**Can persons deprived of legal capacity vote?**

Indicators on political participation

of persons with disabilities

2014

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| **EUMS** | **Source and supporting information** |
| AT | Austriais one of the states in which persons with mental health problems and persons with intellectual disabilities are allowed to vote and to be elected like all other citizens. According to Article 26(5) of the Austrian Constitution, a person can only be deprived of his or her right to vote and to be elected in case of a criminal conviction, which is further specified in Section 22 of the Elections to the Parliament Act. Austria/BGBl 471/1992 as amended by BGBl II 147/2008 (29.12.2008).[[1]](#footnote-1) |
| BE | Generally, everyone has the right to vote as soon as they meet the conditions of eligibility. A person with a disability thus also has the right to vote unless the person has been deprived of her legal capacity, is under a prolonged minority status (Civil Code, Book I, Title X, Chapter IV) or is an offender interned due to serious mental disability following a judicial decision (Social Protection Act against abnormal and habitual offenders of 1 July 1964). This is mentioned in article 7, 1° of the Electoral Code.The electoral incapacity ends at the same time as the lifting of the deprivation of legal capacity, the end of the extended minority or the prisoner’s final release.A declaration of incapacity requires a judicial decision or judgment (cf. Articles 489 to 512 of the Civil Code concerning the removal of legal capacity). The temporary custody of property belonging to a minor is not part of the deprivation of legal capacity regime. In principle, a person who has a temporary administrator has the right to vote but may, on medical advice, either be excused from voting or vote by proxy. |
| BG | There is no limitation except for persons placed under guardianship by a final decision of a district court (Article 42 of the Constitution of the Republic of Bulgaria and art. 3 and 4 of the Electoral Code). These persons have no active or passive rights to vote and are placed in the so called “prohibited voter lists”.[[2]](#footnote-2)The Electoral Code applies to all types of elections - national, local, European Parliament and referendum on the basis of the national norm of § 2 of the Direct Participation of Citizens in State and Local Government Act.The Electoral Code applies to all types of elections, which provides separate rules for each type of vote, including the election of members of the European Parliament. |
| CY | Citizens can stand for and be elected to public office if they are over 35 years old, are eligible to vote, have not been convicted of “an offence involving dishonesty”, have not been disqualified by a court for any electoral offence or are not suffering from a mental disability.[[3]](#footnote-3) |
| CZ | The right to political participation relates to the legal capacity of a person. A person´s legal capacity may be limited or even negated by a court decision based on the fact that he/she suffers from a mental disorder which is not temporary and if the person is not able to perform legal acts (Art. 10 Civil Code).[[4]](#footnote-4) The court decision may be revoked. The right to vote is vested in the Election Act 247/1995 (*Volební zákon)[[5]](#footnote-5)* and limited by its article 2, which states that “*limits to exercise a right to vote are a) statutory restriction on sb.´s freedoms in order to protect people´s health or b) legal capacity restriction”[[6]](#footnote-6)* However, mental health problems and/or intellectual disability do not automatically lead to legal capacity restriction, they must be assessed individually. A similar barrier is formulated in Act 62/2003 on elections to the European Parliament and in section no. 4, paragraph 2b of Act 491/2001 regulating the right to vote in local elections and stating that aside from age and residency requirements, a barrier for exercising voting rights is the “*deprival of the capacity to carry out legal acts*”.Act 40/1964 (Civil Code),[[7]](#footnote-7) establishes and describes the process of deprivation of legal capacity. Its articles 10 and 855 refer to the exclusion and limited political participation. The new civil code that entered into force on the 1st of January 2014 redefines the term *legal capacity* andrevokes the deprivation of legal capacity (paragraphs 55-65)*.* People, who will have been stripped of their full legal capacity before 2014 will be granted another status within a period of 3 years[[8]](#footnote-8), and the court will be able to limit legal capacity only for particular acts.In the Shadow Report to the UN Committee on the Rights of Persons with Disabilities, a group of major NGOs condemned the practice of scrutinizing people’s mental abilities and called for a more generous approach to allow citizens with intellectual disabilities to exercise their rights to vote. |
