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THE LEGAL STATUS OF ELECTORAL COMMISSIONERS – SELECTED ISSUES

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Summary. Legislative changes taking place in the Polish legal order call for an analysis of the amended regulations, particularly in the areas directly related to implementation of fundamental civil rights and individual liberties. Undoubtedly, such is the nature of regulatory policies governing the rules which define how persons eligible to vote can exercise their electoral rights. Thus, it is hardly surprising that the changes which have been recently introduced into provisions of the act from 5 January 2011 – Election Code, arouse the interest of the theory of law, mass media, as well as citizens.

Keywords: electoral commissioner; Election Code; electoral rights; election administration.

Status prawny komisarzy wyborczych – wybrane zagadnienia. Zmiany legislacyjne zachodzące w polskim porządku prawnym wymagają analizy nowo przyjętych re-

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gulacji, szczególnie w obszarach bezpośrednio związanych z wdrażaniem podstawowych praw obywatelskich i wolności osobistych. Niewątpliwie taki charakter mają regulacje określające zasady, w jaki sposób osoby uprawnione do głosowania mogą wykonywać swoje prawa wyborcze. Nic więc dziwnego, że zmiany, które niedawno wprowadzono do przepisów ustawy z 5 stycznia 2011 r. – Kodeks wyborczy, budzą zainteresowanie zarówno przedstawiceli doktryny, środków masowego przekazu, jak i obywateli.

Słowa kluczowe: komisarz wyborczy; Kodeks wyborczy; prawa wyborcze; administracja wyborcza.

1. INTRODUCTION

Legislative changes taking place in the Polish legal order call for an analysis of the amended regulations, particularly in the areas directly related to implementation of fundamental civil rights and individual liberties. Undoubtedly, such is the nature of regulatory policies governing the rules which define how persons eligible to vote can exercise their electoral rights. Thus, it is hardly surprising that the changes which have been recently introduced into provisions of the act from 5 January 2011 – Election Code, arouse the interest of the theory of law, mass media, as well as citizens¹. This is caused by the fact that it is a regulation whose formulation impacts the direct powers of citizens living both in our country and abroad, and, indirectly, also the system of political power in the state². The interest in the amendment introduced by the act from 11 January 2018 on amending certain acts in order to increase the citizens' participation in the process of electing, functioning of and supervising some public authorities³ was particularly high due to the political context, real or not, in which the amendments introduced by the aforementioned act had been presented⁴.

¹ Act from 5 January 2011 – Election Code (i.e. Journal of Laws from 2017, item 15) – hereinafter referred to as the Election Code, Code or E.C.

² On the genesis and structure of the Election Code – see I. Wróblewska, *Podstawowe zasady prawa wyborczego*, [in:] *Prawo konstytucyjne*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2015, p. 198.

³ Journal of Laws, item 130.

⁴ Changes in legal regulations shaping the electoral law in Poland were aptly exposed in 2015 by Z. Witkowski, who placed „the appropriation of the electoral law by political parties and a far-reaching instrumentalization of electoral law by politicians” among „the seven deadly sins of the Polish political class, committed against voters, elections and electoral law” see: Z. Witkowski, *Siedem grzechów głównych polskiej klasy politycznej wobec wyborców, wyborów i prawa wyborczego*, [in:] *Wokół wyborów i prawa wyborczego. Wykłady im. Prof. Dr. Wacława Komarnickiego*, eds. Z. Witkowski, A. Frydrych-Depka, P. Rażny, Toruń 2018, p. 206.

In terms of quantity the changes introduced by the act from 11 January 2018 focused to the greatest extent on the amending of the act on Electoral Code and it is these changes that we would like to concentrate on in the present study. However, the object of further reflections will only be a fragment of the amended legal regulation, namely the provisions which form the status of electoral commissioners. Nevertheless, focusing solely on the amending provisions would not allow to present and explain the role played by this authority in electoral processes which takes place periodically in Polish democracy. Hence, further reflections have been devoted to the presentation of the legal status of electoral commissioners within the context of legal regulations changed as a result of the January's amendment.

The basic legal regulations shaping the legal status of electoral commissioners have been included in section 2 of the Election Code, „Election authorities”, in chapter 3 entitled: „Electoral commissioners”⁵. Even a cursory analysis of this chapter leads to a conclusion that the legislative level of its content is low. It is a chapter full of glaring inconsistencies in legal regulations, irregularities in formulation of references and term usage, demonstrating incompleteness of regulatory framework of institutions regulated therein (legal loopholes). The aforementioned comments do not speak well of the project promoters; however, they will not always lead to problems in the application of particular provisions, although in some cases surely the regulations included in this part of the act require further clarification from the legislator.

