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Direct Recall as an Instrument of Political Liability of Public Authorities Before Voters in the Republics of Poland and Latvia

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The direct and participatory democracy is becoming increasingly popular in recent years in Europe. States are introducing new institutions into their constitutional systems, which, on the one hand, strengthen the ability of citizens to influence decision-making processes and, on the other hand, allow them to control the actions of public authorities. One of such institutions is a "recall", which provides citizens with the right to recall, by way of voting, the public authorities elected directly by citizens. The institution of recall may take either direct or indirect form. Nevertheless, only a "direct recall" that takes place at the request of citizens can fully satisfy their interests. The direct recall at the national level is a relatively rare institution, hence, Latvian solutions in this area that allow for the recall of parliament before the end of its term may be considered unique, whilst in Poland the institution of direct recall occurs at the local level. Polish experiences with the practice of recalls indicate that for this institution to function effectively, it is necessary to adopt appropriate legal regulations. For example, the high turnout threshold adopted in both countries, which determines the binding nature of the vote, may be a factor that significantly reduces the effectiveness of this measure. The authors present the current legal regulations concerning the institution of direct recall in both states, as well as provide their critical assessment.

Keywords: direct democracy, accountability of elected officials, direct recall, indirect recall, popular voting, Poland, Latvia.

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Introduction

In recent decades, recall mechanisms have increasingly found their way into the constitutional orders of democratic states, attracting an increasing interest of academics. These countries include the Republic of Poland, where the Constitution of 2 April 1997 provides for the constitutional basis of recall at the local government level, as well as Latvia, which in 2008 introduced into its constitutional system a form of recall that is unique in the world, complimenting another mechanism already present there, namely, the recall of parliament by way of a referendum. The article is devoted to the mechanism of recall as it exists in the constitutional systems of Poland and Latvia. The controversy that is aroused by the effectiveness of this mechanism in Poland in comparison with the modest Latvian experience in this field provokes research questions concerning these institutions, including those that belong to the field of comparative law, although they function on different levels of public authority. Although the article compares the Polish experience at the local level and the Latvian experience at the national level, the authors believe that, despite this, conclusions can be drawn as to the role and functioning of the recall institution. The research aimed to assess the normative solutions of both recall models and to answer the question of whether, in the light of these findings and the constitutional practice, any conclusions can be constructed regarding the rationalisation of normative solutions in both countries. For this purpose, firstly, the authors will analyse the provisions of the Constitution of the Republic of Poland constituting the legal basis for the institution of recall in the Polish legal order, and then the provisions of the Local Referendum Act and, as far as required, other acts. Next, the data on the practice of using this institution will be presented. The model of the Polish recall thus constructed, together with the Polish experience, will then be compared to the mechanism of Latvian recall in terms of Art. 14 of the Latvian constitution, *Satversme*.

1. Terminological remarks

The analysis of the normative solutions should be preceded by comments of a terminological nature. There are no major doubts as to the very definition of the recall mechanism, which can be characterised as a political right of a certain group of people to recall bodies of public authority elected by universal suffrage.[1] The *ratio legis* of this institution is also relatively easy to identify. As A. Lijphart aptly observes, the essence of this institution is the possibility of early dismissal of those representatives who in the voters' opinion have betrayed the trust of voters and

[1] See, f. ex.: *Uziębło, P.* Demokracja partycypacyjna. Gdańsk, 2009, p. 50. The representatives of Western doctrine define recall similarly, see, f. ex.: *Zimmerman, J. F.* The Recall: Tribunal of the People. Albany, 2014, p. 9; *Macgregor Burns, J., Peltason, J. W., Cronin, T., Magleby, D.* Government by The People. New York, 2000, p. 27; *Qvortrup, M.* Hasta la Vista: a comparative institutionalist analysis of the recall. Representation, Vol. 47, No. 2, July 2011, p. 161.

have performed their duties improperly.[2] Hence, it allows for ongoing verification of the activities of individual representatives, as well as the entire assembly, although in today's world it is important to keep in mind that in some cases this may turn out to be a verification in the field of propaganda, disinformation and manipulation by means of social media. The mechanism of recall exists, however, in many versions (e.g. recall elections, referendum recall, representative recall) and, although it is not the purpose of this article to characterise them all, for the sake of further considerations two forms of recall should be distinguished. The first one is a "direct recall" initiated upon a relevant petition of a certain number of voters which results in a direct vote on recall before the end of the term of the elected body/official. The second one is an "indirect recall" initiated by a public authority according to the provisions of law, and only then voters can decide by voting.[3] The literature on recalls provides a number of arguments both for and against the institution of recall, pointing out the advantages and disadvantages of its different forms. Bearing this in mind, the legislator shall always carefully consider the very idea of recall, as well as the specific procedural solutions when introducing this institution into a given legal order.[4]

