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## National referendum as a tool for the opposition to influence the legislative process

STUDIA I ANALIZY

**Keywords:** national referendum, political opposition, legislative process

**Abstract:** *The article is an analysis of the use of the institution of national referendum in Poland by the opposition to influence the legislative process. It examines two hypotheses: first, the opposition, by initiating the referendum process, intends to draw the attention of the state authorities to certain public issues that are important from its point of view; second, the greater the public's support for these issues, the greater the chance for those in power to include the opposition's demands in their legislation.*

### Introduction

A referendum is a basic form of direct democracy, the essence of which is the personal participation of entitled citizens in the performance of their public functions. They can directly decide on important public matters or participate in such decisions<sup>1</sup>. A referendum is char-

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<sup>1</sup> S. Grabowska, *Formy demokracji bezpośredniej w wybranych państwach europejskich*, Rzeszów 2009, p. 9; J. Kuciński, *Z zagadnień współczesnej demokracji politycznej*, Warszawa 2005, p. 182; M. Podolak, *Instytucja referendum w wybranych państwach Europy Środkowej i Wschodniej (1989–2012)*, Lublin 2014, p. 45; L. Rajca, *Demokracja*, Toruń 2007, p. 53.

acterised by the possibility of entitled citizens to express their views through a vote on important issues of a national or local nature. In this way, decision-makers have the opportunity to make their views known to the public on a given issue and, depending on the type of referendum, must or can comply with the outcome of the vote<sup>2</sup>.

Referendum can be divided into several types. According to the subject of vote, a referendum can be: constitutional (concerns the adoption or amendment of the constitution), legislative (concerns the approval of a law), administrative (concerns issues related to the administrative division of the state) and financial (concerns the issues of self-taxation of the society). The criterion for the voting requirement allows for referendums to be divided into obligatory (they are the only legal way of adopting a given decision) and optional (they are one of the possible ways of making a decision). According to the criterion concerning the timing of when a referendum will be held, they are divided into: ratifying (acceptance or rejection of a normative act), preliminary (examination of the position of the wider society on a given solution before a draft normative act is submitted or enacted) and repealing (repeal of an existing legal act). According to the criterion of binding force, referenda are consultative (citizens express their position on a given problem, but the final decision belongs to the competent public authority) and constituting (the decision taken by the voters is binding for public authorities). According to the territorial scope of a referendum, it can be divided into national (carried out on the territory of the whole country) and local (carried out on a specific area of the country). According to the criterion of the initiator of the referendum, it can be hegemonic (initiated by the ruling party) and anti-hegemonic (initiated by the opposition)<sup>3</sup>.

The aim of the article is to analyze the role of the national referendum as a tool that can be employed by the political opposition to influence the legislative process. Two research hypotheses have been put forward: 1) the opposition, by initiating the referendum process, intends to draw the attention of the state authorities to certain public matters

<sup>2</sup> M. Bankowicz, *Demokracja. Zasady, procedury, instytucje*, Kraków 2006, p. 185; S. Grabowska, *Formy...*, p. 45; Ł. Jakubiak, *Referendum jako narzędzie polityki. Francuskie doświadczenia ustrojowe*, Kraków 2012, p. 11; M. Marczevska-Rytko, *Demokracja bezpośrednia w teorii i praktyce politycznej*, Lublin 2001, pp. 110–111; M. Podolak, *Instytucja...*, p. 21; E. Zieliński, I. Bokszczanin, J. Zieliński, *Referendum w państwach Europy*, Warszawa 2003, p. 13.

<sup>3</sup> S. Grabowska, *Formy...*, pp. 50–52; A.K. Piasecki, *Referenda w III RP*, Warszawa 2005, pp. 7–8; M. Rachwał, *Demokracja bezpośrednia w procesie kształtowania się społeczeństwa obywatelskiego w Polsce*, Warszawa 2010, pp. 79–83; E. Zieliński, I. Bokszczanin, J. Zieliński, *Referendum...*, pp. 33–37.

that are important from its point of view; 2) the greater the support that is shown by the public for these matters, the greater the chance for the rulers to include the opposition's demands in the legislation. These hypotheses will be verified by reference to the following research questions: 1) What possibilities does the opposition have when applying for a referendum? 2) How many requests for holding a referendum were submitted by the opposition and which of them were successful in the form of a general vote? 3) What influence did the referendum process have on shaping Polish legislation?

