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OPINION ON THE LEGAL FRAMEWORK GOVERNING PARTICIPATION OF PERSONS WITH DISABILITIES IN POLITICAL AND PUBLIC LIFE

Poland

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Based on an unofficial English translation of the Draft Law.



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

ODIHR welcomes the willingness of the Office of the Commissioner for Human Rights to seek international expertise in relation to the participation of persons with disabilities in political and public life, and hopes that this opinion will provide further guidance on how relevant legislation could be brought in line with international human rights obligations and OSCE commitments.

The Polish Constitution guarantees the equality of all persons before the law and imposes a duty on the authorities to provide assistance to persons with disabilities “to ensure their subsistence, adaptation to work and social communication.” Positively, some pieces of legislation also provide for measures to ensure physical access to persons with disabilities. However, the legislation imposes restrictions of persons deprived of legal capacity on the enjoyment of their fundamental rights, which has a significant impact on person’s right to exercise their constitutional rights, including on the freedoms of assembly and association, right to join and serve as a member of a political party, right to vote or participate in elections as a candidate, the right of access to public service and the right to introduce legislation.

The right to political participation of persons with disabilities is recognized in various international treaties, OSCE commitments and in a number of other politically and legally binding regional documents. As a central component of international law protecting persons with disabilities, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), to which Poland is a State party, guarantees the rights to participation in political and public life of persons with disabilities. Article 29 of the CRPD specifies that States shall undertake to actively promote “an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs,” including in “the activities and administration of political parties.” In addition, Article 12 addresses “equal recognition before the law”, which notes that “State Parties shall recognize that persons with

disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”

The central issues for consideration by Polish authorities relate to the obligation of the State to ensure that everyone, including all persons with disabilities have equal rights as recognized by the international obligations and OSCE commitments. Thus, ODIHR makes the following key recommendations:

A. to consider repealing existing discriminatory provisions across the legislation allowing for the deprivation of legal capacity of persons with disabilities. In line with the CRPD, legal capacity should be recognized and effectively guaranteed as an inherent right accorded to all people; [pars 26-32]

B. to enable the realization of freedoms of assembly and association by persons with disabilities, consideration should be given to amending Article 4.1 of the Law on Freedom of Assembly and Article 3.1 of the Law on Association to ensure persons with disabilities can organize assemblies as well as found and join associations; [pars 37-43]

C. to enable the realization of freedom of association and political participation of persons with disabilities, to amend Article 11.3 of the Law on Political Parties; [pars 44-45]

D. to guarantee that persons with disabilities enjoy legal capacity to vote and stand as candidates on an equal basis with others, without any exceptions, active measures to facilitate an environment conducive to their full participation should be taken by the authorities. Consideration should be given to withdrawing the interpretative declaration to Article 12 of CRPD; [pars 52-54]

E. to ensure all polling stations are accessible and adapted to all voters, technical conditions should be adhered to and specified not only for polling stations but also for their immediate neighbourhood; [pars 60-61]

F. If certain persons are deprived of legal capacity contrary to what is recommended in Recommendation A, to, at a minimum, amend Article 545 of the Civil Procedure Code to ensure that persons deprived of legal capacity have equal and effective access to legal redress, allowing them to apply for the

revocation of a prior decision related to legal capacity. [pars 69-73]

These recommendations are aimed at further improving the compliance of the legal framework governing the participation of persons with disabilities in political life and public life with OSCE commitments, and other international human rights obligations.

As a final note, ODIHR would like to remind that a successful reform process should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses previous recommendations; 2) adoption of legislation by broad consensus after extensive public consultations, in particular, consultations with persons with disabilities that are active, free and meaningful; and 3) political commitment to fully implement the legislation in good faith. In particular, ODIHR stresses that an open and transparent process of consultation and preparation of the future amendments increases the confidence and trust in the adopted legislation and in the State institutions in general. ODIHR remains at the disposal of the authorities of Poland for any further assistance that they may require.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 11 April 2019, the Commissioner of Human Rights of Poland sent a request to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to review the impact legal incapacitation has on the participation of persons with disabilities in political and public life.
2. On 9 May 2019, the ODIHR Director responded to this request, confirming the Office's readiness to prepare a legal opinion on the participation of persons with disabilities, assessing the legal framework governing the right to participation in political and public life of persons with disabilities against OSCE human dimension commitments and other international human rights obligations. Due to the planned elections and in order to maintain the independence and impartiality of its election observation activities, publication of the opinion was postponed.
3. This opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.

II. SCOPE OF REVIEW

4. The scope of this opinion focuses on relevant provisions pertaining to access to political and public life of persons with disabilities from various pieces of national legislation, including the Constitution, the Law on Political Parties, the Law on Freedom of Assembly, the Law on Freedom of Association, the Election Code, and the Civil Code and their compatibility with international standards pertaining to the rights of persons with disabilities, such as [the United Nations Convention on the Rights of Persons with Disabilities \(hereinafter CRPD\)](#). Thus, it does not constitute a full and comprehensive review of the entire legal and institutional framework related to the rights of persons with disabilities.
5. This opinion raises key issues and indicates areas of possible refinement. In order to ensure conciseness, it focuses on areas that require amendment or improvement rather than on the positive aspects of the legal framework. The ensuing recommendations are based on relevant international obligations, OSCE commitments, and international good practice, including the CRPD, ODIHR Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities and the [ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities](#).¹
6. Moreover, in accordance with OSCE commitments and Council of Europe obligations to mainstream a gender perspective into all policies, measures and activities, this

¹ See also the [ODIHR Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities](#).

opinion also takes account of the potential impact of the respective laws on gender equality.²

7. This opinion is based on an unofficial English translation of the legislation. Inaccuracies may occur in this opinion as a result of an incorrect translation.

III. ANALYSIS

1. INTERNATIONAL STANDARDS AND OSCE COMMITMENTS ON THE PARTICIPATION OF PERSONS WITH DISABILITIES IN POLITICAL AND PUBLIC LIFE

8. The right to political participation of persons with disabilities is recognized in various international treaties, OSCE commitments and in a number of regional documents. As a leading principle, Article 21 of [the 1948 Universal Declaration for Human Rights](#) (UDHR) affirms that “everyone has the right to take part in the government of his [or her] country, directly or through freely chosen representatives” and that “everyone has the right of equal access to public service in his [or her] country.” Subsequently, these rights have been included in a number of international human rights treaties, including Article 25 of [the 1966 International Covenant on Civil and Political Rights](#) (ICCPR).³ While the ICCPR establishes that all citizens have the right to participate in public and political life, it was subsequently recognized that additional treaties were required to ensure that traditionally excluded and underrepresented sections of society were equally entitled to these rights.
9. [The United Nations Convention on the Rights of Persons with Disabilities](#) (CRPD) is a central component of international law protecting persons with disabilities.⁴ Article 2 defines discrimination as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.” States that have ratified or acceded to the treaty are, according to Article 4.1, obliged to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.”
10. Article 29 of the CRPD guarantees political rights of persons with disabilities. It notes that States should ensure the right of persons with disabilities to “stand for elections, to effectively hold office and perform all public functions at all levels of government,

² See paragraph 32 of the [OSCE Action Plan for the Promotion of Gender Equality](#) adopted by Decision No.14/04, MC.DEC/14/04 (2004), which refers to commitments to mainstream a gender perspective into OSCE activities; and the [Council of Europe’s Gender Equality Strategy 2018-2023](#) which includes the realisation of gender mainstreaming in all policies and measures as one of five strategic objectives.

