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Polish National Referendum Act. The accession referenda

Preface

Referendum (from Latin: *referendum*) – things with which one should refer to some group [to the nation]. Referendum is a form of **direct democracy**. It is a way of referring to the nation understood as the sovereign, to have it make any particular decision or manifest its will in any given matter. Referendum is a method of deciding in a direct way, through voting by all citizens entitled to vote, upon matters that are important for the whole country (**national referendum**) or for a part of its territory (**local referendum**). From a logical point of view, the opportunity to decide, enjoyed by citizens, consists precisely in making their choice between alternative solutions. Making decision is the very essence of any referendum. The subject of a referendum deals, in most cases, with legislative issues (such as, for example, either adoption or rejection of the Constitution or of amendments thereto, or to another legal act), administrative issues or other matters having particular importance for the country.

Referenda may be either **obligatory**, where a legislator is obliged by law to carry out a referendum over a given matter (or, in other words, where this is an essential condition for a given decision to enter into force), or **facultative**, where the law allows for holding a referendum in a given matter, without it being required as necessary. Finally, the outcome of a referendum may either be binding for State authorities or may just serve as an opinion delivered by the

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society. This distinguished, we further have to deal with **binding** or **advisory** referenda.¹ Accordingly, we can distinguish the following types of referenda:

1. national – local,
2. obligatory and facultative,
3. binding – advisory.

Sometimes a referendum is also called “plebiscite”. The institution of referendum was developed in 16th Century in Switzerland and it is in that country that it has been used most frequently.²

2. The Accession referenda

As we trace back the process of accession of individual States to the European Communities, and later to the European Union, it occurs that it had not been in all countries that the decision was made through a referendum. To begin with, no referendum had been held in six original Member States that have established the European Communities, *i.e.* in France, Germany, Italy, Belgium, Netherlands and Luxembourg. At that time three establishing treaties were signed, regarded as the basis to start co-operation.

Later on, four successive rounds of enlargement have taken place so far, reflected in further, respective treaties:

1. The Treaty on Accession of **Denmark, United Kingdom and Ireland** to the European Communities (1972), excluding Greenland (1985) from the Treaties establishing the European Communities,
2. The Treaty on Accession of **Greece** to the European Communities (1979),
3. The Treaty on Accession of **Portugal and Spain** to the European Communities (1985),
4. The Treaty on Accession of **Austria, Sweden and Finland** to the European Union (1995).

In only six of the above-mentioned countries, accession referenda were held, namely in: Ireland, Denmark, United Kingdom, Austria, Sweden and Finland. There was no referendum in Greece, Spain and Portugal.

The Irish law obliges the State authorities to hold national referendum in any important matters regarding European integration and a result thereof is binding, which means that the government is obliged to follow the will of nation. Situation in Denmark is similar. In that country, if an act, in result of which Denmark is to hand a certain scope of competence over to international bodies,

¹ *Wielka encyklopedia prawa (Great Encyclopaedia of Law)*, Smoktunowicz E. (ed.), Białystok, Warsaw 2000, p.842; *Encyklopedia prawa (Encyclopaedia of Law)*, Kalina-Prasznik U. (ed.), Warsaw 1999, pp.647-648.

² *The referendum experience in Europe*, Gallagher M., Uleri P.V. (eds.), Basingstoke 1996, p.263.

fails to be passed in the Parliament by the majority of 5/6 of votes, national referendum is held, in which, in order for the draft act to be rejected, an ordinary majority of voters participating, but not less than 30% of all those entitled to vote, have to vote against it.³ Both in Ireland and Denmark obligatory accession referenda have been held and both of them were of the binding type.

The British case was quite unusual and dissimilar to any other, mainly because the referendum was held in that country as late as two years after the actual accession of the United Kingdom to the European Communities. The initial, principal decision on the accession of that country was made in 1973 by the British Parliament. However, after the period of two years, a level of support for the UK participation in the European Communities decreased considerably, as a result of unpopular reforms that took place and of poor condition of economy. As a part of its campaign before the elections to the British Parliament, the Labour Party, then scrambling for power, promised the society that if it won the elections, it would have undertaken re-negotiation of conditions of the United Kingdom's membership in the European Communities. The same party also promised that it would hold the national referendum in which the nation would have an opportunity to decide whether it preferred to stay in the EC or to retire therefrom. In fact, the Labour Party won the elections and kept its promise: the referendum was held. The result, however, was positive and so the United Kingdom retained its EC Member State status.⁴

The event was of particular importance for Britons due to other reasons as well. The referendum in question was the very first to take place in that country. Accordingly, it required, firstly, a special act to be resolved, and secondly, people had to be encouraged to take part.

In Austria the accession referendum was both obligatory and binding. The fact of the accession to the European Communities was regarded as an entire change of the Constitution – something that in Austria has to be decided upon by the society through the obligatory referendum. The principle is that the outcome is final and conclusive if the proposed change of the Constitution is approved by the absolute majority of votes given. In the remaining countries, *i.e.* in Finland and Sweden, referenda were neither obligatory nor binding, but they have nevertheless been held and their outcomes were adopted by governments of

³ Działocha K. et al., *Opinia prawna dotycząca zasad ustalania wyników referendum określonych w projekcie ustawy o referendum ogólnokrajowym* [Ekspertyza sejmowa] (*Legal Opinion Regarding Principles of Determining Outcomes of Referendum as Specified in the Draft Act* [An Expert Opinion prepared in the Sejm]), Warsaw 2002, p.22, [xerocopy].

⁴ Wistrich E., *Wnioski z referendum w 1975 roku. Polska Rada Ruchu Europejskiego: Doświadczenia brytyjskich kampanii przedreferendalnych – wnioski dla Polski* (*Conclusions from the Referendum Held in 1975. Polish European Movement Council: Experiences from British pre-referendum campaigns - Conclusions for Poland*) in: *The Euro Debate*, Federal Trust for Education and Research, 2001.

those countries as binding. In all the above-mentioned countries, in which the accession referenda were held, their outcomes were positive.

Accession referenda:	Votes given	in favour
Ireland – 10.05.1972 (obligatory, binding)	70.80%	83.10%
Denmark – 2.10.1972 (obligatory, binding)	90.44%	63.29%
United Kingdom – 5.06.1975	64.03%	67.23%
Austria – 12.06.1994 (obligatory, binding)	82.35%	66.58%
Sweden – 13.11.1994 (advisory)	83.32%	52.74%
Finland – 16.10.1994 (advisory)	70.40%	56.88% ⁵

The matter of membership in the European Communities has also been considered in two other European countries, namely in Norway and in Switzerland.

In Norway the accession referendum was held twice. Norwegian referenda, according to the law of that country, have been facultative and advisory, so the government has neither the duty to hold them, nor to feel bound by their outcomes. Both times Norwegians said “no” to the European Communities:

- 26 September 1972 - advisory – 46.5% in favour; voted: 79.2%;
- 28 November 1994 - advisory, but adopted as binding - 47.8% in favour; voted: 88.8% of all those entitled to vote.

