

## THE 1997 REFERENDUM ON THE CONSTITUTION IN POLAND\* The Controversies and the Compromise

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### 1. Searching for a Compromise on the Constitution

The changes in constitutional law introduced in the years 1989-1992, which resulted in the adoption of the Constitutional Act of 17 October 1992 on the Mutual Relations between the Legislative and the Executive Institutions, and on Local Government of the Republic of Poland, represented the only compromise based on political consensus which could be achieved at the time. This partial compromise made it difficult to reach a later agreement with regard to the contents of the new constitution.

In addition, the public mandate of successive parliaments to adopt a new constitution was questioned, since, it was argued, those parliaments did not have sufficient legitimacy to act as the Constitutional Assembly. It was asserted that this alleged lack of legitimacy was the result of imperfections in the electoral process and mechanisms.

Thus, the mandate of the parliament elected in 1989 was questioned because of the "contractual" character of the election to the Sejm (the main parliamentary chamber).<sup>1</sup> At the same time, the Senate, elected in a free competitive election, was set against the Sejm. The outcome was a diffusion of efforts which manifested itself in the establishment of a separate constitutional committee by each parliamentary chamber. The results of the work of these two separate constitutional committees show that the area of conflict was becoming larger and that the differences between the two bodies were

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<sup>1</sup> The parliamentary election of 1989 was conducted on the basis of a contract agreed on at the "round table" (see: S. G e b e t h n e r: *Democratization in Poland, 1988-90. Polish Voices*. Edited by George Sanford, London 1992, St. Martin's Press, pp. 57-65). According to that contract, in the election to the Sejm 65 per cent of the seats were secured in advance for the then ruling parties PZPR, ZSL, SD, and other groupings. 35 per cent of the seats were reserved for candidates from opposition groupings. The election to the Senate was conducted on principles of free competition. For more details on that parliamentary election system see D. M. O l s o n: "Compartmentalized Competition. The Managed Transitional Election System of Poland", *Journal of Politics*, 1993, p. 415-441.

becoming more acute; this, in effect, made the possibility of reaching a compromise on the constitution more and more unrealistic.

The mandate of the parliament elected in October of 1991 was questioned due to the extremely low turnout. Only 43% of those entitled to vote participated in this election. That was why president L. Wałęsa proposed that the final decision with respect to the enactment of a new constitution should be left to the voters, who would conclusively accept or reject the text of the basic law in a national referendum.

An additional reason given for the lack of legitimization of the parliament elected in September of 1993 was the fact that, with turnout almost equally low (53%), the 5% threshold left one-third of the voters who participated in the election without representation in the Sejm and, while one political option - the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) - achieved a socially unjustified overrepresentation in both chambers of the Parliament.

After the 1993 election, a political campaign aimed at undermining the newly-elected parliament's mandate to prepare and adopt a new constitution began.

The opponents of the political formations which were victorious in 1993 prejudged the contents of the new constitution, especially its axiological component, and rejected any possibility of compromise.<sup>2</sup> This unwillingness to reach a compromise on the constitution was maintained on their part until the referendum of 1997.

The right-wing opposition functioning outside of parliament treated its defeat in the 1993 election as an episode and was convinced that it would return to the Sejm after the election in 1997. Therefore, opposition groupings outside of parliament strove to delay the adoption of the constitution by the National Assembly elected in 1993, and to present the results of that parliament's work on the constitution in an unfavourable light.

At the same time, deputies of parliamentary opposition, for example the vice-marshal of the Sejm Olga Krzyżanowska, elected from the list of the Democratic Union (later: the Union of Freedom), publicly questioned the mandate of the newly elected parliament to enact a constitution. Whereas, during one of the first sessions of the Constitutional Committee (23 February 1994) the leaders of the Union of Freedom, Tadeusz Mazowiecki and Hanna Suchocka publicly called in question the new parlia-

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<sup>2</sup> Already in October 1993 a commentator for the Catholic daily *Ślowo* wrote: *Adoption of a new constitution by the present Sejm, which is lame since it misses its right leg, would be a misfortune for the State; a misfortune that we would have to live with for many years. A basic law passed now, with the present composition of the Sejm, and even the Senate, would destroy Poland.* At the same time, senator Alicja Grzeškowiak, representing the Centre Alliance, in the same daily (*Ślowo*, October 29 and 31, 1993) declared that: *The Polish parliament, although it was elected democratically, does not reflect the true wishes of the electorate since 35 per cent of the volets have no representation in the Sejm. To the greatest extent, the parliament represents a uniformly leftist political option. Consequently, it is doubtful that the parliament will enact a democratic and lasting constitution.* A similar view was expressed by the Chairman of the Constitutional Committee of the National Assembly in the years 1992-1993, the representative of ZChN, who claimed: *The issue is not that in the new parliament [that is after the 1997 election] new political forces will appear and will change the constitution. It is just that this National Assembly is not able to prepare a constitution which would be good from the axiological, as well as the systemic point of view.* (W. Piotrowski: "Konstytucja jako pomnik" [Constitution as a Monument], *Gazeta Wyborcza*, October 13, 1994).

ment's mandate to adopt a new constitution: *from the moment this Committee began to operate it has been clear that we have to make a distinction between legal legitimization to adopt a constitution, which nobody questions, in any case my club does not question it, and political legitimization.*<sup>3</sup> Almost 30 per cent of the society has no representation in this parliament. Since they are not represented in the parliament, it is to be expected that a constitution adopted in an atmosphere of tension and conflict will never be accepted by society, even if we submit it to a referendum and provoke a conflict in the final stages of the process.<sup>4</sup>

At the end of 1996 and the beginning of 1997 the Union of Freedom and its leaders, especially Tadeusz Mazowiecki, changed their position radically on the issue, arguing that even the parliament elected in 1997 would not be able to enact a new, better constitution quickly, if at all. The opposition groupings functioning outside of parliament never changed their minds and strove to prevent the enactment of a new constitution by the National Assembly elected in 1993. Also the PSL seemed to lean in this direction from mid 1996, taking an equivocal stand, to say the least, on the issue of the constitution.

It should also be remembered that the opinions from 1994 which have been quoted above were expressed in a situation when the Marshal of the Sejm Józef Oleksy was searching for a formula enabling him to involve the opposition functioning outside of parliament in the National Assembly's work on the draft of the constitution, and he met with a refusal. Meanwhile, President L. Wałęsa threatened to boycott the work on the constitution.<sup>5</sup> The Sejm's rejection of L. Wałęsa's proposal to make it possible for 100,000 citizens to submit a draft of the constitution as a popular initiative, but also to establish a rule that the rejection of the constitution in a referendum would automatically mean the dissolution of the parliament and a new election, served as a pretext for these threats on the part of the President of the Republic of Poland.

After the 1993 election the opposition also disregarded Aleksander Kwasniewski's declaration given immediately after he was elected the chairman of the Constitutional Committee stating that: *The experiences of European constitutionalism clearly show that it is precisely through compromise between different social interests and expectations that effective basic laws were constructed in both established, as well as emerging democracies. Therefore, it would be good for us to follow their example and to be able to create a constitution of civic compromise -1 repeat: a constitution of civic compromise.*<sup>6</sup>

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<sup>3</sup> The Bulletin of the Constitutional Committee of the National Assembly (from now on *The Bulletin of CCNA*), 1994, vol. 5, p. 6, column 2.

<sup>4</sup> *The Bulletin of CCNA*, 1994, vol. 5, p. 7, columns 1 and 2.

<sup>5</sup> In a letter addressed to the Marshal of the Sejm, L. Wałęsa claimed that: *Due to the fact that my initiative was rejected already in the first reading, without an in-depth analysis or a serious discussion of its essential points, I have decided to withdraw my representative from the participation in the work of the Constitutional Committee. At the same time, I withdraw my draft of the constitution.* (*The Bulletin of CCNA*, 1994, vol. 5, p. 9, col. 1.)

<sup>6</sup> *The Bulletin of CCNA*, 1993, vol. 1/2, p. 10, col. 1.

