



COMMENTS ON THE ISSUE OF THE INSTITUTION OF A NATIONWIDE REFERENDUM IN POLAND: THE CASE OF THE REFERENDUM OF 6 SEPTEMBER 2015

UWAGI NA TEMAT INSTYTUCJI REFERENDUM
OGÓLNOKRAJOWEGO W POLSCE NA PRZYKŁADZIE
REFERENDUM Z 6 WRZEŚNIA 2015 R.

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— ABSTRACT —

Polish politicians of different political options, especially while proposing new reforms, declare that citizens should have a say in many issues under discussion. In reality, however, instruments of direct democracy stipulated by the Polish constitution (The Constitution of the Republic of Poland, 1997) and laws are not frequently applied (see: people's initiative, social consultations), both due to Polish people's low degree of public activity and because of the lack of parliamentary customs and the authorities' accompanying lack of willingness to work out new solutions by way of serious debate and considering the society's ambitions and expectations, also those representing positions others than those of the government majority.

The aim of this paper is to discuss the institution of a referendum in Poland and to present the approach of the Polish political class to the

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Polscy politycy reprezentujący różne barwy partyjne w procesie planowania kolejnych reform i zmian jednoznacznie deklarują, że obywatele powinni mieć zagwarantowany głos w debacie publicznej. W rzeczywistości jednak instrumenty demokracji bezpośredniej, które wprowadzają przepisy obowiązującego prawa, nie są z reguły stosowane (patrz np. inicjatywa obywatelska, konsultacje społeczne w procesie ustawodawczym). Wśród powodów tego stanu rzeczy można w szczególności wskazać na niski poziom aktywności politycznej Polaków oraz kulturę polityczną przejawiającą się w postaci braku zwyczajów parlamentarnych lub dobrej woli większości rządzącej w zakresie inicjowania współpracy przy tworzeniu nowych rozwiązań prawnych.

Celem niniejszego artykułu jest omówienie instytucji referendum w Polsce na przykładzie

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institution of a nationwide referendum using the example of the referendum of 6 September 2015. We also discuss the history of this institution in Poland and address the issue of its legal foundations, as well as present arguments of the followers and opponents of this form of direct democracy. It is also necessary to analyse the motives behind the initiating entity's decision concerning the organisation of a nationwide referendum from a broader perspective and to evaluate its implications in the sphere of politics.

Keywords: referendum, citizen rights, electoral campaign, political system

referendum z 6 września 2015 r. Przedmiot rozważań będą stanowić uregulowania prawne dotyczące jego przeprowadzenia oraz prezentacja argumentów zwolenników i przeciwników wykorzystania tej formy demokracji bezpośredniej w obliczu trwającej kampanii wyborczej. Analizie zostaną poddane także motywy, które towarzyszyły decyzji prezydenta RP o zorganizowaniu w 2015 r. referendum ogólnokrajowego. Ocena będzie dotyczyć także jego politycznych skutków.

Słowa kluczowe: referendum, prawa obywatelskie, kampania wyborcza, system polityczny

Poland is not Switzerland. Despite numerous assurances from Polish political elites and citizens' expectations, the quality of Polish democracy, particularly of political debate, which is full of negative emotions, is far from this model. There is a popular saying in the Polish language: "to work like a Swiss clock". It refers to conscientiousness when it comes to fulfilling one's duties. Other qualities that come to our minds when we think of Swiss people are: accurate, thorough, diligent, inquisitive, reliable, methodical, careful, and punctual. All these personal traits are not specific to Polish people, though. For Poles it is always too early until it is too late (Malaparte, 2004).

We are totally different nations. These differences concern not only the standard of living, the way professional obligations are treated, customs, religiousness, and the political system, but also the way the idea of the common good is defined and built. It does not change the fact that each time we talk about the institution of a referendum in Poland, we always seek analogy to Swiss constitutional solutions (Sarnecki, 1978). It is obvious that what is the foundation and undoubted value of the democratic system is citizens' right to directly participate in the exercise of state authority. It is reflected not only in their right of legislative initiative (Jabłoński, 2002; Eckhardt, n.d.) or the people's veto, which is stipulated in some national laws, e.g., in Switzerland. Under this law, proper entities (citizens) have the right to object to an act that is due to enter into force. It is also materialised in the form of electoral laws – stipulated in the Constitution of the Republic of Poland of 2 April 1997 (*Journal of Laws*, 1997) – implemented during elections and in the institution of a referendum (Linder, 1996).

