

COUNTRY REPORT

POLAND



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Country background¹

Poland is a republic and a parliamentary democracy with a parliamentary-cabinet system. The political system in Poland is based on a tripartite division of powers. A bicameral Parliament exercises legislative power (Sejm - lower house - 460 members, Senate - upper house - 100 senators) elected by universal suffrage for a 4-year term. There are currently four groups of parties in the Parliament: the ruling right-wing coalition headed by the Law and Justice Party, the opposition parties: the centre led by the Civic Platform party, the left-wing party and the ultra-right-wing party.

The functioning of the state is determined by the Constitution, which is the highest legal act. Poland has a constitution adopted in 1997, which was passed after long discussions and a national referendum. During the more than 20 years of the Constitution's validity, various drafts of changes have been submitted many times, and these drafts have addressed different issues. Many of them were related to Poland's accession to the EU, e.g. the first amendment to the Constitution adopted (in 2006) was the introduction of the possibility to extradite a Polish citizen in connection with a European arrest warrant.

In 2009, the second amendment linked to the right to stand for election - it was about making it impossible for people sentenced to imprisonment for crimes prosecuted by the prosecutor to sit in the Sejm and Senate. The case was the subject of many discussions.

By 2017, 18 draft amendments had been submitted, which were not adopted (the legislative process stopped at various stages).² Drafts were submitted by parties, groups of experts or the President. The proposals for amendments concerned such issues as 1) the immunity of parliamentarians, 2) regulations relating to the competence of Polish institutions in the context of EU law, 3) the proportionality of elections to the Sejm, 4) vetting and decommunisation, 5) rules of conducting a referendum.

The reported changes resulted either from a diagnosis of the poor condition of the state and democracy, or were related to attempts to improve some institutions, or sometimes served to solve an ad hoc problem (such as one of the last reported amendments: concerning the possibility of extending the presidential term in connection with a pandemic and doubts about the conditions for holding elections).³

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² M. Jarentowski, *Zmiana konstytucji w Polsce. Od dogmatyzmu do empirii*, „TeKa of Political Science and International Relations – OL PAN/UMCS”, 2018, 13/1, p. 11–23.

³ Kancelaria Senatu. Biuro Analiz i Dokumentacji, *Zmiany Konstytucji Rzeczypospolitej Polskiej w latach 1997-2011 w świetle projektów ustaw oraz uchwalonych nowelizacji*, Warszawa 2011; B. Banaszak, M. Jabłoński (red.), *Konieczne i pożądane zmiany Konstytucji RP z 2 kwietnia 1997 roku*, Wydawnictwo UWR, Wrocław 2010; R. Chruściak (red.), *Problemy zmiany Konstytucji*, Wydawnictwo Sejmowe, Warszawa 2017; A. Kustra, „Euronowelizacja” w projektach ustaw o zmianie Konstytucji RP. *Próba oceny*, „Przegląd Sejmowy” 2011 nr 3(104), 31-55.

Formal Constitution-making

Article 235 (Chapter XII) of the Republic of Poland's Constitution describes the rules for amending the Constitution.⁴ The procedure for enacting such an amendment differs significantly from the enactment of ordinary law. It cannot be carried out during a state of emergency. However, there are no restrictions as to what can be amended in the Constitution.

Deputies' group (at least 1/5 of the statutory number of deputies, i.e. at least 92), the Senate or the President of the Republic of Poland may put forward a proposal for a draft amendment to the Constitution. The strict timeframes of the whole procedure ensure both reflection and discussion and do not allow the process to be prolonged. The Parliament must adopt the amendment to the Constitution by the Sejm by a majority of the Sejm (at least 2/3 of the votes and by the Senate by an absolute majority).

The procedure for amending the Constitution does not provide for any obligatory elements of deliberation. The law is passed after work in parliamentary committees and plenary debate. Suppose the amendment proposals concern critical constitutional matters (Chapter I), freedoms, rights and duties of man and citizen (Chapter II) or the principles of amending the Constitution (Chapter XII). In that case, an approval referendum may be ordered, in which there is no requirement for a specific turnout. The Supreme Court establishes the validity of this referendum.