2. Constitutional regulation of recall in the Republic of Poland

The Constitution of the Republic of Poland of 2 April 1997[5] provides for two kinds of referendums depending on their territorial scope. The first category of national referendums includes three types of popular voting distinguished according to their subjective scope: a referendum on matters of particular importance to the State (Art. 125), a referendum on granting consent for the ratification of an international agreement that delegates the competence of organs of State authority concerning certain matters to an international organization or international institution (Art. 90, para. 3), and a confirmatory referendum that is a part of a procedure amending the Constitution (Art. 235, para. 6). The second category of local referendums is determined by Art. 170, which serves as a constitutional basis for the recall institution in a commune.

According to Art. 170, "members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute". It should be pointed out that the Constitution does not limit in any way the issues that can be subject to a local referendum, stating only that they shall refer to matters concerning the self-governing community. The only limitation in this regard relates to the requirement that the subject of the referendum should concern the self-governing community perceived as a subject of public law and not the particular interests of

[2] *Lijphart, A.* Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries, New Haven, 1984, p. 200.

[3] *Qvortrup, M.* Hasta la Vista, p. 163. This classification is also used by U. Serdült and Y. Welp, who also propose another classification based on the recall function criterion; See: *Serdült, U., Welp, Y.* The leveling up of a political institution. Perspectives on the recall referendum. In: *Ruth, S., Welp, Y. and Whitehead, L.* Let the people rule? Direct democracy in the twenty-first century. Colchester, 2017, pp. 137–140.

[4] The arguments for and against the institution of a recall are comprehensively presented, *inter alia,* by *Zimmerman, J. F.* The Recall, pp. 78–90.

[5] The Official Journal of Laws „Dziennik Ustaw", No. 78, item 483, 1997. Available: https://sejm.gov.pl/prawo/konst/angielski/kon1.htm [last viewed 17.06.2024].

individual inhabitants or their groups – e.g. the initiators of such a referendum.[6] Despite the fact that the Constitution does not require that issues addressed to the referendum must fall within the scope of tasks and competencies of the given local government unit, such interpretation seems to be appropriate if we want to ensure the effective functioning of this institution.[7] The provisions of ordinary law should not limit the subjective scope of the local referendum. However, irrespective of the determination of the admissible subjective scope of the local referendum in Poland, a recall of a local authority has been explicitly mentioned in the Constitution as one of the matters that can be decided in a referendum.[8]

The above fact shows the special attention that the legislator pays to this institution. The institution of recall is an exceptional mechanism that results in the interruption of the term of office of public authority whose legitimacy to govern for a certain period has its source in democratic elections. If the mechanism of recall were not regulated in the Constitution, there would be reasonable doubts as to whether such a procedure is permissible at all. The authors of this paper believe that Art. 170 of the Polish Constitution provides for two different constitutional mechanisms. Firstly, there is a local "problem-based" referendum that allows inhabitants to decide on certain "matters", and secondly, there is a local referendum that allows deciding on "persons" and due to its distinct features, it may be referred to as a recall mechanism separate from the "problem-based" referendum. This, therefore, unequivocally confirms the appropriateness of indicating this mechanism *expressis verbis* in the Constitution.

The Constitution does not indicate at what level of self-government a local referendum may be organised, which reflects a rather open construction of the model of local government in Poland. The Constitution only determines that the commune shall be the basic unit of local government (Art. 164 para. 1). Meanwhile, it stipulates that other units of regional and/or local government shall be specified by statute. It follows from this provision that the legislator can decide on the number of tiers of local government in Poland, although a commune as the basic unit and at least one tier of the local government of a regional nature must be established by a statute. Nevertheless, there are no obstacles to establishing more local or regional tiers.[9] In 1998, several acts were adopted that established the basis for the current shape of the Polish local government. These were primarily the Act of 24 July 1998 on the Introduction of the Basic Three-Tier Territorial Division of the State,[10] the Act of 5 June 1998 on *Poviat* Local Government[11] and the Act of 5 June 1998 on Voivodeship Local Government.[12] The Act of 8 March 1990 on the Municipal Local Government[13] had already been

[6] Of course, in certain situations this may cause doubts whether the issue would concern the rights of a certain part of the population, but not all. In the absence of constitutional indications in this respect (but also in the absence of statutory ones), it should be acknowledged that the issue is a matter to be assessed by the authority administering the referendum. Furthermore, it is subject to the supervision of the *voivode*, who can issue a supervisory decision stating the invalidity of the resolution on holding the referendum. The supervisory decision is subject to appeal to the administrative court (Article 10 of the Act on Local Referendum).

