections in a municipality with a population of over 20,000 the removal of a candidate's name occurs as a result of their death and results in the number of candidates in the election district being equal to or less than the number of councilors elected in that district, the commission informs the appropriate electoral attorney of the possibility of proposing a new candidate – the list is to be supplemented not later than on the 10th day before the election day; in this case the provisions of Art. 427 § 1 do not apply³²; if in council elections in a municipality with a population of up to 20,000 the removal of a candidate's name is due to the candidate's death, the commission notifies the person submitting the list of the possibility of submitting a new candidate; the nomination is to be submitted no later than on the 10th day before election day; in this case the provisions of Art. 427 § 1 do not apply³³, unless otherwise provided in this chapter, the provisions of Chapter 10 concerning elections to county councils in municipalities with populations of more than 20,000 apply accordingly to elections to county councils³⁴; if a candidate's name is removed as a result of their death resulting in a situation referred to in Art. 436 § 2, the regional electoral commission informs the relevant attorney about the possibility of proposing a new candidate no later than on the 10th day before the election day³⁵; if the removal of a candidate's name is due to their death, the commission informs the relevant electoral attorney of the possibility of submitting a new candidate; additions to the list are made no later than on the 15th day before the election day³⁶; the expiry of the term of office of the municipality head occurs upon their death³⁷.

Another, but less commonly used term under the EC to describe the end of an individual's life is the verb in the accomplished form '[has] died'. The District Electoral Commission removes from the registered list of

³⁰ Art. 363 point 1) EC.

³¹ Art. 383 § 1 point 1) EC.

³² Art. 436 § 2 EC.

³³ Art. 436 § 2a EC.

³⁴ Art. 450 EC.

³⁵ Art. 465 EC.

³⁶ Art. 483 § 2 EC.

³⁷ Art. 492 § 1 point 7) EC.

candidates the name of a parliamentary candidate who has died, lost the right to be elected or has submitted to the commission a written statement of withdrawal of consent to stand as a candidate³⁸; the National Electoral Commission removes from the candidates list those who have withdrawn their consent to stand as candidates, have died or have lost their right to be elected; the National Electoral Commission is to be immediately make public information about the deletion of a candidate³⁹; the District Electoral Commission removes from the registered list of candidates the name of a candidate for a member of the European Parliament who has died, lost the right to be elected, submitted to the commission a written statement of withdrawal of consent to stand as a candidate or made a false statement referred to in Art. 344 § 1 point 2⁴⁰; the municipality electoral commission removes from the registered list of candidates the name of the candidate who has died, lost the right to be elected, made a false statement referred to in Art. 426 § 2, has been declared as a candidate for more than one municipality legislating body or on more than one list of candidates, or made a statement in writing withdrawing their consent to stand as a candidate; this is immediately notified to the competent electoral attorney⁴¹; the municipal electoral commission removes from the candidates list a candidate who has died⁴².

III. Substantive aspects of an individual's end of life as provided by the Electoral Code

The EC is the basic act of statutory rank that regulates the organization and conduct of elections, as well as the implementation of subjective voting rights. It should be noted that the Polish Constitution of 1997⁴³ in Art. 62 sec. 2 sets out a closed catalogue of reasons for ineligibility for election. It is not avail-

³⁸ Art. 222 § 1 EC.

³⁹ Art. 306 EC.

⁴⁰ Art. 346 § 1 EC.

⁴¹ Art. 436 § 1 EC.

⁴² Art. 483 § 1 point 1) EC.

⁴³ Constitution of the Republic of Poland of 2 April 1997 (Dz.U.No. 78 item 483 as amend.).

able to individuals who by a final court decision are incapacitated or deprived of public or voting rights. Exclusions of voting rights of categories of persons under Art. 62 sec. 2 of the Constitution do not interfere with the principle of universality⁴⁴. Article 62 exhaustively lists the negative prerequisites for the right to vote and does not authorize other subjective exclusions⁴⁵. In this case the constitutional legislator used existing terms. The provision cannot be understood as leaving the ordinary legislator free to determine the prerequisites and contents of the enumerated institutions, but on the contrary as restraining his authority by using terms the content of which were established in the Polish legal language and jurisprudence prior to the enactment of the Constitution. When enacting electoral law, the legislature may, up to a point, modify the normative provisions concerning the enumerated institutions, provided that their identity is preserved⁴⁶.

