

## SOCIAL-PSYCHOLOGICAL AND LEGAL FRAMEWORK OF THE LOCAL RECALL - REFERENDUM IN POLAND

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**Abstract:** *The local referendum in Poland is an important tool of direct democracy, enabling residents to participate in decisions made at the local government level and to dismiss the bodies of local government units. The latter is the form of direct voting that residents use the most often. Due to the lack of tradition of using this type of direct democracy instruments in Poland, especially at the local level, an attempt was made to create a legal basis allowing the use of this form of voting. The initial effects in the form of the municipal referendum of October 11, 1991 were promising. However, practice has shown that existing regulations require changes and adaptation to Polish reality, in particular to the low level of participation and interest of residents in local matters. Research conducted for another study clearly showed that the effectiveness of referendums depends not only on legal regulations, but also on the ability of residents to use the tools of direct democracy. Even the best solutions and regulations will not help if citizens do not know how to use available instruments and do not become interested in local issues. Therefore, one of the ways to increase the effectiveness of referendums should be civic education.*

**Key words:** *democracy, direct democracy, local government, local referendum, recall referendum, referendum, Poland.*

### Introduction

Referendum is a form of direct democracy providing citizens with an opportunity to express their views with reference to the subject of the vote and which concerns either an entire state or its part. The features of the referendum include: direct participation of citizens in voting, having only one vote, recognition of the will of the majority of all entitled persons as decisive in resolving matters. There are many classifications of referendums in the literature, based on different criteria. In this case, however, the division based on the territorial range criterion is important. On this basis, we distinguish: a state referendum, which is held on the scale of the entire state, and a local referendum - conducted only in a part of the territory of the state, and its effects apply only to people living in that territory.

The local referendum in Poland is an important tool of direct democracy, enabling residents to participate in decisions made at the local government level and to dismiss the bodies of local government units. The latter is the form of direct voting that residents resort to most often. Since the introduction of the local recall referendum into the Polish legal system, it has experienced periods of intense use, but has also been repeatedly the subject of criticism and discussion. Its role, effectiveness and scope of influence on decision-making processes at the local level have been the subject of many social, political and scientific debates.

As a tool of direct public participation, a local recall referendum has the potential to influence local policymaking, building public trust and increasing citizen engagement. However, its effectiveness and the method of implementation in practice are often criticized due to procedural and organizational challenges and limitations, but above all due to the lack of knowledge about how it is used by citizens and the low interest in knee community issues.

The aim of this article will be to present the most important changes in the scope of the recall referendum. To prepare this study, the historical method, comparative method, as well as critical content analysis and analysis of legal acts were used.

### **The evolution of Polish local referendum law - selected issues**

Despite the political changes in Poland, due to the lack of new regulations, the formal legal basis for holding a local referendum in the Third Polish Republic was the Act of May 6, 1987 on amending the Constitution of the Polish Republic, amending the provisions of the Constitution of the Polish People's Republic of 1952. Constitution of 1952 did not envisage the use of this mechanism of direct democracy. This changed only with the entry into force of the above-mentioned act. According to the second article, „The exercise of state power by the working people also takes place by expressing their will by means of a referendum. The rules and procedure for conducting a referendum are specified by law”<sup>1</sup>. This act entered into force on May 6, 1987 and was the Act on public consultations and referendums, enabling a national or local referendum to be held. In the case of the latter, it was possible to vote on specific local issues or draft resolutions<sup>1</sup>. The Council could reject the application - however, the act did not specify which cases this possibility applied to. The Council's obligation was to notify the initiator of this fact and justify its decision. The costs associated with conducting a local referendum were covered from the budget of the unit in which the referendum was to be held. Citizens with permanent residence in the area where the referendum was organized and who had the right to vote for national councils had the right to participate in voting. The referendum was considered decisive if more than half of those eligible to vote voted in favor of one of the solutions<sup>2</sup>. From a theoretical point of view, the 1987 Act was an important step towards implementing direct democracy. The importance of this tool was enhanced by its constitutional basis. In reality, however, it was further evidence of the creation of facade democratic institutions that depended on the decisions of the party, instead of serving the residents<sup>3</sup>.

