

VALSTS TIESĪBU APAKŠNOZARE

INSTITUTION OF REFERENDUM IN POLAND – LEGAL REGULATIONS AND POLITICAL PRACTICE*

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Abstract

The aim of the present paper is to analyze the legal basis of the referendum ordered by the President in Poland and demonstrate how this institution is utilized in political practice. The article assumes and proves that the fundamental condition for ordering of referendum by the President, both in legal and political terms, is the consent of the Senate. In the end this consent is determined by the distribution of political forces in the chamber. Furthermore a thesis was adopted on the political character of presidential initiatives regarding the ordering of referenda.

Keywords: Poland, President, referendum, Senate.

Introduction

The referendum institution has become a very popular tool in decision-making in Central and Eastern Europe in recent years¹. It should be noted that in most countries it was relatively rarely used during the years of the communist system. This was mainly due to the lack of appropriate constitutional and legal solutions as well as the specificity of the previous system. The “new democracies” of Central and Eastern Europe have become an interesting topic in research in political science. One of the methodological reasons is that the political systems in these countries had to start the process

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of democratization at the same time.

The process of building democratic institutions and market economy has begun². The referendum is one of the most popular tools of direct democracy, as citizens thus have the opportunity to participate in the decision-making process. The twentieth century is the time of direct democracy, and therefore the institution of the referendum. The aim of the article is to analyze institution of referendum in Poland, the legal basis and the political practice.

Legal regulations

According to the Polish Constitution section 125 a nationwide referendum may be held in respect of matters of particular importance to the State³. The right to order a nationwide referendum shall be vested in the Sejm, to be taken by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, or in the President of the Republic with the consent of the Senate given by an absolute majority vote taken in the presence of at least half of the statutory number of Senators⁴. A result of a nationwide referendum shall be binding, if more than half of the number of those having the right to vote have participated in it. The validity of a nationwide referendum and the referendum referred to in section 235, article 6, shall be determined by the Supreme Court. The principles of and procedures for the holding of a referendum shall be specified by statute.

The Constitution of the Republic of Poland provides three main models of the nationwide referendum⁵. First of all: on granting consent to the ratification of an international agreement providing for transferring the competence of state organs to an organization or an international body in certain cases (section 90, article 3), secondly: “in matters of special importance for the state (section 125), thirdly, regarding the approval of an amendment to the Constitution regarding the provisions contained in chapters I, II, XII (section 235, article 6)⁶.”

In addition to the referendums mentioned above, the Constitution also establishes the institutions of the local referendum. From the text of the provision of section 170 of the Constitution indicates that the right to participate in a local referendum is vested in a member of a given local government community. The provisions of the

Constitution were developed in the law regulating the principles and manner of conducting a local referendum and in the electoral law for local municipal councils, having appropriate application in the area not regulated by the local referendum law [13, 53-54]. In 2003 (March 14th) was adopted a law of national referendum⁷.

Political practice

In the history of Poland after 1989, the citizens have had an opportunity to express their opinions in nationwide referendums for four times⁸.

The first referendum was held on February 18th, 1996 and there were two referendums:

1. Referendum on Enfranchisement of citizens. *Referendum w sprawie powszechnego uwłaszczenia obywateli*). It was ordered by the President Lech Wałęsa, whilst the others were created on the basis of the resolution made by Sejm. The question: Do you approve the enfranchisement of citizens? All except one were approved by over 90% of voters. However, voter turnout was just 32%, well below the 50% threshold required to make the referendums valid.
2. Privatised referendum (*Referendum o niektórych kierunkach wykorzystania majątku państwowego*) with four questions:
 1. Are you for or against – obligations towards pensioners, annuitants and retirees in the Civil Service will be fulfilled with the privatized state-owned assets?
 2. Are you for or against – a part of the privatized state-owned assets will be assigned to public pension funds?
 3. Are you for or against – the value of joint stock certificates in National Investment Fund will be increased?
 4. Are you for the use of privatization bonds in the universal property restitution programme?