While in principle Norwegian referenda have been just of advisory nature, in the latter case the government of that country decided to regard them as binding and made its decisions in line with the will of the nation. It isn't hard to understand those decisions. First of all, Norway is a relatively small country in terms of its population. As a result, its representation in the European Communities institutions, such as the European Commission, the European Parliament or the Council of the European Union would be modest, preventing Norway from having any significant influence upon the functioning of the Communities as the whole or upon decisions made therein. Secondly, Norway has been a wealthy country and its regions have been very well developed, needing no support from the Community budget. Accordingly, Norway would contribute to the common budget more than it would be able to draw therefrom. Rather than that, this country prefers to reinvest the income earned on oil and gas extraction in the North Sea in its own territory, and to protect its fishery areas, in particular those of salmon. Additionally, due to its economic history and traditional trade links and directions, the Norwegian economy features strong pro-American trends. Nevertheless, the fact that Norway has not accessed the European Communities, in no way restricts extensive contacts of that

⁵ *Direct democracy in the world*, (<http://c2d.unige.ch/int/>); *Voices of Europe. IRI Europe Report on the growing importance of initiatives and referenda in the European integration process*, Hautala H., Kaufmann B., Wallis D. (eds.), (<http://www.iri-europe.org>).

country with the European Union Member States: its legislation its consistent with the EU legislation and its borders have been open.⁶ Norway has been a member of the European Free Trade Association – EFTA, as it's been a member of many other European organisations that have shaped the EU market, such as of the European standardisation organisations CEN/CENELEC,⁷ etc.

Switzerland has voted against the accession twice, as well. In that case, however, the issue to be decided wasn't that of either approval or rejection, by the society, the Treaty on Accession, as it was in the case of other countries. In the referendum held on 6 December 1992 the voting regarded the Treaty on accession of Switzerland to the European Economic Area – EEA (49.7% in favour, 79% citizens of the country participated), while on 21 May 2000 the issue under referendum was the package of bilateral agreements with the European Union (67.2% in favour, however, only 48% of those entitled to vote took part). Such decisions seem to be explained well enough both by federal structure of the country and by the level of its economic development, although it should be observed, on the other hand, that the attitude of Swiss society towards the European Union has undergone gradual change over time.⁸

On the part of the Member themselves States just one referendum took place: in France, on 23 April 1972 (with 60.27% of those enjoying voting rights taking part, out of whom 68.28% voted in favour). The French referendum, regarding the approval of the first round of enlargement of the European Communities in 1972, concerned the issue of potential adoption to the European Communities of the United Kingdom, the membership of which was blocked by France for some time before, due to economic reasons. However, as it occurred, the referendum finally manifested the French society's consent to that enlargement.⁹ It should also be reminded that on 23 February 1982 a referendum was held in Greenland (the island belonging to Denmark), as a result of which Greenland was excluded from the European Communities (45.96% in favour, participated 74,91% of the entitled).

⁶ Norway has been a member of Nordic States Passport Union associated with the Schengen group.

⁷ CEN – Comité Européen de Normalisation (European Standardisation Committee), (<http://www.cenorm.be>); CENELEC – Comité Européen de Normalisation Electrotechnique (European Electrotechnical Standardisation Committee), (<http://www.cenelec.org>).

⁸ Important steps after the no to the EEA, (<http://www.europa.admin.ch>).

⁹ Kuźlewska E., *Wpływ referendum na przemiany prawno-polityczne w wybranych krajach europejskich (The Influence of Referendum Upon Legal and Political Changes in Selected European Countries)*, in: Fijałkowska B., Żukowski A. (eds.), *Unifikacja i różnicowanie się współczesnej Europy (Unification and Differentiation of Contemporary Europe)*, Warsaw 2002, pp.68-77; Mróz M., *Referendum w sprawie przystąpienia do Unii Europejskiej (Referendum On the Accession to the European Union)*, "Głos", no. 10/2002, p.9.

3. Information actions and referendum campaigns

The role played by information actions and referendum campaigns in the process of making decisions on whether any given country should access the European Communities or not, cannot be overestimated. It should be explained that an information action differs from a referendum campaign in that the former may be run for an unrestricted period and it should focus upon communication of impartial, substantial information regarding both the European Communities and efforts undertaken by the given country in the area of integration. An information action is in most cases prepared and implemented by the government, which presents the treaty on accession to the society and has an obligation to inform it fully and reliably on principles of integration and on results thereof. A referendum campaign, instead, is run by different entities entitled to participate in the referendum, just for a definite period preceding the referendum, and usually specified by an act. It mainly consists in agitation (electioneering). It should be stressed that Polish Act on referendum deals only with the referendum campaign, while information actions have been regulated under separate legal provisions. Such actions mainly took form of governmental programmes: "National Strategy for Integration. Part VII: Activities in the area of information",¹⁰ "The Programme of Informing the Society",¹¹ the regulation of the Council of Ministers of 11 December 2001 regarding establishment of the position of the Government Representative responsible for European Information¹² or two following regulations: "of the Council of Ministers, of 7 January 2003 on abolition of the position of the Government Representative responsible for European Information"¹³ and "of the Prime Minister, of 7 January 2003 on establishment of detailed scope of competence of the Minister – member of the Council of Ministers Lech Nikolski"¹⁴ as the government representative responsible for matters of the accession referendum.

Both in all the countries to have accessed the European Communities and in those that eventually chose to stay aside the EC, extensive information actions had been conducted. Such activities were usually prepared by central governments or by organisations working in that area upon the government's order. Actions were extended over periods as long as two years preceding accession of a

¹⁰ *Narodowa Strategia Integracji (National Strategy for Integration)*, "Monitor Integracji Europejskiej" - wydanie specjalne, ("The Monitor of European Integration" - special issue), 1997.

¹¹ *Program Informowania Społeczeństwa. Integracja Polski z Unią Europejską (The Programme of Informing the Society. Poland's Integration with the European Union)*, The Office of the Committee for European Integration. Information and Social Communication Department, Warsaw 1999, [xerocopy].

¹² "Dziennik Ustaw" (Polish Journal of Statutory Law), no. 1444 1997, item 1618.

¹³ "Dziennik Ustaw" (Polish Journal of Statutory Law), no. 1 2003, item 3.

¹⁴ "Dziennik Ustaw" (Polish Journal of Statutory Law), no. 1 2003, item 6.

country to the European Communities and, in some cases, after it happened as well. They were financed out of the central budget funds. In the countries where referenda on the accession were held, referendum (agitation) campaigns had been organised as well, often with financial support from the State budget. However, in those cases, such budgetary resources were divided into two equal parts: a half for those involved in agitation in favour of membership and another half for the opponents. Moreover, in those situations special rules required both sides to establish the referendum committees that had to be properly registered in order to obtain the funds, and, having concluded their activities, they had to produce detailed funds settlement reports.