The legal act in which the municipal referendum was mentioned for the first time after 1989 was the Act on local government of March 8, 1990<sup>4</sup>. The act included provisions according to which the inhabitants of the commune had the right to exercise power directly by popular vote by participating in elections and referendums or „through the commune bodies“. The said act regulated issues regarding the subject, types, conditions of validity and effectiveness of the referendum. It provided for their organization in order to dismiss the commune council before the end of its term of office, in the matter of self-taxation for

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<sup>1</sup> A similar provision was included in the amendment of September 1, 1989. According to it, „the nation exercises power through its representatives, as well as by expressing its will in a referendum.“

<sup>2</sup> Ustawa z dnia 6 maja 1987 r. o konsultacjach i referendum, Dz.U. 1987, nr 14, poz. 83; art. 2 ust. 2, art. 12 ust. 2, art. 14 ust. 2, art. 15, art. 19, art. 20.

<sup>3</sup> B. Zawadzka, *Ewolucja systemu wyborczego do rad narodowych (1944-1988)*, „Problemy Rad Narodowych” 1989, nr 75.

<sup>4</sup> Ustawa z dnia 8 marca 1990 r. o samorządzie terytorialnym (tekst pierwotny), Dz.U. 1990, nr 16, poz. 95.

public purposes and in any other issue important for the commune. The high electoral thresholds (the possibility of holding a referendum at the request of 20% of residents and a turnout of over fifty percent allowing it to be considered effective) were changed even before the practical application of the regulations. In the final version, in order to vote, it was necessary to collect signatures of 10% of residents entitled to vote, while the participation threshold was set at 30%<sup>5</sup>. In matters not regulated by the act, the legislator referred to a separate act that entered into force 2 years later. In the absence of it, the provisions of the Act of May 6, 1987 on public consultations and referendums were in force. In practice, no reference was made to the analyzed mechanism of direct democracy until the Act of 11 October 1991 on municipal referendums entered into force, which contained detailed regulations regarding the principles and procedure for conducting a municipal referendum. Its adoption enabled the organization of votes and contributed to the subsequent strengthening of their position<sup>6</sup>.

The constitutional basis for the referendum in the Third Polish Republic was provided by Art. 72 of the small constitution of October 17, 1992. According to it, „Residents may make decisions through a local referendum“<sup>7</sup>. However, the document referred to a separate act regarding the conditions and procedure for its implementation. It is worth emphasizing at this point that the former narrow concept of „municipal referendum“ has been replaced by the expression „local referendum“. In this way, the small constitution indirectly indicated the possibility of establishing other (beyond the commune) local government units<sup>8</sup>. The constitution of April 2, 1997 included a provision that maintained the right of residents of local government units to make decisions on matters relating to the community by referendum. The legislator also noted that a directly elected body of a local government unit can be dismissed in the same way<sup>9</sup>.

Amendments to the Act on Municipal Self-Government and the Act on Local Referendum were introduced on September 29, 1995. Their main reason was the experience of a two-year period of application of this instrument of direct democracy, which showed that changes were necessary in the Act on Municipal Referendum. The most important was the restriction of the use of referendums. In the light of the new regulations, the council could not be recalled before 12 months from the election date and the last referendum held on the same issue. The rule also applied when the date of early elections, held as a result of a decisive referendum, would be shorter than six months before the statutory end of the term. Before the amendments were introduced, provincial court rulings regarding referendum protests were final. However, after the changes made by the legislator, the initiators had the right to appeal to the court of appeal. A clear reference was also made to the entity conducting the referendum on the council's dismissal, stating that it was the residents<sup>10</sup>.

On June 5, 1998, the Parliament adopted the acts on district self-government and voivodeship self-government. Both of them provided for the possibility of using the institution of referendum by the inhabitants of these territorial units on any issue important

<sup>5</sup> A.K. Piasecki, *Ewolucja referendalnego prawa w III RP*, „Samorząd Terytorialny” 2003, nr 1-2, s. 64.