## **The legal basis of referendum management**

The institution of referendum was introduced on the 6<sup>th</sup> of May 1987 by an amendment to the Constitution of the People's Republic of Poland, and by the Act on public consultation and referendum. According to the Act, matters defining the basic directions of the state's activity were to be subject to a general vote<sup>4</sup>. In the Constitutional Act of the 17<sup>th</sup> of October 1992 the possibility of holding a referendum of particular importance for the state was added<sup>5</sup>. The Act on the preparation and enactment of the Constitution of the 23<sup>rd</sup> of April 1992 introduced an obligatory referendum, approving the Constitution of the Republic of Poland, passed by the National Assembly. Both types of referendum were included in the Act on referendum of the 29<sup>th</sup> of June 1995<sup>6</sup>. The Constitution of the Republic of Poland of the 2<sup>nd</sup> of April 1997 introduced three types of referendums: 1) of particular importance to the state, 2) the consent for the ratification of an international agreement in which the Polish state may delegate to an international organisation or international body the competence of organs of state authority in certain matters, and 3) on the change of chapters I, II and XII of the Polish

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<sup>4</sup> *Ustawa z 6 V 1987 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej*, Dziennik Ustaw (next: Dz.U.) 1987, No 14, item 82; *Ustawa z 6 V 1987 r. o konsultacjach społecznych i referendum*, Dz.U. 1987, No 14, item 83; *Uchwała Sejmu Polskiej Rzeczypospolitej Ludowej z 25 IX 1987 r. zmieniająca Regulamin Sejmu Polskiej Rzeczypospolitej Ludowej*, Monitor Polski (next: M.P.), No 29, item 225.

<sup>5</sup> *Ustawa Konstytucyjna z 17 X 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym*, Dz.U. 1992, No 84, item 426.

<sup>6</sup> *Ustawa Konstytucyjna z 23 IV 1992 r. o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej*, Dz.U. 1992, No 67, item 336; *Ustawa z 29 VI 1995 r. o referendum*, Dz.U. 1995, No 99, item 487.

Constitution. This division was maintained in the Act on referendum of the 29<sup>th</sup> of March 2003<sup>7</sup>.

According to the 1987 Act and the Rules of Procedure of the Sejm of the 25<sup>th</sup> of August 1987, the decision to hold a referendum should be supported by a majority of at least 2/3 of MP's in the Sejm, with the participation of at least half of the statutory number of MPs. The right to submit a referendum motion was vested in the Council of State, the Council of Ministers, the Council of the National Patriotic Renaissance Movement (PRON), the Presidium of the Sejm, the Sejm committee and a group of at least 15 MPs<sup>8</sup>. In 1989, with a constitutional amendment, the powers of the Council of State were taken over by the President of the People's Republic of Poland (since the 31 of December 1989 – the President of the Republic of Poland)<sup>9</sup>, the PRON also ceased to exist. The law of the 17<sup>th</sup> of October 1992 gave two entities the right to order a referendum of particular importance for the state. These are: The Sejm, by way of a resolution adopted by an absolute majority of votes and the President of the Republic of Poland, with the consent of the Senate, adopted by an absolute majority of votes. These entities were also listed in the 1995 Act. Applicants could be: The President of the Republic of Poland, the Presidium of the Sejm, a Sejm committee, a group of at least 15 MPs, the Senate, the Council of Ministers and a group of at least 500,000 citizens who have the right to elect to the Sejm, with the proviso that a citizen's referenda proposal may not concern the issues of expenditure, income and defence of the state and amnesty<sup>10</sup>. The Constitution and the Act of 2003 maintained the number of entities entitled to submit referendum motions on matters of particular importance to the state, but the Sejm's rules of procedure of the 14<sup>th</sup> of February 2002 increased the minimum number of MPs to 69. The referendum on the ratification of the international agreement can be ordered by the Parliament: The Sejm, at the request of the Presidium of the Sejm, a Sejm committee and a group of at least 69 MPs, or the President of the Republic of Poland, with the consent of the Senate. A referendum on the amendment of Chapters I, II and XII of the Constitution shall be ordered by the Speaker

<sup>7</sup> *Konstytucja Rzeczypospolitej Polskiej*, Warszawa 1997, pp. 17, 23–24, 45; *Ustawa z 14 III 2003 r. o referendum ogólnokrajowym*, Dz.U. 2003, No 57, item 507.