Incremental Constitution-making

The ruling coalition (headed by Prawo i Sprawiedliwość [Law and Justice party]) had slogans to change the Constitution in its election program. However, the results of the 2015 elections did not give the majority to introduce such changes. The

⁴“1. A bill to amend the Constitution may be submitted by the following: at least one-fifth of the statutory number of Deputies; the Senate; or the President of the Republic. 2. Amendments to the Constitution shall be made by means of a statute adopted by the Sejm and, thereafter, adopted in the same wording by the Senate within a period of 60 days. 3. The first reading of a bill to amend the Constitution may take place no sooner than 30 days after the submission of the bill to the Sejm. 4. A bill to amend the Constitution shall be adopted by the Sejm by a majority of at least two-thirds of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators. 5. The adoption by the Sejm of a bill amending the provisions of Chapters I, II or XII of the Constitution shall take place no sooner than 60 days after the first reading of the bill. 6. If a bill to amend the Constitution relates to the provisions Chapters I, II or XII, the subjects specified in para. 1 above may require, within 45 days of the adoption of the bill by the Senate, the holding of a confirmatory referendum. Such subjects shall make application in the matter to the Marshal of the Sejm, who shall order the holding of a referendum within 60 days of the day of receipt of the application. The amendment to the Constitution shall be deemed accepted if the majority of those voting express support for such amendment. 7. After conclusion of the procedures specified in para 4 and 6 above, the Marshal of the Sejm shall submit the adopted statute to the President of the Republic for signature. The President of the Republic shall sign the statute within 21 days of its submission and order its promulgation in the Journal of Laws of the Republic of Poland”.

government, however, is introducing systemic changes through acts disregarding or omitting the Constitution.

These laws, which primarily concern judicial system changes, violate the constitutional principles of judicial independence and judicial independence. They raise doubts of the European Commission and are also subject to proceedings in the Court of Justice of the European Union.

Many lawyers and citizens accuse President Andrzej Duda and Prime Ministers Beata Szydło and Mateusz Morawiecki of breaking the Constitution (instrumental treatment of the right of the grace, refusal to take an oath from judges of the Constitutional Court; signing laws concerning the Constitutional Court and changing the judicial system). Opinion polls indicate that the majority of Poles are currently not in favour of changing the Constitution.⁵

The law does not currently require or allow for any deliberative action in amending the Constitution. However, a great deal has happened in Poland in recent years as regards 1) the way politicians treat the Constitution, 2) building knowledge about the Constitution and civic awareness through various social activities, including deliberative practices.

Deliberative events and incidents

The deliberative practices in Poland are used at different levels of social life by various institutions and social actors⁶. They are characterized by quite a great diversity, dispersion, and above all, a relatively short history of their application and only the emerging tradition of undertaking such activities in local communities (at the municipal or city level). Examples of deliberative practices are participatory (civic)

⁵ CBOS: *O czym Polacy chcieliby się wypowiedzieć w referendum? Komunikat z badań*, CBOS, Warszawa 2017; CBOS: *Zainteresowanie referendum konsultacyjnym ws. konstytucji. Komunikat z badań*, CBOS, Warszawa 2018.