<sup>6</sup> E. Olejniczak-Szałowska, *Prawo do udziału w referendum lokalnym. Rozważania na tle ustawodawstwa polskiego*, Łódź 2002, s. 54-55.

<sup>7</sup> Ustawa konstytucyjna z 17 października 1992 r., Dz.U. 1992, nr 84, poz. 426, art. 72 ust. 2.

<sup>8</sup> E. Olejniczak-Szałowska, *Referendum lokalne w świetle ustawodawstwa polskiego*, Warszawa 2002., s. 34.

<sup>9</sup> Konstytucja Rzeczypospolitej Polskiej, Dz.U. 1997, nr 78, poz. 483, art. 170.

<sup>10</sup> A.K. Piasecki, *Referenda w III RP*, Warszawa 2005, s. 89.

to these units. Using the same tool, it was also possible to dismiss the decision-making bodies of the poviats and voivodeships. Just as in 1990, the Act on municipal self-government referred to a separate legal act, here too the rules and procedure for conducting referenda were to be included in a separate act. And just like then, delays could not be avoided because the law was passed only two years later. The entry into force of the Act of September 15, 2000 derogated from the Act of October 11, 1991, and the statutory regulations applied to residents of communes and cities, districts, voivodeships and the capital city of Warsaw<sup>11</sup>.

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Most of the provisions of the 1991 Act regarding the calendar of referendum activities were maintained, including the obligation of the initiator to collect signatures within 60 days from the moment of notifying the chairman of the management board of a specific local government unit and the voivodeship electoral commissioner of the intention to conduct a vote. Among the changes, it is worth noting the additional 7 days<sup>12</sup>, which the chairman of the commune management board was entitled to notify in writing the referendum initiator or his representative about the number of residents entitled to vote. The period in which the referendum had to be held was also extended by five days.

Among the modified solutions included in the 2000 Act was the obligation to prepare cards with a note on the ineffectiveness of withdrawing support for the referendum initiative. The legislator also obliged the initiative group to collect signatures for a request to hold a referendum in a place, time and in a way that excludes the use of pressure aimed at forcing support. The application for holding a referendum – together with information on the fulfillment of statutory obligations and attached cards with signatures of residents expressing support for the referendum initiative – was submitted by the initiator to the electoral commissioner, who was obliged to confirm its receipt in writing and check it in formal terms. The Commissioner issued a decision to hold a referendum when the application met the statutory requirements. If the document contained errors that could be removed, it was returned to the initiator, who had 14 days to correct the errors. In a

<sup>11</sup> B. Węglarz, *Ewolucja lokalnej demokracji bezpośredniej w Polsce po 1989 roku*, Kraków 2013, pp. 62-63.

<sup>12</sup> The 1991 Act obliged the chairman of the management board to provide information on the number of people entitled to vote within 7 days.

situation where the application did not meet the statutory requirements (e.g. when residents were not informed about the intention to hold a referendum or when the application did not include a justification for the authority's dismissal) or contained deficiencies that could not be eliminated, the commissioner issued a decision to reject it. A special case was the issue of signatures. If the commissioner's reservations concerned the collection of an insufficient number, such an application was classified as one whose errors could not be eliminated. The exception was the situation when the 60-day deadline for collecting signatures had not yet expired. The commissioner then returned the application to the initiator for completion. The initiator had the right to appeal against the commissioner's decision rejecting the application, as well as in the event of failure to meet the thirty-day deadline provided for by the legislator for making a decision, to the Supreme Administrative Court within 14 days from the date of delivery of the decision or the commissioner's failure to take action. The regulations on limiting the possibility of organizing referendums have also been tightened. The solution regarding the ban on holding elections was maintained in the event that early elections resulting from the dismissal of the decision-making body were to take place within 6 months before the statutory end of its term of office. At the same time, the legislator decided that the same situation should apply if less than 12 months have passed since the election day or the last referendum on the same issue.

