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Faculty of Law, University of Białystok, Poland

ELŻBIETA KUŹELEWSKA

Referendum in the Czech Republic and Slovakia

ABSTRACT

For more than 80 years the Czechs and the Slovaks have been functioning within one political, economic and social system. Various political and economic circumstances resulted in the division of Czechoslovakia to the Czech Republic and Slovakia. Ever since the political systems of both countries became different. These various political systems inspired me to examine the people's participation in the political life of those countries.

The aim of this paper is to analyse and compare the most common form of direct democracy – a referendum – in both the Czech and Slovak political systems. It will be compared on two levels. The first one will deal with general constitutional background of a referendum and its procedures, as well as with a comparison of regulations in the respective countries. The second one will concern the practice of referendum in the analysed countries.

Key words: the Czech Republic, Slovakia, referendum, political systems, participation

INTRODUCTION

Since 1 March 1993 the Czech Republic and Slovakia are independent sovereign countries. Between 1918 and 1993 the two nations – the Czechs and the Slovaks – constituted a single state – Czechoslovakia. For more than 80 years these two nations have been functioning within one political, economic and social system. Various political and economic circumstances resulted in the division of Czechoslovakia to the Czech Republic and Slovakia. Ever since political systems of both countries be-

came different. For example, from the constitutional viewpoint, the Czech Republic opted for a bicameral parliament while Slovakia – for a unicameral one. The Slovak president is elected in a universal and direct suffrage, while the Czech head of state till recently used to be elected by the parliament; the change for direct elections occurred just in 2012. These various political systems inspired me to examine the people's participation in the political life of those countries. I would like to explore the role of a referendum in the Slovak and Czech political systems.

The aim of this paper is to analyse and compare the most common form of direct democracy – a referendum – in both the Czech and Slovak political systems. It will be compared on two levels. The first one will deal with general constitutional background of a referendum and its procedures, as well as with a comparison of regulations in the respective countries. The other one will concern the practice of referendum in the analysed countries.

This paper is divided into four sections. Section 1 includes short and general remarks on advantages and disadvantages of a referendum. Section 2 starts with a brief analysis of the constitutional background. Section 3 describes the referendum experience, subjects of vote, initiators of the vote as well as the referenda results. Referenda on the EU membership are also discussed in this section. Finally, Section 4 draws some conclusions from comparing the referendum experience in the Czech Republic and Slovakia and looks at impacts of political pressure on results and turnout in referendum.

1. PROS AND CONS OF REFERENDUM IN POLITICAL LIFE. A FEW SHORT GENERAL REMARKS

One of the most important and widely used form of direct democracy – referendum – has been used globally to varying ends [Reilly 2010: 7]. Referendum is held not only in western democracies but also in post-communist states. It becomes more and more common. Not only has direct democracy proliferated, but it has also become a significant force in changing policy and directing governments around the world. The supporters of the use of referendums argue that, in the context of increasing voter apathy and disenchantment with traditional forms of democracy, direct democracy can help to re-engage voters with politics and democracy. One important procedural aspect is people's belief in political influence. Citizens with experience in direct democratic decision-making are found to form positive attitudes about their abilities to influence what government does [Benz, Stutzer 2007: 138]. Others argument advanced in favour of referenda is that they can be used to resolve political problems, particularly for governments; where the governing parties are divided over an issue. There is also an argument that governments need a specific popular mandate for any changes that were not part of the original platform on which they campaigned. This is particularly the case when an amendment to a constitution which itself was approved by referendum is under consideration (The ACE Electoral Knowledge Network 2013).

The opponents of the use of referenda also give a number of arguments. In their opinion referendum weakens representative democracy by undermining the role and importance of elected representatives. Further to this point, referenda are sometimes seen as a means available to elected representatives to avoid having to take an unpopular position on a controversial issue [Rourke, Hiskes, Zirakzadeh 1992: 58]. Another is that voters do not always have the capacity or information to make informed decisions about the issue at stake, and instead may make ill-informed decisions based on partial knowledge or on the basis of unrelated factors such as the state of the economy [Kuzelewska 2002: 123]. This trend may be exacerbated in the case of referendums on complex issues such as constitutional change or international treaties, with which voters are likely to be unfamiliar. Referendum can be also used as a political tool to suit the needs of the government rather than the interest of democracy. Sometimes the decision to hold a referendum will be made because the governing parties have concluded that a particular political agenda requires demonstrated public support in order to carry it through [LeDuc 2003: 74] Last, but not least since in many countries turnout in referenda is lower than in national elections, the argument that a referendum increases the legitimacy of political decision does not stand up.

