

The Right to vote of Persons with Disabilities

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Abstract

The right to vote is a fundamental right of every citizen. Convention on the Rights of Persons with Disabilities (CRPD), the legal instrument that applies human rights disability, requires states to guarantee to the persons with disabilities the right to vote, stand for election and be elected, including the possibility of effectively and fully benefit from them, without discrimination and on an equal basis with others, directly or through freely chosen representatives. This means ensuring that voting procedures are adequate, accessible, easy to understand and use, protect the rights of persons with disabilities to vote by secret vote, guaranteeing the free expression of the will of persons with disabilities as electors, in which case it will allow assistance in voting by a person chosen by them.

Keywords: *right to vote, persons with disabilities, the Convention on the Rights of Persons with Disabilities, accessibility.*

1. Introduction

The evolution legislation in the field of civil and political rights for people with disabilities has led national legal paradigms evolution, from a law based on providing benefits to the rights one. This new dimension of disability law was a major landmark on the way to the recognition of human rights of persons with disabilities, a road that more governments seem willing to go through.

2. General International and European Standards in terms of political rights

The right to vote has a long and quite controversial history. Thus, Article 21 of the Universal Declaration of Human Rights (1948), solemnly proclaims the right of everyone "to take part in the government of his country, directly or through freely chosen representatives. (...) The will of the people shall be basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

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The right to vote became legally binding with its inclusion in the International Covenant on Civil and Political Rights (1966), which in Article 25 recognizes every citizen "the right and the opportunity, without discrimination (...) and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors (...)" .

However, there is a contradiction between the principle of universal vote and the recognition of the right and possibility of every citizen to vote without unreasonable restrictions. This discrepancy can be explained by the fact that when the Covenant was adopted, most of the state parties consider voting for persons belonging to groups or categories - including foreigners, children and minors, persons deprived of legal capacity or convicted criminals – that can be restricted and does not represent violation of universal vote

Regionally, the right to vote was included in the first Protocol to the European Convention on Human Rights and Fundamental Freedoms (1952), which, in Article 3, establishes to states the commitment "to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

In matters of the right to vote, also applies the European Union Charter of Fundamental Rights and the European Union treaties.

Articles 39-40 of the Charter of Fundamental Rights of the European Union (2000) guarantees to every citizen the right to vote at local and European Parliament elections in the Member State in which she or he resides, under the same conditions as nationals of that State.

The right to vote must be read together with Article 10 of the EU Treaty and Article 22 of the Treaty on the Functioning of the European Union.

As provided in Article 22 of the Treaty on the Functioning of the European Union, every citizen of the Union residing in a Member State which is not a national shall have the right to vote at municipal elections and at the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.

Therefore, the right to vote is legally protected by international and European instruments. According to general human rights law, the right to vote is not an absolute right, and in some cases, especially in the disability may be limited.

3. International and European instruments on the right to vote for persons with disabilities

Recommendation Rec (2006) 5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of persons with disabilities in society: Improving the quality of life of people with disabilities in Europe 2006-2015 saying, in the 1st action line, that participation of all citizens in political and public life and the democratic process is essential for the development of democratic societies. The document also recognizes that people with disabilities should have the opportunity to influence the destiny of their communities, therefore, it is important that they can exercise their right to vote.

Article 29 of the Convention on the Rights of Persons with Disabilities (2006) (CRPD) guarantees to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, states committing themselves to ensure that persons with disabilities have the right and opportunity to vote.

The right to vote is crucial to ensuring equal opportunities for persons with disabilities and their full and effective participation and inclusion in society. Through its exercise, persons with disabilities affirm their individual autonomy, including the freedom to make their own decisions, and the right to recognition as a person before the law.

As mentioned in letter a) of Article 29, persons with disabilities have not only the right but also the "opportunity" to vote and to be elected, the document setting out the obligation for States parties to ensure, through positive measures, that all persons have ability to effectively exercise the voting rights.

Therefore, it is not sufficient formal recognition of the right to vote of persons with disabilities; states also have an obligation to ensure that persons with disabilities are truly able to exercise their right to vote, by:

- Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
- Protecting the rights of persons with disabilities to vote by secret ballot without intimidation, to stand for elections, to effectively hold office and chose to perform all public functions at all levels of government, facilitating the use of assistive and new technologies, where appropriate;
- Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their choice;

European Disability Strategy 2010-2020: a renewed commitment to a barrier-free Europe, adopted comprehensive strategy to create, by 2020, a Europe without barriers for people with disabilities, aims to provide people with disabilities the ability to enjoy full rights and completely benefit from participation in European social and economic life. The strategy focuses on eliminating barriers, the Commission committed itself to take action on accessibility in voting to facilitate the exercise of electoral rights of EU citizens.

