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The National Referendum in the Polish Legal Tradition

Abstract: This article provides a concise historical-legal analysis of the national referendum in the Polish constitutional tradition from 1918 to the present. It examines how successive political systems—the Second Republic, the People’s Republic of Poland and the Third Republic—shaped both the normative framework and the practical functioning of the referendum. The study shows that despite its constitutional status as an instrument of direct democracy, the referendum has been used predominantly for political or legitimising purposes, with genuine civic participation being limited in practice. Only the 1997 constitutional referendum and the 2003 EU accession referendum fulfilled a substantive democratic role. The article highlights long-term patterns of instrumentalisation and the structural barriers that have hindered the consolidation of the referendum as an authentic expression of popular sovereignty.

Keywords: national referendum, direct democracy, Polish constitutional law, political instrumentalisation, history of law, direct democracy mechanisms

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Introduction

The national referendum, one of the constitutionally envisaged forms of direct democracy, occupies a distinctive position within the Polish legal order, although its actual systemic function has undergone significant transformations across successive periods of the state's history. Even the mere act of asking about the purpose of the referendum and the reasons why this instrument is considered useful from a constitutional perspective leads to broader reflections on the extent to which the mechanism of the popular vote has influenced political reality and the dynamics of public life, as well as how it has shaped collective opinion. Such an analysis is necessary because, in Poland's history, the referendum has been used in radically different ways—both as a tool for legitimising the actions of those in power and as an element of political mobilisation, devoid of any independent deliberative value, and as an institution enabling citizens to exert a genuine influence on the direction of state policy.

From a historical-legal perspective, it is difficult to speak of the existence of genuine forms of direct democracy prior to Poland's independence being regained in 1918. This is due to the fact that it was only in the period of the Second Republic that political rights were extended to all citizens of the state, and not merely to members of the nobility. Only then could the Polish constitutional system be described as democratic in any meaningful sense and any discussion of the level of civic participation undertaken. It is true that in the period of what is termed the First Republic of Poland certain embryonic forms of bottom-up exercise of power emerged (albeit confined to a narrow stratum of the aristocratic estate), and, as an example one may cite the Third of May “referendum” of the February local dietines (Pol. *sejmiki*), whose purpose was to ascertain the opinion of the nobility on the adoption of the Constitution of 3 May.³ In my view, however, designating this series of events as a referendum

³ This process was described in detail by Wojciech Szczygielski, *Referendum trzeciomajowe: Sejmiki lutowe 1792 roku* (Wydawnictwo Uniwersytetu Łódzkiego, 1994).

is inappropriate and misleading. It would be more rational to define them as an instrument introducing a deliberative dimension into the law-making process.

This article analyses the use—and attempted use—of the national referendum in the Polish legal system from 1918 to the present day. Its aim is to reconstruct the transformations of this institution against the background of successive stages in the development of the state system, and to assess the extent to which it has constituted an instrument for giving effect to the principle of popular sovereignty. Within the adopted research perspective, particular importance is attached to several fundamental questions, the formulation of which determines the direction of the analyses undertaken in the subsequent parts of the article.

Firstly, the inquiry focuses on how the place of the referendum was shaped within the constitutional arrangements of the Second Republic, the People's Republic of Poland (PRL) and the Third Republic, both at the normative and at the practical level. The analysis thus covers the constitutional drafts of the inter-war period, the incidental and profoundly distorted use of the referendum in 1946, the evolution of the provisions and practice in the late PRL, and the gradual institutionalisation of this form of participation after 1989, especially in the light of the solutions adopted in the 1997 Constitution.

Secondly, it is necessary to examine the political, social and legal factors that determined the way in which the institution of the referendum was constructed and the grounds for its use in successive epochs. This concerns both the pre-war ideological disputes surrounding the representative system, and the logic of authoritarian power in the People's Republic, where the referendum was subordinated to legitimising goals, as well as the conditions of the pluralist political scene of the Third Republic, in which referendal practice has often reflected the interests of current parliamentary majorities or the ambitions of members of the executive.

Thirdly, the analysis considers the extent to which referendums held in Poland have constituted a genuine instrument of direct democracy, enabling

citizens autonomously to express their will in matters of public importance, and the extent to which they have been reduced to a means of political instrumentalisation. From this perspective, it is essential to determine whether referendum procedures have fostered public deliberation and strengthened civic participation, or whether—as in 1946—they have become part of propagandistic activities devoid of real significance for the decision-making process.

Fourthly and finally, it is necessary to define criteria allowing for an assessment of the quality and significance of the referendums conducted in Poland. On the basis of historical-legal analyses that take into account, *inter alia*, the abuses of the 1940s, the conditions of referendum campaigns, the formulation of questions, turnout, and normative effects, one may distinguish in particular: (1) the procedural standard and degree of integrity in the organisation of voting, including the independence of commissions and the possibility of controlling the process; (2) the neutrality, clarity and non-misleading character of referendum questions; (3) the conditions of the campaign, encompassing the level of informational pluralism and the freedom and substantive nature of public debate; (4) the actual level of citizen participation, understood more broadly than mere turnout; (5) the real impact of the referendum outcome on the decision-making process; and (6) the conformity of referendal practice with the constitutional function of the referendum, namely the strengthening of the power of the people, rather than the pursuit of short-term political aims.

The structure of the article reflects the chronology of constitutional changes and the evolution of the institution. The first part discusses the concepts and constitutional projects of the Second Republic, in which, despite the lack of practical application, the first modern concepts of the national referendum took shape. The next part presents the experience and consequences of the 1946 referendum, as well as the functioning of the referendum in the realities of the People's Republic of Poland, including its legitimising and consultative roles. The following section concerns the period of constitutional transformation and the first decades of the Third Republic, covering, *inter alia*, constitutional and

ratification referendums. The final part is devoted to referendal practice after 2003, marked by an increased number of initiatives and a rise in the instrumentalisation of issue-specific referendums, particularly visible in 2015 and 2023.

In this way, the study seeks to offer a comprehensive account of the historical-legal position of the national referendum in Poland, encompassing both its normative framework and the real practice of its application. The research perspective so outlined makes it possible to evaluate the degree to which the functions attributed to this institution within a democratic system have been realised, and to identify the enduring patterns of its instrumentalisation.

The Second Republic—Attempts to Introduce the National Referendum into the Polish Legal System

In the interwar period, the institution of the national referendum did not find expression either at the normative level or in practice. One may, of course, point to several examples of instruments of direct democracy used at that time. The popular plebiscites held in Warmia, Masuria, Powiśle and Upper Silesia may serve as such examples. Even if one were to regard a plebiscite as a form of referendum, it must be clearly stated that the above-mentioned votes were popular ballots of a regional, not nationwide, character.

This does not mean, however, that the national referendum was absent from legal discourse. In the course of work on the March Constitution, four drafts of the basic law were presented: these were drawn up by the Polish Socialist Party (PPS), the Polish People's Party "Wyzwolenie" (PSL-Wyzwolenie), the Constitutional Labour Club (the "American" draft), and Władysław Wróblewski (the "French" draft). All provided for citizen participation in the direct exercise of power. The most far-reaching of these⁴ was the draft prepared by the Union of Polish Socialist Deputies under the leadership of Mieczysław

⁴ Piotr Uziębło, *Demokracja partycypacyjna: Wprowadzenie* (Centrum Badań Społecznych, 2009), 170.

Niedziałkowski in 1920.⁵ Under this proposal, pursuant to Article 51 of the constitution, any statute or resolution of the Sejm could be submitted to a popular vote: by a resolution of the Sejm, at the request of the President and the Council of Ministers supported by one-third of the total number of deputies, at the request of the Chamber of Labour (Pol. *Izba Pracy*) in specified cases, or at the request of at least 100,000 citizens holding active electoral rights.

The PSL-Wyzwolenie draft, based largely on Włodzimierz Wakar's *Foundations of the Order of the Polish Republic*,⁶ also contained provisions on a national referendum, although they were not as far-reaching as those in the PPS proposal. They were to concern, for example, consent to the restriction of civil liberties.⁷ The draft likewise provided for a popular initiative by 500,000 citizens seeking either the renewed submission of an adopted statute to a vote, or the ordering of a referendum in relation to it.⁸

Very interesting proposals can also be found in the draft prepared in 1919 by Józef Buzek.⁹ Supported by deputies of the Constitutional Labour Club, this advocated the introduction of a federal presidential system modelled on that of the United States.¹⁰ Chapter III, entitled "The Direct Participation of the People in the Exercise of Legislative Power", was devoted to citizen participation. Under its provisions, a referendum was to be ordered in the event of any constitutional amendment, with respect to certain tax statutes, in relation to resolutions authorising the contracting of agrarian loans, and as a result of popular initiative (with the exception of budgetary and emergency statutes).

5 Związek Polskich Posłów Socjalistycznych under the guidance of Mieczysława Niedziałkowskiego, *Projekt Konstytucji Rzeczypospolitej Polskiej* (PPS, 1920).

6 Włodzimierz Wakar, *Podstawa ładu Rzeczypospolitej Polskiej: (wniosek)* (Drukarnia Synów St. Niemiry, 1919), 5.

7 Sejm Ustawodawczy, *Sprawozdanie Stenograficzne z 35 Posiedzenia Sejmu Ustawodawczego z dnia 9 maja 1919 r.* (Drukarnia Piotra Laskauera, 1919), 36.

8 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej: Referendum ogólnokrajowe w Polsce* (Kancelaria Senatu, 2013), 7.

9 Józef Buzek, *Projekt konstytucji Rzeczypospolitej Polskiej* (Drukarnia Państwowa, 1919).

10 Krzysztof Prokop, "W poszukiwaniu systemu rządów u progu niepodległości (1918–1921)," *Miscellanea Historico-Iuridica* 17, no. 1(2018): 37.

Other interesting systemic arrangements were put forward in the draft attributed to Władysław Wróblewski,¹¹ known as the “French” draft because it was inspired by the Constitution of the Third French Republic.¹² It envisaged the possibility of holding a referendum in two situations involving a lack of agreement between the two chambers of Parliament. First, where a legislative deadlock arose because the Sejm and the Senate were unable to reach the procedurally required consensus. Secondly, where one chamber refused to assent to a proposed constitutional amendment, 300,000 citizens could request that a referendum be organised on the matter.¹³

During the work on the March Constitution, the dividing line in the dispute over the referendum ran between the political right and the left, the latter being advocates of introducing this institution.¹⁴ Representatives of the right, such as Deputy Bolesław Fichna of the Christian Democratic NZR, argued that given the difficult situation of the state and its ethnically heterogeneous structure, such regulations should be approached with great caution.¹⁵ The risk of manipulation and the low level of education of the population were frequently invoked.¹⁶ For that reason, for example, Buzek’s draft stipulated that, in the case of local referendums establishing or amending regional constitutions, such a referendum could only be held if the illiteracy rate in the region did not

11 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 6; Marian Kallas, “Wstępy w projektach Konstytucji z lat 1919–1921,” *Prawo Kanoniczne: Kwartalnik Prawno-Historyczny* 52, no. 3–4 (2009): 398; Robert Jastrzębski, “Realizacja postanowień Konstytucji Rzeczypospolitej Polskiej z dnia 17 marca 1921 roku w zakresie wymiaru sprawiedliwości,” *Krakowskie Studia z Historii Państwa i Prawa* 16, no. 2(2023): 205.

12 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 6.

13 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 6.

14 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 7; Przemysław Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” *Zasopismo Prawno-Historyczne* 61, no. 1(2009): 174; Uziębło, *Demokracja partycypacyjna*, 169.

15 Sejm Ustawodawczy, *Sprawozdanie Stenograficzne z 35 Posiedzenia Sejmu Ustawodawczego*, 46.

16 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 7.

exceed 10% (Article 3).¹⁷ However, none of these solutions found its way into the final text of the 1921 Constitution.

It appears that in the interwar period this was the only real opportunity to implement mechanisms of direct democracy. In the constitutional practice of that time, there was evident instability in the political system, which enabled the growth in social support and political strength of the Sanacja movement. The August Amendment of 1926 substantially strengthened the position of the executive in relation to the legislature, while the April Constitution was filled primarily with duties rather than with rights and freedoms of citizens, which were not even set apart in its systematic structure.¹⁸ The functioning of the state under that constitution was brutally interrupted by the outbreak of the Second World War in 1939.

III-Begotten—The Disastrous Experience of the First Nationwide Referendum in Polish History

After the Second World War, as a result of the decisions taken at the Yalta Conference, among other factors, the Republic of Poland found itself within the USSR's sphere of influence,¹⁹ which undertook to ensure that free elections would be held in Poland as rapidly as possible.²⁰ However, uncertain of victory, the communists postponed the calling of such elections. The victory in November 1945 of the Smallholders' Party in Hungary, which was in opposition to the local communist

17 Buzek, *Projekt konstytucji Rzeczypospolitej Polskiej*.

18 Tadeusz Maciejewski, *Historia ustroju i prawa sądowego Polski* (C.H. Beck, 2017), 308.

19 Dariusz Dudek, "Referendum—instrument czy iluzja władzy polskiego suwerena?," *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 80, no. 1(2018): 169.