| DE | People with disabilities enjoy the same right as every other citizen in Germany to vote and to stand for election pursuant to our constitution and statutory provisions (Art. 38 of the Basic Law, section 12 para. 1, second sentence of the BWG, section 6 of the EuWG), i.e. if he or she reached the age of eighteen years and has been residing in Germany or another EU member state for at least three months or usually lives there. There are no restrictions contained in the German Constitution which would restrict right of persons with disabilities to vote and be elected. However, the Bundeswahlgesetz (BWahlG) [Federal Election Act] contains restrictions which mainly affect persons with disabilities. Following Section 13, only those persons are disqualified from voting who are deprived of their right to vote by a court verdict, persons for whom a custodian is appointed by a final court order to permanently manage all their affairs, and persons who by court order are in a psychiatric hospital because they committed a crime but have been found to lack criminal responsibility due to mental illness (Section 6a (1) EuWG).Citizens of the European Union are also disqualified from voting if they are deprived of their right to vote by a court verdict in their home state, Section 6a (2) Nr. 2 EuWG.Similar provisions are contained in the municipal elections acts of the 16 states, as well as the Federal States have passed similar legislation concerning elections at state level.The exclusion of voting rights of persons who by court order are in a psychiatric hospital because they committed a crime but have been found to lack criminal responsibility due to mental illness does not exist in every state, e.g. the states of Baden-Württemberg, Bremen, Mecklenburg-West Pomerania, Hesse, North Rhine-Westphalia, Saxony- Anhalt and Schleswig-Holstein do not have these provisions.A Draft Bill aiming to implement the UN CRPD in election law, which was tabled in the German Bundestag by the Green Party early in 2013, was rejected by majority vote on 27 June 2013. The proposed bill aimed at removing the exclusion of mentally impaired from elections.[[9]](#footnote-9)Both the Social Democrats[[10]](#footnote-10) and the Green Party[[11]](#footnote-11) in the German Bundestag tabled proposals to revise the Federal Election Act (*Bundeswahlgesetz*) and the Europe Election Act (*Europawahlgesetz*) in early 2013. In an attempt to fully implement Article 29 of the UN CPRD, the proposed revisions aimed at granting voting rights to persons who are currently excluded from voting as they either have been assigned to a caretaker for all matters (*Betreuer*) or are hospitalised as criminally insane. Both proposals were discussed in depth at an expert hearing in the Committee for Home Affairs of the German Bundestag on the 3d of June 2013. Whereas four of the six experts supported the goal of the proposals and recommended to drop the provisions at stake, two of them recommended waiting for the findings of the study on exercising voting rights by persons with disabilities jointly commissioned by the Federal Ministry for the Interior and the Federal Ministry of Labour and Social Affairs.[[12]](#footnote-12) However, both proposals were rejected by majority vote in the plenary session of the German Bundestag on 27 June 2013.[[13]](#footnote-13)In 2013, the Federal Ministry of Labour and Social Affairs in collaboration with the Federal Ministry of the Interior and the Federal Ministry of Justice mandated a study of the actual situation of disabled people concerning their active and passive right to vote. The aim of the study is to define the groups of people which are affected by the legal exclusion to elect in section 13(2) and (3) Federal Electoral Act and to what extent. Furthermore, the question is to determine whether the attachment of the legal exclusion of the voting right is justified and necessary in a practical and legal aspect to the judge's decision on a permanent arrangement of support in all matters or to the judge's order of placement in a psychiatric hospital. As a result of the study recommendations for possible regulatory changes shall be developed. |
| DK | The main issue concerning the right to vote for persons with disabilities remains the restriction of the right to vote for those under the legal guardianship of a caretaker or parent. The Act on Guardianship[[14]](#footnote-14) (*Værgemålsloven)*, combined with section 30 of the Danish Constitution, leads to disenfranchisement of persons who have been put under guardianship for reasons unrelated to their ability to vote in an election, as for instance if they have been placed under guardianship to help to protect them financially. Persons deprived of their legal capacity are not eligible to vote for elections of the EP (section 3 of the LBK nr. 126 of 11/02/2013), nor can persons deprived of their legal capacity stand as a candidate for the EP (section 6 of the LBK nr. 126 of 11/02/2013).The same applies to municipal elections (section 3 of the Act on Municipal and Regional Elections nr. 127 af 11/02/2013) and national parliament elections (section 4 of the Danish Parliamentary Election Act nr. 128 of 11/02/2013). The Danish Institute for Human Rights released a report on this issue in 2011, and the topic was debated in various media outlets in 2011 and 2012. However, despite follow-up with relevant authorities, no steps have been taken until now to rectify the issue. |
| EE | Exclusion: Article 57 of the Constitution of the Republic of Estonia, and Article 5 (3) of the Local Government Council Election ActLimited participation: Article 526 (5) of the Code of Civil ProcedureIn accordance with the Riigikogu Election Act and the Local Government Council Election Act, a person who has been declared incapable by court concerning voting rights, has neither the right to stand as candidate nor the right to vote.[[15]](#footnote-15) |
