

## THE 2015 REFERENDUM IN POLAND

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### Outline

- The factor determining the call for referendum was the result in the elections for the President of the Republic of Poland.
- The circumstances of calling the referendum, as well as the choice and content of questions caused a lot of debate.
- The Civic Platform and Paweł Kukiz encouraged the citizens to participate in the referendum and to vote for changes.
- The quality of the campaign preceding the referendum resulted in a low level of knowledge and interest on the part of the citizens.
- A low turnout made the referendum a negative instance of applying the mechanisms of direct democracy in Poland.

### Background and legal framework

In the history of Poland after 1989, the citizens have had an opportunity to express their opinions in nationwide referendums five times. The most recent took place on September 6, 2015. The circumstances in which it was held, the choice of questions and its results will bear upon the attitude of citizens towards direct democracy initiatives for a long time. The cause which directly led to calling the referendum was the result of the elections for the President of Poland, which took place on May 10, 2015. The leader of pre-election opinion polls, the current President Bronisław Komorowski, received fewer votes (33.77%) than his main opponent Andrzej Duda (34.76%). However, it was the third candidate's, Paweł Kukiz's, result (20.8%) that mattered the most. This active rock musician, so far not involved in political activity, participated in the presidential campaign with a postulate to implement single-member constituencies in the Sejm elections, generally gathering the voters disappointed with the present politics.

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A day after the May elections, President Komorowski made an instantaneous decision to hold a national referendum. Justifying his initiative, he explained that he saw high support for Kukiz as a signal that the citizens want changes. He understood Kukiz's result as a necessity to transform the citizen-state relationship, and pointed out that politicians should pay attention to opinions of their voters. It is thus difficult not to perceive the referendum as part of the presidential campaign. The impulse to call it, as well as the choice of questions were aimed at winning higher support and polarizing the positions of the two remaining candidates. It was an important circumstance that Komorowski wished to win the favour of Kukiz's supporters. Taking such a decision, the current president was influenced by the fact that Law and Justice (PiS) and candidate Duda, who was to compete with Komorowski in the run-off, were against the proposed solutions. Moreover, Komorowski's position was in agreement with the postulates of Civic Platform (PO), which were voiced but not implemented in the previous years.

The legal frame for the referendum is regulated mainly on the basis of two legal acts, i.e. the Constitution (Constitution 1997) and Act on the Nationwide Referendum (Act 2015). Moreover, the Senate proceedings concerning the referendum are determined by its rules (Rules 2015). The course of voting by the citizens is regulated in turn by Election Code (Election Code 2011). The Constitution makes it possible to call a referendum concerning matters of particular importance to the State (Article 125, p. 1). The right to call a referendum is vested in the President, who has to be granted the Senate's agreement, which is expressed by an absolute majority with at least half of the statutory number of senators present (Art. 125, p. 2).

All citizens of the Republic of Poland who have come of age (18 years old) are entitled to vote in a nationwide referendum, including those whose permanent or temporary place of residence is abroad. The voting is universal, equal and secret. Ballots can be sent by post and given by proxy, and the blind are provided with Braille overlays. The very act of voting consists in the voters marking Yes or No on the ballot form. The result of a nationwide referendum is binding if more than half of the citizens entitled to vote have participated in it (Art. 125, p.3). The validity of such a referendum is determined by the Supreme Court (Art. 125, p.4). Having informed the public about his initiative, President Komorowski started the procedures described above. On May 13, 2015 he sent the Speaker of the Senate a bill of resolution calling a nationwide referendum which contained the questions and the proposed date. On May 21, 2015, the Senate agreed for the President of the Republic of Poland to call a nationwide referendum. 57 senators took part in the ballot and all of them voted for the resolution. They represented

the governing coalition of PO (52) and the Polish People's Party (PSL, 2), as well as Independent Senators Circle (2) and PiS (1). The latter voted 'for' by mistake and the remaining PiS senators did not participate in the ballot although they were present in the room. Consequently, President Komorowski signed the documents on the 17th of June and the resolution of the President of the Republic of Poland on Calling a Nationwide Referendum was published in the Journal of Laws (Resolution of the President 2015).

The nationwide referendum consisted of three questions: 1. Are you in favor of introducing single-member constituencies in elections to the Sejm of the Republic of Poland? 2. Are you in favor of maintaining the current system of financing political parties from the state budget? 3. Are you in favor of introducing a general principle whereby any legal doubts in interpreting tax law would be resolved in favor of taxpayers? All three questions raised problems in relation to an unconstitutional nature of the first question, lack of precision of the second question, and irrelevance of the third question. Especially the first question, politically most crucial, caused the most serious legal doubts. Concerning the bill of the referendum published by the Analyses and Documentation Office of the Chancellery of the Senate, three out of five lawyers pointed to the unconstitutional character of the referendum. The reservations referred primarily to the first question.