2. CONSTITUTIONAL BASES FOR A REFERENDUM IN THE CZECH REPUBLIC AND SLOVAKIA

The constitutions of both the Czech Republic and Slovakia provide that a nation is a sovereign and this sovereign exercises its authority either directly or indirectly and – *de facto* – the former is an exception to the latter.¹

Among the direct democracy instruments, both constitutions provide for a referendum. The notion of referendum is of similar nature when comparing its legal bases, however there are some significant differences. First of all, the constitution of the Czech Republic (1992) laconically regulates the legal basis for a referendum. Generally, it accepts the principle of representative democracy. Art. 2 creates the possibility of recourse to a referendum, setting up a legal basis given to the legislative branch – “constitutional act may define when the people exercise state power directly”. The constitutional principle of parliamentary sovereignty expresses the belief that the Parliament represents the interests of homogeneous and united “Czech nation” [Smith 2011: 33]. In comparison with the constitution of the Czech Republic, the constitution of Slovakia includes a separate article concerning referendum. It also

¹ Art. 2 (1) of the Constitution of Czech Republic (1992) states that the people is the source of public power.

Art. 2 (1) of the Constitution of Slovakia (1992) provides that the state power come from people who do it through their elected representatives or directly.

mentions the issues excluded from national referendum. Secondly, the constitution of Slovakia (Art. 98) describes situations when referendum is binding.

2.1. THE CZECH REPUBLIC

As briefly stated above, the constitution of the Czech Republic accepts the principle of representative democracy. However, Art. 2 of the constitution creates a possibility to recourse to a referendum, setting up a legal basis given to the legislative branch. Through the constitutional amendment, an “integration clause” was introduced (Art. 10a). In the added article, a possibility to pass over certain competences of the state authority to the international organizations or institutions was allowed. Yet, Art. 10a (2) provides that this agreement could be completed only having obtained a parliamentary consent, unless by a virtue of a constitutional act in a particular case, the whole parliamentary procedure is replaced by an obligation to hold a referendum. According to a recent constitutional amendment [2003], the constitution was supplemented with rules providing the president with authority to call the referendum and to announce its result. These regulations were reduced exclusively to referendum on the EU membership. We should mention that the parliament several times was working on the act of national referendum in the Czech Republic [Vláda České Republiky 2013], without success [Poslanecká Sněmovna Parlamentu České Republiky 2013]. Despite earlier initiatives there is no act on universe referendum in the Czech constitutional order [Jirásková, Skotnicki 2009: 14]. As Skotnicki wrote, the institution of a referendum met with strong opposition from the politicians [Skotnicki 2000: 17]. Nowadays the situation can be changed because of a new political party. In May 2013 (just before the parliamentary elections) a new party Úsvit Přímé Demokracie (Dawn of Direct Democracy) was established. The leader Tomio Okamura wants to spread the referendum not only in the name of his party. He is interested in using a referendum in the Czech Republic on the basis of the Swiss model. It is too early to judge the success of this party. One is sure – the debate on increasing direct democracy in the Czech Republic finally was initiated, however the initiator was a young populist party.

2.2. SLOVAKIA

According to the Art. 95 of the constitution of Slovakia, it is possible to hold a referendum on the basis of resolution of the National Council as well as by the popular initiative supported by 350,000 citizens entitled to vote. A referendum is organized by the President and it cannot take place during the 90 days preceding the parliamentary elections. Referendum may be held on the day of parliamentary elections (Art. 97). Referendum is binding if the vote has been attended by more than half

of eligible citizens and more than half of participating have been in favour (Art. 98). Art. 98 also declares that another referendum on the same subject may be held at least three years after the first one. The constitution guarantees the stability of the referendum's decision: the Parliament can amend or repeal the result of referendum by constitutional statute after three years of its legitimacy.

According to Arts 7 (1) and 93, a referendum approves constitutional act of entrance to (or withdrawal from) a union state. According to Art. 93, other significant issues of public interest could be decided in referendum. At the same time Art. 93(3) indicates that the subject of vote in referendum could not refer to fundamental rights and freedoms, taxes, conscription and the state budget.