<sup>8</sup> *Ustawa z 6 V 1987 r. o konsultacjach...*; *Uchwała Sejmu Polskiej Rzeczypospolitej Ludowej z 25 IX 1987 r. zmieniająca Regulamin Sejmu Polskiej Rzeczypospolitej Ludowej*, Monitor Polski (dalej: M.P.) 1987, No 29, item 225.

<sup>9</sup> *Ustawa z 7 IV 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej*, Dz.U. 1989, No 19, item 101.

<sup>10</sup> *Ustawa Konstytucyjna z 17 X 1992 r....; Ustawa z 29 VI 1995 r....*

of the Sejm at the request of the President, the Senate and a group of at least 1/5 of the statutory number of Members (i.e. 92)<sup>11</sup>.

The law in Poland gives the opposition several possibilities to initiate the referendum process. Firstly, it is the right for a group of MPs to submit motions. Initially, the number of applicants was 15, which meant that each parliamentary group could submit its own application for consideration by the Sejm. As a result, applications were submitted by a number of small clubs from the opposition, such as the Polish People's Party (PSL) in the first and third term, the Labour Union (UP) in the second term and the League of Polish Families (LPR) in the fourth term. Later on, this possibility was limited to larger clubs, such as Law and Justice (PiS) and Civic Platform (PO), as since 2005 only they have enough MPs to meet the minimum number of initiators criteria. Smaller clubs are forced to join together in a referendum coalition. In the case of a referendum on consent to amend three chapters of the Constitution, the 1997 Basic Law limited the possibility of the opposition by granting independence to large parliamentary clubs with at least 92 MPs or forcing smaller clubs to form into coalitions. The second possibility is to grant citizens the right to request a referendum. There is the requirement to collect at least half a million signatures in support of the request, but a well-functioning organisation can do this. So far, seven times citizens' motions to hold a general vote have been submitted<sup>12</sup>. These motions were initiated by parties (PSL, Democratic Left Alliance – SLD, LPR, PiS) and social organizations (Polish Teachers' Union, NSZZ "Solidarność"). This provides an opportunity for the non-parliamentary opposition to put forward their proposals to the public space. The third possibility is the president's powers in the situation where the government and presidency are held by opposing camps. The opposition, having a representative in the person of the head of state, may force the rulers to take an interest in certain problems. Such a situation took place three times when Presidents submitted their requests for a referendum to the Senate, where the majority of their opponents were: in 1995 Lech Wałęsa (SLD-PSL governments), in 2008 Lech Kaczyński and in 2015 Andrzej Duda (PO-PSL governments)<sup>13</sup>.

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<sup>11</sup> *Konstytucja...*, pp. 17, 23–24, 45; *Ustawa z 14 III 2003 r...*; *Uchwała Sejmu Rzeczypospolitej Polskiej z 14 II 2002 r. w sprawie zmiany Regulaminu Sejmu Rzeczypospolitej Polskiej*, M.P. 2002, No 9, item 162.

<sup>12</sup> T. Koziello, *Obywatelska inicjatywa referendalna w III Rzeczypospolitej na poziomie ogólnokrajowym*, «Roczniki Nauk Społecznych» 2019, nr 1, pp. 93–111.

<sup>13</sup> Data based on information obtained from the Sejm and Senate.

The national referendum in Poland is optional. This means that there are no requirements for it to be held in order to approve a state decision<sup>14</sup>. The initiators of a referendum on matters of particular importance for the state or a referendum on consent for ratification of an international agreement must take into account that their application can be rejected by the Sejm or Senate, despite it meeting the formal requirements. Only in the case of a referendum on the approval of an amendment to the three chapters of the Constitution, is the Speaker of the Sejm obliged to order it if appropriate requests are received. Each referendum proposal should contain proposals for questions or variants of solutions on the matter put to a vote and indicate the person who represents it before the Sejm or Senate. A list of eligible persons supporting this initiative must also be attached to the parliamentary and citizens' motion. The discussion on the motion takes place at meetings of the Sejm and Senate and in relevant committees, which prepare a draft resolution to hold a referendum or issue an opinion of consent to the draft resolution to hold a referendum. If a resolution on holding a referendum is passed by the Sejm or if the Senate agrees to hold a referendum, the Speaker of the Sejm or the President of the Republic of Poland shall order it within 90 days from the date of the relevant decision. In the case of a constitutional referendum, the Speaker of the Sejm shall order it within 60 days from the date of submission of the motion, provided that the motion is received within 45 days of the date on which the Senate passes a bill amending the Constitution<sup>15</sup>.