Recommendation Rec (2011) 14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life recommends continued efforts to achieve the goals set by the Action line no. 1 "Participation in political and public life" in the "Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society", the aim of which is to achieve full equality in participation in elections and representation of all members of society in decision-making bodies to ensure that the diversity of views and needs is taken into account in national, regional and local legislation and policy development in member states

To ensure the exercise of the right to vote, on an equal basis with others, states are obliged to adopt appropriate legislative measures to ensure:

a) Equal Rights and Opportunities, the removal of restrictions on legal capacity, the abolition of voting test, the introduction of relevant legal provisions, specific forms of assistance, awareness raising and funding, equal access to justice and legal protection in conditions of equality with others, in the event of infringement.

b) Accessibility of the environment, goods and services, procedures, rules, information and communication. The failure to guarantee accessibility through "universal design" and "reasonable accommodation" infringes the rights and dignity of persons with disabilities, and the principles of equality, non-discrimination and equality.

c) Non-discrimination in the exercise of legal capacity, supporting and providing, upon request, assistance needs of persons with disabilities in exercising their legal capacity in different aspects of life, especially when exercising the right to vote, which is a universal right.

d) Assistance in decision making and free choice by persons with disabilities if they need assistance in order to vote or express an opinion, by being able to be accompanied by a person of their choice. "Assistance" in this case means to help persons with disabilities to express their own will, and did not decide for them. If the journey towards to conventional voting sections is a major obstacle to political participation of persons with disabilities, States have the obligation to introduce alternative mechanisms to allow them to vote otherwise.

e). Education and training in democratic participation – combating stereotypes among all members of society is a task which should be tackled by means of training programmes and awareness-raising campaigns. Every person involved in activities related to the public about political or public life should receive training. Persons with disabilities themselves, children and adults, should gain confidence in themselves in order to carry out their own decisions and fulfil their potential and capacities in public and political life.

The revised interpretative Declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections (2011), which, in order to ensure disabled people the right to vote and participation in political and public life as elected representatives on an equal basis with others citizens, complement the principles of the previous 2002 Code.

Thus, universal suffrage ensure that people with disabilities cannot be discriminated against the exercise of their democratic rights, voting procedures and the facilities must be accessible and allow, when needed, providing assistance in voting, with the principle that the vote must be individual.

As regards the obligation to allow voters to know the list of candidates standing for elections, public authorities must ensure that the above information is available and accessible, to the greatest extent possible and taking due account of the principle of reasonable accommodation.

The right of persons with disabilities to vote by secret ballot should be protected, *inter alia*, by guaranteeing the free expression of their will as electors and to this end, where necessary, at their request, allowing them to use assistive technologies and/or to be assisted in voting by a person of their own choice, in conditions which ensure that the person chosen not exercise undue influence.

4. Main aspects of the effective realization of the right to vote of persons with disabilities in the European Union

Article 29 of the CRPD requires States Parties to ensure persons with disabilities equal and effective exercise of political rights, including the right to vote and to stand at the election. This provision does not provide any reasonable restriction, nor allow an exception for any group of persons with disabilities. Therefore, any exclusion or limitation of the right to vote on the basis of disability, psychosocial or intellectual perceived or real would be discrimination within the meaning of Article 2 of the CRPD.

However, as it shown in the studies elaborated by the Fundamental Rights Agency "The right to political participation of persons with mental health problems and people with mental retardation" and "The right to political Participation for persons with Disabilities: human rights indicators", in the case intellectual disability, limiting the right to vote has been argued that such a restriction is not based on disability itself, but rather the lack of legal capacity. Such an argument is in contradiction with the CRPD which recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life (art. 12, item 2), a provision which does not provide any exception, but require states to take all appropriate measures to ensure access by persons with disabilities to the support they may require in exercising their legal capacity (art. 12, pt. 3). Thus, the prohibition or restriction of legal capacity for mental or psychological disabilities is a violation of Article 12 of the CRPD.