[7] Cfr. Judgement of the Constitutional Tribunal of 26 February 2003, (K 30/02).

[8] *Banaszak, B.* Konstytucja Rzeczypospolitej Polskiej. Komentarz [Constitution of the Republic of Poland. Commentary]. Warszawa, 2009, pp. 763–766.

[9] *Skoczylas, A., Piątek, T.* Komentarz do artykułu 164 [Commentary on Article 164]. In: Konstytucja RP. Komentarz T. II. *Safjan, M., Bosek, L.* (eds). Warszawa, 2016, pp. 889–891.

[10] Official Journal of Laws „Dziennik Ustaw", No. 96, item 603, 1998.

[11] Consolidated text: Official Journal of Laws „Dziennik Ustaw" item 511, 2019.

[12] Ibid., item 512, 2019.

[13] Consolidated text: Official Journal of Laws „Dziennik Ustaw" items 559, 583, 2022.

in force. It should be noted that although the process of shaping the Polish model of local self-government, which refers to interwar solutions, began in 1989, the fact that it is largely based on statutory laws caused it to be subject to further evolution.[14]

In the opinion of the authors, the referendum provided in Art. 170 may be carried out at any level of local government, even though the second sentence of this provision refers only to a local referendum, not mentioning a regional one. When constructing the institution of the referendum at the local level, the legislator referred this regulation to the communes envisaged by the Constitution, i.e. units of local self-government. Hence, the term "local referendum" appears. This formulation should not, however, be understood in a way that prohibits holding a referendum on other levels of self-government established by a statute. Firstly, there is no substantive justification for excluding such a possibility at other tiers of local government. Secondly, given the principle of self-government units' independence, understood in this context as the lack of subordination of a given category of units to higher-level units, granting only one category of local communities (municipalities) the right to decide their own affairs in a referendum, while depriving others of this right, could face the charge of arbitrariness in this regard and be considered in the context of the principle of equality, referring to the equal political rights of different categories of local communities. Moreover, as pointed out by A. Skoczylas and T. Piątek, such reasoning would be in contradiction with Art. 62, placed in the subchapter concerning political freedoms and rights, which generally provides for the right to take part in a referendum without any exclusions of a subjective nature.[15] In the opinion of the authors, a regional referendum and therefore a recall at the regional level is possible.[16] Yet, given the content of Art. 164, para. 2 of the Constitution, allowing the legislator to establish different units from commune units of the local and regional government, a more appropriate legislative solution would be to add to the content of Art. 170 the possibility to organize a regional referendum. It is worth pointing out that the law on local referendum, which is crucial in this matter, unnecessarily exacerbates the terminological doubts, recognising in Art. 6 that a local referendum includes a municipal referendum, a district referendum, and a voivodeship referendum.

The Constitution does not specify the number of tiers of territorial self-government and does not define the bodies of territorial self-government at those tiers. However, Art. 169, para. 1 prejudges the dual organisational structure of local government units, since it follows from this provision that units of local government shall perform their duties through legislative and executive organs. The key issue from the point of view of the recall mechanism, which follows from Art. 170, is the identification of those bodies which are established by direct election. According to Art. 169, para. 2, elections to legislative organs must be universal, direct, equal, and shall be conducted by secret ballot.[17] Regarding executive bodies, the Constitution is more

[14] *Jackiewicz, A.* Re-enactment of the territorial self-government in Poland during transformation. In: Jurisprudence and culture: past lessons and future challenges: the 5th International Scientific Conference of the University of Latvia: dedicated to the 95th Anniversary of the Faculty of Law of the University of Latvia, 10–11 November 2014, *Torgans, K., Pleps, J.* (eds). Riga, 2014, pp. 258–267.

[15] *Skoczylas, A., Piątek, T.* Komentarz do Art. 170, p. 948.

[16] See: *Jackiewicz, A.* The constitutional and statutory basis for the local referendum in Poland, In: Evolution of constitutionalism in the selected states of Central and Eastern Europe, *Matwiejuk, J., Prokop, K.* (eds). Białystok, 2010, pp. 181–182.