Unlike the earlier act, the one from 2000 included quite detailed provisions regarding the referendum campaign. However, the procedure for conducting and announcing the results of the referendum has not changed. The modifications include specifying the deadline for appointing precinct commissions (no later than 21 days before the referendum day), introducing the institution of a shop steward and the obligation to stamp the ballots with the seal not only of the electoral commissioner, but also of the precinct commission. However, the provision was maintained according to which the latter cannot include councilors, members of the management board of a given local government unit, as well as the initiator of the referendum and his representative.

Significant changes were introduced in relation to determining the results of the referendum. Pursuant to the 1991 Act, cards other than those officially established or those that did not bear an appropriate stamp were considered invalid. Since 2000, when calculating voting results<sup>13</sup> cards completely torn into two or more parts were also not taken into account. Moreover, the committee was obliged to prepare a report in triplicate containing the number of: people entitled to vote; people who were issued voting cards; cards taken from the ballot box; invalid cards; valid cards; invalid votes; valid votes; valid votes cast for individual answers to a question or for choosing a specific variant. Pursuant to the 1991 Act, it was sufficient for the minutes to contain the seal and signatures of all committee members. The 2000 Act extended these provisions to include the obligation for all committee members to initial each party. It also provided for the possibility for committee members and shop stewards to submit comments on the voting protocol<sup>14</sup>.

An important moment for the functioning of local government was the introduction of the Act of June 20, 2002 on the direct election of the commune, mayor and city president<sup>15</sup>. The entry into force of this legal act resulted in fundamental changes in the competences and shape of the executive body in the commune. In accordance with the Act of March 8,

<sup>13</sup> The minutes prepared pursuant to the 1991 Act contained only the number of: persons entitled to vote, votes cast, invalid votes, valid votes, and votes cast for individual proposed solutions.

<sup>14</sup> Ustawa z dnia 15 września 2000 r. o referendum lokalnym, Dz.U. 2000 Nr 88 poz. 985.

<sup>15</sup> Ustawa z dnia 20 czerwca 2002 roku o bezpośrednim wyborze wójta, burmistrza i prezydenta miasta, Dz.U. 2002, nr 113, poz. 984.

1990 on municipal self-government<sup>16</sup> the board of local government units was a collegial body, and the commune head (mayor, city president) was its chairman, elected and dismissed by the commune (city) council. The new act not only abolished municipal boards and established the commune head (mayor, city president) as a monocratic executive body, but its provisions also made it possible to dismiss him through a referendum. Until the entry into force of the Act of 20 June 2002 on the direct election of commune, mayor and city president, only the decision-making body could dismiss the management board or its individual members (including the chairman of the management board) by adopting a resolution by an absolute majority of votes of the statutory composition of the council in a secret ballot<sup>17</sup>. After the new regulations came into force, both residents and the commune council could deprive the commune, mayor or city president of their mandate by organizing a referendum. An interesting solution was the situation when, in a referendum vote conducted at the request of the commune council for reasons other than the failure to grant discharge to the executive body, more than 50% of the inhabitants voted against such a solution (while maintaining the turnout required to recognize the referendum as effective), because then the referendum was ended by operation of law. council activities<sup>18</sup>. The legislator's intention was probably to strengthen the position of the executive bodies and to limit the use of this form of democracy for political fighting. However, the councillors found a way to circumvent this restriction, because in order to avoid the risk and loss of mandate, they persuade a group of residents to apply for a referendum on the mayor's dismissal.

Two extremely important changes took place after the entry into force of the Act of July 8, 2005 amending the Act on municipal self-government and certain other acts. Pursuant to Art. 1 eliminated the problem that dominated voting in the years 2002-2006. The media contributed to creating such an image by publicizing cases of conflict between the executive body and the law. Public reactions were varied. Some recipients strongly opposed their continued office. However, there was no shortage of people for whom the stay of the executive body in custody was not reprehensible. However, the legislator addressed this issue clearly in the above-mentioned act of July 8, 2005. In the event of a temporary obstacle in the performance of the mayor's tasks and competences caused by, among others, temporary arrest, serving a sentence of arrest or imprisonment for an unintentional crime, his tasks were taken over by his deputy. . In the absence of a deputy, at the request of the voivode, he was appointed by the Prime Minister. The same procedure applied when the office manager's absence due to illness lasted more than thirty days. Thanks to these provisions, the situation in which a city or commune is deprived of its executive body is basically excluded<sup>19</sup> In turn, thanks to Art. 3 point 2 of the cited legal act, the effectiveness of referendum votes increased. Pursuant to the applicable regulations, a decisive referendum on the dismissal of a body of a local government unit resulting from direct elections was considered to be one in which not less than three-fifths of the number of people taking part in the election of the recalled body turned out to vote<sup>20</sup>. The above difference had a significant impact on referendum practice. The current high thresholds for