Of all the European Union Member States that have ratified the CRPD, Malta is the only state that has raised reservation on Article 29 letter a), stating that it will

continue to apply its own electoral legislation that includes provisions for persons with disabilities who need assistance to vote in the voting booth in front of authorized workers, although the CRPD sets States the obligation to take all measures to ensure the exercise of political rights to all persons with disabilities, regardless of the type of deficiency and not setting any restriction in this respect.

Only seven of the 28 EU countries - Austria, Croatia, Italy, Latvia, the Netherlands, Sweden and the UK - guarantee the right to vote for all persons with disabilities, including those without legal capacity.

Other EU Member States have a system which evaluates the actual capacity of the individual to vote. In Hungary, the system in which all those under guardianship had no right to vote was changed, so that, judges decide whether persons with "limited mental abilities" are allowed to vote. In Slovenia, the legal test of judges to decide whether to restrict the right to vote monitors whether the persons with disabilities is able to understand the meaning, purpose and effect of the elections.

EU member states such as Belgium, Bulgaria, Cyprus, Denmark, Estonia, Germany, Greece, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania and Slovakia prohibit voting by persons with disabilities without legal capacity. This exclusion is being established in the constitutions or in the electoral law.

One other aspect that deserves to be discussed is that relating to the obligation imposed by some EU Member States to potential voters to register before voting requirement can hinder political participation of persons with disabilities, where registration procedures the vote is not accessible.

In more than half of the EU countries (15), registering to vote is automatic for all voters. Several of these states provide specific provisions for persons with disabilities who want support or assistance in voting, to request reasonable accommodation long before the day of the election. In Bulgaria, for example, persons who cannot vote at polling stations for reasons associated with disability must request permission for mobile voting within 30 days before the election day, while in Poland, voters, persons with disabilities can change the place of voting with an accessible polling station, in which case shall notify authorities at least 14 days before voting.

Although most of the people express their votes at polling stations, there are other methods of voting, such as postal voting, e-voting or voting by proxy, alternative voting means that may be available to all voters or either designed to allow those who otherwise could not get to a polling station to vote on election day, for example due to lack of place of residence, illness, or disability.

In eight Member States, Austria, Denmark, Estonia, Finland, Germany, Lithuania, the Netherlands and the UK, all voters can vote using the alternative vote by correspondence. In the Netherlands and the UK, proxy voting is permitted, but not for more than two proxy votes.

In a second group, comprising nearly half (13) of EU Member States, alternatives are available to vote at the polling station only to persons with disabilities or health problems, the most common measure for voting is permitted at residence of the voter in the presence of election officials. In Ireland, Luxembourg and Poland, however, postal voting is available to persons whose disability or health problems prevent them from the access to a polling station, while proxy voting is an opportunity for such persons in Poland and Sweden.

In Cyprus, Greece and Portugal, votes may be expressed only in polling stations.

A particular problem arises when persons with disabilities in institutions hosted in the long term, although the CRPD states their right to live in the community (art. 19). Having the right to enjoy political participation on an equal basis with others, persons with disabilities face a number of problems in exercising it, access to a polling station is difficult, either because institutions are located in remote areas or because of the lack of accessibility means of transport or because residents cannot leave the institution without assistance. Thus, under these conditions, ensuring the right to vote involves providing alternative forms of voting, setting up voting booths or allowing mobile ballot boxes to be made to institutions. Such measures should take into account the importance of ensuring secrecy of the vote and ensure that people with disabilities can make a free choice without undue influence from others.

Eighteen EU member states have specific legislation governing how people living in long-term institutions can vote. In Austria, Bulgaria, Finland, France, Germany and Poland, the law provides for polling stations to be set up in institutions that host long-

term persons with disabilities. In Italy, in order to establish a polling station in a residential institution must have at least 200 beds.

In other countries such as Hungary, Latvia, Lithuania, Slovakia and Slovenia, the opening of a polling station in long-term institutions require an individual application or notification in advance, which could act as a barrier to the exercise of voting rights.

In Denmark, Luxembourg, Netherlands, Romania, Spain, Sweden and the UK in long-term institutions are used general measures on alternative forms of voting. Mobile polling stations are not provided in these countries except Romania, where the mobile box can be provided for national elections where a person requests medical reasons is unable to provide transportation to a polling station, but the request must be approved by the chairman of the electoral area. In Belgium, Cyprus and Greece there is no legislation to establish how the long-term living in institutions can exercise their right to vote.