The aim of this paper is to discuss the institution of a referendum in Poland and to present the approach of the Polish political class to the institution of a nationwide referendum using the example of the referendum of 6 September 2015. We also discuss the history of this institution in Poland and address the issue of its legal foundations, as well as present arguments of the followers and opponents of this form of direct democracy¹. It is also necessary to analyse the motives behind the initiating entity's decision concerning the organisation of a nationwide referendum from a broader perspective and to evaluate its implications in the sphere of politics.

It must be emphasised that Polish politicians of different political options, especially while proposing new reforms, declare that citizens should have a say in many issues under discussion. In reality, however, instruments of direct democracy (Podolak, 2015) stipulated by the Polish constitution (The Constitution of the Republic of Poland, 1997) and laws are not frequently applied (see: people's initiative, social consultations), both due to Polish people's low degree of public activity and because of the lack of parliamentary customs and the authorities' accompanying lack of willingness to work out new solutions by way of serious debate and considering the society's ambitions and expectations, also those representing positions others than those of the government majority. The main research methods applied include text analysis, the analysis of statements made by politicians and representatives of the doctrine, the historical method, and the legal and institutional analysis.

It is estimated that since the 1990s, about 40 citizens' committees have been established in Poland, and nine of them have been able to make the parliament adopt the regulations they petitioned for. It must be noted that most draft acts prepared as part of people's initiative concern the interest of professional groups (e.g., teachers), issues of axiology and outlook (the problem of in vitro, prenatal protection, equal rights). In the 6th term of the Sejm of the RP, the biggest number of citizen bills was submitted since the act on the exercise of legislative initiatives, i.e., 19². As Krzysztof Eckhardt notes, it accounts for almost

¹ For more details on direct democracy see: Tallian, 1977.

² See: Citizen Bills. (n.d.). Citizen bill on changing the act on family planning, prenatal protection and conditions of the acceptability of abortion and some other acts, parliamentary paper no. 3727, was submitted on 9 November 2010; Citizen bill on the return to the Republic of Poland of people of Polish origin, who were deported and exiled by the government of the Union of Socialist Soviet Republics, parliamentary paper no. 3605, was submitted on 15 September 2010; Citizen bill on changing the act on the educational system and the act on the income of local government units,

1% of all submitted bills (Eckhardt, n.d.). Moreover, by August 2011, two of them were passed as acts³. It should be noted here that in the 3rd term of the Sejm, five initiatives were formally submitted to the Marshal of the Sejm. There were eleven of them in the 4th term, while eight citizen bills were submitted to the parliament in the 5th term (*Sejm przeżywa zalew...*, 2011). This unsatisfactory state of affairs is also confirmed by the findings of Dariusz Skrzypiński's study, according to which only from 0.25% to 0.5% of submitted citizen bills become acts (Skrzypiński, 2010; Eckhardt, n.d.).

The Commissioner for Civil Rights Protection Adam Bodnar expressed the hope that the situation in which instruments of participative democracy are not sufficiently applied in Poland might be improved when the new act on petitions would enter into force on 6 September 2015 (*Journal of Laws*, 2014)⁴. This act provides precise constitutional legal foundations of this institution, which, as the experience of many countries shows, facilitates the development of civil society.

Bogusław Banaszak defines a referendum as an "institutional form which guarantees that entitled people can directly vote on the matters that are important for the state or a specific area" (Banaszak, Preisner, 1996). Maciej Jabłoński (2014a) indicates that what is "the essence of the contemporary model of

parliamentary paper no. 3374, was submitted on 11 August 2010; Citizen bill on the activity of housing cooperatives, parliamentary paper no. 3317, was submitted on 2 July 2010; Citizen bill on changing the act on pensions and disability pensions from the Social Insurance Fund, parliamentary paper no. 3178, was submitted on 27 May 2010; Citizen bill on changing the act on the electoral law to the Sejm of the Republic of Poland and the Senate of the Republic of Poland, the act on the electoral law to communal councils, district councils and provincial councils, and the act on the electoral law to the European Parliament, following the introduction of gender parity on the lists of candidates, parliamentary paper no. 2713, was submitted on 22 January 2010; Citizen bill on changing the act on the criminal code, parliamentary paper no. 2249, was submitted on 16 September 2009; Citizen bill on restoring the day free of work on Three Kings' Day, parliamentary paper no. 2063, was submitted on 17 April 2009; Citizen bill on changing the act on personal income tax, parliamentary paper no. 2000, was submitted on 31 December 2008; Citizen bill on changing the act on the right to free and concessionary fares in public transport, parliamentary paper no. 1892, was submitted on 23 March 2009; Citizen bill on restoring the feast day of Three Kings, parliamentary paper no. 826, was submitted on 24 June 2008; Citizen bill on changing the act on the educational system and the act on the income of local government units, parliamentary paper no. 605, was submitted on 24 April 2008; Citizen bill on changing the act on pensions and disability pensions from the Social Insurance Fund and some other acts, parliamentary paper no. 150, was submitted on 15 January 2008.

