

## **Direct Democracy at the Local Level in Poland**

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*Direct democracy was not known in Poland in the period before the World War II while in People's Poland there were no proper conditions to implement it. The forms of direct democracy at the local level are village meetings, general meetings of people in a housing estate, consultations with gmina inhabitants, and a gmina referendum (local referendum). In a housing estate (osiedle) but not in a town district (dzielnica), direct democracy is admissible in the form of the general assembly of the estate. Changes in the current binding model of local authorities entail changes in the decisions concerning referendums. An example of such modifications can be the direct elections of the commune head (wójt), town mayor or town president.*

**Key words:** direct democracy, local level, Poland, citizen participation, referendum

### Introduction

The forms of direct democracy at the local level are village meetings, general meetings of people in a housing estate, consultations with gmina inhabitants, and first of all, a gmina referendum [Leoński 2001: 147-161; Taras 1997: 169-183]. It should be observed that the last institution took the form of a local referendum in accordance with the Law on Local Referendums of 15 September 2000 [Ustawa z dnia 15 września 2000 r. o referendum lokalnym...; Ustawa o referendum lokalnym...2001; Ustawa z dnia 15 lutego 2002...]. In a *sołectwo* [subgmina] the *sołtys* (village head/administrator) and the *sołectwo* council are elected in a secret ballot by the permanent residents, with a possibility to nominate an unlimited number of candidates for the post of *sołtys* and for the *sołectwo* council. This is stipulated in Article 36 para 2 of the Law on Gmina Self-Government, while in Article 35 para 3 of this Law the legislator adopted a view that the statutes of the auxiliary unity (which is *sołectwo*) should contain solutions concerning the principles of and procedures for election

of both the *solectwo* council and the *soltys*. Therefore, in *solectwo* we are dealing with the forms of direct democracy (village meetings) or with the bodies elected by the village community (the *solectwo* council and the *soltys*).

In connection with the adopted solutions several debatable questions emerge. They certainly include the possibility for the *solectwo* inhabitants to lodge an election protest in strictly specified cases [Andruszkiewicz 2003:28]. Considerable confusion was caused by a news item published in the “Gazety Wyborcza” daily, according to which the *soltys* in one of *solectwos* in the vicinity of Warsaw was a mobster, but he was trusted by the *solectwo* inhabitants who even changed the *solectwo* statutes so that he could be elected to the post. The voices of the public opinion were symptomatic: they insisted that “it was not the country bumpkins who rule”, but the regulations in the statutes. Therefore, the problem appeared regarding the scope of matters that can be dealt with as part of local direct democracy [Zych 2003: 44-45; Szarek 2004:. 44-45].

Another problem is the issue connected with the striving of *Solectwo* Associations for being granted the rights and responsibilities which would not be arbitrarily determined by gmina councils. Recall that the gmina council has powers concerning the rules of electing a *soltys*, members of the village meeting and for the *solectwo* council. This is effected through a resolution, the local statutes or regulations. *Solectwo* Associations find it very important matter to regulate by law the property rights exercised by the *solectwo* [Wileński 2003:28; Orłowska-Bednarz 2010:233-242; Klimek, Kraszewski 2010:243-252; Abramowicz 2010:253-272].

In a housing estate (*osiedle*) but not in a town district (*dzielnica*), direct democracy is admissible in the form of the general assembly of the estate [Stachniuk 2010:221-232]. They are treated as auxiliary units. Consultations with gmina inhabitants introduced into the local self-government law in 1996 are a form of asking the inhabitants’ opinion. Unlike a referendum, this opinion does not have a binding power, but it should taken into consideration by the gmina council and its agencies.

The aim of the article is to analyze the institutions of direct democracy at local level in Poland. The article consists of two parts. The first one is connected with the legal basis and the second one - the objective scope and examples of local referendums.

#### The legal basis

Under the Polish conditions, a referendum at the local level quickly, I believe, found its proper legal safeguards. I take into consideration, inter alia, the fact that this institution was not known in Poland in the period before the World War II while in People's Poland there were no proper conditions to implement it. It evolved during the period of political-system transformation, which is expressed, among others, by the name of the referendum.

Initially, this was a gmina referendum, and subsequently, a local referendum [Piasecki 2003:64]. It is legitimized in the Constitution and in legislation (the most important being the aforementioned Law on Local Referendum of 15 September 2000). The local dimension of the referendum appeared in the Law on Amending the People's Poland's Constitution of 6 May 1987. Article 2 para 2 defines the scope of a nationwide and local referendum. The right to make a resolution on putting a matter to the vote in a local referendum was vested in the contemporary people's councils.