In the eight years efforts to postpone the enactment of the new constitution intensified every time a new parliamentary election drew nearer. That was the case in 1991, when two separate drafts of the constitution were ready, prepared by the Senate and by the Constitutional Committee of the Sejm, but an early parliamentary election was scheduled for the Autumn of that year. With the approach of the parliamentary election in the Autumn of 1997, similar tendencies to delay the adoption of the new constitution by the National Assembly began to emerge also in 1996 when the Constitutional Committee of the National Assembly was nearing the conclusion of its work.

The argument that the constitution should not be enacted by a parliament which is at the end of its term of office and faces a new election, is not unfounded. That is why it was so important that the constitution adopted by the parliament, i.e. by the joint session of both chambers constituting the National Assembly, should be ratified in a national referendum.

It should be pointed out that already in June of 1996, that is, more than one year before the end of the parliament's term of office, the Constitutional Committee of the National Assembly finished work on the first version of the preliminary uniform draft of the new Constitution of the Republic of Poland. In July and August the Committee started to work on the final draft of the text.<sup>7</sup> It might seem at the time that the work on the constitution was near completion. However, it turned out, as could have been predicted, that the comprehensive text of the new constitution, completed in June of 1996, rested on a weak and brittle consensus.

That apparent consensus on the issue of the constitution was an illusion. Some politicians, however, especially these in the SLD, took it to be real. However, the fact that the Constitutional Committee adopted particular fragments of the constitution, and only by a simple majority, could guarantee only that the Committee reached partial agreements with respect to concrete questions and said nothing about an agreement with respect to the constitution at large.

In September of 1996 the Committee began the next stage of the debate on the final draft of the Constitution.<sup>8</sup> In fact, it was, in a way, the third reading in the procedure adopted by the Constitutional Committee. Officially, the amendments concerning the final draft of the text were to be the subject of the debate. However, the discussion repeatedly came back to the essential issues stemming from axiological - in particular, ideological - conflicts. Those conflicts could be seen most clearly during the discussion of the preamble of the Constitution - especially, but not only, *the invocatio Dei*. The Episcopate of the Catholic Church also issued a statement on several other matters, for

<sup>7</sup> The Sitzings of the Drafting Subcommittee of General Issues and Regulations Introducing the Constitution on the 12th to the 14th, 19th to 20th, and 26th to 27th of August 1996. *The Bulletin of CCNA*, 1997: vol. s 37 and 38. See also: P. Winczorek: "Szlifowanie treści przepisów" [Polishing the Content of Regulations], *Rzeczpospolita*, 12 September 1996; M. Zieliński: "Prawo w przyszłej konstytucji" [Law in the Future Constitution], *Rzeczpospolita*, 2 September 1996.

<sup>8</sup> About the earlier stages of the work on the draft of the new constitution see: K. Działocha: *Towards a New Constitution of the Republic of Poland* oraz R. Chruściak: "The Role of the Constitutional Committee of the National Assembly in Creating the New Constitution of the Republic of Poland", *Polish Contemporary Law* 1996, No. 1-4.

example, on the question of the constitutional protection of the family based on the union between a man and a woman.<sup>9</sup>

The efforts to strengthen the constitutional position of the President of the Republic of Poland as an arbiter and as the organ moderating the activities of the government (responsible before the Sejm) constituted another area of revisions of the basic provisions of the previously accepted draft. The main issue was the réintroduction of the two-thirds majority required to overrule the President's veto of an act adopted by the parliament. The initiative in this case came from a member of parliament who was at the time an under-secretary of state in the Chancellory of the President of the Republic of Poland.<sup>10</sup> In the following debates of the Constitutional Committee and of the National Assembly also the list of matters in which documents issued by the President did not require the countersignature of the Prime Minister was steadily becoming longer.

When this phase in the activities of the Constitutional Committee was nearing completion, in December of 1996, deputies of the Polish Peasant Party (PSL) and the Union of Labour (UP) demanded a revision of the decisions concerning the admissibility of charging fees for education in government institutions of higher education and the preservation of free services in the public health care system. These groupings argued also that the controversial question of the establishment of counties, as the third, intermediate level of the territorial division of the country, should not be decided in the Constitution.<sup>11</sup> Marian Krzaklewski, the leader of the Electoral Action Solidarity (AWS), and the bishops of the Catholic Church joined the debate on whether the postulates of the opposition remaining outside of parliament should be recognised in the Constitution. The main issues were: the acknowledgement in the Constitution of the superiority of natural law over the Constitution and over all enacted laws, the attitude towards the past (that is, the Polish People's Republic and the so-called issue of the continuity of the State), the condemnation of totalitarianism, as well as the ban on the operation of fascist and communist parties, and the issue of the so-called tri-partite commission, i.e. a consulting and mediatory body consisting of deputies of labour unions, employers' organisations, and the government. The question of the constitutional protection of human life from the conception to natural death returned as a significant moral issue.

In addition, arguments over the procedure of adopting the Constitution and over the conditions for conducting a referendum returned. These arguments further confirmed the lack of the necessary consensus on the question of the Constitution.

After intense negotiations between SLD, UW, PSL, and UP a compromise was finally reached on the guarantees of social welfare rights (conditions were imposed on

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<sup>9</sup> See: Declaration of the 284th Plenary Conference of the Episcopate of Poland on the Constitution of the Republic of Poland (Rzeszów, September 14th 1996).

<sup>10</sup> See: *The Bulletin of CCNA*, 1997: vol. 40, p. 62, col. 2.

<sup>11</sup> Announcing at the beginning of the session of the Constitutional Committee on 10 December 1996 the submission on behalf of PSL and UP of the appropriate amendments to the draft of the Constitution, representative A. Bentkowski emphasised that the proponents of those amendments regard them as *essential and necessary in the draft of the constitution. At the same time, we state that both factions will stand firmly by these proposals.*

the admissibility of charging fees for education in government institutions of higher education, and on the availability of free services in the public health care system), on removing from the Constitution the requirement to create counties, and on the contents of the preamble. SLD also consented to including in the Constitution a ban on parties advocating totalitarian methods, with an explicit condemnation of communism together with fascism and nazism. The draft included a definition of a social market economy based on the dialogue of social partners, which did not, however, mention by name the already existing tri-partite commission.

During this stage of negotiations it was characteristic that the UW deputies were perceived as the advocates of the demands of AWS, which strove to infuse the contents of the new Constitution with national and Catholic values. At the same time, the UP deputies accepted the role of champions of the social welfare demands included in Solidarity's draft of the constitution.<sup>12</sup>

During the negotiations the four main parliamentary groupings, SLD, PSL, UW, and UP, made a number of significant concessions to each other in order to reach a consensus on the constitution. At the same time, they showed great willingness to make concessions towards AWS and to the bishops of the Catholic church.

Eventually, on 16 January 1997 the Constitutional Committee by the required majority of two-thirds of the votes adopted the entire draft of the Constitution and submitted a report, which contained also 46 minority motions. One of them was the whole draft of the Constitution of the Republic of Poland adopted by the Senate on October 22nd 1991. This made it possible for the National Assembly to hold the debate in the second reading. At this point it became clear that four groupings - the Democratic Left Alliance, the Polish Peasant Party, the Union of Freedom, and the Union of Labour - reached an agreement on the Constitution and decided that a national referendum ratifying the Constitution adopted by the National Assembly should take place as early as might be proclaimed. Initially, SLD argued that the referendum on the Constitution should be held in Autumn, together with the parliamentary election. However, the Union of Freedom pushed for holding the referendum at the end of May.

It can be said that a parliamentary coalition regarding the adoption of a new Constitution of the Republic of Poland only was formed as late as in January of 1997. This coalition may be called, following the Italian model of the years 1946-1947, "the constitutional arch".

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<sup>12</sup> In reference to that, A. Smolár in his article "Wojna Światów" [War of the Worlds] (*Gazeta Wyborcza*, 30 May 1997) writes, not without reason: *To state things briefly, with the help of Lech Mazewski's handy wording, the constitution was built on a three fold compromise. The first one, was the one between GW and SLD. Its result was a project "for a liberal, civic society". The second compromise pertained to issues of welfare and was /ached due to the pressure from the Guion of Labour and the Polish Peasant Party. Finally, the third one, achieved at the end, was the result of the pressure from the Church and the Right. At that point, there appeared in the Constitution such phrases as "the Polish Nation" — with a political, however, not ethnic, definition of the concept of nation; the importance of the "Christian heritage of the Nation"; "the best traditions of the first, and the second Republic" were included; "the sense of responsibility before God" was appealed to; it was specified that "marriage is a union between a man and a woman"; the responsibility of the State for the family and motherhood was also included. There appeared, therefore, a "clear national-catholic context".*

The full debate in the second reading in the National Assembly took place from 24th to 28th of February 1997. After this debate, during which a number of amendments were proposed, the draft of the Constitution was sent once more to the Constitutional Committee.