2. THE POSITION OF ELECTORAL COMMISSIONERS IN THE SYSTEM

It is difficult to unambiguously determine the legal status of electoral commissioners on the basis of the Election Code's provisions. This is caused by a quite an inconsistent regulation included in the Code. Provisions of the act show that implementation of tasks related to holding of elections has been entrusted to specialized electoral authorities responsible for the proper course thereof. The Code stipulates directly that both the National Electoral Commission⁶ and electoral commissioners are regular electoral authorities (art. 152, section 1 E.C.). However, at the same time art. 166, section 1 E.C. specifies that an

⁵ It should be noted that as a result of the January's amendment of the Election Code, the title of this chapter has been changed. Originally, it read: „Electoral commissioner”.

⁶ Hereinafter referred to as NEC.

electoral commissioner is a plenipotentiary of the National Electoral Commission, appointed for the area of a voivodeship or a part thereof. Using the term „plenipotentiary”, which should be associated rather with the sphere of private law, in this provision, blurs quite a clear image emerging from the analysis of tasks and competencies of electoral commissioners determined in the Code, for it is difficult to decode what the work of a NEC’s plenipotentiary should consist in. It seems that if the legislator’s intention was to provide a statutory authorization of the electoral commissioner to act on behalf of the NEG, then the terms used should rather be „authorization” or „representation in the field” – structures deep-seated in public law regulations⁷.

A detailed analysis of code regulations and, in particular, provisions shaping the electoral commissioners’ scope of activity leads to a conclusion that on the one hand the electoral commissioner has a status of a regular, independent electoral authority, as stipulated by art. 152, section 1 E.C., e.g. the electoral commissioner acts in this capacity when appointing territorial electoral commissions, while on the other hand he or she acts on behalf of the NEC under the authorization resulting from statutory regulations, e.g. performing other actions ordered by the NEC. Hence the NEC has a significant impact on the electoral commissioners’ scope of activity, and, in particular, the performance of tasks entrusted to them. It identifies the electoral commissioners’ *ratione materiae*, also with regard to the performance of voivodeship-wide activities, including tasks related to self-government elections, determining summary results of council and voivod elections conducted on the territory of a voivodeship and announcing them in a manner provided for in the Code, as well as submitting reports on the process of elections conducted on the territory of a voivodeship, together with the results thereof, to the NEC, as well as the

⁷ This emphasized terminological inconsistency is also noted in the theory. For example, A. Kisielewicz emphasizes: „The code regulations determining the tasks and competencies of the electoral commissioner show that the electoral commissioner does not have the status of the National Electoral Commission’s plenipotentiary in a legal (civil law) sense. The term has little in common with a plenipotentiary in the proper sense of the word, for the electoral commissioner is not an entity acting on behalf of the National Electoral Commission in the sense that his or her actions have a direct impact on the Commission. Besides, the primary source of the electoral commissioner’s authority is the law and not the „will” of the National Electoral Commission, although the electoral commissioner also conducts actions „ordered” by the NEC. Hence, the electoral commissioner is an authority – a body governed by the electoral law, carrying out tasks and powers assigned thereto on his or her own behalf and calling the electoral commissioner a plenipotentiary of the National Electoral Commission probably aims to underline their dependency on the Commission” (A. Kisielewicz, *Kodeks wyborczy. Komentarz*, eLex 2014, A commentary on art. 166 thesis 2).

electoral commissioners' territorial competence and the seat thereof (art. 166, section 2 E.C.).

Undoubtedly, provisions of the Election Code introduce a hierarchy of the electoral authorities, subordinating electoral commissioners to the NEC. According to art. 161, section 1 E.C. electoral commissioners are bound by guidelines issued by the NEC. Furthermore, the NEC handles complaints made against the work of electoral commissioners (art. 160, section 1, clause 5 E.C.). The latter are also obliged to conduct activities ordered by the NEC. As far as organizational hierarchy is concerned, the NEC has statutory competencies to define the rules of procedure for electoral commissioners, determining in particular: rules and mode of work, procedure for task performance, as well as the way compliance with electoral law is monitored (art. 160, section 4 E.C.). Nevertheless, they are not bound with the NEC by an employment relationship.