UN International Covenant on Civil and Political Rights (hereinafter “ICCPR”), adopted by the UN General Assembly by the Resolution 2200A (XXI) of 16 December 1966. The Republic of Poland ratified the ICCPR on 18 March 1977.

⁴ UN Convention on the Rights of Persons with Disabilities (CRPD), adopted by General Assembly resolution A/RES/61/106 on 13 December 2006 and which entered into force on 3 May 2008. Poland ratified the CRPD on 6 September 2012.

facilitating the use of assistive and new technologies where appropriate.” Article 29 also specifies that States shall actively promote “an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs,” including in “the activities and administration of political parties.”

11. Article 6 of the CRPD recognizes that women and girls with disabilities are subject to multiple forms of discrimination, and that States “shall take all appropriate measures to ensure the full development, advancement and empowerment of women” when implementing the other rights outlined in the CRPD. Acknowledging that women encounter more impediments to the enjoyment of their political rights due to cultural or legal barriers, Article 6 of the CRPD requires States to take all appropriate measures to ensure their full development, advancement and empowerment. It further obligates States to take steps to eliminate the barriers that prevent their participation in public decision-making and must ensure that all participatory mechanisms and bodies take into account both disability- and gender-related factors and the complex interrelationships between them. Lastly, Article 12 addresses “equal recognition before the law”, which notes that “State Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”
12. In addition, it is important to consider the general non-discrimination clause as envisaged by Article 26 of the ICCPR, and Article 2 of the International Covenant on Economic, Social and Cultural Rights. Fundamental rights outlined in other treaties, such as the [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#)⁵, the [UN Declaration on the Rights of Indigenous Peoples](#) and the [International Convention on the Elimination of all Forms of Racial Discrimination](#)⁶ apply equally to persons with disabilities.
13. There are a number of regional instruments that promote and ensure the inclusion of persons with disabilities in public and political life. In the European Union (EU), [the Charter of Fundamental Rights of the European Union](#) is one of the leading human rights treaties. For Council of Europe (CoE) member States, [the Convention for the Protection of Human Rights and Fundamental Freedoms](#) (ECHR) serves as a key regional human rights instrument. In addition, the CoE has adopted a number of documents emphasizing the importance of more inclusive societies. These include [the Committee of Ministers’ recommendation CM Rec\(2011\)14](#), the Parliamentary Assembly of the Council of Europe (PACE) [Resolution 2039 \(2015\)](#) on equality and inclusion for people with disabilities, and the 2015 PACE Committee on Equality and Non-Discrimination Report: [“The political rights of persons with disabilities: a democratic issue.”](#) In addition, in November 2016, the CoE adopted [a Strategy on the Rights of Persons with Disabilities for 2017-2023](#) with an emphasis on such rights being interpreted in line with the CRPD. The strategy emphasizes that persons with disabilities should enjoy equal recognition before the law and that substituted decision-making should be replaced by supported decision-making.
14. The OSCE human dimension commitments reaffirm the importance of participating States’ realization of their obligations under international and regional human rights

⁵ UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Poland ratified this Convention on 30 July 1980.

⁶ UN Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”) was adopted by General Assembly resolution 2106 (XX) on 21 December 1965. The Republic of Poland ratified this Convention on 5 December 1968.

treaties. Participating States are called to act in conformity with these international instruments and respect, protect and fulfil the human rights of all within their jurisdiction, without discrimination.⁷

15. The [1990 OSCE Copenhagen Document](#) provides the foundation for specific commitments on democratic elections and commits all participating States to “guarantee universal and equal suffrage to adult citizens” (par 7.3) and to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;” (par 7.5). Importantly, it states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;” (par 5.9). It further notes that “[t]he participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with international commitment. (...) Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.” (par 24).
16. In [the 1991 OSCE Moscow Document](#), OSCE participating States committed to “take steps to ensure the equal opportunity of persons with disabilities to participate fully in the life of their society” and “to promote the appropriate participation of such persons in decision-making in fields concerning them.”
17. In 2016, in marking the 25th anniversary of the Moscow Document, ODIHR partnered with the Ministry for Foreign Affairs of Finland and the Finnish Human Rights Centre to organize a high-level expert seminar on promoting the participation of persons with disabilities in political and public life. The document issued following the seminar recommended that States “remove all barriers in their national legal and administrative systems that prevent participation of persons with disabilities in political and public life on an equal basis with others, including denial of voting rights on the basis of legal capacity. Legal provisions and measures respecting equal recognition before the law of all persons with disabilities should be introduced, providing assistance to exercise legal capacity through supported instead of substituted decision-making.”⁸
18. In 2018, [the Berlin Declaration of the OSCE Parliamentary Assembly](#) provided that persons with disabilities “remain widely under-represented in parliaments across the OSCE region” and urged all OSCE participating States to “commit, through a Ministerial decision, to promote more inclusive and representative societies and ensure participatory processes for persons with disabilities in all phases of developing legislation or policies in the spheres of political and public life.”
19. In the context of elections, all obligations and commitments on democratic elections as outlined in Article 25 of the ICCPR, as well as in [1996 General Comment No. 25 to the ICCPR](#), are applicable to persons with disabilities. In the OSCE context, paragraphs 7.3, 7.5 and 5.9 of the [1990 OSCE Copenhagen Document](#) guarantee universal and

⁷ In the 2008 OSCE Helsinki Document, participating States recognized that “human rights are best respected in democratic societies” and support for “partnerships between different stakeholders in the promotion and protection of human rights,” both statements that underline the importance of human rights (including disability rights) and inclusion.

⁸ See [the list of the recommendations](#) developed by ODIHR and Finland.

equal suffrage to adult citizens and the right of citizens to seek political or public office without discrimination.⁹ In addition, the CoE's European Commission for Democracy through Law's (Venice Commission) [Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections](#) states that "[u]niversal suffrage is a fundamental principle of the European Electoral Heritage. People with disabilities may not be discriminated against in this regard, in conformity with article 29 of the CRPD and the case-law of the ECtHR."

20. Yet, the above commitments notwithstanding, case law of the European Court of Human Rights (ECtHR) does not fully reflect the approach of the CRPD and the CRPD Committee on the matter of legal capacity. Judgements of the ECtHR have demonstrated the limitation of legal capacity with respect to the right to vote if the limitation is imposed by a court following an individual assessment. This contrasts with the CRPD, which affirms the right of persons with disabilities to legal capacity on an equal basis with others and considers any limitation on this as discrimination. However, in 2013, the CRPD Committee affirmed that an infringement of Article 29 is "an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability."¹⁰ In its General Comment No 1 on Article 12, the CRPD Committee states that in order "[t]o fully realize the equal recognition of legal capacity in all aspects of life, it is important to recognize the legal capacity of persons with disabilities in public and political life. This means that a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote [and] the right to stand for election."¹¹ The CRPD Committee also consistently reaffirms this in its [Concluding Observations](#) on country reports. Under the CRPD, States have a duty to provide support to persons who require assistance in the exercise of their legal capacity.