⁶ A. Peisert, *Demokracja deliberacyjna a praktyka społeczna*, in: *Partycypacja publiczna. O uczestnictwie obywateli w życiu wspólnoty lokalnej*, pod red. A. Olech, ISP, Warszawa 2011; W. Kłębowski, *Budżet Partycypacyjny. Krótka instrukcja obsługi*, Instytut Obywatelski, Warszawa 2013; D. Kraszewski, K. Mojkowski, *Budżet obywatelski w Polsce*, Fundacja im. Stefana Batorego, Warszawa 2014; W. Kłębowski, *Budżet partycypacyjny. Ewaluacja*, Instytut Obywatelski, Warszawa 2014; *Standardy procesów budżetu partycypacyjnego w Polsce*, Fundacja Pracownia Badań i Innowacji Społecznych „Stocznia” Warszawa 2015; A. Kubiak, A. Krzewińska, *Sondaż deliberacyjny – inwentarz problemów*, „Przegląd Socjologiczny” 2012 no1; A. Hess, *Polskie think tanki jako społeczni uczestnicy dyskursu politycznego*, „Athenaeum. Polskie Studia Politologiczne” 2013, no 37; M. Bukowski, A. Hess, W. Klytta, *Dialog obywatelski w Krakowie 5. Perspektywa dziennikarzy i kreatorów opinii*, Wydawnictwo TOC, Kraków 2018; M. Bukowski, A. Hess, W. Klytta, *Dialog obywatelski w Krakowie 3. Reprezentacje medialne*, Wydawnictwo TOC, Kraków 2017; E. Bogacz-Wojtanowska et al. *Dialog obywatelski w Krakowie. Formy i współdziałanie z organizacjami pozarządowymi 2*. Wydawnictwo TOC, Kraków 2016; E. Bogacz-Wojtanowska et al., *Dialog obywatelski w Krakowie w opiniach mieszkańców i przedstawicieli organizacji pozarządowych 1*. Attyka, Kraków 2015; P. Poławski, *Elementy deliberacji w centralnej administracji publicznej*, in *Wybrane instytucje demokracji partycypacyjnej w polskim systemie politycznym*, red. J. Sroka, Instytut Pracy i Spraw Socjalnych, Warszawa 2008; J. Sroka, *Deliberacja i rządzenie wielopasmowe. Teoria i praktyka*, Wrocław 2009.

budget, which has been introduced since 2011 in many cities; use of public consultations in the development of municipal development strategies; organization of citizen panels in some cities.

The activity of non-governmental organizations that work for the development of civil society and increasing political participation is also important⁷. There are deliberative polls, debates, civic courts. Elements of deliberative practices are also in the process of formation of new political parties and the creation of their program (e.g. Ruch Palikota [Palikot's Movement], Wiosna [Spring party], Razem [Together party]). Involving ordinary citizens, listening to them, allowing them to speak is one of the elements of building the image of a party as a representative of the interests of ordinary people (this is not related to populism). In the context of political participation, a referendum could also be an example of deliberation⁸. Seven national referendums took place in Poland after 1945. After 1989 only twice - in the case of the constitution in 1997 and Poland's accession to the EU in 2003 - was the turnout high enough. Several hundred local referendums were held in Poland, primarily about dismissal of the commune council or commune head. The required turnout in this case is only 30%, but this was achieved in every tenth case.

In recent years we have also been dealing with pseudo-deliberate activities. Examples of such fake deliberation are:

- a. Constitutional survey sent to Polish lawyers by Law and Justice (2017-2018). It was supposed to be used to present the ideas of experts, specialists, regarding the change of the constitution⁹.
- b. In 2017, the President announced a nationwide referendum on a possible change to the constitution and he organized lots of meetings on this subject, but they were not indeed deliberative. In 2018 the Senate did not agree to the referendum¹⁰.

⁷ Przykłady: <https://mamprawowiedziec.pl/>; <https://www.ngo.pl/>; <https://www.batory.org.pl/>

⁸ A. Kampka, *Między głosem a głosowaniem. Wokół debaty w Senacie RP o projekcie referendum z 2018 r.*, „Przegląd Sejmowy” 2020/ nr 4(159), s. 107–125

⁹ B. Mikołajewska, *PiS po cichu pracuje nad nową Konstytucją, nie oglądając się na Andrzeja Dudę*, 22.06.2017, <https://oko.press/pis-cichu-pracuje-nad-nowa-konstytucja-ogladajac-sie-andrzeja-dude/> dostęp: 20.09.2020; B. Mikołajewska, *Prawnicy zbojkotowali ankietę konstytucyjną PiS. Z co najmniej 102 osób, do których ją wysłano, odpowiedziało zaledwie 14. W tym kilka związanych z PiS*, 17.04.2020, <https://oko.press/prawnicy-zbojkotowali-ankiete-konstytucyjna-pis-z-co-najmniej-102-osob-do-ktorych-ja-wyslano-odpowiedzialo-zaledwie-14-w-tym-kilka-zwiazanych-z-pis/>, dostęp: 20.09.2020