As stated by the Constitutional Tribunal, “the right to be elected is a consequence of the right to elect⁴⁷”. Thus, having passive voting rights presupposes the possession of active voting rights⁴⁸. Deprivation of the active right to vote causes the passive right to be taken away; it constitutes an obstacle to any formalized participation in electoral procedure⁴⁹.

Among the legal scientists dealing with constitutional law there has long been a widespread belief that constitutional regulation should be characterized by a high degree of generality⁵⁰. Thus, it should be presumed that a voter loses the right to be elected upon his or her death, although the fundamental law does not expressly state so. Similarly, among the grounds justifying the deprivation of the right to stand for election, the EC in Art. 11 § 2–4 does not

⁴⁴ M. Chmaj, W. Skrzydło, *System wyborczy w Rzeczypospolitej Polskiej*, Kraków 2005, p. 47.

⁴⁵ M. Florczak-Wątor, *Komentarz do art. 62 [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019, p. 212.

⁴⁶ W. Sokolewicz, K. Wojtyczek, *Komentarz do art. 62 [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz do art. 87–243*, t. II, eds. M. Safjan, L. Bosek, Warszawa 2016, p. 521.

⁴⁷ Judgment of the CT of 24 November 2008, file ref. no. K 66/07, OTK-A 2008/9, item. 158; W. Sokolewicz, K. Wojtyczek, *op.cit.*, p. 548.

⁴⁸ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2021, p. 176.

⁴⁹ W. Sokolewicz, K. Wojtyczek, *op.cit.*, s. 549.

⁵⁰ W. Brzozowski, *O potrzebie reformy konstytucyjnej*, “Państwo i Prawo” 2017, no. 12, p. 5.

provide for the death of an individual. The Code uses two terms to designate the end of an individual's life: 'death' and 'died'.

In the first case, the term 'death' is a natural consequence of the *ipse iure* expiration of law of institutions and functions related to the preparation of elections (electoral official, electoral commissioner, member of the National Electoral Commission), the conduct of the electoral process (returning of officers), or voting (expiration by law of proxy authorization – proxy voting is among the so-called "alternative voting methods"⁵¹; membership in the district, territorial, and precinct electoral commissions).

In the second case, the death of an individual produces effects in the sphere of their right to stand for election (assuming that during their lifetime they were not deprived of it). Death causes the expiry of the mandate of: an MP, senator, MEP, or municipality or county councillor (pursuant to EC Art. 450). The mandate of a member of a regional assembly also expires; however, this regulation follows from the reference contained in EC Art. 459 § 1, stipulating that elections to regional assemblies are accordingly governed by the provisions of Chapter 10 concerning elections to councils in municipalities with populations over 20,000, unless the provisions of this chapter provide otherwise). As a result of death, the mandate of a municipality head expires, but by virtue of the reference in EC Art. 5 sec. 6 also of a town or city mayor.

Third, it should be noted that the consequence of the expiration of a mandate due to the death of an individual is the removal of their name from the registered list of candidates, which makes it necessary to complete the list.

In this regard, the EC uses inconsistent terminology. Upon the death of a candidate for a deputy, senator, member of the European Parliament, the relevant commission notifies the person submitting the list about the possibility of submitting a new candidate.

However, in the event of the death of a candidate for municipal councillor in a municipality with a population of more than 20,000 inhabitants, the commission informs the electoral attorney of the possibility of submitting a new candidate. However, in municipal council elections in a municipality with a population of up to 20,000 inhabitants, the death of a candidate caus-

⁵¹ J. Zbieranek, *Nowe procedury: głosowanie korespondencyjne i przez pełnomocnika* [in:] *Kodeks wyborczy. Wstępna ocena*, ed. K. Skotnicki, Warszawa 2011, p. 59; R. Zych, *Istota i gwarancje zasady tajności głosowania w polskim prawie wyborczym*, Toruń 2016, p. 206.