For six days the Committee reviewed motions on amendments to the Constitution proposed during the debate in the National Assembly. The intense work in the Committee was partly motivated by their determination to take a position on all of the proposed changes as soon as possible. In this phase of the process, the role of the Committee was limited to formulating recommendations for the National Assembly as to whether a particular amendment should be accepted or rejected. In the end, the fate of every amendment was decided by the National Assembly. For an amendment to be accepted by the National Assembly, it had to pass by the qualified majority of two-thirds of the votes.

The process of considering the amendments proposed during the debate in the National Assembly was characterised by a spirit of compromise dictated by time. With respect to the most divisive issues the Committee strove to formulate the text of the amendments in a way which would take into account all the objections and critical opinions expressed in the parliament and outside of parliament. The goal was to eliminate, as far as possible, the differences between the draft of the Constitution that was under consideration and the Solidarity's draft of constitution. In regard to a number of issues that goal was achieved, although the supporters of Solidarity's draft of the constitution did not acknowledge the fact.

It also appeared that during this phase of work on the constitution, the arguments over the relative positions of natural law and enacted laws subsided. The deputies of the Episcopate declared even that they did not require that the Constitution should proclaim *expressis verbis* the absolute superiority of natural law over the Constitution; nor did they postulate a religious State. They signalled that it was sufficient for them that the universal principles of natural law be reaffirmed in the draft of the Constitution. This was to be further confirmed by an additional article in the Constitution stating that "The rights and liberties included in the Constitution cannot be interpreted in a way that would limit the human rights guaranteed in the Universal Declaration of Human Rights." The declaration referred to in the article is the 1948 UN Universal Declaration. This article was basically unnecessary, and in the end it was rejected by the National Assembly. In fact, all of the human rights proclaimed in the Universal Declaration, as the minimum of codified principles of natural law universally recognised by the international community, were guaranteed in the draft of the new Polish Constitution. What is more, since 1948 half a century had passed and international treaties, especially the 1966 international pacts on human rights and liberties, have since raised standards of respect for basic human rights. These new standards have been confirmed, by Poland among others, in ratified agreements and the Constitution clearly stipulates in article 9 that "The Republic of Poland shall respect the international law binding upon it."

The deciding factor in the adoption of the Constitution by the National Assembly was the change in the position of the Union of Freedom (UW). The leader of the Union, L. Balcerowicz, confirmed that the draft constructed by the Constitutional Com-

mittee secured a balance between social welfare rights and the opportunities for economic development. He argued that the Constitution should create the legal basis for the economy and for the stability of the Polish zloty, and it should also protect people from populism in economic policy: excessive national debt, passing budgetary expenses without having the necessary funds, political and bureaucratic interference in the activities of enterprises, manipulation of taxes for short-term political gain, undermining private ownership.<sup>13</sup>

After the vote on the 362 amendments to the Constitution proposed in the second reading and on the 46 minority motions, on 22nd March 1997 the National Assembly adopted the entire text of the Constitution. 497 deputies and senators out of a possible 560 participated in the vote. 461 members of the National Assembly voted for the adoption of the Constitution, 31 were against, with 5 abstaining. The adopted Constitution was on the same day submitted to the President of the Republic.

The President of the Republic exercised his rights and proposed his own amendments to the Constitution adopted by the National Assembly during the second reading. These amendments were examined in the third reading by the National Assembly and, with a few exceptions, accepted by the required majority. The final text of the Constitution was adopted during third reading on 2 April 1997.

Just as in the second reading, 497 deputies and senators participated in the vote and 451 of them were for the adoption of the Constitution in the third reading, 40 were against, with 6 abstaining. The distribution of votes was similar to the one in the second reading, although it is significant that this time among the PSL 6 members were against and 5 abstained (while 22 PSL members did not participate in the vote). This behaviour on the part of some of the deputies and senators from PSL, as well as the fact that during the vote in the Constitutional Committee on the final compromise concerning the text of the proposed preamble the leader of PSL abstained, foreshadowed the equivocal attitude towards the Constitution enacted by the National Assembly which the party was to assume during the campaign before the referendum.

The results of the vote, in the second as well as in the third reading, testify to the existence of a parliamentary compromise on the Constitution based on the agreement between four groupings: SLD, PSL, UW, and UP. The Constitution was also supported by the parliamentary groupings of PPS, New Democracy, German Minority, and the Faction of Independent Senators.

The senators representing NSZZ "Solidarność", deputies of the Parliamentary Faction of the Right, and the deputies of the Conservative People's Faction voted consist-

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<sup>13</sup> See *Gazeta Wyborcza*, 24 February 1997 in a report from the visit of the UW Chairman to Gdańsk. L. Balcerowicz emphasised then that the deputies of UW in the Constitutional Committee insisted on introducing into the draft of the Constitution regulations concerning: raising of the importance of property rights and of the right to inherit it, a ban on incurring or giving safeguards as a result of which the public/national debt would exceed three-fifths of the brutto annual national product, limitations on the increase in budget spending and budget deficit, and a guarantee of the independence of the central bank. He stated also that: *UW will defend these regulations. In the draft proposed by ROP and Solidarity there is no balance between welfare rights and the opportunities for the development of the economy. There are welfare rights elaborated there but no protection for the economy.*

ently against the Constitution. The behaviour of the members of the confederal faction of BBWR and KPN was less consistent.

The next day after the adoption of the Constitution by the National Assembly in the third reading the President ordered a referendum, which was to take place on 25th May 1997.

## 2. Formation of “Constitutional Arch”

The SLD-PSL coalition which governed in Poland in the years 1993-1997 lacked the required two-thirds majority in the National Assembly almost from the very beginning. It did not have this majority in the Constitutional Committee, either; and here a qualified majority was also required. Moreover, the SLD-PSL coalition was only a governmental coalition, not a coalition for the enactment of the constitution. Therefore, there were no reasons to fear that SLD would be able to impose its own vision of the constitution. From the beginning of the work on the constitution in 1994, there was no real threat that the constitution finally submitted to the referendum would be radically leftist and axiologically secular.

Contrary to the claims voiced in the aggressive propaganda campaign of the opposition, both parliamentary as well as the one functioning outside of parliament, supported also by the majority of the media, from the very beginning of that phase of work on the draft of the constitution (i.e. since Autumn of 1993) there were no attempts on the part of the ruling majority to impose a draft reflecting one political option.<sup>14</sup>

During the debate in the second reading in the National Assembly, it was argued by the opposition that this was a constitution of only four political parties, which came to a hasty agreement at the very last moment, or that it was simply the constitution of SLD and PSL. A polemic with these arguments developed since, in fact, the Constitution was based to a larger extent on the proposals of drafts submitted by (or rather, on of) L. Wałęsa, the Union of Freedom, or included in the so-called Senate’s draft of constitution.<sup>15</sup> The problem is, that this unquestionable fact is known only to specialists and to

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<sup>14</sup> Aleksander Kwaśniewski, the leader of SLD assuming the position of the chairman of the Constitutional Committee stated that at the moment that he was elected the chairman of the Committee: *the draft which I signed - the draft proposed by the Democratic Left Alliance - from that moment has become [to him] one of the drafts, one of many drafts, that have been submitted. Therefore, it will be treated in the same way as the Senate draft, which senator A. Grześkowiak was talking about, in the same way as the other projects which were submitted by parliamentary groupings during the previous term. (The Bulletin o/CCNA, 1993, vol. I/II, p. 9, col. 2).*

<sup>15</sup> Chairman of the SLD Club, J. Szmajdziński, pointed to that in his speech in the National Assembly: *The accusation of lack of legitimisation, or lack of full legitimisation, on the part of this parliament, to enact a constitution is based also on the fact that as a result of the existence of electoral thresholds, part of the electorate are deprived of their own representation in the parliament. That is true, but this is a double-edged sword. The awareness of that shortcoming was the stimulus for introducing in 1994 the citizens’ initiative on the constitution, which extended, but did not replace, the mechanism of representative democracy. This awareness was also a premise for the creation of such a wide constitutional field and for the gathering of opinions and propositions for the draft of the constitution. That failure, he wrote, was made up for. The citizens’ constitutional initiative was enabled, thus creating an additional chance for parties not*

those involved directly in the writing of the new Constitution of the Republic of Poland. It is not known to the average citizen. Moreover, it is not acknowledged by the opponents of the political camp which constituted the majority in the parliament elected in 1993.

