

Judgment of 20th February 2006, [K 9/05](#)
LIMITATION OF ELECTORAL RIGHTS IN LOCAL ELECTIONS

Type of proceedings: Abstract review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
Legal provisions under review	Basis of review	
Conditioning electoral rights of Polish citizens in local elections upon being entered in a permanent register of voters not later than 12 months before the date of elections <small>[Electoral Law to Commune Councils, District Councils and Regional Assemblies Act 1998: Article 6(1), read in conjunction with Article 5(1) and Article 7(1) (in the wording introduced in 2004)]</small>	Status of self-governing communities Principle of proportionality Principle of equality Freedom of movement and the choice of place of residence and sojourn within the territory of Poland Right of Polish citizens to vote for representatives to local self-government bodies Principle of universal suffrage in local elections <small>[Constitution: Articles 16(1), 31(3), 32(1), 52(1), 62 and 169(2)]</small>	
Analogous limitation of electoral rights of European Union citizens not holding Polish nationality <small>[Ibidem: Article 6a(1) (inserted in 2004), read in conjunction with Article 7(1)]</small>	Status of self-governing communities Freedom of movement and the choice of place of residence and sojourn within the territory of Poland Principle of universal suffrage in local elections <small>[Constitution: Articles 16(1), 52(1) and 169(2)]</small>	

Elections to constitutive organs (i.e. councils) of local self-government units at every level – i.e. communes (*gminy*), districts (*powiaty*) and regions (*województwa*) – are held on the basis of the aforementioned 1998 Act (hereinafter referred to as: “Local Electoral Law”). The shape of that Act, insofar as covered by the judgment summarised herein, was established by the Amendment Act 2004 which entered into force on the day of Poland’s accession to the European Union, i.e. on 1st May 2004.

It follows from the Local Electoral Law that the right to vote and the right to stand as a candidate in elections to a constitutive organ of a local self-government unit is vested – in principle – in Polish citizens who have reached, on the day of vote at the latest, the age of 18 and who reside permanently within the territory covered by the activities of that organ.

Possession of electoral rights in elections to commune councils is also the condition for participation in direct elections of Heads of Communes (*wójtowie*), Mayors (*burmistrzowie*) and Presidents of Cities (*prezydenci miast*) – i.e. the executive organs of communes, elected by direct universal suffrage (Article 3 of the Direct Elections of Heads of Communes, Mayors and Presidents of Towns Act 2002). The right to stand as a candidate is, however, vested only in persons having reached the age of 25.

According to the first of the two provisions challenged in the present case – i.e. Article 6(1) of the Local Electoral Law – the enjoyment of right to vote, and in consequence, pursuant to Article 7(1) of the same Act, also of the right to stand as a candidate in local elections, was made conditional upon being entered, not later than 12 months prior to the day of vote, in the so-called permanent register of voters (*stały rejestr wyborców*; electoral roll) kept in the respective commune. A person who failed to obtain the respective registration by that deadline was not permitted to vote, nor to stand as candidate, in local elections within the territory of the respective commune.

The accession of Poland to the European Union (EU) implied the necessity to adjust the provisions regulating the conduct of local elections to the requirements of Community law. Pursuant to Article 19(1) of the Treaty establishing the European Community (EC Treaty), every EU citizen residing in a Member State of which he/she is not a national is vested with the right to vote and to stand as a candidate in municipal elections in that State under the same conditions as nationals of that State.

The Polish legislator, implementing the duties stemming from the aforementioned provision of Community law, granted the EU citizens who have reached the age of 18, not being citizens of Poland, the right to vote and to stand as a candidate in elections to commune councils. However, the right to stand as a candidate was not vested in EU citizens deprived of the right to stand as a candidate in elections in their home Member State (Article 7(3) of the Local Electoral Law). Moreover, EU citizens have the right to vote in elections of Heads of Communes, Mayors and Presidents of Cities (see above). The right to stand as a candidate in these elections is, however, reserved for Polish citizens (Article 3 of the aforementioned 2002 Act). Enjoyment of electoral rights has been made conditional – similarly as in the case of Polish citizens – upon being entered, not later than 12 months prior to the day of vote, in the permanent register of voters. This stems from Article 6a of the Local Electoral Law – i.e. the second provision challenged in the present case (read in conjunction with Article 7(1) of the same Act).

The initiator of proceedings before the Constitutional Tribunal in the present case, i.e. the Commissioner for Citizens' Rights, alleged that the aforementioned limitation of electoral rights failed to conform to the provisions of the Constitution indicated in the table above.

It is worth reminding that the Constitutional Tribunal, when adjudicating upon the conformity with the Constitution of the conditions of Poland's membership in the EU (judgment of 11th May 2005, [K 18/04](#); summarised separately), has responded to the constitutional doubts concerning the admissibility of participation by EU citizens not holding Polish nationality in local elections within the territory of Poland. The Tribunal ruled that the aforementioned Article 19(1) of the EC Treaty [is not inconsistent](#) with Article 1 and Article 62(1) of the Constitution.

RULING

1. Article 6(1), read in conjunction with Article 5(1) and Article 7(1), of the Electoral Law to Commune Councils, District Councils and Regional Assemblies Act 1998, insofar as it deprives Polish citizens entered in the permanent register of voters during a period of less than 12 months prior to the day of vote of the right to vote and to stand as a candidate in elections to commune councils and in elections of Heads of Communes,

Mayors and Presidents of Cities, does not conform to Article 31(3), Article 32(1), Article 62 and the first sentence of Article 169(2), read in conjunction with Article 16(1), of the Constitution and is not inconsistent with Article 52(1) of the Constitution.