[17] Art. 169, para. 2 provides: "Elections to constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot. The principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, shall be specified by statute."

flexible, stating in Art. 169, para. 3 that the principles and procedures for the election and dismissal of executive organs of units of local government shall be specified by statute. Therefore, the referendum on the dismissal of an organ of local government may concern the constituting bodies at all levels of local government, since each of these bodies, irrespective of the level at which it is appointed, is directly elected. It may also concern executive bodies, provided that the statute determines that they are directly elected.

3. Polish statutory regulations

The current model of local government in Poland provides for three levels of local government: municipalities (communes), counties (districts), and voivodeships. In the light of the current statutory solutions, the directly elected bodies, thus subject to the recall mechanism, including at the municipal level – legislative bodies (commune councils) and executive bodies (heads of communes, mayors, or town presidents depending on the commune's status, and in particular on the number of inhabitants), at the district level – district councils (which are legislative bodies) and at the voivodeship level – voivodeship assemblies (which are legislative bodies)[18].

The basic normative act regulating the institution of recall is the Act of 15 September 2000 on the Local Referendum.[19] In regard to issues not regulated by its provisions the Act of 5 January 2011 – Electoral Code[20] shall be applied. According to Art. 2 of the Act on Local Referendum, which refers to the referendum subject, the recall mechanism is a procedure that allows the inhabitants of the local government unit (constituting the local government community) to express their will, by way of voting, to recall the decision-making body of this unit or to recall the head of the commune (mayor, president of the city). Based on the provisions of the Act, two forms of recall can be distinguished – *communis opinio* defined as a direct recall and an indirect recall. The first form refers to the recall of a local authority in the form of a popular vote initiated by the members of the respective local government community, while the second form concerns the recall of a local authority also in the form of a popular vote, but on the initiative of another entity. The second one, in the light of the current statutory solutions, may only take place in a municipality concerning the executive body. Following the above-outlined research aims, further considerations have been focused on the instrument of a direct recall.

The analysis of the statutory provisions concerning the conduct of a recall shows a whole range of procedural solutions, which include various forms of limiting or hindering the use of this mechanism. According to Art. 4 and Art. 5 of the Act on Local Referendum, the recall of legislative authority of the local government unit can be decided before the expiry of its term of office only by way of a referendum initiated by at least 10% of residents of a municipality or a district, or by at least 5% of residents in case of a voivodeship. The initiative to start the recall can be supported by those who are entitled to vote in local elections. Regarding the municipal executive body, the recall can be initiated upon the request of the above-mentioned group of residents, but also upon the initiative of the municipal council. Notably, in all cases

[18] The executive bodies in the districts (*poviats*) and provinces (voivodships) – the management boards – are elected by the constituent bodies, hence, the recall mechanism cannot apply to them.

[19] Official Journal of Laws "Dziennik Ustaw", No. 88, item 985, 2000.

[20] Consolidated text: Official Journal of Laws „Dziennik Ustaw", item 1319, 2020.

the motion may be submitted after the lapse of 10 months from the date of the election of the authority or 10 months from the date of the last recall referendum and no later than 8 months before the end of its term of office. Given the 5-year term of office of self-government bodies, this means a time limitation excluding less than 1/3 of the whole term of office. This limitation can be justified by pragmatic reasons. On the one hand, it is aimed to prevent the recall of authorities whose term of office has just started, and. on the other hand, to prevent the recall of an authority whose term of office is about to expire anyway and the residents will have an opportunity to carry out political verification in the forthcoming elections.

According to Art. 22 of the Act on Local Referendum, the procedure for ordering a direct recall is initiated by the so-called recall initiator, which can be a group of citizens, a statutory field structure of a political party, or a social organisation with a legal personality. The eligible entity submits the application in writing to the election commissioner together with the required number of signatures of the inhabitants of the given unit of local self-government.[21] If the residents' application meets the requirements set out in the Act, the election commissioner decides to conduct a recall at the initiative of the residents (Art. 23 of the Local Referendum Act). The voting shall be held on a day of rest, no later than on the 50th day after the date of publication of the decision by the election commissioner on this matter (Art. 27 of the Local Referendum Act).[22]