It has also been pointed out, correctly, that during the campaign before the referendum on the Constitution, the concessions made by SLD were the least topic discussed. For the deputies of this grouping: *it is a painful subject, because some of the concessions undermine their historic legitimization and a large part of their ideological heritage. The Right and the militant faction in the Church are not interested in discussing the concessions of "the communists" either. This is because, if the true extent of the compromise on the part of the Left were revealed, it would be difficult to claim that this is a 'communist', 'pink', 'round-table' constitution, 'reaffirming the political order of 1944'. Besides, it would have to be acknowledged that the Right played an important role in achieving these concessions.*<sup>16</sup>

Adversaries of the ruling coalition of the years 1993-1997 - hostile especially towards SLD - after the electoral defeat, made the issue of the constitution a battle ground on which they were hoping to regain their lost positions. One of the leaders of a party which suffered a defeat in the 1993 parliamentary election openly admits to that hypocritical game aimed at short-term political goals.<sup>17</sup>

Although, in public, the opposition consistently advocated a policy of intransigence in regard to the contents of the future basic law, the Constitutional Committee's work on the draft of the constitution was conducted in the spirit of a search for a compromise. This does not mean, however, that the compromise was achieved.

In 1994 the post-Solidarity political groupings were arguing among themselves and differed significantly in their conceptions of the new constitution. Nevertheless, in June 1996, before the entire preliminary consolidated draft of the constitution was even ready, its contents and axiology were already prejudged and rejected in advance.<sup>18</sup> The

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*found in the parliament. As a result after submission by Solidarity of its draft the National Assembly had at its disposal three drafts arising from the right, not including president Wałęsa's draft. The draft prepared by the Constitutional Committee is not only the product of the last three years, written under the dictation of the SLD and the PSL. Careful tracing of the items in the draft and of their origins in proposals voiced since 1989 would lead to astonishing conclusions. It would turn out that the largest number of items derives from the constitutional proposals of president Wałęsa and the Democratic Union, many come from the draft of the 10th term Sejm which was adopted in large part by the PSL-UP draft, but more or less equally from the drafts of the 1st term Senate as well as the SLD. These proposals were reworked during the process of compromise and deputies of varied political orientations participated until the last moments. Thus defining the present draft as the draft of four parties, as Marian Krzaklewski stubbornly insists on doing, is an obvious falsehood. In sum, Wiktor Osiatyński concludes, the process of creating the constitution after 1993 suffered rather from an excess than a lack of legitimacy. See also W. Osiatyński: *Twoja Konstytucja* [Your Constitution], WSiP, Warszawa 1997*

<sup>16</sup> A. Smola: "Wojna światów" [War of the Worlds], *Gazeta Wyborcza*, 30 May 1997.

<sup>17</sup> See: "Polska korupcją stoi" [Poland Stands on Corruption], An interview of Ewa Milewicz with Jarosław Kaczyński. *Gazeta Wyborcza*, 16 July 1997.

<sup>18</sup> See: A. Grześkowiak: "Aksjologia projektu Konstytucji RP" [Axiology of the Draft of the Constitution of the Republic of Poland] in: *Ocena projektu Konstytucji RP Komisji Konstytucyjnej Zgromadzenia Narodowego* [Evaluation of the Constitutional Committee of the National Assembly's Draft of the RP Constitution], J. Kruskowski (ed.), Towarzystwo Naukowe KUL, Lublin 1996.

opposition, especially outside of parliament, declared itself against it and the deputies of the Church hierarchy threatened to evaluate the new constitution negatively still before the referendum.

This specific political climate in which the actual work on the draft of the constitution started, at the turn of 1994, must not be forgotten. Despite these obstacles, which had to be expected, 1995 and 1996 were characterised by tedious and time - consuming efforts aimed at reaching a minimum of compromise on the constitution, which consisted also in making significant concessions to the Episcopate of the Catholic Church.

Despite these unfavourable conditions, the final draft of the constitution, worked out by the Constitutional Committee as a result of a compromise between the above-mentioned parliamentary groupings of the “constitutional arch”, was ready to be submitted to the National Assembly, to be considered in the second reading, in the middle of February of 1997. Finally, on April 2nd 1997 the Constitution of the Republic of Poland was adopted by the National Assembly and the President ordered a ratifying referendum.

### **3. The Controversies over the Referendum on the Constitution**

The referendum on the Constitution was also, just like the Constitution itself, an object of a sharp conflict between the opponents of the Constitution and the “constitutional arch”. Politicians from the opposition demanded that, in addition to the Constitution adopted by the National Assembly, the Solidarity’s draft of the constitution, proposed in 1994 as the popular initiative (the so-called citizens’ draft of the Constitution), should also be subject of voting in the referendum.

For this purpose, a proposal was submitted for a change of the Constitutional Act on the Procedure for Preparing and Adopting the Constitution of the Republic of Poland.<sup>19</sup> The proponents of the change wanted to put to vote in the referendum both the Constitution adopted by the National Assembly and the Solidarity’s draft of the constitution. On March 6th 1997 the Sejm rejected this proposal by an overwhelming majority (357 against, to 36 in favour of the change). From the formal point of view, the Sejm decision put an end to the efforts on the part of the opposition outside of parliament to hold a referendum in which two drafts of the constitution would be put to an all-national vote. This was because the Constitutional Act of 1992 on the procedure of preparation and adoption of the Constitution of the Republic of Poland granted the exclusive power to enact a constitution to the National Assembly.

The proponents of holding a referendum on two drafts of the constitution quoted public opinion polls, which indicated that half of those polled in sociological surveys were in favour of choosing between many drafts of the constitution. Such preferences on the part of the general public were understandable. As the authors of the Centre for

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<sup>19</sup> The draft of the amendments of the Constitutional Act of April 23, 1992 was submitted by deputies on behalf of the AWS as well as deputies of the KPN, BBWR, the Right Alienee, as well as the Conservative People’s Party. They proposed that the constitution be the subject of a referendum and that it would pass if the majority of eligible voters supported it. They assumed therefore a higher threshold than under a normal referendum, which becomes valid when at least half of eligible voters take part.

Research on Public Opinion (CBOS) report correctly wrote that *the preferences with regard to choice between the two drafts result first of all from the desire to retain the highest possible degree of civic subjecthood, and less from the intent of submitting to vote one or another draft of the constitution.*<sup>20</sup> In previous polls, conducted in 1994, 1995, and 1996, the respondents preferred a preliminary, partial referendum on concrete constitutional issues. Their reaction to a referendum confirming the entire constitution was not favourable.<sup>21</sup>

In the 1993 election the political groupings of the “constitutional arch” received 57.8% valid cast votes. During that election, the groupings which in 1997 were part of AWS or ROP received together 31.9% of votes.