The question concerning single-member constituencies was the main pretext to initiate the referendum. It has to be emphasized that such constituencies have been a rule since 2011 for the elections to the Senate, and since 2014 in elections to the commune councils in communes which are not district towns. Hence, they are not unknown or a completely new solution. However, implementing the proposed solution is not possible according to the present law. It is against the statement in the Constitution (Article 96, p. 2), saying that the elections to the Sejm shall be universal, equal, direct, proportional, and conducted by secret ballot. Conscious of that, President Komorowski sent to the Sejm on May 12, 2015 a bill proposing to change the Constitution by removing the word 'proportional.'

The second question was quite general and did not suggest any precise solution. It is thus difficult to determine the range of changes that would have to be implemented as a consequence of the citizens voting 'for'. The intention of the question which was discussed publicly pointed to abolishing the financing of political parties from the state budget. However, the question itself did not point to such a solution. Answering 'yes' suggests only that the source of financing would change, with no direction or range of the changes.

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The third question referred to the relationship between the taxpayers and the state. It was supposed to initiate changes in the attitude towards the citizens in the case of doubts about tax laws, which had so far been decided in favor of the state's institutions. One cannot forget, however, that on July 10, 2015 the Sejm passed an amendment of the tax statute which granted such a solution.

Considering the choice of questions, it must be noted that they were part of a public debate about the role of political parties in Poland. The first and third questions referred to diminishing the role of political parties as they bear negative connotations for Polish citizens. The general postulate of tightening the relationships between the citizens and their representatives, in line with diminishing the role of parties in the process of compiling slates, as well as abolishing the public funding all converge with the feelings of the citizens.

### Campaign

The major political parties were the main actors entitled to take part in the referendum campaign. Moreover, Kukiz assumed the role of a mobilizing force as the proposals included in the questions were close to his ideas. When it comes to the views of particular political parties on participation in the referendum, two main factions can be observed. The PO and Kukiz were clearly for, while the PiS politicians claimed that they would take part in the referendum but the party did not pay much attention to mobilizing their voters. The Representatives of PSL, Alliance of Democratic Left (SLD), and Your Movement (TR) announced that they were not going to vote.

Looking at the questions, one can see that single-member constituencies were the main axis of debate. They were supported by the PO and Kukiz, while the other parties were against. The second question reflects a similar division, with the PO, Kukiz and the TR being against the financing system used so far. No controversy was caused by the third question, as everybody supported strengthening the position of the citizen. When analyzing the views of the public about the referendum, it is visible that they changed as time passed. In the polls conducted by the Public Opinion Research Centre (CBOS 2015), Polish citizens said they knew/rather knew what the referendum was about (June – 17%/22%; July – 20%/29%; August – 22%/29%). The number of people who declared they were/rather were going to participate in the voting dropped over time (June – 41%/19%; July – 41%/21%; August – 32%/20%). The number of people supporting the implementation of single-member constituencies also decreased (June – 54%; July – 45%; August – 41%). Small fluctuations occurred when it comes to 'yes' answers to the second (June – 15%; July – 13%; August 14%) and third question (June – 82%; July – 81%; August – 76%).

In the course of the entire referendum campaign there were proposals to add more questions. Some political actors pointed out that the scope of the nationwide referendum should be bigger. They wanted to ask the citizens about, among other issues, returning to the previous retirement age (PiS), financing religion classes from the state budget (TR), or reintroducing death penalty (KORWiN). The only opportunity to ask the citizens about the above mentioned issues would appear if the President or the Sejm called for another nationwide referendum. Two referendums could even be organized on the same day, as it happened in 1996. However, this would not be in any way opportune for President Komorowski and the governing coalition of PO and PSL.

While there was still some discussion about the selection of questions to be asked in the referendum, the newly elected President Duda used his powers and proposed another referendum. He came up with a motion for the Senate to agree to call a nationwide referendum to be held on October 25 together with the already planned parliamentary elections. On September 4, the second chamber of the Polish parliament did not grant its permission to do so.

Formally, a referendum campaign starts on the day when President announces his resolution and finishes 24 hours before the referendum day, when electoral silence commences. All expenses of the entities which take part in the campaign are financed from their own means. Formally, the National Electoral Commission registered 133 out of 157 applying entities, mainly unknown societies and foundations, which received the right to participate in the campaign. Such a formality makes it possible for them to gain two benefits. Hence such huge interest is motivated by an opportunity to delegate their representatives who work in referendum commissions and receive remuneration, as well as being granted free airtime (75 entities confirmed that they wished to broadcast free publicity materials).