The main problem with the constitutional provisions on the referendum is the legal impact of the referendum outcome. The constitution itself offers several legal interpretations. It states that the valid result of a referendum is to be published as a law. However, this deals only with the procedural aspect of a referendum outcome, but not with his legal effect [Láštík 2007: 190]. Art. 99 (1) suggests that the referendum outcome is supra-legal because it allows the parliament to change or revoke the referendum result by passing a constitutional law not earlier than 3 years after the referendum date. If only constitutional law can change the outcome of a referendum, does it mean that the result is of the same legal status? Or maybe: by allowing the parliament to change the referendum outcome by means of constitutional law, the supremacy of representative democracy is declared and the referendum is intended to play only a minor role [Láštík 2007: 190].

Table 1. Voluntary and compulsory referenda in the Czech Republic and Slovakia

Referendum	The Czech Republic	Slovakia
Compulsory referendum	No	Constitutional referendum Art. 93 (1) – a referendum on entry or leaving the international union
Non-compulsory referendum	Accession referendum (Art. 10a)	1. Issue referendum (Art. 93 (2)) – concerning the solemn matters of public life, except from limitations mentioned by the Constitution 2. Arbitrage referendum (Art. 101) – initiated by the parliament and its subject can be an impeachment of the President; if the result of the vote is positive for the President the Parliament is dissolved

Source: Warzocha-Rytl 2011: 131.

The Slovak constitution contains both types of referendum – compulsory (obligatory) and non-compulsory (facultative). Compulsory referendum is held in case of decision-making on accessions to the state unions or their secession. This type of referendum was incorporated into the constitution in 1992 for the reason of dealing with Czech-Slovak relations [Belko, Kopeček 2003: 194].

Table 2. Referendum framework in Czech Republic and Slovakia

Referendum	Slovakia	The Czech Republic
Who calls it?	President upon the motion of at least 350,000 electors, or on the basis of resolution of National Council	The President
When referendum cannot be held?	1. Art. 93 (3) of the Constitution 2. referendum on the same subject may be held after at least three years	In the case of rejection of the EU membership, referendum on the same issue can be held in two years
Validity/binding	Results of referendum are binding if more than half of all electors have voted and the decision was accepted by more than half of all voters participating in referendum	Regardless of the turnout the outcomes are binding

Source: self-made.

2.3. INTERIM CONCLUSIONS

The constitutions of both countries recognize the institution of a referendum. However, there are some differences. The Czech constitution does not introduce an obligatory referendum, while the Slovak one provides for an obligatory constitutional referendum on the entry or on the leaving of an international union. In the Czech Republic, the president calls the referendum. In Slovakia, both the Parliament and the citizens can initiate referenda. The similarities are seen in: (1) the validity of a referendum (depending on the turnout); (2) the situations in which a referendum cannot be held again (on the same subject-matter it can be held after three years in Slovakia and two years in the Czech Republic).

3. THE REFERENDUM EXPERIENCE

3.1. THE CZECH REPUBLIC

In the Czech Republic, so far only one national referendum was held, i.e. a vote concerning the EU accession. Under the constitutional act on a referendum, in June 13–14, 2003 the Czechs voted on the accession to the EU [Report 2004: 27]. However local referenda are in quite common use [Špok et al. 2006: 19ff].

Since the Czech referendum practice was limited to one specific case, the MPs did not establish any special conditions for the validity of the results. Politicians agreed, in this particular case, that they would respect the voice of people. The referendum was thus acknowledged as binding: had the voters rejected the accession to the EU, the MPs could not have ignored their decision. A second referendum on the same issue could take place

two years after the first one [Valach 2004: 50]. However, Czech politicians discussed a minimum 50% of participation, but eventually, they did not adopt this option. They feared that turnout might not be sufficient, since the previous communal and Senate elections did not achieve the participation rate exceeding 30%. The day of referendum also became an issue: should the voting be held on one or two days and should the elections be held on a weekday or during the weekend? Finally, the politicians decided to hold a referendum on Friday and Saturday, before people would leave for the weekend [Valach 2004: 50].