| EL | Individuals who, because of a disability, have been declared by a court fully incapacitated are deprived of their voting rights.[[16]](#footnote-16) Apart from those, all other people with disabilities, irrespective of the disability in question, have the right to vote. Article 51 par 3 of the Constitution regulates the right to vote and its limitations. The Presidential Decree 26/2012 Codification of legislation on the election of members of Parliament (*Κωδικοποίηση σ’ ενιαίο κείμενο των διατάξεων της νομοθεσίας για την εκλογή βουλευτών*, OG A 57/15.3.2012) determines the conditions for the right to vote in national elections. According to article 5 “*People who have been deprived of their legal capacity and people convicted by a penal court for specific crimes are deprived of the right to vote*”.  |
| ES | Following the indications of the Organic Act 5/1985 of 19 June on the General Electoral Regime, Following article 3.1 LOREG: „Disenfranchised are those:b) People declared legally incapable by a final judicial decision, provided that the court specifically declares the incapability for the exercise of the right to vote;c) People in a psychiatric hospital, because of a court’s authorization, will not be franchised during the period of that internment, only if the Judge had expressly declared that incapacity to exercise the right to vote.“If declared incapacitated, persons with disabilities are usually prevented from voting and from standing as candidates in Spain. As expressed in article 3 LOREG, judges or Courts in charge of incapacitation or internment procedures, must expressly declare the incapacity for the exercise of the right to vote. In case that incapacity is declared, they will communicate it to the Civil Register.[[17]](#footnote-17)In September 2011, the United Nations’ Committee on the Rights of Persons with Disabilities (CRPD) stated[[18]](#footnote-18) in a report that it was concerned that in Spain:“The right to vote of persons with intellectual or psychosocial disabilities can be restricted if the person concerned has been deprived of his or her legal capacity, or has been placed in an institution. It is further concerned that the deprivation of this right appears to be the rule and not the exception. It regrets the lack of information on standards of evidence or grounds, and criteria used by judges when depriving persons of their right to vote. It notes with concern the number of persons with disabilities denied their right to vote”. It furtherrecommended that:“All relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others. The Committee requests the State party to amend article 3 of Organic Act 5/1985, which allows the denial of the right to vote based on individualized decisions taken by a judge. The amendment should ensure that all persons with disabilities have the right to vote”.CERMI (Spanish committee of representatives of Persons with Disabilities)[[19]](#footnote-19) has recently drafted a proposal of reformat of this Organic Law aiming to remove these limitations tot he right to vote for a number of persons with disabilities. The draft has been sent to the members of the Spanish Parliament.In October 2013, the CERMI reported that the Catalan parliamentary group *Convergència i Unió* (CiU) had submitted a motion at the Lower House of the Spanish Parliament asking the Spanish government to modify the current electoral Act in order to achieve that persons with intellectual disabilities or mental health problems are not deprived of their right to vote on unjustified grounds[[20]](#footnote-20) asjudges in Spain are empowered to do this without not even the need to proceed to a case-by-case approach. In this regard, this parliamentary group is said to have collected the reiterated demands of the organisations of persons with disabilities to avoid that more than 80,000 persons with disabilities, mostly of them under guardianship because of their intellectual disabilities or mental or psychosocial diseases, see their right to vote or to stand for elections contravened.With only a few exceptions, the Spanish political parties supported this motion[[21]](#footnote-21), so later in the same month the Lower House in the Spanish Parliament[[22]](#footnote-22) approved to urge the Spanish government to carry out within the following six months a report focused on the legislative proposals to adapt the Spanish law to the International Convention for the Rights of Persons with Disabilities particularly regarding the electoral Act currently in force in order to achieve that all persons with disabilities can vote in equality of conditions. |
| FI | Limited participation:Section 27 Constitution of Finland concerns the eligibility and qualifications for the office of a representative in the Parliament, and does not concern voting. There is no reference to disability in this section, and the section only stipulates that persons under guardianship cannot be candidates in Parliamentary elections. Participation:Section 14 Constitution Section 2 Election Act. This section provides that in Finland every Finnish citizen who has reached the age of 18 is equally entitled to vote.A person under guardianship cannot be a candidate in elections. The provisions to this effect are laid down in the Constitution and the Municipality of Residence Act. According to the Ministry of Justice, all citizens have the right to vote despite of being under guardianship |
