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## The Civil Referendum Initiative in Poland

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**Tomasz Koziello**

## **THE CIVIL REFERENDUM INITIATIVE IN POLAND**

### **Introduction**

The civil referendum initiative [*obywatelska inicjatywa referendalna*] is one of the types of popular initiatives [*inicjatywa ludowa*] that constitute a form of direct democracy. Apart from this there exist: the constitutional initiative that guarantees to a group of citizens the right to legislative initiative [*inicjatywa ustawodawcza*] that is the right to present a bill for a new constitution or to introduce changes in the existing one. The civil referendum initiative enables a group of citizens to put forward a proposal to carry out a public vote in order to learn what opinion the society has on a particular issue (Grabowska 2005: 19–20; Kuciński 2007: 283).

### **1. Legal regulations**

In Poland, the civil national referendum initiative had been introduced by the Act on Referendum of 29 June in 1995 that was replaced by the law concerning the national referendum of 14 March in 2003. According to the legal regulations, a public vote may only be held regarding issues that are exceptionally important from the vantage point of the state. This formula may encompass a broad spectrum of issues: social issues, economic issues, moral issues. The legislators made a reservation stipulating that the referendum motion [*wniosek referendalny*] may not be related to expenses and revenues of the state, defense issues or the issue of amnesty (Grabowska 2005: 167–168; Kuciński 2007: 238; Uziębło 2006: 124–126).

A group of at least 500 thousand citizens was designated as the subject entitled to put forward the referendum initiative. Such a group is to be represented by a plenipotentiary who is selected out of the first

15 persons that supported the motion by signature. The plenipotentiary's task involves the preparing of a petition to collect subsequent signatures in support of the motion in accordance with the regulation of Państwowa Komisja Wyborcza (National Electoral Commission). The petition is to contain the name of the issue that is the subject of the referendum and list the questions or proposed solutions. After the required number of signatures is collected, the plenipotentiary hands in the petition to hold the referendum to the Speaker of the lower chamber of the Polish Parliament (*Marszałek Sejmu*). In order for the petition to be accepted, it must contain: 1) the proposed questions or variants of the solutions to the problem that is subject of the referendum ballot, 2) the list of citizens in support of the initiative, including their first and family names, permanent addresses, personal identity numbers (PESEL) and their signatures made in handwriting, 3) reasons justifying the need to organize the referendum. After the request is filed, the Speaker of the Parliament is obliged to set up a committee to verify the petition in terms of its formal compliance with the existing regulations. If any inadvertencies are detected, the Speaker informs the plenipotentiary about his decision to reject the request, ordering the plenipotentiary to remove the inadvertences. The correction of the petition should be accomplished within 14 days since the decision's communication. The plenipotentiary may draw the petition back, to repair its errors or, not accepting the Speaker's decision, make an appellation at the Supreme Court. The Court has to issue a final decision within 30 days. In case the petition is decided to be correct or the Supreme Court decides that the plenipotentiary's complaint was justified, the Speaker passes the petition to be discussed during a parliamentary session (Grabowska 2005: 172, 181–182).

The first reading of the citizens' request concerning the referendum takes place during a plenary session of the lower chamber of Parliament (Sejm). The plenipotentiary justifies the motion, which is then subject to discussion and voting. In order for the request to be accepted, it has to be supported by an absolute majority on the condition that at least half of the number of the deputies are present, as specified by law. The request is rejected if it is not supported by the required number of votes. In turn, if the request is accepted by the lower chamber of Parliament, the Speaker passes the petition further to a parliamentary committee in order to have a bill concerning the organisation of a referendum prepared and presented. The committee's task is to make sure that the request complies with the existing law; it may not interfere

with the subject of the petition or the contents of the questions or variants of solution that it contains. Otherwise, the Speaker has the right to reject the corrections introduced by the committee. When the committee finishes its work, the bill is presented at the lower chamber of Parliament. The chamber, in the presence of a minimum of half of the number of the deputies, as stipulated by law, decides whether the referendum is to be held. A public vote must then be held within 90 days since the date of the parliament's decision (Grabowska 2005: 186–187).