In the public opinion polls published in 1996 and 1997 the advantage of the “constitutional arch” over the opposition functioning outside of parliament supporting Solidarity’s draft of the constitution, stayed basically at the same level. In the February poll, conducted by the Centre of Social Research (PBS) in 1997, that advantage approached the proportions of a qualified majority, that is, two-thirds. According to the polls conducted by PBS and CBOS the distribution of opinions looked as follows:

**The proportions of the advantage of the “Constitutional Arch” over the Anti-Constitution Block opposition functioning out of parliament in the period from June 1996 to May 1997, according to the polls conducted by the Centre of Social Research (in percentage)**

|                           | 1996 |     |      |    |    |    |     | 1997 |    |    |    |
|---------------------------|------|-----|------|----|----|----|-----|------|----|----|----|
|                           | VI   | VII | VIII | IX | X  | XI | XII | I    | II | IV | V  |
| Constitutional Arch       | 60   | 58  | 61   | 60 | 58 | 59 | 62  | 58   | 62 | 55 | 56 |
| Anti-Constitutional Block | 40   | 39  | 35   | 36 | 37 | 38 | 35  | 38   | 34 | 35 | 33 |

**The proportions of the advantage of the “Constitutional Arch” over the Anti-Constitution Block opposition functioning out of parliament in the period from July 1996 to April 1997, according to the polls conducted by the Centre for Research on Public Opinion (in percentage)**

|                           | 1996 |      |    |    |    |     |    | 1997 |     |    |  |
|---------------------------|------|------|----|----|----|-----|----|------|-----|----|--|
|                           | VII  | VIII | LX | X  | XI | XII | I  | II   | III | IV |  |
| Constitutional Arch       | 63   | 61   | 65 | 63 | 58 | 60  | 54 | 61   | 51  | 50 |  |
| Anti-Constitutional Block | 37   | 39   | 35 | 37 | 42 | 40  | 46 | 39   | 33  | 34 |  |

<sup>20</sup> Report from research by CBOS: *Polacy o konstytucji i referendum zatwierdzającym* [The Poles on Constitution and the Approving Referendum] (March, 1997).

<sup>21</sup> See: Reports from research by CBOS: Report from research *Konstytucja w świadomości Polaków* [Constitution in the Consciousness of the Poles] (January, 1994), Report from research *Konstytucja w świadomości Polaków* [Constitution in the Consciousness of the Poles] (November, 1995) and Report from research *Znaczenie prawa i konstytucji* [Meaning of Law and Constitution] (March, 1996).

Therefore, it can be said that between 1993 and 1997 the balance of power in the electorate did not undergo any significant change. It would be difficult to point to any crucial shift of power strengthening the position of the opposition functioning outside of parliament. However, in 1997 it became better organised.

The opposition groupings outside of parliament which opposed the Constitution adopted by the National Assembly demanded also a change in the rules for holding a referendum on the Constitution, especially as regards the conditions under which the results of a referendum would be recognised as binding. They wanted it to be recognised that for the results of a referendum to be binding, at least half of the eligible voters must participate in the referendum. After the failure of the efforts to change the Constitutional Act of April 23rd 1992, which specified the conditions for holding a national referendum on a constitution adopted by the National Assembly, the opposition outside of parliament began to work on invalidating the referendum of May 25th 1997.

Thus, the AWS politicians addressed a protest to the Supreme Court against the validity of the referendum.<sup>22</sup> The protesters claimed that the outcome of the referendum was not binding because only 42,86% of eligible voters participated in it. According to the authors of the protest, article 19 section 3 of the Constitutional Act of October 17th 1992, i.e. of the provisional constitution, had superior legal force over article 11 section 1 of the Constitutional Act of April 23 1992 on the Procedure for Preparing and Adopting of the Constitution of the Republic of Poland. The latter Act, referring to a referendum on the constitution, stipulates: "A constitution is adopted in a referendum if the majority of those participating in the referendum voted for the constitution." At the same time, article 19 section 2 of the provisional constitution, concerning an ordinary referendum, stipulates: "If more than half of the eligible voters participated in a referendum, then the result of the referendum is binding."

The AWS politicians who lodged the protest argued that article 11 of the Constitutional Act of April 23rd 1992 was incompatible with article 19 of the Constitutional Act of October 17th 1992, and according to them, the latter Act was more important. They demanded that the Constitutional Tribunal take a decision on the matter.

The President of the Constitutional Tribunal, prof. A. Zoll, declared that the Tribunal could not consider the matter since it had no power to examine constitutional acts and the relationship between them. Nevertheless, he admitted that in his opinion 50% participation in voting should be required also in the case of a referendum on the constitution. He made it clear, however, that this was a problem of the law-maker's rationality and not a question which the Tribunal could decide.

It is difficult to accept the implication of irrationality on the part of the Polish law-makers. Both of the 1992 Constitutional Acts, the one from April 23rd and the one from October 17th, are constitutional acts of equal legal force. Neither one of them is superior to the other. Moreover, these two Constitutional Acts contain regulations con-

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<sup>22</sup> See: protests of AWS' activists, J. Tomaszewski and A. Słomka, *Rzeczpospolita* of 4 July 1997.

cerning two different kinds of referendum. Therefore, the difference in the criteria determining binding results is fully rational.<sup>23</sup>

The nation-wide referendum provided for in the provisional constitution (and regulated in a similar way in the new Constitution) is an example of direct democracy, supplementing the basic method in which the nation exercises a public power through its deputies. In an ordinary nation-wide referendum society can express its opinion on a particular question. When in a given case the majority of voters support a particular solution, and more than half of the eligible voters participate in the voting, then the outcome of the referendum binds the legislative body and other organs of the State. In other words, the qualified majority of citizens gives binding instructions to their deputies. And it is understandable that when such instructions are given, there should be a sensible threshold of participation which will sanction them as the will of a significant majority of voters. Otherwise, a small minority could impose its wishes on the majority. The will of the majority expressed in the ordinary referendum only initiates certain actions on the part of the deputies of the people.

A referendum on the Constitution works differently, however. The National Assembly is elected for a particular purpose, with the general task of adopting the Constitution; and the referendum is held in order to verify the final text of such an Act. Therefore, a referendum on the constitution is held in order to ratify a constitution adopted by the National Assembly. The National Assembly acted as the Constitutional Assembly, which by the will of the nation, the sovereign ruler, through a democratic election, is vested with the constitution-making power.

The Supreme Court received 433 protests questioning whether the referendum on the Constitution had been conducted correctly. 259 of them were not reviewed, due to their contents or formal premises. In 103 of the cases the objections turned out to be unfounded. With respect to 64 of the protests the judges of the Supreme Court found that the charges contained in them were formally grounded but that they did not influence the result of the referendum. Here were also included the 6 protests which were recognised as justified, and which led to the invalidation of the vote in 3 voting wards. The recognition of these protests had no effect on the outcome of the referendum. It only required the National Electoral Commission to make a correction into their earlier declaration on the results of the vote.

The Supreme Court, or more precisely, the Bench for Administrative Law, Labour Law, and Social Security, rejected the above-mentioned protests of the AWS leaders by passing, on July 15th 1997, a resolution confirming the validity of the referendum on the Constitution. The Supreme Court correctly distinguished between a referendum on the constitution and an ordinary referendum provided for in the provisional constitution.<sup>24</sup>

The resolution was not passed unanimously by the entire Bench for Administrative Law, Labour Law, and Social Security of the Supreme Court. Two of the judges ex-

<sup>23</sup> S. Gebethner: "Obligatoryjne, wiążące i racjonalne" [Obligatory, Binding and Rational], *Trybuna*, 4 June 1997.

<sup>24</sup> See Resolution of the Supreme Court of 15 July 1997 on validity of the referendum on the Constitution performed on 25 May 1997 (*Dziennik Ustaw* [Journal of Laws], no. 79, item. 490).

expressed a different opinion. Earlier, one of the three-judge panels ruling on a protest demanding invalidation of the referendum due to low turnout (below 50%), recognised the arguments of the plaintiffs as reasonable. Those three judges claimed that the provisional constitution, being then in force, was violated since “it is a generally recognised rule that a later general norm annuls an earlier particular norm, which leads to the conclusion that article 19 of the small constitution annulled article 11 of the Constitutional act on the procedure of preparing and adopting the Constitution of the Republic of Poland”.<sup>25</sup> This juridical opinion seems to indicate that some of the judges were influenced in their decisions by political considerations, rather than by recognised legal principles. This attitude on the part of the above-mentioned judges, if shared by the entire Bench of the Supreme Court, would have constituted “a radical departure from the, known from time immemorial, rule of collision. This rule can be found in any introductory textbook of jurisprudence. If the opinions of the authors of textbooks from the last 50 years are not convincing, for any reasons, let us look at a pre-war book by a Polish theoretician and philosopher of law, prof. Eugeniusz Jarra who writes that: when there is a clash between two legal norms introduced by normative acts from different times, the rule is that the later law annuls the earlier law (*lex posterior derogat legi priori*), with the exception, however, of those cases where the later law is a general law while the earlier law is a particular one, that means, existing due to some particular circumstances (*lex posterior generali non derogat legi priori speciali*)”.<sup>26</sup>

Moreover, the above-mentioned judges of the Supreme Court were trying to overstep their competence by attempting to verify the constitutionality of an ordinary act (the act on a referendum) and to interpret the constitutional acts, for which even the Constitutional Tribunal has no power.

