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NATIONAL REFERENDUM IN THE REPUBLIC OF POLAND IN THE LIGHT OF THE PROPOSALS OF THE ACT OF 14 MARCH 2003*

*Consolidated text Journal of Laws of 2018, item 754, as amended.

The aim of the article is to present the origins, types, and practice of carrying out a national referendum in the Republic of Poland (Rzeczpospolita Polska — RP). Apart from the analysis of the current legal status regarding the subject scope and the mode of referendum management, the implementation of its individual stages and legal consequences of voting, and the referendum practice under the 1997 Constitution of the Republic of Poland, some proposals for changes will be presented, raised by the doctrine of constitutional law and electoral administration bodies in relation to some selected provisions of the Act on the National Referendum of 14 March 2003.

INTRODUCTORY REMARKS

Proposals for the introduction of a national referendum into the Polish political system date back to the first years after Poland regained its independence. Already at the stage of work on the March Constitution of 1921, in the projects submitted by some political groups, the need to constitutionalize this form of direct democracy was signalled; the postulate of anchoring the referendum in the provisions of the new Basic Law was contained in concepts by the Polish Socialist Party (Polska Partia Socjalistyczna — PPS), the Polish People's Party "Liberation" (Polskie Stronnictwo Ludowe "Wyzwolenie" — PSL "Wyzwolenie"), the National Workers' Party (Narodowa Partia Robotnicza — NPR), and the Constitutional Work Club (Klub Pracy Konstytucyjnej — KPK). The PPS project, which provided for the possibility of holding a referendum (called a popular vote) in relation to each statute and resolution adopted by the Sejm, should be

considered as particularly interesting and elaborate. The entities authorized to submit an application for the ordering of a national referendum were the Sejm, the Labour Chamber (with the intention of the project promoters to replace the second Chamber of the Parliament), the President of the Republic of Poland (Rzeczpospolita Polska — RP), the Council of Ministers (these entities had to obtain the approval of at least 1/3 of the Deputies' Chamber composition) and — what is worth emphasizing due to the essence of the referendum institution — a group of at least 100,000 Polish citizens having an active electoral right¹. In an interesting way, the proposal to constitutionalize the referendum in the KPK project was normalized, according to which — and in the conditions of the reviving, post-partition statehood was not a senseless solution — a constitutional referendum referring to the sanctioning of the Basic Law or its amendment by the Sovereign, could be held only in the territory where the percentage of illiterates among those entitled to vote did not exceed 10%. As a result of the disputes inside the Parliament accompanying the adoption of the March Constitution, none of the moved proposals of introducing the referendum to the provisions of the Basic Law was accepted². The discussed institution of direct democracy was not standardized in the provisions of the April Constitution of 1935, either.

¹ Jaboński M., Referendum ogólnokrajowe w polskim prawie konstytucyjnym, [National Referendum in Polish Constitutional Law], *Publ. by the University of Wrocław*, Wrocław 2001. — P. 20.

² Garlicki L., Uwagi do art. 125 [Comments on Article 125], (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitution of the Republic of Poland. Commentary], *Publ. by Wyd. Sejmowe*, Warszawa 2001. — P. 3.

After the end of World War II, during the period of the struggle for power on the liberated Polish lands, there appeared a concept of a national referendum, inspired by the Polish Workers' Party (Polska Partia Robotnicza — PPR) and the Polish Socialist Party (Polska Partia Socjalistyczna — PPS), with the intention of its originators to postpone parliamentary elections³. Early elections to the Legislative Sejm would significantly increase the chances for the victory of the Polish People's Party (Polskie Stronnictwo Ludowe — PSL), presenting itself as an alternative group to the communist camp fully dependent on the Soviets, concentrated around the PPR and the PPS. The aim of the referendum, apart from postponing elections to the future Constituent Assembly⁴, was also to convince the public about the programme coherence of the communist-origin party with the PSL, which enjoyed a great support and was led by Stanisław Miłkołajczyk, Prime Minister of the Polish Government-in-Exile in 1943–44. The indicated intention was to be implemented by the catchy character of the questions: a) the abolition of the Senate as the second Chamber of the Parliament; 2) the constitutional support of the socio-economic system of the State on the basis of the reforms already implemented, and 3) the confirmation of the State borders on the Baltic Sea, the Oder and the Lusatian Neisse. It should be indicated that the referendum had no constitutional authorization and was carried out on 30 June 1946, on the basis of the *Act of 27 April 1946 on People's Vote* (Journal of Laws of 1946, No. 15, item 104), and the *Act of 28 April 1946 on Carrying out the People's Vote* (Journal of Laws of 1946, No. 15, item 105) — the Acts passed by a non-electoral body, the National Council (Krajowa Rada Narodowa — KRN), in 1943–47 functioning as a self-proclaimed parliament, which was strongly opposed by the Polish Government-in-Exile. As a result of the PSL calling to its supporters — contrary to the ex-

pectations of the PPR — to vote “against” in answer to a question about the Senate in order to confront the communist bloc⁵, the official results of the people's vote were falsified: in the opinion of historians no more than 26.9% of those taking part in the referendum voted “in favour” 3 times⁶. The experience gained by the crystallizing ruling power camp during the organization of the people's vote was used during the elections on 19 January 1947 to the Legislative Sejm, the announced results of which — inconsistent with the reality — brought about a definite victory of the so-called Democratic Bloc, consisting of the PPR, the PPS, the People's Party (Stronnictwo Ludowe — SL) and the Democratic Party (Stronnictwo Demokratyczne — SD) (394 seats), while marginalizing the role of the Polish People's Party (Polskie Stronnictwo Ludowe — PSL) (28 seats).

The institution of the national referendum was not constitutionalized in the original wording of the provisions of the Constitution of the Polish People's Republic (Polska Rzeczpospolita Ludowa — PRL) of 22 July 1952. A relevant amendment, however, not resulting from the actual desire to provide citizens with the right to express their will on matters of key importance to the State, but being a reaction of the authorities to intensifying economic problems of the country and the related increase in social tensions⁷, was introduced only on 6 May 1987. According to the provisions of the transformed Art. 2 of the Constitution of the PRL, the exercise of the State power by working people consisted also in expressing their will by the way of referendum⁸. As a consequence of the adopted changes, the same day the Sejm of the PRL adopted the *Act on Public Consultations and Referendum* (Journal of Laws 1987, No. 14, item 82), governing the principles and conduct of voting⁹. Without going into a detailed discussion of the aforementioned Act provisions, it should be pointed out — apart from the principle of

³ Jabłoński M., Referendum ogólnokrajowe w polskim prawie konstytucyjnym, [National Referendum in Polish Constitutional Law], *Publ. by the University of Wrocław*, Wrocław 2001. — P. 24; Paczkowski A., Referendum z 30 czerwca 1946 r. Próba wstępnego bilansu, [Referendum of 30 June 1946. An Attempt of Initial Result], (in:) *Referendum w Polsce współczesnej* [Referendum in Modern Poland] (ed. D. Waniek and M. T. Staszewski), Warszawa, 1995. — P. 68.