| FR | Persons under a guardianship or tutelage measure (most of whom have a mental illness/disability) have been allowed to vote since 2009. This was introduced by one law of 5 March 2007 on the reform of legal protection of [incapacitated] adults (*Loi portant réforme de la protection juridique des majeurs*)[[23]](#footnote-23), which entered into force in 2009. Before this date, they needed judicial authorization to vote. They are now able to vote except if a judge decides, on a doctor’s advice, to remove the right to vote for the person under guardianship or tutelage (art. 12). Persons under guardianship or tutelage are not permitted to stand as election candidates (art. 200 of the Electoral Code). On the 15th of February 2011, MP Germinal Peiro proposed a bill relating to civil rights of persons with mental health problems (*Proposition de loi No. 3169 relative aux droits civiques des handicapés mentaux, 15 février 2011*). His bill aimed at amending Article L5 of the Electoral Code to establish the principle of the automatic recognition by the judge of the right to vote of the individual under a protective measure. It also proposed to amend Article L200 of the Electoral Code (which currently states that 'Adults placed under partial or plenary guardianship cannot be elected') to establish the general principle of the eligibility of such persons for elected office. Up to now, the bill has not been followed up by the committee of the National Assembly in charge of its examination. |
| HR | The new Act on Voter Registry removed the exclusion of persons divested of legal capacity from the right to vote. Its article 64 states: “Persons fully divested of legal capacity by a final decision of a competent court in the period preceding the coming into force of this Act shall be considered voters and shall be entered into the voters’ register”.This provision annuls the exclusionary effect of the previous Act on Voter Lists (*Zakon o popisima birača*)[[24]](#footnote-24) , that specified in its article 2 that Croatian citizens aged 18 and older were entered in the voters’ list, except for those who had been divested of legal capacity by a final court decision.In its written justification of the final draft of the act, the Ministry of Public Administration states that it has reacted to criticism by the Ombudsman for Persons with Disabilities (*Pravobraniteljica za osobe s invaliditetom*) and secured voting rights for persons without legal capacity.[[25]](#footnote-25) Namely, the Ombudsman for Persons with Disabilities has written and made publically available a letter to the Ministry of Public Administration regarding the limitation of voting rights and the participation of persons with disability.[[26]](#footnote-26) The Ombudsman has also written a warning to competent parliamentary committees on exclusions contained in the earlier draft version of the new act.[[27]](#footnote-27)The only law that still excludes persons who were denied legal capacity by a final court decision from the group of eligible voters is the Act on the Elections of Representatives to the Croatian Parliament *(Zakon o izborima zastupnika u Hrvatski sabor)[[28]](#footnote-28).* Plans regarding amendments in that respect have been reported by some NGOs.[[29]](#footnote-29) |
| HU | The Fundamental Law[[30]](#footnote-30) in its Article XIII (6) stipulates that “Those disenfranchised by a court for a criminal offence or limited mental capacity shall not have the right to vote and to be voted for. Citizens of another Member State of the European Union with residence in Hungary shall not have the right to be voted for if they have been excluded from the exercise of this right in their State pursuant a legal regulation, a court decision or an authority decision of their State” Thus, rather than providing for an automatic linkage between guardianship and disenfranchisement, as the previous constitution and regime did, the current one requires courts to rule separately on the ability to vote in the case of persons with mental health problems or intellectual disabilities, as also set out explicitly by Article 13/A (1) of the Election Procedure Act. The Election Procedure Act provides under Article 13/A that in any decision placing a person under guardianship, the court must decide on the person’s right to vote, and should exclude from suffrage adult persons whose mental ability to exercise the right to vote is either lastingly diminished or periodically significantly diminished due to their psychological state, intellectual diminution or addiction; or is completely absent due to their psychological state or intellectual diminution. While the adoption of this provision somewhat clarifies for courts on how to determine whether a citizen under guardianship should retain his/her voting rights, according to Hungarian Civil Liberties Union (*Társaság a szabadságjogokért*) two key problems remain. The experts’ objection that courts lack corresponding expertise and in practice would be unlikely to make an effort to thoroughly investigate such matters would still apply, as would the objection that the exclusion grounds are contrary to international law.[[31]](#footnote-31)Additionally, under Article 13/A (4) of the Election Procedure Act those who are entitled to request the termination of the guardianship regarding a certain person (i.e. the person concerned; his/her spouse, registered partner, linear relative, sibling or guardian; the wardship authority; or the prosecutor[[32]](#footnote-32)) may separately also request from the court that the exclusion from suffrage is terminated regarding the (adult) person concerned. Under Article13/A (3) of the Election Procedure Act persons deprived of their legal capacity regarding issues other than voting (e.g. concluding contracts, making decisions concerning health care), i.e. those under guardianship but not excluded from suffrage may vote personally and may make valid legal statements related to voting independently, thus may access general redress mechanisms independently, without their guardians. |