Among the most renowned and best-organised information actions and referendum campaigns one undeniably should mention the case of the United Kingdom. First of all, before the British Parliament made its decision in 1973, the government commissioned an extensive information and promotional action to be held by the British European Movement. The action lasted six months, with one million pounds being spent. It succeeded in reaching the fundamental change in the (previously negative) attitude of British society to the European Communities. This way, the British Parliament could make decision on the accession of the United Kingdom to the Communities with clear conscience. This, however, haven't saved the British European Movement from being generally remembered as an organisation "of European fanatics". After having come to power, the Labour Party decided to renegotiate conditions of British membership in the Communities. The European Movement was contacted again, this time it was commissioned to hold a referendum campaign of adherents of the European integration. However, before that could happen, any activities of the organisation had to be suspended for a six-months period and its name had to be changed to a new one – "Britain in Europe", all in order to neutralise its former "fanatic" image. Then the referendum campaign started. 374 local groups were formed, actively involved in the referendum campaign all over the country's territory.

Beside that organisation, also other, non-governmental organisations were entitled to participate in the campaign at their own cost, without being obliged to be registered. In fact, everybody had such right, in line with the principle of freedom of speech. The government, on its part, allotted the amount of 125 thousand pounds for the committee involved in the referendum campaign in favour of the accession, under the slogan "Britain in Europe" and the equal amount for the committee running an opposing campaign, entitled "National Referendum Campaign". Moreover, the government financed the publication of brochures, issued by either body and sent to citizens, in which both organisations could present their respective attitudes and opinions regarding the UK's membership in the European Communities. Both committees had the right to

organise collections of money in order to increase their electoral funds, however, any private donor who paid more than one thousand pounds to the account of either committee, had to be disclosed.¹⁵ Committees were free to decide how they were going to run their campaigns and which information channels to use to that purpose.

Situation in Finland in terms of the accession referendum was quite similar. The information action on the European Communities was conducted in that country by the government, with contributions from different governmental agencies, for two years, at the total cost of FIM 30.6 million.¹⁶ In the referendum campaign three committees were formed, in opposition to each other: one in favour of membership, another one against it, the third one being a neutral block. The amounts of FIM 3.65 million were allotted from the State budget funds for both the “positive” and the “negative” committees, while the neutral block was given FIM 2.7 million.¹⁷ Peculiar to the Finnish campaign was the fact that the period of its implementation was not limited by legislation, as has usually been done in the case of any electoral (agitation) campaigns.¹⁸

In Sweden, instead, being one of the countries most prejudiced against membership in the European Union, a neutral information action was held, under the leading principle “You need information before the referendum so you are able to come at your independent opinion and make proper decision”. Swedish government earmarked the amount of SEK 50 million to that purpose.¹⁹ The action was managed by the Secretariat for European Information operating within the structures of Swedish Ministry of Foreign Affairs. In order to access citizens, an extensive use was made of networks of public and school libraries. The scope of the action included publication of a number of brochures addressed to various groups of citizens. In the referendum (electioneering) campaign, on the other hand, two referendum committees were established: “YES to the EU” and “NO to the EU”, with a dividing line between them cutting, in many cases, across political parties.²⁰

Access to the radio and TV media within the scope of information actions and referendum campaigns differed considerably from one country to another. Principles of such access have been regulated, in particular countries, by appropriate legal acts. In most cases, in an information action one could have

¹⁵ See: footnote no. 5.

¹⁶ Finnish Marks.

¹⁷ Accessible in World Wide Web: (<http://www.euoppatiedotus.fi/publications>).

¹⁸ Kuosmanen et al., *Finland's Journey to the European Union*, European Institute of Public Administration, Maastricht 2001.

¹⁹ Swedish Kröner.

²⁰ Czarny R.M., *Szwecja w Unii Europejskiej. Studium polityczno-prawne (Sweden in the European Union. Political and Legal Study)*, Kielce 2002, pp.156-166.

made unrestricted use of public media as the purpose of it was to keep citizens informed in a fair and reliable way on different aspects of the European integration process. The matter of referendum (agitation) campaigns, however, has been quite different. In some countries, for example in Sweden, public channels have no right to involve in paid electoral campaigns. In other countries one may purchase broadcasting time for such purpose, in still other ones (such as Poland) broadcasting time of public media channels is made available to those running electoral campaigns in equal allotments, free of charge. According to some sources, promoters of the referendum campaign in the United Kingdom “*had access to broadcasting time in both radio and TV*”.²¹ In Sweden no referendum campaign could have taken place in broadcasting media because running political electoral campaigns in the public media is forbidden by the law of that country. That’s why other channels of communication with society have been used to such a significant degree there. In Finland, instead, interested parties had the right to buy as much broadcasting time as their budgets could afford.

4. Polish national referendum draft Act

Seen against the background of the above-discussed referenda in other countries, Polish requirements in this area have to be rated as very high. Until recently, Poland had the Referendum Act adopted on 29 June 1995.²² The Act allowed for two kinds of referenda to be held: one to decide upon matters having particular importance for the State and another to approve a change to the Constitution of the Republic of Poland. It allowed for two different kinds of referenda to be held: one to decide upon matters having particular importance for the State and another to approve changes made to the Constitution of the Republic of Poland. However, in 1997 new Constitution of the RP came into force, introducing, among other things, an option according to which referendum is held to either approve or reject ratification of an international agreement, on the virtue of which Poland is to hand over to an international organisation or body some of its State authority’s scope of competence in certain areas. Moreover, the new Constitution further defined precise requirements regarding effectiveness and validity of referendum. As a result of this, the Act of 1995 should be amended.

²¹ See: footnote no. 5.

²² “*Dziennik Ustaw*” (*Polish Journal of Statutory Law*), no. 99/1995, item 487, “*Dziennik Ustaw*” (*Polish Journal of Statutory Law*), no. 43/2000, item 488. Moreover, Poland has the Local Referendum Act of 15 September: “*Dziennik Ustaw*” (*Polish Journal of Statutory Law*), no. 88/2000, item 985; “*Dziennik Ustaw*” (*Polish Journal of Statutory Law*), no. 23/2002, item 220.

According to the Polish Constitution, the government may order to hold a national referendum in the following cases:

1. to decide upon matters having particular importance for the State,
2. to approve changes to the Constitution of the Republic of Poland,
3. to approve ratification, by Poland, of an international agreement.

National referendum in matters having particular importance for the State is ordered in line with Article 125 of the Constitution that stipulates for as follows:

1. In matters having particular importance for the State national referendum may be held.

2. The Sejm has the right to order national referendum to be held, by an absolute majority of votes, in voting held in presence of at least a half of the statutory number of deputies. Alternatively, holding of such referendum may be ordered by the President of the Republic of Poland, upon consent of the Senate, expressed by an absolute majority of votes, in voting held in presence of at least a half of the statutory number of senators.

3. Where national referendum is attended by more than a half of those having voting rights, its outcome is binding.²³

4. Validity of national referendum, as well as of that mentioned in Article 235 paragraph 6, is decided upon by the Supreme Court.