2. THE NATIONAL LEGAL FRAMEWORK ON THE PARTICIPATION OF PERSONS WITH DISABILITIES IN POLITICAL AND PUBLIC LIFE

21. The participation of persons with disabilities in political and public life in Article 29 of the CRPD represents a prerequisite for the effective enjoyment of other fundamental rights. Hence, it is closely related to, and contingent on, the implementation of other provisions of the CRPD. This includes the State's obligation to take appropriate legislative measures to implement all human rights and fundamental freedoms of persons with disabilities. A State's duty to consult persons with disabilities in decision-

⁹ Article 25 of the ICCPR provides for the right to electoral participation "without unreasonable restrictions". Article 2 requires States "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The OSCE Copenhagen Document commits all participating States to "guarantee universal and equal suffrage to adult citizens" (paragraph 7.3) and to "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination," (paragraph 7.5). It also states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground." (paragraph 5.9).

¹⁰ See paragraph 94 of the [2013 CRPD Committee's Communication No. 4/2011 on Zsolt Bujdosó and others v. Hungary](#).

¹¹ Committee on the Rights of Persons with Disabilities (2014), General comment No. 1 – Article 12: Equal recognition before the law, CRPD/C/GC/1, 19 May 2014, para. 48

making further derives from Article 4 (3) and 33 (3) of the CRPD and is explained in the CRPD Committee’s General Comment No. 7 on the participation of persons with disabilities.¹²

22. In its concluding observations on Poland, the CRPD Committee called authorities to repeal legal restrictions and to “[d]evelop, with the wide participation of organizations of persons with disabilities, a strategy and action plan for the implementation of obligations under the Convention, ensuring a comprehensive paradigm shift from a charity model to the human-rights model of disability throughout its national, regional, local and sectoral policies, regarding persons with disabilities as human rights holders.”¹³

2.1. Definition of Disability and Legal Capacity

23. Article 1 of the CRPD states that persons with disabilities “include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder [person’s] full and effective participation in society on an equal basis with others.”
24. According to the 1997 Charter of Persons with Disabilities of Poland, a person “whose physical, mental or intellectual ability either permanently or temporarily impairs, restricts or prevents daily life, education, work and performing social roles, in accordance with the legal and customary standards,” is considered disabled.¹⁴
25. As such, the CRPD does acknowledge that disability is an ever-evolving concept¹⁵ and acknowledges two components of “disability”, namely (a) an impairment which (b), combined with barriers (e.g. social, economic, political or environmental),¹⁶ prevents a person’s full and equitable participation in society. The CRPD Committee has further criticized Poland for following a “charity and social protection approach” to disability, instead of the human rights-based approach of the CRPD, for using a variety of definitions of “disability” which are not consistent with Article 1 of the CRPD” and are all based on a medical-model of disability, using derogatory terminology and vague concepts such as ‘mental retardation’, ‘incapacity to work’, ‘inability to perform social roles’ or ‘dependent or lacking ability to be autonomous.’”¹⁷ **It is recommended for the Polish legislator to amend its definition of “disability” in fulfilment of its obligations as a State party of the CRPD. Legislation should reflect the CRPD’s human rights-based approach to acknowledge its open-ended nature, to account for the importance external barriers play in preventing persons with disabilities from effective participation in political and public life and to acknowledge the State’s obligation in reducing or removing such barriers.**
26. Legal capacity is further explained in the Civil Code. Article 13.1 provides that “a person who has attained thirteen years of age may be fully legally incapacitated if, due

¹² [Article 4.3 and 33.3: Participation with persons with disabilities in the implementation and monitoring of the Convention](#), adopted 21 September 2018; Article 4.3 states “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations”

¹³ See [concluding observations](#) (CRPD/C/POL/CO/1), 29 October 2018

¹⁴ See Article 1 of the [1997 Charter of Persons with Disabilities of Poland](#).

¹⁵ Guidelines p 20.

¹⁶ Guidelines p 20.

¹⁷ CRPD Concluding Observations par 5 (a) and (b).

to a mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, he/she is incapable of controlling his/her conduct.” Article 16.1 of the Civil Code further defines the partial incapacitation as “mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, if his/her condition does not justify him/her being fully legally incapacitated but he/she requires assistance in managing his/her affairs.”

27. According to Article 544 of the Civil Procedure Code, a decision on legal incapacitation falls within the jurisdiction of regional courts, which may rule to assign a person to custody for full incapacitation or guardianship for partial incapacitation – in both cases, this results in disqualifying persons from exercising their political rights.
28. In this respect, legal capacity has a significant impact on a person’s ability to exercise their constitutional political rights, including on the right to vote or participate in elections (Article 62.2 of the Constitution); the right to stand as a candidate in *Senat* and *Sejm* elections (Article 99 of the Constitution); the right to stand as a candidate in presidential elections (Article 127.3 of the Constitution); the right to equal opportunity of access to employment in public service (Article 60 of the Constitution) and the right to introduce legislation (Article 118.2 of the Constitution). In addition to parting from the general principle of universality of access to political rights, such a deprivation of legal capacity runs contrary to Article 32.2 of the Constitution, which provides that “[n]o one shall be discriminated against in political, social or economic life for any reason.”
29. The denial of the right to participate in public life does not comply with the obligations undertaken by the State under the CRPD, which provides that all rights, including the right to political participation (Article 29) and the right to work on an equal basis with others (Article 27) are protected for all persons with disabilities, and that States should recognize that persons with disabilities “enjoy legal capacity on an equal basis with others in all aspects of life” (Article 12). As stated by the Special Rapporteur on the rights of persons with disabilities “[t]he evolving interpretation of the right to equal recognition as a person before the law implies that legal capacity is a universal attribute inherent to all persons by virtue of their humanity. Therefore, if a person’s legal agency is denied, his or her status as a person before the law is also affected.”¹⁸
30. General Comment No. 1 to Article 12 of the CPRD on equal recognition before the law states that legal capacity is the key to accessing full and effective participation in society and in decision-making processes and should be guaranteed to all persons with disabilities, including persons with intellectual disabilities, persons with autism and persons with actual or perceived psychosocial impairment, and children with disabilities, through their organizations.¹⁹ In addition, legal capacity is recognized as “an inherent right accorded to all people, including persons with disabilities.”²⁰
31. In its concluding observations on Poland, the UN Committee on the Rights of Persons with Disabilities (hereinafter: CRPD Committee) expressed concern about an “interpretative declaration on article 12 and the provisions of the Civil Code allowing for the deprivation of legal capacity of a person with psychosocial and/or intellectual disability and the assignment of a guardian or “curator” to make decisions on the said

¹⁸ See [the Report of the Special Rapporteur on the rights of persons with disabilities](#) (A/HRC/37/56).

¹⁹ See paragraph 8 and 9 of [General Comment No 1 \(2014\)](#).

²⁰ See paragraph 7, *Ibid*

person's behalf, and also about the large and growing number of persons with disabilities deprived of their legal capacity."²¹

32. The Constitutional Tribunal of Poland also emphasised in its decision that "legal incapacitation and the associated limitation of public rights has important implications for the constitutional political rights of legally incapacitated persons." It ruled that "[f]ollowing the enactment of the Constitution of 1997 and in connection with the adoption by Poland of the Council of Europe and European Union standards, the rights of legally incapacitated persons should be respected to a greater extent than in the past."²² It further noted that more comprehensive changes to the institution of legal incapacitation in Polish law could also be considered given that more countries are moving toward flexible solutions.