20 Jan Snopko, "Przebieg referendum ludowego z 30 czerwca 1946 roku w powiecie augustowskim w świetle raportu szefa Powiatowego Urzędu Bezpieczeństwa Publicznego w Augustowie," *Studia Podlaskie*, no. 17(2007/2008): 353; Mariusz Żuławnik, *Referendum ludowe z 30 czerwca 1946 roku w Płocku i powiecie płockim* (Archiwum IPN, 2023), 216; Adam Dziurok and Małgorzata Świder, eds., *Referendum ludowe w 1946 roku oraz wybory do Sejmu Ustawodawczego w 1947 roku na Górnym Śląsku* (IPN, 2017), 7.

party,²¹ is said to have prompted Władysław Gomułka to postpone the election date.²² It was nevertheless necessary to legitimise the authorities by means of a ballot, and this constituted the first reason for ordering a referendum.²³

Moreover, such a vote was considered to be an ideal test of the actual level of support for the communist camp and of acceptance of the change in the political situation.²⁴ It also made it possible to consolidate the new authorities, to organise more effectively the apparatus of repression against the opposition (above all, the Polish People's Party, PSL), and to create opportunities for electoral fraud.²⁵ As K. Drażba notes, even before the proposal to hold a referendum was publicly announced, the Political Bureau of the Polish Workers' Party (PPR) established a secret State Security Commission tasked with coordinating the activities of the army and security organs in combating the armed underground and "securing" the referendum. As a rule, this popular vote was treated as a substitute for parliamentary elections,²⁶ a kind of proxy referendum.²⁷ What is particularly striking, however, is that when the Polish Socialist Party (PPS) formally came forward with the proposal to hold a referendum, it

21 Snopko, "Przebieg referendum ludowego z 30 czerwca 1946 roku w powiecie augustowskim," 353; Krzysztof Drażba, *Urna to jest taki pniak. Wrzucisz "nie", wychodzi "tak": Referendum z 30 czerwca 1946 r. w Polsce na przykładzie województwa gdańskiego* (IPN, 2016), 17.

22 Andrzej Cyliw, "Referendum 1946 r. na Pomorzu w świetle odtajnionych raportów amerykańskich," *Studia Gdańskie. Wizje i rzeczywistość*, no. 19(2022/2023): 170.

23 Anna Maciąg, "Historyczny kontekst referendum lokalnego w Polsce," *Folia Iuridica Universitatis Wratislaviensis* 7, no. 2 (2018): 45.

24 Żuławnik, *Referendum ludowe z 30 czerwca 1946 roku w Płocku i powiecie płockim*, 216; Snopko, "Przebieg referendum ludowego z 30 czerwca 1946 roku w powiecie augustowskim," 353–54.

25 Drażba, *Urna to jest taki pniak*, 80; Snopko, "Przebieg referendum ludowego z 30 czerwca 1946 roku w powiecie augustowskim," 353; *Zrzeszenie Wolność i Niezawisłość, Wnioski z referendum a wybory* (WiN, 1946), 1; Adam Dziurok and Bernard Linek, eds., *Górny Śląsk w Polsce Ludowej. Tom 1. Przełomy i zwroty* (IPN, 2017), 43.

26 Sabina Grabowska, "Referendum ogólnokrajowe w Polsce—analiza przypadku," *Studia Politologiczne* 53, 2019: 102; Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 7; *Zrzeszenie Wolność i Niezawisłość, Wnioski z referendum a wybory*, 1.

27 Krzywoszyński, "Z dyskusji nad referendum w Polsce Ludowej," 178.

was supported by Stanisław Mikołajczyk himself.²⁸ This resulted from the fact that opposition circles likewise viewed the popular vote as an opportunity to test their own support.²⁹

On 26–28 April 1946, at a session of the State National Council (Krajowa Rada Narodowa, KRN), which had in effect become a self-appointed parliament of the Republic,³⁰ two statutes were adopted: the Act on the Popular Vote and the Act on the Conduct of the Popular Vote.³¹ The Act of 27 April 1946 on the Popular Vote was the first legal act to introduce into Polish law the institution of the nationwide referendum.³² The detailed procedure for conducting such a referendum was set out in the Act of 28 April 1946 on the Conduct of the Popular Vote.³³ The franchise was granted to all citizens possessing full legal capacity, who had reached the age of 21, had not been deprived of public rights by a final court judgment after 22 July 1944, and were not at that time serving a custodial sentence. The key provisions of the Act that enabled manipulation of the result concerned the manner of appointing electoral commissions and the design of the ballot.

The referendum was ordered by the General Commissioner for the Popular Vote,³⁴ together with a deputy, elected by the Presidium of the State National Council.³⁵ Members of the district electoral commissions were appointed by

28 Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 101–02; Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” 175; Żuławnik, *Referendum ludowe z 30 czerwca 1946 roku w Płocku i powiecie płockim*, 221–22.

29 Drażba, *Urna to jest taki pniak*, 8 and 18.

30 Żuławnik, *Referendum ludowe z 30 czerwca 1946 roku w Płocku i powiecie płockim*, 216.

31 Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 98–99.

32 Journal of Laws of 1946, no. 15, item 104.

33 Journal of Laws of 1946, no. 15, item 105.

34 This position was held by Wacław Barcikowski—First President of the Supreme Court, vice-chairman (later chairman) of the Alliance of Democrats (which was in coalition with the Polish Workers’ Party), a member of the Presidium of the State National Council, and later Deputy Marshal (Deputy Speaker) of the Sejm and member of the Council of State.

35 The Commissioner and the Deputy were appointed by a resolution adopted by the following members: President Bolesław Bierut, Stanisław Szwalbe, Stanisław Grabski, Michał Żymierski, Roman Zambrowski, and Wacław Barcikowski: Uchwała Prezydium Krajowej

the voivodship national councils, and their chairs were appointed by the General Commissioner. The composition of the local electoral commissions, which directly conducted the vote, was determined by the chair of the district electoral commission (as chair), by the district (municipal) national councils (three members), and by the district authority of general administration.³⁶ The General Commissioner exercised virtually unlimited supervision over the work of the commissions, and his orders were not subject to appeal. The legal basis for the 1946 referendum consisted of ad hoc acts, which expired upon the issuance of the General Commissioner's Proclamation on the Results of the Popular Vote of 30 June 1946.³⁷

Article 3 of the Act on the Popular Vote provided that the vote was to be held on 30 June 1946 throughout the entire territory of the state. Under Article 2 of the same Act, the questions put to the citizens were as follows³⁸:

- 1) *Do you support the abolition of the Senate?*
- 2) *Do you wish the future Constitution to preserve the economic system introduced by the agrarian reform and the nationalisation of the basic branches of the national economy, while maintaining the statutory rights of private initiative?*
- 3) *Do you wish to consolidate the western borders of the Polish State on the Baltic, the Oder and the Lusatian Neisse?*

The questions were formulated in a highly artful manner so that the majority of voters would answer them in the affirmative, thereby creating an impres-

Rady Narodowej z dnia 10 maja 1946 r. o powołaniu Generalnego Komisarza Głosowania Ludowego i jego zastępcy (Polish Monitor of 1946, no. 40, item 78).

36 That is, the county starosties (Pol. *starostwa powiatowe*), established pursuant to: Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 21 sierpnia 1944 r.—Prawo o organizacji i zakresie działania administracji ogólnej I instancji (Journal of Laws of 1944, no. 6, item 27).

37 Polish Monitor of 1946, no. 61, item 115.

38 Załącznik do ustawy z dnia 28 kwietnia 1946 r. o przeprowadzeniu głosowania ludowego [Appendix to the Act of 28 April 1946 on the Conduct of the Plebiscite] (Journal of Laws, no. 15, item 105).

sion of social unanimity and of support for the communist authorities.³⁹ They are a classic example of so-called sham questions.⁴⁰ This drafting technique also aimed to make it more difficult for the opposition to agitate against them.⁴¹ Nonetheless, the PSL, seeking to distinguish itself from the PPR, campaigned for a negative vote on the abolition of the Senate,⁴² although it had itself previously advocated unicameralism in its programme,⁴³ but they regarded this point as the least important of the three issues.⁴⁴

The Democratic Bloc of parties (PPR, PPS, the People's Party—SL, and the Democratic Party—SD, under the leadership of the PPR) called for a mass “3 × YES” vote.⁴⁵ It justified its position, inter alia, by claiming that it would ensure: openness of political life, the consolidation of sincere democrats, the strengthening of the achievements of the popular masses, the defeat of reaction, the prevention of the return of fascism and German imperialism,⁴⁶ political stabilisation,⁴⁷ and the rapid reconstruction of the state, which, it was argued, required a government enjoying the confidence of the other states of the world.⁴⁸

A notable technique of social engineering was the tailoring of propaganda messages to specific social groups, such as women,⁴⁹ peasants, repatriates, sol-

39 Dziurok and Linek, eds., *Górny Śląsk w Polsce Ludowej*, 42; Drażba, *Urna to jest taki pniak*, 19.

40 Remigiusz Chęciński, *Referendum ogólnokrajowe w polskim systemie prawnym po 2 kwietnia 1997 r.* (UAM, 2019), 34.

41 Drażba, *Urna to jest taki pniak*, 19–20.

42 Dziurok and Linek, eds., *Górny Śląsk w Polsce Ludowej*, 42; Drażba, *Urna to jest taki pniak*, 8.

43 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 7–8.

44 Żuławnik, *Referendum ludowe z 30 czerwca 1946 roku w Płocku i powiecie płockim*, 222.

45 Cylwik, “Referendum 1946 r. na Pomorzu w świetle odtajnionych raportów amerykańskich,” 171; Michał Siedziako, “Socjotechnika w procesie przejmowania władzy w Polsce przez komunistów (1944–1948),” *Historia i Polityka* 54, no. 47 (2024): 133.

46 Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” 177.

47 Drażba, *Urna to jest taki pniak*, 36.

48 Drażba, *Urna to jest taki pniak*, 98.

49 It is especially worth noting: Biblioteka Narodowa, *Dlaczego kobiety głosować będą trzy razy tak* (Zakład Graficzny “Książka”, 1946).

diers, the intelligentsia, youth, and former concentration camp prisoners.⁵⁰ No less important a component of the propaganda effort was the negative messaging directed at the strongest opposition party, the PSL.⁵¹ The alleged vices of the Peasant Party were said to include: internal quarrels, a negative attitude towards agrarian reform, links with the pro-independence underground,⁵² reactionism and backwardness, representing Western interests,⁵³ as well as responsibility for the country's political and economic failures.⁵⁴ Moreover, PSL politicians were reminded that they had themselves been supporters of unicameralism, while the Senate was simultaneously subjected to ridicule.⁵⁵

With regard to the second question, consequentialist arguments were advanced, attempting to demonstrate the effectiveness of the proposed solutions for the working masses.⁵⁶ Propaganda also appealed directly to the emotions of voters, invoking, for example, historical peasant wrongs⁵⁷ and social exploitation.⁵⁸ At the same time, the PPR denied that there were any plans to collectivise agriculture.⁵⁹ As to the question on borders, anti-German sentiments were skilfully exploited.⁶⁰ The aggressiveness of the campaign was accom-

50 Drażba, *Urna to jest taki pniak*, 36.

51 Kamila Churska-Wołoszczak, "Prasa województwa pomorskiego w okresie referendum ludowego i wyborów do Sejmu Ustawodawczego," *Studia Medioznawcze*, no. 56(2014): 165.

52 Churska-Wołoszczak, "Prasa województwa pomorskiego w okresie referendum ludowego i wyborów do Sejmu Ustawodawczego," 166.

53 Drażba, *Urna to jest taki pniak*, 31–32.

54 Zrzeszenie Wolność i Niezawisłość, *Wnioski z referendum a wybory*, 9.

55 Churska-Wołoszczak, "Prasa województwa pomorskiego w okresie referendum ludowego i wyborów do Sejmu Ustawodawczego," 173; Drażba, *Urna to jest taki pniak*, 32.

56 Churska-Wołoszczak, "Prasa województwa pomorskiego w okresie referendum ludowego i wyborów do Sejmu Ustawodawczego," 173.

57 Biblioteka Narodowa, *Dlaczego kobiety głosować będą trzy razy tak*, 4.

58 Dziurok and Linek, eds., *Górny Śląsk w Polsce Ludowej*, 69.

59 Drażba, *Urna to jest taki pniak*, 36; Siedziako, "Socjotechnika w procesie przejmowania władzy w Polsce przez komunistów (1944–1948)," 129.

60 Przemysław Krzywoszyński, "Zagadnienia narodowościowe w perspektywie polskich plebiscytów i referendum (1920, 1921, 1946)," *Annales Universitatis Mariae Curie-Skłodowska* 58, no. 2(2011): 40; Drażba, *Urna to jest taki pniak*, 38–40.

panied by ruthless terror directed at the opposition.⁶¹ This encompassed such activities as: arrests⁶² (around 5,500 people, 90% of them PSL members),⁶³ torture,⁶⁴ beatings,⁶⁵ surveillance,⁶⁶ confiscation of property,⁶⁷ dismissals from employment,⁶⁸ political murders,⁶⁹ and censorship.⁷⁰

The communists were heavily over-represented on the electoral commissions. PSL representatives constituted a clear minority on the commissions, especially among chairs and vice-chairs (country-wide they accounted for a mere 4.3% of their total number).⁷¹ This alone created ample opportunity for abuses, and in addition communist representatives had decisive influence over the choice of chairs and vice-chairs.⁷² A quorum for the validity of a commission's resolution was three members, and it sufficed for the chair and one member to vote in favour.⁷³ Moreover, there was no institution of polling agent, who might have monitored the commissions' actions, and PPR members present in polling stations openly campaigned in line with the Democratic Bloc's

61 Dziurok and Świder, eds., *Referendum ludowe w 1946 roku oraz wybory do Sejmu Ustawodawczego w 1947 roku na Górnym Śląsku*, 5.