The Law on Local Self-Government of 8 March 1990 regulated the issue of a gmina referendum [Ustawa z dnia 8 marca 1990 roku o samorządzie terytorialnym]. Its Article 11 stipulated that gmina inhabitants would participate in decision making, inter alia, through a referendum [Compare: Olejniczak-Szałowska 1993; Levrat 1991:16]. The matters not specified therein were still decided by the Law on Social Consultations and Referendum (6 May 1987). This situation lasted until 1991, when the law on a gmina referendum was passed [Ustawa o referendum gminnym]. The law distinguished two kinds of referendums: mandatory and optional (facultative). The former concerned matters related to the inhabitants' self-taxation for public purposes and dismissal of the gmina council before the expiry of its term. The latter was to be held for deciding important matters for the gmina. Such a referendum could be initiated by the gmina council or by 10% of its inhabitants having the right to vote. A referendum was considered valid if at least 30% of those having the right to vote participated. For a conclusive decision in a referendum more than half of the number of valid votes were required, whereas the inhabitants' self-taxation required at least two-thirds of valid votes. The costs of holding a referendum would be covered by the gmina budget [Taras 1997: 174-181; *Wytyczne w sprawie referendum* 1994: 20-21, 25].

For the first time the term "local referendum" was included in the Small Constitution in Article 27, para 2 [Compare: Fuks 1993]. The Republic of Poland's Constitution of 1997 includes the local referendum as a form of direct exercise of power in Article 170. In accordance with this provision, "members of a self-governing community may decide, by means of a referendum, the matters concerning their community, including the dismissal of an organ of local self-government established by direct election. The principles of and

procedures for conducting a local referendum shall be specified by statute” [Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku].

The Law on Local Referendum of 15 September 2000 made reference to the self-governing community of gmina, district (powiat) and voivodeship (province), including the capital city of Warsaw [Ustawa o referendum lokalnym z dnia 15 września 2000 roku]. Article 2 para 1 reads that the inhabitants of a local self-governing community “express, by means of voting, their will regarding the manner of deciding a matter concerning their community within the scope of tasks and competence of the agencies of a unit or in respect of dismissal of the decision-making body of their unit”. A referendum is held on the motion of the decision-making body or on the motion of 10% of inhabitants having the right to vote at the gmina or district level, or of 5% of those having the right to vote at the voivodeship level. Regarding the dismissal of a relevant council, it is not possible to hold a vote within a year after the elections or the date of the last referendum, and within six months before the end of term. Self-taxation of inhabitants for public purposes was retained at the gmina level only and can be introduced exclusively through a referendum. On the motion of the inhabitants, the initiative to hold a referendum can be put forwards by a group of at least 15 citizens who have the right to vote; five persons at the gmina level and a social organization with the status of legal personality. The measures connected with the holding of a referendum are as follows: notifying in writing the chairman of the town, district or voivodeship council/board by the initiator (Article 12, para 1; Article 22); collecting of inhabitants’ signatures (Art 14, para 1); submission of the motion to hold a referendum (Article 15, para 1); the appointment of a commission by the council or the local assembly to verify whether the motion submitted conforms to the provisions of the law (Article 16); passing of a resolution by the council or the local assembly in respect of holding a referendum or turning down the motion (Article 17; Articles 23, 24). A referendum will be held on a holiday, within the period between 30 and 40 days of the promulgation of the resolution in the provincial official journal, or of the promulgation of decision by the Supreme Administrative Court (Article 21). The Law on Referendum has regulated the matters relating to the conduct of the referendum campaign (Chapter 6); funding of a referendum by the local self-government budget; and the powers of the referendum initiator and his/her helper (Chapter7); the procedure for holding a referendum as well as determining and promulgating its results (Chapter8). A referendum is regarded as valid when at least 30% of inhabitants having the right to vote have participated in it (Article 55). The decisive result is when more than half the number of votes are in favor of one of the solutions; the issue of self-taxation requires a two-thirds majority of valid votes (Article 56).

## The objective scope and examples of referendum

The problem that still raises many controversies is the objective scope of the referendum. On the basis of regulations we can state that the scope of the mandatory referendum is very precisely determined, while the scope of the optional referendum raises considerable doubts. They largely stem from the fact that the wording “a matter of particular importance to a gmina, district and voivodeship” can be interpreted in various ways. There is no doubt that under the current legislation the subject of the referendum must be within the gmina’s competence. In this context, what is important is the fact that the scope of gmina’s operation covers both its own tasks and the tasks assigned to a gmina unit. The question thus arises whether a referendum should be confined to the gmina’s own tasks while the assigned tasks should be excluded [Krupa 2002:42-43]. There is no explicit answer here. The insight into the system in force is allowed by the decisions of the Supreme Administrative Court, which has repeatedly settled contentious issues concerning the referendum [Orzecznictwo Naczelnego Sądu Administracyjnego; Kisiel 2002:50-51]. We can indicate, inter alia, an example from Oświęcim, where the town council put forward a proposal for a referendum concerning the area of the former Auschwitz concentration camps [Kisiel 2001:42-44]; the gmina’s membership of a specific powiat [Woźniakowska].