Apart from the ties and dependencies formed in such a way and existing between the NEC and electoral commissioners, the latter have a number of statutory, independent competencies, which is crucial in terms of defining them as electoral authorities. Since a detailed analysis of tasks and competencies has been included in the further part of the study, it will not be discussed in this section.

When defining the status of electoral commissioners, what should also be emphasized is their status as public officers. However, the regulation itself, determining the consequences of such a classification deserves some criticism, since the legislator, instead of defining the electoral commissioner directly as a public officer, which would automatically provide electoral commissioners with legal protection, does so in a quite an unfortunate manner, equalizing this authority both in terms of liability and protection, with public officers. According to art. 154, section 5 E.C. electoral commissioners, members of the NEC, district, regional and territorial electoral commissions as well as electoral officials enjoy legal protection provided for public officers and are liable as public officers. Literal wording of this provision suggests that it is a regulation which merely extends the scope of protection and liability provided for public officers to the group of individuals covered by this regulation, without classifying them into this category at the same time. However, given the legal status of individuals mentioned in this provision, they should undoubtedly be granted the status of public officers.

In financial terms, the Code makes the work of electoral commissioners conditional on the state budget, since according to art. 124, section 1, clause 2 E.C. the tasks of electoral commissioners are financed from the state budget. Electoral commissioners are entitled to monthly remuneration equal to the remuneration of a NEC member (art. 166, section 6 E.C.), as well as to daily allowances and

reimbursement of travel and accommodation costs (art. 154, section 1, clause 1 in relation to art. 154, section 3a E.C.).

Services for electoral commissioners, in turn, are provided by the Central Electoral Office (art. 187, section 1 E.C.) being in its essentials, as stipulated in the theory, „an electoral institution acting as an instrument supporting the electoral administration”⁸, i.e. an office providing, in fact, services for electoral authorities⁹.

3. APPOINTING, REPLACING AND DISMISSING THE ELECTORAL COMMISSIONER, EXPIRATION OF TERM OF OFFICE

Rules for appointing electoral commissioners are regulated by provisions of the Election Code in art. 166. In this provision the legislator has specified the authority competent to appoint electoral commissioners, the number of electoral commissioners, appointment procedure, as well as criteria which a candidate for an electoral commissioner needs to meet.

First of all, provisions of the Code establish the number of electoral commissioners at 100. It is a number determined in a way which unambiguously binds the authority competent to appoint the officials.

In provisions of the Election Code the legislator determines the criteria which the candidates for electoral commissioners need to meet. According to art. 166, section 3 E.C., electoral commissioners are appointed from among candidates with higher legal education who guarantee that the position of the electoral commissioner will be held in a proper way. According to the provision, these are the two prerequisites for being a candidate for an electoral commissioner. Thus, they will be examined by authorities competent to conduct the appointment procedure. Furthermore, the legislator also determines additional criteria which the electoral commissioner has to meet in section 4 and 5 E.C. According to these provisions, the electoral commissioner cannot be a member of a political party or conduct public activity which cannot be combined with the position held. Moreover, the electoral commissioner cannot be a person convicted by a valid judgment for an intentional, indictable offence or an intentional tax offence. Can-

⁸ A. Sokala, *Krajowe Biuro Wyborcze*, [in:] *Leksykon prawa wyborczego i referendalnego oraz systemów wyborczych*, A. Sokala, B. Michalak, P. Uziębło, Warszawa 2013, p. 110. On doubts related to the legal nature of the Central Electoral Office, see: A. Sokala, *Administracja wyborcza w obowiązującym prawie polskim*, Toruń 2010, p. 224.

⁹ See: A. Sokala, *Administracja wyborcza w obowiązującym...*, p. 226; B. Banaszak, *Kodeks wyborczy. Komentarz*, Warszawa 2014, p. 323.

didates running in elections, electoral plenipotentiaries, financial plenipotentiaries, trusted representatives, electoral officials, as well as members of electoral commissions are also excluded. These prerequisites are also assessed at the stage of running for the position of an electoral commissioner. However, in view of the fact that the prerequisites determined in section 4 and 5 of art. 166 E.C. can also be present following the appointment of an electoral commissioner, according to art. 166, section 7 E.C., they form the grounds for expiration of term of office.