#### 4. The Outcome and Consequences of the Referendum

In accordance with the requirements of the Constitutional Act of April 23rd 1992, Poles adopted the new Constitution of the Republic of Poland in the referendum on May 25, 1997. From the formal point of view, the procedure for enacting the Constitution was duly fulfilled.

The initial Declaration of the National Electoral Commission from May 26th 1997 regarding the results of the vote and the result of the referendum was published on June 4 in *Dziennik Ustaw (Journal of Laws)*. The Supreme Court reviewed the protests and invalidated the vote in three electoral wards. In consequences the National Electoral Commission, on July 8th 1997, issued the Declaration containing the corrected results of the vote and the outcome of the referendum. The corrected results of the vote did not change the final result of referendum on the Constitution. According to that second

<sup>25</sup> See: *Rzeczpospolita* 1 July 1997.

<sup>26</sup> P. Winczorek: “Błąd i poprawka” [Error and Correction], *Rzeczpospolita*, 16 July 1997.

Declaration of the National Electoral Commission<sup>27</sup> the final results of the vote were as follows:

|                                                                                    |             |             |
|------------------------------------------------------------------------------------|-------------|-------------|
| registered number of entitled voters                                               | 28 319 650  | citizens    |
| number of participants                                                             | 12 140 858, | i.e. 42,86% |
| number of invalid ballots                                                          | 1 068,      | i.e. 0,004% |
| number of valid ballots (i.e. the number of citizens who participated in the vote) | 12 137 136, |             |
| of which invalid votes were cast by                                                | 170 002,    | i.e. 1,4%   |
| valid votes were cast by                                                           | 11 967 234, |             |
| of which:                                                                          |             |             |
| voted "yes" for the adoption of the Constitution                                   | 6 396 641,  | i.e. 52,70% |
| voted "no" against the adoption of the Constitution                                | 5 570 493,  | i.e. 45,90% |

On July 15th 1997, as mentioned above, the Supreme Court passed a resolution recognising the outcome of the referendum as valid.

On the next day, July 16th 1997, the President of the Polish Republic signed the Constitution, which was officially published on the same day in *Dziennik Ustaw* and came in force on October 17th 1997.

As a result of the nation-wide referendum, which took place on May 25th 1997, eight years after the memorable turning point of regime change, Poland was given the new Constitution.

However, the satisfaction derived from the enactment of the new Constitution must not overshadow the painful lessons which the constitution-making process inflicted on the society, its political elite, and moral authorities, including the Catholic Church. In the political sense, everybody sustained losses or set-backs in connection with the referendum.

The opponents of the Constitution - mainly AWS and ROP, who had the support of the Catholic clergy and who treated the referendum as a prelude to the Autumn parliamentary election - achieved success. They obtained the support of as many as 5,5 million voters. This was over 700,000 votes more than what the post-Solidarity political groupings, constituting in 1997 AWS and ROP, obtained in the 1993 parliamentary election. This was also more than the groupings of this political orientation obtained in the 1991 parliamentary election. The referendum on the constitution in May 1997 was also a harbinger of the success that AWS was to achieve in the parliamentary election in September 1997.

It is interesting to compare the outcome of referendum on the constitution with the parliamentary elections of 1991, 1993 and 1997 and the presidential election of 1995. The election statistics given below show a configuration of political orientations within the Polish electorate that had been fairly stable since 1991 (see Table 2 below).

In the referendum all of the political groupings of the "constitutional arch" (SLD, PSL, UD, and UP) sustained a set-back - all together, as well as each one of them

<sup>27</sup> *Dziennik Ustaw*, no. 75, item 476.

individually. First of all, they lost the pre-referendum campaign on the public radio and television. Politicians from these groupings were unable to present the advantages of the new Constitution in a way that would appeal to the average citizen.

The disputes that flared up over the contents of the Constitution and the manner of its adoption will last for some time still, but they will probably die down earlier than we expect. Many of the constitutions that are in force today have been adopted under similarly controversial circumstances, but few people remember it today. Just as an example let us remember here that July 1, 1997 was the 60th anniversary of the enactment of the Constitution of Ireland. That Constitution was adopted in 1937 by a 57% majority in the referendum in which only 43% of those eligible to vote participated. Let us also remember that the Japanese constitution from 1946 and the German Basic Law from 1949 - since they were partially granted by the foreign powers - had a very low degree of legitimacy. Similarly, the French constitution of the Fifth Republic was, for a long time after its adoption in the referendum in 1958, contested by groups on the Right as well as on the Left.

From both the social and political viewpoint the low turnout in the referendum and the marginal advantage of the supporters of the Constitution over its opponents must inspire reflection. The legitimacy of the new Polish Constitution is weak. In fact, only 22.59% of eligible voters supported it while 19.67% were against.

Politicians will keep on arguing for a long time over the evaluation of the results of 1997 referendum. The turnout in referendum can be interpreted in various ways.<sup>28</sup> Sociologists, psychologists, and political scientists will puzzle over this phenomenon for a long time.

It should be remembered, however, that, except for the unusually high turnout in the second round of the presidential election of 1995, a low level participation rate in public votes has become a norm in Poland after 1989. In the 1990 local government election only 42.3% of eligible voters participated - and in 1994 only 33.8%. In the 1991 parliamentary election the turnout was 43.2% and in 1993 - 52.1%, while in 1996 in the referendum on citizens' enfranchisement of the public ownership the turnout was 32.4%. In the presidential elections in 1990 and 1995 the turnouts were between 53.4% and 68.2%. (see Table 1 below).

This phenomenon of low turnout in elections and referenda in the 1990's in Poland seems to result from a throughgoing political alienation of the majority of Poles. We see conformation of this in the outcome of a sociological survey conducted just after

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<sup>28</sup> Day after the referendum T. Mazowiecki said that *the low turnout* means that citizens either are not interested in public issues or they are discouraged. Poles do not recognize that the constitution is for citizens and not for officials. *Gazeta Wyborcza* from 26 May 1997. Authors of the Report from research by CBOS (Funkcjonowanie demokracji w Polsce. Opinie o Konstytucji przed referendum zatwierdzającym. May, 1997) warned before the referendum, that *the cognitive dissonance experience by a large part of Polish society due to the information campaign begun in the media at the start of the research appears to be causing a growth in scepticism as to the effects of the enactment of the constitution. That must have undoubtedly been a factor in lowering the level of turnout in the referendum.*

the 1997 parliamentary election. In this survey 59.4% of the respondents agreed with the opinion that "We are all just cogs in the machine of politics."<sup>29</sup>

On the other hand, the political balance of power in Polish society, which is reflected in the outcome of the referendum, does not differ much from the one observed in previous votes. Despite the frequent change of labels of the particular political parties, and their electoral coalitions, the main political and ideological currents in Poland after 1989 are stable. This is illustrated in Table 2.

The results of the 1997 referendum are often compared with the results of the second round of the 1995 presidential election. However, a much more necessary comparison is the one between the outcome of the referendum and the results of parliamentary elections of 1997 and 1993, as well as of 1991.

The political parties of the "constitutional arch" obtained almost 8 million votes in the 1993 parliamentary election. In the referendum on the constitution, they commanded only 3/4 of their shared electorate of 1993. It seems that the largest number among those who stayed home constituted supporters of PSL (perhaps they even voted against the Constitution). The results of the referendum in voivodships such as Przemyśl, Krosno, Tarnów, Tarnobrzeg, Rzeszów, or Łomża, testify to that. In the 1993 parliamentary election PSL received about 30% of the voting in these voivodships. This attitude to the referendum on the part of PSL voters can be explained by the ambivalent position adopted by PSL leaders in reference to the new Constitution.

It can also be supposed that a significant number of SLD voters stayed at home. This is proven by the results of the referendum in the Włocławek voivodship, which in previous election cast large numbers of votes, if not the largest number of votes, for the SLD lists and candidates.

