

Historical and legal recognition of the principle of the secret ballot as the object of protection under Polish penal and electoral law 1932-1969

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The current state of research on issues specific to the topic of the article certainly does not – in my opinion – form a basis for a broad analysis of the essence of protection under criminal law or for a guarantee of the principle of the secret ballot in Polish electoral law. This is why, I have attempted to investigate this issue. Archival materials – policy documents and normative acts provide a basis of sources for this article. An analysis of individual phenomena and events has been performed on their basis. The interpretation of the investigated source materials was made taking into account the socio-political conditions in which they were created. The article is complemented by the literature. The legal and empirical research was conducted using the following research techniques: observation, examination of documents and statistical compilations in setups suitable for the designated research purposes. It is the analysis of the norms of the electoral law by taking into account the instruments of criminal law that allows gradation of social consequences, given the scale of violations, their gravity and the impact on the outcome of the election and the subject-matter of criminal law regulations. Its scope affects the effective protection of electoral rights. I hope that this article will provide material for the assessment of knowledge and protection of electoral behaviour and its determinants under criminal law

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The need to protect the principle of the secret ballot by criminal provisions should not raise doubt (Kryszew 2007, p. 161). This process of sequentially interconnected actions (Michalak, Sokala 2010, s.v. wybory) has great social importance. Every eligible voter has a real opportunity to shape the personal composition of representative bodies and to choose among the contenders one to hold a particular office. Criminal law cannot remain indifferent to actions directed against electoral procedures. Especially that the provisions of electoral legislation, indicating the premises for bringing an electoral protest, consider committing a crime against elections as one of its bases. The question of the scope of this protection may be legitimately asked. Do criminal law standards protect the personal right of the individual or maybe the right in the material sense? I will seek answers to these and other questions by analyzing relevant provisions of Polish penal codes, of 1932 and 1969 respectively. However, some findings on the level of protection of the principle of secret ballot under criminal law can be searched for before.

I. THE PERIOD PRECEDING THE ADOPTION OF THE 1932 PENAL CODE

In November 1918 Poland regained its independence. This event was one of the most important in the national history of Poland. According to Tadeusz Jędruszczak, “it was the unification of most of the territory and population in one state organism, which markedly contributed to integration in all areas of life and became a turning point in the development of national awareness throughout the country (Jędruszczak 1982, p. 51)”. The young state faced an enormity of challenges – one of them was to carry out a comprehensive reform of all branches of law (Bradliński 2018, p. 33).

Decree of the Chief of State of 1918 on the electoral law for the Legislative Sejm (Decree of the Chief of State of 28 November 1918 on the electoral law for the Legislative Sejm (Dz. U. (Journal of Laws) of 1918, No. 18, item 46) did not contain criminal provisions. This failure did not mean withdrawing from regulating cases of violations of law in connection with elections (Juchniewicz, Pałka 2011, pp. 96-97). This protection found its expression in the Decree of the Chief of State of 8 January 1919 on penal provisions for obstructing elections to the Sejm and the performance of duties by the deputies¹. The behaviours sanctioned in Article 6 included misuses in taking or counting votes.

Adopted on 12 February 1930 the Act on the protection of freedom of elections against abuse of power by officials² provided for an individual offense of violating the secret ballot. Article 6 of the Act stated: “an official, who, in connection with his office unlawfully learns of the contents of someone else’s vote at secret

ballot shall be subject to arrest for up to one year". The law was repealed in September 1930 in the run-up to the so-called Brest elections by the Decree of the President of Poland of 12 September 1930 on penalties to protect the freedom of elections (Dz. U. (Journal of Laws) of 1930, No. 64 item 509). This regulation in Article 7 prescribed that: "who at secret ballot unlawfully learns the contents of someone else's vote shall be subject to arrest for up to one year or a fine of 5,000 zlotys"³. Also under this Regulation, § 11 of the Act of 26 January 1907 containing penal provisions for the protection of freedom of elections and assemblies was repealed (in Article 16 § 2 (c)) (Journal of Laws of the Austrian State, No 18. Reported as: Kozielowicz 2008, p. 114). The said § 11 of the Act reads as follows: "who at secret ballot unlawfully intentionally gains information about the voting behaviour of individual voters shall be punished for these offences by arrest from 1 week up to 3 months".