## **2. Political practice**

Since the act concerning referendum was put into practice in September of 1995, three citizens' requests regarding a public vote have been filed. They were initiated, respectively, by *Polskie Stronnictwo Ludowe* [Polish Peasants' Party] supported by *Sojusz Lewicy Demokratycznej* [Left Democratic Alliance] (petition number 1); *Sojusz Lewicy Demokratycznej* (SLD) supported by *Unia Pracy* (Labour's Union) and *Polskie Stronnictwo Ludowe* (PSL) (petition number 2) and *Liga Polskich Rodzin* [League of Polish Families] (petition number 3). Stanisław Żelichowski, a PSL deputy became the plenipotentiary of the first of the motions. The request was handed in to the Sejm Speaker then, Maciej Płażyński, on 20 January in 2000. Józef Zych, another of the PSL deputies represented the authors of the second of the requests – this request was filed on 3 November in 2000. The third of the requests, handed in to the Sejm Speaker Marek Borowski on 15 October in 2002, was represented by a LPR deputy, Marek Kotlinowski. Each of the motions managed to be supported by the required 500 thousand of signatures and was then passed to the lower chamber of Parliament for discussion. In the first case, the petition was passed to the lower chamber of Parliament after a month elapsed (it took place on 17 February in 2000), in the second case – 6 days (9 November 2000), in the third – 13 days (28 October 2002). The citizens' requests were quickly evaluated with a reference to their formal correctness, which made it possible to subject them to the parliamentary debate immediately (SI Sejm: III/druk 1735; III/druk 2339; IV/druk 1032).

The first of the motions concerned the issue of privatisation and re-privatisation of state forests. It included three questions. Those questions asked whether the citizens agree to: 1) return the forests that were currently owned by the state to their former owners or the owners' in-

heritors; 2) have the forest clearing increased in order to meet the financial claims that were presented by the former owners of the forests and their inheritors in relation to the forests' re-privatisation; 3) change the ownership status of the state owned forests by transforming them into commercial partnerships [*spółki prawa handlowego*] whose aim was to maximize profits (this transformation would restrict or eliminate free access of the public to the forests). The second of the requests was related to the problem of the scope, forms and costs of re-privatisation of the public property that had been nationalized by the state in the period 1944–1962. The petition included three questions. The citizens were to express their approval of: 1) the restricting of the re-privatisation to only those Polish citizens who were deprived of their property by the state authorities in a manner that infringed upon the then obliging law and to the repatriates from the territories east of the Bug River who had been promised compensation for the property they had had to leave in the East; 2) the return to the former owners of the real estate that had been in public use, including tenant buildings, hospitals and school buildings, 3) the estimated loss compensation to be paid to the former owners in the form of property coupons (*bony majątkowe*) to be distributed in shares that could not exceed 5 percent of the sum constituting the value of the equities owned by the State Treasury and the value of property of state-owned enterprises. The last of the citizens' petitions asked whether the citizens agreed to have the Polish land sold to foreigners; it contained just this question. The society was to answer whether it was against the sale of the Polish land to foreigners (SI Sejm: III/druk 1735; III/druk 2339; IV/druk 1032).

In the first two cases, the policy of re-privatisation implemented by Jerzy Buzek's Cabinet gave rise to the referenda campaigns. In September of 1999, Speaker Płażyński received a motion concerning re-privatisation and compensation for persons who had lost their property to the advantage of the State Treasury in the period 1944–1962. The authors of the petition proposed that the former owners should be given back the estates and property that they had lost due to decisions taken by the communist authorities. In those cases where this proved impossible – because the property constituted an enormous value from the vantage point of the national culture, it was located within a national park or was indispensable in terms of the state, security – the former owners would receive re-privatisation coupons. Those coupons could be used to buy arable land that was owned by the state, some of the areas that were owned by Państwowe Gospodarstwo Leśne – Lasy

Państwowe [State Forests Company] (these were to be areas to be used for afforestation or for the extraction of raw materials), real estate indicated by territorial self-governments and the Minister responsible for public administration or – this would apply to the former owners of forests – could sell the coupons to the management of Lasy Państwowe (PGL-LP). For some time plans had been considered to include in the proposed bill a project of transforming PGL-LP into a commercial partnership. Other ideas included full re-privatisation – those plans had been presented by the deputies of the governing coalition of Akcja Wyborcza Solidarność – Unia Wolności [Solidarity Election Action-Freedom Union]. The third of the citizens' referendum requests had been made in response to the foreign policy of Leszek Miller's Cabinet that regarded Poland's accession to the European Union. The vice-Prime Minister and the Minister of Agriculture then, Jarosław Kalinowski, on behalf of the Cabinet agreed in March of 2002 to shorten the transition period that was to precede the moment since when foreigners could buy arable land in Poland from 18 years (which had been proposed by the Buzek government) to 12 years, with a reservation that persons who had already leased such land in Poland for at least three years (in the eastern voivodships) or seven years (in the western voivodships) that elapsed at the moment of Poland's accession to the European Union could buy this land before the transition period expires.