The regulations mentioned above are to ensure that the position of the electoral commissioner will be held by individuals with relevant professional qualifications in the scope of implementation of statutory tasks, determined mainly by provisions of the Election Code, as well as to ensure the independence of electoral commissioners' work, mainly from political factors. To this end, the Code has been extended by provisions regulating the „no dual mandate” rule, prohibiting individuals from combining the position of the electoral commissioner with other roles related to elections. They also guarantee that these positions will not be held by individuals convicted by a valid judgment for an intentional, indictable offence or an intentional tax offence, which clearly eliminates any possible discordance that could occur between the position and a flaw in the impeccable character (or rather a lack thereof) of the person who holds it, following the commissioner's conviction¹⁰.

An authority competent to conduct the appointment is the NEC. However, for the commissioners to be appointed, the NEC needs to cooperate with the minister in charge of internal affairs, since according to provisions of the Code, appointment of electoral commissioners cannot be the result of the NEC's own initiative, but only the minister's motion¹¹. However, the NEC is not bound by the motion of the minister in charge of internal affairs in this scope. According to section 3a of art. 166 E.C., in the case of justified concerns regarding candidates for electoral commissioners nominated under the aforementioned procedure, the NEC shall immediately inform the minister about the fact. Under such circumstances, however, the minister shall nominate new candidates. In essence, the use of the term „new candidates” in the provision of art. 166, section 3a E.C. does

¹⁰ Prior to the January's amendment of the Election Code, the position of the electoral commissioner could be held by a judge or a judge emeritus, both of a common and administrative court. The change introduced by the amendment from 11 January 2018 is fundamental, since it extends the possibility to hold this position to individuals outside of the judicial community. Of course, this does not exclude the possibility of appointing a judge to the position of the commissioner. Practice will show whether the new solution will have an impact on the quality of elections.

¹¹ Hereupon, see: A. Sokala, *Administracja wyborcza w polskim kodeksie wyborczym*, [in:] *Kodeks wyborczy. Wstępna ocena*, ed. K. Skotnicki, Warszawa 2011, p. 145.

not allow the minister in charge of internal affairs to nominate the same candidates to whom the NEC had previously raised objections again. Some doubts might be raised with regard to the qualifier concerning the objections, which appears in the provision, since according to the regulation the NEC may act on the basis of section 3a art. 166 E.C. in the case of justified concerns. The error of this regulation, in turn, is the lack of further clarification regarding the aspects of individual nominations which the „justified concerns” should refer to. It seems that the NEC’s right to formulate objections in this case has been indirectly limited by the legislator to legal prerequisites for the appointment of electoral commissioners, in particular the ones defined by the provisions of the Election Code. Categorization of objections by the use of the term „justified concerns”, without a detailed definition of the nature thereof, could result in conflicts between the minister and the NEC, should the minister in charge of internal affairs deem the concerns to be of a different nature, since according to the provision of art. 166, section 3a E.C., the obligation to nominate new candidates is binding upon the minister solely if the NEC’s concern meet the criterion of „justified concerns”, which, in view of the currently applicable regulation, ought to be considered as a fuzzy term.

Of course, the nomination of new candidates by the minister in charge of internal affairs does not prevent the procedure regulated by art. 166, section 3a E.C. from being repeated, since the new candidates can still raise the NEC’s justified concerns. In such a case the NEC should immediately inform the minister about the fact.

In view of the fact that the NEC is a collegial body, the proper form for the appointment of electoral commissioners is the form of a resolution. Resolutions concerning appointments should be adopted in a manner regulated by art. 161, section 4 E.C., i.e. by a majority of votes in the presence of at least 2/3 of the full Commission, including its chairperson or one of his or her deputies, at a public session. The lack of further clarification concerning the type of voting majority by which the NEC’s resolutions ought to be adopted, should be treated as a minor legislative mistake. However, in the case of such a regulation it should be assumed that in art. 161, section 4 E.C. the legislator has the simple majority of votes in mind. Appointment is an individual act, hence the NEC’s resolutions should be adopted with regard to the appointment of specific electoral commissioners. The content of the resolution is determined by the regulation included in art. 166, section 2 E.C., which the legislator refers to in section 3, as well as in the section 3 itself. According to the same regulations, the resolution should, among other things, identify the data allowing for an individualization of the appointed candidate, determine the term which the candidate is appointed for, specify the

ratione materiae of the appointed commissioner, also with regard to the performance of voivodeship-wide activities, including tasks related to self-government elections and tasks referred to in art. 167, section 1, clause 8 and 9 E.C.¹², as well as the electoral commissioner's territorial competence and the seat thereof. Since the appointment act includes the administering of powers to hold a public office, it should be classified as an individual administrative act adopted in the sphere of external activities of administration, i.e. an act being an administrative decision in its nature. Thus, it seems reasonable to apply the provisions of the act – The Code of Administrative Proceedings¹³ when issuing it, which results from art. 1, clause 1 and 2 CAP, with all the resulting consequences, in particular with regard to its delivery, form, content and legal remedies the addressee of the act is entitled to.