| IE | Regarding the exclusion, the Lunacy Regulation (Ireland) Act 1871 and Order 67 of the Rules of the Superior Courts 1986 apply.Regarding the participation, article 7(1) of the Electoral Act of Ireland 1992 applies.  |
| IT | Electoral law used to deprive both persons placed in mental hospitals and persons subject to competence limitations of their right to vote. However, these rules were repealed by the *Basaglia* Law[[33]](#footnote-33). Law Basaglia returned the right to vote to interdicted persons. It is a right that enables their full political participation, it is not subject to conditions and, therefore, it can be exercised independently, with no assistance or accompaniment required. The legislation in force does not provide for any possibility of limiting the right to vote in connection with forms of legal incapacity.Therefore, no limitation presently applies to the right to vote for persons with intellectual disabilities or mental health problems, provided that mental disease does not prevent the capacity to form and express the will. |
| LT | Pursuant to article 34 of the Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*)[[34]](#footnote-34), persons deprived of legal capacity (*neveiksniems asmenims*) by the court do not have the right to vote and be elected. The Central Electoral Commission receives orders from court decisions about persons deprived of legal capacity. All relevant electoral legislation contains this limitation of universal suffrage:* Article 2 of the Law on Elections to the Seimas *(Lietuvos Respublikos Seimo rinkimų įstatymas)*[[35]](#footnote-35)
* Article 3 of the Law on Elections to the European Parliament (*Lietuvos Respublikos rinkimų į Europos Parlamentą įstatymas)*[[36]](#footnote-36)
* Article 2 of the Law on Elections to Municipal Councils (*Lietuvos Respublikos savivaldybių tarybų rinkimų įstatymas)*[[37]](#footnote-37)

Articles 2 and 4 of the Law on Presidential Elections (*Lietuvos Respublikos Prezidento rinkimų įstatymas*)[[38]](#footnote-38). |
| LU | Currently, the Constitution does not allow persons under guardianship (mainly those with mental or intellectual disabilities) to participate in elections (art. 53): *“Majors under custody cannot vote or stand for elections”*[[39]](#footnote-39). This is also stated in article 6 of the Electoral Act as well as the Law of the 11th of August 1982 regarding ‘incapable adults’ applies.[[40]](#footnote-40) The national action plan (NAP, 2012[[41]](#footnote-41)) foresees within its measure number 1.3 the participation in elections of persons under guardianship, coupled to training regarding this participation as well as to the provision of ‘news’ in a simple language and in sign language according to ‘the principle of two senses’. The participation in elections is intended to empower disabled persons. The time line indicated by the NAP is 2012 to 2015. The reform will be implemented in a three steps process: 1. Article 53 of the Constitution has to be abolished.2. The section on guardianship of the civil Code has to be modified[[42]](#footnote-42)3. Article 6 of the Electoral Act has to be modified. Currently, an in depth revision of the constitution is n process; article 65 of the current draft still contains the same prohibition to vote. However, the government’s opinion (draft bill number 603005) as well as the opinion of the State’s Council (*Conseil d’Etat:* draft bill number 603006)[[43]](#footnote-43) refer to the UN-CRPD and propose to erase the article entirely[[44]](#footnote-44). |
| LV | Electoral legislation prohibits the right to vote in cases where a judgement declared a person’s legal incapacity. Amendments to Section 3561 of the Civil Law (*Civillikums*) made on 29 November 2012 envisage that "the person shall not be deprived of personal non-material rights", which also means that persons deprived of legal capacity shall not be denied the right to vote.[[45]](#footnote-45) The amendments are in force since the 1st of January 2013. However, the relevant provisions of Latvia's electoral legislation have not been fully brought in line with the amendments to the Civil Law (*Civillikums*). The Law on Elections to the European Parliament (*Eiropas Parlamenta vēlēšanu likums*) was amended to exclude the restriction on voting rights of persons deprived of legal capacity.[[46]](#footnote-46) However, the Saeima Election Law (*Saeimas vēlēšanu likums*) (article 2(3)) and the Law on Elections of the Republic City Council and Municipality Council (*Republikas pilsētas domes un novada domes vēlēšanu likums*) still provide for restrictions and thus the persons deprived of legal capacity are still potentially denied voting rights in national parliamentary and local government (municipality) elections. During 2013, both latter laws underwent amendments,[[47]](#footnote-47) yet the issue of persons deprived of legal capacity was overlooked and there is no information about any specific plans to amend them in accordance with the Civil Law (*Civillikums*).In practice, an individual with limited legal capacity was included in the voter's register in 2013 following the involvement of the NGO ’Zelda’, which provided consultation and helped in writing a complaint letter. The person participated in municipal elections in 2013.[[48]](#footnote-48) The NGO ’Zelda’ also checked that all their other members are included in the voters’ register (both those without full legal capacity and those whose legal capacity was restored).[[49]](#footnote-49)Additionally, lack of fully ensured accessibility to polling stations as well as lac of ballots in braille may restrict the right to vote of persons with disabilities. |