³ The abovementioned act on quotas and the Act of 19 March 2009 on changing the act of the educational system and changing some other acts (*Journal of Laws*, 2009).

⁴ The Senate of the RP adopted the act on petitions on 7 August 2014. President of the RP Bronisław Komorowski signed it on 27 August 2014.

a referendum is the fact that it enables all citizens who hold political rights (at least suffrage) to participate in the process of universal voting on the specific matter (matters) concerning the functioning of the state (or a specific territory), and resulting in legitimising or replacing the activity (or prior arrangements) of specific decision-making bodies (usually legislative and executive ones)⁵. According to Maria Marczevska-Rytko (2001), the nationwide referendum should address issues that are important for the whole society.

In the constitutional orders of democratic states it is a referendum that is the prominent institution of direct democracy (Grabowska, 2009; Leszczyńska, 2010; Marczevska-Rytko, 2001; Gallagher, Uleri, 1996). The institution of a referendum dates back to ancient times – Greek city-states and the Roman Republic. The contemporary version of this institution has been modelled after the 16th century Swiss people's assemblies (communes; *Zarys instytucji referendum...*, 2013; see also: Musiał-Karg, 2008; Marczevska-Rytko, 2010). In 1690, John Locke noted, in *The Second Treatise of Government*, that “if a controversy arise betwixt a Prince and some of the people, in a matter where the law is silent, or doubtful, and the thing be of great consequence, I think the proper Umpire in such a case should be the Body of the People”. As Matt Qvortrup (2015) points out, this philosophically has become the basis of the constitutional justifications for referenda. In the constitutional practice, a referendum became established in the second half of the 18th century.

It is indicated in the doctrine that a referendum fulfils a number of important functions in democracies. According to scholars, it has the following predominant functions: „the society's right to directly use the attribute of sovereignty (e.g., while amending the constitution); the legitimising function, which consists in strengthening the people's democratic legitimation for the decisions made by the state through universal voting; the articulative function reflected in the fact that citizens have the right to express their preferences concerning issues important for the state; the scrutiny function, which gives citizens the right to influence the contents of decisions made by state authorities, which may result in adopting or rejecting them (*Zarys instytucji referendum...*, 2013; Rytel-Warzocho, 2011). Petr A. Kucherenko, Badma. V. Sangadzhiev and Murad C. Velibekov, in turn, list the following functions: “mandatory – a final decision on certain issues; – advisory – identifying, the mapping of the will of the people and formed by them

⁵ For more details on the concept of a referendum see also: Pietrzak, 1997; Zieliński, 1995.

a body of power; – regulatory – participation of the people in the system of social management based on the concepts of representative government and people's sovereignty" (Kucherenko, Sangadzhiev, Velibekov, 2016).

It is assumed that a referendum in democratic systems varies from consultative and optional to mandatory and binding (Nurmi, 1997).

In the period of the Polish Second Republic, the institution of a referendum had no constitutional foundations (Jabłoński, 2001). It was included neither in the provisions of the Constitution of 17 March 1921 nor in the articles of the Constitutional Act of 23 April 1935. After World War II, despite the lack of constitutional regulations, on 27 and 28 April 1946 the acts on holding the people's referendum was passed (*Journal of Laws*, 1946, No. 15, item 104, and *Journal of Laws*, 1946, No. 15, item 105). The referendum was finally held on 30 June. The decision of the state authorities was incidental and was of the political and propaganda nature. Its principal goal was to delay the universal election to the Sejm and to persuade the society that it may "co-decide on the most important constitutional matters". The results of the rigged referendum were used for fighting the opposition and establishing a unicameral parliament. After these goals were achieved, despite promises, the institution of a referendum was not introduced in the articles of later constitutions: the so-called Small Constitution of 1947, the Constitution of the Republic of Poland of 22 July 1952, and its further amendments. In the period of the Third Polish Republic, a referendum was introduced in the act of 6 May 1987 on amending the Constitution of the Republic of Poland, which added a new par. 3 to art. 2, in the following wording: "The exercise of state power by the working people shall be done through expressing their will by way of a referendum. The principles and mode of a referendum shall be statutorily specified". On the same day, the Sejm also passed an act on social consultations and a referendum. The institution of a referendum was also stipulated in the next two amendments to the constitution of 1989, i.e., by the act of 17 October 1992 on mutual relations between the legislative and executive branches of the Republic of Poland and on local government and by the act of 23 April 1992 on the procedure of the preparation and adoption of the Constitution of the Republic of Poland (the so-called Small Constitution), which specified all points concerning the subject and object of a referendum. Without going into much detail, it is worth noting that the first referendum in free Poland was held on 18 February 1996. It was the referendum on the issue of granting property rights to citizens, referred to as the people's referendum (*The Regulation...*, 1995; *The Resolution of the Sejm...*, 1995). It was also in the form of voting in