It should be observed that this institution is directly linked with the model characteristic of local authorities. Over the last decade or more we can speak of numerous amendments which specified the legal position and the practice of the use a local referendum. They aimed at the elimination of ambiguities or at taking a stance on the problems lying beyond legal regulation. In practice, not all ambiguities were leveled out. On the contrary, we are witnessing disputes both among the scholars who deal with the problems in question and among the lawyers, politicians or ordinary citizens. Theses disputes seem to prove that the institution of the referendum plays a significant role. It appears that some would like to restrict it while others to broaden it.

Changes in the current binding model of local authorities entail changes in the decisions concerning referendums. An example of such modifications can be the direct elections of the commune head (*wójt*), town mayor or town president [Ustawa z dnia 20 czerwca 2002 roku o bezpośrednim wyborze wójta, burmistrza i prezydenta miasta]. The relevant law extended the possibility of using the institution of the referendum to dismiss the

executive body elected in this way [Żarowski; Marecki 2004:20-22; Jendra 2003:28; Kowalik 2003:38-56; Pitera 2002:22]. Motions to dismiss a *wójt* or mayor can also apply to the relevant council. It appears that practice has confirmed the thesis on the difficulties connected with the dismissal of an executive body that has been directly elected. This happens first of all because of low attendance of voters. Nevertheless, this form of voicing of opinions by inhabitants of a community is likely to gain in importance. The motion to recall an executive body can also apply to town presidents [Zaręba 2010:109-119]. Especially worth noting is the example of Szczecin, where the motion to dismiss the president applied to the meritorious Solidarity movement activist Marian Jurczyk [Sawka 2004:18].

Worth noting is also the form of the local referendum held in a town district (*dzielnica*). For example, the authorities of Krakow's *dzielnica* III called a referendum in which the inhabitants opted for or against the introduction of one-way traffic in one of the streets [Nałęcka, Bukowski 2004:5]. Among other referendum proposals there was one of combining the elections to the European Parliament on 13 June 2004 with holding of referendums in respect of matters of particular importance to local communities. For example, some towns planned referendums on taking over by the *gmina* the responsibilities for municipal waste disposal. A proposal was also put forward that the dates of parliamentary and presidential elections be also the dates of holding local referendums [Oczkowicz 2003:23-24; Ciepielak 2003:3; Metzger 2003:3]. The argument was that this move would increase attendance and prevent the referendum institution from functioning as an expensive toy.

### Concluding Remarks

Detailed solutions concerning the institution of the referendum and other forms of direct democracy are based on general decisions and resolutions, inter alia in the axiological sphere [Dębicki 1995:16]. Observe, for example, that the concept of the local referendum applies here to a local self-governing community, both at the *gmina*, district (*powiat*) and voivodeship level (Article 6, Law on the Local Referendum). Some authors would prefer to apply this concept to the *gmina* and district level only. It should be emphasized that, unlike the nationwide referendum, the local referendum is becoming an instrument used by the citizens to manage public affairs. In other words, *not* restricting of the citizens' opportunities to vote once in a few years but, on the contrary, giving the citizens greater freedom in their wish to be involved in the running of public affairs is the eventual goal. This would be possible, inter alia, owing to participation in actions taken as a result of a referendum.

Taking axiological issues into account, we should point to the subsidiarity principle as the foundation of an integrating Europe, which means the transfer of controlling functions from higher levels to lower levels, including transferring of these functions to the citizens [Dylus 1995:52-61; Kulesza 1996; Millon-Delsol 1995; Zgud 1999]. In this sense, the processes occurring in Poland are becoming part of a broader European vision. Another highly important issue is the problem of reconciling representative democracy with direct democracy, especially at the time of the development of information society and the information revolution. It seems that there is general approval for the principle of supplementing the forms of representative democracy with the forms of direct democracy. However, the problem of appropriate proportions between the two forms appears to be the subject of controversy. Under these circumstances we should conclude that the lower the level of authority, the higher should be the opportunities for applying direct democracy solutions, first of all the institution of the referendum. As some authors rightly observe, the fact that the predominant form of present-day democracy is a representative one does not presuppose that the function of local self-government can be reduced to representation [Olejniczak-Szałowska 2002:134].

Certain controversies arise from the concept of a territorial self-governing community [Słobodzian 2011:241-257]. It is well known that the division into particular communities was made in a largely automatic way. It usually comprises the inhabitants who live in a specific territory. Some authors appear to argue that it is difficult to speak of common goals or interests under such circumstances. Others take the opposite stances. They state that inhabiting a specific territory necessarily creates a shared common history, culture and tradition; and in consequence, certain definite common interests. We can speak at this point of common social or economic ties.

There are also voices that challenge the concept of the consultation referendum, whose essence lies in that it is not binding on the authorities. However, it is treated as a way of expressing the citizens' opinion on a specific issue. The predominant conviction is that the referendum has a decisive character. We should also point out the problem of the pre-referendum campaign. The agencies of a local self-government unit or members of these agencies cannot take part in it. The campaign should not be conducted in the offices of government or local government administration. Practice varies in this respect.

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