Electoral commissioners are appointed for a 5-year term. According to the second statement of section 3, art. 166 E.C., the same individual can be reappointed to the position of the commissioner. Such a wording may raise doubts as to the interpretation of the statement, i.e. the determination of whether the 5-year term may be repeated only once or the legislator does not impose any limitations concerning the number of repeated terms in this respect. The doubts related to the content of this provision result from the fact that silence on the subject of introduction of legal limitations with regard to being reappointed for the term, means a lack thereof. However, it seems that the content of the quoted provision does not create such restrictions. Therefore, the second statement of art. 166, section 3 E.C. should be interpreted directly as allowing for a possibility to reappoint an individual who had previously held the position of the electoral commissioner. Nevertheless, it seems that in this case, too, the legislative technique applied is unfortunate, since the legislator would have achieved the same result, while not raising doubts as to the interpretation, had the second statement in the aforementioned article been left out.

The Election Code also regulates the expiration of term of the electoral commissioner's office. However, in the case of this mechanism the legislator focuses on the determination of prerequisites which justify such an expiration, while – which ought to be perceived as a significant legislative mistake – completely

¹² According to art. 167, section 1, clause 8 and 9, the electoral commissioner's tasks include: 8) determining summary results of council and voiv elections conducted on the territory of a voivodeship and announcing them in a manner provided for in the Election Code; 9) submitting reports on the process of elections conducted on the territory of a voivodeship, together with the results thereof to the National Election Commission.

¹³ Act from 14 June 1960 – Code of Administrative Proceedings (i.e. Journal of Laws. from 2017, item 1257). – hereinafter referred to as the CPA.

ignoring the process aspects related to the application thereof. According to section 7, art. 166 E.C. the role of electoral commissioner expires in the case of: resignation from the position¹⁴; death; signing of a consent to be nominated to an electoral commission, standing as a candidate in elections or accepting the role of an electoral plenipotentiary, financial plenipotentiary, trusted representative, electoral official referred to in section 4 (i.e. joining a political party, conducting public activity which cannot be reconciled with the role held, being convicted by a valid judgment for an intentional, indictable offence or an intentional tax offence); being dismissed.

A regulation put in such a form deserves some criticism. First of all, the legislator uses erroneous terms in the regulation which shapes the grounds for expiration. It is difficult to accept a regulation, according to which the role of the electoral commissioner expires, since it is to be treated as an abstract set of rights and obligations shaped by the provisions of the Election Code and other legal regulations, in isolation from the specific individual appointed to the position. Therefore, it lasts whether there is a person appointed to hold the position in a given moment or not. Should the prerequisites determined by the provision occur, what can be established is the expiration of appointment of a specific individual to the position of electoral commissioner, and not the expiration of the role itself. Furthermore, the catalogue of prerequisites justifying the „expiration of the role”, determined in this provision, in particular within the context of differentiation between the institution of „expiration” and „dismissal”, raises some doubts, since the legislator seems to combine these two institutions which are consequently differentiated in the provisions of system administrative law. According to art. 166, section 7, clause 5 E.C. „the role of the electoral commissioner expires in the case of his or her dismissal”. Apart from the incompleteness of the provision formulated in such a way (it seems necessary to further clarify who does the dismissal provided for in this provision concern), it is to be emphasized that introducing such a structure is futile and raises serious doubts. Dismissal (of an electoral commissioner) and expiration (of an appointment) ought to be treated on the basis of the Election Code provisions as two separate legal institutions, since expiration should be connected with prerequisites justifying the confirmation of incapacity (including loss of qualifications) to fulfill the duties of an electoral commissioner and thus constitute an institution the application of which ought to be effective *ex tunc* – from the moment the reason for expiration occurs. Dismissal, on the other hand, in view of the nature of prerequisites justifying the application thereof, ought

¹⁴ More on resignation from the position, see: B. Banaszak, op. cit., p. 291.

to be effective *ex nunc* – from the moment the NEC makes a decision in this respect.