a referendum held in 7 and 8 June 2003, that the decision on Poland's accession to the European Union was made (*Zarys instytucji referendum...*, 2013).

At present, along with the articles of the Constitution of the Republic of Poland of 2 April 1997 (Pietrzak, 1997), the institution of a referendum is specified by some statutes and regulations, i.e., the act of 14 March 2003 on nationwide referendum (*Journal of Laws*, 2003; see also: Uziębło, 2003), the act of 15 September 2000 on a local referendum (*Journal of Laws*, 2000; see also: Czaplicki, Dauter, Kisielewicz, Rymarz, 2007), the Standing orders of the Sejm of the Republic of Poland of 30 July 1992 (M.P., 2016), and the Standing Orders of the Senate of the Republic of Poland of 23 November 1990 (M.P., 2014, 2015).

Referring only to Polish constitutional regulations in this respect⁶, it should be noted that, under art. 4 par. 1 of the Constitution of the Republic of Poland, "Supreme power in the Republic of Poland shall be vested in the Nation", which exercises it indirectly or through its representatives (art. 4 par. 2). Moreover, under art. 62 par. 1 of the fundamental law, Polish citizens at the age of at least 18 have the right to participate in a referendum⁷. The institution of a referendum is also used when the parliament debates on an international agreement, which grants "an international organisation or an international authority the powers of state authorities on some matters". Under art. 125⁸ in relation with art. 90 par. 1–2 of the Constitution, a nationwide referendum may be held in respect of matters of particular importance to the state [which also includes receiving citizens' approval of the ratification of an international agreement]⁹.

Zbigniew Witkowski and Maciej Serowaniec (2016) examine the institution of a nationwide referendum, analysing it in the context of the empowerment of the society, processes of strengthening political and legal culture in the country, and using democratic lawmaking procedures.

The subjects entitled to call a nationwide referendum include: the Sejm (the decision is made by an absolute majority of votes in the presence of at least half

⁶ For more details see: Jabłoński, 2002a; Górka, Litwin, 2008.

⁷ In the case of a nationwide referendum, the right to vote has the nature of the so-called exclusive citizen right (see also: art. 2 par. 1 of the act on a nationwide referendum). Foreigners cannot participate in referenda concerning issues specified under art. 125 par. 1, art. 90 par. 3, and art. 235 par. 6 of the Constitution of the Republic of Poland. In the case of a local referendum, under art. 2 par. 1 of the act, "residents of the local government unit, as members of the local government community, express their will by way of voting".

⁸ See: Garlicki, 2001, p. 8.

⁹ See also: Jabłoński, 1999.

of the statutory number of deputies) and the President of the Republic with the consent of the Senate (in this case, the consent is given by an absolute majority vote in the presence of at least half of the statutory number of senators)¹⁰. The Supreme Court determines the validity of a referendum, deeming its result binding if more than half of the number of those having the right to vote have participated in it¹¹.

Moreover, under art. 170 of the Polish fundamental law, a local referendum is held with respect to matters concerning a self-governing community. The Constitution lists such cases, which include, for example, the dismissal of an organ of local government established by direct election. It must be noted that this exemplification had the nature of an open catalogue. The principles of and procedures for conducting this type of a referendum are specified by statutory regulations.

