

ACCESS TO VOTING FOR PEOPLE WITH DISABILITIES IN COSTA RICA

Magistrate Mario Seing Jiménez

The 1949 Constitution declares the establishment of a Supreme Electoral Tribunal (TSE for its Spanish acronym) with the rank and independence of the Branches of Power. Its exclusive and independent responsibilities include the organization, administration and oversight of electoral processes, as well as safeguarding the exercise of the political rights and duties of Costa Rican citizens.

Articles 9, 99 and 102 of the Constitution make evident that the Supreme Electoral Tribunal has the legal authority to organize, manage and oversee electoral processes, with independence, and thus has the power to interpret the Constitution equally towards all (*erga omnes*) in matters related to elections.

The Constitutional Hall in ruling number 3194-92 of 4:00 P.M. on 10/27/1992 reiterated in numerous resolutions the following:

“This is equivalent to saying that it is the exclusive and mandatory duty of the Tribunal to interpret the Constitution, exercising its constitutional and legal authority in electoral matters. Thus, this interpretation cannot be overseen by any other jurisdiction, even constitutional, because even if the interpretation violates constitutional norms or principles, it would be, as a Tribunal of its rank, declaring the meaning of the norm or principle, at least as there is no legal remedy in our laws against such a violation”.

Legal recourses:

Based on the jurisprudence of the Constitutional Hall and of the Tribunal, electoral jurisdiction has been developed and strengthened through “Procedural Electoral Law” and “Electoral Jurisprudence”, thus creating legal instruments that aim to defend citizens’ fundamental rights in electoral matters and for an effective safeguarding of the political and electoral rights of Costa Rican citizens, particularly in situations when these rights could be threatened or endangered. Such instruments/resources include the following: Appeals on the grounds on unconstitutionality, electoral consultation, repeal of statutory norms due to unconstitutionality, action for annulment, right to appeal,

complaints regarding political bias or belligerence and removal from office of elected public officials.

However, among these, the Electoral “Recurso de Amparo” is the most ideal, safe and efficient mechanism to guarantee the adequate protection of fundamental political and electoral rights.

Political Participation:

Political participation is a fundamental right of all citizens over the age of 18, and it is enshrined in the concept of popular sovereignty. Moreover, it is the only legitimate source of political power. Article 93 of the Constitution defines suffrage as a “primary and mandatory civic duty” and it is expressed in the following two ways: As the right to elect/vote (active suffrage), which takes form when citizens cast their ballots on Election Day; and as the right to be elected (passive suffrage), which takes form when a citizen runs for public office.

The Supreme Electoral Tribunal has added safeguards to guarantee the equal participation of all men and women without discriminating due to race, age or any other condition that may place any citizen at a disadvantage, such as a disability or imprisonment.

It is worth noting that women were granted the right to vote in 1949, and they exercised this right for the first time in 1950. Nowadays, in the recent presidential elections held on February 7, 2010, the first female President of Costa Rica was elected, with more votes than the candidates in the second and third place combined.

The Supreme Electoral Tribunal protects citizens’ political rights through its laws, policies and through concrete actions, such as the implementation of a Program to Equalize/Level Conditions to Exercise the Right to Vote, the Institutional Accessibility Commission, the Gender Commission and the Indigenous Affairs Commission, all of which aim to provide equal access to civil and electoral services.

Concrete actions, such as maintaining auxiliary registration sites in the nation’s central hospitals, as well as a program of mobile voter registration booths, and visits to distant areas, indigenous territories, hospitals, prisons, homes for the elderly, and even domiciliary voter registration, for people with disabilities.

Disabilities:

Responding to the stipulations of Law Number 7600 on Equal Opportunities for People with Disabilities, passed in 1996, as well as Law Number 8661 – Convention about the Rights of People with Disabilities, and with the support of the National Council of Rehabilitation and Special Needs Education, the Supreme Electoral Tribunal includes in election administration the “Program to Equalize/Level Conditions to Exercise the Right to Vote”. One of the program’s main objectives is to equalize access to the vote for senior citizens and people with disabilities, in order to uphold the principles of equality, non-discrimination, participation and self representation, so that all citizens may exercise their rights and duties before, during and after an electoral process.