5. Both the way in which a referendum is organised and its principles are specified in legislation.²⁴

As can be concluded from paragraph 4 of the above article, also **national referendum approving changes made to the Constitution of the Republic of Poland** is held according to provision of Article 125. Particular provisions of Article 235 paragraph 6 are as follows:

“Where an act on bringing changes to the Constitution relates to provisions of its Chapters I [The Republic], II [Freedoms, rights and responsibilities of man and citizen] or XII [Change of the Constitution] bodies specified in paragraph 1 [A draft Act on bringing changes to the Constitution may be put forth by no less than 1/5 of statutory number of deputies, the Senate or the President of the Republic of Poland] may require that a referendum approving such changes be held within 45 days from the day the Act is adopted by the Senate. Such bodies address a motion regarding that matter to the President of the Sejm, who immediately orders such referendum to be held within 60 days

²³ Stawianie wymogów frekwencyjnych w wyborach uważane jest za niewłaściwe. See: O.Gay, *Referendums: Recent Developments*, “House of Commons Library Research Paper”, no. 99/30, House of Commons Library, Home Affairs Section, London, March 1999, p.10.

²⁴ *Konstytucja Rzeczypospolitej Polskiej (The Constitution of the Republic of Poland)* of 6 April 1997.

*from the date such motion was lodged. A change to the Constitution is adopted if it is approved by a majority of votes in the referendum”.*²⁵

National referendum on the approval of ratification of an international agreement is provided for in Article 90 of the Constitution that stipulates for as follows:

1. The Republic of Poland may, on the basis of an international agreement, hand over a certain scope of competence of central authority bodies, over certain matters, to an international organisation or body.

2. An Act approving ratification of an international agreement mentioned in paragraph 1 above is resolved by the Sejm with majority of no less than 2/3 of votes, in voting held in presence of no less than a half of the statutory number of deputies, and by the Senate with majority of no less than 2/3 of votes, in voting held in presence of no less than a half of the statutory number of senators.

3. Approval of such ratification of an agreement may be resolved in national referendum in line with provisions of Article 125.

4. A resolution on selection of a procedure according to which approval is expressed regarding ratification, is adopted by the Sejm with an absolute majority of votes, in voting held in presence of no less than a half of the statutory number of deputies.²⁶

As shown above, all referenda are held according to provisions of Article 125 of the Constitution.

In all those cases a referendum may be ordered, however, without it being obligatory. In other words, it is facultative. In the case of a national referendum over any matter having particular importance for the country and in that of national referendum on approval of ratification of an international agreement, in order for it to be binding for the government, it is required that they are attended by more than a half of those enjoying voting rights. In the case of a national referendum approving a change brought to the Constitution of the Republic of Poland the same requirement does not apply. Neither such 50 per cent attendance threshold applies, under Polish legislation, in cases of, for example, elections to the Sejm or the Senate. It should be observed that requiring fulfilment of attendance thresholds in elections has not been regarded proper legislative solution in most countries worldwide.²⁷ Rather than that, it is recommended to apply percentage criteria regarding outcomes of such elections.

The process of development of new Polish Act on referendum may be divided into five following stages:

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ Gay O., *Referendums: Recent Developments*, “House of Commons Research Paper”, no. 99/30, House of Commons Library, Home Affairs Section, London, March 1999, p.10, (8.Thresholds).

1. Work on preparation of the draft Act carried out by a team appointed by the President of the Republic of Poland Aleksander Kwaśniewski (April 2002 - September 2002),
2. Work on preparation of the draft Act in the Legislative Committee of the Sejm of the Republic of Poland (November 2002 - February 2003),
3. Work on preparation of the draft Act in the Senate of the RP (February - March 2003),
4. Consideration of adjustments brought by the Senate of the RP by the Sejm of the RP,
5. Signature by the President of the RP.

The team appointed by the President of the RP was led by Professor Piotr Winczorek²⁸ from Warsaw University. At the outset a couple of fundamental decisions had to be made: on whether a new act on referendum would be prepared with only the specific purpose of holding the referendum upon Poland's accession to the EU in mind, or should it rather take a form of an amendment of the hitherto-existing Polish Act on referendum. In the latter case it would regulate procedures and principles of holding any kind of national referendum. Furthermore, it had to be resolved whether, in its major part, the new Act would rely upon principles included in the electoral system in force, that regulates procedures of elections to both the Sejm and the Senate of the Republic of Poland,²⁹ or whether separate provisions should be introduced. Finally, it was necessary to define precisely how a referendum campaign should be organised. Additionally, it was a wish of the President of the RP that no changes are brought to the Constitution of the RP in relation with amendment of the Act on referendum.

Eventually it was decided that the Act would regulate methods of holding all kinds of referenda, rather than being meant "just for that particular occasion". The Act would rely, in its basic assumptions, upon solutions adopted in the electoral system, and in the case of a referendum campaign – not only political parties would be admitted thereto, but other bodies actively involved in public life as well.

At the stage of Presidential draft, the Act consisted of the following parts:

1. General provisions,
2. Bodies responsible for the matters of referendum,

²⁸ Winczorek P., *Projekt ustawy o referendach ogólnokrajowych (National Referenda Draft Act)*, "Państwo i Prawo", no. 12/2002, pp.17-31.

²⁹ *Ustawa z dnia 12 kwietnia 2001 r. – Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej (The Act of 12 April 2001 - Electoral Law for the Sejm of the Republic of Poland and to the Senate of the Republic of Poland)*, "Dziennik Ustaw" (Polish Journal of Statutory Law) no. 46, item 499; no. 74, item 786; no. 154, item 1802 and "Dziennik Ustaw" (Polish Journal of Statutory Law), no. 14/2002, item 128; no. 113/2002, item 984; no. 127/2002, item 1089.

3. Voting card and method of voting,
4. Settlement of outcomes of voting and of the final outcome of referendum,
5. Validity of referendum,
6. Referendum campaign and financing thereof,
7. Financing of referendum itself from the State budget resources,
8. National referendum in matters having particular importance for the State,
9. National referendum over approval of ratification of an international agreement,
10. National referendum approving a change brought to the Constitution of the Republic of Poland,
11. Criminal provisions,
12. Detailed provisions, amending and final provisions.³⁰

Chapters from 1 to 7 specified principles common to all kinds of referenda.

Provisions contained in Chapter 1 defined persons entitled to participate in a national referendum, principles of preparation of lists of such persons, principles of establishing voting districts and subdistricts, as well as principles and methods of voting itself. It was decided that a referendum may be attended by all citizens of Poland who, on the day of voting at the latest, have reached the age of 18. Voting also takes place abroad and on Polish ships sailing overseas. Referendum is held on a free day; one may vote only in person. Voting districts are established in the same way as it was during the recent elections to the Sejm of the RP.

In Chapter 2 provisions regarding bodies responsible for holding referendum and their responsibilities have been contained. Referendum is held by the State Electoral Commission appointed on the basis of the Act entitled *“Electoral System for Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland”*.³¹ The so-called “entitled entities”, referred to in Chapter 6, appoint their delegates to electoral commissions.