The option of holding a referendum is a restriction for the opposition, as the ruling majority can reject the proposal. Between 1989 and 2019, 36 referendum initiatives were submitted, of which only four ended with a popular vote – two referendums on enfranchisement (1996), an accession referendum (2003) and a presidential referendum (2015). The fifth referendum, constitutional (1997), was obligatory. The obligatory holding of a referendum approving changes in the constitution gives only limited opportunities for the opposition to influence the political process by appealing to the will of citizens. This is due to three reasons. Firstly, the need to gather an appropriate number of MPs. After 1997,

<sup>14</sup> S. Grabowska, *Formy...*, p. 74; M. Jabłoński, *Referendum ogólnokrajowe w polskim prawie konstytucyjnym*, Wrocław 2001, p. 16; J. Kuciński, *Demokracja przedstawicielska i bezpośrednia w Trzeciej Rzeczypospolitej*, Warszawa 2007, p. 234.

<sup>15</sup> *Ustawa z 14 III 2003 r. ...; Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z 3 X 2019 r. w sprawie ogłoszenia jednolitego tekstu uchwały Sejmu Rzeczypospolitej Polskiej – Regulamin Sejmu Rzeczypospolitej Polskiej*, M.P. 2019, item 1028; *Uchwała Senatu Rzeczypospolitej Polskiej z 23 XI 1990 r. – Regulamin Senatu*, M.P. 2018, item 846.

few opposition groups had the minimum number of MPs required by law to submit a motion. These were: the SLD, PO and PiS. Secondly, the short deadline for submitting a referendum request, during which – meaning that smaller clubs may not be able to reach an agreement to form a coalition for a referendum. Thirdly, the requirement for a prior amendment of the constitutional provisions contained in Chapters I, II and XII. So far, the provisions of the Basic Law have been amended only twice – in 2006 and 2009 – and only in the first case they concerned one of the three chapters mentioned<sup>16</sup>.

The legal grounds for holding a national referendum in Poland do not allow for the free use of this institution by political entities. The ruling groups are privileged because they have a majority in the Sejm and the Senate, so they can pass a resolution to hold a referendum if they consider it necessary. The opposition, on the other hand, can only initiate the referendum process if it collects the legally required 69 parliamentary signatures or 500 000 signatures of citizens, or has a representative in the position of President of the Republic of Poland. However, without the agreement of the ruling party, it may not be possible to bring its initiative to fruition because such a request will be rejected or ignored.

## **The use of the referendum by the opposition in practice**

Between 1989 and 2019, the opposition submitted 26 applications for national referendums, 16 of which were MPs' applications, seven – citizens' applications and three – presidential draft regulations<sup>17</sup>. Their subject matter covered such issues as: the issue of privatisation and reprivatisation; the political and territorial system of the state; attitudes towards abortion; the education system; the pension system; relations with the European Union. Among them, the initiative of President Lech Walesa, who succeeded in obtaining the Senate's consent to hold an enfranchisement referendum in 1996, was a success. In other cases, the applications were rejected by the Sejm and Senate (19), not considered by the Sejm (5) and withdrawn by the applicants (1). President Walesa's project included a question on giving universal enfranchisement to citizens. It was sent to the Senate at the beginning of November 1995, and the upper house, by the votes of the PSL and the opposition decided

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<sup>16</sup> Data based on information obtained from the Sejm and Senate.

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to agree to a referendum<sup>18</sup>. The President issued an order on the 19<sup>th</sup> of November 1995, setting the deadline for the vote to be held by the 18<sup>th</sup> of February 1996<sup>19</sup>. The approval of the PSL as co-ruler resulted from two reasons: 1) support of about half of the electorate for the idea of enfranchisement; 2) support of the PSL for direct democracy. In the vote, more than 96% of the voters answered the question in the affirmative, but the turnout was too low (32.4% against the required 50%) and this resulted in the results being non-binding for the government<sup>20</sup>. It is difficult to determine what impact L. Walesa's initiative had on the enfranchisement process, as he did not present any concrete proposals.