The judicial decisions of the Supreme Court of 1931 assumed that voters returning "open" ballots in the voting room was inadmissible agitation. Such behaviour violating electoral law could even result in invalidity of elections in the district, if it prevented the election commission from carrying out activities related to the vote or if it made it considerably difficult (Decision of the Supreme Court of 27 June 1931, W 212/30. Reports of Cases of the Supreme Court in electoral matters. Y 1928-1939, item 63. Reported as: Kozielowicz 2008, p. 111). In Silesia, special "boxes" were installed in polling stations to help voters keep the secrecy. General Electoral Commissioner ordered in 1928 "withdrawal of this custom" as not having a basis in the law. In this situation a protest was brought to the Supreme Court in which a group of voters argued that "elimination of boxes resulted in voting taking place openly" (Kozielowicz 2008, p. 111). In a decision of 3 February 1930 the court rejected that plea holding that the "provision of Article 73 of the electoral code (Act of 28 July 1922 on the Sejm elections) does not provide for dedicated boxes" (Decision of the Supreme Court of 3 February 1930, Ref. W 1696/28, Reports of Cases of the Supreme Court in electoral matters, Y. 1928-1932, item 30. Reported as: Kozielowicz 2008, p. 112). The 1935 act on elections to the Sejm (Act of 8 July 1935 on the Sejm elections (Dz. U. (Journal of Laws) of 1935, No. 47 item 319) introduced "curtains ensuring secrecy of voting". However, neither this act nor the law on elections to the Senate (Act of 8 July 1935 on elections to the Senate (Dz. U. (Journal of Laws) of 1935, No. 47 item 320) included penal provisions that criminalized behaviour against elections. The only piece of legislation regulating liability for such offenses had been the Penal Code.

The Penal Code of 1932.

During the work of the Penal Law Codification Commission a postulate was put forward to introduce penalties for open and agitation voting. The originators proceeded from the assumption that the secret ballot is not only a voters' right but also their duty. Agitation for openness was considered harmful, because with it everyone who evaded openness was suspected of voting in a certain direction (Makarewicz 1938, p. 352). The 1932 Penal Code (Decree of the President of the Republic of Poland of 11 July 1932 (Dz. U. (Journal of Laws) of 1932, No. 60 item 571) described offenses in this matter in Chapter twenty entitled "Offenses against voting in public affairs". Article 124 of the Code penalized an act of infringement of the principle of secret ballot. The content of this provision reads as follows: "whoever, in violation of secret ballot learns the contents of someone else's vote shall be subject to arrest for a year or a fine". The criminal sanction provided for carrying out this act was not as severe as in the case of six other articles accommodated in this chapter (in most cases it was a prison sentence of up to five years).

In the hypothesis of the discussed legal standard the vote was described as "someone else's". The legislator did not directly mention "violation" of regulations, using a more sophisticated concept "against the rules". In order to commit such an offense it was enough to learn the content of a vote, which took place as a result of infringement of provisions on the secrecy of elections in any way⁴. It is well worth noticing that the constituent element of being "against the will" of the person entitled to vote was not a characteristic of this offense⁵. However, it could not be assumed that the will of that person would not repeal unlawfulness of the act. Thus, for the offence to occur, the mere reading of the content of somebody else's vote violating the secret ballot was enough.

The Codification Commission pointed to the fact that neither the offender's intentions nor further consequences were relevant, because "learning the contents of a secret ballot is directly related to influencing the sincerity of the vote, whether as a means to influence the vote, or to apply negative consequences with respect to the person who voted in a way that is undesirable for the offender (The Polish Codification Commission, Criminal Law Section, vol. V, no. 4. *Draft Penal Code. Reasoning for special parts*, Warsaw 1930, pp. 40-41. Similarly: Makarewicz 1938, p. 357).

Anyone could be a subject of the discussed type of crime – both the person empowered to collect or count votes, as well as any other person, who, contrary to the provisions on secret ballot, learned the contents of someone else's vote (Kozielowicz 2008, pp. 113-114). The so-called "learning" could occur by removing a ballot form an envelope and reading its content, as well as when someone looks at the ballot when the person who is voting puts it in an envelope (Kozielowicz 2008, pp. 113-114). According to Leon Petrażycki, if a voter,

through negligence or by accident, reveals the content of his ballot, then learning the contents of someone else's vote will not be equal to a constituent element of a crime (Peiper 1936, p. 264). In this case, it is difficult to impose an obligation on third parties so that they themselves try to prevent possibilities of reading the content of someone else's vote (Peiper 1936, p. 264).