62 Siedziako, "Socjotechnika w procesie przejmowania władzy w Polsce przez komunistów (1944–1948)," 134.

63 Drazba, *Urna to jest taki pniak*, 51.

64 Mirosław Pietrzyk, "Szefowie inowrocławskiej bezpieki w latach 1945–1965," *Aparat Represji w Polsce Ludowej 1944–1989*, no. 1(2015): 277.

65 Pietrzyk, "Szefowie inowrocławskiej bezpieki w latach 1945–1965," 277; Siedziako, "Socjotechnika w procesie przejmowania władzy w Polsce przez komunistów (1944–1948)," 134.

66 Snopko, "Przebieg referendum ludowego z 30 czerwca 1946 roku w powiecie augustowskim," 355.

67 Siedziako, "Socjotechnika w procesie przejmowania władzy w Polsce przez komunistów (1944–1948)," 134.

68 Siedziako, "Socjotechnika w procesie przejmowania władzy w Polsce przez komunistów (1944–1948)," 134.

69 Siedziako, "Socjotechnika w procesie przejmowania władzy w Polsce przez komunistów (1944–1948)," 134; Drazba, *Urna to jest taki pniak*, 50–51.

70 Drazba, *Urna to jest taki pniak*, 39.

71 Drazba, *Urna to jest taki pniak*, 23.

72 Dziurok and Linek, eds., *Górny Śląsk w Polsce Ludowej*, 44.

73 Zrzeszenie Wolność i Niezawisłość, *Wnioski z referendum a wybory*, 6.

position.⁷⁴ Polling stations were sometimes closed before the official end of voting; ballot papers were substituted, and, in breach of the law, separate districts were created for the Security Office (UB), Citizens' Militia (MO) and the army, where, under pressure from superiors, voters were instructed to vote "3 × YES".⁷⁵ There were even cases of votes being cast in the names of the deceased.⁷⁶ Many more irregularities could be listed; the foregoing ones are merely the most significant.

At the counting stage, mass falsification occurred. In almost all districts, ballot boxes were removed from the polling stations and transported to the offices of the district chiefs (Pol. *starostwa*), the Citizens' Militia or the Security Offices, where selected members of the commissions counted (and falsified) the votes.⁷⁷ It should be added that the voting method made it very easy to convert a "NO" vote (a single stroke) into a "YES" vote (a cross), and this was done on a large scale.⁷⁸ Protocols were also falsified.⁷⁹

The official results are therefore widely, and with good reason, regarded as spurious. Nonetheless, it is useful to recall them and to juxtapose them with the actual figures in tabular form. It should also be noted that turnout was officially reported at 90%.⁸⁰

74 Zrzeszenie Wolność i Niezawisłość, *Wnioski z referendum a wybory*, 6; Drażba, *Urna to jest taki pniak*, 74–75.

75 Zrzeszenie Wolność i Niezawisłość, *Wnioski z referendum a wybory*, 6–7; Drażba, *Urna to jest taki pniak*, 74–75.

76 Zrzeszenie Wolność i Niezawisłość, *Wnioski z referendum a wybory*, 7.

77 Czesław Osękowski, "Referendum z 30 czerwca 1946 r. na ziemiach przekazanych Polsce po II wojnie światowej," *Dzieje Najnowsze*, no. 3(1995): 92; Drażba, *Urna to jest taki pniak*, 95.

78 Osękowski, "Referendum z 30 czerwca 1946 r. na ziemiach przekazanych Polsce po II wojnie światowej," 92; Zrzeszenie Wolność i Niezawisłość, *Wnioski z referendum a wybory*, 8.

79 Osękowski, "Referendum z 30 czerwca 1946 r. na ziemiach przekazanych Polsce po II wojnie światowej," 93.

80 Ogłoszenie Generalnego Komisarza głosowania ludowego o wyniku głosowania ludowego z dnia 30 czerwca 1946 r. (Polish Monitor of 1946, no. 61, item 115).

	Official results (per cent “YES”)⁸¹	Actual results (per cent “YES”)
Question no. 1	68%	26.9% ⁸² or 30.5% ⁸³
Question no. 2	77.2%	42% ⁸⁴ or 44.5% ⁸⁵
Question no. 3	91.4%	66.9% ⁸⁶ or 68.3% ⁸⁷

The people’s referendum of 30 June 1946 did not constitute, euphemistically speaking, a model example of the operation of liberal direct democracy: it was rather its negation. It consisted of a campaign full of contempt, lies and demagogic propaganda, a lack of pluralism in the referendum administration, terror against opposition activists and, finally, massive falsification of the results. Despite this, it had significant practical effects, above all, in the form of opening the road to power for the communists. The first nationwide referendum in the history of Poland was an event, from the point of view of democratism and civic participation, downright tragic, strongly inscribing a reserve towards civic democracy into social consciousness. Civic democracy was for the communists not only unnecessary, but could also constitute a threat to them. For this reason, the 1946 referendum had an ad hoc and inci-

81 Ogłoszenie Generalnego Komisarza głosowania ludowego o wyniku głosowania ludowego z dnia 30 czerwca 1946 r.

82 Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” 178; Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 102; Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 9.

83 Osękowski, “Referendum z 30 czerwca 1946 r. na ziemiach przekazanych Polsce po II wojnie światowej,” 95.

84 Dudek, “Referendum—instrument czy iluzja władzy polskiego suwerena?,” 170; Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” 178; Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 102.

85 Osękowski, “Referendum z 30 czerwca 1946 r. na ziemiach przekazanych Polsce po II wojnie światowej,” 95.

86 Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” 178; Dudek, “Referendum—instrument czy iluzja władzy polskiego suwerena?,” 170; Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 102; Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 9.

87 Osękowski, “Referendum z 30 czerwca 1946 r. na ziemiach przekazanych Polsce po II wojnie światowej,” 95.

dental character, and in the Constitution of the PRL of 1952 this mechanism was not foreseen.⁸⁸

The 1987 Referendum—A Return to the Idea of Direct Democracy in the Final Phase of the People’s Republic of Poland

In the People’s Republic of Poland (PRL), demands for greater participation were only rarely articulated, though they did appear from time to time. For example, in 1974 Antoni Rost and Lucjan Zawartowski published an article entitled “*On Forms of Direct Democracy*”, in which they called for supplementing representative democracy with participatory mechanisms.⁸⁹ In 1983 work began, under the auspices of the Patriotic Movement for National Rebirth (PRON),⁹⁰ on a draft referendum statute, which contributed significantly to its eventual adoption.⁹¹ At the level of state leadership, however, the first to advance such an idea was the Government Spokesman, Jerzy Urban.⁹² In July 1984, he wrote in a letter to General Wojciech Jaruzelski: “Perhaps public life could be invigorated by some referendum ... on a developmental issue in the socio-economic sphere which concerns everyone.”⁹³ This opened a discussion

88 Małgorzata Podolak, “Instytucja referendum w Polsce,” *Annales Universitatis Mariae Curie-Skłodowska* 14, 2007: 4; Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 99; Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 8; Maciąg, “Historyczny kontekst referendum lokalnego w Polsce,” 45.

89 Antoni Rost and Lucjan Zawartowski, “W sprawie form demokracji bezpośredniej,” *Ruch Prawniczy*, no. 1(1974): 1–2.

90 Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 103; Krzywożyński, “Z dyskusji nad referendum w Polsce Ludowej,” 185.

91 Krzywożyński, “Z dyskusji nad referendum w Polsce Ludowej,” 185; Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 9.

92 Łukasz Komorowski, “Referendum z 29 listopada 1987 roku w województwie poznańskim,” in *Wielkopolska i... nie tylko*, eds. Konrad Białecki et al. (Instytut Historii UAM, 2018), 231.

93 Robert Skobelski, “Goodbye PRL. Referendum z 29 listopada 1987 roku (ze szczególnym uwzględnieniem województwa zielonogórskiego),” *Res Gestae. Czasopismo Historyczne* 17, 2023: 223

on the use of this instrument. A decision was ultimately taken to hold a referendum in 1987. That decision formed part of the broader policy of “democratisation” and the intensification of so-called social consultations.⁹⁴ Initially, it was considered whether the referendum should not concern rudimentary constitutional issues such as the establishment of the office of President or the creation of a second parliamentary chamber.⁹⁵ In the end, however, the decision was taken to focus on economic matters and citizens’ issues in the strict sense.

To give effect to the will of the party leadership, a constitutional amendment was necessary.⁹⁶ This was the purpose of the Act of 6 May 1987 amending the Constitution of the Polish People’s Republic.⁹⁷ A new paragraph 3 was added to Article 2 of the basic law,⁹⁸ enabling the “working people” to express their will in a referendum and containing a statutory delegation to regulate the principles and procedure for the conduct of referendums. This delegation was implemented by the Act on the Referendum and Social Consultations adopted on the same day.⁹⁹ That Act provided for the possibility of holding a popular vote on “key” issues of importance for the development of the state or for the interests and living conditions of citizens. Such a vote could be conducted at the national or local level. Matters relating to state defence were excluded from the scope of the referendum. The right of referendum initiative was granted to the Sejm, the Council of State, the Council of Ministers and the National Council of the Patriotic Movement for National Rebirth. A referendum was

94 Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” 185; Mariusz Baranowski et al., eds., *Przestrzeń publiczna i państwo dobrobytu* (Wydawnictwo Naukowe Wydziału Nauk Społecznych Uniwersytetu im. Adama Mickiewicza, 2016), 174.

95 Skobelski, “Goodbye PRL,” 224; Komorowski, “Referendum z 29 listopada 1987 roku w województwie poznańskim,” 232; Dudek, “Referendum—instrument czy iluzja władzy polskiego suwerena?,” 171.

96 Skobelski, “Goodbye PRL,” 225.

97 Journal of Laws of 1987, no. 14, item 82.

98 “Sprawowanie władzy państwowej przez lud pracujący następuje także poprzez wyrażanie woli w drodze *referendum*. Zasady i tryb przeprowadzania *referendum* określa ustawa”—The Constitution of the PRL in the version effective from May 12, 1987, to June 16, 1988.

99 Ustawa z dnia 6 maja 1987 r. o konsultacjach społecznych i referendum [Act of May 6, 1987 on Social Consultations and Referendum] (Journal of Laws of 1987, no. 14, item 83).

ordered by the Sejm by a two-thirds majority in the presence of at least half of the statutory number of deputies. The Act laid down methods for formulating questions, which could be either “variant”¹⁰⁰ or binary (alternative).¹⁰¹ The referendum result was binding if at least half of those entitled to vote supported one of the responses. The franchise was granted to citizens present in the country who held the right to vote in elections to the Sejm. The detailed procedure for conducting the referendum, including the rules of procedure of referendum commissions and the templates of ballot papers, was specified in the Resolution of the Council of State of 17 September 1987 on the detailed rules and procedure for the conduct of a referendum.¹⁰²

On 7 October 1987, the National Council of PRON addressed the Marshal of the Sejm with a proposal to hold a nationwide referendum.¹⁰³ A decisive reason for agreeing to a popular vote was the economic collapse¹⁰⁴ and the crisis of confidence in the authorities, which had become clearly visible during the “Carnival of Solidarity”, as well as during and after martial law, and intensified particularly in the late 1980s.¹⁰⁵ The referendum, set for 29 November 1987, contained two questions¹⁰⁶:

- 1) *Do you support the full implementation of the programme for radical recovery of the economy submitted to the Sejm, aimed at a clear improvement in the living conditions of society, knowing that this requires going through a difficult two- to three-year period of rapid change?*

100 Selection of the preferred response from the proposed options.

101 Voting in favour of or against the proposed solution.

102 Journal of Laws of 1987, no. 28, item 158.

103 Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 103.

104 Baranowski et al., eds., *Przestrzeń publiczna i państwo dobrobytu*, 173; Skobelski, “Goodbye PRL,” 224.

105 Krzywoszyński, “Z dyskusji nad referendum w Polsce Ludowej,” 185; Skobelski, “Goodbye PRL,” 224; Baranowski et al., eds., *Przestrzeń publiczna i państwo dobrobytu*, 174.

106 Uchwała Sejmu Polskiej Rzeczypospolitej Ludowej z dnia 23 października 1987 r. w sprawie szczegółowego określenia przedmiotu referendum [Resolution of the Sejm of the People’s Republic of Poland of October 23, 1987, regarding the detailed definition of the subject of the referendum] (Polish Monitor of 1987, no. 32, item 245).

2) *Do you support a Polish model of profound democratisation of public life, aimed at strengthening self-government, extending citizens' rights and increasing their participation in governing the country?*

During the campaign, the authorities urged citizens to vote “2 × YES”.¹⁰⁷ This was done in a manner typical of the ruling Polish United Workers' Party (PZPR), through pompous and catchy slogans¹⁰⁸ disseminated by the media,¹⁰⁹ as well as direct agitation conducted by party activists,¹¹⁰ who were mobilised through the creation of “civic committees”, among other means¹¹¹ The Solidarity opposition called for a boycott of the vote.¹¹²

Turnout amounted to 67.32%. Of those who voted, 66.04% supported the first question and 69.03% the second.¹¹³ Although the Security Service (SB) was used to monitor and hinder opposition activity (an “object case” codenamed “Consultation” was opened),¹¹⁴ it must nonetheless be clearly stated that in comparison with the June 1946 referendum, the 1987 vote was incomparably more democratic in character. The event formed part of the broader current of change through which the PRL was about to pass: economic crisis, the decline of public trust in the authorities, strikes,¹¹⁵ the strengthened position of Solidarity, and the increasingly imminent prospect of a change of ruling camp.¹¹⁶ Already in 1988, a series of informal meetings took place in Magdalenka near Warsaw between representatives of parts of the opposition and of the PRL

107 Skobelski, “Goodbye PRL,” 227–28.

108 Skobelski, “Goodbye PRL,” 227–28.

109 Baranowski et al., eds., *Przestrzeń publiczna i państwo dobrobytu*, 174.

110 Komorowski, “Referendum z 29 listopada 1987 roku w województwie poznańskim,” 242.

111 Skobelski, “Goodbye PRL,” 227.

112 Dziurok and Linek, eds., *Górny Śląsk w Polsce Ludowej*, 256; Baranowski et al., eds., *Przestrzeń publiczna i państwo dobrobytu*, 171.