Statistics indicate that referenda in Poland are usually used by the opposition. The governing entities, having a majority in parliament, can create law in line with their political agenda and implement it using appropriate methods and means, citing the will of the voters who gave them legitimacy to exercise power. The opposition, deprived of the possibility of direct policy-making, considers a referendum to be an instrument of pressure on those in power to resolve certain problems which, in its view, the government ignores or through its inaction make worse. The appeal to the will of the citizens is intended to show the public that it is the initiators of the referendum that are the real representatives of the society, ready to listen to its decision and implement it. Each request is accompanied by a media campaign which shows the mistakes and negligence of the government and indicates new solutions or the need to reflect on certain issues, and that can put pressure on the ruling majority to officially take the side of the public by agreeing to hold a referendum. If an issue is important to the public, or the applicants make it important through a strong campaign, then there is the possibility that public pressure will allow some change in government policy in the direction proposed by the initiators of the referendum, even if the referendum process itself fails. In such a case, the position of the opposition as a representative of the citizens will be strengthened, which it can use in the next parliamentary election<sup>21</sup>.

<sup>18</sup> *Debate in Senate, meeting 59 in 17 November 1995*, <http://ww2.senat.pl/k3/dok/sten/059/59spr.pdf> (30.12.2019).

<sup>19</sup> *Zarządzenie Prezydenta Rzeczypospolitej Polskiej z 29 XI 1995 r. w sprawie przeprowadzenia referendum o powszechnym wwoławczeniu obywateli*, Dz.U. 1995, No 138, item 685.

<sup>20</sup> *Obwieszczenie Państwowej Komisji Wyborczej z 20 II 1996 r. o wynikach głosowania i wynikach referendum przeprowadzonych w dniu 18 II 1996 r.*, Dz.U. 1996, No 22, item 101.

<sup>21</sup> M. Bankowicz, *Demokracja...*, pp. 188–189; M. Jabłoński, *Referendum...*, p. 85; J. Kuciński, *Z zagadnień...*, p. 299; A.K. Piasecki, *Referenda...*, p. 8; M. Podolak, *Instytucja...*, pp. 35–36; M. Rachwał, *Demokracja...*, pp. 91–92.

The first example of the impact of a referendum initiative on the legislative process was the issue of reprivatisation. It was related to the applications of the PSL from the 10<sup>th</sup> and 3<sup>rd</sup> term of the Sejm and the citizens' applications submitted in the 3<sup>rd</sup> term of the Sejm<sup>22</sup>. They were a reaction to the reprivatization bills presented by the governments of Jan Krzysztof Bielecki and Jerzy Buzek. Both proposals postulated the return to the former owners or their heirs of property taken away by the authorities of the People's Republic of Poland in the years 1944–1962, including agricultural and forest land, water bodies, residential and industrial buildings. The reprivatisation excluded, among others, monuments of particular importance for national culture, areas located in national parks, real estate necessary for state security, and those which could not be separated without losing their previous function. In this case, the former owners and their heirs as well as persons who had lost their property in the former Eastern Borderlands were to receive compensation in the form of reprivatisation vouchers issued by the Treasury, for which they could purchase real estate, sold by the State or local government units as well as shares in companies of the State Treasury and local government<sup>23</sup>.

The initiators of the referenda processes were against the total reprivatisation of nationalized assets by the authorities of the Polish People's Republic. In their opinion, it should only concern those owners (or their heirs) who lost their assets as a result of the violation of the law established by the communist authorities. They also sought to limit the scope of reprivatisation as much as possible, demanding that all forest land, belonging to the state, public utility buildings, strategic state resources (water bodies, mineral deposits) and residential buildings be excluded

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<sup>22</sup> *Projekt uchwały Sejmu RP w sprawie referendum ogólnokrajowego dotyczącego reprivatyzacji i prywatyzacji majątku w Polsce*, No 1129, 20.09.1991, [https://bs.sejm.gov.pl/exlibris/aleph/a22\\_1/apache\\_media/PG3VIEQXEPP43HMS9NMDITP2YBEB1K.pdf](https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/PG3VIEQXEPP43HMS9NMDITP2YBEB1K.pdf); *Poselski wniosek o przeprowadzeniu referendum ogólnokrajowego w sprawie reprivatyzacji*, No 1374, 23.09.1999, <http://orka.sejm.gov.pl/proc3.nsf/0/898E63AAEA01DFDBC1257456004D44C9?OpenDocument>; *Obywatelski wniosek o poddanie pod referendum sprawy prywatyzacji i reprivatyzacji lasów*, No 1735, 17.02.2000, <http://orka.sejm.gov.pl/proc3.nsf/0/7043FA7A82748E3FC1257456004D4DBA?OpenDocument>; *Obywatelski wniosek o poddanie pod referendum zakresu, form i kosztów reprivatyzacji majątku publicznego, przejętego przez państwo w ramach ustaw nacjonalizacyjnych w latach 1944–1962*, No 2339, 9.11.2000, <http://orka.sejm.gov.pl/proc3.nsf/0/3F4C32BE0AA9AEFDC1257456004D59A1?OpenDocument> (30.12.2019).