Criminality of an offense is excluded by the voting person consenting for the contents of their vote to be read. However, such a consent would have to be voluntary, expressed without any pressure or coercion, even indirect, and both categorical and unambiguous at the same time. Presumption of consent in this regard was absolutely not enough (Glaser, Mogilnicki 1934, pp. 415-416). Therefore, in this case, the principle of *volenti non fit iniuria* (Latin, "to a willing person, injury is not done" Peiper 1936, p. 264) was applied. It was assumed that the voter wants to use facilities that ensure secrecy of the ballot (Leon Peiper used the term "secret elections", Peiper 1936, p. 264) and does not wish to disclose the way he voted. The electoral system in its broad sense (the use of envelopes in the ballot) applicable in the Second Polish Republic had an impact of views of criminal law scholars and commentators⁶. As Julius Makarewicz claimed, marking an envelope containing a ballot inside (e.g. by the chairman of the district election commission) in order to read the contents of the inserted ballot paper during vote counting can be regarded as an attempt to commit an offense of violation of the secret ballot (Makarewicz 1938, p. 357. According to the author this action aimed to exercise an intention).

The said author placed the protection of the secrecy of voting on the same plane as the secrecy of correspondence⁷. In the opinion of J. Makarewicz, the Penal Code did not require that the offender should intend to make publically available what he has learned or to share this information with another person. In addition, in order for this crime to be committed, intentional guilt (*dolus*) was necessary, since the offender wanted to learn the content of the vote in violation of the law (Makarewicz 1938, p. 357). For example, one can refer to Article 66 of the Sejm Electoral Code Act (Act of 28 July 1922 on the Sejm elections (Dz. U. (Journal of Laws) of 1922, No. 66 item 590) which prohibited all forms of agitation during a vote (such as delivering speeches, distributing ballot papers). What was material for a crime to occur was that the offender had learnt the content of a vote cast in secret, and that he had gained this knowledge unlawfully, regardless of the motives guiding the person infringing the secrecy of voting (Makarewicz 1938, pp. 356-357).

As highlighted in the Explanatory Memorandum of the Penal Code of 1932, the issues subject to protection under articles of this chapter included all voting in public affairs, where the material concept of voting law was adopted (Peiper 1936, p. 255; Górnio 1989, p. 530) understood as public actions aimed at delivering citizen's individual rights⁸. Therefore, the aim of the protection involved voting as an institution of public law and not a subjective relationship of the individual to rights they enjoy.

Voting in the period of validity of the 1932 Penal Code did not always have a secret character, as declared by the principle of "secret ballot". There were cases of exerting psychological pressure on voters, e.g. when superiors ordered government officials and their families to appear at a specific time and in a specific place, where they would walk into polling stations to the accompaniment of orchestras. Those voters under the crowd pressure or at threat of disciplinary action declared that they did not wish to vote in secret and showed their open voting slips to electoral commissions. In addition, there were cases of the officials' management preparing special circulars with guidelines for employees as to how they are supposed to vote. For example, one can cite here the memoirs of Adam Pragier, Member of Parliament.

He wrote that the then authorities sought to eliminate the secrecy of voting. Under the refined "governmental methods" of verification of voting, treasury officials sent a few pages, where the number of the governmental list, the so-called "jedyńka" ("the number one"), was printed in green. It should be remembered that the electoral code dictated that the voting slips were white, but the legislator did not forbid a situation in which the number of the electoral list would be printed in a colour other than black. Thus, officials in tax offices were given voting cards for them and their family members in a specified number, and then they were checked in district polling stations to see if the same number of sheets with a green "number one" is in the ballot box. Such measures were also undertaken in relation to other professional groups, where hierarchical subordination was the core of the functioning of a given institution (*Ze wspomnień Adama Pragiera* 1985, p. 187).

Electoral abuses also occurred in a later period, during the shaping of post-war Poland's political system. The literature reports that, although the 1946 Electoral Code for the Legislative Sejm of 1946 (Act of 22 September 1946 on elections to the Legislative Sejm (Dz. U. (Journal of Laws) of 1946, No. 48 item 274) provided for the secrecy of voting "in practice, a substantial part of the population went to polling stations on 19 January 1947 in a demonstrative manner and voted openly" (Rybiński 1977, p. 35).