In Chapter 3 principles regarding voting cards as well as principles of calculation of referendum outcomes have been contained. It was assumed that an outcome would be calculated on the basis of valid voting cards taken out from ballot boxes (rather than, for example, basing upon a number of signatures put down on electoral lists). Chapter 4 defines methods of calculating outcomes of a referendum according to principles adopted in Chapter 3.

Chapter 5 contained principles of resolving the matter of validity of referendum and matters of resolving upon protests brought against validity of referendum to

³⁰ *Ustawa z dnia.....2002 r. o referendach ogólnokrajowych. Projekt (The Act of 2002 on national referenda. The draft)*, The Chancellery of the President of the Republic of Poland, Warsaw 2002, pp. 41 +12. [xerocopy].

³¹ See: footnote no. 7.

the Supreme Court within 7 days from the day on which outcomes of the referendum were published in *"The Journal of Statutory Law of the Republic of Poland"* by the State Electoral Commission.

There may be no doubt that it is Chapter 6, dealing with the matter of referendum campaign, that proved by far the most revolutionary of all. Solutions adopted differed considerably from legal regulations in force in the case of elections to the Sejm or to local-level authorities. The argument is that national referendum is of equal concern for all citizens and for organisations representing them and involved in public life (*i.e.* political parties, trade unions, social-and-vocational organisations of farmers, associations, citizen movements, foundations and other voluntary unions – in line with Articles 11 and 12 of the Constitution of RP). Accordingly, a referendum campaign has been defined as follows:

"A referendum campaign consists in presentation, by citizens, political parties, social organisations, foundations and other bodies, of their positions regarding the matter referred to the referendum".

"A referendum campaign starts on the day on which the resolution of the Sejm, the decision of the President of the Republic of Poland or the decision of the President of the Sejm, respectively, on holding the referendum, is published, and ends 24 hours before the day of voting".

As may be concluded from the above-discussed provisions, every citizen of Poland as well as every organisation is entitled to participate in a referendum campaign. This principle has been adopted in line with Article 54 of the Constitution of the Republic of Poland, in which freedom of expression of one's opinion in Poland is guaranteed. On the other hand, no public financial resources have been provided for referendum campaigns. Any expenditures borne by bodies taking part in a referendum campaign have to be covered out of their own resources, in consistence with appropriate provisions regulating their respective financial activities. Furthermore, a number of prohibitions have been introduced, relating to the way in which a referendum campaign is run, for example, in school or in governmental administration offices, in military units, in grammar schools, secondary schools and high schools in relation to students not yet having the right to participate in the referendum. Additionally, it has been prohibited to serve, during campaign events, any alcoholic beverages free of charge. A referendum campaign lasts from the day the referendum is announced by the body that orders it to be held, until 24 hours before the day of voting.

The draft Act indicates the so-called "entitled entities" that have the right to take advantage of free broadcasting time in public channels of Polish Radio S.A. and Polish Television S.A., both national and regional. At the stage of the Presidential draft, the Act provided for 15 hours in Polish Television S.A., including 3 hours in TV Polonia, and 30 hours in Polish Radio S.A., including

up to 5 hours in programmes addressed to audiences abroad, for the referendum campaign in national programmes. In regional programmes 10 hours in Polish Television S.A. and 15 hours in Polish Radio S.A. were provided for, respectively. The whole broadcasting time was distributed among all those entities in equal allotments.

According to what the Presidential draft stipulated for, entities entitled to take advantage of free broadcasting time were as follows:

1. A political party that, in the most recent elections to the Sejm and the Senate preceding the referendum:

(a) independently establishing its electoral committee, received, on national scale, at least 3% of valid votes on its district lists of candidates for deputies,

(b) belonged to an electoral coalition whose district lists of candidates for deputies received, on a national scale, at least 6% of valid votes,

2. A deputies' club and a senators' club in which, respectively, deputies or senators are associated who had been elected in the last elections to the Sejm and the Senate prior to the referendum, out of candidates put forth by an electoral committee,

3. An association or another social organisation that meets the following criteria:

(a) has been registered in line with legal provisions in force not later than one year before the day on which the referendum is announced,

(b) the area of its activity covers the whole territory of the Republic of Poland,

(c) it has been involved in an activity related with the subject of the referendum and that activity is consistent with its statutory objectives,

4. A foundation that meets the criteria defined in paragraph 3 (a) and (c).

It was originally decided that the entitled entities would have the right to broadcast referendum programmes free of charge during the period of last 15 days of the referendum campaign. Later on, that period has been extended to 20 days preceding the end of the referendum campaign.

The right of using free broadcasting time in public radio and TV channels by the above-mentioned entitled entities does not prevent them from having the right to place paid referendum publicity messages in both public and private radio and TV channels. All entities involved in the referendum campaign have the right of placing such messages.

It was also assumed that communicating, by bodies of State administration, including the body that orders the referendum to be held, an information the purpose of which it is to present and explain the contents of questions or of variants of solutions put forth in a referendum is not regarded as running the referendum campaign.

In Chapter 7 provisions regarding financing of a referendum out of the State budget resources have been defined. It is to be financed out of the so-called “target reserve” funds managed by directors of National Electoral Office.

Three following chapters have focused upon detailed provisions concerning three kinds of referenda referred to in the draft act.

At the stage of the Presidential draft it was decided that, in line with what the Constitution stipulates for, decision on selection of method of expressing approval of ratification of an international agreement, mentioned in Article 90 paragraph 90 of the Constitution of the Republic of Poland – is to be made by the Sejm in the form of a resolution passed by an absolute majority of votes, in voting held in presence of at least a half of the statutory number of deputies. (Article 90 paragraph 4), while holding a referendum itself is either ordered by the Sejm through a resolution or by the President of the Republic of Poland through a decision, subject to the Senate’s approval expressed by an absolute majority of votes, in voting held in presence of at least a half of the statutory number of senators (Article 125 paragraph 2).

In this version of the draft Act a model referendum question has been defined. The question, in consistence with provisions of Article 90 paragraph 3 of the Constitution was to run as follows:

“Do you express your consent for ratification, by the President of the Republic of Poland, an international agreement of (date) on ... (title of the agreement).”

Where a referendum has been attended by over 50 per cent of the society - its outcome is binding. If, however, the number of those taking part in a referendum fails to constitute more than 50 per cent of the society and, consequently, its outcome is not binding, facing the lack of the appropriate settlements provided for in the Constitution and taking into account that the matter was *de facto* left unsolved by the society, it has been assumed that in such a case the international agreement in question is treated in a way consistent with provisions of the Act on international agreements.³² In other words – in that case ratification of such international agreement is being done in the Sejm by a statutory proceeding. In order to adopt this solution, it was necessary to propose certain changes in the Act on international agreements (Article 81 of the draft Act).

Regarding two remaining kinds of referenda – little has been changed in relation to the Act on referendum of 1995.