Since a referendum on the EU membership has become a Europe-wide standard, the Czech Republic received its first opportunity to decide on an issue in 2003. The official referendum campaign was not either very long or particularly intense [Perottino 2005: 25]. All the parties of the government coalition (Social Democratic Czech Party, Christian-Democratic Union-Czech People Party and Union for Freedom-Democratic Union) supported the governmental referendum campaign; however, this support differed among the parties. There were two euro-sceptical parties: Civic Democratic Party and Communist Party. The first one discourse's turned against Brussels bureaucracy and its temptation of "creeping socialism" [Perottino 2005: 27]. As far as the Communist Party, it had shown the negative effects of the EU accession, however the final choice was left to voters. To conclude, with the exception of the Communists, all of the major parties endorsed EU membership, including the more eurosceptical Civil Democrats. As rightly Baun and other note, "this strong cross-party support for EU membership played a key role in the positive referendum outcome, since the supporters of the major parties voted heavily in favour of EU membership" [Baun et al. 2006: 251].

On 13–14 June 2003, for the first time in their history, the Czechs participated in a referendum. More than 55% of the population took a part therein and more than 77% voted for the accession. This referendum can be regarded as a successful step towards a more democratic society in a country whose citizens have no experience of direct participation in public affairs. As Long writes the referendum's results were also the victory for the Czechs who viewed EU membership as an incontrovertible sign of the country's reintegration into Western Europe and the break with its isolation in the past [Long 2005:151].

However, a relatively low turnout can be surprising. According to Večerník, one of the reasons of relatively low turnout could be the fact that many Euro-sceptic voters did not participate in the referendum as they were certain of its outcome in favour of accession [Večerník 2009: 235]. Baun and others present quite different standpoint towards the turnout [Baun et al. 2006: 264]. In their opinion 55.2% of the participants in the EU referendum is relevantly strong turnout, slightly below the 58% figure for the parliamentary elections in June 2002. Balik rightfully shares this point of view. In his opinion participation of 55% voters in the referendum should be recognised as a dimension of strong democratic culture and political maturity of the Czechs; the Europeans came to the ballot-boxes [Balik 2003]. The European integration issue was one of a few areas in which majority of public opinion coincided with the government's opinion. Public television broadcasted numerous educational programs concerning the EU [Kusa 2005: 121]. The EU membership obtained equal support of all segments of

population: inhabitants of country and towns, seniors and first-time voters, academics and people with a basic education. Only voters of the Communist Party largely voted against the EU membership. Lebeda shows strong connection between voting in a referendum and the parliamentary elections in 2002. In regions with high support for coalition in 2002, the high support for the EU was a year later [Lebeda 2004: 222].

3.2. SLOVAKIA

Slovakia carried out seven national referenda in 1994–2012.

Table 3. Referenda in Slovakia

Date of vote	Subject of referendum	Turnout %	For %	Against %	Result
22 October 1994	Retrospective disclosure of financial transactions regarding privatisations	19.97	93.64	3.97	No
24 May 1997	Direct presidential elections	Unknown			No
	Deployment of nuclear weapons	Unknown			No
	NATO membership	9.51			No
	Creating military bases	Unknown	Unknown	Unknown	No
26 September 1998	No privatisations of strategically important enterprises	44.06	Unknown	Unknown	No
11 November 2000	Amendments to the Electoral Law in order to hold early elections of the National Council	20.03	92.74	4.80	No
17 May 2003	Accession to the EU	52.15	92.46	6.20	Yes
3 April 2004	Early general elections	35.86	86.78	11.93	No
18 September 2010	Abolition of concession fees for broadcasting and television	22.84	87.24	9.02	No
	Limitation of parliamentary immunity	22.84	95.40	1.73	No
	Reduction of the number of parliamentary seats	22.84	92.76	3.85	No
	Ceiling price for official vehicles	22.84	88.84.51	6.16	No
	Elections via Internet	22.84	70.46	22.22	No
	No right of rely for office holders	22.84	74.93	13.44	No

Source: <http://www.c2d.ch/votes.php?table=votes>, 12.10.2013; <http://portal.statistics.sk/showdoc.do?docid=72>, 05.12.2013

The first referendum was held in 1994 and concerned the retrospective disclosure of financial transactions regarding privatisations. The idea was – based on the law and acceptance of the referendum – to force the investors to reveal the source of their assets. The initiator of referendum was Jan Luptak (supported by Vladimír Mečiar) – the leader of the extreme left-wing association – Union of Slovak Workers (ZRS). Due to a low turnout, the results of the vote were not binding. However, the successful petition preceding the referendum helped to make the ZRS (off-parliamentary at that time) more visible in the pre-election period and subsequently led to its success in 1994 [Belko, Kopeček 2003: 196].