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<sup>16</sup> Ustawą z 8 marca 1990 r. o samorządzie gminnym, Dz.U. 2001, nr 142, poz. 1591 z późn. zm. (tekst jednolity).

<sup>17</sup> Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, Dz.U. 1998, nr 162, poz. 1126.

<sup>18</sup> Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, art. 28a oraz 28b.

<sup>19</sup> Ustawa z dnia 8 lipca 2005 r. o zmianie ustawy o samorządzie gminnym oraz niektórych innych ustaw, Dz.U. 2005, nr 175, poz. 1457, art. 1.

<sup>20</sup> Op. cit., art. 3.

referendum effectiveness (30% of citizens entitled to vote) which were not in any way related to citizen participation meant that this form of direct democracy was limited only to communities with several or several thousand inhabitants<sup>21</sup>. Ewa Olejniczak-Szałowska emphasized that the amendment introduced in 2005, which resulted in linking the conditions for dismissal of the body with the conditions for its election, is logical and rational. A body that received a high percentage of support from residents as a result of voting by residents will have a much more stable position than one that was entrusted by citizens with a mandate by voting for it with a small number of votes. A problem may arise in the latter case, because the minority may decide to dismiss the mayor<sup>22</sup> of a given commune<sup>23</sup>.

### **Current legal status regarding the organization and conduct of a local recall referendum**

The current basis for conducting a local recall referendum is in particular: the Constitution of the Republic of Poland of April 2, 1997<sup>24</sup>, Act on municipal self-government<sup>25</sup>, Act on district self-government<sup>26</sup>, Act on voivodeship self-government<sup>27</sup>, Act on local referendum<sup>28</sup>.

In the case of this type of referendum, it is possible to recall before the end of the term of office of a directly elected local government body - i.e. the commune head (mayor, city president), commune council, district council or voivodeship assembly. A motion to dismiss the executive body of a local government unit may also be submitted by the decision-making body of the local government unit in addition to the indicated number of inhabitants (at least 10% of the commune or powiat inhabitants entitled to vote, as well as 5% of the voivodeship inhabitants entitled to vote)<sup>29</sup>. The commune council may request a referendum on the dismissal of the executive body in three cases:

1) adopting a resolution on not granting discharge to the mayor (failure to grant discharge is tantamount to taking the initiative to hold a referendum on the dismissal of the mayor);

2) failure to grant a vote of confidence to the mayor in two consecutive years;

3) for reasons other than failure to grant discharge to the mayor or failure to grant a vote of confidence to the mayor.

In each of the three cases mentioned, the resolution must be adopted after 9 months from the date of election of the mayor and no later than 9 months before the end of the term of office. The differences concern the number of councillors who must vote in favor of adopting a resolution. In the first and second cases, the commune council adopts a

<sup>21</sup> B. Węglarz, *op. cit.*, s. 48.

<sup>22</sup> With a turnout of 30% in the elections, the participation of 18% of residents entitled to vote is required for the referendum to be considered effective, and more than half of the voters must vote in favor of depriving the executive body of its mandate, i.e. in this case it is enough to exceed the threshold of 9%.

<sup>23</sup> E. Olejniczak-Szałowska, *Wynik referendum lokalnego i jego skutki*, „Samorząd Terytorialny” 2008, nr 7-8, s. 17-18.

<sup>24</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997r., Dz.U. 1997 nr 78 poz. 483.