It seems that for some of the SLD voters the compromise on the constitution overstepped the limit of acceptability. One quarter of them did not participate in the referendum. (See Table 8).

The low turnout in the 1997 referendum, caused first of all by the absence of PSL voters, should give the two parties (SLD and PSL) a lot to think about. On the other hand, the mobilisation of the AWS and ROP electorate in the referendum was undoubtedly a success for these political groupings.

The results of the presidential elections of 1990 and 1995, the parliamentary elections of 1991, 1993 and 1997, and the results of the referenda of 1996 and 1997,

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<sup>29</sup> The answers to the question: *Do you agree with the opinion that we are all just cogs in the machine of politics?*, was as follows:

|                           |       |
|---------------------------|-------|
| I agree                   | 31.8% |
| I agree to some extent    | 27.6% |
| I disagree to some extent | 16.9% |
| I disagree                | 7.7%  |
| It is difficult to say    | 15.4% |
| Decline to answer         | 0.5%  |

See: *Polish National Election Survey, 1997* which had been conducted between 26 September and 7 October 1997.

contrary to common opinions, reveal more stability in the election behaviours and more continuity of expressed political options.

In fact, the outcome of the 1997 referendum was not an accident. The results of the vote in the referendum on the Constitution, in May, and in the parliamentary election, in September, indicate a stable division in the Polish electorate. If we assume that the main dividing line was the attitude to the new Constitution, we may see that the political groupings supporting the Constitution gained similar numbers of votes in the referendum and in the parliamentary election - around 6,5 million. Likewise, the opponents of the Constitution also received similar numbers votes of support - around 5,5 million. Therefore, the outcome of the two votings in 1997 can be evaluated in two opposite manners. The attitude towards the Constitution in the referendum stemmed from deeper political divisions strongly rooted in history. On the other hand, the results of parliamentary election had been determined by the differentiated attitudes towards the new Constitution.

Turnout in the 1997 referendum was at the level of turnout recorded in the parliamentary election of 1991. It could mean that when voters feel lost and do not know what decision to make, they refrain from participating in the voting. One should remember at this point that in the parliamentary election of 1991 the multitude of political groupings which were difficult to recognise and to distinguish among them, made it extremely difficult for the voters to decide. The situation was similar during the referendum on the Constitution. The deluge of contradictory information on the subject of the new Constitution made it difficult for an average voter, unacquainted with the issues related to the enactment of the constitution, to reach an informed decision. And that is presumably why that voter stayed at home. Part of Poles also failed to notice the relevance between their own situation and the adoption of the new Constitution. In the pre-referendum campaign the voters were not made aware of what was beneficial to them in the Constitution enacted on April 2nd 1997. On the contrary, due to the agitation of the opponents of the Constitution, the voters could see threats to themselves ensuing from the adoption of the new Constitution.

The data from the exit polls conducted by the Centre of Social Research indicate that particular demographic factors clearly differentiated voting behaviours in the referendum on the constitution. This is illustrated in Tables 3 and 7.

According to, a survey conducted in July 1997 by the Polish Gallup, people did not participate in the referendum mostly because they were disheartened by public quarels on the substance of the Constitution. They also find it difficult to form an opinion whether it was a good or a bad document or the matter was indifferent for them.<sup>30</sup>

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<sup>30</sup> The answers to the question: *Why, in your opinion, did people not participate in the referendum on the Constitution?* were as follows:

|                                                                                  |       |       |
|----------------------------------------------------------------------------------|-------|-------|
| They were disheartened by public quarrels on the substance of the Constitution   | 31.2% | 25.4% |
| It was difficult to form an opinion over whether it was a good or a bad document | 20.9% | 24.9% |
| The matter was indifferent to them                                               | 20.9% | 21.8% |
| They are not participating in any elections or referenda                         | 16.1% | 20.0% |
| There was no choice between two drafts of the constitution                       | 13.2% | 11.7% |
| This particular Constitution did not suit them                                   | 12.3% | 11.6% |

The data show in particular that the agitation of the opponents of the Constitution was more effective with lower educated, with women as well as with younger people and with people who were less educated and who lived in the rural areas. (See Table 3)

As far as the voting behaviours according to political preference are concerned, it is clear that the highest degree of loyalty was observed among the SLD electorate. The supporters of AWS, UW, UP, and ROP demonstrated a somewhat lower degree of party loyalty; 10-15% of them disregarded the appeals of their respective parties. The PSL and UPR supporters appeared to be the least disciplined ones. (See Table 4) The ROP supporters boycotted the referendum to the highest degree. (See Table 8)

The data in Table 5 indicate that the political parties which mobilised for participation in the referendum to the highest degree were SLD and AWS.

PSL demonstrated the lowest degree of mobilisation on the part of its supporters. Relatively many people in the rural areas - and among them the supporters of PSL - voted against the Constitution.

At the same time, the results of a survey conducted by CBOS in the middle of June 1997<sup>31</sup> seem to indicate that the potential ROP voters were the most disciplined ones, while the ones who disregarded the pre-referendum appeals to the largest degree were the supporters of UP and PSL. (Table 6)

The data collected from the exit polls lead to the conclusion that the citizens' answer to the question posed did not, in fact, concern their opinion on the Constitution, but that it was first and foremost an expression of political options.

This conclusion seems to be confirmed not only by the comparative analysis of the election results' statistics which was given above, but also by the outcome of the surveys conducted by CBOS, one month before the referendum,<sup>32</sup> as well as three weeks before the referendum.<sup>33</sup> In April only 9% of the respondents estimated their knowledge about the Constitution as good. At the same time, 43% of the respondents considered themselves poorly informed, while 26% knew nothing about the subject. What was most significant, however, was the growth of scepticism with respect to the importance and the consequences of the fact of enactment of the new Constitution. Half of those polled predicted that the chances of the citizens' having more of a say in the government of the country after the enactment of the Constitution, or of Poland's becoming a better ruled country, were small or non-existent. Moreover, more than half of the respondents (56%) thought that the adoption of the Constitution would create

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Respondents could indicate three answers. In the second column is shown the percentage of answers given by respondent who declared that they did not participate in the referendum.

(Data from the survey conducted by MARECQ/GALLUP INTERNATIONAL in July 1997)

<sup>31</sup> Report from research by CBOS: *Motywy głosowania za odrzuceniem Konstytucji. Zadowolenie z przyjęcia ustawy zasadniczej* [Reasons of Voting for the Rejection of the Constitution. Satisfaction after Accepting the Basic Law], July 1997.

<sup>32</sup> Report from research by CBOS: *Funkcjonowanie demokracji w Polsce. Opinie o Konstytucji przed referendum zatwierdzającym* [Functioning of Democracy in Poland. Opinions on the Constitution before the Approving Referendum], May 1997.

<sup>33</sup> Report from research by CBOS: *Motywy głosowania za odrzuceniem Konstytucji. Zadowolenie z przyjęcia ustawy zasadniczej* [Reasons of Voting for the Rejection of the Constitution Satisfaction after Accepting the Basic Law], July 1997.

one more plane of political polarisation and would become a source of conflict. Only one fourth of those questioned thought that the enactment of the Constitution would have a stabilising effect on the Polish political scene. In this survey 19% of respondents had no opinion on that matter.

The survey conducted by CBOS after the referendum indicated that an important inducement to vote against the Constitution was the conviction that it was not in conformity with the Christian faith or the teaching of the Catholic Church. This finding seems to confirm the hypothesis that voting behaviours in the referendum on the Constitution were to a large extent conditioned by the ideological and world outlook factors. Arguments about lack of proper protection of life from the conception to natural death, about threats to the sovereignty of the Republic of Poland, and also its objections pertaining to the form of the Constitution (the Constitution is bad because it is written unclearly and its construction is faulty) also proved effective in mobilising the opponents of the political parties which voted in the National Assembly for the Constitution.

It is not surprising, therefore, that only 52% of those questioned in the above mentioned CBOS survey declared themselves pleased that the Constitution had been adopted in the referendum (of those, only 22% were definitely pleased), while more than one fourth were displeased by the fact, when 20% of respondents had no opinion on that matter.