In 1997 the Slovaks voted in referendum on several issues. The crucial ones concerned accession to the NATO and direct presidential elections. The referendum was held in an atmosphere of disputes between the governmental coalition; all the attention was focused on the issue of Slovakia's accession to the NATO. The idea of direct presidential elections came from opposition parties. This referendum was held in the atmosphere of a scandal [Podolak 2008: 240], which resulted in low vote turnout. The scandal over the referendum issue caused real harm to the country's international standing and assured that Slovakia would not be included in the first group of countries invited to join the NATO [Hacker 2010: 167]. The unsuccessful referendum became the subject of the Constitutional Court's decision-making and the CC certified that the Ministry of the Interior had really violated the constitutional right of the citizens. After the decision of the CC the president Kováč proclaimed the repetition of the referendum in April 1998. Finally, the Prime Minister Mečiar cancelled the referendum and the direct presidential election was established by the amendment to the constitution in 1999 [Belko, Kopeček 2003: 197–198]. Unclear rules of referendum thus became repetitive dispute between political actors in 1994 and 1997. The discussion whether it is possible to change the constitution by referendum showed that the formal interpretation of the rules also depends on the position of political actors [Láštko 2011: 6].

In 1998 another referendum was held – on the privatisation of strategically important enterprises (i.e. energy and gas) was held. The referendum was initiated by the HZDS. It concerned a ban on privatization of the largest and major state-owned companies in Slovakia. The motivation of the proposer most probably was the effort to increase the support from voters. Other parliamentary parties did not support Mečiar's proposal. They appealed to approach the case of state enterprises privatisation on individual basis. Low turnout resulted in the invalidity of the referendum.

In 2000 a referendum on early elections of the National Council was held. The opposition parties dissatisfied with the Dzurina's government blamed the prime minister for the inflation and unemployment. They gained some 700,000 signatures in favour of a proposal to shorten the current parliamentary term. Again, the low turnout resulted in the invalidity of the referendum. We should mention that the HZDS (Movement for Democratic Slovakia) and the SNS (Slovak National Party) made an effort to hold a referendum on language usage of national minorities in official procedures

and non-privatisation of the strategic companies. They were successful once again in collecting the sufficient numbers of signatures. President Schuster decided not to proclaim the referendum because of its unconstitutionality [Belko, Kopeček 2003: 198].

The same subject-matter of a referendum came back in 2004. The referendum petition was initiated by the Trade Union Confederation (KOZ) and the opposition party Smer. During the presidential elections, president Schuster organized a referendum in which he asked people whether they wanted to shorten the parliamentary term so that parliamentary elections would take place in 2004. Political disputes resulted in low turnout and invalidity of referendum. Yet, the opposition managed to get its two candidates into the second round of the presidential contest [Láštík 2007: 195].

Only one referendum was successful – a referendum on the EU entry. In 2003 Slovaks voted for the EU accession. The Slovaks were highly enthusiastic. More than 95% voters supported the EU membership. It should be noted that citizens in former communist countries were more in favour of closer EU integration because the relative poverty of the former communist states was the key factor leading their citizens to be relatively supportive of European integration [Garry, Tilley 2007: 182]. However, it is worth mentioning that there had been a lack of debate on the EU in Slovakia during the last ten years before the referendum. The lack of Slovakian debate on the EU is regarded as the “frozen public discourse” inherited from the communist period and from the internal Slovak politics [Kusa 2005: 115]. The Slovaks were truly afraid of nationalism of the Mečiar’s policy so they had no time to think about the Slovak’s place in Europe. The turnout in the referendum on EU membership was 52%. Other explanation of relatively low turnout was the boycotting the referendum by the majority of voters because in that way they wanted to express their dissatisfaction with the restrictive social policy of the government of Dzurinda [Belko, Kopeček 2003: 199]. In spite of relatively low turnout, the outcome of the referendum confirmed that the Slovaks had a positive picture of the EU and took a leap of faith in the EU before the accession [Wagner 2010: 1–2].