RECOMMENDATION A.

Consideration should be given to repealing existing discriminatory provisions across the legislation allowing for the deprivation of legal capacity of persons with disabilities. In line with the CRPD, legal capacity should be recognized and effectively guaranteed as an inherent right accorded to all people.

2.2. Non-Discrimination on the Grounds of Disability

33. Article 32 of the Constitution of Poland guarantees the equality of all persons before the law. The Constitution, however, is broad and does not explicitly recognize and prohibit discrimination on the grounds of disability, among others. Article 69 imposes a duty on the authorities to provide assistance to persons with disabilities "to ensure their subsistence, adaptation to work and social communication." However, it does not explicitly guarantee their participation in public and political life. Article 5 of the CRPD provides that "in order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."²³ Pursuant to Article 2 of the CRPD, the term "reasonable accommodation" implies "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".
34. **In order to fulfil its obligations under the CRPD and to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, it is important to guarantee that legislation provides for reasonable accommodation.**

²¹ See [concluding observations](#) (CRPD/C/POL/CO/1), 29 October 2018.

²² See [the decision](#) of the Constitutional Tribunal of Poland, No. K 28/05 from 7 March 2007.

²³ According to Article 2 of the CRPD, "[d]iscrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."

35. Further, Article 8 of the 2010 Act on the Implementation of Some Regulations of European Union Regarding Equal Treatment prohibits unequal treatment of natural persons on the basis of “sex, race, ethnic origin, nationality, religion, denomination, belief, disability, age or sexual orientation,” in the “joining and acting in trade unions, employers’ organizations and professional self-governing associations, and also exercising rights to which members of these organizations are entitled.” Moreover, it recognizes both direct and indirect discrimination based on disability (Article 3).²⁴
36. Lastly, while not legally binding, the 1997 Charter of Rights of Persons with Disabilities prohibits disability-based discrimination.²⁵ The Charter acknowledges that persons with disabilities have the right to an independent, active life, free from discrimination and imposes an obligation on the government to provide information concerning implementation of the rights of persons with disabilities.

2.3. Right to Freedom of Assembly and Association

37. Under Polish legislation, persons deprived of legal capacity are prohibited from exercising their fundamental right to association and assembly. Specifically, under Article 4.1 of the Law on Freedom of Assembly, persons deprived of legal capacity are prohibited from organizing assemblies. According to Article 3.1 of the Law on Association, the right to establish associations and to be members of associations is only vested in citizens who have full legal capacity. Provided that peaceful assemblies and associations are important mechanisms for enabling a citizen’s voice to be heard, any exclusion based on legal capacity further marginalizes persons with disabilities in the enjoyment of their fundamental rights.
38. In 2018, in the CRPD Committee’s concluding observations on Poland raised concern that the legislation “does not allow persons deprived of legal capacity to found an association, to be a member of one, or to organize public assemblies.”²⁶ The Committee further stressed that “[t]he participation of persons with disabilities in implementing and monitoring the Convention is possible when such persons can exercise their rights to freedom of expression, peaceful assembly and association as enshrined in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights.”²⁷
39. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized the impact of deprivation of legal capacity in that “[t]he rights to freedom of peaceful assembly and of association play a key role in empowering individuals belonging to groups most at risk to claim other rights and overcome the challenges associated with marginalization. Such rights must therefore not only be protected, but also facilitated. It is the responsibility of all stakeholders to

²⁴ However, the Act is not inclusive and fails to prohibit discrimination based on disability in the fields of health care, social protection and housing. In his report to the Committee on the Rights of Persons with Disabilities, the Commissioner for Human Rights noted that the 2010 Act “fails to prohibit discrimination of persons with disabilities in other areas of social life, despite the fact that such a prohibition applies to other groups at risk of discrimination (e.g. ethnic minorities). As a result, a person with a disability who is a victim of unequal treatment does not enjoy the same level of protection against discrimination as other people with respect to social security, access to services, including housing services, to goods, acquired rights, energy sources, health care and education, including university education. See the Information of the Commissioner for Human Rights on measures taken by the Republic of Poland in 2015-2017 in order to implement the provisions of the Convention on the Rights of Persons with Disabilities, 31 January 2018.

²⁵ The Charter of Rights of Persons with Disabilities, approved by the Parliament (Sejm) 15 on 1 August 1997 (M.P. 1997, No. 50, item 475)

²⁶ [Concluding observations](#) (CRPD/C/POL/CO/1), 29 October 2018 par 51.

²⁷ See paragraph 29 of [UN General Comment No. 7 \(2018\)](#) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention. See also Articles 21 and 22 of the ICCPR.

ensure that the voices of individuals belonging to groups most at risk are heard, and taken into account, in compliance with the principles of pluralism of views, tolerance, broadmindedness and equity.”²⁸

40. The above restrictions on legal capacity in Polish legislation are contrary to the CRPD. As stated in previous ODIHR Comments “[r]outinely depriving persons with disabilities of their legal capacity, based on a perceived or actual intellectual disability, and consequently depriving them of the exercise of certain human rights and fundamental freedoms, [...], defeats the very purpose of the Convention and therefore can lead to flagrant violations of the UN CRPD. More generally, the fact that persons registered with psychiatric institutions are deprived of the possibility to be an organizer of a peaceful assembly also runs counter to Articles 12, 19 and 29 of the Convention.”²⁹
41. Any restriction of the right to association and assembly must be in conformity with the specific permissible grounds of limitations set out in the relevant international obligations and standards. Article 11 of the ECHR states that the only restrictions permissible are those that are “prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” Any restrictions on the rights to freedom of assembly and association should be narrowly tailored to meet a legitimate aim,³⁰ in particular, limitations on the formation of associations imposed on certain persons or groups should, thus, be narrowly tailored.”³¹ When introducing regulations, “the authorities must not treat any individual, group or type of association differently, without providing a well-founded justification”.³² All individuals should be facilitated in the enjoyment of their freedom to peacefully assemble, irrespective of their legal capacity.³³
42. Furthermore, Article 29 of CRPD imposes a duty on the State to adopt positive measures to encourage the active involvement of persons with disabilities in non-governmental organizations and associations concerned with public and political life, and in political parties, as well as the forming and joining of organizations of persons with disabilities (DPOs) at the local, regional, national and international levels. In addition, Article 33.3 obliges States to ensure that persons with disabilities are involved and participate fully in monitoring the implementation of the CRPD at the national level.
43. Lastly, General Comment No 1 to Article 12 of the CRPD states that “a person’s status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds for denying legal capacity or any of the rights provided for in Article 12. All practices that in purpose or effect violate Article 12 must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others.”

²⁸ See [the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#) (A/HRC/26/29).

²⁹ See [ODIHR Comments](#) on the Draft Law on Rallies, Meetings and Demonstrations of the Republic of Uzbekistan.

³⁰ Guidelines on Freedom of Peaceful Assembly par 40; Guidelines of Freedom of Association Principle 9.

³¹ Guidelines on Freedom of Association par 125.; see also *Zdanoka v Latvia* [GC] (Application No 58278/00) judgement of 16 March 2004; In addition, Principle 2 states that the State has the positive obligation to respect and facilitate the exercise of the freedom of association.

³² Guidelines of Freedom of Association par 125.

³³ Guidelines on Freedom of Peaceful Assembly par 59.

RECOMMENDATION B.