Regarding the right to stand and be elected, as in the case of the right to vote, in many countries it continues to be linked to the legal capacity of person. In some cases, a person under guardianship can be a candidate in the elections, even though she or he may exercise the right to vote. In France, for example, persons under guardianship enjoy, in principle, the full recognition of the right to vote, but cannot hold any elective.

Only a limited number of countries people with intellectual or mental disabilities can participate as candidates in elections on an equal basis with others. For example, in the UK, there are no restrictions on the rights of persons with disabilities to stand for the election..

5. The right to vote of persons with disabilities in Romania

The Romanian Constitution guarantees, according to art. 36, the equal rights of all Romanian citizens without discrimination and privilege and states that are entitled to vote all Romanian citizens who have reached the age of 18, except debilitated or mentally insane, laid under interdiction, and persons convicted by court final judgment, to the loss of electoral rights. The Constitution also provides that Romanian citizens with the right to vote, residing in the country, may be elected, unless they are forbidden to join political parties.

According to the electoral law in Romania state ensures equal conditions for exercising the right to vote. The Romanian electoral law allows only the direct exercise of the right to vote or assisted exercise but not voting by representatives. Thus, the voters have the opportunity to go themselves at the polling station to which they belong, establishing a series of requirements to ensure suitable conditions for exercise of voting rights:

- in establishing of polling stations will be considered especially spaces at ground floor;
- for access to persons with disabilities who intend to exercise their right to vote, it is setting up special ramps;
- in addition to standard cabins calculated for a polling station it is recommended making and placing a voting booths for persons with disabilities, sized and marked.

In the polling station, voters who, for good reasons, are found by the chairman of the electoral office of the polling station that cannot vote by themselves, has the right to call in the voting booth an attendant of his choice to help them, which cannot be from among the observers and members of the electoral office of the polling station.

For voters who cannot be transported because of their illness or invalidity, the chairman of the electoral office of the polling station may approve, at their written request, together with the copies of medical documents or other official documents showing that the persons concerned are not transportable, that the team of at least two members of the electoral office to move with a special box and with the necessary materials for voting to the location of the voters, to vote. In the radius of a polling station is used only one single special box which can be transported only by the electoral office members of the polling station and move only within the area subordinated to that polling station.

6. Conclusions and recommendations

CRPD heralds a new era for political participation of persons with disabilities imposing an obligation to ensure to the persons with disabilities political rights and the possibility that they can exercise this rights on an equal basis with others.

In many countries, persons with disabilities continue to face physical and communication barriers, with inaccessible polling stations, the lack of information in accessible formats that prevent or limit their equal and effective participation in

conducting public affairs. Much more needs to be done to ensure equal and effective access to the political rights by all persons with disabilities, measures could be envisaged:

- Elimination of legal and administrative barriers: Disability Action Plans should address how to promote voting participation of persons with disabilities, including changing laws that deprive these persons of their right to vote because of disability; introduction of alternative forms of voting for institutionalized persons and accessibility of complaint mechanisms on voting;
- A political participation more accessible, meaning that polling stations should meet the needs of all persons with disabilities, not just those with physically impairments. Information about the election and the campaign materials should be available in a variety of accessible formats - Braille, sign language, readable formats etc.
- To increase voting participation, meaning that should be promoted opportunities for the participation of persons with disabilities to public consultation by using accessible forms of communication or by providing additional support where necessary.
- Raising awareness of rights - officials involved in elections, political parties, public authorities and the media need training and guidance on how to meet the needs of persons with disabilities. Also, organizations of persons with disabilities should receive support to implement awareness programs among their members about the importance of voting.
- Data collection to measure voter participation, reliable and comparable data at EU and Member States to be used for the formulation of targeted measures that will the vote of persons with disabilities.

There are needed to be developed alternative ways of voting that allow persons with disabilities to vote in public, preferably without assistance, thus ensuring secrecy of the vote.

They should always be assessed in relation to the general obligation to include people with disabilities in all aspects of society, promoting independence, autonomy and dignity, to be used only in cases where it is not possible, or is extremely difficult, for people with disabilities to vote in polling stations, like everyone else, because the general dependence on voting assistance and alternative voting are not consistent with

the general obligations undertaken by States Parties under Articles 4 and 29 of the CRPD..

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