The Act provides a detailed regulation of conducting the recall referendum campaign, which starts on the day of the publication of the decision of the election commissioner on calling the referendum and ends 24 hours before the voting day. The statutory provisions determine various types of restrictions in this regard. The Act also provides for the manner of financing the referendum, which must be transparent. As a rule, the recall referendum is financed from the budgetary funds of the local self-government unit, whereas the expenses related to the recall initiative are covered by the initiator's funds, and the Act extensively enumerates the sources from which the recall initiator cannot obtain funds, e.g. they can neither come from the state budget nor from abroad (Art. 43 of the Local Referendum Act).[23]

Recall voting is conducted and its results are determined by the appropriate territorial (voivodship, district, and municipal) referendum committees and regional referendum committees appointed for that purpose.[24] Under Art. 50 of the Act on Local Referendum, the members of territorial and regional referendum committees are appointed by the election commissioner from among persons (in equal numbers) indicated in writing by the executive body and the referendum initiator. The referendum committees cannot include councillors, persons who are members

[21] The judgement of the Provincial Administrative Court in Gorzów Wielkopolski of 8 March 2017 (ref. II SA/Go 19/17). The court indicated in it, *inter alia*, that: "An inhabitant of a local self-government unit supporting a referendum application shall provide on the card his/her name, surname, address of residence and PESEL registration number, as well as the date of giving support. They confirm these data with their signature. The incorrect or illegible provision of data which makes it impossible to verify its correctness may be the reason for rejecting the referendum application".

[22] *Jackiewicz, A*. The constitutional, pp. 184–185. On the procedure of initiating the recall referendum, also: *Uziębło, P.* Ustawa o referendum lokalnym. Komentarz [Local Referendum Act. Commentary]. Warszawa, 2008, pp. 102–112.

[23] *Jackiewicz, A*. The constitutional, pp. 185–187.

[24] Voting in the referendum shall be conducted in permanent and separate polling districts referred to in Art. 12 § 1 of the Act of 5 January 2011 – Electoral Code.

of or perform the function of the executive body of the local government unit, as well as the referendum initiator and its proxy.[25]

Of particular importance for the recall practice is the regulation contained in Art. 55, para. 2 of the Act on Local Referendum, which provides that the recall procedure is effective[26] if not less than 3/5 of the number of voters who have taken part in the election of the recalled organ take part in it. Other types of local referendums are binding if at least 30% of those eligible to vote take part.[27] Making the effectiveness of recall dependent on the turnout has its far-reaching practical consequences, which will be considered in the next section of the current paper.[28]

Immediately after drawing up the protocol on the referendum result, the territorial committee makes the results of the vote and the result of the referendum public by displaying one of the copies of the protocol in its seat. The announcement of the result of the referendum in which voters decided on the recall of the legislative body of a district or a voivodeship, means the end of the activities both of the legislative and executive authorities and the announcement of the result of the referendum conducted at the request of inhabitants in which they decided on the recall of the municipal bodies before the end of their term of office means the end of the activities of the bodies subject to voting.

The legal effect of the referendum in which the members of the local community voted in favour of the recall of the local authority, creates, under Art. 67, para. 4 of the Act on Local Referendum, the obligation of the Prime Minister to immediately appoint a person who will perform the functions of the recalled bodies until the appointment of the new one in early elections. Entrusting this task to the Prime Minister is a consequence of the fact that, according to Art. 171, para. 2 of the Constitution, he is the supervisory authority over local government.

4. Polish experience regarding the recall

From the beginning of the current term of municipal authorities in October 2018 until 3 April 2022, 63 referendums have been held on the recall of municipal executive bodies, municipal councils, or both of these authorities.[29] This can be perceived as distrust toward the elected local representatives. However, only 8 of them were binding due to the required turnout. In all these cases, the residents decided by a vast majority to recall the body subject to voting. The rate of binding and at the same time effective recall referendums is only 12.69%. The rest of them were not binding and did not cause any effects, because the turnout was lower than the required one. In the previous term of local government, from 2014 to 2018, there were 60 recall procedures, of

[25] A territorial commission is composed of 6 to 16 persons while a local commission is composed of 6 to 10 persons.

[26] Local Referendum Act, in order to determine the binding effect of an election, uses the unfortunate term “valid” (*ważne*), which the Constitution refers to the holding of a referendum in accordance with the law. The Constitution uses the term “binding” (*wiążące*) to assess whether a referendum has legal effect. The authors also use such a term to refer to a Local Referendum Act.

[27] See more: *Kryszeń, G.* Referendum jako instytucja demokracji bezpośredniej [Referendum as an institution of direct democracy]. Białystok 2020, s. 160–162.