⁴ Jabłoński M., Referendum ogólnokrajowe. Wybrane zagadnienia, [National Referendum. Selected Issues] *Publ. by "Palestra"*, 2003, issues 5–6. — P. 17.

⁵ Paczkowski A., Referendum z 30 czerwca 1946 r. Próba wstępnego bilansu, [Referendum of 30 June 1946. An Attempt of Initial Result], (in:) *Referendum w Polsce współczesnej* [Referendum in Modern Poland] (ed. D. Waniek and M. T. Staszewski), Warszawa, 1995. — P. 73.

⁶ Paczkowski A., Referendum z 30 czerwca 1946 r. Próba wstępnego bilansu, [Referendum of 30 June 1946. An Attempt of Initial Result], (in:) *Referendum w Polsce współczesnej* [Referendum in Modern Poland] (ed. D. Waniek and M. T. Staszewski), Warszawa, 1995. — P. 75.

⁷ Jaskiernia J., Prawnoustrojowe i społeczno-polityczne doświadczenia referendum z 29 listopada 1987 r. [Legal, Systemic and Socio-Political Experience of the Referendum of 29 November 1987] (in:) *Referendum w Polsce współczesnej* [Referendum in Contemporary Poland] (ed. D. Waniek and M. T. Staszewski), Warszawa, 1995. — P. 86.

⁸ Winczorek P., Kilka uwag o polskich referendach [Some Remarks on the Polish Referenda], *"Ruch Prawniczy, Ekonomiczny i Socjologiczny"* Year LXXVI, journals 2. — 2014. — P. 144.

⁹ Jabłoński M., Referendum ogólnokrajowe w polskim prawie konstytucyjnym, [National Referendum in Polish Constitutional Law], *Publ. by the University of Wrocław*, Wrocław, 2001. — P. 31.

non-conducting a referendum outside the country¹⁰ — the specific shaping of its validity conditions, distinguishing the referendum managed under the Act of 1987 from voting held under the current legal status. According to Art. 19 of the Act, the result of the referendum was binding, if one of the submitted solutions was voted for by more than half of those entitled¹¹. Such a high threshold of the required support for one of the variants — which was already pointed out during the work on the Act — proved to be a condition too rigorous even in the realities of the PRL, characterized by high attendance¹². In the referendum ordered by the Sejm on 29 November 1987, referring to the necessity of deep economic reforms and the need to democratize the political life, despite the participation of 67.32% of those entitled to vote, none of the questions was given the percentage of responses necessary for the validity of the referendum (respectively 44.28% of people's votes "in favour" and 18.57% of people's votes "against" when asked about the position on *the full implementation of the programme of radical economic recovery presented to the Sejm*, and 46.29% of votes "in favour", with 16.48% of people's votes "against" in relation to the question about the legitimacy of implementing a *model of deep democratization of the political life*, the effect of which was to strengthen self-government, expand citizens' rights and increase their participation in governing of the country. In this way, instead of providing the Sovereign with the opportunity to present a real statement on the desired direction of the political and economic reforms, the referendum was made an instrumentally treated facade of democracy¹³.

The Constitutional Act on Mutual Relations between the Legislative and Executive Powers of the Republic of Poland and the Local Government (Journal of Laws 1992, No. 84, item 426 as amended.) adopted on October 17, 1992 and called the Small Constitution, upheld the provisions of the Constitution of the PRL with reference to the people's vote, with Art. 19 being additionally devoted to it, according to which

a referendum managed by the Sejm or by the President of the RP, acting with the consent of the Senate, could be held in matters of special significance for the State. It is worth pointing out that the creators of the Small Constitution, being aware of the problems with obtaining the binding outcome of the referendum under the 1987 Law as a condition of its validity, introduced the participation of more than half of those entitled to vote, liberalizing the previous requirements in the discussed area.

Subsequent referenda, known as enfranchisement referenda, were conducted based on the provisions of the new *Referendum Act*, adopted on 29 June 1995 (Journal of Laws of 1995, No. 99, item 36 as amended). Both the *Referendum on Universal Enfranchisement of Citizens* ordered by the President of the RP on 29 November 1995 and the vote on *Some Use Directions of the State Property*, carried out on the initiative of the Parliament (resolution of 21 December 1995) took place on 18 February 1996. In both cases, insufficient voter turnout stood in the way of recognizing the referendum results as binding¹⁴, the condition for the vote's validity was the participation of at least 14,004,858 voters. The referendum ordered by the Head of State was attended only by 9,076,004 of those entitled, out of whom 94.54% were in favour of carrying out the universal enfranchisement of citizens. In the vote ordered by the Sejm, the turnout was 9,085,145 people, which — as in the case of the referendum ordered by the President of the RP — resulted in its invalidity¹⁵.

The Constitutional Act on the Mode of Preparation and Adoption of the Constitution of the Republic of Poland (Journal of Laws of 1992 No. 67, item. 336 as amended.) adopted on 23 April 1992, provided in the text of Art. 9 para. 1 and 2 that within 14 days of the adoption of the Constitution of the RP by the National Assembly, the President of the RP should order the referendum approving the Basic Law, setting its date on a day off work, in the period of no longer than four months from the date of ordering the voting¹⁶.

¹⁰ Jaskiernia J. Prawnoustrojowe i społeczno-polityczne doświadczenia referendum z 29 listopada 1987 r. [Legal, Systemic and Socio-Political Experience of the Referendum of 29 November 1987] (in:) Referendum w Polsce współczesnej [Referendum in Contemporary Poland] (ed. D. Waniek and M. T. Staszewski), Warszawa, 1995. — P. 80.

¹¹ Jabłoński M., Referendum ogólnokrajowe w polskim prawie konstytucyjnym, [National Referendum in Polish Constitutional Law], *Publ. by the University of Wrocław*, Wrocław, 2001. — P. 32.

¹² Jaskiernia J. Prawnoustrojowe i społeczno-polityczne doświadczenia referendum z 29 listopada 1987 r. [Legal, Systemic and Socio-Political Experience of the Referendum of 29 November 1987] (in:) Referendum w Polsce współczesnej [Referendum in Contemporary

Poland] (ed. D. Waniek and M. T. Staszewski), Warszawa, 1995. — P. 86.

¹³ Referendum w Polsce i w Europie Wschodniej [Referendum in Poland and Eastern Europe] (ed. M. T. Staszewski, D. Waniek), Warszawa, 1996. — P. 112.

¹⁴ Jabłoński M., Referendum ogólnokrajowe. Wybrane zagadnienia, [National Referendum. Selected Issues]. *Publ. by "Palestra"*, 2003, issues 5–6. — P. 18.