113 Obwieszczenie Centralnej Komisji do Spraw Referendum z dnia 30 listopada 1987 r. o wyniku referendum ogólnokrajowego przeprowadzonego dnia 29 listopada 1987 r. (Polish Monitor of 1987, no. 34, item 294).

114 Komorowski, “Referendum z 29 listopada 1987 roku w województwie poznańskim,” 244.

115 Referring to the strikes of 1988: Anna Materska-Sosnowska, “Okrągły Stół po dwudziestu latach. Stan dyskusji politycznej,” *Studia Politologiczne* 15, 2009: 118

116 Wojciech Polak and Sylwia Galij-Skarbińska, “Jak oceniać okrągły stół?,” *Fides, Ratio et Patria. Studia Toruńskie*, no. 7(2017): 206.

government.¹¹⁷ During those meetings, the date was agreed for the so-called Round Table talks, whose aim was to effect a far-reaching reform of the state system in agreement with sections of the opposition.¹¹⁸ As a result partially free parliamentary elections were scheduled for 4 June 1989,¹¹⁹ which produced the Tenth-Term Sejm of the PRL, the “contract Sejm”.

Referendums in the Process of Shaping the Constitutional System of the Third Republic

On 31 December 1989, the Act of 29 December 1989 amending the Constitution of the Polish People’s Republic entered into force.¹²⁰ It changed the title of the basic law to the “Constitution of the Republic of Poland” and gave new wording to Article 2,¹²¹ adapting it to the new constitutional and social conditions—the bearer of sovereignty became the People (Pol. *Naród*), exercising authority through their representatives or by way of referendum. The Act of 6 May 1987 on Social Consultations and the Referendum remained unchanged until 8 September 1995. Provisions explicitly referring to the values of the former system were left intact (“for the fuller realisation of socialist democracy”, “defence of the State and the Armed Forces of the Polish People’s Republic”, “other social organisations of the working people”), as were references to the Patriotic Movement for National Rebirth, the Council of State and the national councils. This fact suggests that little importance was attached at that time

117 Arkadiusz Plewik, “Transformacje partii postkomunistycznych i ich wpływ na system polityczny Rzeczypospolitej Polskiej,” *Studenckie Zeszyty Naukowe*, no. 23(2022): 37.

118 Krystyna Trembicka, *Okrągły Stół w Polsce. Studium o porozumieniu politycznym* (Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 2003), 223.

119 Polak and Galij-Skarbińska, “Jak oceniać okrągły stół?,” 207.

120 Journal of Laws of 1989, no. 75, item 444.

121 Article 2:

1. In the Republic of Poland, supreme power belongs to the Nation.
2. The Nation exercises power through its representatives elected to the Sejm, Senate, and national councils; the exercise of power also occurs through the expression of will in a referendum. The principles and procedure for conducting a referendum are specified by law.

to the institution of the referendum and that there were no serious plans to use it beyond employing the referendum form for the adoption of the new constitution.

In the so-called Small Constitution,¹²² adopted on 17 October 1992, Article 19 regulated the national referendum. The right to order a referendum was conferred on the Sejm and on the President with the consent of the Senate. This solution remains in force to this day. The Small Constitution also introduced, and still in force today, the rule governing the binding effect of a referendum: its outcome would be binding if more than half of those entitled to vote took part in the ballot. On 23 April 1992, a constitutional statute was adopted on the procedure for preparing and adopting the Constitution of the Republic of Poland.¹²³ It was then decided that the Constitution of the Republic of Poland would be adopted by way of a referendum. The referendum was to be ordered by the President after the basic law had been adopted by the National Assembly. The referendum would be binding if a majority of those taking part in the vote supported the adoption of the new constitution, regardless of turnout. Adoption of the constitution in the referendum obliged the President to sign it and to order its immediate publication in the Journal of Laws.

In the period between 1989 and 1993, proposals to hold a nationwide referendum were put forward on several occasions. However, none of the formally submitted projects were taken up for consideration by the Sejm. This was due in part to the premature termination of parliamentary terms in 1991 and 1993, but above all, to the lack of political will to hold such a vote. Between 1989 and 1991 referendums were proposed on: the future of nuclear energy, the adoption of a new constitution, the continued existence of the Senate, the date of new parliamentary elections, abortion, and reprivatisation. In the fol-

122 Ustawa konstytucyjna z dnia 17 października 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym [Constitutional Act of October 17, 1992, on the mutual relations between the legislative and executive authorities of the Republic of Poland and local government] (Journal of Laws of 1992, no. 84, item 426).

123 Journal of Laws of 1992, no. 67, item 336.

lowing parliamentary term, 1991–1993, two proposals were submitted for referendums on abortion.¹²⁴

The initiators of referendums were primarily opposition deputies, and referendum initiatives were treated as a means of drawing attention to the issue that was to be the subject of the vote, or as a way of pushing through legislative proposals for which a parliamentary majority could not be assembled.¹²⁵ It is therefore hardly surprising that the parliamentary majority, which possessed both the power to enact statutes and the power to decide on holding a referendum, had little interest in making use of this instrument.

By means of the Act of 22 April 1994,¹²⁶ the possibility was introduced of holding a referendum on the principles on which the new Constitution was to be based. This possibility, however, was not used. The advanced stage of work on the new Constitution and the plan to submit it to a referendum for adoption led to the adoption of a new Referendum Act.¹²⁷ That statute set out rules concerning the form of the questions (binary or multi-option) and the circle of persons entitled to vote, as well as the territorial scope of the vote. As regards the latter, an exception was introduced for the constitutional referendum—it could also be held outside the country. A four-year moratorium was imposed on re-submitting to a referendum a matter that had already been the subject of a referendum. As to the bodies empowered to order a referendum and the conditions for a binding result, the solutions of the Small Constitution were repeated. The right of referendum initiative was granted to the Sejm, the Council of Ministers and a group of 500,000 citizens. Chapter 2 of the Act contained provisions regulating the procedure for the constitutional referendum. The pro-

124 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 9.

125 System Informacyjny Sejmu RP, <http://orka.sejm.gov.pl>, Senat RP.

126 Ustawa konstytucyjna z dnia 22 kwietnia 1994 r. o zmianie ustawy konstytucyjnej o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej [Constitutional Act of April 22, 1994, amending the Constitutional Act on the procedure for preparing and adopting the Constitution of the Republic of Poland] (Journal of Laws of 1994, no. 61, item 251).

127 Ustawa z dnia 29 czerwca 1995 r. o referendum [Act of June 29, 1995, on referenda] (Journal of Laws of 1995, no. 99, item 487).

visions of the 1995 Referendum Act relating to the constitutional referendum were of an ad hoc nature and therefore lapsed with the adoption of the 1997 Constitution.

During the 1995 presidential campaign, on 19 October, Lech Wałęsa submitted a draft resolution ordering a referendum on the universal enfranchisement (Pol. *powszechne uwłaszczenie*) of citizens. Poles were to answer the main question—*Should universal enfranchisement of citizens be carried out in Poland?*—and then choose between variants:

- I. The subject-matter of enfranchisement should be:
 - 1) property owned by the State Treasury,
 - 2) property owned by the State Treasury and municipal property;
- II. Under the universal enfranchisement of citizens there should be established:
 - 1) a fund for the universal enfranchisement of citizens,
 - 2) a fund for the universal enfranchisement of citizens, a social insurance fund, a pension fund and a reprivatisation fund;
- III. The following should be eligible to participate in the universal enfranchisement of citizens:
 - 1) persons who have held Polish citizenship for at least five years and are permanently resident in the country,
 - 2) persons who hold Polish citizenship and are permanently resident in the country,
 - 3) persons who hold Polish citizenship and are resident in the country or abroad;
- IV. Universal enfranchisement of citizens should be carried out in the form of:
 - 1) gratuitous transfer,
 - 2) partial payment,
 - 3) credit.

The proposed date of the referendum was 21 January 1996.¹²⁸ The project referred back to a campaign promise made by the President five years earlier under the slogan “one hundred million for everyone”.¹²⁹ The proposal gave rise to serious doubts as to the clarity of its wording and the construction of the questions. The vote in the Senate took place on 2 November 1995, three days before the first round of the presidential election. As it was supported mainly by members of the NSZZ “Solidarity” Senate Club, the project was rejected.¹³⁰ The following day Wałęsa submitted a new, much simplified proposal containing a single question: *Are you in favour of universal affranchissement of citizens?*¹³¹ It was adopted without debate on 17 November, two days before the second round of the presidential election. Senators from all post-Solidarity groupings and from the Polish People’s Party (PSL) supported the project, outvoting the left-wing senators and thus agreeing to the holding of the referendum on 18 February 1996.

After the second round of the presidential election, a group of deputies from the then SLD–PSL parliamentary majority submitted a motion to hold, on the same day, a second referendum with the following questions:

- 1) *Do you support satisfying, from privatised state assets, the claims of pensioners, disability pensioners and public-sector employees arising from judgments of the Constitutional Tribunal?*
- 2) *Do you support allocating part of the privatised state assets to general pension funds?*

128 Krystyna Leszczyńska, “Instytucja referendum ogólnokrajowego zarządzanego przez Prezydenta RP za zgodą Senatu,” *Studia Politologiczne* 42, 2016: 75.

129 Mariusz Kowalski, “Referenda ‘uwłaszczeniowe’ 1996,” in *Atlas Wyborczy Polski*, ed. Mariusz Kowalski and Przemysław Śleszyński (Instytut Geografii i Przestrzennego Zagospodarowania PAN, 2018), 77.

130 Leszczyńska, “Instytucja referendum ogólnokrajowego zarządzanego przez Prezydenta RP,” 75.

131 Zarządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 29 listopada 1995 r. w sprawie przeprowadzenia referendum o powszechnym uwłaszczeniu obywateli [Order of the President of the Republic of Poland of November 29, 1995, regarding the conduct of a referendum on the universal privatization of citizens’ property] (*Journal of Laws of 1995*, no. 138, item 685).

3) *Do you support increasing the value of National Investment Fund share certificates by including additional enterprises in the programme?*

This motion was adopted by the governing coalition with the support of deputies from the Freedom Union (UW), at whose request a fourth, additional question was added¹³²:

4) *Do you support including privatisation vouchers in the affranchissement programme?*¹³³

As a result, two referendums were held on 18 February 1996: one ordered by the President and one by the Sejm. The referendum campaign was marked by two main camps: the newly elected President Aleksander Kwaśniewski, who, together with the Freedom Union, urged voters to cast “5 × YES” votes, and right-wing circles, led by NSZZ “Solidarity” and the Catholic Church, which advocated voting “yes” in the presidential referendum and on the first three questions of the Sejm referendum, and “no” on the question concerning privatisation vouchers. The obscurity of the questions, Lech Wałęsa’s electoral defeat, the pronounced reticence of the governing coalition towards the referendum, the complexity of the subject-matter (which made public debate difficult) and the limited polarisation of positions all contributed to a disastrous turnout. Despite high percentages of “yes” votes on all questions (between 72.52% and 94.54%), the turnout of well below half of those entitled to vote (32.4% in the presidential referendum and 32.44% in the Sejm referendum) meant that the referendums were not binding.

The referendums nonetheless had certain political effects, including political consultations involving the President, the government and opposition

132 Kowalski, “Referenda ‘uwłaszczeniowe’ 1996,” 77; Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 21 grudnia 1995 r. w sprawie przeprowadzenia referendum o niektórych kierunkach wykorzystania majątku państwowego [Resolution of the Sejm of the Republic of Poland of December 21, 1995, regarding the conduct of a referendum on certain directions for the utilization of state property] (Journal of Laws of 1995, no. 154, item 795).

133 Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 21 grudnia 1995 r. w sprawie przeprowadzenia referendum o niektórych kierunkach wykorzystania majątku państwowego [Resolution of the Sejm of the Republic of Poland of December 21, 1995, regarding the conduct of a referendum on certain directions for the utilization of state property] (Journal of Laws of 1995, no. 154, item 795).

forces and the Prime Minister's declaration that the government would take voters' opinions into account.¹³⁴ The Sejm also adopted a resolution calling on the government to devise a programme of *affranchissement* and to implement it by 2000.¹³⁵ However, the low turnout and the ambiguity of the questions¹³⁶ allowed each political force to invoke the "will of the people"¹³⁷ with a considerable degree of freedom, while the issue of *affranchissement* gradually lost political salience,¹³⁸ especially in the face of current political questions such as the fall of Józef Oleksy's government,¹³⁹ the finalisation of work on the new Constitution and accession to NATO.