<sup>23</sup> *Rządowy projekt ustawy o reprivatyzacji*, No 984, 16.07.1991, <http://orka.sejm.gov.pl/procx.nsf/0/42FF086B92134FBDC12574640020CADC?OpenDocument>; *Rządowy projekt ustawy o reprivatyzacji nieruchomości i niektórych ruchomości osób fizycznych przejętych przez Państwo lub gminę miasta stołecznego Warszawy oraz o rekompensatach*, No 1360, 20.09.1999, <http://orka.sejm.gov.pl/proc3.nsf/0/63AABAE9AA857D05C1257456004D446E?OpenDocument> (30.12.2019).

from it. They demanded that the compensation paid to the former owners or their heirs be lower than that proposed by the President and the two Prime Ministers. In their view, complete reprivatisation would be detrimental to the State, as it would lose many properties used for educational, economic and social purposes, and would impose excessive costs on the State budget, which would be borne by society in the form of high taxes. Citizens would also suffer because some of them would be forced to hand over their own property as part of the reprivatisation of the property they live or manage. The applications referred to public opinion polls, which were largely negative towards complete reprivatisation. According to a survey conducted by the Social Opinion Research Centre, the number of supporters of reprivatisation fell from 64% in 1991 to 40% in 1999, while the number of opponents increased from 28% in 1991 to 40% in 1999. Among those surveyed, the most popular option was to support the payment of compensation for lost property (46% in 1995 and 56% in 1999), while the number of supporters of restitution of lost property was much smaller (17% in 1995 and 11% in 1999). It was also believed that the restitution of property should concern only those cases where the applicable law was violated (47% in 1999) and not all nationalized property (13% in 1999)<sup>24</sup>. For this reason, it was considered that with little support for complete reprivatisation, its scope and forms should be decided by citizens rather than governments.

All the referenda proposals were rejected by the ruling majority or were not considered by the Sejm, but the parliament also rejected J.K. Bielecki's government bill. J. Buzek's government managed to pass the bill in the Sejm and Senate, but, due to public pressure, it had to introduce several changes that had been proposed by the opposition: a ban on the reprivatisation of state forests, water bodies, mineral deposits, environmental protection facilities, public roads, as well as a restriction on the reprivatisation of public and residential buildings. The payment of compensation for lost property was also limited to a maximum of 50% of its value. Despite the concessions made by the PSL and the SLD, the Government voted against the bill, and after it was vetoed by President Aleksander Kwaśniewski in March 2001, their position resulted in the ultimate failure of the bill.

The issue of the altering the legal restrictions of the termination of a pregnancy was raised by the SLD and the UP, which in the 1<sup>st</sup> and 2<sup>nd</sup>

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<sup>24</sup> *Opinie o reprivatyzacji*, [https://www.cbos.pl/SPISKOM.POL/1999/K\\_151\\_99.PDF](https://www.cbos.pl/SPISKOM.POL/1999/K_151_99.PDF) (30.12.2019).

term of the Sejm submitted requests for a referendum to be held on this issue<sup>25</sup>. They were reacting to the parliamentary proposal of the majority of centre and right-wing parliamentary clubs, which aimed at limiting the right to terminate a pregnancy. At that time, a law from 1956 was in force, which allowed for the termination of a pregnancy in the event that: it would endanger the life or health of the pregnant woman; research would point to permanent and irreversible developmental defects, or an incurable disease of the foetus; the pregnancy was a result of crime; the woman was in a difficult financial situation<sup>26</sup>. The new draft law wanted to introduce a provision on the legal protection of human life and health from the moment of conception. It did not introduce a total ban on abortion, but limited this possibility by removing the provision on difficult material conditions for women. The Act was passed in January 1993<sup>27</sup>.