¹⁵ Winczorek P., Kilka uwag o polskich referendach [Some Remarks on the Polish Referenda], *"Ruch Prawniczy, Ekonomiczny i Socjologiczny"*, Year LXXVI, journals 2 — 2014. — P. 144.

¹⁶ Gebethner S., Referendum konstytucyjne — uwikłania społeczne i prawnoustrojowe [Constitutional Referendum — Social, Legal

Pursuant to the provisions of Art. 11 para. 1 of the Constitutional Act, the adoption of the Constitution of the RP in a referendum, followed, if the **majority** of voters opted for it. The aforementioned provision became a cause of a dispute among the representatives of constitutional law as to the understanding of the concept of majority necessary to approve a new Constitution¹⁷. It was pointed out that pursuant to the provisions of the aforementioned Art. 19 of the *Constitutional Act of 17 October 1992*, the referendum was valid if more than half of those entitled to vote took part in it — hence the provision of the Act on the mode of preparation and adoption of the Constitution of the RP was supposed to refer, in the opinion of some experts, only to the distribution of votes for and against, and a condition for the validity of the voting was a turnout exceeding half of the legitimated. This position was rightly considered as unauthorized. Firstly, it should be pointed out that the content of Art. 11 section 1 of the Act of 23 April 1992, was established earlier than the norm of the Small Constitution, and therefore it could not anticipate the future direction of legislative work. Secondly, at the stage of constructing the provisions of the Act on the mode of preparation and adoption of the Constitution of the RP, no quorum was established purposefully as a condition of the binding force of the constitutional referendum. It was decided that the approval of the new Basic Law by the Sovereign is a key issue, and therefore the decision on the adoption of the Act with the highest legal force, defining the basis of the political, social and economic system of the State, should be taken by active citizens involved in public affairs and aware of the content of the provisions of the Constitution to be voted on, and not by passive citizens, uninterested in participating in the referendum¹⁸. As an important argument in favour of accepting the interpretation of Art. 11 para. 1 of the Constitutional Act to abandon the quorum condition, it was also pointed out that a different understanding of it would lead to a stalemate in which, as a result of failure to obtain the required turnout and the non-binding outcome of the referendum, the

and Structural Entanglement], (in:) Referendum konstytucyjne w Polsce [Constitutional Referendum in Poland] (ed. M. T. Staszewski), Warszawa, 1997. — P. 94.

¹⁷ Wawrzyniak J., Aksjologia referendum konstytucyjnego [Axiology of the Constitutional Referendum], (in:) Referendum konstytucyjne w Polsce [Constitutional Referendum in Poland] (ed. M. T. Staszewski), Warszawa, 1997. — P. 195.

¹⁸ Jarosz Z., Prawne problemy referendum konstytucyjnego [Legal Issues of the Constitutional Referendum], (in:) Referendum konstytucyjne w Polsce [Constitutional Referendum in Poland] (ed. M. T. Staszewski), Warszawa, 1997. — P. 122.

Constitution would not be either accepted or rejected by the Nation, which would put into question the further fate of the Act worked on and passed by the National Assembly¹⁹. As a result of the public discussion, Article 11 para. 1 of the Constitutional Act of 23 April 1992 was considered the *lex specialis* in relation to Art. 19 para. 3 of the Small Constitution, and as the future showed it determined the approval of the new Basic Law.

After the adoption of the Constitution of the RP by the National Assembly on 2 April 1997, the President of the RP ordered the constitutional referendum on 25 May. 28 324,965 citizens were entitled to participate in the voting, the voter turnout was 42.86%, the majority participating in the referendum, necessary for the adoption of the Constitution, was established on the level of 6 069,896 people. The adoption of the Basic Law was voted for by 6,398,316 entitled persons, which accounted for 52.7% of the voters, 5,571,439 (45.8%) of the people voted against, and 170,035 votes were considered invalid. In the light of the above findings of the National Electoral Commission and after the Supreme Court stated the validity of the carried-out referendum, the President of the RP signed the Constitution on 16 July 1997²⁰. The Basic Law came into force on 17 October 1997, on the fifth anniversary of the adoption of the Small Constitution.

NATIONAL REFERENDUM IN THE LIGHT OF THE PROVISIONS OF THE CONSTITUTION OF THE RP OF 2 APRIL 1997 AND OF THE ACT OF 14 MARCH 2003

Currently, issues related to the institution of a national referendum are regulated in Art. 125, Art. 90, para. 3, and Art. 235 para. 6 of the Constitution of the RP.

Pursuant to the regulations of the first of the abovementioned provisions, generally governing the

tuczynie w Polsce [Constitutional Referendum in Poland] (ed. M. T. Staszewski), Warszawa, 1997. — P. 49.

¹⁹ Jabłoński M., Referendum ogólnokrajowe w polskim prawie konstytucyjnym, [National Referendum in Polish Constitutional Law], *Publ. by the University of Wrocław*, Wrocław, 2001. — P. 60.

²⁰ Gebethner S., Referendum konstytucyjne — uwikłania społeczne i prawnoustrojowe [Constitutional Referendum — Social, Legal and Structural Entanglement], (in:) Referendum konstytucyjne w Polsce [Constitutional Referendum in Poland] (ed. M. T. Staszewski), Warszawa, 1997. — P. 122.

subject and basic organization of a people's vote, a national referendum may be held in matters of special significance for the State, whereas the Sejm of the RP and the President of the RP, after obtaining the Senate's consent (such a solution is recognized by some representatives of constitutional law as tying up the freedom of the Head of State in the implementation of the constitutional prerogatives²¹). It should be noted that the imprecise wording of the Constitution regarding the subject of the referendum provokes criticism of the doctrine. It is indicated that under the referendum laid down in Art. 125 of the Basic Law, only general and directional matters may be subjected, which "without substituting actions of competent state authorities, are to specify the later content of solutions undertaken by these authorities"²². The constitutional wording of "a matter of special significance for the State" is a general clause, which can be difficult to be interpreted in specific cases. Nevertheless, the subject of a national referendum under Art. 125 cannot certainly be relevant only to a certain category of citizens or parts of the national territory — not concerning the State as a whole; they do not fit into the list of issues that can be referred to the will of the Sovereign expressed in a people's vote²³.

Both Chambers adopt the aforementioned resolutions by an absolute majority of votes, in the presence of at least half of the statutory number of deputies or senators. The referendum is binding on the condition that more than half of those entitled to vote participate in the vote, whereas its validity — as in the case of parliamentary and presidential elections as well as elections to the European Parliament — is confirmed by the Supreme Court.

Art. 90 para. 3, constructed by the creators of the Constitution for the needs of the future European integration process, provides that a consent to the ratification of an international agreement, by which the Republic of Poland conveys the competence of

State authorities in certain matters to the international organization or international authorities, may take place by means of a national referendum, pursuant to Art. 125 of the Constitution²⁴. This regulation was used to carry out the accession referendum, confirming the accession of the Republic of Poland to the European Union, organized on 7–8 June 2003.