Chapter XII of the Constitution of the RP is entitled *Amending the Constitution*. Also this part of this act, which constitutes the foundation of each democratic state, includes provisions concerning a nationwide referendum. The constitution-makers specify that if the entitled subjects (at least one fifth of the statutory number of deputies, the Senate or the President of the RP) submit a bill to amend the Constitution which relates to chapters I, II or XII, they are obliged to submit to the Marshal of the Senate – within 45 days of the adoption of the bill by the Senate – the motion to hold a confirmatory referendum. The Marshal is then obliged to order the holding of a referendum within 60 days from the date of receipt of the application. Under the Constitution, the amendment to the Constitution is accepted if the majority of those voting express their support (art. 235 of the Constitution).

Under the binding act of 15 September 2000, a local referendum is held on the territory of a commune, district or province. The voting may concern subjects such as self-taxation or dismissing a decision-making body chosen in elections, as well as a commune leader, mayor or city president before the end of their term. A local referendum may be called at the initiative of a decision-making body or inhabitants with voting rights: 10 per cent of commune residents or 5% of province residents. As M. Jabłoński indicates, the voting is deemed valid when the electoral threshold has been reached. The results of a local referendum are binding when at least 30% of those with voting rights have participated in it. If

¹⁰ For more details see: Jarosz, 1994.

¹¹ See: Chapter IV of the Constitution of the RP..., 1997.

the referendum concerns the dismissal of a local government body chosen in direct elections, it is valid if not less than three fifths of those who participated in the election of this body voted in it (art. 55 of the act on a local referendum)¹².

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At the initiative of Bronisław Komorowski, on 6 September 2015, the first nationwide referendum in five years was held. The president submitted his bill to hold a nationwide referendum to the Senate on 13 May 2015. The bill was proceeded with unprecedented haste. Within one week, it was approved by three Senate committees and was made the subject of a plenary sitting (Senate document 899). The moment this initiative was announced, the observers of the Polish political scene had no doubts that it was politically motivated. The decision on this matter was made in an unusually short time, and the preparations were full of chaos and lacked consistency. Not only experts, constitutionalists, but also citizens believed that the real aim of the referendum was to win the voters of Kukiz'15 party, and thus seal the victory of Bronisław Komorowski in the 2nd round of the presidential election, rather than discuss important constitutional issues (Witkowski, Serowaniec, 2016). Critics were also abundant among the voters of the then president. They noted that “the institution of a referendum cannot be used only for taking over resolutions and decisions that the Constitution explicitly specifies as lying within the powers of the parliament or other state authorities” (Garlicki, 2001).

As it was expected, the referendum was not deemed valid. A few days before voting, as many as 47% of Poles did not know what the questions would be. 51% of those eligible to vote declared that they knew the subject of the referendum (*Co drugi Polak nie wie...*, 2015). The turnout appeared to be the lowest in the history of this institution in Poland, reaching only 7.8%. Commenting on low attendance, one of the advocates of the idea of single-seat constituencies, Paweł Kukiz said in Monika Olejnik's show that “the number of people voting in the referendum cannot be considered to be a huge disappointment, because, after all, three million citizens turned out at the polling stations. It is a success, bearing in mind the fact that the questions were formulated ineffectually, and for a few months we have been observing a hate campaign against this referendum”. For-

¹² See also: Jabłoński, 2014b.

mer Prime Minister Leszek Miller, one of the present leaders of the Democratic Left Alliance, judged that the referendum had been “a total failure. 100 million zlotys is equivalent to 400 thousand sets of books for school students or three thousand children in new kindergartens. All this went down the drain yesterday. “This referendum was called as the panic reaction after the first round of presidential election. Komorowski and his team imagined that if they appealed to the supporters of Kukiz, they would swing the balance in their favour. Now President Komorowski is bitterly aware that he was mistaken” (Oficjalne wyniki referendum..., 2015). Government spokesman Cezary Tomczyk was much less critical, saying that “the turnout was low, but for me it is largely the failure of Paweł Kukiz and of the slogans that he bandied around on the presidential campaign, and later in the referendum campaign” (Oficjalne wyniki referendum..., 2015). President’s counsellor, Prof. Tomasz Nałęcz, stated that “[it] was torpedoed due to party leaders’ joining forces, although I admit that some of them, owing to their political closeness to the president, expressed more understanding for the idea” (*Prof. Nałęcz: Referendum utrupili liderzy partyjni...*, 2015).