<sup>25</sup> Ustawa z dnia 8 marca 1990 r o samorządzie gminnym, Dz.U. 1990 nr 16 poz. 95.

<sup>26</sup> Ustawa z dnia 5 czerwca 1998 o samorządzie powiatowym, Dz. U. 1998 nr 91 poz. 578.

<sup>27</sup> Ustawa z dnia 5 czerwca 1998 o samorządzie województwa, Dz. U. 1998 nr 91 poz. 576.

<sup>28</sup> Ustawa z dnia 15 września 2000 r. o referendum lokalnym, Dz.U. 2000 Nr 88 poz. 985.

<sup>29</sup> *Op. cit.*, art. 2-5.

resolution by an absolute majority of votes of the statutory composition of the council, in a roll-call vote. However, in the third case (for reasons other than failure to discharge the mayor or failure to grant a vote of confidence to the mayor), the council adopts a resolution by a majority of at least 3/5 of the votes of the statutory composition of the council, in a roll-call vote. If the motion submitted in this mode to adopt a resolution on holding a referendum on the dismissal of the mayor has not obtained the required majority of votes, another motion may be submitted in this mode no earlier than 12 months after the previous vote<sup>30</sup>. The resolution to hold a referendum on the dismissal of the commune head (mayor, city president) is submitted by the chairman of the commune council to the electoral commissioner, who has fourteen days to issue a decision to hold a referendum. This period is counted from the expiry of the deadline for declaring the resolution invalid by the voivode or receiving a ruling dismissing or rejecting by an administrative court a complaint against the voivode's supervisory decision invalidating the resolution adopted by the council on holding a recall referendum<sup>31</sup>. The procedure and rules for conducting a recall referendum are the same regardless of which entity (the local government body or the residents) initiated the voting.

Referendum on the dismissal of the decision-making body of a local government unit<sup>32</sup> before the end of the term of office may only be carried out at the request of at least 10% of the commune or poviát inhabitants entitled to vote, as well as 5% of the voivodeship inhabitants entitled to vote. The restrictions regarding the organization of the referendum included, among others: that the residents' application may be submitted after 10 months from the date of election of the body or 10 months from the date of the last referendum on its dismissal and no later than 8 months before the end of its statutory term of office. Moreover, a referendum is not held on the day of elections: to the Sejm of the Republic of Poland and the Senate of the Republic of Poland, to the President of the Republic of Poland, to the European Parliament in the Republic of Poland, to decision-making bodies of local government units or to commune heads (mayors, city presidents). The provision does not apply to by-elections, early elections or re-elections to the previously mentioned bodies<sup>33</sup>.

The initiative to hold a referendum at the request of residents, in accordance with the Act, is vested in a group of at least five (in the case of a commune) or fifteen citizens (in the case of a poviát and voivodeship) who have the right to elect members of the decision-making body of a given local government unit; as well as the statutory structure of a political party operating in a given local government unit and social organizations with legal personality. The initiator of a referendum is obliged to notify in writing the electoral commissioner and the chairman of the management board of a given local government unit (and in a commune, the commune head, mayor or city president) of the intention to submit a referendum initiative. It also informs residents about the subject of the planned referendum, at its own expense, in a customary manner. Within fourteen days from submitting the notification, the chairman of the management board of a given local government unit (and in a commune, the commune head, mayor or city president) informs in writing the initiator of the referendum or his representative about the number of people entitled to vote. Within 60 days from the above notification, the initiator collects signatures

<sup>30</sup> Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, art. 28a, 28b.

<sup>31</sup> Ustawa z dnia 15 września 2000 r. o referendum lokalnym, op. cit., art. 24a.

<sup>32</sup> The request of the commune residents may concern the dismissal of both the commune council and the commune head (mayor, city president) or the dismissal of one of these bodies.