Art. 235 para. 6 of the Basic Law refers to the constitutional referendum, with a slightly distinctive character from the classical national referendum. The constitutional referendum may concern the approval by universal vote only of changes introduced in the provisions of Chapter I — "Republic", II — "Freedom, Rights and Obligations of Man and Citizen", XII — "Amendment to the Constitution". In the case of a constitutional referendum the difference lies in both the entity ordering the people's vote — the Speaker of the Sejm, as well as the group of entities entitled to submit a request regarding its implementation: pursuant to Art. 235 para. 6 first sentence in connection with Art. 235 para. 1 of the Basic Law, the following have legitimacy in this respect: 1/5 of the statutory composition of the chamber of deputies (92 deputies), the Senate and the President of the RP, acting within 45 days of the adoption of the Act amending the Constitution by the Senate. Importantly, the Speaker of the Parliament does not have the right of free assessment of the application merits, in accordance with the constitutional order; in the case of an initiative to hold a referendum by the qualified entity, the Speaker "orders immediately" a referendum within 60 days from the date of submission of the application²⁵. It should also be pointed out that, contrary to a national referendum on matters of particular interest to the State, a constitutional referendum is valid regardless of the turnout: an amendment to the Constitution is deemed to be accepted if the majority of voters were in favour²⁶. This procedure is aimed at making transformations in the content of the Basic

²¹ Sarnacki P, Ustawa z dnia 14 marca 2003 r. o referendum ogólnokrajowym na tle Konstytucji RP [The Act of 14 March 2003 on National Referendum on the Background of the Constitution of the Republic of Poland], *"Przegląd Sejmowy"*, 2003, issue 3. — P. 12, 21.

²² Jabłoński M., Referendum ogólnokrajowe. Wybrane zagadnienia, [National Referendum. Selected Issues] *Publ. by "Palestra"*, 2003, issues 5–6. — P. 12.

²³ Winczorek P, Kilka uwag o polskich referendach [Some Remarks on the Polish Referenda], *"Ruch Prawniczy, Ekonomiczny i Socjologiczny"* Year LXXVI, journals 2 — 2014. — P. 149; Garlicki L., Uwagi do art. 125 [Comments on Article 125], (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitution of the Republic of Poland. Commentary], *Publ. by Wyd. Sejmowe*, Warszawa, 2001. — P. 5.

²⁴ Piłat M. Referendum ogólnokrajowe w procesie integracji Polski z

Unią Europejską [National Referendum in the Integration Process of Poland with the European Union], *"Studia Iuridica Lublinensia"*, 2004, vol. 3. — P. 153; Dubicka A., Uwagi o ustawie z dnia 14 marca 2003 r. o referendum ogólnokrajowym w świetle prac nad jej projektem [Comments on the Act of 14 March 2003 on the National Referendum in the Light of Work on its Draft], *"Acta Universitatis Wratislaviensis", Przegląd Prawa i Administracji* 2004, issue 63. — P. 80.

²⁵ Rytel-Warzocho A., Zarządzanie referendum ogólnokrajowego przez Prezydenta RP [Ordering National Referendum by the President of the Republic of Poland], (in:) *Referendum ogólnokrajowe w Polsce. Wybrane zagadnienia* [National Referendum in Poland. Selected Issues], *Publ. by the Gdańsk University*, 2016. — P. 13.

²⁶ Grabowska M., Polska ustawa o referendum ogólnokrajowym (referenda akcesyjne) [Polish Act on National Referendum (Accession Referenda)], *"Studia Europejskie"*, 2003. — P. 104.

Law dependent on the will of citizens interested in the direction of legal changes, and not to be blocked through the passivity of part of the electorate.

The Constitution delegated a detailed regulation of issues related to the preparation, carrying out and establishing the results of a referendum to be resolved by a statutory way.

Under the current legal status (2018), this delegation is fulfilled by the *Act of 14 March 2003 on the National Referendum*.

According to the contents of Art. 3 paragraphs 1 and 2 of the *Act on the Referendum*, as a repetition of the provisions of Art. 62, paragraphs 1 and 2 of the Constitution of the RP, Polish citizens, who will turn 18 years of age the latest on the voting day, are entitled to participate in the vote. The exclusion catalogue of referendum rights includes cases of deprivation of public or electoral rights and incapacitation with a legally binding court decision. It is worth noting that the Constitution of the RP grants citizens the right “to participate” in the referendum, and not the right “to a referendum”. The final decision as to the subject matter of voting, its date, or rejection of the citizens’ application belongs to the representative body. This provokes comments about the semi-direct nature of the national referendum²⁷, manifested in the inability of the Sovereign to initiate effectively a referendum²⁸. The legislator’s reluctant approach to instruments of direct participation of citizens in the State’s governance, negatively affecting their use, is also evidenced by the lack of mandatory referendums in the provisions of the Basic Law and depriving the Sovereign of the right to participate in proceedings aimed at amending the Constitution of the RP: citizens have neither the right of people’s constitution initiative, or the possibility of initiating a referendum approving an amendment²⁹.

Voting may be conducted within one or two days — in the first case it takes place on a day off work, in the second case it also includes the day before it — one-day voting takes place between 6.00 a.m. and 10.00 p.m., and two-day voting takes place between 6.00 a.m. and 8.00 p.m. each day. Voting in a referendum is carried out both in the voting stations

in the country, i.e. in permanent stations designated on the basis of the provisions of the *Electoral Code* of 5 January 2011³⁰, separate stations established in hospitals, social welfare institutions, penitentiaries, pretrial detention centres and external stations organized for Polish citizens staying on Polish sea ships, as well as in the voting stations established for Polish citizens staying abroad. It is also acceptable to create a voting station in student hostels or their complexes if at least 50 people entitled to take part in the referendum are present on the day of voting and the rector of the higher school that runs the student hostel has been informed about it.

The Act provides for a three-tier system of competent authorities in matters of a national referendum: The National Electoral Commission, electoral commissioners, and Circuit Electoral Commissions for the Referendum.

The central electoral authority is responsible for organizing and conducting the referendum, in particular by: supervising the preparation of the referendum and compliance with the rules governing its implementation, explanation of the mode of voting, consideration of complaints about electoral commissioners’ activities, preparation of reports on the course of voting, as well as making the result of the referendum publicly available and announcing them in the Official Journal of the Republic of Poland.

The tasks of electoral commissioners, in the area belonging to their competence, include: ensuring — in cooperation with territorial self-government bodies — the proper preparation and conduct of the referendum, verifying of compliance with the provisions of the *Referendum Act* by regional referendum commissions and considering complaints about their activities, providing Circuit Electoral Commissions with ballot papers and determining the results of voting and their transfer to the National Electoral Commission.