Justifying the petition number 1, its authors argued that the need to hold a referendum was based on a fear related to the consequences of the state forests' privatisation and re-privatisation plans as drafted by the government. They maintained that the return of the forests in the hands of private owners or the transformation of the state forests into a commercial partnership or the obligation imposed on the PGL-LP to buy the privatisation coupons would lead to a situation in which forests would become treated as instruments to be used for profit maximisation and that would result in unlimited forest clearing. This would cause gradual devastation of the forests and would deprive the forest areas of important, non-productive functions such as a positive impact on the climate, water management or recreational and leisure opportunities offered to society. Arguing the case for the citizens' request number 2, it was stated that the implementation of the re-privatisation program would produce dangerous social and economic effects. It was believed that the owners that would recuperate their former property, such as tenant houses, would – for profit – raise the rents for tenants in order to evict those who were unable to pay the higher rents. It was feared that

the owners to whom the state would return real estate where public benefit institutions had been housed would press for the termination of the renting contracts and thus force territorial self-governments or the state to have new buildings constructed to house the evacuated hospitals, schools or old age pensioners' homes. Many reservations were also raised as far as the idea to compensate the former owners by means of re-privatisation coupons. According to the petition's authors, the bill prepared by the government would be a burden on the state budget leading to public deficit. In the petition number 3, its authors expressed their anxiety that the Polish arable land and forests could be bought out by foreigners once Poland became a member of the European Union. They were convinced that this would result in huge territorial losses by the Polish state (SI Sejm: III/druk 1735; III/druk 2339; IV/druk 1032).

The first of the filed requests waited the longest to be debated by the lower chamber of Parliament – 3 months. The debate took place during the session number 79, held on 25 May in 2000. The second of the petitions waited for a week – its first reading took place on the 15 November in 2000, during the 91<sup>th</sup> session of Sejm. The third of the motions waited to be debated for 2 weeks – it was discussed during the 34<sup>th</sup> Sejm session, held on 12 November in 2002.

During the debate on the first of the referendum requests, the deputy Żelichowski repeated the reservations that the request's authors had regarding the government's policy. He stated that the plan to re-privatise and privatise the forests was aimed at the destruction of considerable forest areas. The petition's plenipotentiary drew the deputies' attention to the fact that the buy-out option that made PGL-LP buy the coupons and the financial compensations paid to the former owners would burden the budget of Lasy Państwowe to the value of one billion Polish zloties over 10 years. This financial burden exceeded by more than 1/3 the estimated net income derived from forest economy in that period. The management of LP would thus be forced to increase the forest clearing in order to maximize their profit. As a result the area taken up by forests in Poland would be diminished. Żelichowski added that the returning of the forests owned by PGL-LP to their former owners would also mean the end of the forests because the private owners would take advantage of them by initiating economic, profit-oriented activities and that would mean unlimited clearing. The citizens' motion was supported by the deputies of SLD (Jan Sieńko), PSL (Józef Zych), Konfederacja Polski Niepodległej-Ojczyzna [Confederation of Independent Poland – Motherland] (Michał Janiszewski) and

Polska Partia Socjalistyczna (Piotr Ikonowicz). Deputies representing the governing parties were not persuaded by the motion. Marian Goliński (Akcja Wyborcza Solidarność – AWS) and Marian Cycoń (Unia Wolności – UW) stated that there was no need to hold a referendum, believing that the governmental bill did not spell those threats since the draft had not included either a regulation concerning in-kind re-privatisation or the one stipulating the transformation of the state forests into a commercial partnership. They maintained that the coupon-based compensation for the former owners was just and justified and that PGL-LP should be obliged to pay for the coupons. Antoni Tokarczuk, the Minister of Environment, who represented the Cabinet then, added that the estimated financial burden over the 10 years was calculated at about 400 million zloties which should not wreak havoc on Lasy Państwowe's budget. The representatives of the governing coalition stipulated that the money that the authors of the citizens' petition wanted to spend on the referendum (48 million zloties) was to be used for other purposes, including the implementation of afforestation program and the program of forest protection (SI Sejm: III/pos. 79).

During the debate over petition number 2, apart from adducing the arguments included in the request's justification, the deputy Zych stated that the bill prepared by the government would cause social conflicts that would accompany the process during which the former owners would again take possession of the property that they had been deprived of. In his opinion the wish to repair the harm done by the communist authorities, put into practice by the Council of Ministers, would result in harm done to the current owners, leasees and tenants. It would also endanger the Polish *raison d'état*, because the draft of the law did not restrict the return of the property to Polish citizens only. The plenipotentiary demanded that re-privatisation should be restricted to those cases in which law had been broken, and should not be applied if this meant the returning of the whole private property that had been nationalised. Similarly as in the former case, this citizens' request was supported by SLD (Wiesław Kaczmarek) and PSL (Stanisław Żelichowski). AWS (Marcin Libicki) and UW (Janusz Lewandowski) were against the motion. The governing coalition parties' representatives maintained that the motion aimed at legalization of the communist unlawfulness and the policy of forced expropriation implemented by the authorities of People's Poland by means of illegal decrees and unlawful laws. According to them, re-privatisation was the only way to repair the harm done and was one of the conditions to be fulfilled

to break away with communism. That was why, together with the representatives of Ruch Odbudowy Polski-Porozumienie Centrum (Movement of Reconstruction of Poland – Centre Agreement), both clubs decided not to support this citizens' petition (SI Sejm: III/pos. 91).