The referendum was not binding due to the low turnout – 32.4 percent, although the declared turnout in the survey conducted on February 2-6 was 48 percent⁹. However, the results of the answer was unambiguous: the first question – 94.54 percent. “Yes”; the second question – 92.89 per cent “Yes”; the third question – 93.70 percent “Yes”; the fourth questions - 72.52 percent. “Yes”; the fifth question – 88.30 percent “Yes”¹⁰.

The enfranchisement referendum is a part of the current negative tendency that accompanies this institution of direct democracy in our country. It did not initiate a positive tradition. It is not optimistic that the campaign on enfranchisement before the referendum has largely become a manifestation of demagogy¹¹.

The next referendum was held on May 25th, 1997 and it was a constitutional referendum (*Referendum konstytucyjne*). People were asked whether they approved of a new constitutional question: Do you approve the Constitution of the Republic of Poland, passed by the National Assembly on April 2nd, 1997? It was narrowly approved, with 53.5% voting in favour (22.58% of voters with rights to vote, voting for “yes”). Voter turnout was just 42.9%. Although the 1995 Referendum Act stated that a 50% turnout was required to validate the referendum, the Supreme Court ruled on July 15th that the constitution could be introduced. From the formal point of view this result was sufficient to adopt the new constitution¹².

On April 17th, 2003 the Sejm passed a resolution on ordering a nationwide referendum concerning Poland’s membership of the European Union¹³. It was held on June 7th and 8th, 2003. The question: Do you approve of the Republic of Poland’s accession to the European Union? The proposal was approved by 77.6% of voters. For the first time in the history of the Third Polish Republic, we had to mobilize the political class, the media, NGOs and the Church in favor of the broadest possible participation of Poles in the vote. The result, attendance above 58 percent it seems from today’s perspective a stunning success, although it was only decent. Needless to say, the prophecy about the mass mobilization of anti-European populists has not come true. The EU referendum will probably remain an important turning point in the history of our nation. Essentially, it ended the many years of applying for membership and ultimately determined Poland’s integration with the European Union, documenting the choice of the western direction of development¹⁴.

And the last referendum was held by President Bronisław Komorowski during his electoral campaign. The voting took place on September 6th, 2015.

The referendum asked voters the following three yes-or-no questions:

1. Are you in favour of introducing single-member constituencies in elections to the Sejm of the Republic of Poland?

2. Are you in favour of maintaining the current method of financing of political parties from the national budget?
3. Are you in favour of introducing a general rule of resolving doubts regarding the interpretation of taxation law in favour of the tax-payer?

The Vote turnout of 7.80 percent was well below the 50-percent threshold required for the referendum results to be legally binding¹⁵.

Conclusion

The referendum institution is not a popular form of direct democracy in Poland. Political elites rarely use referendums in current politics. The predictable prospect of the referendum development in Poland will depend to a large extent on the formation of this institution in European constitutionalism, and on the other hand on the development of information technology. Undoubtedly, the techniques of organization and communication of the referendum are changing, but the basic assumption of the philosophy of J.J. Rousseau proving the necessity of legitimization of power through the institutions of direct democracy¹⁶.

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Anotācija

Rakstā ir izskatīti referendumā īstenošanas konstitucionālie pamati Polijas politiskās prakses kontekstā. Neskatoties uz to, ka Konstitūcijā referendumā veikšanas noteikumi ir izklāstīti skaidri un pietiekami detalizēti, politiķi reti izmanto šo tiešās demokrātijas formu. Laikā no 1989. līdz 2018. gadam Polijā tika sarīkoti tikai četri referendumi, tai skaitā divas balsošanas. Šāda prakse negatīvi raksturo to, ka visus lēmumus pieņem tikai politiķi, nesaskaņojot tos ar suverēnu.