The most recent Slovakian referendum was held in 2010 and concerned several issues such as limitation of parliamentary immunity, reduction of the number of parliamentary seats, elections via Internet. Low participation in voting resulted in, as usual, the invalidity of the referendum. However, this referendum campaign promoted Freedom and Solidarity (SaS) policy statements and can be regarded as its success [Hudáčková, Eibl 2011].

3.3. INTERIM CONCLUSIONS

Seven referenda were held in Slovakia and only one was successful. The voters did not want to participate in political parties’ disputes which tried to make a referendum a nifty tool to eliminate political opponents. In Slovakia referendum has become one of the most important instruments (mis)used by political parties in political competi-

tion. The Czechs voted only once and the result was positive. Turnout was 55% (2% higher in comparison with Slovak on EU membership). Seventy seven percent of the Czechs voted for (11% less comparing the Slovaks).

4. FINAL CONCLUSIONS

As far as the constitutional background is concerned, the constitution of the Czech Republic does not favour direct democracy. It regulates the institution of referendum very laconically. The Czech constitution only hints at a possibility of national referenda. In contrast to the Czech constitution, the Slovakian constitution does contain clear references to the referendum. The Slovak constitution includes separate, detailed article on the referendum. It also mentions the issues excluded from national referendum.

As far as the referendum experience is concerned, the Czech Republic is less experienced in comparison with Slovakia. Since 1989 the Slovaks have voted seven times in a referendum, while the Czechs did so only once. One may ask why the referendum was more frequently used in Slovakia? First of all, according to the data of the EU referendum in the Czech Republic, we could observe the significant role of the political parties as opinion shapers in the debate about EU integration, a role evident in the outcome of the 2003 accession referendum. High degree of correlation between party affiliation or preference and the referendum outcome was seen. Results of 2003 referendum suggest that a consolidated party system has emerged in the Czech Republic. In other words, the accession referendum case showed the alliance between political parties and their representatives. Maybe there is (was) no need to share of power with the people before this referendum and also in the future.

In Slovakia situation looks quite different. The referenda frequency and the subject-matter of the vote mostly depend on the government. As far as Slovakia is concerned, a referendum is often held in order to support ruling parties; or to move them out of power. The Slovak referenda had been mostly a part of the political struggle between the government and the opposition. The most significant problem with the referendum instrument in Slovakia includes the dominance of political parties in taking the initiative and a relatively high quorum [Blokker 2013: 116]. None of the popular initiatives has been valid.

We should add that the Slovak policy-makers remind themselves to use referendum in a convenient time for themselves. Meanwhile, the Slovak voters perceive referendum not as an important instrument to express the people's real views but rather as a significant tool in the political struggle.

Finally, voters' behaviour in national referenda is comparable to the EU accession referendum. People voting "for" or "against" follow the attitudes of political parties. Referenda results, from the legal and constitutional viewpoint, have provided with a sufficient basis for political reforms or the EU membership. The European integra-

tion issue is not quite independent from domestic politics and this attitude drives the referendum vote in accordance with government's popularity [de Vreese and Semetko 2004: 18]. We should remember that this low turnout corresponds with the participation in the national elections and in the elections to the European Parliament in most of the EU member states [Illner, Černák et al. 2006: 158].

The research question was to examine the role of a referendum in the Slovak and Czech political systems. In Slovakia there is a lack of clarity of constitutional provisions on a referendum. There is no clear consensus on the role of direct democracy. In Slovakia the referendum remains under the control of the political class; it has the plebiscitary form of decision-making. In Slovakia the referenda were repeatedly used as an instrument mainly by the opposition political parties. While most of Slovak referenda were unsuccessful, they had quite significant effect on political party system. In the Czech Republic a referendum rather completes representative form of democracy. However, a new political party Úsvit Přímé Demokracie opened the discussion on wider usage of a referendum in the Czech Republic.

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BIOGRAPHY

Elżbieta Kuźelewska, Dr of political science. She works at the Faculty of Law, University of Białystok, Poland. Head of the Centre for Direct Democracy Studies. Her academic work involves problems of direct democracy, European integration and contemporary political systems in a comparative perspective. The author of two books in Polish: *Referendum in the Process of European Integration*, Warszawa 2005; *Ratification of the Treaty Establishing Constitution for Europe and Its Results*, Warszawa 2011. Editor-in-Chief of European Integration and Democracy Series.