Decision on holding a national referendum in matters having particular importance for the State has been made by the Sejm, either acting out of its own initiative, or upon a motion from the Senate, from the Council of Ministers or

³² “*Dziennik Ustaw*” (*Polish Journal of Statutory Law*), no. 39/2000, item 443.

from citizens. A motion from citizens has to gain support of at least 500 thousand persons. However, a referendum held upon such motion coming from citizens, if any, must not regard the areas of State expenditure, receipts, defence nor amnesty. Additionally, in the case of such referendum, a 50 per cent attendance of citizens in voting is required and, furthermore, a referendum regarding the same matter must not be repeated sooner than 4 years after it had been first held. Another important conditions concern the date on which such referendum is to be announced: not later than 90 days from the day an appropriate resolution was passed by the Sejm, and the obligation of the State authorities to implement the outcome of the referendum not later than 60 days after the resolution on the referendum outcome was announced by the Supreme Court.

National referendum approving a change made to the Constitution does not require a 50 per cent attendance threshold to be attained. A motion seeking for such referendum to be held may be lodged to the President of the Sejm by no less than 1/5 of the statutory number of deputies, or by the Senate, or by the President of the RP. Such referendum is held within 45 days from the day on which any given change was adopted by the Sejm. The draft Act also contains a model question that is as follows:

“Are you in favour of adoption of the change being made to the Constitution of the Republic of Poland on 2 April 1997 by virtue of the Act of [date] ...?”

5. The draft Act in the Sejm of the Republic of Poland

The draft Act in the above-discussed form was brought to the Sejm in November 2002 and sent to the Legislative Committee presided by Ryszard Kalisz, M.P.

The debate in the Sejm Committee mainly focused upon matters that could have loosened, to a certain degree, stiff criteria regarding the required attendance and a length of time of a referendum. The principal concern behind the debate was to raise attendance through a set of different measures, such as enabling all categories of citizens to vote, raising a number of voting districts, ensuring adequate safety and control at the stage of calculation of votes given, inviting different social life bodies to participate in a free referendum campaign in the media, financing the referendum campaign, contents of the referendum question, etc. There may no doubt that most changes suggested to be brought to the draft Act was put forth by the Government that was interested in having binding outcome of the referendum achieved, as well as by political parties in opposition that have been against Poland’s accession to the European Union (such as Catholic-National Circle and the League of Polish Families) as they have aimed

at introducing more extensive control over the referendum and at enhancing citizen participation in the referendum campaign.

One of the principal issues dealt with was to decide whether the referendum should last one day, as originally planned in the Presidential draft, or should it rather be held during two days. This proposal, put forth by Jerzy Głuszyński from the Institute of Opinion and Market Surveys PENTOR, and later on maintained by Professor Lena Kolarska-Bobińska from the Institute of Public Affairs, was supported by the Citizens Platform. Eventually it was resolved that a referendum is set to last either one or two days, *i.e.* a free day and a day before or a day after that, although the State Electoral Commission expressed its objections regarding the issue of ensuring proper security of ballot boxes over the night between two days, in the case of a two-day referendum. The final decision in this matter is to be made each time by the body that orders the referendum to be held. Where a referendum is to last two days, further doubts and objections have been raised around the question which day should be regarded as “the day of referendum”, since it is from that day that various other dates and periods run, as well as how to treat persons who gain their voting rights on the second day of voting (in most cases, by reaching the age of eighteen on that very day), *i.e.* whether they are entitled to vote on either day or only on the second day.

Then a number of amendments were considered, regarding ways of raising up the referendum attendance. They concerned, for example, possible methods of enabling handicapped and elderly persons (above the age of 75 or 80) to vote. This involved the problem of potential introduction of the principle of voting via a representative or establishment of “mobile commissions”. After having sought advice from the Council of Europe Information Office it occurred that, in the case of voting *via* a representative, using a principle of voting on behalf of somebody else is out of the question. Such representative, if anything, could only fill the role of a “postman”, using a special certificate, issued by a community council, to collect, in the first place, a voting card for an entitled person from the commission, then to deliver it to such person and finally to bring it back to the ballot box. The fundamental principle behind it says that the act of voting may be performed only in person. Following a debate, however, even that option was rejected. Similarly, the idea of “mobile commissions” found no approval. It should be added, by the way, that in other countries voting via postal services, and even *via* Internet, has been admissible. In Poland no such option has been adopted yet. Nevertheless, it is advisable to consider providing, in the future, some sort of opportunity to vote to those who cannot get to their nearest electoral commission in person, since their right to vote is one of their fundamental citizen rights.

Another issue under discussion during the meetings of the Commission was that of raising the number of electoral commissions: it was suggested that such commissions could also be established in military units, in student hostels and in colleges. Again, after having sought the opinion from the Council of Europe Information Office it occurred that electoral commissions must not be established in military units due to the principle of limited citizen rights that applies in such places. Soldiers, in order to perform the act of voting, have to leave their barracks and get to nearest electoral commissions or simply to vote where they normally live. The idea to open electoral commissions at colleges was rejected as well, because such establishments do not feature any peculiar characteristics on the basis of which it would be justified to treat them separately from, for example, work establishments. The only project adopted was that of a possibility to establish electoral commissions in student hostels that have appropriate agreements with colleges signed, provided that at least 50 persons notify such need to a college rector. This provision, proposed by the government, while actually adopted, seems, however, to be imprecise as it uses the notion of “a person” instead of “a student”.

The debate was particularly tempestuous around the issue of the referendum campaign, principles of its financing and participation of the so-called “entitled entities” in free radio-and-TV campaign. It should be observed that there is a basic difference between a referendum and elections in that as a result of the latter event some political groups taking part gain power and positions related therewith. Accordingly, electoral campaigns mainly attract participation of political parties and their financial resources earmarked for that participation in a campaign has been under strict statutory control. A referendum, on the other hand, is not related with any competition for power. Rather than that, it involves manifestation of attitudes taken by the nation, regarding a particular issue. This requires that citizens are given as broad as possible an opportunity to express their views. That’s why maintenance of the freedom of speech has been the basic principle of a referendum campaign adopted in the draft Act (Articles 54 and 14 of the Constitution of the Republic of Poland), coupled with minimum financial restrictions. As mentioned above, citizens, political parties, social organisations etc. alike have the right to participate in a referendum campaign. They bear costs of such campaign out of financial resources that have constituted legal sources of funding their activity. Accusations that were raised during the debate, that entities involved in the referendum campaign would use foreign funds, were based upon the argument that under present conditions it is practically impossible to distinguish Polish from foreign financial resources. Furthermore, due to the fact that the Act is meant to regulate referenda in general rather than just specifically for the referendum on the accession, following Poland’s accession to the European Union distinguishing Polish money from that coming

from abroad in general, legal income of any Polish entity will not be practicable at all. One is tempted to add at this point that, for example in Finland, the issue of potential share of foreign funds in the referendum campaign was left without any consideration. If, for instance, non-governmental organisations had some foreign financial resources at their lawful disposal (for example in the form of donations given to foundations), they were free to use them in the referendum campaign.