<sup>33</sup> Ustawa z dnia 15 września 2000 r. o referendum lokalnym, op. cit., art. 4, art. 5, art. 8a.



of residents, which are an expression of support for the planned referendum. The provisions regarding the ineffectiveness of withdrawing support given by signature and collecting signatures in a place, time and in a way that excludes the use of pressure or aimed at forcing signatures have been maintained.<sup>34</sup>

No later than after the deadline for collecting signatures, the referendum initiator provides cards with signatures and a written request to hold a referendum along with a justification for the appeal and information on the fulfilment of the condition regarding informing residents about the planned vote. The commissioner confirms receipt of the application in writing. If the application contains deficiencies that can be removed, it is returned to the initiator and set fourteen days for their removal. If the application contains deficiencies that cannot be removed or if the initiator has not fulfilled his obligations, the commissioner, by way of a decision, rejects the application for a referendum. The commissioner has thirty days to issue a decision to reject the application or to hold a referendum, which is counted from the moment the referendum initiator submits the referendum application. The latter has the right to file a complaint to the administrative court against the decision of the electoral commissioner not to hold a referendum. The decision of the electoral commissioner to hold a vote is published in the voivodeship official journal and must include: the date of holding the referendum; template and content of the voting card; calendar of activities related to conducting the referendum. Voting is carried out on a day off from work, no later than on the fiftieth day from the date of publication of the electoral commissioner's decision on this matter or from the date on which the judgment of the administrative court accepting the complaint against the voivode's supervisory decision or the rejection of the application for a referendum by the electoral commissioner becomes final.<sup>35</sup>

Voting is preceded by a referendum campaign, which begins on the day the decision-making body of a local government unit adopts a resolution or decision.

Electoral commissioner about holding a referendum, and ends 24 hours before voting day. The rules of the campaign are strictly regulated by law. These include a ban on campaigning in: government and local government offices and courts; workplaces, if the campaign would disrupt their normal functioning; military units and other organizational units subordinate to the minister responsible for national defense and civil defense units, as well as barracked police units. During the campaign, raffles, games of chance and competitions in which the winnings are cash prizes or items with a value higher than the value of small items customarily used for advertising and promotional purposes cannot be conducted. The Act also provides for financial penalties and the possibility of submitting an application to court if the initiator does not comply with the regulations<sup>36</sup>. The financing of the referendum is public, and the funds for its implementation come from the budget of the local government unit where the vote is organized. However, the initiator's expenses incurred in connection with the referendum are covered from his own sources. The Act specifies in detail the sources from which the initiator may not accept funds for referendum purposes. These include, among others, funds from the state budget or local government units, but also from natural persons who do not live in Poland (except Polish citizens living abroad)<sup>37</sup>.

<sup>34</sup> Op. cit., art. 11, art. 12, art.13, art. 14.

<sup>35</sup> Op. cit., art. 10, art. 13, art. 22, art. 23, art. 24, art. 25, art. 27.

<sup>36</sup> Op. cit., art. 28, art. 29, art. 31, at. 35

<sup>37</sup> Op. cit., art. 43.

The Act regulates not only the procedure and manner of conducting voting (it is carried out by territorial and district commissions), but also: the appearance of the ballot card and the rules for recognizing the card and vote as valid or invalid. The referendum is valid if not less than 3/5 of the number of people participating in the election of the body being recalled took part in it. The result is decisive if more than half of the valid votes were cast in favor of the dismissal of the local government body. After preparing the protocols, the results are immediately sent to the electoral commissioner and the voivode, made public and published in the voivodship official journal. Election protests are directed to district courts. The result of the decisive vote carried out at the request of the residents is the termination of the activities of these bodies. If, by way of a referendum, it is decided to dismiss the decision-making body of a poviator or voivodship self-government, this means the termination of the activities of not only the decision-making body, but also the executive body. However, if in a decisive referendum on the dismissal of the commune head (mayor, city president), which was carried out at the request of the commune council for reasons other than failure to grant discharge, more than half of the valid votes were cast against the dismissal of the commune head (mayor, city president), the activities of the commune council are subject to terminated by operation of law<sup>38</sup>.