In many places priority was given to those voting openly, while voters declaring they wanted to vote in secret were lined up before the commission's premises. This often lasted for hours, as a result of which some of them, discouraged, gave up on voting, while some of them were not given the opportunity to vote as a result of early closure of voting. Communist propaganda gave collective voting a solemn festive setting. People led to the polls would wear Sunday best clothes, they carried banners and marched to the rhythm of music played by an orchestra. This intensified the sense of electoral improvisation and ultimately dispelled illusions about free

elections (Skoczylas 2003, p. 103-106). The organization of an open vote was fully successful in small towns, rather than in metropolitan areas. It can be certainly said that in a situation where one section of the society vote openly, and the second part cast their votes maintaining secrecy, such a conduct could be regarded as supporting a list different to the one supported by those voting openly (Skoczylas 2003, p. 79).

A change of Poland's geopolitical situation after World War II did not bring the criminalization of behaviours against the elections on the basis of electoral laws. It should be noted that the 1952 Parliamentary Election Law of the People's Republic (Act of 1 August 1952 on elections to the Sejm of the Polish People's Republic (Dz. U. (Journal of Laws) of 1952, No. 35, item 246) referred in Article 84 to the existing criminal legislation. The cited legal rule stated that: "anyone who commits crimes against voting in public affairs, is subject to penalties prescribed for in the penal code" and was considered *superfluum* (Juchniewicz, Pałka 2011, p. 100). A similar procedure was repeated in the acts of 1954 (Act of 25 September 1954 on elections to national councils (Dz. U. (Journal of Laws) of 1954, No. 43 item 193) and 1956 (Act of 24 October 1956 on elections to the Sejm of the Polish Republic (Dz. U. (Journal of Laws) of 1956, No. 47 item 210). Beginning with the 1957 electoral code (Act of 31 October 1957 on elections to national councils (Dz. U. (Journal of Laws) of 1957, No. 55 item 270. Consolidated text: Dz. U. (Journal of Laws) of 1973, No. 38 item 226), subsequent ones did not know such a regulation. Polish electoral law scholars and commentators of the communist period recognized criminal sanctions protecting the secret vote as one of the guarantees protecting the secrecy of voting⁹.

II. THE PENAL CODE OF 1969

The subsequent 1969 Penal Code (Act of 19 April 1969 Penal Code (Dz. U. (Journal of Laws) of 1969, No. 13, item 94 as amended) remained under the influence of the 1932 Code, despite very different political realities (Zduński 2016, p. 243). It addressed the issue of electoral crimes briefly in chapter twenty-sixth. The chapter's only article caused a divergence of views on the contemporary criminal law relating to whether it constituted one type of crime (Śliwowski 1975, p. 428) or three (Chybiński, Gutekunst, Świda 1971, p. 223). According to Kazimierz Łojewski and Edmund Mazur, the subject of the protection afforded by Article 189 included free exercise of voting rights, fairness and honesty of elections and secret ballot (Łojewski, Mazur 1969, p. 67).

Article 189 in §1 provided: "who by violence, illegal threat, deceit or abuse of a relationship of dependence interferes with the free exercise of voting rights or in performing other tasks in proceedings involving elections to the Sejm or to the national council or falsifies results of such a vote, shall be punished by imprisonment from 6 months to 5 years". In contrast §2 stated that "whoever, in violation of the provisions on the secrecy of voting in elections to the Sejm or national council, learns against the will of the voter the content of his vote, shall be subject to imprisonment of up to two years, restriction of liberty or a fine". The hypothesis of the legal standard determined that the vote belonged to "the voter". The limitation of the scope of protection only to elections to the Sejm and national councils also drew attention, which in connection to the political breakthrough in Poland in 1989 required adaptation to the legal systemic reality. According to commentators, anyone could be the subject of this crime, both the person authorized to collect or count the votes, as well as an outsider (Bafia, Mioduski, Siewierski 1987, p. 193). Przemysław Kalinowski's statement that "the Polish Penal Code did not introduce a formal limit of the number of entities that can commit a crime of infringement of the secrecy of voting" (Kalinowski 1985, p. 92) corresponded to this view. I share this point of view fully. On the other hand, Śliwowski points to the fact that the discussed type of crime can be committed only in relation to elections, and thus it was of situational and individual nature with regard to the act (Śliwowski 1975, p. 429). Another position, presented by Henryk Popławski, can also be identified. In his opinion, an offense under Article 169 § 2 of the Penal Code could be committed by any one, but people involved in the work of election committees would have a better opportunity to commit it (Popławski 1984, p. 46). However, it should be noted that it was unthinkable for a voter to be watched over during the voting – both by another voter or a member of the electoral committee. However, the introduction of criminal sanctions for members of electoral commissions was proposed for the mere learning of the content of his vote against the will of the voter (Popławski 1984, p. 47). Such a solution would provide better protection ensuring secrecy in the material and personal sense.