When referring to the catalogue of reasons for the „role expiration”, it is to be emphasized that with regard to the specification included in section 7, art. 166 E.C., the legislator combines the prerequisites justifying its application with the ones which should justify the commissioner’s dismissal¹⁵. The prerequisites which justify expiration include death, signing of a consent to be nominated to an electoral commission, standing as a candidate in elections or accepting the role of an electoral plenipotentiary, financial plenipotentiary, trusted representative, electoral official, joining a political party or being convicted by a valid judgment for an intentional, indictable offence or an intentional tax offence. A significant deficiency of the currently applicable regulation is also the fact that it does not regulate the procedure for the establishment of expiration; neither does it determine the authority and decisions which ought to be made in this respect. The significance of legal effects of expiration poses an obligation to determine the moment when these effects take place in an unambiguous way. Hence, it seems reasonable to call for an amendment of this legal regulation, by adding provisions which would pass the competencies to adopt a resolution in this respect to the NEC.

According to the applicable regulation, the NEC can dismiss an electoral commissioner prior to the lapse of the period he or she was appointed for, in the case of non-performance or improper performance of the duties of the electoral commissioner. In terms of the nature of these prerequisites it seems that they are relative and include elements of an assessment. Hence, excluding them from the catalogue of prerequisites which justify the „expiration of the role” ought to be perceived in a positive way. However, the catalogue should be also enriched by prerequisites which currently justify the „expiration of the role”, namely, the prerequisite regarding the conducting of public activity which cannot be reconciled with the role held (since it also includes elements of an assessment), as well as the prerequisite concerning resignation from the position (since it would be necessary for the NEC to make a decision whether or not to release the individual resigning from the position from the duties entrusted to him or her upon appointment). In the case of a dismissal, which is a decision having effects for the future (*ex nunc*), the authority competent to make the decision is the NEC, which ought to adopt a resolution in this case, as per art. 161, section 3 and E.C. The resolution in this case, in view of its nature, should be classified similarly to the resolution on the appointment of electoral commissioners, with all the consequences regarding the possibility to access legal remedies therefrom.

¹⁵ A. Sokala, *Administracja wyborcza w polskim kodeksie...*, p. 146.

Applying the instrument of „expiration of the role”, as well as the commissioner’s dismissal, justifies initiation of proceedings with regard to the appointment of an electoral commissioner. According to section 9, art. 166 E.C., the appointment takes place in a manner and pursuant to rules determined in section 3, i.e. in an ordinary manner for the appointment of electoral commissioners.

The provisions of the Election Code also regulate the institution of the electoral commissioner’s deputy. According to art. 166, section 10, E.C., the NEC can entrust this position in case of the electoral commissioner’s temporary inability to fulfill his or her duties. The decision concerning the appointment of a deputy is temporary and provided for the time when the electoral commissioner is unable to fulfill his or her duties. The legislator specifies that the role can be entrusted to another electoral commissioner or another person who can ensure that the electoral activities are conducted in a reliable way. Also this form of the regulation deserves some criticism. If the intention of the legislator was to create the possibility to appoint a temporary deputy from outside the circle of electoral commissioners, then it seems reasonable to supplement the prerequisite of „ensuring that the electoral activities are conducted in a reliable way” with a reference to the criteria conditioning the appointment thereof, regulated in section 3, art. 166 E.C. (higher legal education), as well as a reference to restrictions shaped by the regulation included in section 4, section 5 and section 7 of art. 166 E.C. The warranty of „conducting the electoral activities in a reliable way” cannot be, indeed, treated as covering negative or positive prerequisites regulated in these provisions in each case. Also in the scope of entrusting the role of the electoral commissioner to another person for a temporary period, the NEC ought to undertake actions pursuant to art. 161, section 3 and 4 E.C.¹⁶

Analysis of provisions regulating the rules for the appointment, dismissal, expiration of term of office and entrusting the role for a temporary period to another person in the place of the electoral commissioner leads to a conclusion that the regulation proposed in the currently applicable legal situation requires an intervention from the legislator in view of the legal loopholes and ambiguities, as well as a significant institutional inconsistency. It is a legal regulation characterized by a low legislative level.

¹⁶ Currently the aforementioned issue is regulated by the NEC’s resolution from 7 May 2018 on the entrusting of the electoral commissioner’s position in case of a temporary inability to fulfill this role.

4. THE TASKS OF THE ELECTORAL COMMISSIONER

The tasks of the electoral commissioner, as already mentioned in the analysis of this authority's system position, are diversified. They include statutory tasks of this authority, carried out independently from the NEC, as well as the ones he or she fulfills as a „plenipotentiary” (or rather on behalf) of this body.