[28] See also: *Rytel-Warzocha, A.* Referendum lokalne w Polsce w świetle aktualnych regulacji prawnych i proponowanych zmian [Local referendum in Poland in the light of current legal regulations and proposed changes]. Przegląd Prawa Konstytucyjnego, No. 2, 2020, p. 88.

[29] Referenda on recall since their introduction in 1990 until 2014 are presented in: *Piasecki, A.* Ewolucje referendum w sprawie oddziaływania organu samorządu terytorialnego [Evolution of the referendum in the impact of the local government body]. Homo Politicus, Vol. 12, 2017, pp. 153–164.

which only 4 were binding and at the same time resulted in the successful recall of municipal bodies, which constituted 6.66%, and thus an even smaller fraction than in the current term. Yet often, this is not the result of a lack of trust in the direct recall mechanism, but a deliberate choice by residents who do not want the contested body to be recalled.

Despite such low effectiveness of the local recall mechanism, citizens use this procedure relatively often, therefore it can be concluded that a recall is a necessary mechanism of political control available to the members of local communities. Unfortunately, the current solutions provided in the Local Referendum Act make the turnout to be the axis of decisions made in the framework of the recall procedure. The analysis of detailed results of individual recalls confirms that regardless of the turnout achieved, i.e. whether the referendum result is binding or not, the overwhelming majority of votes are cast by dissatisfied inhabitants of the municipality who are voting for the dismissal of executive or legislative bodies. Therefore, the only chance to retain the positions is often the "low turnout game". In such a case, the referendum campaign primarily focuses on encouraging voters to stay at home, often accusing the referendum initiators of political adventurism and desire to destabilise the municipality, rather than presenting substantive arguments. As a consequence, the residents who support those who govern the municipality remain at home, while those who support their dismissal participate and vote for their recall. Paradoxically, those residents who support the rulers and go to vote against their recall, *de facto* contribute to their disadvantage, as they increase the turnout required for the recall to be considered binding. Meanwhile, in practice such votes cannot keep those in power in office, since the results of local government recall unequivocally show that those who are dissatisfied and want those in power to be dismissed are more motivated to vote under these procedures. Therefore, Art. 8a of the Local Referendum Act, according to which a recall, like all other local referendums, cannot be ordered on the day on which elections to the *Sejm* of the Republic of Poland and the Senate of the Republic of Poland, elections to the President of the Republic of Poland, elections to the European Parliament in the Republic of Poland, elections to decision-making bodies and executive bodies of local government units take place[30] should be assessed critically. The legislator shall be aware that organising a recall on the same day as an election will affect the turnout and thus the binding result of the referendum. In the light of experience demonstrating the far-reaching motivation of the dissatisfied, it confirms that the turnout is the key issue for the referendum and in the case of a recall for the existence of local government bodies.[31]

At the county (*poviat*) and voivodship level, the institution recall has not been applied in practice. There are several reasons for this. Firstly, this is due to the much greater involvement necessary to collect signatures. to the second reason is the specificity of the tasks and competencies of *poviats* and voivodeships, which are more distant from the matters with a decisive impact upon lives of the inhabitants of these entities, and therefore generate less public opposition that could turn into an initiative for the dismissal of the decision-making bodies. Thirdly, such initiatives are demobilised by the turnout required by the provisions of the Local Referendum Act, which is more difficult to achieve due to the aforementioned range of matters falling within the competence of these self-government units. It should be also emphasised that the "face" of the self-government authorities at those

[30] This does not apply to municipal early elections or by-elections.

[31] *Jackiewicz, A*. The constitutional, pp. 189–191.

levels are the executive bodies, i.e. the *poviat* board and its chairperson, as well as the voivodship board and its chairperson (called Marshal) who cannot be subject to the recall procedure, as they are not appointed through direct elections.