The results of the surveys conducted after the referendum on the Constitution seem to indicate, however, that the social acceptance of the new Constitution is perhaps higher than it might have seemed after the outcome of the vote of May 25th 1997 was announced.

The referendum on the Constitution has become a fact. It undoubtedly paves the way for the shaping and strengthening of democratic institutions. It is also a testimony to the difficulty of the process of building a political consensus around the adopted Constitution. The process of the legitimisation of the Constitution is a complex one. It is conditioned not only by legal decisions and guarantees (among them the resolution of the Supreme Court on the validity of the outcome of the referendum) but, most of all, by the practice of implementation of the new Constitution and by the perception of the Constitution by society.

The new Constitution is compatible with the requirements of a modern democratic state and has typical characteristics of a basic law adopted by a society which has experienced authoritarian rule and wants to safeguard itself from the return of such rule. At the same time, this Constitution refers to Polish national traditions favouring political independence and sovereignty. It also takes into account the world-wide tendencies of modern constitutionalism. It is a basic law which respects the international norms defining human and civic rights and liberties.

### Abbreviations

**AWS** - Electoral Action Solidarity [Akcja Wyborcza Solidarność]

**BBWR** - Nonparty Bloc for the Support of Reforms [Bezpartyjny Blok Wspierania Reform]

**ChD** - Christian Democracy [Chrześcijańska Demokracja]

**KdR** - Coalition for Republic [Koalicja dla Rzeczypospolitej]

**KLD** - Liberal Democratic Congress [Kongres Liberalno-Demokratyczny]

**KPN** - Confederation for the Independent Poland [Konfederacja Polski Niepodległej]

**KPRiE** - National Party of Retired [Krajowa Partia Rencistów i Emerytów]

**PC** - Center Alliance - Polish Union [Porozumienie Centrum]

**PChD** - Party of Christian Democrats [Partia Chrześcijańskich Demokratów]

**PSL** - Polish Peasant Party [Polskie Stronnictwo Ludowe]

**PSL-PL** - Polish Peasant Party - Peasant Alliance [Polskie Stronnictwo Ludowe - Porozumienie Ludowe]

**ROP** - Movement for the Reconstruction of Poland [Ruch Odbudowy Polski]

**“S”** - “Solidarity” Trade Unions [NSZZ “Solidarność”]

**SLD** - Democratic Left Alliance [Sojusz Lewicy Demokratycznej]

**UD** - Democratic Union [Unia Demokratyczna]

**UP** - Union of Labour [Unia Pracy]

**UPR** - Union of Real Politics [Unia Polityki Realnej]

**UW** - Union of Freedom [Unia Wolności]

**WAK** - Catholic Electoral Action [Wyborcza Akcja Katolicka]

**ZChN** - Christian National Union [Zjednoczenie Chrześcijańsko-Narodowe]

### Who Was for and Against the Constitution?

Table 3. Voting behaviour in the referendum on the Constitution according to gender, education, and place of residence (results of exit poll quoted after *Gazeta Wyborcza* of 26 May 1997)

|                         | FOR<br>% | AGAINST<br>% |
|-------------------------|----------|--------------|
| Gender:                 |          |              |
| Women                   | 55,0     | 45,0         |
| Men                     | 58,5     | 41,5         |
| Age:                    |          |              |
| 18-24                   | 57,5     | 42,5         |
| 25-39                   | 52,0     | 48,0         |
| 40-59                   | 60,0     | 40,0         |
| over 60                 | 67,0     | 33,0         |
| Education:              |          |              |
| elementary              | 51,0     | 49,0         |
| vocational              | 51,5     | 48,5         |
| secondary               | 59,5     | 40,5         |
| higher                  | 63,0     | 37,0         |
| Place of residence:     |          |              |
| Rural area              | 51,0     | 49,0         |
| towns with inhabitants: |          |              |
| up to 50 000            | 58,0     | 42,0         |
| from 50 000 to 200 000  | 62,0     | 38,0         |
| over 200 000            | 58,0     | 42,0         |

Table 4. Voting behaviour in the referendum on the Constitution according to expressed political preferences (results of exit poll quoted after *Gazeta Wyborcza* of May 26th 1997)

| Supporters of | FOR<br>% | AGAINST<br>% |
|---------------|----------|--------------|
| SLD           | 97,0     | 3,0          |
| UW            | 84,0     | 16,0         |
| UP            | 84,0     | 16,0         |
| PSL           | 72,0     | 28,0         |
| KPRiE         | 65,0     | 35,0         |
| UPR           | 52,0     | 48,0         |
| ROP           | 15,0     | 85,0         |
| AWS           | 9,5      | 90,5         |

**Table 5. Declared political preferences of voters participating in the referendum**

**on the Constitution** (results of exit poll quoted after *Gazeta Wyborcza* of 26 May

| Declared support for political grouping | %    |
|-----------------------------------------|------|
| AWS                                     | 22,6 |
| SLD                                     | 22,3 |
| UW                                      | 7,4  |
| ROP                                     | 5,2  |
| KPRiE                                   | 5,2  |
| PSL                                     | 4,6  |
| UP                                      | 3,6  |
| UPR                                     | 2,0  |
| will not vote                           | 2,2  |
| undecided                               | 23,3 |

**Table 6. Declared participation in the referendum of the supporters of particular**

**political groupings** (based on results of the survey conducted by CBOS from the 13th

| Supporters of | Declaration of participation in referendum |    |
|---------------|--------------------------------------------|----|
|               | YES                                        | NO |
|               | (in percentage)                            |    |
| ROP           | 82                                         | 18 |
| SLD           | 76                                         | 24 |
| KPRiE         | 76                                         | 24 |
| AWS           | 74                                         | 26 |
| UW            | 72                                         | 28 |
| PSL           | 64                                         | 36 |
| UP            | 55                                         | 45 |

**Table 7. Declared participation in the referendum on the Constitution according to gender, education, place of residence and occupation** (based on results of the survey conducted by Mareco/Gallup International in July 1997)

|                             | YES<br>% | NO<br>% |
|-----------------------------|----------|---------|
| Gender                      |          |         |
| Women                       | 53,5     | 46,5    |
| Men                         | 58,9     | 41,1    |
| Age:                        |          |         |
| 18-19                       | 35,8     | 64,2    |
| 20-29                       | 50,8     | 49,2    |
| 30-39                       | 54,8     | 45,2    |
| 40-49                       | 67,8     | 32,2    |
| 50-59                       | 68,0     | 32,0    |
| over 60                     | 63,0     | 37,0    |
| Education                   |          |         |
| elementary                  | 48,9     | 51,1    |
| vocational                  | 54,6     | 45,4    |
| secondary                   | 61,8     | 38,2    |
| higher                      | 73,6     | 26,4    |
| Place of residence:         |          |         |
| Rural area                  | 52,5     | 47,5    |
| towns with inhabitants:     |          |         |
| up to 20 000                | 62,9     | 37,1    |
| from 20 000 to 50 000       | 52,8     | 47,2    |
| from 50 000 to 200 000      | 57,0     | 43,0    |
| from 200 000 to 500 000     | 62,4     | 37,6    |
| over 500 000                | 53,3     | 46,7    |
| Occupation:                 |          |         |
| businessmen & white collars | 62,8     | 37,2    |
| blue collars                | 65,8     | 34,2    |
| workers                     | 53,2     | 46,8    |
| students                    | 40,2     | 59,8    |
| housewives                  | 48,8     | 51,2    |
| pensioners                  | 62,3     | 37,7    |
| farmers                     | 59,4     | 40,6    |
| jobless                     | 37,5     | 62,5    |

**Table 8. Declared participation in the referendum of the supporters of particular political groupings** (based on results of the survey conducted by Mareco/Gallup Inter-

| Supporters of | Declaration of participation in referendum |      |
|---------------|--------------------------------------------|------|
|               | YES<br>(in percentage)                     | NO   |
| SLD           | 77,5                                       | 22,5 |
| UP            | 73,9                                       | 26,1 |
| AWS           | 72,0                                       | 28,0 |
| UW            | 66,7                                       | 33,3 |
| PSL           | 60,9                                       | 39,1 |
| KPRiE         | 57,9                                       | 42,1 |
| ROP           | 29,4                                       | 70,6 |