While presenting the request number 3, deputy Kotlinowski warned in his speech that accepting the conditions negotiated by Minister Kalinowski would mean that after the protection period elapsed, foreigners could buy out the Polish land in an uninhibited manner. Attracting attention to the fact that land prices in Poland were lower than in the countries of the „old” Union, while the old Union's citizens were much richer than Poles, the plenipotentiary presented a catastrophic vision according to which just within several years the whole Polish land would be owned by foreigners whereas the Poles would turn into their employees. He believed that Polish society should block the government's policy by means of a general ballot since the government's plans were detrimental to the Polish interests and Polish *raison d'etat*. The stance taken by the petition's authors was supported by representatives of Samoobrona [Self-Defense] (Waldemar Borczyk), Liga Polskich Rodzin (LPR) (Zygmunt Wrzodak) and Ruch Katolicko-Narodowy [Catholic-National Movement] (Antoni Macierewicz). Two deputy clubs – Prawo i Sprawiedliwość [Law and Justice] (Michał Kamiński) and PSL (which participated in the governing coalition), represented by Józef Zych, were in favor of the citizens' request opting for recommending it for further elaboration by a parliamentary commission so as to introduce some changes in the proposed question formula. The other two governing parties, SLD (Józef Oleksy) and Unia Pracy (Andrzej Aumiller) as well as the biggest party of the opposition, Platforma Obywatelska [Citizens' Platform] (Waldy Dzikowski) were against it. The arguments opposing the referendum included the claim that the veto blocking the sale of land: 1) infringed upon free market and free trade in land, which was not congruent with the European Union's legal regulations, 2) would lead to Poland's isolation in the international arena, whereas 3) the cost of the referendum (128 million zloties) constituted too much of a burden on the public budget, especially at the moment that the pre-accession referendum was being prepared. To appease the public opinion, the coalition promised that it would draft bills protecting the land against use that would not be compatible with the Polish interest (SI Sejm: IV/pos. 34).

The voting on the three citizens' motions was carried out during the same Sejm sitting, the day after the debate was held. 405 MPs took

part in the voting concerning the request number 1 (26 May 2000). Out of them 180 voted „yes” (SLD, PSL, PPS, KPN-O, Polska Racja Stanu, a few AWS deputies and independent MPs), while 217 deputies voted against the request (AWS, UW, Porozumienie Polskie, ROP-PC, a few independent MPs), whereas 8 deputies abstained from voting. The citizens’ request number 2 was subjected to voting on 16 November 2000. Out of the 420 MPs participating in the voting, 190 supported the motion (SLD, PSL, Koalicja dla Polski, a few PP, AWS and independent deputies), while 228 voted „no” (AWS, UW, ROP-PC, a few PP, KdP and independent MPs). 2 MPs abstained from voting. While the citizens’ motion number 3 was voted (13 November 2002), out of the 420 who were present then, 131 voted in favor of the petition (Samobrona, PSL, LPR, RKN, ROP, part of PiS), while 254 MPs (SLD, PO, UP, Partia Ludowo-Demokratyczna, a few PSL and independent deputies) against it. 35 MPs abstained from voting. All of the citizens’ referendum petitions were ultimately rejected during their first reading by the lower chamber of Parliament (SI Sejm: III/pos. 79; III/pos. 91; IV/pos. 34).

### **3. Concluding remarks**

The civil referendum initiative does not constitute a regular political practice. A few factors account for this state of affairs: 1) difficulties related to the organisation of a public campaign and the collection of half a million signatures to support the motion; 2) unwillingness of politicians to deploy this form of direct democracy – between 1995 and 2009 in total only 18 requests to hold a referendum were filed, out of which only four were accepted for formal processing, 3) lacking faith that it will be possible to have an effective public vote as in case the turnout is lower than 50 percent, the results are not binding and they might not be taken into account by the governing authorities. Out of the 4 referenda that were held in the period – they concerned the issue of privatisation and granting property rights [*uwłaszczenie*] and the use of state property (1996), the adoption of the Constitution (1997) and an approval of Poland’s accession to the European Union (2003), only the last of the referenda was attended by the required share of the voters – this was because it lasted for two days (Kuciński 2007: 260, 269–270; Piasecki 2005: 24, 39). The aforementioned factors are responsible for the under-utilisation of this form of political action by the society. From

this perspective, the efforts undertaken by the three applicants that managed to represent their petitions in the lower chamber of Parliament effectively need to be appreciated.

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