To enable the realization of freedoms of assembly and association by persons with disabilities, consideration should be given to amending Article 4.1 of the Law on Freedom of Assembly and Article 3.1 of the Law on Association to ensure persons with disabilities can organize assemblies as well as found and join associations.

2.4. Membership in Political Parties

44. Political parties are private associations that have been recognized as integral actors in the democratic process and as foundational to a pluralist political society and hence play a critical role in the public sphere.³⁴ Ultimately, the deprivation of the right to associate impacts a person's rights to become and serve as a member of a political party, to run for office, to influence policy choices through law-making and choose political leaders, among others. Article 12.2 of the CRPD states that "[s]tate Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life," whereas pursuant to Article 29(b)(i) State Parties shall undertake to promote actively an environment in which persons with disabilities can participate in "non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties." In addition, CoE Recommendation (2011)14 invites member States to enable persons with disabilities "freely and without discrimination, particularly of a legal, environmental and/or financial nature to [...] meet, join or found political parties."³⁵
45. It is recognized that the participation of persons with disabilities in public decision-making can have a considerable positive impact on government actions affecting them. Previously, ODIHR has recommended to a number of participating States to remove the reference to "legal capacity" in their legislation related to the enjoyment of political rights.³⁶
46. In addition, Article 11.3 of the Law on Political Parties requires a person's full legal capacity to support the establishment of a political party. Declaring support for a political party is a form of expression and political participation, including the opportunity to influence policy choices, choose and engage with political leaders, as well as a guarantor of pluralism in the country. Freedom of association, including in the formation of and support to political parties, is essential to ensuring the full enjoyment and protection of the rights to freedom of expression and political participation and must be respected without discrimination.

³⁴ Guidelines on Political Party Regulation par 6.

³⁵ See also ODIHR Joint Guidelines on Political Party Regulations, which provides that "[a]ll individuals and groups that seek to establish political parties must be able to do so on the basis of equal treatment before the law. No individual or group wishing to associate as a political party should be advantaged or disadvantaged in this endeavour by the State, and the regulation of parties must be uniformly applied."

³⁶ See [ODIHR opinion](#) on the Draft Law on Political Parties in Mongolia and ODIHR [opinion](#) on the Constitutional Law of the Republic of Armenia on Political Parties

RECOMMENDATION C.

47. **To enable the realization of freedom of association and political participation of persons with disabilities, it is recommended to amend Article 11.3 of the Law on Political Parties.**

political parties do not have the same obligations undertaken by the State and, as such, Article 29 of the CRPD is not directly applicable, they nevertheless fall under the broader responsibility of State parties to the CRPD to create a legal environment that promotes conformity with the convention related to the inclusion of persons with disabilities in political life. As such, Article 29 calls on States “to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs [...] on an equal basis with others.” In addition, Article 3 of EU Regulation 1141/2014 on the statute and funding of European political parties and European political foundations provides that a political party “must observe, in particular in its programme and in its activities, and through those of its members, the values on which the European Union is founded, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.”³⁷

48. In this respect, political parties could use various tools to promote the participation of persons with disabilities, including women and youth with disabilities, such as reserving financial resources for accommodating persons with disabilities, connecting with local civil society organizations representing different disability communities and making their premises and websites more accessible to persons with disabilities.³⁸ As provided by the ODIHR Guidelines, special temporary measures such as quotas (either legislative or voluntary), could help to resolve inequalities for persons with disabilities and increase their numbers in political parties.³⁹
49. *Political parties could consider voluntary measures to promote the participation of persons with disabilities.*
50. Lastly, to encourage and increase the participation of persons with disabilities in political life, and in line with previous ODIHR recommendations, public funding could be allocated for initiatives by political parties aiming to support the participation of persons with disabilities in political life.⁴⁰ This could include developing political and campaign materials, including online, in accessible formats tailored to improve accessibility for all people with disabilities.⁴¹
51. *Consideration could be given to measures, such as connecting the allocation of public financing to measurable efforts to promote political participation of persons with disabilities.*

2.5. Electoral Participation

2.5.1 Suffrage Rights

³⁷ See [EU Regulation 1141/2014](#) on the statute and funding of European political parties and European political foundations.

³⁸ See e.g. e [ODIHR Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities pp 46-74](#)

³⁹ See [ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities.](#)

⁴⁰ See [ODIHR opinion](#) on the Draft Law on Political Parties in Mongolia, ODIHR [opinion](#) on the Constitutional Law of the Republic of Armenia on Political Parties and [ODIHR opinion](#) on Laws Regulating the Funding of Political Parties in Spain.

⁴¹ See [ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities.](#)

52. Under the Constitution (Article 62 par 2) and the Election Code (Article 10 par 2) persons deprived of legal capacity, including on the basis of intellectual or psychosocial disability, automatically lose the right to vote (active voting rights). The deprivation of these rights is a violation of international obligations and jurisprudence as previously noted by ODIHR in its election observation reports.⁴² The nature of the disability is not relevant to the enjoyment of the right to participate in elections and therefore this rule is applicable to partial and full incapacitation.⁴³ In 2018, the CRPD Committee called for the repeal of restrictions to the right to vote and other political rights.⁴⁴ In the following years, ODIHR has repeatedly recommended that “all restrictions on the electoral rights of persons with intellectual or psychosocial disabilities should be removed.”⁴⁵ In fact, through the enjoyment of political rights, persons with disabilities assert their autonomy, thereby allowing their full and effective participation and inclusion in the society.⁴⁶
53. According to Articles 99 and 127 of the Constitution and Article 11 of the Election Code, the right to be elected (passive voting right) can only be enjoyed by persons having the right to vote, subject to additional conditions. Poland also made an interpretative declaration to Article 12 of the CRPD.⁴⁷ Consequently, persons with certain disabilities that are deprived of legal capacity are not able to exercise their right to be elected.
54. Under Article 29 of the CRPD states should guarantee that, “persons with disabilities have not only the right, but also the ‘opportunity’ to vote and be elected. This sets up a duty on States Parties to guarantee, through the adoption of positive measures, that all eligible persons have the actual opportunity to exercise their voting rights. Consequently, it is not enough to extend formal voting rights to persons with disabilities; States are also required to ensure that persons with disabilities are truly able to make use of their right to vote, for example by making polling stations accessible to wheelchair users, facilitating the use of assistive voting devices to enable persons with visual impairments to vote independently, or allowing persons with disabilities to be assisted in voting by a person of their choice.”⁴⁸

⁴² See all previous ODIHR election reports on Poland.

In 2019, in a landmark decision regarding the elections to the European Parliament, the District Court of Nowy Sacz ordered that a “partially” incapacitated person be entered in the voters' register, reversing the earlier decision of the city's mayor. The court found that the blanket deprivation of incapacitated persons' right to vote in elections to the European Parliament violates international and regional treaties.

⁴⁴ Paragraph 52 of the 2018 CRPD [Concluding Observations on the initial report of Poland](#). See also the decision of the ECtHR in [Horváth and Kiss v. Hungary](#) (application no. 11146/11, 29 April 2013).

⁴⁵ See [ODIHR Limited Election Observation Mission Final Report](#) Parliamentary Elections, 13 October 2019 and [Special Election Assessment Mission Final Report](#) Presidential Election, 28 June 2020.

⁴⁶ Thematic study by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on participation in political and public life by persons with disabilities 2011, [A/HRC/19/36](#), paragraph 14.