The *affranchissement* issue resurfaced in the 1997 parliamentary and the 2000 presidential election campaigns, raised by Solidarity Electoral Action (AWS)¹⁴⁰ and its leader Marian Krzaklewski.¹⁴¹ The adoption of the Act of 8 September 2000 on the Principles for Implementing the Programme of Universal *Affranchissement* of Citizens of the Republic of Poland was intended as a trap for Aleksander Kwaśniewski, who was seeking re-election against Krzaklewski.¹⁴²

134 Kowalski, "Referenda 'uwłaszczeniowe' 1996," 84.

135 Rezolucja Sejmu Rzeczypospolitej Polskiej z dnia 29 sierpnia 1996 r. w sprawie podjęcia przez Rząd działań w związku z przeprowadzonym referendum w dniu 18 lutego 1996 r. [Resolution of the Sejm of the Republic of Poland of August 29, 1996, regarding the Government's actions following the referendum held on February 18, 1996] (Polish Monitor of 1996, no. 55, item 503).

136 See Andrzej K. Piasecki, "Błędy, zaniechania i manipulacje polityków na przykładzie referendum w Polsce w 1996 i 2015 roku," *Polityka i Społeczeństwo* 15, no. 2(2017): 110–11; Andrzej Suwalski, "Ekonomiczno-społeczne zagadnienia sporu o powszechne uwłaszczenie," *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 59, no. 1(1997): 81–83.

137 Piasecki, "Błędy, zaniechania i manipulacje polityków na przykładzie referendum w Polsce w 1996 i 2015 roku," 114–15.

138 Krzysztof Patkowski, "Masowa prywatyzacja w Polsce jako jeden z elementów budowania społeczeństwa obywatelskiego," *Środkowoeuropejskie Studia Polityczne*, no. 2(2007): 235–36.

139 Andrzej K. Piasecki, "Demokracja bezpośrednia w Polsce po 1989 roku," *Przegląd Sejmowy*, no. 1(2006): 15.

140 Kowalski, "Referenda 'uwłaszczeniowe' 1996," 84.

141 Patkowski, "Masowa prywatyzacja w Polsce jako jeden z elementów budowania społeczeństwa obywatelskiego," 116–17.

142 Patkowski, "Masowa prywatyzacja w Polsce jako jeden z elementów budowania społeczeństwa obywatelskiego," 235–36.

The presidential veto—justified, *inter alia*, by constitutional doubts—did not, however, prevent Kwaśniewski from winning in the first round of the 2000 presidential election.¹⁴³ At the same time, the failure of that Act brought the enfranchisement issue to an end as a significant topic in domestic politics.¹⁴⁴ The low turnout in the enfranchisement referendums was one of the main arguments for abandoning the idea, introduced by the constitutional statute of 22 April 1994, of a preliminary referendum on the contents of the new constitution.¹⁴⁵

The new Constitution was adopted by the National Assembly on 2 April 1997.¹⁴⁶ On the same day, the President issued an order to hold a constitutional referendum.¹⁴⁷ The ballot paper for that referendum, held on 25 May 1997, contained a single question: *Are you in favour of the adoption of the Constitution of the Republic of Poland passed by the National Assembly on 2 April 1997?*

The attitude of political parties to the draft basic law effectively reflected their support for, or opposition to, the then ruling coalition.¹⁴⁸ The governing parties—the Democratic Left Alliance (SLD), the Polish People's Party

143 Posiedzenie połączonych Komisji Skarbu Państwa, Uwłaszczenia i Prywatyzacji oraz Finansów Publicznych, "Biuletyn z posiedzenia komisji," <https://orka.sejm.gov.pl/Biuletyn.nsf/0/488080823AED3186C1256B73003C992E?OpenDocument>; Prezydent Rzeczypospolitej Polskiej, *Decyzja Prezydenta RP w sprawie ustawy o powszechnym uwłaszczeniu* (Archiwum Kancelarii Prezydenta RP, 2000), <https://www.prezydent.pl/kancelaria/archiwum/archiwum-aleksandra-kwasniewskiego/aktualnosci/rok-2000-i-starsze/decyzja-prezydenta-rp-w-sprawie-ustawy-o-powszechnym-uwlasczeniu,33891,archive>; Sejm Rzeczypospolitej Polskiej, *Rejestr dokumentów wniesionych na posiedzeniu Sejmu Rzeczypospolitej Polskiej nr 2201* (Sejm Rzeczypospolitej Polskiej, 2000), [https://orka.sejm.gov.pl/RejestrD.nsf/wgdruku/2201/\\$file/2201.pdf](https://orka.sejm.gov.pl/RejestrD.nsf/wgdruku/2201/$file/2201.pdf).

144 Patkowski, "Masowa prywatyzacja w Polsce jako jeden z elementów budowania społeczeństwa obywatelskiego," 236.

145 Sławomir Jakubczak, "Komisja Konstytucyjna Zgromadzenia Narodowego," *Przegląd Sejmowy*, no. 1(1996): 192; Ustawa konstytucyjna z dnia 22 kwietnia 1994 r. o zmianie ustawy konstytucyjnej o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej [Constitutional Act of April 22, 1994, amending the Constitutional Act on the procedure for preparing and adopting the Constitution of the Republic of Poland] (*Journal of Laws of 1994*, no. 61, item 251).

146 *Journal of Laws of 1997*, no. 78, item 483.

147 *Journal of Laws of 1997*, no. 31, item 174.

148 Marcin Rachwał, "Referendum jako forma udziału obywateli w kierowaniu sprawami państwa," *Studia Prawnicze*, no. 2(2005): 156; Andrzej K. Piasecki, *Referendum w III Rzeczypospolitej* (Wydawnictwo Naukowe PWN, 2005), 176.

(PSL) and Labour Union (UP)—supported the Constitution. The Freedom Union (UW), then in opposition, also declared its support; its leader Tadeusz Mazowiecki was co-author of the compromise preamble.¹⁴⁹ The main opponents of the draft were right-wing parties, above all, the Movement for the Reconstruction of Poland (ROP) and the extra-parliamentary Solidarity Electoral Action (AWS), which at that time constituted the principal opposition force.¹⁵⁰ For the AWS leadership, the referendum campaign became an opportunity to consolidate post-Solidarity circles around a common rejection of the liberal—left constitutional project.¹⁵¹ An important factor in the course of the campaign was also the position of the Catholic Church. In a resolution of its 288th plenary meeting, the Polish Episcopate stated that the draft Constitution “raises serious moral objections”, which significantly influenced the formation of public opinion among the faithful.¹⁵²

The campaign was marked by a relatively high degree of political mobilisation but only moderate public interest. Despite a broad information campaign—including the distribution of the constitutional text, together with a presidential address, to around one million households—public opinion research indicated limited faith among citizens in the referendum’s real impact on the final content of the Constitution.¹⁵³ The referendum nevertheless contributed to broad civic education regarding the institutions of state power and helped create conditions for the development of civil society.¹⁵⁴

149 Piasecki, *Referendum w III Rzeczypospolitej*, 176.

150 In the 1993 elections, many small right-wing parties did not cross the electoral threshold, resulting in right-wing parties securing only 38 seats in the Sejm. This allowed left-wing and liberal groups to have a dominant influence on the shape of the adopted constitution.

151 Piasecki, *Referendum w III Rzeczypospolitej*, 176.

152 Piasecki, *Referendum w III Rzeczypospolitej*, 176.

153 Dudek, “Referendum—instrument czy iluzja władzy polskiego suwerena?,” 178; Michał M. Wiszowaty, “Referenda dla obywateli: rekomendacje dotyczące zmian w polskiej regulacji prawnej instytucji referendów zaproponowane przez organizacje społeczne skupione wokół Instytutu Spraw Obywatelskich,” in *Aktualne problemy referendum*, eds. Beata Tokaj et al. (Krajowe Biuro Wyborcze, 2016), 117.

154 Piasecki, *Referendum w III Rzeczypospolitej*, 176.

The active involvement of President Aleksander Kwaśniewski, who strongly supported the campaign for adoption of the Constitution, had a significant influence on the final outcome of the referendum. Mobilisation of the president's electorate probably prevented the defeat of the supporters of the basic law.¹⁵⁵ The 1997 campaign was thus not only an act of legitimising the new constitutional order but also a prelude to the forthcoming parliamentary elections, which determined its strongly politicised character.¹⁵⁶

Of the 28,324,965 citizens entitled to vote, turnout in the referendum was 42.86%. A total of 11,969,755 valid ballot papers were cast. 6,398,316 citizens (52.71% of valid votes) voted in favour of the Constitution, while 5,571,439 (45.87%) voted against.¹⁵⁷ Under the constitutional statute on the procedure for preparing and adopting the Constitution of the Republic of Poland,¹⁵⁸ there was no turnout threshold; consequently, the result of the referendum meant that the Constitution was adopted.

A territorial analysis of the results reveals clear geographical differentiation in support. The new basic law was accepted mainly in the northern and western voivodeships, whereas opposition predominated in the south and east of the country. This pattern largely overlapped with the results of the 1995 presidential election: regions that had supported Lech Wałęsa largely rejected the constitutional draft.¹⁵⁹

Adoption of the Constitution by referendum had far-reaching systemic consequences, marking the final end of the period of constitutional transition

155 Piasecki, *Referendum w III Rzeczypospolitej*, 176.

156 Piasecki, "Demokracja bezpośrednia w Polsce po 1989 roku," 15.

157 Skorygowane obwieszczenie Państwowej Komisji Wyborczej z dnia 8 lipca 1997 r. o wynikach głosowania i wyniku referendum konstytucyjnego przeprowadzonego w dniu 25 maja 1997 r. [Corrected announcement of the National Electoral Commission of July 8, 1997, regarding the results of the voting and the outcome of the constitutional referendum held on May 25, 1997] (*Journal of Laws of 1997*, no. 75, item 476).

158 *Journal of Laws of 1992*, no. 67, item 336.

159 Rachwał, "Referendum jako forma udziału obywateli w kierowaniu sprawami państwa," 156.

after 1989.¹⁶⁰ The new basic law established a durable model of a democratic, law-governed and social state based on the principles of popular sovereignty, political pluralism and separation of powers.¹⁶¹ In legal terms, the referendum result conferred on the new Constitution the highest degree of legitimacy, deriving from the direct participation of citizens in the constitution-making process.¹⁶² The adoption of the 1997 Constitution of the Republic of Poland thus meant the institutional consolidation of the principles of the democratic state and the end of the provisional constitutional arrangements in force since the Small Constitution of 1992. This act, sanctioned by the will of the citizens, entrenched the constitutional model of the Third Republic and marked the formal culmination of the state's democratisation.¹⁶³ The decision taken in the referendum, after seven years of work conducted by three successive parliaments¹⁶⁴ and in the context of intense political engagement in the campaign, endowed the new Constitution with strong democratic legitimacy, recognised by all the significant political forces despite their divergent views on its adoption.

Referendums in the First Decades of the Constitution of the Republic of Poland of 2 April 1997

The new Constitution of the Republic of Poland entered into force on 17 October 1997.¹⁶⁵ It established three types of nationwide referendum, distinguished by the subject-matter of the decision: a referendum on matters of particular

160 Rachwał, "Referendum jako forma udziału obywateli w kierowaniu sprawami państwa," 151.

161 Piotr Winczorek, "Kilka uwag o polskich referendach", *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 76, no. 2(2014): 52.

162 Dudek, "Referendum – instrument czy iluzja władzy polskiego suwerena?," 179.

163 Piasecki, *Referendum w III Rzeczypospolitej*, 176.

164 See Ryszard Mojak, "Geneza, prawnoustrojowe zasady i prawne procedury tworzenia i uchwalenia Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.," *Gdańskie Studia Prawnicze* 15, 2018: 99–134.

165 The signing by the President and the publication in the Journal of Laws of the Constitution took place on July 16, 1997 (Journal of Laws of 1997 nr 78 item 483), and according to Article 234, the Constitution came into force three months after its publication.

importance to the state (Article 125), a ratification referendum (Article 90), and a referendum approving amendments to the Constitution (Article 235). Statutory regulation of the ratification and approving referendums was only adopted on 14 March 2003¹⁶⁶; up to that point, their operation in the legal system was based solely on the constitutional provisions. The 2003 Act abolished the “cooling-off” period for matters already voted on in a referendum on matters of particular importance and introduced provisions governing the conditions for the binding effect of ratification and approving referendums.

A referendum on matters of particular importance serves to allow citizens to decide on an issue of major significance and has a binding effect on the authorities competent in the matter. It is ordered by the Sejm or by the President with the consent of the Senate. A motion to the Sejm to hold such a referendum may be submitted by a group of at least one-fifth of the statutory number of deputies, the Senate, the Council of Ministers, or a group of at least 500,000 citizens. It may concern any issue connected with the functioning of the state,¹⁶⁷ with the exception—where the referendum is held at the request of a group of citizens—of matters relating to state expenditure and revenue, in particular taxes and other public charges, the defence of the state, and amnesty.

A ratification referendum is a constitutive element of the procedure for granting consent to the ratification by the President of an international agreement under which an international organisation or body is conferred competences of organs of state authority in certain matters. A ratification referendum offers an alternative to the statutory route for granting consent to ratification. The choice of procedure is made by the Sejm in the form of a resolution (Article 90(4)).

166 Ustawa z dnia 14 marca 2003 r. o referendum ogólnokrajowym [Act of March 14, 2003, on nationwide referenda] (Journal of Laws of 2003, no. 57, item 507).