It should be emphasized that the second premise for the existence of the crime in question involved the requirement that the action of the discussed offender was contrary to the will of the voter (Młynarczyk 1984, p. 10). He could agree to the disclosure of his vote, though, this consent would have to have existed at the time of gaining knowledge of the content of the vote. Where such a consent were to be given after this fact, the act remained a crime, and such a consent could affect the penalty (Chybiński, Gutekunst, Świda 1980, p. 286). According to Zbigniew Młynarczyk, committing the crime in question required the will of the perpetrator, and thus it could have been committed only as part of direct intention – *dolus directus* (Młynarczyk 1986, p. 201). On the other hand, Jerzy Śliwowski explained the necessity of legal and penal protection of the secrecy of voting as follows: "the wording regarding infringement of regulations on the secrecy of voting was necessary, because only by gaining knowledge on the quantitative features of results one can consider them as necessary for public and

legal arrangements” (Śliwowski 1975, p. 429). However, the same author stated that the direct object of protection under Article 189 § 2 involved the “secrecy of elections” (Śliwowski 1975, p. 428). Zbigniew Młynarczyk, cited above, acknowledged that the subject of protection of the discussed standard involved interest of the entire society in conducting elections according to the principles of democracy (Młynarczyk 1986, p. 196). Moreover, the author pointed out the shortcomings of legal regulations concerning the protection of elections under criminal law terms, limiting it only to the authorities listed in the standard’s instruction (Młynarczyk 1986, p. 201). After the turnover of the political system in 1989, the Supreme Court shared this view by ruling in one of its judgments (Judgment of the Supreme Court of 21 January 1997, III KKN 168/96) that actions directed against elections known in the Polish legal system but not referred to in Article 189 of the Penal Code (It involved elections to the Senate and to the communes as local government units) are reprehensible, but do not constitute prohibited acts.

The views of criminal law scholars and commentators were not consistent in the use of terminology to denote the discussed crime. It was referred to as “violation of the secrecy of voting” and the terms “falsification of elections or violation of their confidentiality (elections) (Gardocki 1994, p. 255).” were used interchangeably. Octavia Górnioł indicated that state bodies are obligated to provide the technical conditions for fulfilling the principle of voting secrecy. However, with regard to the voters, there were no provisions which would impose on them an obligation to keep the content of his vote secret (Górnioł 1989, pp. 533-534).

The title of chapter twenty six – “Offenses against the elections”, pointed out that the 1969 Penal Code covered within the scope of its protection not only voting, but also the entire process in order to shape the composition of representative bodies (Górnioł, pp. 531-532). However, it needs to be remembered that open vote in the Polish People’s Republic was not considered a form of illegal electioneering on voting day (Kozielewicz 2008, p. 112). The provision of Article 189 § 2 of the Penal Code did not provide effective protection of the secret ballot, because the propaganda of transparent elections involved a violation of the secrecy (Kozielewicz 2006, p. 206 and references cited therein). It was worth noting that existing regulations in chapter twenty of the 1932 Penal Code included the protection of all types of voting in public affairs, whereas the provisions of the 1969 Penal Code strengthened this protection only to elections to the Sejm and national councils, as representatives of implementers of the universally applicable rule by the people. Crimes that could be committed in other forms of elections in public affairs were prosecuted under other provisions of a particular section, e.g. regarding coercion, threats, abuse of power, falsified document (Łojewski, Mazur 1969, p. 67).

Only the electoral practice in the implementation of rules on the principle of the secrecy of voting which began with voting in elections of 4 June 1989 meant that voters used voting booths massively (Kozielewicz 2008, p. 112). This date can be considered the beginning of the actual functioning of the constitutional principle of secret ballot. With the transformation of the political system an urgent need to expand the catalogue of offenses in connection with elections was noticed¹⁰. However, none of them referred directly to the violation of the principle of secret ballot.