Having in mind the approaching October parliamentary campaign, parties were not eager to invest their resources in the referendum campaign. It is thus difficult to say that a true campaign took place, one which would be based on presenting views in publicity materials on TV, in the radio, press or billboards. Unlike in the presidential or parliamentary campaigns, there were no incessantly broadcast TV commercials, posters hanging on every surface or letter boxes blocked with leaflets. One of the very few campaign-like undertakings were posters on billboards, on which PO showed that it was for abolishing of financing parties from the budget while PiS was against such a solution.

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Radio and television were the main sources of information during the campaign. This is due to the fact that every entity was entitled to have free airtime to broadcast referendum-related content on Polish Television (TVP 1, TVP 2, TVP Polonia, and regional TV branches), and in the Polish Radio (Channel 1,2,3,4 and the channel for Poles abroad). Altogether, the airtime amounted to 25 hours of TV content and 30 hours of radio content, including divisions between particular channels and various times of the day (Resolution 2015). In the case of parliamentary elections this is 15 and 30 hours, although one needs to remember that then the airtime is divided between a smaller number of entities.

### Results

The result of the referendum was unambiguous, although it has to be analyzed from two perspectives (Announcement 2015). First of all, the answers to the questions provide a certain picture, namely the voters were for single-member constituencies (78.75%), against the current system of financing political parties (82.63%), and for deciding doubts concerning tax laws in favor of the taxpayers (94.51%). Secondly, and fundamentally for the assessment of the referendum, the low turnout – only 7.8% – reflected a clear attitude of the citizens towards the referendum.

Voting took place in 27,788 polling stations in Poland and 189 abroad. The act of voting could be performed in three different ways: personally, by proxy (406 people), and by post (3,734 valid ballots). The total number of invalid voting forms amounted to 181, with a close number of invalid votes depending on the question (1 – 2.55%; 2 – 2.36%; 3 – 2.63%). Thus the result of the referendum, due to the low turnout, is not binding.

**Table 1. Results of the 2015 referendum**

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Date of referendum:		6 September 2015	
Electorate:		30,565,826	
Referendum question:	Are you in favor of introducing single-member constituencies in elections to the Sejm of the Republic of Poland?	Are you in favor of maintaining the current system of financing political parties from the state budget?	Are you in favor of introducing a general principle whereby any legal doubts in interpreting tax law would be resolved in favor of taxpayers?

Total votes cast:	2,384,780 (7.8%)	2,384,780 (7.8%)	2,384,780 (7.8%)
Total valid votes:	2,323,930 (97.45%)	2,328,509 (97.64%)	2,322,084 (97.37%)
Valid votes in favor:	1,829,995 (78.75%)	404,515 (17.37%)	2,194,689 (94.51%)
Valid votes against:	493,935 (21.25%)	1,923,994 (82.63%)	127,395 (5.49%)

## Conclusions

Conclusions are to be drawn not on the basis of the results but the level of the turnout. Unfortunately, there are no empirical studies on the topic of referendum abstention. It seems, however, that the picture of the referendum presented here resulted from lack of subject-matter-oriented campaign and the way of implementing the referendum, rather than from the attitude of the citizens or the content of the questions. Considering particular politicians, it can be said that Komorowski and Kukiz are those who lost the most. Komorowski initiated the referendum, and Kukiz had it as his most prominent postulate, encouraging the citizens to vote.

When one analyzes political consequences for particular parties, the PiS won the best position, being the main opposition formation which is aspiring to take over government. The party gained arguments confirming that the referendum was a defeat for PO and Kukiz. The whole situation revealed the weakness of the government as well as the main candidate who wanted to contend for the votes of the disappointed people who wanted changes. For the country these results can be interpreted in two ways. The circumstances of calling the referendum, the course of the campaign and the results did not win any supporters for this form of direct democracy. This generates difficult conditions for any further attempts to encourage the citizens to participate in such initiatives. However, on the other hand, the politicians might not apply direct democracy instrumentally in the future, and they will limit the use of a nationwide referendum to matters and circumstances which are really crucial. What is most important, such referendums shall not be part of presidential or parliamentary campaigns, but they shall be preceded by an informed and wide-reaching campaign to show advantages and disadvantages of particular solutions.

In a comparative perspective, three factors differentiate the present referendum in a negative manner. This is attendance, the importance of questions as well as the circumstances of calling it. Comparing it to the four previous nationwide referendums, we see that for the first time the result of such a referendum is not binding because of low attendance. Although the

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attendance threshold was established at 50% in 2003, in all the previous referendums attendance was not as low as now (the first referendum – 32.40%; second – 32.44%; third – 42.86%; fourth – 58.85%). The importance of questions also seems to be lower, especially when compared to two last ones, namely accepting the Constitution in 1997, or joining the EU in 2003. Finally, the decision to call the referendum was primarily a result of presidential rivalry rather than a need to get acquainted with the will of the citizens. The referendum took place in line with the constitutional rule of “particular importance for the state.” It definitely got such a status, going down in history as a negative instance of applying direct democracy in Poland.

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