Circuit Referendum Commissions are appointed by the commune head (mayor, president of the city) out of the persons entitled to participate in the referendum, permanently residing in the given commune, composed of: 4–8 of persons in the event of one-day voting, and 6–10 in the case of two-day voting. In both

²⁷ Jabłoński M., Referendum ogólnokrajowe. Wybrane zagadnienia, [National Referendum. Selected Issues] *Publ. by “Palestra”*, 2003, issues 5–6. — P. 12–13.

²⁸ Garlicki L., Uwagi do art. 125 [Comments on Article 125], (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitution of the Republic of Poland. Commentary], *Publ. by Wyd. Sejmowe*, Warszawa, 2001. — P. 8.

²⁹ Uziębło P., Zarządzanie referendum ogólnokrajowego na wniosek

grupy wyborców [Ordering National Referendum, at Request of Voters’ Group], (in:) *Referendum ogólnokrajowe w Polsce. Wybrane zagadnienia* [National Referendum in Poland. Selected issues]. *Publ. by the Gdańsk University*, Gdańsk, 2016. — P. 35.

³⁰ Koziełło T., Ogólnokrajowa obywatelska inicjatywa referendalna w Polsce, [National Civic Referendum Initiative in Poland], *“Polityka i Społeczeństwo”*, 2010, issue 7. — P. 113.

³¹ Consolidated text *Journal of Laws* of 2018, item 754, as amended.

³¹ Grabowska S., Inicjatywa ludowa w sprawie przeprowadzenia ogólnokrajowego referendum

situations, one person indicated by the executive body of the commune is additionally appointed to be in the composition of the Circuit Commission: in relation to permanent voting stations out of local government employees, and in the case of separate stations established in hospitals, social welfare homes, prisons, pre-trial detention centres and student hostels — out of the employees of these institutions. The circuit commissions are responsible for conducting the voting, ensuring compliance with the provisions of the *Act on the Referendum* at the time and place of the voting, determining the results of the voting in the station and making them public and passing the voting protocol to the competent electoral commissioner.

As already indicated above, the referendum on matters of particular interest to the State is ordered by the Sejm or by the President of the Republic of Poland, with the consent of the Senate.

It is worth noting that the Sejm, deciding on referring a given issue to a common vote, may act on its own initiative or at the request of the Council of Ministers, the Senate, and a group of at least 500,000 citizens. Importantly, the submission of a request by the authorized entity (specifying the proposals for questions or variants of the solution in the case considered in a referendum) does not mean — contrary to the situation in the case of a constitutional referendum — the obligation to take account of it³¹. In the event of rejection of the request for a national referendum by the Sejm, the Speaker of the Chamber is obliged to inform the proposer of that fact. It should also be emphasized that the request for reference to a referendum of a specific matter submitted by citizens cannot concern matters related to State defence, amnesty, and State income and expenses, in particular taxes and other public levies³² (for the detailed

procedure concerning the request of a group of citizens to conduct a national referendum³³).

In the case of a referendum ordered by the President of the RP, the Head of the State presents the Senate with questions or solution options and the date of its implementation³⁴, and the second Chamber of the Parliament adopts a resolution to vote or denies it within 14 days since the date of submitting the draft decision by the President of the RP³⁵.

Both in the case of a referendum ordered by the Sejm and a vote conducted on the initiative of the Head of the State, the resolution or decision in the case must contain: the legal grounds for a referendum, proposals for questions or solution options, the voting date and a calendar of activities related to the referendum³⁶. In accordance with the provision of Art. 65 para. 4 of the Act of 14 March 2003, the referendum is carried out no later than 90 days from the announcement of the resolution of the Sejm of the RP or the decision of the President of the RP. As already indicated, the result of the referendum on matters of special importance to the State is binding if more than half of those entitled to vote took part in it. The conclusive nature of the plebiscite is something different and it occurs if most of the answers to the question are given in a valid way in favour or against it, or if one of the proposed variants obtains the largest number of valid votes³⁷. The binding result of the referendum imposes on the State authorities the obligation to implement it immediately by issuing the necessary normative acts or through other actions, no later than within 60 days from the date of announcement of the Supreme Court's resolution stating the validity of the referendum in the Journal of Laws of the RP. It is pointed out that this obligation rests, in particular, on the authorities whose

nokrajowego referendum wpływającego na ustawodawstwo (na przykładzie uregulowań szwajcarskich, włoskich i polskich [The People's Initiative for a National Referendum Affecting Legislation (Examples of the Swiss, Italian and Polish Regulations)], *Annales Universitatis Mariae Curie-Skłodowska*, 2003/2004, issue 50. — P. 72; Winczorek P., Kilka uwag o polskich referendach [Some Remarks on the Polish Referenda], *"Ruch Prawniczy, Ekonomiczny i Socjologiczny"* Year LXXVI, journals 2 — 2014. — P. 151.

³² Grabowska S., Inicjatywa ludowa w sprawie przeprowadzenia ogólnokrajowego referendum wpływającego na ustawodawstwo (na przykładzie uregulowań szwajcarskich, włoskich i polskich [The People's Initiative for a National Referendum Affecting Legislation (Examples of the Swiss, Italian and Polish Regulations)], *Annales Universitatis Mariae Curie-Skłodowska*, 2003/2004, issue 50. — P. 53.

³³ Mordwiłko J., W sprawie trybu postępowania Sejmu z wnioskiem grupy obywateli o przeprowadzenie referendum ogólnokrajowego [On the Procedure of the Sejm with the Request by a Group of Citizens to Hold a National Referendum], *"Biuletyn EiOP"*, 2000, issue 1. — P. 94.

³⁴ Garlicki L., Uwagi do art. 125 [Comments on Article 125], (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitution of the Republic of Poland. Commentary], *Publ. by Wyd. Sejmowe*, Warszawa, 2001. — P. 8.

³⁵ Rytel-Warzocho A., Zarządzanie referendum ogólnokrajowego przez Prezydenta RP [Ordering National Referendum by the President of the Republic of Poland], (in:) *Referendum ogólnokrajowe w Polsce. Wybrane zagadnienia* [National Referendum in Poland. Selected Issues], *Publ. by the Gdańsk University*, 2016. — P. 26.

³⁶ Wrzałik M., Zarządzenie referendum ogólnokrajowego przez Prezydenta RP w sprawach o szczególnym znaczeniu dla państwa (wybrane problemy) [Ordering a National Referendum by the President of the Republic of Poland on Matters of Special Importance to the State (Selected Problems)], *"Przegląd Prawa Konstytucyjnego"*, 2017, issue 4. — P. 35.