167 Jan Boć, “Komentarz do artykułu 125 Konstytucji RP z 2 kwietnia 1997 r.,” in *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 r.*, eds. Jan Boć and Ryszard Balicki (Kolonia Limited, 1998), 207; Chęciński, *Referendum ogólnokrajowe w polskim systemie prawnym po 2 kwietnia 1997 r.*, 64–65 and 67–69.

A approving referendum serves to approve amendments to the Constitution where they concern provisions contained in Chapters I, II or XII of the Constitution and where one of the entitled entities so requests. The approving referendum is ordered by the Marshal of the Sejm at the request of at least one-fifth of the statutory number of deputies, the Senate or the President of the Republic. The possibility, enjoyed by this closed circle of actors, of demanding the holding of an approving referendum in a legally binding way functions as a systemic safeguard, preventing hasty changes to the most important chapters of the Constitution and ensuring that such changes require broad social consensus.

For a referendum on matters of particular importance and a ratification referendum to be binding, more than half of those entitled to vote must take part in the ballot. No turnout requirement applies to an approving referendum: adoption of the constitutional amendment requires the support of a majority of those voting, while the absence of consent results in the loss of binding force of the statute amending the Constitution.

The next event of key importance for the future of the state after the adoption of the Constitution was accession to the European Union. The Republic of Poland submitted its formal application for EU membership in April 1994, and negotiations continued until 13 December 2002.¹⁶⁸ As a result, an Accession Treaty was signed; however, because it transferred to an international organisation certain competences of the organs of the Republic of Poland, it had to be ratified either by statute or by referendum. Acting on the basis of Article 90(1) of the Constitution, the Sejm, in its Resolution of 17 April 2003 on ordering a nationwide referendum on expressing consent to the ratification of the Treaty concerning the accession of the Republic of Poland to the European Union, decided to choose a referendum as the form of consent to ratification.

168 Marcin Chruściel and Karol Kloc, “Polska w Unii Europejskiej—proces akcesyjny i priorytety polskiej polityki w ramach UE”, *Poliarchia*, no. 1(2013): 94 and 99.

The referendum question was: *Do you agree to the accession of the Republic of Poland to the European Union?*¹⁶⁹ Under § 4 of the Resolution, the ballot paper contained an explanation stating that a “YES” vote signified consent to the ratification of the Accession Treaty. In this case, a turnout requirement applied for the result to be binding: more than half of those entitled to vote had to take part. Concerns on the part of the state authorities that this threshold might not be met were understandable in light of turnout in preceding elections and the referendums of 1996 and 1997.¹⁷⁰ For this reason a two-day vote was chosen.¹⁷¹ Pro-turnout measures included the possibility of voting abroad and in student dormitories,¹⁷² as well as a provision for referendum campaigning in radio and television programmes.¹⁷³

Supporters of accession included the government, the President, various associations and parties such as SLD, PSL, PO and PiS. A very intensive information campaign was conducted, headed by the Office for the European Referendum.¹⁷⁴ The campaign was to be based on mass information activities. At the same time, informational programmes directed at specific social groups, such as entrepreneurs and rural residents, were continued.¹⁷⁵ Negative campaigning

169 Uchwała Sejmu Rzeczypospolitej z dnia 17 kwietnia 2003 r. o zarządzeniu ogólnokrajowego referendum w sprawie wyrażania zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej [Resolution of the Sejm of the Republic of Poland of April 17, 2003, regarding the ordering of a nationwide referendum on the consent for ratification of the Treaty on the Accession of the Republic of Poland to the European Union] (Journal of Laws of 2003, no. 66, item 613).

170 Rachwał, “Referendum jako forma udziału obywateli w kierowaniu sprawami państwa,” 151; Teresa Sasińska-Klas, “Stosunek Polaków do Unii Europejskiej przed i po referendum unijnym (w świetle badań opinii publicznej),” in *Media a integracja europejska*, eds. Teresa Sasińska-Klas and Agnieszka Hess (Wydawnictwo Uniwersytetu Jagiellońskiego, 2004), 123.

171 Dudek, “Referendum—instrument czy iluzja władzy polskiego suwerena?,” 175.

172 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 12.

173 Kancelaria Senatu, *Zarys instytucji referendum jako formy demokracji bezpośredniej*, 12; Agnieszka Stępińska, “Telewizyjna kampania referendalna jako arena rywalizacji politycznej. Referendum unijne w Polsce w 2003 r.,” *Środkowoeuropejskie Studia Polityczne*, no. 1(2005): 40.

174 Andrzej K. Piasecki, “Referendum akcesyjne z 2003 r.: próba bilansu,” *Annales Universitatis Paedagogicae Cracoviensis. Studia Politologica*, no. 2(2004): 156.

175 Piasecki, “Referendum akcesyjne z 2003 r.,” 156.

was also used against Eurosceptics, for example, by the Young Democrats Association linked to the Civic Platform (PO).¹⁷⁶ For the positive outcome of the referendum, however, in addition to turnout, the position of the Church was of fundamental importance. For a long time, this position remained ambivalent, even though support for EU accession among the clergy was higher than the average.¹⁷⁷ The letter of the Episcopate of 2 May 2003 was also inconclusive. It was Pope John Paul II who, in a speech marking the 25th anniversary of his pontificate, closed the discussion with his famous words: “Europe needs Poland. Poland needs Europe”.¹⁷⁸ The leading role in the Eurosceptic narrative was played by representatives of the League of Polish Families (LPR) and Self-Defence (Samoobrona).¹⁷⁹ Anti-EU campaigns were emotional in tone and, given the nature of the objection, negative.¹⁸⁰ They often took the form of short, catchy and at times substantively dubious slogans such as: “Europajace” [a derogatory neologism], “Slaves of the EU”, “Do you know these dates: 2004, 1939, 1795, 1793, 1772?”¹⁸¹ or “Yesterday Moscow, today Brussels”.¹⁸²

The vote took place on 7 and 8 June 2003 between 6 a.m. and 8 p.m., and turnout reached 58.5%, thus exceeding the constitutional threshold. The result was announced on 11 June 2003. A total of 13, 514, 872 voters supported EU accession, while 3,935,655 opposed it, yielding 77.45% “YES” and 22.55% “NO”.¹⁸³ The President ratified the treaty on 23 July 2003, and it entered into

176 Piasecki, “Referendum akcesyjne z 2003 r.,” 153.

177 Piasecki, “Referendum akcesyjne z 2003 r.,” 153.

178 Piasecki, “Referendum akcesyjne z 2003 r.,” 153.

179 Piasecki, “Referendum akcesyjne z 2003 r.,” 147.

180 Piasecki, “Referendum akcesyjne z 2003 r.,” 166; Stępińska, “Telewizyjna kampania referendalna jako arena rywalizacji politycznej,” 51.

181 Piasecki, “Referendum akcesyjne z 2003 r.,” 166.

182 Maria Marczewska-Rytko, “Kampania przed referendum akcesyjnym Polski do UE w kontekście doradztwa politycznego,” *Roczniki Nauk Społecznych*, no. 1(2014): 89.

183 Obwieszczenie Państwowej Komisji Wyborczej z dnia 9 czerwca 2003 r. o wyniku ogólnokrajowego referendum w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej [Announcement of the National Electoral Commission of June 9, 2003, on the results of the nationwide referendum regarding the consent for the ratification of the Treaty on the Accession of the Republic of Poland to the European Union] (*Journal of Laws of 2003*, no. 103, item 953).

force on 1 May 2004. The accession referendum was the first referendum ordered on the basis of the 1997 Constitution. It was unprecedented: never before had a constitutive ratification referendum been held in Poland. At the same time, it marked a watershed in the state's history, making it possible for Poland to join the European Union. Despite the frequent appearance in public debate of slogans of low constructive value, the referendum must be evaluated positively. The very strong and effective engagement of pro-European actors took the form of democratic mobilisation, thanks to which public debate flared up around major social, political and economic issues. All of this took place with general respect for the principles of the rule of law.

Another situation in which a ratification referendum could have been used was the adoption of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (the so-called Lisbon Treaty).¹⁸⁴ It was signed by the leaders of the Member States of the European Communities, including Poland, on 13 December 2007. On 25 February 2008, a governmental bill was submitted to the Sejm on granting consent to the ratification of this agreement. Three days later, the Sejm adopted a resolution choosing the statutory route for granting consent. The statute was adopted by the Sejm on 1 April 2008, and the following day it was approved by the Senate. Only later, on 10 April 2009, did the President ratify the treaty, which entered into force on 1 December 2009.¹⁸⁵

From the entry into force of the 1997 Constitution, nationwide referendums on matters of particular importance to the state have been held twice—in 2015 and 2023. In that period, referendum initiatives were taken on 20 occasions:

184 Traktat z Lizbony zmieniający Traktat o Unii Europejskiej i Traktat ustanawiający Wspólnotę Europejską [Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community] (Journal of Laws of 2009, no. 203, item 1569).

185 Rządowy projekt ustawy o ratyfikacji Traktatu z Lizbony zmieniającego Traktat o Unii Europejskiej i Traktat ustanawiający Wspólnotę Europejską, sporządzonego w Lizbonie dnia 13 grudnia 2007 r. [Government draft bill on the ratification of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, drawn up in Lisbon on December 13, 2007.], Sejm print no. 280, <https://orka.sejm.gov.pl/proc6.nsf/opisy/280.htm>.

No.	Date of motion	Initiator	Subject-matter	Outcome
1	21.04.1998	Opposition deputies (PSL)	Reform of the territorial division and system of the Republic of Poland	Rejected by the Sejm
2	23.09.1999	Opposition deputies (PSL)	Reprivatisation (property taken over in 1944–1962)	Rejected by the Sejm
3	20.01.2000	Citizens' initiative (agent: Stanisław Żelichowski, opposition deputy, PSL)	Privatisation and reprivatisation of forests	Rejected by the Sejm
4	03.11.2000	Citizens' initiative (agent: Józef Zych, opposition deputy, PSL)	Costs of reprivatisation (property taken over in 1944–1962)	Rejected by the Sejm
5	15.10.2002	Citizens' initiative (agent: Marek Kotlinowski, opposition deputy, LPR)	Sale of Polish land to foreigners	Rejected by the Sejm
6	18.03.2004	Opposition deputies (PiS)	Privatisation and participation in the war in Iraq	Not considered
7	29.10.2008	President Lech Kaczyński	Direction of health-care reform	Rejected by the Senate
8	15.10.2010	Opposition deputies (PiS)	Inclusion of State Forests in the public finance sector (“which would ultimately lead to their privatisation”)	Not considered
9	02.03.2012	Opposition deputies (PiS)	Poland's acceptance of the ACTA agreement	Not considered

No.	Date of motion	Initiator	Subject-matter	Outcome
10	30.03.2012	Citizens' initiative (agent: Piotr Duda, President of NSZZ "Solidarity")	Maintaining the retirement age at 60 for women and 65 for men	Rejected by the Sejm
11	15.06.2012	Opposition deputies (PiS)	Renegotiation of the climate and energy package	Rejected by the Sejm
12	08.11.2013	Citizens' initiative	School starting age of six, compulsory pre-school for five-year-olds, history curriculum, abolition of lower secondary schools (<i>gimnazja</i>), "preventing the closure of public schools and pre-schools"	Rejected by the Sejm
13	18.11.2013	Opposition deputies (PiS)	Construction of nuclear power plants in Poland	Withdrawn by the proposers
14	19.11.2013	Opposition deputies (PiS)	Abolition of compulsory schooling from age six	Rejected by the Sejm
15	23.06.2014	Citizens' initiative (agent: Jan Szyszko, opposition deputy, PiS)	Maintaining the status quo of State Forests and renegotiation of the Accession Treaty in respect of land purchases by foreigners	Not considered
16	21.05.2015	President Bronisław Komorowski	Single-member constituencies, public funding of political parties, rule of resolving doubts in tax law in favour of the taxpayer	Referendum held

No.	Date of motion	Initiator	Subject-matter	Outcome
17	04.09.2015	President Andrzej Duda	Retirement age, State Forests, compulsory schooling from age six	Rejected by the Senate
18	20.04.2017	Citizens' initiative (agent: Sławomir Broniarz, President of the Polish Teachers' Union)	Preventing the abolition of lower secondary schools (<i>gimnazja</i>)	Referred to committee, not considered further, rejected by the Sejm
19	25.07.2018	President Andrzej Duda	Directions of systemic changes in the Republic of Poland	Rejected by the Senate
20	17.08.2023	Deputies' motion (committee motion, initiated by deputies of the ruling PiS party)	"Sale" of state assets, retirement age, barrier on the border with Belarus, acceptance of migrants	Referendum held

Source: Information System of the Sejm of the Republic of Poland, <http://orka.sejm.gov.pl/>; Senate of the Republic of Poland, <https://www.senat.gov.pl/prace/proces-legislacyjny-w-senacie/>.

In ten cases, the initiators were deputies (including, in two cases, committees), in four the President, in seven a group of citizens. Only two of them obtained the support of the governing bodies—in 2015, the presidential one, and in 2023, the parliamentary (committee) one. Three presidential projects were rejected by the Senate; the Sejm rejected ten projects at the first reading, four were referred to the first reading and then work on them was discontinued, one was withdrawn. It is worth noting that the number of submitted motions rose unprecedentedly in the 7th term and returned to a low norm in the following years. In the third term of both parliaments, 4 projects were submitted, in the next—2, in the fifth and sixth, one each, in the record seventh as many as 9, in the eighth, two, and one in the ninth.