The applications were rejected by the parliamentary majority. However, during the entire referendum process, their initiators convinced citizens of the necessity to leave the decision on having an abortion to women. Not only did they consider it inadvisable to restrict the possibility of women to have the right to have an abortion, but they also proposed (SLD) to allow abortion without restrictions. They referred to public opinion, according to which in the first half of the 1990's 1/5 of Poles agreed with the right for a woman to have an abortion without restrictions, and at least half were in favour of maintaining the provision on the admissibility of termination of pregnancy due to a woman's difficult financial situation<sup>28</sup>. They believed that such matters should be decided by the general public. The initiative to extend the right to terminate a pregnancy due to difficult material conditions for women was successfully completed in the Sejm and Senate between 1993 and 1997, when the SLD-PSL coalition was in power. Despite the rejection of

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<sup>25</sup> *Poselski projekt uchwały w sprawie przeprowadzenia referendum ogólnokrajowego dot. dopuszczalności przerywania ciąży*, No 194, 30.03.1992, <http://orka.sejm.gov.pl/proc1.nsf/0/281C3B2C-3F13706AC125745F003141D4?OpenDocument>; *Poselski projekt uchwały w sprawie przeprowadzenia referendum ogólnokrajowego dot. dopuszczalności przerywania ciąży*, No 578, 6.11.1992, <http://orka.sejm.gov.pl/proc1.nsf/0/727CD71EBBFD8827C125745F0031471F?OpenDocument>; *Poselski projekt uchwały w sprawie przeprowadzenia referendum*, No 1383, 24.11.1995, <http://orka.sejm.gov.pl/proc2.nsf/0/07853454A2B4F8F7C1257458002190FE?OpenDocument> (30.12.2019).

<sup>26</sup> *Ustawa z 27 IV 1956 r. o warunkach dopuszczalności przerywania ciąży*, Dz.U. 1956, No 12, item 61.

<sup>27</sup> *Ustawa z 7 I 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży*, Dz.U. 1993, No 17, item 78.

<sup>28</sup> *Stosunek do prawnej dopuszczalności aborcji i ewentualnej zmiany ustawy*, [https://www.cbos.pl/SPISKOM.POL/1996/K\\_053\\_96.PDF](https://www.cbos.pl/SPISKOM.POL/1996/K_053_96.PDF) (30.12.2019).

the motion for a referendum submitted by the UP, the SLD supported the proposal of the opposition club, which decided to adopt a new law in August 1996, extending the possibility of abortion by the postulated point<sup>29</sup>. This time, the success of the opposition was determined by the convergence of ideas of both political circles.

The third example of the impact of referenda initiatives of the opposition on the legislative process was the issue of the pension system. A civic motion was submitted to the Sejm of the 7<sup>th</sup> term, which was supported by almost 1.4 million citizens<sup>30</sup>. The initiator was NSZZ "Solidarność", it was supported by PiS and the SLD. The motion was a reaction to the increase in the retirement age of women and men, and its equalisation for both genders, that had been announced by the Donald Tusk government. The retirement age at that time was 60 years for women and 65 years for men, while the ruling PO-PSL coalition wanted the common retirement age to be 67 years. The government representatives explanation for the need for these measures, was that as the life expectancy of citizens increased, the longer each person would be drawing of pension benefits, which under the current regulations, would in turn increase the financial burden on the state budget, and lead to a reduction in the benefits that could be paid out. They believed that increasing the retirement age would partly reduce the financial burden on the state and keep the pensions at the current level, allowing them to be index linked to inflation.

The initiators of the referendum believed that extending the working period age would have negative social, material and health effects. As it would lead to a deterioration in the material situation of those who retired, because it would affect those entitled to pre-retirement benefits and pre-retirement protection, and protection from dismissal. They also felt that it would have an adverse effect on citizens health due to the obligation to work longer. The applicants acknowledged that their proposal would have negative consequences for the state budget, as it would increase the number of people drawing pensions. However, they believed that this problem could be solved by encouraging people to continue

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<sup>29</sup> *Ustawa z 30 VIII 1996 r. o zmianie ustawy o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży oraz o zmianie niektórych innych ustaw*, Dz.U. 1996, No 139, item 646.