| MT | The Constitution of Malta establishes certain exceptions where it is deemed justifiable to restrict the civil and political rights of citizens if they fail to conform to certain criteria (such as age or incarceration). These include considerations based on the grounds of mental competence that could preclude one's entitlement to these rights. However, the Constitution fails to go into detail about the interpretation of these mental conditions leading to an assessment of legal incompetence.Article 58 of the Constitution of Malta states that an interdicted or legally incapacitated person cannot qualify to be registered as a voter for the election of members of the House of Representatives if interdicted or incapacitated for any mental infirmity by a court in Malta or is otherwise determined in Malta to be of unsound mind.While this article does not list the specifics of the conditions, it has been used to deny the right of intellectually disabled people to vote and to render void any contract or to legal status they might have. In addition, people with mental health issues may be denied their voting, legal, and civil rights if it is proven that they are incapable of taking “rational” decisions.In both cases, a medical board assesses the case and people with mental health issues are not deemed legally incompetent for life as this decision may be revised later on in their life. On the other hand, people with an intellectual impairment who are deemed legally incompetent, at present, are deemed legally incompetent for a lifetime.Decisions of the Medical Board (established by Section 14 of the General Elections Act) that a voter is of unsound mind are taken by unanimous vote and are communicated in writing to the Electoral Commission who is required to immediately inform the voter according to Section 27(3) of the General Elections Act [[50]](#footnote-50). The decision of the Medical Board is final and binding on the Electoral Commission and the voter.The National Commission Persons with Disability (*Kummissjoni Nazzjonali Persuni B’Dizabilita*, KNPD) pointed out that there have been no changes regarding the two groups in 2013[[51]](#footnote-51). They can be referred to the Electoral Commission for a medical examination regarding their ability or otherwise to vote. The medical board may give either limited participation in all elections or exclusion from all of them. KNPD is carrying out a survey to find out how many disabled people vote, how many require assistance and the type of assistance they prefer. Right to vote: General Elections Act[[52]](#footnote-52) Art. 15. (Qualification of voters): *Subject to the provisions of the next following article, a person shall be entitled to be registered as a voter for the election of Members of the House if, and shall not be entitled to be registered unless, he has the qualifications required by article 57 of the Constitution and provided he is not so disqualified in terms of article 58 of the Constitution or in accordance with the provisions of this Act.*European Parliament Elections Act[[53]](#footnote-53):Art. 10. (Persons entitled to vote): *Every person whose name appears in the Electoral Register last published before the date fixed for the election and every person whose name appears in the European Union Electoral Register and who in either case has not, following the publication of the said Electoral Register or the said European Union Electoral Register, been convicted of any offence connected with the election of members to the House of Representatives or with the election of members of Local Councils or with the election of members of the European Parliament shall be entitled to vote in elections of members of the European Parliament.*Local Councils Act[[54]](#footnote-54):Art. 5 (1) *Every citizen of Malta whose name appears in the last published Electoral Register and who has not been convicted of any offence connected with the election of members of Local Councils shall be entitled to vote at elections of Local Councils.* |
| NL | The right to vote is granted by the constitution and specified in the election law. Persons with disabilities (whether physical or intellectual) are allowed to vote in the Netherlands. Until 2008, persons placed under custodial care due to their mental health problems or intellectual disabilities could not exercise their right to vote. This changed with the constitutional amendment following a decision of the Council of State, declaring that the categorical exclusion of persons placed under custodial care can be contrary to the International Covenant on Civil and Political Rights.[[55]](#footnote-55) |