¹⁰ <https://www.prezydent.pl/kancelaria/referendumkonsultacyjne/kampania-spoleczno-informacyjna/>;
A. Kampka, *Miedzy głosem a głosowaniem...*

- c. the process of creating a new law on science and higher education (called by the minister "Constitution for Science", changing the structure of universities and the principles of research and education)¹¹

All these initiatives have in common that the authorities emphasized their deliberative character, the value of the confrontation of different opinions and ideas, and substantive discussions involving representatives of different backgrounds (experts and all interested parties). Meanwhile, in reality, experts' impartiality has been questioned due to their links to the government. The representativeness of the participants' selection was also questionable (e.g., the questionnaire was sent to several hundred lawyers, only 14 replied).

As already mentioned, since 2015 the government changes the legal system without a formal amendment to the Constitution. This is the subject of many legal and political disputes, as well as social protests. Opinions on changes in the judicial system reflect political polarization in Poland. The activities of the authorities since 2015 have significantly influenced civic awareness, increased knowledge of the constitution and civil rights.

Examples of civic movements that emerged in response to the actions of the authorities are Komitet Obrony Demokracji (KOD) [The Committee for the Defence of Democracy] and Obywatele RP [Citizens of the Republic of Poland]. The activities of both organizations include mainly organizing protests, providing legal aid, but also organizing events to increase knowledge and civic participation.

Komitet Obrony Demokracji [The Committee for the Defence of Democracy] (KOD) is a social movement and association established on December 2, 2015, in response to the policy of the government camp of Law and Justice. The KOD criticizes this policy as undemocratic, detrimental to Polish interests and a threat to the constitutional order. The KOD's main goal is of monitoring public life in Poland and focuses its members around public demonstrations organized on various occasions. KOD is not a political party but regularly participates in actions and activities of a political and social nature, including the organization of collective demonstrations, protests and discussion clubs. The KOD cooperated with all opposition parties of the Sejm. The KOD also carries out activities related to the dissemination and popularization of knowledge about democratic values, such as the triple division of power, civil liberties, political participation and judicial independence. The name of the association refers to the Komitet Obrony Robotników [Workers' Defence Committee] (KOR), an opposition and democratic group was active in the 1970s in the Polish People's Republic. The KOD is also responsible for the information portal <https://kodu24.pl/>.

Obywatele RP [The Citizens of the Republic of Poland] are a social movement, dealing with anti-fascist activities and defending the independence of the judiciary in Poland. Obywatele RP act as an informal movement. The condition for participation in the movement is to sign the "Citizens' Declaration", which, among other

¹¹ <https://konstytucjadlanauki.gov.pl/>

things, states "Everyone has the right to refuse obedience to tyranny, to a state that violates its dignity, to a state that violates the laws and values that are important to it, and to an unlawful state. You should not submit to every authority". The method of operation of the movement is the action of civil disobedience of a peaceful nature. The movement also provides legal support when arrested or interrogated by the police. Based on data, it publishes regular reports on court cases against demonstrators. Obywatele RP were the initiators of the "Europe, do not forgive" campaign, which consisted in lobbying for the European Commission to submit a motion to the Court of Justice of the European Union to check the compliance of the Supreme Court Act with EU law. The action included pickets and demonstrations as well as petitions and letters of support. There are many substantive discussions in movement-related internet sources (website, social media profiles), which can be viewed as deliberation. Obywatele RP belong to the European Democracy Network, a partnership of organizations from various European countries, which aims at cooperation and exchange of experience between NGOs promoting the development of civil society. The constitutional issues are very strongly present in the movement's statement: "The Citizens of the Republic of Poland Movement established in 2016 as a result of opposition to the violation of the Constitution and the destruction of the rule of law by the Law and Justice party. Today our goals reach further. We want to build a modern civil society, consolidate fundamental constitutional values and strengthen our place in the European Union. We defend the dignity of every human being. We exclude any violence, including verbal violence"¹².