As the reasons of the failure of the president’s concept, scholars mostly pay attention to imprecisely formulated questions, which concerned: changing the electoral law in the elections to the Sejm of the RP, the system of financing of political parties by the state budget, and introducing a principle that any doubts pertaining to the interpretation of the tax law will be interpreted in the taxpayer’s favour. As Tomasz Adam accurately noted, it was the constitutionality of the questions that raised doubts among experts. Out of five legal opinions, only two, prepared by Prof. Wojciech Orłowski and Prof. Marek Chmaj, deemed their conformity to the fundamental law (*Opinie prawne w przedmiocie zgodności...*, 2015; see also: Adam, 2016). The other experts pointed out that the positive answer to the question on single-seat constituencies would require amending the constitution. As a result, citizens would gain the right of initiative with respect to amending the fundamental law, which is not stipulated in any binding constitutional regulations. According to Marcin Michał Wiszowaty, it is unconstitutional to treat a referendum as the form of “pressure from the executive branch on the legislature, with the application of the institution of a referendum in order to achieve desired results in the sphere that does not lie within the powers of the executive (the specific amendment to an act, the specific amendment to the Constitution). This can be classified as trying to ignore legislative bodies when introducing changes to the law” (Wiszowaty, 2015; see also: Adam, 2016). The legal opinions also referred to the lack of precision in the formulation of the

second question and to the ongoing legislative process of the revision of the regulations concerning the financing of political parties. It was emphasised that this kind of the president's initiative, which relates to the issues that have already been considered by the parliament, may be deemed to be the executive's attempt to interfere with the powers of the legislature. In the case of the third question, it was also pointed out that it concerned the ongoing legislative proceedings (*Opinie prawne w przedmiocie zgodności...*, 2015). What is more, Marcin Michał Wiszowaty noted that the principle mentioned in the question was already binding in the Polish tax law (Wiszowaty, 2015; see also: Adam, 2016).

Krystyna Pawłowicz (2015), in turn, stated that "in the matters of amending the Constitution, only 'the confirmatory referendum' rather than 'the pre-constitutional one' is acceptable".

CONCLUSION

In political systems, institutions of direct and indirect democracy coexist (Nurmi, 1997).

It is indicated in the literature that the degree to which citizens exercise their right to launch people's initiative reflects the level of participatory democracy in the state. In my opinion, although there is no doubt that this fact should be considered to be a significant measure in this respect, one cannot forget about other, equally important, determinants. A referendum plays a crucial role in representational democracies if due attention is paid to its proper arrangements (Nurmi, 1997).

Gordon Smith classified Polish referenda as controlled referenda, i.e., the ones in which it is up to the government whether it will be held and when and what will be voted (Witkowski, Serowaniec, 2016; Rachwał, 2010).

The referendum of 2015, just like the earlier ones, was prepared with too much haste (*Henryk Wujec o referendum...*, 2015). Such a fast pace of proceedings could not be rationally justified. It was undoubtedly an element of the ongoing political battle, which was quickly deciphered by voters. The opposition expressed accusations of its rights' being violated and showing disrespect for the constitution. The opinions that the rules of democracy and principles of constitutional culture are infringed were also frequent. However, the political class made a decision – not for the first and probably not for the last time – to treat it as a tool for achieving its own goals. As Tomasz Adam notes, the Senate of

the RP constitutes a certain barrier to the unconstitutionality of the referendum proposed at the president's initiative. In the face of the ongoing battle for the victory in the presidential election, however, it was political considerations that played the key role here. Therefore, we should once again emphasise the role of the Constitutional Tribunal in the political system of the state. As the same author points out, this court should obligatorily control referendum proceedings (Adam, 2016).

The existing body of literature provides a number of positive effects of the application of direct democracy tools in established democracies. On the other hand, one cannot ignore threats that result from using them for particular purposes, especially in authoritarian states. Leaders of political parties, who often cynically formulate their goals and programmes, initiate referenda on the basis of their own calculations and benefits (Setala, 1997). Witkowski and Serowaniec express the opinion that "as the result of the quality of human mind, referenda have a natural tendency to become a personal plebiscite, which is about being in favour or against a particular politician or group who are the authors of the bill to be voted. The content, strengths and weaknesses of the bill itself become unimportant" (Witkowski, Serowaniec, 2016).

Despite assurances from the Presidential Palace, the referendum of 2015 could not contribute to an increase in the degree of citizens' involvement in public affairs. In fact, the effect was totally adverse. Citizens dissociated themselves from politics, deciding not to participate, especially as the issues raised in the referendum were not understood by the majority of society (Witkowski, Serowaniec, 2016).