³⁷ Winczorek P., Kilka uwag o polskich referendach [Some Remarks on the Polish Referenda], *"Ruch Prawniczy, Ekonomiczny i Socjologiczny"* Year LXXVI, journals 2 — 2014. — P. 153.

constitutional tasks and competences are to take a given category of cases³⁸. It should be emphasized that the legal consequences are not foreseen for failing to comply with the above-mentioned obligation: in the science of constitutional law a view is expressed that enforcing the responsibility for failure to implement the binding result of the referendum is possible only by voters in the course of subsequent elections; in respect to the President also in the form of the implementation of constitutional responsibility³⁹, which — bearing in mind both the too general definition of the obligation to implement the binding result of the referendum⁴⁰, and the shape of the Polish model of proceedings in the matter of constitutional torts — is not very likely.

Differences related to the procedure of holding a referendum on granting consent for the ratification of an international agreement, referred to in Art. 90 para. 3 of the Constitution of the RP, is regulated by Chapter 9 of the *Referendum Act*⁴¹ (the differences accompanying the constitutional referendum have already been discussed in the earlier part of this article). Signing of an international agreement under which the Republic of Poland has given the international organization or the international authority the competence of State authorities in certain matters is announced to the Speaker of the Sejm by the Prime Minister. The consent to the ratification of such an agreement may be expressed in a parliamentary manner, by the way of a statute passed in both Chambers by a majority of 2/3 of votes, in the presence of at least half of the statutory number of deputies and senators or by a national referendum. The mode of consent is determined by the Sejm by a resolution passed by the absolute majority⁴². The entities authorized to order a referendum as provided by the statute are the Sejm and the President of the RP, with the consent of the Senate. If the ordering body of the

popular vote is the Sejm, it should be noted that the Chamber is obliged to adopt a separate resolution in this matter — the activities related to determining the mode of consenting to the ratification of an international agreement are insufficient⁴³. It is worth noting that, unlike in the case of a referendum on matters of special significance for the State under Art. 125 of the Constitution, the Sejm acts on the matter only on its own initiative, and requests from other entities to hold a referendum are inadmissible. Regarding the referendum under Art. 90 para. 3 of the Constitution, it is also required that more than half of those entitled to vote participate in it as a condition of its binding nature, with which the consequences of the vote are connected. If the result of the referendum is binding, and the majority of valid votes were cast for the consent, the President of the RP obtains legitimacy to ratify an international agreement⁴⁴; the predominance of negative votes with the binding nature of referendum excludes the possibility for the Head of State to undertake efforts to bind the Republic of Poland by the provisions of the agreement⁴⁵. The situation is different in the case of a non-binding result of the vote: pursuant to Art. 75 of the Act of 14 March 2003, if the required turnout is not obtained, the Sejm may again adopt a resolution regarding the mode of consent to the ratification of a specific type of an international agreement concluded by the Polish State.

The expenses related to the organization and conduct of a national referendum are paid from the State budget, as part of the specific reserves. They include in particular costs related to the implementation of tasks by the National Electoral Commission, the National Electoral Office, electoral commissioners, and Circuit Electoral Commissions, as well as funds spent in connection with the performance of duties by the government administration authorities and

³⁸ Winczorek P., Kilka uwag o polskich referendach [Some Remarks on the Polish Referenda], *“Ruch Prawniczy, Ekonomiczny i Socjologiczny”* Year LXXVI, journals 2 — 2014. — P. 154.

³⁹ Skotnicki K., Opinia dotycząca wniosku obywatelskiego o podjęcie przez Sejm uchwały w sprawie przeprowadzenia referendum ogólnokrajowego w sprawie zmian w ustroju Rzeczypospolitej Polskiej [Opinion on a Citizen's Request to the Sejm to Adopt a Resolution on Holding a National Referendum on Changes in the Political System of the Republic of Poland], *“Przegląd Sejmowy”*, 2005, issue 3. — P. 117.

⁴⁰ Rytel-Warzocha A., Zarządzanie referendum ogólnokrajowego przez Prezydenta RP [Ordering National Referendum by the President of the Republic of Poland], (in:) *Referendum ogólnokrajowe w Polsce. Wybrane zagadnienia* [National Referendum in Poland. Selected Issues], *Publ. by the Gdańsk University*, 2016. — P. 28.

⁴¹ Garlicki L., Uwagi do art. 125 [Comments on Article 125], (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitu-

tion of the Republic of Poland. Commentary], *Publ. by Wyd. Sejmowe*, Warszawa, 2001. — P. 14.

⁴² Piąt M., Referendum ogólnokrajowe w procesie integracji Polski z Unią Europejską [National Referendum in the Integration Process of Poland with the European Union], *“Studia Iuridica Lublinensia”*, 2004, vol. 3. — P. 153.

⁴³ Dubicka A., Uwagi o ustawie z dnia 14 marca 2003 r. o referendum ogólnokrajowym w świetle prac nad jej projektem [Comments on the Act of 14 March 2003 on the National Referendum in the Light of Work on its Draft], *“Acta Universitatis Wratislaviensis”, Przegląd Prawa i Administracji*, 2004, issue 63. — P. 84

⁴⁴ Piąt M., Referendum ogólnokrajowe w procesie integracji Polski z Unią Europejską [National Referendum in the Integration Process of Poland with the European Union], *“Studia Iuridica Lublinensia”*, 2004, vol. 3. — P. 160.

⁴⁵ Dubicka A., Uwagi o ustawie z dnia 14 marca 2003 r. o referendum ogólnokrajowym w świetle prac nad jej projektem [Comments on

their central offices, as well as tasks commissioned to be performed by local government units.

Against the validity of a national referendum, a protest may be submitted to the Supreme Court for violating the provisions of the Referendum Act regarding voting, establishing the results of voting, or determining the results of a referendum, or for committing a crime against a referendum⁴⁶. The right to challenge the legitimacy of a referendum depends on the basis of the protest: if it is based on the charge of committing a crime or violating the provisions of the statute by the National Electoral Commission (Państwowa Komisja Wyborcza — PKW), the right to file a complaint is vested in everyone entitled to participate in the voting, and in the case of a protest based on violation of the provisions of the *Referendum Act* regarding voting or establishing results of voting in a circuit or by an election commissioner, the right to challenge the validity of a referendum is vested in a person included on the list of voters in a specific circuit or in the area of activity of a given electoral commissioner. The protest is filed in writing within 7 days from the date of the announcement of the referendum result by the PKW in the Journal of Laws, and the Supreme Court, after examining complaints, acting as the entire Extraordinary Control and Public Affairs Chamber, passes a resolution regarding the validity of the referendum no later than 60 days from the announcement of the result of the referendum (the confirmation of the referendum validity is a necessary element of the referendum procedure, regardless of the fact whether the plebiscite was protested or not⁴⁷). The resolution is immediately presented to the President of the RP, the Speakers of the Sejm and the Senate, the Prime Minister, and published in the Official Journal of the RP, and sent to the National Electoral Commission. If the Supreme Court annuls the vote in a circuit or circuits, and if the annulment does not affect the result of the referendum, the PKW revises the results of the referendum by the way of a resolution. If it is determined that the violation of law raised in the protests influenced the final result of the plebiscite, the Supreme Court orders re-voting in a specific circuit or circuits, or indicates an action

the Act of 14 March 2003 on the National Referendum in the Light of Work on its Draft], *Acta Universitatis Wratislaviensis*, Przegląd Prawa i Administracji, 2004, issue 63. — P. 95.