The All-Poland Women's Strike (Ogolnopolski Strajk Kobiet) is a Polish feminist social movement formed in September 2016 in protest against attempts to tighten anti-abortion laws. After the Constitutional Court decision (October 22, 2020), which narrows the abortion law, mass protests started. The All-Poland Women's Strike formed an Expert Consultative Council (consisting of approximately 500 people). This Council, based on slogans from the street protests and voices in social media, has identified thematic areas in which deliberative discussions have begun. These debates concern health, child and adolescent psychiatry, LGBTQ+ people, people with disabilities, culture, law rule, animals, stop fascism, propaganda and the media. These debates are now taking place online. OSK use the participatory platform loomio.org/osk, which has already been used to build civil society in over 100 countries. The aim is to develop immediate and long-term solutions. Some of them can be implemented immediately, thanks to local authorities, schools or associations. Others require legislative initiatives, and work on them is treated as preparation for action after government change.

Another group of institutions using deliberative practices are newly emerging political parties or social movements associated with politicians. Examples:

- The **Wiosna Roberta Biedronia** [Spring of Robert Biedroń] is a centre-left political party existing since 2019 that presents its ideological profile as a social

¹² <https://obywatelerp.org/program/>

democratic, social liberal, anticlerical, feminist and pro-ecological. Robert Biedroń, the Mayor of Slupsk, a left-wing politician and LGBT activist, initiated a series of 40 meetings entitled "The Social Democratic Party. He initiated a series of 40 meetings called "Brainstorming," during which he began discussions with residents about their preferred political reforms¹³. He announced that the proposals developed during the meetings would form part of the program of his new political project, which ultimately turned out to be the Spring Party. Candidates from this party ran in elections to the European Parliament (obtaining three Euromandates) and in national parliamentary elections in the Left coalition (taking 19 seats).

- **Polska 2050** [Poland 2050]¹⁴ movement is an association resulting from the activities of Szymon Hołownia, a journalist, social and political activist, candidate for the office of President of the Republic of Poland in 2020. During the campaign, Hołownia organized many meetings, debates with the residents and Internet debates. Now, the involvement of his supporters he is turning into an association¹⁵.
- **Wspólna Polska** [The Common Poland] Movement is Rafał Trzaskowski's initiative. President of Warsaw, a candidate in the presidential election of 2020 (he received 48.97%), treats the movement as an offer for active citizens who do not want to be activists of any party but want to get involved in politics and society. The program proclaims: "The movement is to be a space for dialogue and cooperation between local government officials, NGOs, experts, politicians, activists, community activists and all people of goodwill who want to act. In Poland, there are hundreds of thousands of active citizens who do titanic work for Poland and Poles. Today, however, too often individual initiatives are not coordinated with each other, and single organizations do not have enough contact with each other"¹⁶.

Both initiatives, Polska 2050 and Wspólna Polska stem from very similar assumptions and have similar goals. Although it is still too early to analyse their activities (additionally hindered by the epidemiological situation), it is worth noting that they provide a promising platform for deliberation, as they gather people with very different political views.

¹³ Burza mózgów z Robertem Biedroniem. Teatr Palladium. Warszawa 29.11.2018, <https://www.youtube.com/watch?v=p-eGVYA4Tqg>, dostęp: 20.09.2020

¹⁴ <https://polska2050.pl/>

¹⁵ K. Pełczyńska-Nałęcz, *Polska 2050 nie jest partią wodzowską ani nową wersją PO. Jest innowacją polityczną*, 28.09.2020, <https://oko.press/polska-2050-nie-jest-partia-wodzowska-ani-nowa-wersja-po-jest-innowacja-polityczna-debata-oko-press/>, dostęp: 10.10.2020.

¹⁶ <https://ruchwspolnapolska.pl/>

Conclusion

The example of Poland shows how much deliberation and the constitution-making processes are connected with civic awareness and discourse. On the one hand, we see how it is possible to completely change the standards of the rule of law without formally changing the constitution. On the other hand, we can observe how civic protests in defence of the rule of law can transform into deliberative actions aimed at increasing knowledge and civic participation.