| PL | In general, out of all persons with mental disorders in Poland only incapacitated persons are deprived of their voting rights. They do not have the right to vote in elections and in national or territorial referendum, and they cannot be chosen for the most important public offices and accept nominations as a judge, persecutor, advocate, civil servant or notary. Such persons cannot sign the draft law presented as the citizens’ legislative initiative.[[56]](#footnote-56)A person who is fully incapacitated by a court judgment does not hold any voting rights according to Article 62-2 Constitution of Poland:“Persons who, by a final judgment of a court, have been subjected to legal incapacitation or deprived of public or electoral rights, shall have no right to participate in a referendum nor a right to vote”.Article 10-2 Electoral Code:“The right to vote is not enjoyed by persons:1) deprived of public rights by a final court ruling; 2) deprived of electoral rights by a final decision of the Tribunal of State; 3) incapacitated by a final court ruling.”The legislative developments introduced in the Electoral Law did not grant the right to vote and be elected to persons with intellectual disabilities and persons with mental health problems who do not have full legal capacity. Partial incapacitation does not affect the voting rights of a person. The Polish government in its response to the OHCHR Thematic Study stated: “The Constitution and the provisions of laws on elections refer to incapacitation without specifying its nature, it must be therefore assumed that this term covers both the total and partial incapacitation. In addition, the regulations do not provide any differentiation with respect to substantive reasons for incapacitation, that results in the deprivation of voting rights for all incapacitated persons, regardless of what is the basis of legal incapacitation. A liquidation of the institution of partial legal incapacitation to be considered within the elaboration of the new Civil Code will ensure the full implementation of Article 29 of the Convention. Any further changes to legislation regulating the conduct of elections and the national referendum will be considered after additional analyses.”[[57]](#footnote-57) In November 2013 the Minister of Justice (*Minister Sprawiedliwości*) announced his plan to remove the legal institution of incapacitation (full and partial) from the Polish legal system and replace it with other means of support. This would mean that the political rights of people with mental health problems and persons with intellectual disabilities would be enhanced as compared to currently applicable Polish laws which deprive the incapacitated person of their political rights.[[58]](#footnote-58)The Deputy Minister of Justice informed, during a joint meeting of the Sejm Committees on Social Policy and Family and Justice and Human Rights, that the existing legal incapacitation would be changed into four institutions of care: 1. Assistance, for persons with legal capacity to perform acts in law, 2. Representative care of a person, which will grant a representative limited representation rights, 3. Co-decision regarding important aspects of the life of persons placed in care, 4. Complete representation of the person under care.[[59]](#footnote-59) |
| PT | Article 49 (1) Constitution of the Republic of Portugal[[60]](#footnote-60) states: *“Every citizen who has attained the age of eighteen years has the right to vote, subject to the incapacities provided for in the general law.”*Article 71 stipulates: *“1. Citizens who have physical or mental disabilities shall enjoy all the rights and be subject to all the duties contained in this Constitution, except to the extent that their disability renders them unfit to exercise or perform them.”* Art. 2 Parliamentary Election Law[[61]](#footnote-61)on *Incapacities to vote*states:  *The following are not eligible to vote:* *a) Persons who are barred by a sentence that has transited in rem judicatam;* *b) Persons who are clearly acknowledged to be demented, even if they are not barred by a sentence, when they are committed to a psychiatric establishment or are declared to be demented by a medical board composed of two doctors;* *c) Persons who are deprived of political rights by a judicial decision that has transited in rem judicatam.*Article 30 of the Electoral Law to Municipal Elections on *Incapacities* contains the same provision*[[62]](#footnote-62)*.In its response to a questionnaire for the OHCHR *Thematic Study on the Political Participation of persons with Disabilities[[63]](#footnote-63)*, Portugal stated: “Electoral Law contemplates as well the possibility of disqualification from voting based on Mental Disability in the following cases: insanity, inability to manage own affairs and in the case of deprivation of political rights.”[[64]](#footnote-64)The Portuguese Ombudsman (*Provedor de Justiça*) answered the question of whether “aware of any restrictions on the right of persons with disabilities to vote and be elected”: “There are no such restrictions in the Portuguese legal framework. In fact, if there were similar restrictions imposed by the law they would violate the Constitution of the Portuguese Republic, particularly article 13 (Principle of Equality).”[[65]](#footnote-65)Pursuant to Article 4, Parliamentary Election Law[[66]](#footnote-66), and Article 5, Electoral Law to Municipal Elections[[67]](#footnote-67) the right to be elected in elections for the European Parliament and municipal elections, respectively, depend on the right to vote. Any citizens disqualified from standing for election under the legislation applying to elections to the Assembly of the Republic is not entitled to stand for election in the European Parliament elections.[[68]](#footnote-68) |