### Summary

Due to the lack of tradition of using this type of direct democracy instruments in Poland, especially at the local level, an attempt was made to create a legal basis allowing the use of this form of voting. The initial effects in the form of the Act of 11 October 1991 on municipal referendums on the local referendum were promising. However, practice has shown that existing regulations require changes and adaptation to Polish realities, in particular to the low level of participation and interest of residents in local matters. The changes began with lowering the electoral thresholds. Then, the focus was on clarifying and expanding the existing regulations. Introduced, among others: restrictions on the use of referendums, transparency of obtaining funds for campaigning, as well as detailed regulations on the procedure for conducting a referendum. Current problems were also solved, such as „governing from behind bars“, as well as long-term ones, such as the impossibility of voting in large local government units due to the need to collect a large number of signatures. The level of electoral participation was also linked to referenda by introducing a provision according to which a decisive referendum on the dismissal of a body of a local government unit resulting from direct elections was considered to be one in which not less than three-fifths of the number of people taking part in the election of the recalled body turned out to vote.

Research conducted for another study also showed very clearly that the effectiveness of referendums depends not only on legal regulations, but also on the ability of residents to use the tools of direct democracy. However, even the best solutions and regulations will not help if citizens do not know how to use available instruments and do not become interested in local issues. Therefore, one of the ways to increase the effectiveness of referendums should be civic education. Despite the relative stability in the organization of this form of referendum, it is necessary to look for new solutions that, on the one hand, will encourage residents to participate in the life of their unit and, on the other hand, discourage the authorities from putting pressure on citizens not to go to the ballot box. One of such attempts was a draft amendment to the referendum act (however, it did not obtain a

<sup>38</sup> Op. cit., art. 49-60, art. 63, art. 66, art. 67.

parliamentary majority). It postulated, among others: lowering the voting thresholds other than recall-referendum from 30 to 15%. However, a change that raises major reservations was the possibility of organizing a referendum on issues important to residents twice a year. Taking into account the low level of citizens' participation, it would be a better idea to encourage them to participate in the referendum rather than limiting their right to do so.

### References:

1. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997 nr 78 poz. 483.
2. Kotulski M., Referendum lokalne, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” nr 3/2017.
3. Olejniczak-Szałowska E., Prawo do udziału w referendum lokalnym. Rozważania na tle ustawodawstwa polskiego, Łódź 2002.
4. Olejniczak-Szałowska E., Referendum lokalne w świetle ustawodawstwa polskiego, Warszawa 2002.
5. Olejniczak-Szałowska E., Wynik referendum lokalnego i jego skutki, „Samorząd Terytorialny” 2008, nr 7-8.
6. Piasecki A.K., Ewolucja referendalnego prawa w III RP, „Samorząd Terytorialny” 2003.
7. Piasecki A.K., Referenda w III RP, Warszawa 2005.
8. Rachwał M., Referenda w sprawie odwołania organu samorządu terytorialnego – doświadczenia lat 2010-2014, „Kwartalnik Naukowy OAP UW e-Politikon” nr 11/2014.
9. Ustawa konstytucyjna z 17 października 1992 r., Dz.U. 1992, nr 84, poz. 426.
10. Ustawa z dnia 5 czerwca 1998 o samorządzie powiatowym, Dz. U. 1998 nr 91 poz. 578.
11. Ustawa z dnia 5 czerwca 1998 o samorządzie województwa, Dz. U. 1998 nr 91 poz. 576.
12. Ustawa z dnia 6 maja 1987 r. o konsultacjach i referendum, Dz.U. 1987, nr 14, poz. 83.
13. Ustawa z dnia 8 marca 1990 r o samorządzie gminnym, Dz.U. 1990 nr 16 poz. 95.
14. Ustawa z dnia 8 marca 1990 r. o samorządzie terytorialnym (tekst pierwotny), Dz.U. 1990, nr 16, poz. 95.
15. Ustawa z dnia 15 września 2000 r. o referendum lokalnym, Dz.U. 2000 Nr 88 poz. 985.
16. Węglarz B., Ewolucja lokalnej demokracji bezpośredniej w Polsce po 1989 roku, Kraków 2013.
17. Zawadzka B., Ewolucja systemu wyborczego do rad narodowych (1944-1988), „Problemy Rad Narodowych” 1989, nr 75.