The basic catalogue of actions which the electoral commissioners have been appointed to conduct has been regulated directly in art. 167 E.C. However, the specification thereof takes place in a number of provisions of the Election Code, as well as non-code regulations.

Transparency of analysis of this authority's tasks and competencies requires an introduction of a breakdown structure which would be as clear as possible, as well as, it seems, a chronology of events accompanying the electoral activities conducted. However, it is to be emphasized that the tasks of the electoral commissioner include both the ones conducted throughout the whole electoral cycle and its particular stages. The latter include tasks specific to the preparation of elections, activities conducted in the course of elections, as well as tasks following the end of the electoral process¹⁷.

Undoubtedly, the Code classifies commissioners directly to the electoral authorities having supervision over elections. In the scope mentioned above it is not a system supervision, yet the supervisory roles fulfilled by the commissioners ought to be included in the category of a particular type of supervision conducted under substantive law. This means that electoral commissioners monitor compliance with electoral law (art. 167, section 1, clause 1 E.C.). In this respect their duty is to ensure, in cooperation with self-government units and electoral officials, the organization of council elections on the territory of a voivodeship (art. 167, section 1, clause 2 E.C.) and provide explanations, as need may be, to territorial and regional electoral commissions and electoral officials (art. 167, section 1, clause 7 E.C.). In this last respect, to make the implementation of elections-related tasks easier, the electoral commissioners have become the superiors of electoral officials (art. 167, section 2a E.C.). With regard to electoral officials (new institution introduced by the amendment of the Election Code, mentioned in the introduction), electoral commissioners have a duty to determine the detailed subject scope and frequency of trainings (art. 191h E.C.).

It is to be noted that the Code does not provide for a closed catalogue of tasks of electoral commissioners, since they can carry out other activities pro-

¹⁷ On the diversity of electoral commissioners' tasks, see. A. Sokala, *Administracja wyborcza w obowiązującym...*, p. 121.

vided for in specific acts or tasks ordered by the NEC (art. 167, section 1, clause 10 E.C.). Also worth emphasizing in this regard are the guidelines of the NEC which are considered to be executive regulations „*sui generis*”¹⁸.

A new task¹⁹ for electoral commissioners is to create and change voting districts, in particular to determine their numbers, borders and seats of regional electoral commissions (art. 167, section 1, clause 3b E.C.) and to divide municipalities, districts and voivodeships, respectively, into constituencies, determine their borders, numbers, number of councillors elected in each constituency, in the self-government elections (art. 167, section 1, clause 3d E.C.).

Another task related directly to the holding of elections is to appoint territorial and regional electoral commissions and dissolve them in self-government elections after they have completed their statutory tasks (art. 167, section 1, clause 3 and 3a E.C.), as well as to inform the public of the composition of the territorial electoral commissions appointed on the territory of a voivodeship (art. 167, section 1, clause 6 E.C.).

As part of their technical duties related to the holding of self-government elections, electoral commissioners still order the printing of voting cards and ensure they are handed over to the proper electoral commissions (art. 167, section 1, clause 3c E.C.).

Among the activities related to the establishment of eligibility for voting, the duties of commissioners include to inspect, in the scope determined by the NEC, whether the registers of voters are made correctly (167, section 1 1, clause 5c E.C.).

The commissioners also accept notifications from disabled voters concerning the wish to vote by correspondence (art. 53d E.C.) made orally, in writing, by telefax or e-mail, which they then hand over to a relevant elector official.

Electoral commissioners have also been entrusted with a number of informative tasks. These include, e.g. informing the voters in permanent voting districts, in the form of an unaddressed document placed in letter-boxes, about the date and time of elections, voting method and conditions for the validity of a vote in the given elections, as well as of the possibility for disabled voters to vote by correspondence and by a proxy (art. 37d E.C.). The commissioners also ensure that the public has the information, which they post in an easily accessible place at the entry to the polling station, allowing the voters to reach the polling station of a relevant regional electoral commission competent for the holding of elections

¹⁸ Order of the Supreme Court from 21 October 2000 (III SW 74/00), OSNAPiUS 2001, No 3, item 96.

¹⁹ From 1 January 2019.

in the region in the case when elections had been held in this polling station for the period of 5 years preceding the date of elections and on the elections day the voting is not held or a regional electoral commission competent for the holding of elections in the region and having authority over a constituency with revised borders has a seat there. Furthermore, informative tasks also include the publishing of information concerning notifications regarding the established electoral committees in the Public Information Bulletin (art. 406, section 2 E.C.) and informing the public about the assigned numbers of candidates lists and notifying other electoral commissioners acting on the territory of a voivodeship about them (art. 410, section 4 E.C.). This last competency is related to the competencies of electoral commissioners consisting in drawing lots to assign numbers to the registered candidates lists (art. 408, clause 2 E.C.).