⁴⁶ Див.: Jachimowicz M., Przestępstwa z ustawy o referendum ogólnokrajowym [Offences under the Act on the National Referendum], *Przegląd Sejmowy*, 2008, issue 1. — P. 65; Wrzalik M., Zarządzenie referendum ogólnokrajowego przez Prezydenta RP w sprawie o szczególnym znaczeniu dla państwa (wybrane problemy) [Ordering a National Referendum by the President of the Republic of Po-

land on Matters of Special Importance to the State (Selected Problems)], *Przegląd Prawa Konstytucyjnego*, 2017, issue 4. — P. 39.

from which the referendum proceedings should be repeated. After carrying out the prescribed actions, the PKW determines the adjusted results of the voting and the result of the referendum by the way of a resolution to be announced in the Journal of Laws of the RP.

During the period of the Constitution of the RP of 2 April 1997, two national referenda took place. The first of them, concerning the Nation's approval of the ratification of the *Treaty on the Accession of the Republic of Poland to the European Union*, was ordered on 8 June 2003. Bearing in mind the problems of obtaining high attendance, characteristic of Polish elections and referenda, it was decided to vote within two days: on 7 and 8 June 2003. The accession referendum was attended by 59% of those entitled to vote, which determined its binding nature. The clear majority (77%) was in favour of the accession of Poland to the EU, which allowed the President of the RP to hold a solemn ratification of the Accession Treaty on 23 July 2003.

The second and last referendum to date (2018), ordered by the President of the RP on 17 June 2015, took place on 6 September 2015. The voters answered 3 questions: 1) *Are you in favour of the introduction of single-member constituencies in elections to the Sejm of the RP?*; 2) *Are you in favour of maintaining the current method of financing political parties from the State budget?* 3) *Are you in favour of introducing the general rule of resolving doubts about the interpretation of tax law in favour of the taxpayer?* With respect to the first and last questions, the answers "in favour" were clearly predominant: 78.75% and 94.52% of the votes, respectively, and the second question was answered negatively by the participants of the referendum (82.63% of the votes). Despite the unambiguous position of voters in cases referred to a referendum, its results could not be considered binding due to a failure to achieve the required turnout — 7.8% of those entitled to vote took part in the plebiscite, which was the worst result in all European popular votes conducted after the Second World War world⁴⁸.

land on Matters of Special Importance to the State (Selected Problems)], *Przegląd Prawa Konstytucyjnego*, 2017, issue 4. — P. 39.

⁴⁷ Garlicki L., Uwagi do art. 125 [Comments on Article 125], (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitution of the Republic of Poland. Commentary], *Publ. by Wyd. Sejmowe*, Warszawa, 2001. — P. 11.

⁴⁸ Osiecki G., Potocki M., Referendum przeszło do historii [Referendum Passed into History]. *"Dziennik Gazeta Prawna"*, 8 September 2015. — P. A4.

For the proper record, it should be noted that under the Polish Constitution of 1997 other referenda were also planned, mainly postulated by citizens, but they eventually did not take place (only in the years 2007–2012, 9 attempts were made; some of them torpedoed by the Sejm, without adopting resolutions regarding the referendum, and some by the Senate which did not consent to the referendum initiative of the President of the RP. See more on this topic⁴⁹). The following concepts can be given as an example: in 2005, a referendum on the EU Constitution was to be held, but after the negative results of the referenda in France and The Netherlands, the idea of carrying it out was abandoned. Two initiatives of the President of the RP to hold a referendum turned out to be ineffective: the draft resolution on ordering a national referendum regarding the retirement age, functioning of state forests and the compulsory school age of six-year-old children, submitted by the Head of State to the Senate on 17 August 2015, was rejected by the second Chamber on 4 September 2015⁵⁰, while the initiative to conduct a constitutional referendum on 10-11 November this year, including 10 questions of a political nature, did not obtain the Senate's consent during the vote on 25 July 2018.

PROPOSALS FOR AMENDMENTS TO THE REFERENDUM ACT

The above-described, concise discussion of the provisions of the *2003 National Referendum Act* allows to formulate a conclusion that most of its provisions were constructed in a transparent manner that would not give rise to any doubts in interpretation. Nonetheless, there are some provisions, whose current wording requires a change towards unification with the provisions of the *Electoral Code* and some regulations that may, in its current wording, imply difficulties in their practical application.

First, one should signal the need to harmonize

voting times in the referendum with the voting times for parliamentary, presidential, local government and European Parliament elections⁵¹. As already indicated, referendum voting takes place from 6.00 a.m. to 10.00 p.m. in the case of the one-day plebiscite, and from 6.00 a.m. to 8.00 p.m. in the case of voting carried out within 2 days. Regarding the electoral proceedings, the legislator established voting hours from 7.00 a.m. to 9.00 p.m. (Art. 39 § 2 of the *Electoral Code*). In addition, it must be emphasized that in the case of a one-day referendum, the election silence lasts until 10.00 p.m., and in the elections, it ends at 9.00 p.m., if none of the circuit electoral commissions extends the voting due to the occurrence of extraordinary events. This may cause a collision in the event of ordering elections and a referendum on the same day. Similar complications related to voting times, participation in the voting and the referendum and electoral silence would result in a two-day voting in the referendum and simultaneous elections ordered for the second of these days.

The issue of the electoral register used in the referendum carried out together with the elections also requires attention. According to the current wording of Art. 90 section 1 point 1 of the *Referendum Act*, in the case discussed, electoral registers drawn up for the needs of specific elections are used, while in connection with the suggestions from electoral authorities⁵² that in the event of simultaneous holding of elections and referendum it would be necessary to require the participants to take separate confirmation of receipt of the electoral and referendum card, it may be considered to change the said provision in the direction of granting the competent minister the right to determine a new pattern of the electoral register.

It also seems necessary to harmonize the deadlines for public disclosure of information on the numbers and boundaries of voting circuits and on the seats of Circuit Electoral Commissions in permanent and separate circuits with the provisions of the

⁴⁹ Winczorek P., Kilka uwag o polskich referendach [Some Remarks on the Polish Referenda], *“Ruch Prawniczy, Ekonomiczny i Socjologiczny”* Year LXXVI, journals 2 — 2014. — P. 144; Zarys instytucji referendum jako formy demokracji bezpośredniej. Referenda ogólnokrajowe w Polsce. Opracowanie tematyczne OT-620 [Outline of the Institution of the Referendum as a Form of Direct Democracy. National Referenda in Poland. Thematic Studies OT-620], the Office of the Senate, May 2013. — P. 13.