Another issue discussed in the Sejm Committee was that of the so-called "entities entitled" to participate in free radio-and-TV campaign. The list of such entities was further extended by adding thereto a representative who is to represent citizens' motions to hold a referendum over issues having particular importance for the country. The opposition was also highly agitated over the fact that the list of the "entities entitled" to run the referendum campaign in the media free of charge did not contain the so-called "citizens movements" mentioned in Article 12 of the Constitution of the RP. In fact, this concerned the so-called "citizens electoral committees" involved in electoral campaigns to either the Sejm or the Senate. The parties in opposition requested that such committees, established after the referendum was ordered and numbering at least 1000 members each, are admitted thereto as well. However, the Sejm Committee rejected that request, justifying its decision with the argument that such committees would have been treated with criteria different than other entities. They would have been formed *ad hoc* as eleventh-hour creatures and a potential large number in which they might appeared would probably render smooth operation of the radio-and-TV campaign impossible. Surely, this is not meant to say that such committees must not be formed or involve in the referendum campaign at all. They just haven't been admitted to a free media campaign. Also, the provision relating to deputies' and senators' clubs was changed to gain the following form:

"2. a deputies' club, a senators' club or a parliamentary club, that during the period lasting one year before the day the resolution or the decision on holding a referendum, associated, respectively, deputies or senators elected from among candidates offered by an electoral committee, provided that those deputies or senators accounted for more than a half of composition of those clubs".

Finally, the debate focused on the issue of principles of distribution of broadcasting time among the entitled entities. The draft Act proposed to share broadcasting time fairly in equal parts among all such entities, while the opposition opted for having the time distributed in two halves: one for adherents and another one for opponents of the referendum subject matter. The latter proposal was rejected since it was presumable that a number of entities would

prefer to put forth both arguments “in favour” and “against” in parallel in their presentations.

Finally the Sejm Committee decided to extend broadcasting time for entities involved in a free referendum campaign in the case of a referendum over approval of ratification of an international agreement. In national channels 25 hours were allotted in Polish Television, including up to 5 hours in TV Polonia, and 45 hours in Polish Radio, including up to 8 hours over the channels addressed to listeners abroad. In each of the regional channels, 15 hours were allotted in Polish Television and 20 hours in Polish Radio.

Moreover, answering questions asked by citizens regarding the referendum was also not included in the referendum campaign. Serving alcoholic beverages during the referendum campaign was wholly prohibited, either free or by selling. On the other hand, extending the referendum campaign activities to include schools was allowed.

The entities entitled to run a free referendum campaign in the media also enjoy the right to propose their representatives to electoral commissions. Political parties in opposition suggested that the involvement of such representatives is extended one step further, to supervise transport of ballot boxes from district commissions to higher-level State Electoral Commission units. The principle that was eventually adopted provides that such representatives may in fact participate in that process, but no statutory provision to the effect that they have the right to do so was approved. This seemed quite reasonable since in that situation, should any representative announce his eagerness to exercise his right to assist in the transport of ballots and then fail to turn up, it would not be possible to bring ballots to the State Electoral Commission without him being present. This would have entailed a risk that delivery of ballots to the State Electoral Commission within a statutory time limit might be undermined. Any entity entitled thereto should notify its will to take part in a free radio-and-TV campaign not later than 40 days before the day of referendum and should propose its representative to an electoral commission no later than 30 days before the referendum.

In three chapters containing detailed provisions regarding particular types of referenda, two fundamental changes were made: firstly, a prohibition of repeating a referendum on the same subject during the period shorter than four years from the first one in the case of a referendum over matters having particular importance for the country was abolished (since there is no such requirement in the Constitution), and secondly, in the case of a referendum over approval of ratification of an international agreement, inclusion of a model referendum question in the Act was given up.

Also the provision concerning redirecting of process of ratification of an international agreement to a statutory way in the case of lack of a sufficient

attendance in a referendum was changed substantially. The above-mentioned Article 81 was deleted from the draft Act. At the same time, a new provision was inserted, to the effect that, in the case where a referendum was attended by no more than 50 per cent of the society, which means that the referendum is valid but is not binding, the Sejm has the right to adopt once more a resolution regarding a method of expressing approval to ratification of such agreement. In other words – in such case the process of ratification simply starts anew: the Sejm may either choose a referendum once more or it may choose ratification through statutory way (Article 75 of the draft Act of 17 February 2003). This provision stirs most controversy among some constitutionalists (such as Professor Stanisław Gebethner) who maintain that it is inconsistent with the Constitution of the Republic of Poland.

Criminal provisions provide for financial fines, for example for running a referendum campaign in forbidden places, for failure to include, in referendum-related materials, an explicit note stating from whom they come, for non-compliance to the principle of referendum silence as well as for serving alcoholic beverages during a referendum campaign.

“The Act on National Referendum” was adopted by the Sejm of the Republic of Poland on 13 February 2003. Votes in the Sejm were spread as follows: in favour: 297, against: 89, abstaining: 7, with 67 deputies not being present. Adoption of the Act was mainly supported by the Alliance of Democratic Left-Wing and the Citizens Platform, while the Law and Justice and the League of Polish Families were among most significant parties voting against it.

6. Amendments brought by the Senate of the Republic of Poland

The draft Act was subject to discussion in two committees in the Senate of the RP: in the Legislation and Legality Committee and in the Territorial Government and Administration Committee.

The Legislation and Legality Committee suggested several amendments concerning, above all, the time the referendum was to last as well as various issues regarding the way it would be organised. The provision saying that a referendum may last either one or two days was rendered more precise. Where a referendum is to last two days, these may be a free day and a day preceding it (those provisions were then adopted by the Sejm unanimously). Voting should last, on each day, from 6.00 AM until 8.00 PM. It was also suggested to remove the provision that allowed to set voting districts in student hostels, however, during a plenary session of the Sejm it was brought back, although in an amended version: it was proposed to allow for establishing voting districts just in large complexes of student hostels. For persons who reach the age of eighteen

on the second day of a two-day referendum, additional voting lists should be prepared. If a referendum lasts two days, an obligatory composition of electoral commissions should be extended from 4-8 to 6-10 persons and there should be substitute to each representative.

Throughout the night break in voting both the slot in each ballot box and an entry to the premises where voting takes place have to be sealed. Numbers of unused voting cards as well as that of issued voting cards have to be settled and recorded in a protocol. A Minister competent in the field of public administration defines, by a regulation, detailed requirements in the area of proper protection of the electoral commission premises and principles of provision assistance to local authorities on the part of police.

Furthermore, the Committee suggested to remove from the Act the procedure of court proceedings in emergency in cases of infringement of personal goods during the referendum campaign. In line with the new proposition, such proceedings could take place only in common courts. The Sejm, however, did not adopt that amendment brought by the Senate.

Finally, the following minority applications were put forth: where a referendum is set to last just one day, voting should last from 6.00 AM to 10.00 PM. Where it is set for two days – calculation of votes should start after voting on the second day ends.