es the commission to notify the person submitting the list of the possibility of submitting a new candidate. It is worth noting that by virtue of the reference in Art. 450, the provisions of Chapter 10 concerning elections to county councils in municipalities with populations of more than 20,000 apply *mutatis mutandis* to elections to county councils to the extent not regulated, unless the provisions of this chapter provide otherwise. Therefore, the electoral attorney should be informed. Upon the death of a candidate for a regional councilor, the regional electoral commission informs the electoral attorney about the possibility of proposing a new candidate. Also upon the death of a candidate for town mayor, the commission informs the election attorney of the possibility of submitting a new candidate. According to EC Art. 211 § 4, “a list of candidates shall be submitted in person, in writing, by the electoral attorney or a person authorized by them, hereinafter referred to as the ‘person submitting the list’. If the list is submitted by a person authorized by a proxy, the notification shall be accompanied by a document confirming the authorization, indicating the scope of the authorization and the data of the person authorized by the proxy: name(s), surname, address of residence and PESEL registration number”. Taking into account the systemic interpretation and the fact that the cited provision was placed in Section III, Chapter 3 on the submission of candidates for deputies, and therefore before the entire group of provisions related to the question of supplementing the list when a candidate dies (starting with EC Art. 222 § 2), it should be assumed that the designation “person submitting the list” would be more correct. Alternatively, it could be suggested that the wording of EC Art. 211 § 4 is supplemented with “person submitting a candidate or a list”.

As regards the death of a candidate for a Sejm deputy, the legislator has placed an important duty on the Speaker of the Sejm, who – after receiving information from the State Election Commission – notifies the next candidate from the same list of candidates as the deceased who received the largest number of votes in the elections of their priority to the mandate. In the case of senatorial elections, however, the death of a senator not only results in the expiration of their mandate, but also implies that the President of the Republic of Poland must order by-elections to the Senate. The expiry of a mandate is to be declared, by way of a decision, by the Speaker of the Sejm or of

the Senate, respectively⁵². The President, on the other hand, in his decision to order a by-election specifies county areas covered by the by-election, sets the polling day and deadlines for the performance of electoral acts (the electoral calendar – annexed to the decision)⁵³. The concept of eligibility for office includes the right to be elected in elections, i.e., the right to stand for election and to obtain and hold a mandate obtained in a fair election. The right to stand for election is not exhausted in the act of voting, which means that the constitutional protection of this right should also be related to the permanence of the mandate⁵⁴. Death results in the termination of the mandate, i.e. the loss of the validity of the mandate of a candidate elected in a given election to sit on a given collegial body or to perform a specific function⁵⁵. The term “expiration” has a somewhat euphemistic character⁵⁶. Death, as a chance event⁵⁷, is a natural cause of the termination of office⁵⁸.

The second designation for an individual's death, i.e. “died”, implies removal from the registered list of candidates: for an MP, the President of the Republic of Poland, an MEP, a member of a municipal council, a town mayor, or a city mayor. Therefore, on the basis of the EC, the more significant consequences should be attributed to the term “death”, while the word “died”

⁵² I. Wróblewska, *Prawo wyborcze do Sejmu i Senatu oraz status prawny posłów i senatorów* [in:] *Prawo konstytucyjne*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2015, p. 218.

⁵³ Decision of the President of the Republic of Poland of 19 February 2013 on the ordering of supplementary elections to the Senate of the Republic of Poland (Dz.U. item 256); Decision of the President of the Republic of Poland of 25 June 2014 on the ordering of supplementary elections to the Senate of the Republic of Poland (Dz.U. item 859).

⁵⁴ Judgment of the CT of 24 November 2008, file ref. no. K 66/07, OTK-A 2008/9, item. 158; A. Kisielewicz, *Komentarz do art. 11* [in:] K.W. Czaplicki et al., *Kodeks wyborczy. Komentarz*, Warszawa 2018, p. 70.

⁵⁵ B. Michalak, *wygaśnięcie mandatu* [in:] *Leksykon prawa wyborczego i referendalnego oraz systemów wyborczych*, eds. A. Sokala, B. Michalak, P. Uziębło, Warszawa 2013, p. 280.

⁵⁶ D. Dudek, *Business and constitutional (ir)responsibility of the Deputy*, “*Studia Iuridica Lublinensia*” 2014, no. 22, pp. 226–227.

⁵⁷ A. Frydrych-Depka, *Glosa do postanowienia Sądu Najwyższego z dnia 5 listopada 2019 r., I NSW 136/19*, “*Studia Iuridica Toruniensia*” 2019, vol. XXV, p. 227.