Codification of law – eighty years ago and even today – was and is conditioned in Poland, both historically and culturally (Górnioł 2007, p. 82; Lityński 2012, p. 216). Probably the cases of voting behaviour in the past were the basis for the legislature to modify the law in the future.

III. CONCLUSIONS

The protection afforded to secret ballot by the norms of criminal law is to ensure the proper and smooth execution of electoral rights. The 1932 Penal Code in its normative content contained no feature of “against the will” of the entitled person. Despite a case-study description of the types of crimes against elections, the omission of this characteristic should be regarded as requiring attention. *Signum specificum* of the PC regulation of this period also involved the dimension of the statutory threats for the discussed prohibited act – arrest for up to a year or a fine. Subsequent codes were unanimous on this issue, providing alternative penalties – a fine, restriction of liberty or imprisonment for up to 2 years. In turn, the feature repeated in all criminal code regulations regarding this crime involved committing a violation of the provisions on secret ballot. In my opinion this determines the role of the electoral law for the understanding of social effect, which is one of the conditions for recognition of an act of man as an offence. It is the analysis of the norms of the electoral law by taking into account criminal law measures that allow gradation of social consequences, given the scale of violations, their gravity and the impact on the outcome of the election and the subject of criminal law regulation. Its scope affects the effective protection of electoral rights. However, in my opinion, its effectiveness is certified by the practice of application criminal law and election law. In terms of text criminal laws feature incomplete instruction and require interpretation. For example, during the Second Republic and the Polish People’s Republic electoral laws imposed a duty to insert ballot papers into envelopes.

Elections (both as a process consisting of actions and their outcomes) are an important social good and the probability of causing them harm in the public interest and a subjective right of an individual – especially during the act of voting – call for sanctions under criminal law standards.

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- [34]. Act of 12 February 1930 on the protection of freedom of election against abuse of power by officials (Dz. U. (Journal of Laws) of 1930, No. 17 item 123).
- [35]. Act of 8 July 1935 on elections to the Sejm (Dz. U. (Journal of Laws) of 1935, No. 47 item 319).
- [36]. Act of 8 July 1935 on the elections to the Senate (Dz. U. (Journal of Laws) of 1935, No. 47 item 320).
- [37]. Act of 22 September 1946 on elections to the Legislative Sejm (Dz. U. (Journal of Laws) of 1946, No. 48 item 274).
- [38]. Act of 1 August 1952 on elections to the Sejm of the Polish People's Republic (Dz. U. (Journal of Laws) of 1952, No. 35 item 246).
- [39]. Act of 25 September 1954 on elections to national councils (Dz. U. (Journal of Laws) of 1954, No. 43 item 193).
- [40]. Act of 24 October 1956 on elections to the Sejm of the Polish Republic (Dz. U. (Journal of Laws) of 1956, No. 47 item 210).
- [41]. Act of 31 October 1957 on elections to national councils (Dz. U. (Journal of Laws) of 1957, No. 55 item 270). (Consolidated text, Dz. U. (Journal of Laws) of 1973, No. 38 item 226).
- [42]. Act of 19 April 1969 Penal Code (Dz. U. (Journal of Laws) of 1969, No. 13 item 94 with amend.).
- [43]. Act of 28 May 1993 on the elections to the Polish Sejm (Dz. U. (Journal of Laws) of 1993, No. 45 item 205).

REGULATION OF THE INTERWAR PERIOD

Decree of the Chief of State of 28 November 1918 on the electoral law for the Legislative Sejm (Dz. U. (Journal of Laws) of 1918, No. 18 item 46).

Decree of the Chief of State of 8 January 1919 on penal provisions for obstructing elections to the Sejm and the performance of duties by the Deputies (Dz. U. (Journal of Laws) of 1919, No. 5 item 96).

Decree of the President of Poland of 12 September 1930 on penalties to protect the freedom of elections (Dz. U. (Journal of Laws) of 1930, No. 64 item 509).

Decree of the President of the Republic of Poland on 11 July 1932 Penal Code (Dz. U. (Journal of Laws) of 1932, No. 60 item 571).

Decree of the President of the Republic of 11 July 1932. Regulations introducing the Penal Code and the law on offenses (Dz. U. (Journal of Laws) of 1932, No. 60 item 573).