Similarly, Article 29 of Law 8661 “Convention on the Rights of People with Disabilities”, ratified by Costa Rica’s Legislative Assembly in August 2008 and published in the Official Journal Number 187 in September of the same year, sets forth the obligation of guaranteeing the political rights of people with disabilities, and allowing them to enjoy these rights in equal conditions than other citizens, thus agreeing to:

- a. Making sure that people with disabilities can participate fully and effectively in political and public life in equal conditions as other citizens, directly or through freely elected representatives, including the right and the possibility of people with disabilities to vote and to be elected, through the following mechanisms:
 - i. Guaranteeing that voting procedures, facilities and electoral materials be adequate, accessible, and easy to use and understand;
 - ii. Protecting the right of people with disabilities to vote in elections and referendums upholding the secrecy of the vote, and without any form of pressure or intimidation, as well as the right to run for office in elections, to hold public office and work in the public service at all levels of government, facilitating the use of new technologies when relevant;
 - iii. Guaranteeing that people with disabilities freely express their will as voters, and when necessary and at their request, this includes their right to request assistance to vote in an election.

People with disabilities include those who: "Have physical, mental, intellectual or sensory disabilities, who may be confronted with diverse barriers that may hinder their full and effective participation in society, in equal conditions as other citizens". It is worth noting that disabilities may be short-term or long term.

It is the Supreme Electoral Tribunal's duty to ask people with disabilities, as well as senior citizens, whether they require special assistance, how this assistance can be offered, and above all, it should be flexible in providing this assistance.

It is worth noting that all votes are equal and that all citizens, including people with disabilities, both young and old, have the right to:

- Participate in public affairs
- Access public services, in equal conditions
- Run for office
- Vote by universal, free, direct and secret ballot, in equal conditions and without any form of discrimination.

It is worth mentioning that a political party elected a representative who had a visual disability/impairment and whose term ended on April 30. In the most recent election this candidate's political party, without spending any money on political campaigns and without having political party representatives in any of the 6.617 polling stations, was able to have four representatives elected, thus publicly stating that he recognized the transparency of the electoral process organized by the TSE.

According to our Constitution and Electoral Law, all registered voters have the right to cast their ballot in the voting center, in a direct and secret manner. For cases when people with disabilities or senior citizens cannot exercise their right to vote in this manner, the Electoral Law sets forth procedures to follow in cases of public, semi-public or assisted voting.

There is a program of special electoral materials in place to assist people with disabilities, including providing magnifying glasses, ergonomic pens, flashlights, and special clips to hold the ballot in the voting table, as well as Braille ballots, among

others. In terms of special adjustments to voting centers for people with disabilities, this includes building ramps and handrails, among others, in the main voting centers.

Article 181 of the Electoral Law states the following:

Article 181 – Voting for people who require special assistance

The Supreme Electoral Tribunal will take the necessary steps to ensure that voters with any disabilities or difficulties may cast their ballots, thus guarding their right to free and, when possible, secret suffrage.

For the case of people with a visual disability, they can cast their ballots in secret by using the templates system, and the Supreme Electoral Tribunal will take any steps necessary to do this.

However, if voters are not able to cast their ballots on their own they can:

- Ask to be accompanied to the polling station by a person of their confidence, who can cast the ballot for them.
- Ask to vote publicly, when they request this directly to the polling station members. In this case, the president of the polling station will cast the ballot for the voter.

With regards to this matter, Leo Segura, a journalist with a visual disability, stated the following in a document sent to the Supreme Electoral Tribunal:

"I was pleased to note that aside from the Braille ballots and other such special voting materials, the polling station members were trained and able to help voters with disabilities, which made me happy. This was the third time I used the Braille ballot, and I was very excited to do so, almost as if it would have been my first time using it. This way democracy works well... I will never tire of recognizing the Supreme Electoral Tribunal for offering this service during this historic and accessible referendum".