⁴⁷ “Poland has declared that it will interpret Article 12 of the Convention in a way allowing the application of the incapacitation, in the circumstances and in the manner set forth in the domestic law, as a measure indicated in Article 12.4, when a person suffering from a mental illness, mental disability or other mental disorder is unable to control his or her conduct.”

⁴⁸ Thematic study by the OHCHR on participation in political and public life by persons with disabilities 2011, [A/HRC/19/36](#), paragraph 15.

RECOMMENDATION D.

Persons with disabilities should enjoy legal capacity to vote and stand as candidates on an equal basis with others, without any exceptions. Active measures to facilitate an environment conducive to their full participation should be taken by the authorities.

Consideration should be given to withdrawing the interpretative declaration to Article 12 of CRPD.

2.5.2 Collection of Disaggregated Data

55. Contrary to the CRPD (Article 31), there are no legal requirements in Poland requiring that electoral data be collected and disaggregated by various types of disabilities and gender. Consequently, there is no data available on the registration and turnout of persons with disabilities in order to assess their voting participation, or on the number of persons with disabilities who have registered as candidates and the number of persons with disabilities serving on election commissions at each level. The CRPD Committee recommends that states “update and collect data and statistics on persons with disabilities disaggregated by age, sex, type of impairment, ethnicity and geographic position.”⁴⁹ Furthermore, collection and regular update of data is important to inform, formulate and implement fact based policies related to electoral participation of persons with disabilities including to address barriers that prevent their full participation. **Disaggregated data about the participation of persons with disabilities in the electoral process should be collected and published in a comprehensive manner.**

2.5.3 Participation in Election Administration

56. The 1997 Polish Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, provides for a six per cent legal quota for persons with disabilities in employment and a fine to the State Fund for Rehabilitation of Disabled People for non-compliance with this provision. The Act also categorizes disability in three levels: severe, moderate and minor. The CRPD Committee recommended that Poland shall “ensure that the employment quota of six per cent for persons with disabilities is reached in all sectors, in particular in the public administration sector.”⁵⁰ There is no data available on the number of persons with disabilities appointed to election commissions on each level. There is also no official consolidated data on organisational activities undertaken to provide reasonable accommodation or on types of adaptations. **It is recommended to ensure that six per cent quota requirement applies also to election administration and that data on the conformity with this provision is publicly available. Consideration should be given to eliminate negative terminology concerning persons with disabilities.**

⁴⁹ CRPD Concluding observations Serbia, CRPD/C/SRB/CO/1, 2016, paragraph 64.

⁵⁰ Paragraph 48 of the 2018 CRPD Concluding Observations on the initial report of Poland. Data from 2015 show that quotas were reached by 44.5 per cent of total number of obliged employers (those with over 25 employees). For non-compliance, employers pay a fine for each post falling short of quota. Eight Disability High Level Group Report on the Implementation of the CRPD, 2016.

2.5.4 Raising Awareness and Electoral Information

57. The Election Code (Article 37a.1) provides persons with disabilities the right to access information on elections, including their relevant electoral district; polling stations nearest to the voter's place of residence, including premises with amenities for disabled people; conditions for adding a voter's name to the electoral roll in an electoral district; dates and hours of the vote; electors' committees running in the elections; registered candidates; and, terms and forms of voting. However, such information is available only upon request, which might prove burdensome in practice as not all voters know how, where and under what conditions to request such information.
58. The Election Code (Article 37b) obliges the National Election Commission (NEC) to post special information on the rights of voters with disabilities on its website, in a form which is accessible to people with different types of disabilities and to draw up informative material in Braille about these rights and pass it on request to interested persons. When conducting voter education activities, the NEC is mandated to cooperate with NGOs whose statutory objectives include development of democracy, civil society, raising of election activity and promotion of civil rights (Article 160.3).
59. Polling staff are obliged to display any official notices, including information on candidates, resolutions and copies of results protocols, in such a way that is accessible also for voters with reduced mobility and to orally transmit the content of such notices to voters with disabilities upon request.⁵¹ There is no provision for election results being available in multiple formats, including in easy-to-read, audio, braille or large print formats. **Election-related information should be proactively put at the disposal of persons with disabilities and election results should be made available in multiple formats.**

2.5.5 Accessible Voting Processes

60. The OSCE 1990 Moscow Document, paragraph 41.1, commits States "to encourage favourable conditions for the access of persons with disabilities to public buildings and services, housing, transport, and cultural and recreational activities," which includes access to polling stations, campaign venues and other premises in the course of elections.⁵² Poland adopted the 'Accessibility Plus Programme 2018-2025;' however, no reference is made to participation of persons with disabilities in political life and electoral processes.⁵³
61. The Election Code provides for polling stations to be set up in various types of long-term care institutions, such as hospitals, social welfare institutions, prisons and detention centres and that premises intended for seats of electoral bodies should be easily accessible for the disabled.⁵⁴ At least one half of all polling stations in each municipality should be accessible and fully adapted to the needs of voters with disabilities.⁵⁵ Specific technical conditions for such polling stations are detailed in the

⁵¹ Election Code, Article 37

⁵² See also Article 9 of the CRPD.

⁵³ See '[Accessibility Plus Programme 2018-2025](#)' full document.

⁵⁴ Election Code, Article 12.4 and Article 156.3

⁵⁵ Election Code, Article 186

Regulation of the Minister of Infrastructure from 29 July 2011.⁵⁶ However, the regulation is not always enforced appropriately and does not cover the area surrounding the polling station, thus disregarding the need for removal of possible barriers. Previous ODIHR reports identified that “the layout and vicinity of many of the visited polling stations did not provide for independent access for persons with limited mobility. While several visited polling stations were located in accessible buildings, the doors of these polling stations were often difficult to open or were only partially unlocked and the arrangement of voting booths often could not accommodate a person in a wheelchair. The height of the ballot box also compromised accessibility.”⁵⁷ Following the 2020 presidential election, the Supreme Court received a complaint about a certain number of polling stations not being adapted to the needs of people with disabilities despite having been thus marked in the official announcement. The complaint cites polling stations either not equipped with ramps for a wheelchair, access ways being too narrow or inclination of the ramps being too dangerous to allow for independent access to the premises. The Supreme Court found the complaint justified and acknowledged violation of the Regulation of the Minister of Infrastructure but determined that it had not influenced the overall election result.⁵⁸

RECOMMENDATION E.

All polling stations should be accessible and adapted to all voters. Technical conditions should be adhered to and specified not only for polling stations but also for their immediate neighbourhood.

62. Positively, the legislation provides for the possibility of assisted voting by a person of choice, and requires Braille overlays to be available at polling stations as well as to be included in postal voting packages upon request.⁵⁹
63. The Election Code provides for a variety of ways to cast a ballot: in person, via postal voting or by proxy. It also gives voters with disabilities an opportunity to change their polling station to one which is adapted to their particular needs if they notify the authorities before the vote.
64. Proxy voting is available for voters with disabilities, and those older than 60 years upon request and based on a relevant certificate.⁶⁰ Proxy voting was criticized by previous ODIHR reports as it is in violation of international standards and OSCE commitments related to the secrecy of the vote.⁶¹ **Authorities should continue efforts to facilitate the direct participation of all citizens in the electoral process, including persons with disabilities, thereby eliminating the need for proxy voting.**

⁵⁶ Regulation of the Minister of Infrastructure on Polling Stations with Amenities for Disabled People ([Journal of Laws of 2011, No 158, item 938](#))

⁵⁷ [ODIHR Limited Election Observation Mission Final Report](#) Parliamentary Elections, 13 October 2019.