Bibliography

- Banaszak B., M. Jabłoński (red.), *Konieczne i pożądane zmiany Konstytucji RP z 2 kwietnia 1997 roku*, Wydawnictwo UWR, Wrocław 2010.
- Bogacz-Wojtanowska E. et al. *Dialog obywatelski w Krakowie. Formy i współdziałanie z organizacjami pozarządowymi 2*. Wydawnictwo TOC, Kraków 2016.
- Bogacz-Wojtanowska E. et al., *Dialog obywatelski w Krakowie w opiniach mieszkańców i przedstawicieli organizacji pozarządowych 1*. Attyka, Kraków 2015.
- Bukowski M., A. Hess, W. Klytta, *Dialog obywatelski w Krakowie 5. Perspektywa dziennikarzy i kreatorów opinii*, Wydawnictwo TOC, Kraków 2018.
- Bukowski M., A. Hess, W. Klytta, *Dialog obywatelski w Krakowie 3. Reprezentacje medialne*, Wydawnictwo TOC, Kraków 2017.
- CBOS, *O czym Polacy chcieliby się wypowiedzieć w referendum? Komunikat z badań*, CBOS, Warszawa 2017.
- CBOS, *Zainteresowanie referendum konsultacyjnym ws. konstytucji. Komunikat z badań*, CBOS, Warszawa 2018.
- Chruściak R. (red.), *Problemy zmiany Konstytucji*, Wydawnictwo Sejmowe, Warszawa 2017.
- Hess A., *Polskie think tanki jako społeczni uczestnicy dyskursu politycznego*. „Athenaeum. Polskie Studia Politologiczne” 2013, no 37.
- Jarentowski M., *Zmiana konstytucji w Polsce. Od dogmatyzmu do empirii*, „Teka of Political Science and International Relations – OL PAN/UMCS”, 2018, 13/1, p. 11–23.
- Kampka A., *Między głosem a głosowaniem. Wokół debaty w Senacie RP o projekcie referendum z 2018 r.*, „Przegląd Sejmowy” 2020/ nr 4(159), s. 107–125.
- Kancelaria Senatu. Biuro Analiz i Dokumentacji, *Zmiany Konstytucji Rzeczypospolitej Polskiej w latach 1997-2011 w świetle projektów ustaw oraz uchwalonych nowelizacji*, Warszawa 2011.
- Kęłbowski W., *Budżet partycypacyjny. Ewaluacja*, Instytut Obywatelski, Warszawa 2014.
- Kęłbowski W., *Budżet Partycypacyjny. Krótka instrukcja obsługi*, Instytut Obywatelski, Warszawa 2013
- Kraszewski D., K. Mojkowski, *Budżet obywatelski w Polsce*, Fundacja im. Stefana Batorego, Warszawa 2014.
- Kubiak A., A. Krzewińska, *Sondaż deliberatywny – inwentarz problemów*, „Przegląd Socjologiczny” 2012 no1.
- Kustra A., *„Euronowelizacja” w projektach ustaw o zmianie Konstytucji RP. Próba*

- oceny, „Przegląd Sejmowy” 2011 nr 3(104), 31-55.
- Peisert A., *Demokracja deliberacyjna a praktyka społeczna*, in: *Partycypacja publiczna. O uczestnictwie obywateli w życiu wspólnoty lokalnej*, pod red. A. Olech, ISP, Warszawa 2011.
- Poławski P., *Elementy deliberacji w centralnej administracji publicznej*, in *Wybrane instytucje demokracji partycypacyjnej w polskim systemie politycznym*, red. J. Sroka, Instytut Pracy i Spraw Socjalnych, Warszawa 2008.
- Sroka J., *Deliberacja i rządzenie wielopasmowe. Teoria i praktyka*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2009.
- Standardy procesów budżetu partycypacyjnego w Polsce*, Fundacja Pracownia Badań i Innowacji Społecznych „Stocznia” Warszawa 2015.