2. Article 6a(1), read in conjunction with Article 7(1) of the aforementioned Act, insofar as it deprives EU citizens not holding Polish nationality entered in the permanent register of voters during a period of less than 12 months prior to the day of vote of the right to vote in elections to commune councils, does not conform to the first sentence of Article 169(2), read in conjunction with Article 16(1), of the Constitution and is not inconsistent with Article 52(1) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. In the light of Article 16(1) of the Constitution, the possession of electoral rights with respect to elections to organs of local self-government is contingent upon the condition of belonging to the self-governing community. According to the aforementioned provision, such a community is formed, by virtue of the law, by the inhabitants of the basic territorial division units. The main premise of belonging to a self-governing community consists, therefore, of permanent residence within the territory of the given unit of local self-government.
2. Article 62(1) of the Constitution grants the right to participate in elections and to vote for representatives to organs of local self-government to Polish citizens who attained, no later than the date of the election, the age of 18. The exhaustive catalogue of exclusions is envisaged in Article 62(2) and concerns persons who have been, on the basis of a final court judgment, incapacitated or deprived of public or electoral rights. The Constitution does not authorise the legislator to introduce any additional statutory exclusions in this regard.
3. The second sentence of Article 169(2) of the Constitution only authorises the legislator to determine the principles and procedures for holding elections and the requirements for their validity. This provision does not, however, authorise to statutorily determine the group of persons vested with the electoral rights in question.
4. The requirement of being entered in a register (12 months before the day of vote) as a condition for the ability to participate in local elections, specified in Article 6(1) of the Local Electoral Law, constitutes a limitation of the citizens' right to vote, and, in consequence – in the light of Article 7(1) of the same Act – of their right to stand as a candidate. This limitation fails to conform to the Constitution since it is not justified by the protection of any values specified in Article 31(3) of the Constitution.
5. Concomitantly, the differentiation of citizens with regard to the exercise of their right to vote and to stand as a candidate in elections to organs of local self-government, despite the fulfilment of the requirement of belonging to the self-governing local community (i.e. of residing within the territory of the respective local self-government unit), resulting from the provisions indicated in point 1 of the ruling (above), infringes the principle of equality before the law and the requirement of equal treatment by public authorities (Article 32(1) of the Constitution) since it is based on an irrelevant formal criterion, consisting of being entered in the register of voters no later than 12 months before the day of vote.

6. Electoral rights of EU citizens not holding Polish nationality and residing permanently within the territory of any specific commune in Poland are not expressly envisaged in the Polish Constitution. Such rights constitute, however, a consequence of Poland's obligations stemming from its EU membership, in particular the obligations specified in Article 19(1) of the EC Treaty. Detailed rules on the participation of foreigners being EU citizens in municipal elections are specified in the Council Directive of 19th December 1994 (94/80/EC).
7. The aforementioned Directive allows the Member States to make the electoral rights of EU citizens not holding the nationality of a respective Member State conditional upon residing within the territory of that State over a determined period of time. The challenged Article 6a(1) of the Local Electoral Law does not, however, refer to this criterion. It establishes a strictly formal condition of being entered in the permanent register of voters within a specified time frame. That is incompatible with Article 19(1) of the EC Treaty.
8. In light of the principle of equal treatment of EU citizens and Polish citizens in the context of Article 19(1) of the EC Treaty, the assessment of conformity of the provision indicated in point 1 of the ruling (concerning Polish citizens) with Article 169(2) of the Constitution applies to the provision indicated in point 2 of the ruling (concerning other EU citizens).
9. Electoral rights in elections to local self-government organs vested in EU citizens not holding Polish nationality, who reside in Poland and are members of local communities, are not their constitutional rights. Therefore, Article 31(3) of the Constitution, concerning limitations of freedoms and rights regulated in the Constitution, does not apply to them. For the same reasons, it is impermissible to directly apply the constitutional principle of equal treatment (Article 32) to Polish citizens and to persons not holding Polish nationality.
10. The negative consequences of the legal provisions under review directly concern the sphere of exercising electoral rights in local elections. One may not preclude the indirect impact of these provisions upon the decisions of persons interested in participating in such elections, concerning the place of residence or sojourn. It is, however, an indirect impact and only concerns the sphere of motivation. Furthermore, the challenged provisions contain the criterion of being entered in the register of voters of the given commune within a determined time frame, which is not identical with the choice of the current place of residence or sojourn. For the aforementioned reasons, the discussed provisions are not inconsistent with Article 52(1) of the Constitution.

Provisions of the Polish Constitution and the Treaty establishing the European Community

Constitution

Art. 1. The Republic of Poland shall be the common good of all its citizens.

Art. 16. 1. The inhabitants of the units of basic territorial division shall form, by virtue of the law, a self-governing community.

Art. 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 52. 1. Freedom of movement as well as the choice of place of residence and sojourn within the territory of the Republic of Poland shall be ensured to everyone.

Art. 62. 1. If, no later than on the day of vote, he has attained 18 years of age, a Polish citizen shall have the right to participate in a referendum and the right to vote for the President of the Republic of Poland as well as representatives to the Sejm and Senate and organs of local self-government.

2. Persons who, by a final judgment of a court, have been subjected to legal incapacitation or deprived of public or electoral rights, shall have no right to participate in a referendum nor a right to vote.

Art. 169. [...] 2. Elections to constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot. The principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, shall be specified by statute.

EC Treaty

Art. 19. 1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.