After the voting has been completed the commissioners are obliged to determine the summary results of council and voivodship elections conducted on the territory of a voivodeship and announce them in a manner provided for in the Code, as well as to submit reports on the process of elections conducted on the territory of a voivodeship, together with the results thereof, to the NEC (art. 167, section 1, clause 8 and 9 E.C.).

Commissioners are also involved in the decision-making process, by issuing relevant provisions. These actions include resolution of complaints concerning the establishment of airtime (art. 412 E.C.) and complaints concerning the work of territorial electoral commissions (art. 167, section 1, clause 4 E.C.).

Apart from the provisions of the Election Code, electoral commissioners also perform tasks and competencies regulated in non-code provisions, in particular the ones resulting from self-government acts²⁰, the act on the nation-wide referendum²¹ and the act on the local referendum²². The basic competencies arising from self-government acts include summoning the first session of the legislative body of the self-government unit after self-government elections. A corresponding competency is granted to an electoral commissioner if the first session of the city district council for the capital city of Warsaw is not summoned within the

²⁰ Act from 8 March 1990 on the municipal self-government (i.e. Journal of Laws from 2017, item 1875), act from 5 June 1998 on district self-government (i.e. Journal of Laws from 2017, item 1868), act from 5 June 1998 on the voivodeship self-government (i.e. Journal of Laws from 2017, item 2096), act from 15 March 2002 on the system of the capital city of Warsaw (i.e. Journal of Laws from 2015, item 1438).

²¹ Act from 14 March 2003 on the nation-wide referendum (i.e. Journal of Laws from 2015, item 318).

²² Act from 15 September 2000 on the local referendum (i.e. Journal of Laws from 2016, item 400).

statutory period of 7 days, counted from the date when the summary results of the elections for the territory of the whole country are announced. Self-government elections also involve a competency of the electoral commissioner to summon the session of a municipality council in order to enable the *voit* to take an oath. According to art. 29a, section 2 of the act on municipal self-government, for the *voit* to take an oath, the electoral commissioner summons the council session within 7 days from the date when the summary results of the *voit* elections on the territory of the entire country are announced. If, however, the session summoned in such a way has not taken place, then the electoral commissioner becomes the authority competent to receive the *voit*'s oath of office. The oath certificate confirmed by the *voit*'s signature is then sent by the electoral commissioner to the council chairperson. Furthermore, the electoral commissioner informs the citizens of the municipality about the date of the oath in the form of an announcement in the Public Information Bulletin within 14 days from the date of the oath.

Both acts on referendums give rise to the electoral commissioner's competencies in the area of determining partial results of a nation-wide referendum (art. 28 of the act on the nation-wide referendum), or making decisions concerning the holding of a local referendum on the dismissal of a self-government body (art. 22 et al. act on the local referendum)²³.

The aforementioned tasks and competencies of the electoral commissioner confirm the thesis that it is an independent, regular electoral body, performing also executive functions with regard to the commission, within the territory assigned by the NEC.

5. SUMMARY

The changes introduced by the amendment from 11 January 2018 have partly modified the previous system model of the electoral commissioner, yet in particular in the scope of the manner of appointment thereof and the criteria which a candidate for the position needs to meet. The legal status itself, shaped by the tasks and competencies of this authority has not undergone any significant changes. The electoral commissioner will still serve as the basic electoral authority in the field, drawing his or her competencies from two sources; statutory regulations on the one hand and, on the other hand, by conducting activities ordered by the NEC.

²³ More on the role of electoral commissioners in this respect, see: A. Sokala, P. Uziębło, *Komisarz wyborczy*, [in:] *Leksykon prawa wyborczego...*, p. 106.

The electoral commissioner, mainly by virtue of provisions of the Election Code, has the status of a public officer, which determines his or her liability and the legal protection provided to a great extent. The work of electoral commissioners is financed from the state budget. The state also provides administrative services for this authority by means of the Central Electoral Office.

Analysis of provisions regulating the legal status of the electoral commissioner has revealed numerous irregularities in the currently applicable provisions which use terms inadequate to the institutions being regulated, allow for incomplete and at times even inconsistent regulations. In this scope it seems reasonable to propose that the legislation is amended as soon as possible.

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