⁵⁸ See the ruling and justification of the Supreme Court [here](#).

⁵⁹ Election Code, Article 53 and Article 40a

⁶⁰ Election Code, Articles 54.1 and 54.3 within the meaning of the Act on vocational and social rehabilitation and employment of disabled persons ([Journal of Law 2020, Item 426](#)).

⁶¹ [ODIHR Limited Election Observation Mission Final Report](#) Parliamentary Elections, 13 October 2019.

65. Prior to 2020, postal voting was limited to individuals who could present a certificate of disability. Subsequent amendments to permit voting during the COVID 19 pandemic expanded access to the postal votes to all voters through the 2 June 2020 law on “Special regulations for general elections of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting.” In effect, the 2020 amendments were temporary in nature and intended for one specific election; as such, it is not clear whether there is will to maintain and integrate this provision in the Election Code.
66. Although in general facilitating access to the electoral process, the OHCHR noted in 2011 that “alternative ways of voting should be used only in cases where it is not possible, or it is extremely difficult, for persons with disabilities to vote in polling stations like everyone else... General reliance on voting assistance and alternative voting as a way to ensure the political participation of persons with disabilities would not be consistent with the general obligations undertaken by States Parties under articles 4 and 29 of the Convention [the CRPD].”⁶²
67. *Consideration should be given to removing the legal requirement for a certificate of disability in order to access to postal voting*

2.5.6 Election Campaigns and Political Parties

68. The CRPD Committee’s second General Comment specifically notes that it is important that “political meetings and materials used and produced by political parties or individual candidates participating in public elections are accessible.”⁶³ The accessibility of venues where campaign events take place, accessibility of campaign materials and campaign speeches are not regulated by law. The 2019 ODIHR Final Report noted that “the majority of campaign events observed by the ODIHR LEOM were accessible for persons with limited mobility. However, no speeches at observed events were accompanied by a display of text or sign language interpretation.”⁶⁴ The 2011 Council of Europe’s Committee of Ministers recommendation notes that “member states should require political parties [...] to be accountable for the active measures adopted to ensure that persons with disabilities have access to information on political debates, campaigns and events which fall within their field of action.”⁶⁵ **Political parties and contestants should consider adopting measures to ensure access of persons with disabilities to political campaigns and to information on political debates.**

2.6. Legal Redress

69. While the right to legal redress does not fall under the direct purview of Article 29 of the CRPD, a person’s right and available mechanisms to seek legal redress on

⁶² Thematic study by the Office of the United Nations High Commissioner for Human Rights on participation in political and public life by persons with disabilities 2011, [A/HRC/19/36](#), paragraph 58 and 74.

⁶³ CRPD, General Comment no. 2, [CRPD/C/GC/2](#), paragraph 43

⁶⁴ [ODIHR Limited Election Observation Mission Final Report](#) Parliamentary Elections, 13 October 2019. Paragraph 7 of the [Resolution of the Council of Europe Parliamentary Assembly 2247\(2018\) on Protecting and promoting sign language](#) calls on “political parties to provide sign language interpretation at their congresses and large-scale conferences so as to ensure the participation of deaf people at these events and encourage them to participate in political life.”

⁶⁵ Recommendation [CM/Rec\(2011\)14](#) of the Committee of Ministers to Member States on the Participation of Persons With Disabilities in Political and Public Life.

revocation of a prior decision related to legal capacity are an extension of his or her enjoyment of the right to participate in public and political life.

70. A decision on legal incapacitation falls within the jurisdiction of regional courts, which may rule to assign a person to custody for full incapacitation or guardianship for partial incapacitation – in both cases disqualifying a person from exercising political rights. Under Article 559 of the Civil Procedure Code, “[t]he court shall revoke the declaration of legal incapacitation when reasons for such incapacitation cease to exist; such revocation may also be issued ex officio.” The court may change the scope of legal incapacitation from complete to partial or vice versa “in the event of an improvement of the mental condition of the legally incapacitated person,” or “in the event of deterioration of the person’s mental condition.” This provision must be read in conjunction with Article 545 of the Civil Procedure Code, which does not grant a legally incapacitated person the right to put forward a motion to initiate proceedings to revoke the declaration of, or change the scope of legal incapacitation.⁶⁶ Such a person only retains the right to appeal against a decision issued in the course of such proceedings (Article 560).
71. The case law of the ECtHR has recognized the right of persons with disabilities to pursue legal proceedings concerning the status of guardianship independently and to have effective opportunity to access courts in connection with incapacitation proceedings. For example, the ECtHR found in one case that “there had been a violation of Article 5 §4 (right to have lawfulness of detention decided speedily by a court) of the Convention, concerning the impossibility for the applicant to bring proceedings to have the lawfulness of his detention decided by a court.”⁶⁷ In another case, the ECtHR found that “a person capable of expressing a view, despite being deprived of legal capacity, was also deprived of liberty at the request of his or her guardian, he or she must be accorded the opportunity of contesting that confinement before a court with separate legal representation.”⁶⁸ In addition, the ECtHR recognized the right to fair trial and held that “in cases concerning compulsory confinement, a person of unsound mind should be heard either in person or, where necessary, through some form of representation, it observed in particular that the applicant, who appeared to have been a relatively autonomous person despite his illness, had not been given any opportunity to participate in the proceedings concerning his legal capacity. Given the consequences of those proceedings for the applicant’s personal autonomy and indeed liberty, his attendance had been indispensable not only to give him the opportunity to present his case, but also to allow the judge to form an opinion on his mental capacity.”⁶⁹
72. As already pointed out by the Constitutional Tribunal of Poland, the absence of effective means to access justice, undermines the person’s constitutional right to dignity (Article 30) and the right to respect freedom of others (Article 31). The Court argued that “the deprivation of the legally incapacitated person of the right to put forward a motion to initiate proceedings to revoke the declaration of, or change the scope of legal incapacitation is not in line with Article 30 and Article 31 of the Constitution.”⁷⁰

⁶⁶ According to Article 545, a right to put the motion to revoke or change the legal capacity status belongs to the (1) spouse of the person concerned; (2) relatives in the straight line and siblings, and (3) a statutory representative.

⁶⁷ See *Stanev v. Bulgaria* (application no. [36760/06](#)).

⁶⁸ See *D.D. v. Lithuania* (application no. [13469/06](#)).

⁶⁹ See *Shtukaturov v. Russia* (application no. [44009/05](#)). See also *A.N. v. Lithuania* (application no. [17280/08](#)).

⁷⁰ See [the decision](#) of the Constitutional Tribunal of Poland, No. K 28/05 from 7 March 2007.