Almost half of the projects originated from deputies, with opposition parliamentarians being their authors in the decisive majority. Citizens' motions arose mainly from the inspiration of parliamentarians, who were also plenipotentiaries of the initiative committees.¹⁸⁶ Signature-collecting actions by opposition deputies were used to publicize the subject of the proposed referendum and, as a form of pressure on the Sejm, intended to increase its chances in the vote. These undertakings were also a way for the politicians leading them to gain public attention and a method of promoting a given party. Of the citizens' motions, four arose from the inspiration of opposition parliamentarians, and two from trade unions. Among the topics of the proposed referenda, two threads clearly stand out—privatization and education.

The Instrumentalisation of the Referendum to Serve Short-Term Political Interests

During the 2015 presidential election, alongside the candidates of Law and Justice (PiS) and Civic Platform (PO), then locked in a ten-year confrontation, a further popular non-party candidate emerged, centred on Paweł Kukiz. In his campaign, he advocated the introducing various instruments of direct democracy, but, first and foremost, single-member constituencies and an end to the public funding of political parties.¹⁸⁷ Despite his high result (almost 21%), voters decided that the second round would be contested by Andrzej Duda and Bronisław Komorowski.¹⁸⁸ However, both needed the votes of Kukiz's

186 Tomasz Koziełło, "Obywatelska inicjatywa referendalna w III Rzeczypospolitej na poziomie ogólnokrajowym," *Roczniki Nauk Społecznych* 47, no. 1(2019).

187 Paweł Kukiz did not have a written programme document listing demands, but he repeated those slogans many times, and they may be reflected in his Kukiz'15 movement's 2015 programme titled *Strategia dla Polski*.

188 Obwieszczenie Państwowej Komisji Wyborczej z dnia 11 maja 2015 r. o wynikach głosowania i wyniku wyborów Prezydenta Rzeczypospolitej Polskiej, zarządzonych na dzień 10 maja 2015 r. [Announcement of the National Electoral Commission of May 11, 2015, on the voting results and the outcome of the presidential election in the Republic of Poland, scheduled for May 10, 2015] (Journal of Laws of 2015, item 650).

supporters.¹⁸⁹ On 13 May 2015 (between the two rounds),¹⁹⁰ Komorowski, the incumbent President, therefore decided to submit to the Senate a draft resolution ordering a referendum on three issues:

- 1) *Do you support the introduction of single-member constituencies in elections to the Sejm of the Republic of Poland?*
- 2) *Do you support the continued financing of political parties from the state budget?*
- 3) *Do you support introducing a general rule that doubts as to the interpretation of tax law provisions are resolved in favour of the taxpayer?*¹⁹¹

The draft was approved by the Senate on 21 May 2015, after a heated debate,¹⁹² and on 17 June, the President signed the resolution,¹⁹³ which was published in the Journal of Laws on 19 June 2015; the referendum date was set for 6 September of that year.¹⁹⁴ President Komorowski thus sought to win the favour of Paweł Kukiz's electorate by ordering a referendum that included questions corresponding to Kukiz's key demands.

189 Chęciński, *Referendum ogólnokrajowe w polskim systemie prawnym po 2 kwietnia 1997 r.*, 93; Grabowska, "Referendum ogólnokrajowe w Polsce—analiza przypadku," 109.

190 Druk nr 899 Senatu Rzeczypospolitej Polskiej z 13.05.2015 r. [Print no. 899 of the Senate of the Republic of Poland from May 13, 2015].

191 Postanowienie Prezydenta Rzeczypospolitej Polskiej z dnia 17 czerwca 2015 r. o zarządzeniu ogólnokrajowego referendum [Decision of the President of the Republic of Poland of June 17, 2015, regarding the ordering of a nationwide referendum] (Journal of Laws of 2015, item 852).

192 Uchwała Senatu Rzeczypospolitej Polskiej z dnia 21 maja 2015 r. w sprawie wyrażenia zgody na zarządzenie przez Prezydenta Rzeczypospolitej Polskiej ogólnokrajowego referendum [Resolution of the Senate of the Republic of Poland of May 21, 2015, regarding the consent to order a nationwide referendum by the President of the Republic of Poland], Senate print no. 295.

193 Postanowienie Prezydenta Rzeczypospolitej Polskiej z dnia 17 czerwca 2015 r. o zarządzeniu ogólnokrajowego referendum [Decision of the President of the Republic of Poland of June 17, 2015, regarding the ordering of a nationwide referendum] (Journal of Laws of 2015, item 852).

194 Postanowienie Prezydenta Rzeczypospolitej Polskiej z dnia 17 czerwca 2015 r. o zarządzeniu ogólnokrajowego referendum [Decision of the President of the Republic of Poland of June 17, 2015, regarding the ordering of a nationwide referendum] (Journal of Laws of 2015, item 852).

Serious legal doubts were raised by the first question, which dealt with single-member constituencies. Some constitutional lawyers took the view that deciding on constitutional matters by means of an issue-specific referendum (Pol. *referendum problemowe*) was impermissible. This position was adopted by Michał Wiszowaty,¹⁹⁵ Ryszard Piotrowski,¹⁹⁶ and Bogusław Banaszak,¹⁹⁷ among others, although it was opposed in a legal opinion for the Senate by Wojciech Orłowski¹⁹⁸ and Marek Chmaj.¹⁹⁹

The campaign was highly unusual²⁰⁰; for the initiator it was politically crucial only in relation to the second round of the presidential election, whereas the vote itself took place a month after the new President had taken office. As a result, most of the political scene—including the very initiator—had lost interest in the referendum.²⁰¹ Komorowski himself described it as an “orphan”.²⁰²

195 Michał Wiszowaty, “Dlaczego w obecnym stanie prawnym referendum nt. JOW nie może się odbyć?,” konstytyuty.pl, published 13 May 2015, <https://www.konstytyuty.pl/archiwes/2216>.

196 Krzysztof Lepczyński, “Piotrowski: Referendum ws. JOW będzie niezgodne z konstytucją. Komorowski przed Trybunał Stanu? Radykalny pogląd,” *Gazeta.pl*, published 13 May 2015, <https://wiadomosci.gazeta.pl/wiadomosci/7,114871,17910224,piotrowski-referendum-ws-jow-bedzie-niezgodne-z-konstytucja.html>.

197 Bogusław Banaszak, “Opinia prawna na temat zgodności z Konstytucją materii pytań zawartych w projekcie postanowienia Prezydenta Rzeczypospolitej Polskiej o zarządzeniu krajowego referendum (druk senacki nr 899)—w szczególności pytania dotyczącego jednomandatowych okręgów wyborczych z odniesieniem się do bieżących głosów konstytucjonalistów w tej kwestii,” in *Projekt postanowienia Prezydenta RP o zarządzeniu ogólnokrajowego referendum—opinie prawne* (Kancelaria Senatu Biuro Analiz i Dokumentacji, 2015), 6.

198 Wojciech Orłowski, “Opinia prawna na temat zgodności z Konstytucją materii pytań zawartych w projekcie postanowienia Prezydenta RP o zarządzeniu krajowego referendum (druk senacki nr 899), w szczególności pytania dotyczącego jednomandatowych okręgów wyborczych z odniesieniem się do bieżących głosów konstytucjonalistów w tej kwestii,” in *Projekt postanowienia Prezydenta RP o zarządzeniu ogólnokrajowego referendum—opinie prawne*, 17.

199 Marek Chmaj, “Dopuszczalność zarządzenia przez Prezydenta Rzeczypospolitej Polskiej ogólnokrajowego Referendum w sprawie, m.in. jednomandatowych okręgów wyborczych, w trybie art. 125 Konstytucji,” in *Projekt postanowienia Prezydenta RP o zarządzeniu ogólnokrajowego referendum—opinie prawne*, 12.

200 Grabowska, “Referendum ogólnokrajowe w Polsce—analiza przypadku,” 111.

201 Piasecki, “Błędy, zaniechania i manipulacje polityków na przykładzie referendum w Polsce w 1996 i 2015 roku,” 107–08; Chęciński, *Referendum ogólnokrajowe w polskim systemie prawnym po 2 kwietnia 1997 r.*, 93.

202 “Komorowski: Referendum zostało sierotą po przegranych przeze mnie wyborach,” *Wprost.pl*, published 11 September 2015, <https://www.wprost.pl/520715/bronislaw-komorowski-referendum-zostalo-sierota-po-przegranych-p.html>.

These moves appear strikingly similar to those made by President Lech Wałęsa in relation to the *affranchissement* referendum. Both referendums were ordered for reasons of immediate political expediency, between the first and second rounds of a presidential election, and after their defeat both candidates withdrew from active participation in the referendum campaign.²⁰³

A central issue was whether turnout would exceed the 50% threshold, which did not seem obvious,²⁰⁴ although few expected the participation rate to be quite so low. Of more than 30.5 million eligible voters, only 2,383,041 went to the polls. A little over 232,000 votes were cast on each question, which meant turnout of around 7.8%—far too low for the referendum to be considered binding. Accordingly, it had purely consultative effect. The first question received 78.75% “yes” answers, the second 17.37%, and the third 94.51%.

The cost of the referendum was slightly over 71.5 million PLN.²⁰⁵ It was dubbed “the most expensive opinion poll in Europe”,²⁰⁶ and it is difficult to evaluate it positively. From its very genesis—rooted in the short-term need to boost electoral support—through the financial burden on the state and the organisation and mediocrity of the campaign, to the turnout disaster, the referendum contributed to the trivialisation and instrumentalisation of the institution in Polish political practice, stripping it entirely of seriousness and discouraging society from forms of direct democracy. This is all the more disheartening given that it constituted the first nationwide referendum on matters of particular importance to the state under the 1997 Constitution. Although the instrumental

203 This analogy was described in detail by Andrzej K. Piasecki in “Błędy, zaniechania i manipulacje polityków na przykładzie referendów w Polsce w 1996 i 2015 roku.”

204 Surveys from the end of August hovered around 50%—see the CBOS poll (51%) of 24 August 2015: CBOS, *Polacy o wrześniowym referendum zarządzonym przez prezydenta Bronisława Komorowskiego*, Komunikat z badań nr 121/2015 (Fundacja Centrum Badań Opinii Społecznej, 2015).

205 Informacja o wydatkach z budżetu państwa poniesionych na przygotowanie i przeprowadzenie referendum ogólnokrajowego w dniu 6 września 2015 r. [Information on the expenditures from the state budget incurred for the preparation and conduct of the nationwide referendum held on September 6, 2015], Szef Krajowego Biura Wyborczego February 5, 2016

206 “Raport. Wrześniowe referendum,” TVN24, published 7 September 2015, <https://www.tvn24.pl/raporty/wrzesniowe-referendum,1004%20>.

political use of the popular vote (and its ad hoc deployment without proper preparation in relation to issues of genuine importance for the state)²⁰⁷ deserves a strongly negative evaluation, the referendum nonetheless offered a modest opportunity to stimulate debate on systemic reform.²⁰⁸

It was, however, not the last such case. On 8 August 2023, the President issued an order calling parliamentary elections,²⁰⁹ and nine days later the Sejm adopted a resolution on ordering a nationwide referendum on matters of particular importance to the state to be held on the same day as the elections—15 October 2023.²¹⁰ Four questions were drafted:

- 1) *Do you support the sale of state assets to foreign entities, leading to Poles losing control over strategic sectors of the economy?*
- 2) *Do you support raising the retirement age, including restoring the increased retirement age of 67 for women and men?*
- 3) *Do you support the removal of the barrier on the border between the Republic of Poland and the Republic of Belarus?*
- 4) *Do you support the admission of thousands of illegal immigrants from the Middle East and Africa, in accordance with the forced relocation mechanism imposed by the European bureaucracy?*

The political situation at the time was ambiguous. In July, polling averages showed support at 33.7% for PiS and 12.5% for Confederation (Pol.

207 Tomasz Adam, “Fasadowość instytucji referendum ogólnokrajowego—wybrane zagadnienia,” in *Aktualne problemy referendum*, eds. Beata Tokaj et al. (Krajowe Biuro Wyborcze, 2016), 20.

208 Piasecki, “Błędy, zaniechania i manipulacje polityków na przykładzie referendów w Polsce w 1996 i 2015 roku,” 106; Adam, “Fasadowość instytucji referendum ogólnokrajowego—wybrane zagadnienia,” 11.

209 Postanowienie Prezydenta RP z dnia 8 sierpnia 2023 r. w sprawie zarządzenia wyborów do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej [Decision of the President of the Republic of Poland of August 8, 2023, regarding the ordering of elections to the Sejm and Senate of the Republic of Poland] (Journal of Laws of 2023, item 1564).

210 Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 17 sierpnia 2023 r. o zarządzeniu referendum ogólnokrajowego w sprawach o szczególnym znaczeniu dla państwa [Resolution of the Sejm of the Republic of Poland of August 17, 2023, on ordering a nationwide referendum on matters of special importance to the state] (Journal of Laws of 2023, item 1636).

Konfederacja),²¹¹ and despite the latter's leaders publicly rejecting the idea of a coalition, it was widely predicted that such a coalition might nonetheless materialise. Support for the rest of the opposition (KO + Third Way + the Left) stood at 47.1%.²¹² The government of Mateusz Morawiecki (comprising PiS, Sovereign Poland and the Republican Party) and the parliamentary majority behind it needed to strengthen their position. For that reason, they decided to order a referendum that would display the convergence between the views of the ruling parties and those of citizens, thereby improving their public image.²¹³ It is not difficult to see that the questions were drafted so that the vast majority of Poles would be inclined to answer them in the affirmative—another example of so-called sham questions.²¹⁴ The mechanism is similar to that used in 1946, although that vote and its campaign were incomparably less democratic, which is beyond doubt.