JUDICIAL DECISIONS

Decision of the Supreme Court of 3 February 1930, Ref. W 1696/28, Reports of Cases of the Supreme Court in electoral matters, Y. 1928-1932, item. 30.

Decision of the Supreme Court of 27 June 1931, Ref. W 212/30. Reports of Cases of the Supreme Court in electoral matters. Y 1928-1939, item. 63.

Judgment of the Supreme Court of 21 January 1997, ref. no. III KKN 168/96.

¹ (Dz. U. (Journal of Laws) of 1919, No. 5 item 96. The whole decree was replaced by Article 5 § 1(2) of the Decree of the President of the Republic of 11 July 1932. Regulations introducing the Penal Code and the law on offences (Dz. U. (Journal of Laws) of 1932, No. 60 item 573).

² (Dz. U. (Journal of Laws) of 1930, No. 17 item 123. All of the described offences were committed only by a clerk, and thus, under the Act, any person performing a public function on behalf of the state or local government, as well as members of election commissions. Whereas the injured person does not only entail a person, whose welfare was directly affected or threatened, but also a person who reported the crime and who held the right to vote in the constituency, where the offence was committed. Juchniewicz, Pałka 2011, p. 97-98).

³ An official (where a member of an electoral committee is considered such) committing this offence "during the term of office or in connection to holding the office" constituted a statutory qualifying circumstance. The consequence of a conviction involved the likelihood of losing the right to vote and the right to be elected to all legislative, local government, social or professional bodies. The Regulation also provided for optional additional penalty of deprivation of public rights or the right to exercise civil functions in the administration of justice, loss of political offices and positions (Juchniewicz, Pałka 2011, p. 99).

⁴ The literature provided a variety of ways to circumvent provisions on the "secrecy of elections". These were: removing the ballot from the envelope and looking at it, looking at the ballot when a voter is placing it in an envelope, marking the envelope in a certain way to allow one to subsequently learn how a given person voted or handing them a marked envelope for this purpose. The discussed offence was described as "spying on somebody's vote". See: Peiper 1936, p. 264.

⁵Despite the motives of the Codification Commission reading as follows: “(...) Learning someone else’s secret vote against the will of the voter, and against other provisions of the law guaranteeing secrecy shall constitute an unlawful act”.

Reported as: Peiper 1936, p. 264.

⁶ One cannot agree with the view expressed by Leon Petrażycki that for “criminal law it is irrelevant what voting system the public law deems as best expressing the collective will”. Peiper 1936, p. 255.

⁷ Article 253 § 1 of the Penal Code stated that “whoever without authorization opens a sealed letter not intended for them or appropriates or destroys another person’s correspondence before the addressee reads it, shall be subject to detention for up to 2 years or a fine”. Makarewicz 1938, p. 357.

⁸The draft Penal Code of 1932 emphasized the “role and importance of voting for the life of the state and the civil community”. See: Themes Codification Commission, vol. V, no. 4, p. 32-33. Reported as: Górniok 1989, p. 530.

⁹ (Rozmaryn 1952, p. 433. In 1983, Alexander Patrzalek postulated that “the electoral law should include sanctions for violation of the secrecy elections and quite painful at that (...) It involves modelling certain habits among voters as well as in the administrative and social apparatus which organizes elections”. See: Patrzalek 1983, p. 22.

¹⁰ (Act of 28 May 1993 on elections to the Polish Sejm (Dz. U. (Journal of Laws) of 1993, No. 45 item 205) sanctioned in chapter 16 acts detrimental to the proper conduct of elections. Whereas criminal laws were introduced to the Act on Presidential Elections only by the 2000th amendment of the Act. However, they referred to the rules of campaigning

See: Juchniewicz, Pałka 2011, pp. 103-104.

	Article 124 PC of 1932	Article 189 § 2 PC of 1969
Penal code description of constituent elements of an offense	Whoever, in violation of provisions on the secret ballot, learns the content of someone else’s vote,	Whoever, in violation of provisions of the secret ballot in elections to the Sejm or national council, learns the content of a voter’s vote against his will,
Penalty under penal code	shall be subject to arrest for up to a year or a fine.	shall be subject to imprisonment of up to two years, restriction of liberty or a fine.

Table 1. Violations of the secrecy of voting as a type of a crime in Polish penal codes of 1932 and 1969