⁵⁸ J. Galicki, *Przyczyny wygaśnięcia mandatu radnego*, “*Przegląd Prawa Konstytucyjnego*” 2013, no. 3, p. 207; A. Rytel-Warzocho, *Przesłanki wygaśnięcia mandatu radnego gminy (miasta) w świetle przepisów kodeksu wyborczego i orzecznictwa sądów administracyjnych*, “*Gdańskie Studia Prawnicze*” 2015, vol. XXXIV, p. 154.

only results in removing the candidate from the list of candidates to the extent indicated above.

It must be noted that with respect to the issue at hand, finding any constitutional provision that directly addresses it is impossible. However, it cannot be concluded that the Constitution ignores the title issue since the rights to vote and stand for election follow from the principle of universal suffrage. Grzegorz Kryszewski rightly lists among the criteria of the free elections principle the safeguarding of the right to security of life⁵⁹. Thus, based on the electoral law, the two principles – of universality and freedom – apply to life as a legally protected value. The death of an individual results in the termination of his or her legal entity⁶⁰. Conscious participation in public elections is a specific and legally qualified manifestations of concern for the common good⁶¹. Certainly, the law must react to “life situations”. They include the individual’s death who, depending on the stage and function performed in the electoral process or after its completion, triggers various procedures.

IV. Conclusions

De lege lata, the Constitution does not link the consequences in the sphere of the electoral law to the end of individual’s life. Therefore, it should be assumed that having active and passive electoral rights is a consequence of their being granted by constitutional and statutory provisions. The EC uses the terms “death” and “died” directly providing for the end of life in special situations confirming the natural consequence of a given state of affairs and requiring various procedural steps.

This study offers a conclusion that the EC contains unwarranted repetitions in the regulation of identical issues. A semantic inconsistency is revealed here: the person reporting may be not only the electoral attorney,

⁵⁹ G. Kryszewski, *Standardy prawne wolnych wyborów parlamentarnych*, Białystok 2007, p. 81.

⁶⁰ W. Broniewicz, *Glosa do wyroku Sądu Najwyższego z dnia 17 lipca 1997 r.*, III CKN 149/97, OSP 2000, vol. 4, p. 63.

⁶¹ D. Dudek, *Państwo jako dobro wspólne a wspólnota samorządowa – tożsamość czy kolizja wartości?*, “Przeгляд Prawa Konstytucyjnego” 2020, no. 1, pp. 25–26.

but also a person authorized by them. *De lege ferenda*, it would be advisable to remove these deficiencies by making appropriate legislative changes to the EC. It should be assumed that the terminology “person submitting the list” would be more appropriate. Alternatively, we could postulate that the wording of the provision of Art. 211 § 4 of the EC be amended with “a person submitting a candidate or a list”.

The EC, among the reasons for expiration of membership in the electoral commission indicated in Art. 153 § 2, does not mention the death. On the other hand, the legislator refers to it in Art. 158 § 1, 171 § 1, 179 § 1, 184 § 1, and in each of these provisions in item 3 death is indicated as a separate and self-contained premise for the expiration of a mandate.

Pursuant to § 10 (1) (4) of the Decree of the Minister of Digitization of 3 August 2023 on the register of voters⁶², until the register is given to the chairman of the Precinct Electoral Commission, the register is updated by deleting from the register of voters due to death. However, it lacks the adjective “immediately”, which appears in § 9 (4). Pursuant to § 6, the register of voters is updated automatically in the ICT system in which the Central Register of Voters is maintained. Pursuant to § 10 (2), information on the reasons for deletion from the register is placed in the “remarks” section by making an appropriate note. Meanwhile, pursuant to Art. 47 sec. 2 of the Act of 28 November 2014. – Act on Civil Status Records⁶³, if the death of a person has not been registered on the day it was reported due to the unavailability of the civil registry, immediately after its registration the person reporting the death is issued *ex officio* 2 abbreviated copies of the death certificate. Undoubtedly, due to the personal relationship between the proxy and the voter, the proxy should then refrain from voting on behalf of his mandate, because he has to exercise not his right to vote, but that of the deceased. The deletion of the deceased should be carried out by the competent authority in accordance with the prescribed procedure. Due to the increasing digitization of administration, the provisions of the law should enable the efficient exchange of information and immediate deletion of a voter whose death has been officially confirmed.

⁶² Dz.U. item 1512.

⁶³ Cons. text: Dz.U. 2023, item 1378.

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