| RO | As per Art. 36 (2) of the Constitution of Romania[[69]](#footnote-69), persons who have been declared legally incapacitated by court order are not able to vote.[[70]](#footnote-70) It states that:(*1) Every citizen having turned eighteen up to or on the election day shall have the right to vote.* *(2) The mentally deficient or alienated persons, laid under interdiction, as well as the persons disenfranchised by a final decision of the court cannot vote.*The new Civil Code came into force on 1 October 2011[[71]](#footnote-71) introducing changes to legal capacity provisions none of which have an impact on voting rights of persons with disabilities.[[72]](#footnote-72)As per Art. 37 of the Constitution of Romania[[73]](#footnote-73), persons who do not have the right to vote also do not have the right to be elected. |
| SE | The Constitution in Chapter 1 Article 1 the universal and equal suffrage and in Chapter 3 Article 2, entitles every Swedish citizen to vote in a Riksdag election, respectively.[[74]](#footnote-74)  |
| SI | Law on Election to the National Assembly: According to the law, persons with intellectual disabilities who cannot understand the purpose and meaning of elections do not have the right to vote.The first three paragraphs of Article 7 of the National Assembly Elections Act (*Zakon o volitvah v državni zbor, ZVDZ*) read as follows:*Every citizen of the Republic of Slovenia who has reached the age of 18 by the Election Day shall have the right to vote and to be elected as a deputy.**Notwithstanding the provisions of the preceding paragraph, the right to vote and the right to stand for the election shall not be recognised for a citizen of Slovenia who has reached the age of 18, but has for reasons of mental illness, developmental difficulties or impairment legally been deprived of the legal capacity or for whom parental rights have been prolonged for their parents or other persons beyond their majority, and is consequently not capable of understanding the meaning, purpose and impact of elections.* *In the procedure for taking away the legal capacity or extending parental rights beyond majority, the court shall make a separate decision on taking away the right to stand for election and the right to vote.* These provisions of the National Assembly Elections Act also apply to municipal elections and elections to the EU parliament. |
| SK | Active voting rights of persons with disabilities are regulated by the Constitution, the Anti-discrimination Act and the Act on Elections to the National Council of the Slovak Republic and the Act of the Slovak Republic on European Parliamentary Elections 2003[[75]](#footnote-75), respectively.According to the law governing the elections to the National Parliament of the Slovak Republic, people who have been deprived of legal capacity do not have the right to vote or be elected.[[76]](#footnote-76) Section 2 of the Act of the Slovak Republic on European Parliamentary Elections (*Electoral franchise) also* stipulates that  *The exercise of the electoral franchise shall be precluded by:*1. *restrictions on personal freedom legally imposed for the protection of public health, b) serving a prison sentence, imposed for committing very serious crimes, c) deprivation of legal capacity.*

Persons may lose their legal capacity due to mental disorder which is not of a temporary character. The decision to take away or restrict persons’ legal capacity rests with courts of justice and is very seldom reversed or abolished; it applies to approximately 3% of all cases.[[77]](#footnote-77) The statistics on the total number of people who have been deprived of legal capacity are not available in Slovakia. Since 2001, the number of people deprived of legal capacity has fluctuated between 600 and 1,250 per year and shows a growing trend.[[78]](#footnote-78) In January 2013, the NGO Mental Disability Advocacy Center announced that the Constitutional Court of the Slovak Republic (*Ústavný súd Slovenskej republiky*) had issued a decision in a case regarding deprivation of legal capacity in which it found violations of Articles 6, 8 and 14 of the European Convention on Human Rights and of Article 12 of the Convention on the Rights of Persons with Disabilities.EU citizens have the right to vote at local level. They have to be at least 18 years old with permanent residence within the territory of the given municipality. The law stipulates barriers of the right to vote which are: detention, imprisonment, military service or disfranchisement.[[79]](#footnote-79) The same conditions apply at regional level.[[80]](#footnote-80) Before the parliamentary elections in 2006, 2010 and 2012, the Slovak Library of Matej Hrebenda for Blind People (*Slovenská knižnica Mateja Hrebendu pre nevidiacich)* based in Levoča sponsored printing and distribution of all candidates’ lists in Braille Writing.[[81]](#footnote-81) These candidates’ lists along with their audio versions were distributed to all registered members of this library as well as to departments for blind people in other libraries around Slovakia and the Regional Centres of the Slovak Union of Blind and Weak-Sighted (*Únia nevidiacich a slabozrakých Slovenska)*.[[82]](#footnote-82) |
| UK | In the United Kingdom, the Electoral Administration Act 2006 abolished the common law rule that a person lacks legal capacity to vote by reason of mental health problems.[[83]](#footnote-83) |

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