⁵⁰ Leszczyńska K., Instytucja referendum ogólnokrajowego zarządzanego przez Prezydenta RP za zgodą Senatu [Institution of the National Referendum Ordered by the President of the Republic of Poland with the Consent of the Senate], *“Studia Politologiczne”*,

2016, issue 42. — P. 85.

⁵¹ National Electoral Commission, Informacja o realizacji przepisów Kodeksu wyborczego oraz propozycje ich zmiany [Information on the Implementation of the Electoral Code and the Proposals of Amendments], ZPOW-430-8/15, Warszawa, 2016. — P. 19

⁵¹ National Electoral Commission, Informacja o realizacji przepisów Kodeksu wyborczego oraz propozycje ich zmiany [Information on the Implementation of the Electoral Code and the Proposals of Amendments], ZPOW-430-8/15, Warszawa, 2016. — P. 20.

⁵² National Electoral Commission, Informacja o realizacji przepisów Kodeksu wyborczego oraz propozycje ich zmiany [Information on the Implementation of the Electoral Code and the Proposals of Amendments], ZPOW-430-8/15, Warszawa, 2016. — P. 21.

Electoral Code. Bearing in mind the current wording of Art. 6 para. 5 of the Act of 14 March 2003, such information is provided no later than on the 40th day before the referendum, while pursuant to the instruction of Art. 6 para. 3 of the *Referendum Act*, the provisions of the *Electoral Code* are applicable to separate voting circuits created in hospitals, social welfare homes, prisons, and pre-trial detention centres. According to the content of the Art. 12 section 10 of the *Code*, the creation of separate circuits takes place no later than on the 35th day before the election day. Bearing in mind the above, it should be noted that in the current legal status, the *Referendum Act* requires public information on the boundaries and numbers of voting circuits and the seats of the Circuit Electoral Commissions no later than 5 days before the deadline for formation of separate circuits in the referendum. It would also be advisable to standardize the naming of units in which separate circuits for the needs of a referendum are created, with the names resulting from the provisions of the *Electoral Code* (Art. 6 para.1 point 2 of the *Referendum Act* in connection with Art. 10 § 4 of the *EC*).

Attention should also be paid to the need to supplement the provisions of the *Referendum Act* with the provisions regarding voting by proxy and correspondence voting. Although Art. 5 para. 5 of the *Referendum Act* requires that the provisions of the *Electoral Code* should be applied to the voting procedure, it should be pointed out that, firstly, Art. 5 para. 1 of the *Referendum Act* directly expresses only the possibility of personal voting (the Act does not make any reservations following Art. 38 § 1 of the *Electoral Code*), and secondly, there are no references to specific provisions of the Code, regulating correspondence voting and voting by proxy and implementing acts, including templates of documents related to this⁵³.

Consideration should also be given to extending the list of referendum provisions with a regulation concerning the transfer of information on the date of the referendum, the hours, and the method of voting to those entitled to participate in the referendum in permanent circuits. A similar provision of the *Electoral Code* (Art. 37d) has been in force since 1 January 2016, ordering the election commissioner to provide voters with this information in the form of a non-addressed print, placed in post boxes.

⁵³ National Electoral Commission, Informacja o realizacji przepisów Kodeksu wyborczego oraz propozycje ich zmiany [Information on the Implementation of the Electoral Code and the Proposals of Amendments], ZPOW-430-8/15, Warszawa, 2016. — P. 22.

At the end of the comments on the desired directions of the amendments to the *Referendum Act*, it should be suggested clarifying the provisions defining the legal grounds for filing protests against the validity of the referendum. The current legal status is difficult to be considered as unambiguous and understandable for the participants of the voting, because by the disposition of Art. 34 para. 2, the Act refers to the proper application of the provisions of the *Electoral Code* in the issues pertaining to the conditions and procedure for filing a protest and its consideration, and the rules of adopting a resolution in this matter by the Supreme Court, without indicating, however, which provisions are to be applied in relation to which voting (26, p. 22). Bearing in mind this lack, one should either apply explicitly to the provisions governing the procedure for challenging the validity of a particular electoral proceeding (parliamentary and presidential elections) or for a detailed regulation of the rules for filing referendum protests in the Act of 14 March 2003.

CONCLUSIONS

The principle of the Sovereignty of the Nation is expressed (Art. 4 para. 2), expressed in Art. 4 para. 1 of the Constitution of the RP of 2 April 1997, is realized in the exercise of the superior authority powers by representatives or directly. Bearing in mind that the detailed systematics of the Basic Law is not accidental and is based on a specific constitutional concept, the decisive importance should be attributed to representative democracy, in which the Nation through the free elections decides on the composition of representative bodies expressing its will. Nevertheless, the fullness of the democratic constitutional system is expressed in granting the Sovereign the opportunity to speak directly on issues of key importance to it — in modern democracies this goal is to be served by the institution of referendum. Despite the reservations expressed in the doctrine about the people's vote, highlighting its potentially anti-parliamentary character, the ability to manipulate the will of voters through unreliable wording of referendum questions, decline in interest in the referendum and lowering its rank where the institution is used too often, or high costs of organizing the undertaking, often without binding results, it should be pointed out with force that the incorporation of the referendum institution into the content of con-

temporary constitutions should be assessed unambiguously positively. The direct participation of the Sovereign in the decision taking of the essential political and social importance is the most complete manifestation of democracy, an important means of constructing civil society and a complementary measure to the representative government. The referendum has also an important educational function by activating society politically and making citizens aware of a possible direct impact on the course of public affairs. In order to make possible the abovementioned benefits, stemming from complementing representative democracy with instruments of direct participation of the Sovereign in the exercise of power, public authorities deciding to reach for people's voting must demonstrate their maturity and prudence in its ordering. Bearing in mind the Polish experience so far in organizing a national referendum, it should be stated that this institution does not enjoy special social recognition because the authorities use a referendum opportunistically and for purely political reasons, not

motivated by the needs signalled by citizens. Such actions, instead of making the conviction in the society of the real meaning of the will expressed by the Sovereign in the voting, lead to the depreciation of the referendum institution and the decline in interest in this form of direct democracy. In addition, the unsatisfactory state of referendum legal regulation in the Polish constitutional order should be pointed out: the lack of an effective referendum initiative by a group of at least 500,000 citizens, dependent on the decision of the Sejm, is accompanied by the lack of mandatory referendums at the national level, excluding the Sovereign from the process of initiating a constitutional referendum and the deficiencies of the *Referendum Act* indicated in this article as suggestions for amendments. Without the legislative interference in the discussed issues and the use of a referendum only in cases of real importance for citizens, it will be difficult to change the social perception of the institution, which in its founding is supposed to serve the Sovereign.

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