Poland's previous experience, in which referenda have been poorly prepared in terms of organisation and content, seem to prove the thesis that, in the political practice, this institution is used by political parties (which is quite fortunate in this case) as a weapon in the political battle. This rather negative picture of a referendum is reinforced by the fact that referendum campaigns are rarely accompanied by a sober, pragmatic and content-related campaign. They in turn involve manipulations, political calculations and mere politicking (Rachwał, 2010).

Such a perception of the goals of this institution generates a number of constitutional problems, while other subjects, including citizens, undermine the meaning of a referendum, usually expressing negative opinions about it.

One cannot oppose the view that imprecisely formulated referendum questions may lead to a multitude of interpretations, which in turn reduces citizens'

interest. Constitutional experts emphasise that imprecise and faulty questions cannot serve as the basis for clear conclusions and settlements. Hastily planned and conducted referenda lead to the intensification of political disputes and to the deepening of divisions in the society, negatively affecting citizens' political involvement (Witkowski, Serowaniec, 2016). Moreover, as Z. Witkowski and M. Serowaniec (2016) point out, what makes a referendum unpopular in the Polish political reality is the lack of the established tradition of participation in it and the common conviction that citizens do not have a real impact on state matters.

A.V. Dicey considers a referendum to be “the one available check on party leaders” and “nothing more nor less than a national veto” (Qvortrup²⁰¹⁵; see also: A.V. Dicey to Lord Salisbury, 1892).

According to Giovanni Sartori (1987): “The gist is that the greater the number of people involved, the less effective is their participation – and this is to the vanishing point. Thus, when vast territories and entire nations are involved, direct democracy becomes an unusable formula. I have also and concurrently held that an electronic, «referendum democracy», while technically feasible, would be disastrous and, in all likelihood, suicidal”.

In Latin, *referre* – means to ‘to refer back’ and is understood as the “first step towards more democracy” (Qvortrup²⁰¹⁵).

The existing body of literature provides a number of opinions of both the supporters and opponents of the institution of a referendum. Those in favour of a referendum quote the following arguments, presented in the table below.

Table 1. Arguments of the supporters of the institution of a referendum

Arguments
A referendum makes it possible for members of a given society (entitled citizens of the state or members of a local community) to speak (express their opinion or will) through taking a specific position on the issue which is the subject of a question asked in a referendum.
Universal voting in a referendum strengthens the democratic legitimation of the sovereign (people, Nation) for decisions made at the state level; it confirms its role as the source of legitimisation of political decisions.
A referendum makes it possible for the sovereign (people, Nation) to make decisions in public matters, in a transparent way, without political elites' being involved.
A referendum makes it possible for the sovereign to participate in the exercise of power personally and to influence the functioning of the state, as well as limiting the omnipotence of the parliament, especially with regard to the pursuit of particular interests. Thus, it enables the voter to free themselves from the dominion of a legislature controlled by privileged or minority interests.

Arguments
It educates the voter and makes them directly interested in legislation.
It enables direct contact between the legislators and voters and gives the legislators an added sense of responsibility in proposing laws, making them less likely to propose undesirable or useless measures.
Wire pullers and bribers aspire to use money and influence to have measures especially advantageous to them passed by a legislature. If they realise such measures – it may be subsequently rejected by the people.

Source: *Zarys instytucji referendum...*, 2013; *The Referendum in Theory and Practice*, 1924.

The opponents of a referendum quote the following arguments, presented in the table below.

Table 2. Arguments of the opponents of the institution of a referendum

Arguments
Resorting to a referendum results in inconsistencies in the law.
It decreases citizens' respect for participatory government; it is a kind of vote of no confidence in the activity (in parliament) of democratically elected representatives.
It is time-consuming and protracts the decision-making process.
Its organisation and conduct involves high costs.
The lack of understanding the subject of voting, resulting from insufficient knowledge. This leads to vulnerability to manipulation within the framework of the referendum campaign, which may in turn hamper the objective and well-thought out settlement of the problem.
Each referendum may turn into a sort of popularity contest rather than being the content-related settlement of an important issue (of importance for the state or a local community) raised in the referendum.
Citizens' passivity, their lack of willingness to participate in political ventures usually results in low attendance.
A referendum is in direct opposition to representative government.
It leaves a possibly more enlightened minority at the mercy of a possibly less enlightened majority.
It is not a true expression since great numbers do not cast any vote.
It detracts from the authority of the legislative bodies.
Confusion is caused in the minds of the voters "by the avoidable complexity" of the ballot.

Source: *Zarys instytucji referendum...*, 2013; *The Referendum in Theory and Practice*, 1924.