<sup>30</sup> *Obywatelski wniosek o przeprowadzenie referendum ogólnokrajowego w sprawie o szczególnym znaczeniu dla państwa i obywateli dotyczącej powszechnego wieku emerytalnego kobiet i mężczyzn*, No 254, 21.03.2012, <http://www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?id=6AC288D-3C23A0AE4C12579C80042D8F6> (30.12.2019).

working, rather than forcing them by legal regulations. Such incentives could include: a reduction of the workload, adjusted to age; flexible working time; combining pay with pension benefits; the introduction of individual career path mechanisms and improving the safety and health care for the elderly. These views were based on public opinion, which was against raising the retirement age (84% of respondents), but could accept working longer under certain conditions, such as: the possibility of retiring before the age of 67 after earning sufficiently high benefits (66%), receiving part of the pension before the age of 67 (51%) and the possibility of the early retirement of women who raised children or took care of elderly and disabled family members (58%)<sup>31</sup>. It was requested that the general public be consulted on such an important issue.

The motion was rejected, but the government, under pressure from public opinion, was forced to introduce some of the demands into the Bill, which was passed in May 2012<sup>32</sup>. The main objective, i.e. to equalise the retirement age for women and men and raise it to 67 years of age, was maintained. The law was to apply from the 1<sup>st</sup> of January 2013. It provided for a gradual extension of the retirement age, which was to end in 2020 for men and in 2040 for women. Pre-retirement benefits were maintained for women over 56 years of age with at least 20 years of pension contributions and for men over 61 years of age with 25 years of contributions. For those who were to retire under the old rules in 2013–2016, job protection was maintained until they reach the new, higher retirement age. There was also the possibility of early partial retirement of 50% of the full pension amount. Women over 62 years of age with a 35-year contribution period, and men aged 65 years with a 40-year contribution period were eligible. Until they reach the new retirement age, the amount of the partial pension would not be increased, but it would be indexed. The government also announced the introduction of new mechanisms of social activation of people over 60.

The above examples show that the referendum initiative is relevant to the legislative process. It gives publicity to certain problems, and it has the support of many social groups. Even the rejection of a request for a referendum by the ruling majority does not necessarily result in the failure to achieve the goals of the applicants. The pressure of public opinion, the need to gain public support, as well as a certain convergence

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<sup>31</sup> *Opinie o podnoszeniu wieku emerytalnego i zmianach w systemie emerytalnym*, [https://www.cbos.pl/SPISKOM.POL/2012/K\\_040\\_12.PDF](https://www.cbos.pl/SPISKOM.POL/2012/K_040_12.PDF) (30.12.2019).

<sup>32</sup> *Ustawa z 11 V 2012 r. o zmianie ustawy o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych oraz niektórych innych ustaw*, Dz.U. 2012, item 637.

of ideas between those in power and the opposition contribute to the government taking into account some proposals of their political opponents. This allows for a certain compromise that permits the opposition to maintain its status as a political entity entitled to participate in the creation of law.

## Conclusion

The diverse subject matter of the referendums submitted by the opposition shows different priorities, that depended on specific environments and their values. For the examples that were selected for this article, these important goals were: limiting reprivatization, opposing a restriction on the right to terminate a pregnancy, and not permitting the age of retirement to be increased. The above objectives, as well as the objectives of other initiatives, not mentioned in the article, could have been undertaken because they were supported by the majority of society, or have been selected by strong special interest groups. The opposition was aware of citizens' preferences, following the results of public opinion polls, and therefore tried to take the initiative, when an important ideological issue was supported by society. In such a situation, the applicants could present themselves as being the representatives of the wider society, and demand that the state authority listen to the will of all citizens by holding a referendum. The legal possibilities for initiating the referendum process allowed various parliamentary clubs and social circles to put pressure on those in power to force certain solutions on them. A continued lack of interest in a given problem or disregard for it could expose those in power to the accusation that they are disinterested in the views of the citizens.

The failures of 32 referenda initiatives show that the government is reluctant to accept direct democracy too fully. However, it cannot ignore this problematic issue if it wants to continue to have high public support and maintain power. Therefore, despite its opposition to referendums, the ruling majority often has to take into account the opposition's suggestions, expressed in the results of referendums. It can then conduct consultations to consider the demands made by its opponents, and then try to adjust them to its own policy assumptions. In some cases, including those mentioned in the article, it can make concessions, thus making the opposition subservient, by making it one of the co-creators of the law. In this way, it implements the principles of a democratic state under

the rule of law, in which the majority should respect the opinions of the minority.

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