5. Recall in the Latvian constitutional system

The normative regulation and the experience with the use of the recall mechanism in Poland permit the authors to assess this mechanism as necessary, relatively popular, and having a great constitutional potential, but at the same time not very effective. This justifies the search for constitutional solutions enabling its improvement. The comparative studies show that the institution of recall is becoming more and more popular, finding its place in the legal systems of an increasing number of contemporary states, either at the constitutional or statutory level. These countries include Latvia, where the direct recall mechanism is not without controversy,[32] was introduced by the Constitutional Amendment Act of 8 April 2009.[33] It is significant that the biggest controversy concerning issues related to the number of voters entitled to initiate a referendum and the majority needed to make the referendum for the recall effective.[34] The mechanism of direct recall was introduced to Art. 14 of *Satversme*, which provides that at least one-tenth of all voters have the right to request a referendum on the dismissal of the *Saeima*. The Latvian solution is rare in that it concerns the dismissal of the entire representative collegiate body at the national level.[35] It should be noticed that since its adoption in 1922, the *Satversme* has provided for the institution of a referendum ordered by the President of the State on the dissolution of the parliament,[36] which can be qualified as an indirect form of recall.[37] Introduced into the Constitution in 2009, the direct recall is thus an alternative procedure for bringing about a referendum in which the sovereign can decide on the continuation or discontinuation of the term of office of the representative body.

Similar to the Polish procedure of recall initiated by the inhabitants of a self-government unit, also the Latvian Constitution provides for temporal limitations, limiting the time in which a recall can be launched, according to Art. 14 sentence 3 of the *Satversme*, the right to announce a referendum on the recall of *Saeima* cannot be exercised within one year from the convening of parliament, within one year

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[32] *Jackiewicz, A.* Recall na Łotwie [Recall in Latvia]. Przegląd Prawa Konstytucyjnego, No. 2, 2018, pp. 73–75; *Rodina, A., Pleps, J.* Constitutionalism in Latvia: Reality and Developments. In: New Millennium Constitutionalism: Paradigms of Reality and Challenges, Yerevan, 2013, p. 453.

[33] Recall can be found in Europe (apart from Latvia, in Switzerland, Germany, Romania, Liechtenstein, Poland, and as of 2015 also in Ukraine and the United Kingdom), North America (very popular at state and local levels in the United States, and in the Canadian province of British Columbia), Asia (Taiwan, South Korea, among others) and Africa (Ethiopia, Kenya, Uganda).

[34] *Urdze, S.* Latvia. In: Constitutional Politics in Central and Eastern Europe. From Post-Socialist Transition to the Reform of Political Systems, *Fruhstorfer, A., Hein, M.* (eds). Wiesbaden, 2016, p. 427.

[35] Apart from Latvia, such a procedure at the state level only exists in Liechtenstein, where, according to Art. 48, para. 3 of the Constitution of the Principality of Liechtenstein, 1500 citizens entitled to vote or four municipalities based on resolutions of the municipal assemblies may demand a referendum on the dissolution of the Landtag.

[36] A popular vote is organised when the President of the Republic proposes the dissolution of the *Saeima*. However, if in the referendum more than a half of votes is cast against the dissolution of the parliament, then the President shall be deemed to be removed from the office and the *Saeima* shall elect a new President. See more: *Ruus, J.* Democratic participation at the local level in post-soviet states. In: Local Direct Democracy in Europe, *Schiller, T.*, (ed.). Wiesbaden 2011, p. 273.

[37] In Latvia, they do not refer to this procedure as a recall, reserving this exclusively for the mechanism provided for in Article 14, the subject of this study.

before the end of the term of parliament, within the last six months of the term of the President of the State, as well as within less than six months from the previous referendum on the recall of parliament.[38]

The procedural rules for collecting signatures, as well as other norms concerning the recall mechanism, are contained in the Act of 31 March 1994 on National Referendums, Legislative Initiative, and European Citizens' Initiative.[39] The procedure is quite similar to that determined by Polish law. The application is submitted to the Central Electoral Commission within 12 months after the registration of the group initiating the recall, which can be created by political parties or groups of at least 10 voters. There is, however, a rather important complication, as all signatures must be officially certified (e.g. by a notary public or by the office competent for the place of residence). Significant facilitation in collecting signatures is the possibility, introduced as of 1 January 2015, to collect signatures online via the governmental system of electronic services (or another one, which would ensure identification of signatures and protection of personal data).[40] The correctness of the collected signatures is assessed by the Central Electoral Commission, which also checks the formal admissibility of the recall. If constitutional and statutory requirements are met, the Central Electoral Commission orders the recall referendum for a Saturday, falling no earlier than one month and no later than two months from the date of publication of the decision in the official gazette. The role of the Central Electoral Commission and the procedure at this stage, in general, correspond to the role of the Polish National Electoral Commission and the procedure of the recall local referendum in Poland.[41]

Similar to the Polish recall model, the Latvian law contains quite extensive and detailed statutory regulation of the referendum campaign (Chapter VI of the Act). The Act defines the duration of the campaign (including the "information silence" on the day of the recall voting and the preceding day), the places where it may be conducted, the entities which are entitled to conduct the campaign, and those which are not, the permissible ways of conducting the campaign, and quite strictly defined its financing (including, among others, financial sources, limits, liability).