One must agree, although not uncritically, with the opinion that referenda, especially those at the local level, "provide the voter a unique opportunity to shape public activity" (Mikesell, Blair, 1974). It must be remembered, however, that a referendum will not play this role if the political elites treat it as a measure of popularity of their party or as an element of the battle for power.

The Polish political class has always had doubts when it came to the instrument of direct democracy, particularly a referendum. Z. Witkowski and M. Serowaniec note that it was already at the stage of drafting the constitution that left-wing politicians talked about a threat of a “permanent referendum republic”, which would become a “very dangerous gate for numerous initiatives that lead to deep divisions within the society and are a burden to the state budget. They believe that a referendum can effectively influence the work of the parliament, thus generating concerns that might destabilise the functioning of the state, especially as referenda were expected to concern mainly the matters of conscience” (Witkowski, Serowaniec, 2016).

Having this in mind, it must be stressed that for a referendum to contribute to the strengthening of civil society in the state by encouraging all those eligible to vote to participate, it must be thoroughly prepared. Time matters as well – a referendum should be preceded by a serious and unhurried debate. Referendum questions should concern important issues and must be formulated in the manner that will not raise doubts and generate disputes (Witkowski, Serowaniec, 2016; Rachwał, 2010). The initiators of the referendum of 8 September 2015 definitely failed to fulfil these conditions, and, as a result, voters refused to take part in thus party-like plebiscite. By deciding not to participate, they protested against using the institution of a referendum for one’s particular purposes.

The Internet was buzzing with disputes. The idea of holding a referendum was heavily criticised: “A party for 100 million, and the party-room is empty”, “Where is our 100 million?!”, “We are witnessing one of the first votes where the lack of participation is the fulfilment of citizens’ duty”, “Does anyone know anyone who’s going?”, “Today’s referendum is a sad day for democracy”, “Poles sense falsehood and hypocrisy a mile off, that is why they stayed at home”, “It seems evident that we have beaten the record low turnout”. One of internet users summed up the situation in strong, though justified words: “Today we can say no – to all parties and political options, with our joint efforts we were able to disgrace the idea of a referendum” (*Zakończyło się referendum...*, 2015). Internet users’ sceptical view was in line with experts’ opinions. Tomasz Lis wrote on Twitter: “There has never been such an election silence. The biggest silence was in polling stations”.

When Bronisław Komorowski was asked to comment, he said that “a referendum became an orphan after I lost the election. There was no one who would call for participation in a referendum, and parties showed no interest. I thought

Paweł Kukiz would put more heart and energy into explaining what the system of single-seat constituencies is really about” (*Komorowski: Referendum zostało sierotą...*, 2015).

To conclude, it should be pointed out that a referendum is usually an institution of political democracy. As M. Marczevska-Rytko (2001) notes, history shows that it is often used by undemocratic regimes as a PR tool to obtain the confirmation of the people’s support for the system.

The referendum of September 2015 was an example of a total fiasco of the president’s referendum initiative. The reasons included: imprecise questions, faultily formulated questions, excessive haste in preparing the initiative, debate reduced to a minimum, and inappropriate time due to the ongoing electoral campaign and using the institution of a referendum for political purposes (*Cowynika z referendalnego...*, 2015). Moreover, the issues to be voted were not important enough to hold a referendum. Professor Krzysztof Skotnicki, Chairman of the Polish Constitutional Society, in the programme *Rozmowa Dnia* (*The Talk of the Day*) in Radio Łódź rightly commented that such a referendum [as the referendum of 6 September 2015, author’s note] means “spoiling democracy. Polish people, who are little interested in political life, can become even more discouraged to participate in elections [...] none of the political forces has even tried to explain what the questions are about” (Berkowska, 2015).

A referendum is an institution which, according to Andrzej Antoszewski and Ryszard Herbut (1997), may be considered in terms of benefits and losses of political parties. Both scholars point out that the practice accompanying the application of this tool (how often and with respect to what matters it is called) rather than the act whether the regulations concerning its introduction are of the constitutional importance. This thesis is confirmed by the example of the referendum of September 2015. The decision to hold it was politically motivated – which has been mentioned earlier – but it benefited neither the governing party nor the opposition. Its implications should be discussed from the perspective of losses for the system. The referendum prepared in such a manner reduced the already low level of Polish people’s trust in the political class and undermined the foundations of this important institution, which – in a democratic state – should be used to increase citizens’ interest in the sphere of public life.

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