During a meeting of the Territorial Government and Administration Committee, Professor Stanisław Gebethner from Warsaw University presented his opinion. It has been his view from the very outset of work on the Act that the draft was inconsistent with the Constitution. First of all, he suggested that the chapter dealing with referenda over ratification of an international agreement is given a new, more precise title, by adding thereto definition stating which kind of agreement is involved – since a referendum may only be ordered in case of some particular kinds of international agreements. Also, according to Professor Gebethner, a referendum over approval of ratification of an international agreement may only be ordered by the Sejm. Where, however, such a referendum proves to be non-binding, redirecting the issue to statutory procedure is only possible if, in such a non-binding referendum, a majority of voters nevertheless declare themselves in favour of the agreement and if an amendment is made to the Constitution in its Article 90 paragraph 3 by adding thereto the following provision: *“Where a majority of those participating in the referendum expressed their approval for ratification of an agreement referred to in paragraph 1, but the outcome of the referendum has no binding force, approval for such ratification may be given by the Sejm and the Senate by an Act adopted according to the procedure defined in paragraph 2”*.³³ To be sure, it is the

³³ Gebethner S., *Opinia o ustawie z dnia 13 lutego 2003 r. o referendum ogólnokrajowym (The Opinion on the Act of 13 February 2003 on National Referendum)*, Warsaw, 25 February 2003,

opinion of Professor Gebethner that in the Constitution, in its present form, there have been two conditions set that have to be met jointly at the same time: 50% citizens attendance and majority of votes given "in favour". Where either of the conditions is not met, this is tantamount to negative outcome of the referendum and the process of ratification stops. According to him, redirecting of the whole process to statutory procedure will be possible no sooner than while an appropriate amendment is made to the Constitution.

The Senate Committee, however, neither adopted proposals of such corrections nor supported the idea to amend the Constitution. Both the experts and the Chancellery of the President have been of the opinion that, firstly, there has been a difference between "the choice of a method of ratification" made by the Sejm on the basis of Article 90 paragraph 4 of the Constitution and "ordering of a referendum" that takes place on the basis of Article 125 paragraph 2 of the Constitution. Secondly, in the case of lack of the required attendance during a referendum, referred to in Article 90 paragraph 3 of the Constitution, one has to deal with legislative deadlock and the question of further status of a given international agreement simply remains unsolved. In the latter case the whole process of ratification simply has to be repeated, which provided for in provisions of Article 75 of the Draft Act of 17 February 2003.

During a plenary session of the Senate Senators Adam Biela (the League of Polish Families) and Zbigniew Romaszewski (the Senate 2001 Block) have also proposed amendments to the chapter concerning the referendum campaign. Their proposals regarded introduction of provisions on keeping sources of financing the referendum campaign public, prohibition of financing the referendum campaign out of foreign funds as well as a return to solutions adopted in the Electoral System Act, *i.e.* formation of referendum committees, including those obliged to keep separate bank accounts for financial resources earmarked for the referendum campaign purposes. It was also suggested to provide for financial support, at the level of 30 per cent, from the State budget resources for political parties for the purpose of the referendum campaign as well as for a prohibition of involvement of the referendum committees in public collections of money. None of the above-listed amendments was approved by the Senate due to reasons mentioned earlier, that is due to the fact that, as a rule, no State budget funds may be allotted for the referendum campaign and,

p.20, [xerocopy]; Stankiewicz A., *Profesorskie ultimatum. Integracja z UE. Spór prawników o to, czy ustawa o referendum jest zgodna z konstytucją* (Professors' Ultimatum. The integration with the EU. The lawyers' dispute on whether the Act on Referendum is consistent with the Constitution), "Rzeczpospolita", 6 March 2003; *Czy zmienić konstytucję? Ustrojowo-konstytucyjne aspekty przystąpienia Polski do Unii Europejskiej* (Should the Constitution be changed? Systemic and Constitutional Aspects of Poland's Accession to the European Union), Barcz J. (ed.), The Institute of Public Affairs, Warsaw 2002, p.150.

accordingly, neither a procedure of applying for such funds, nor a reporting procedure have existed. Distinguishing Polish money from foreign money in legal income of entities participating in the referendum campaign hasn't been viable at present. On the other hand, prohibition of involvement in collecting money for purposes of a referendum campaign would eliminate therefrom religious unions that have no funds other than collected that way. It should also be reminded that electoral committees, in the understanding of the Electoral System Act, carry out some specific activities, *i.e.*: *"on behalf of political parties and of the electorate (...) they propose candidates for deputies or for senators and run, according to the principle of exclusiveness, an electoral campaign for their benefit"* (Article 95 of the Electoral System Act).³⁴ Such principles have not applied to the referendum campaign.

The Chancellery of the President of the Republic of Poland has also received an opinion from the State Electoral Commission that has declared itself in a determined way in favour of holding the referendum over one day instead of two, an opinion from the National Judiciary Council concerning number of judges in bench in the Supreme Court in non-litigious proceedings, suggesting to introduce three judges instead of five, as well as opinions from the Legislative Office of the Senate of the Republic of Poland and - once again - from the Institute of Public Affairs, regarding the issue of non-attendance in national referenda. The Senator Mrs. Teresa Liszcz, probably bearing a repeated request addressed to the Parliament by Mrs. Jolanta Banach, the Government Representative for the Handicapped Persons, in mind, prepared an amendment concerning mobile electoral commissions, but, just as in the first instance, the proposal failed to find the Senate's approval again.

Eventually, in the voting that took place on 14 March 2003, the Sejm of the Republic of Poland adopted amendments proposed by the Senate. The President of the RP signed the Act on 28 March 2003.

7. Referenda in the candidate countries

At present the following countries have been applying to become the European Union Member States: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Romania, Slovenia, Slovakia, Turkey.

Signing of the Treaty on Membership by 10 countries that have concluded the process of negotiation (Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovenia and Slovakia) is going to take place, as foreseen, on 16 April 2003.

³⁴ See: footnote no. 30.

Referenda as foreseen:

- Hungary: 12 April 2003,
- Slovakia: 7 June 2003,
- Estonia: 23 August 2003,
- Latvia: 23 August 2003,
- Lithuania: 23 August 2003,
- Poland: 8 June 2003,
- Czech Republic: autumn 2003,
- Slovenia: May or June 2003,
- Malta: 8 March 2003,
- Cyprus: the Constitution of that country does not provide for a referendum.³⁵

Until now, referenda in Central and Eastern European countries usually regarded the issues of national independence (for example Estonia, Lithuania, Latvia, Ukraine) or establishment of the new Constitution (Albania, Estonia, Lithuania, Russia, Romania, Poland).

³⁵ *Voice of Europe. IRI Europe Report on the growing importance of initiatives and referendums in the European integration process*, Hautala H., Kaufmann B. (eds.), Wallis. Text accessible on the World Wide Web: (<http://www.iri-europe.org>).