73. Article 45.1 of the Constitution, ensures everyone has a right to a fair and public hearing. While the recognition of the right to legal capacity is fundamental to guaranteeing access to justice, it is also essential for the protection and restoration of legal capacity.⁷¹ As provided in paragraph 38 of General Comment No 1 to Article 12 of the CPRD, “States parties have an obligation to ensure that persons with disabilities have access to justice on an equal basis with others. The recognition of the right to legal capacity is essential for access to justice in many respects. In order to seek enforcement of their rights and obligations on an equal basis with others, persons with disabilities must be recognized as persons before the law with equal standing in courts and tribunals.”⁷² Additionally, persons with disability have the right to procedural accommodation, accessible legal information and legal counselling, which has also been reiterated by the CRPD Committee on its Concluding Observations on Poland.⁷³ Individuals should also be able to use sign language, Braille, accessible digital formats, Easy to Read and other accessible means, modes and formats of communication in legal proceedings.⁷⁴

RECOMMENDATION F.

If certain persons are deprived of legal capacity contrary to what is recommended in Recommendation A, to, at a minimum, amend Article 545 of the Civil Procedure Code to ensure that persons deprived of legal capacity have equal and effective access to legal redress, allowing them to apply for the revocation of a prior decision related to legal capacity.

2.7. Accessibility of Environment, Information and Communication

74. In order for persons with disabilities “to live independently and participate fully in all aspects of life”, Article 9 par 1 of the CRPD imposes an obligation on a State to “take appropriate measures to ensure to persons with disabilities access, on an equal basis with others” to “the physical environment... information and communications.” In addition, the obligation to ensure access, to the support persons with disability may require in exercising their legal capacity, is provided by Article 12.4. This should also be read in conjunction with Article 5.3, which provides that States “shall take all appropriate steps to ensure that reasonable accommodation is provided.” Similarly, persons who only face problems in communicating their will to others should have access to that type of support, without having to defend their decision to the support person.
75. The 1995 Construction Law contains obligations to ensure accessibility to public buildings for all persons with disabilities. Particularly, Article 5 provides for “the necessary conditions for the use of public facilities and multifamily housing by persons

⁷¹ Article 13 of the CPRD provides that “[s]tates Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”

⁷² In paragraph 13.9 of the [1989 OSCE Vienna Document](#) the participating States committed to “ensure that effective remedies as well as full information about them are available to those who claim that their human rights and fundamental freedoms have been violated.” In paragraph 21 the participating States committed to “ensure that the exercise of the above-mentioned rights will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights.”

⁷³ Pars 7, 21.

⁷⁴ See par 21 (a) Concluding Observations on Poland.

with disabilities, as referred to in Article 1 of the [CRPD]”. Article 9.1 further notes that “any derogation shall not cause a threat to human life or property.” While there is some monitoring of such obligations in the case of new construction through the requirement of a permit, there are no monitoring mechanisms to ensure the full application of the law on all public buildings, in particular for existing structures. In addition, the law does not envisage sanctions for non-compliance with accessibility requirements.⁷⁵

76. ***Authorities could consider amending the Construction Law to provide for more effective mechanisms to monitor the implementation of accessibility regulations as well as to consider reasonable sanctions for non-compliance with accessibility standards.***
77. The 2011 Act on Sign Language obliges the public administration to facilitate access to a translator for public meetings within three days, which is welcomed. However, this provision only applies to activities undertaken in public offices.⁷⁶ The CRPD Committee called for “[e]ffective implementation of the [Act] owing to its narrow scope, lack of clarity and obligations for public and private service providers to make sign language interpretation available, in particular in health-care services.”⁷⁷
78. Positively, and in line with CRPD recommendation, the Law on Broadcasting was amended in 2019 and provides for an obligation for a public broadcaster to “ensure the accessibility of programmes for the visually impaired and hearing impaired by introducing appropriate aids for impaired persons, so that such aids are provided during at least 50 per cent of the quarterly transmission time of the programme service, with the exception of advertising and teleshopping (Article 18a par 1 Law on Broadcasting).”
79. The Law on Freedom of Assembly does not contain provisions to ensure access of persons with physical disabilities during assemblies, this includes access for wheelchairs and other types of aids for persons with physical impairments. This means that whoever is convening the assembly should accommodate the specific needs of persons with any disabilities and support their capacity to exercise their rights to freedom of peaceful assembly.⁷⁸ In this respect, facilitating the right to freedom of assembly should be read in conjunction with Article 21 of the CRPD which recommends “[a]ccepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions” and “[u]rging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities.” Recognizing the difficulties persons with disabilities face in staging peaceful assemblies due to limitations related to their disabilities, the Special Rapporteur urged the States to “to strive for implementation of article 19 of the Convention on the Rights of Persons with Disabilities, which called for States to recognize the equal right of all persons with disabilities to live in the

⁷⁵ In 2018, the CPRD committee recommended to “[u]pdate and enact regulations providing for standards and obligations to implement standards of universal design for products, the environment, transportation, information and communications services, automatic teller machines and other self-service devices, and municipal housing to be used by all persons with disabilities throughout the State party, including buildings built before 1995.”

⁷⁶ See Act on Sign Language and Other Means of Communication, 19 August 2011 (no. 209, item 1243)

⁷⁷ See the [concluding observations](#) (CRPD/C/POL/CO/1), 29 October 2018.

⁷⁸ Article 4 of the CRPD calls the States to have “reasonable accommodation of and support to persons with disabilities to ensure that they enjoy or exercise, on an equal basis with others, all human rights and fundamental freedoms.”

community, with choices equal to others, and to take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of that right and their full inclusion and participation in the community.⁷⁹

80. ***Consideration could be given to include provisions in the Law on Freedom of Assembly that would reinforce the obligation undertaken under the CRPD to take measures to promote participation of persons with disabilities***
81. ODIHR therefore reiterates its recommendation in the above-mentioned report to ***ensure greater accessibility to and within polling stations, and on working with persons with disabilities to facilitate their voting rights.***
82. The right to participation in political and public life is intrinsically linked to the right to freedom of expression and opinion, and access to information, which the CRPD reiterates in Article 21 of the Convention applies to all persons including persons with disability. Persons with disabilities have the right to receive information intended for the general public in accessible formats and to use accessible means, modes and formats of communication of their choice in official interactions. The CRPD Committee voiced a number of concerns and issued various recommendation to Poland in this respect.⁸⁰ Access to information should be safeguarded in all aspects of political and public life.⁸¹

2.8. Final Comments

83. All laws should be designed with the aim to provide universal access. Persons with disabilities should be closely consulted and involved in decision-making about matters affecting their lives, including law-making processes. Such duty derives from Article 4 (3) and 33 (3) of the CPRD and are further explained in the CRPD Committee's General Comment No. 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention.⁸²

[END OF TEXT]

⁷⁹ See [the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#) (A/HRC/26/29).

⁸⁰ Par 38 of the Concluding Observations recommend "(a) Develop the use of Braille, augmentative and alternative modes of communication and Easy Read across all sectors;

(b) Expedite the adaptation of websites of public institutions to ensure accessibility of all persons with disabilities, and conduct regular monitoring thereof;

(c) Update and give effect to the Act on Sign Language and Other Means of Communication to ensure effective implementation of the rights of deaf persons, including access to sign language interpretation in all sectors at the expense of the State;

(d) Include in the Broadcasting Act clear and progressive obligations for public and private broadcasters with regard to the use of sign language interpretation, subtitles and audio description, and amend the Copyright Act to ensure unrestricted access to interpretation in sign language for all broadcasts."

⁸¹ See also Guidelines on Promoting the Political Participation of Persons with Disabilities

⁸² [UN General Comment No. 7 \(2018\)](#) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention; see also [ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities. p 79.](#)