Almost identical to the Polish model of recall, the effectiveness of Latvian recall is also dependent on the turnout, which must be at least two-thirds of those voting in the previous election to the *Saeima*. Admittedly, this refers to national elections, i.e. those that usually attract more interest, but it should be borne in mind that both in Latvia and Poland (3/5), the required turnout threshold is related to the turnout in the election in which the body contested in the recall was elected. At the same time, the Polish experience with a recall suggests that the turnout threshold required of *Satversme* may prove to be too high. The parliament is recalled if a majority of voters vote in favour (Art. 14 of the *Satversme*)[42].

The constitutional practice in Latvia has not verified the normative solutions yet, although there is a visible desire for the development of direct democracy mechanisms. Still, it should be noted that, although the number of referendums held

[38] In case of the mechanism for dissolving the *Saeima* in a referendum ordered by the President – i.e. indirect recall (Art. 48), the *Satversme* does not provide for any restrictions.

[39] Par Tautas Nobalsošanu, Likumu Ierosināšanu un Eiropas Pilsoņu Iniciatīvu, "Latvijas Vēstnesis", 47(178) of 20 April 1994.

[40] Before 1 January 2015 (the entry into force of the amendment to the law), the state-funded the process of collecting signatures.

[41] *Jackiewicz, A*. Recall, pp. 77–78.

[42] Ibid., p. 78.

in the country is increasing, it does not correspond to the voters' involvement as the turnout is relatively low which makes referendums ineffective.[43] In this respect, the results of the referendum held on 23 July 2011 on the dissolution of parliament, the Latvian version of an indirect recall, can be used as an example. There were as many as 94.5% of valid votes cast in favour of the dissolution of the *Saeima* (650.5 thousand eligible voters), 5.48% of voters were against (37.8 thousand) and 0.2% of all votes were invalid (1.5 thousand). Significantly, the turnout was 44.73% of all eligible voters.[44] As the turnout in the elections to the *Saeima* of the 10th term was 62.63%, the necessary threshold for the effective use of the Latvian direct recall would be around 41.73%. This means that the turnout achieved in the indirect recall procedure in 2011 would be also sufficient for the effective use of direct recall. However, the one-time use of recall in Latvia in the indirect form makes it necessary to treat these results with far-reaching caution when assessing the turnout threshold required by the Constitution for direct recall.

Summary

The normative regulation of the direct recall mechanism, which exists in the Polish legal system only at the local level (in fact only at the municipal level), shows far-reaching similarities to the recall mechanism that exists in Latvia and is unique in the world, referring to the parliament *in pleno*. The recall procedure in both cases provides for similar solutions as regards the initiation of the recall, its order, the information campaign, and the vote itself. The key issue in both cases is that the effectiveness of the recall mechanism depends not only on the outcome of the vote but also on the turnout. Both in Poland and Latvia, the required turnout threshold has been dependent on the turnout in the last election of the body to which the specific recall mechanism applies. Taking into account the Polish experience of local self-government units in this respect, the turnout threshold indicated in *Satversme* should be treated as quite demanding, placing high demands on initiators to justify the need to recall parliament and mobilise voters. It should be taken into account, however, that the unique Latvian version of the recall concerns the focal point of the political scene in the parliamentary system of government. On the one hand, it justifies the expectations of extensive voter interest, while on the other hand, it raises concerns regarding questionably justified attempts to destabilise the system of government. Therefore, the provided turnout threshold seems to be warranted. The referendum on *Saeima's* dismissal conducted on the initiative of the head of state in 2011, although it was an example of an indirect recall, has shown that such a turnout is possible in the Latvian political and constitutional reality.

[43] *Karklina, A.* Rights of the Entirety of Citizens in Legislative Process in Latvia. Curentul Juridic, Vol. 57, No. 2, 2015, p. 71; *Jarinovska, K.* Popular Initiatives as Means of Altering the Core of the Republic of Latvia. Juridica International, No. XX, 2013, pp. 152–159.

[44] See more: *Jackiewicz, A.* Referendum w sprawie rozwiązania parlamentu na Łotwie z 2011 roku [Referendum on the dissolution of the Latvian Parliament, 2011]. Przegląd Prawa Konstytucyjnego, No. 5, 2017, pp. 85–100.

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