The first question contained the phrase “sale of state assets to foreign entities, leading to Poles losing control over strategic sectors of the economy”. It concerned an issue that had not been the subject of any ongoing public debate and, moreover, was formulated in what might be deemed a strongly suggestive way at least²¹⁵—particularly given that “sell-off” (Pol. *wyprzedaż*) in ordinary Polish usage denotes selling something at reduced prices.²¹⁶

The second question likewise concerned a matter that was not at the centre of an animated public discussion. It should also be recalled that it was Donald Tusk's government and the then parliamentary majority that decided to raise

211 See <https://ewybory.eu/sondaze/>.

212 See <https://ewybory.eu/sondaze/>.

213 Magdalena Musiał-Karg and Fernando Casal Bértoa, *Polskie wybory parlamentarne i referendum w 2023 roku. Jak zepsuć “święto demokracji”* (Fundacja im. Stefana Batorego, 2023), 9; Mikołaj Małecki, “Referendum narusza Konstytucję, wyniki nie będą wiążące. Należy odmówić udziału w propagandowej szopce,” *Dogmaty Karnisty*, 13.10.2023: 5.

214 Chęciński, *Referendum ogólnokrajowe w polskim systemie prawnym po 2 kwietnia 1997 r.*, 34.

215 Musiał-Karg and Casal Bértoa, *Polskie wybory parlamentarne i referendum w 2023 roku*, 4; Małecki, “Referendum narusza Konstytucję, wyniki nie będą wiążące,” 3.

216 See: *sell-off* definition of PWN's Dictionaries of the Polish language: <https://sjp.pwn.pl/sjp/wyprzedaz;2540347.html>.

the retirement age in 2012,²¹⁷ a decision that became the object of sustained PiS criticism.²¹⁸ The question was therefore intended to remind voters of that decision (as indicated by the phrase “restoring the increased age of 67”) and of PiS’s subsequent lowering of the retirement age back to 65.²¹⁹ Moreover, it is difficult to imagine that a majority of citizens would favour a longer working life.²²⁰ The question thus had a propagandistic and non-substantive character.

The third question also addressed a largely self-evident matter. The Ninth-term Sejm had decided to finance, from the state budget, the construction of a barrier on the border with Belarus,²²¹ which attracted criticism from part of the opposition.²²² With a view to recalling this decision, the question was formulated in this way, although no significant demands were at that time being made in public debate for the barrier’s removal; rather, protests had been voiced *ex ante* against its construction.²²³ Like the preceding question, it had no genuine problem-solving value and served solely to promote the government’s actions.

The fourth question merits the strongest condemnation. Not only did it presuppose an unlawful procedure and contain a false presupposition about the alleged illegality of the compulsory relocation mechanism “imposed” by

217 Ustawa z dnia 11 maja 2012 r. o zmianie ustawy o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych oraz niektórych innych ustaw [Act of May 11, 2012, amending the Act on pensions and annuities from the Social Insurance Fund and certain other acts] (Journal of Laws of 2012, item 637).

218 PIS, *10 lat temu rząd PO-PSL podniósł wiek emerytalny* (PIS, 2023), <https://pis.org.pl/aktualnosci/10-lat-temu-rzad-po-psl-podniosl-wiek-emerytalny>.

219 Ustawa z dnia 16 listopada 2016 r. o zmianie ustawy o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych oraz niektórych innych ustaw [Act of November 16, 2016, amending the Act on pensions and annuities from the Social Insurance Fund and certain other acts] (Journal of Laws of 2017, item 38).

220 Małecki, “Referendum narusza Konstytucję, wyniki nie będą wiążące,” 3–5.

221 Ustawa z dnia 29 października 2021 r. o budowie zabezpieczenia granicy państwowej [Act of October 29, 2021, on the construction of state border security] (Journal of Laws of 2021, item 1992).

222 “Politycy PO od początku nie chcieli zapory na granicy. W Sejmie głosowali przeciw jej budowie,” Polskie Radio 24, published 14 August 2023, <https://polskieradio24.pl/arttykul/3224822,politycy-po-od-poczatku-nie-chcieli-zapory-na-granicy-w-sejmie-glosowali-przeciw-jej-budowie>.

223 “Politycy PO od początku nie chcieli zapory na granicy.”

the EU,²²⁴ it also employed the informal expression “European bureaucracy”, intended to discredit European institutions.²²⁵

The referendum was also accompanied by normative doubts. On 7 July 2023, an amendment to the National Referendum Act was promulgated, omitting the standard 14-day *vacatio legis*.²²⁶ This would have been lawful had it been recognised that, in this instance, an important interest of the state required the normative act to enter into force immediately and that the principles of the democratic state ruled by law did not stand in the way (Article 4(1)–(2) of the Act on the Publication of Normative Acts and Certain Other Legal Acts).²²⁷ It is, however, difficult to identify here any such important state interest, as opposed to a party-political one. Similar doubts arise in relation to the “legislative standstill” (Pol. *cisza legislacyjna*), a rule shaped in case law (rather than in positive law) that amendments to electoral law should not be introduced within six months of a vote.²²⁸ The non-literal formulation of this principle facilitated the justification of action *praeter legem*.

For obvious reasons, the referendum campaign was intertwined with the parliamentary campaign. PiS sought to mobilise its electorate as strongly as possible, while parts of the opposition called for a boycott of the referendum and for voters to refuse to take the referendum ballot paper²²⁹—itself a source of controversy—or simply denigrated the referendum’s significance.²³⁰

224 Marta Pachocka, *Relokacje—referendum w Polsce w 2023 roku a polityka azylowa Unii Europejskiej* (Fundacja im. Stefana Batorego, 2023), 7–8.

225 Musiał-Karg and Casal Bértoa, *Polskie wybory parlamentarne i referendum w 2023 roku*, 4.

226 Ustawa z dnia 7 lipca 2023 r. o zmianie ustawy o referendum ogólnokrajowym [Act of July 7, 2023, amending the Act on nationwide referenda] (Journal of Laws of 2023, item 1628).

227 Ustawa z dnia 20 lipca 2000 r. o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych [Act of July 20, 2000, on the publication of normative acts and certain other legal acts] (Journal of Laws of 2000, no. 62, item 718).

228 Agata Pyrzyńska, “Instytucja ciszy legislacyjnej w polskim prawie wyborczym,” *Krytyka Prawa*, no. 1(2023): 217–18.

229 Jakub Szymczak, “Lewica namawia do odmowy pobrania kart referendalnych,” *Oko.press*, published 5 October 2023, <https://oko.press/na-zywo/wybory-na-zywo-oko-press/lewica-namawia-do-odmowy-pobrania-karty-referendalnej>.

230 “Donald Tusk: uroczyście unieważniam referendum. Rzecznik rządu: przykład tego, jak Tusk podchodzi do słowa demokracja,” PAP, published 16 August 2023, <https://www.>

From the perspective of the ruling party, the referendum turned out to be a failure. Turnout was 40.91%,²³¹ insufficient for the result to be binding, whereas turnout in the parliamentary elections held the same day was exceptionally high by Polish standards (74.38%).²³² This means that nearly 10 million voters refused to take the referendum ballot, which illustrates the effectiveness of opposition mobilisation.

The 2023 issue-specific referendum must be assessed very negatively. It was ordered for political and short-term purposes, concerned topics that were in part marginal to public debate or formulated in a non-substantive manner, and the questions were phrased in a way that suggested an affirmative answer. It was a popular vote intended to mobilise a particular party's electorate to participate in the parliamentary elections, to strengthen the position of the outgoing government, and to attract undecided voters by associating the referendum issues with the ruling party. In this way, it ran counter to the very *ratio legis* of mechanisms of direct democracy.

Conclusion

The history of Polish referendums began with lofty, yet never implemented, ideas of civic participation in the Second Republic. The first practical use of the institution served to legitimise a criminal regime, leaving a long-lasting trauma in social consciousness. The experiences of 1987–2003 were ambivalent, yet they offered hope that this decision-making form might develop into a useful complement to representative democracy. Unfortunately, political

pap.pl/aktualnosci/donald-tusk-uroczyscie-uniewazniam-referendum-rzecznik-rzadu-przyklad-tego-jak-tusk.

231 Obwieszczenie Państwowej Komisji Wyborczej z dnia 17 października 2023 r. o wynikach głosowania i wyniku referendum przeprowadzonego w dniu 15 października 2023 r. [Announcement of the National Electoral Commission of October 17, 2023, on the voting results and the outcome of the referendum held on October 15, 2023] (Journal of Laws of 2023, item 2234).

232 Obwieszczenie Państwowej Komisji Wyborczej z dnia 17 października 2023 r. o wynikach wyborów do Sejmu Rzeczypospolitej Polskiej przeprowadzonych w dniu 15 października 2023 r.

practice over the past twenty years has led to its grotesque instrumentalisation in the service of the current interests of political parties. A referendum has never been held on the basis of a citizens' initiative. Of all the referendums conducted, only once was the initiator not from the same political camp as the body taking the final decision (President Wałęsa and a Senate with a left-wing majority). This illustrates the real dominance of public authorities over a mechanism that, by definition, was intended to embody the direct exercise of power by the People.

In Poland, the institution of the nationwide referendum has generally not been applied in conformity with the standards appropriate to it. It has frequently served to legitimise those in power (1946, 1987, 2023) or to attract voters (1996, 2015), which amounted to its instrumentalisation for short-term political ends.

It is, however, worth drawing some distinctions and stating clearly that the highest-quality popular votes were the non-issue-specific referendums of 1997 and 2003. This correlation is not accidental and follows not only from the subject-matter involved, but from the simple method of formulating the questions. Above all, it stemmed from the fact that these referendums concerned only the approval of decisions already taken by state organs, and the bodies ordering them had little room for manoeuvre as regards the content of the questions. This created a certain generality in the subject-matter, which in turn limited the scope for manipulation and instrumentalisation. These referendums also had the most substantive campaigns (although not entirely free from unconstructive slogans). The 1997 referendum provided strong democratic legitimacy for the Constitution as the fundamental legal act, while the ratification referendum did so for Poland's presence in the European Union. The fact that these key decisions were taken directly by the People means that they do not appear to have been imposed on citizens by the political class. It is worth noting that Poles remain today among the most pro-European societies in the European Union.²³³

233 See researches of Eurobarometer: <https://www.europarl.europa.eu/at-your-service/pl/be-heard/eurobarometer>.

On the other hand, the 1946 referendum ought to be treated as distinct. Given the time at which it was held (fully forty years before the next referendum), the specific circumstances of the country, the nature of the post-war world, and above all the level of non-democracy involved, it is difficult to compare that vote with any other popular ballot. Its distinctiveness lies in the extremely low level of integrity, conditioned by the factors just mentioned.

A review of Poland's referendal experience reveals a consistent absence of binding issue-specific referendums. Insufficient turnout—resulting partly from the legal framework (from the original “majority of those entitled” clause, through the 50% turnout threshold, to contemporary proposals for further lowering that threshold) and partly from a lack of social trust in the authorities' intentions—has prevented such votes from acquiring real force. The various reform proposals advanced over time, including suggestions to abandon turnout thresholds or to revise the structure of the questions, do not resolve the fundamental problem: since the beginning of the transformation, the referendum in Poland has never been entrusted to citizens as an instrument of initiative, but has instead remained a mechanism controlled by public authorities.

Moreover, analysis of referendal questions shows a recurring pattern: the use, in issue-specific referendums, of evaluative formulations, terminology suggesting the “proper” way to vote, and the bundling together of issues that are not substantively related. This tendency, already present in the referendum proposals of the 1990s, emerged in full clarity in 2015 and 2023, when the construction of the questions turned the referendum into an instrument of agitation and mobilisation for a specific electorate, devoid of deliberative value. Thus, rather than serving to resolve defined issues, the institution was absorbed into the logic of electoral competition, aimed at securing additional legitimacy or mobilising particular segments of the electorate.

The history of the nationwide referendum in Poland demonstrates that this mechanism, despite its constitutional entrenchment, has been used primarily as a tool of legitimisation, serving to confirm the positions of state organs rather

than as a genuine instrument for the People to decide on matters of state. The patterns of its functioning inherited from 1946 and reinforced by subsequent instances of instrumental use, have prevented the consolidation of the referendum as a mature form of direct democracy. Consequently, although present in the Polish legal order for almost eight decades, the institution has not attained an autonomous character; it has remained dependent on political interests rather than constituting an authentic emanation of the sovereign's will.

Finally, in answering the question of how referendums have affected political reality, a certain paradox becomes visible: despite the rather negative assessment of their use, their impact has been considerable. The tragic 1946 referendum was fully implemented; the 1987 referendum related to processes that in fact took place; the constitutional and accession referendums had significant consequences in the legal as well as the political and social spheres; the referendums of 1996, 2015 and 2023, owing to turnout failure, contributed to the gradual (1996) or abrupt (2015, 2023) loss of salience of the issues they addressed. Yet they nevertheless exerted some influence on the electoral campaigns with which they were associated (though not necessarily in the manner intended by their initiators), as well as on legal reality (for instance, the introduction of the rule that doubts in tax law are resolved in favour of the taxpayer). The referendum is thus an instrument that can powerfully shape legal and political reality and social consciousness. The use of such a significant mechanism should be accompanied by robust good practices, which have not developed in Poland. In this context, the instrumentalisation of the referendum for short-term political purposes is all the more reprehensible and dangerous.

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