

Referendum in theory and practice: the history of the Slovak referendums and their consequences

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Abstract: *This article deals with the theory and practice of Slovak referendum. Special aim is concentrated on referendum in 1997 (held on NATO accession and on the direct election of the president of the Slovak Republic). Generally speaking referendums brought with a lot of problems. Their outcome was polarization of society and political elite. All Slovak referendums were unsuccessful (with the exception of last referendum – euro referendum in 2003). Concerning the consolidation of Slovak democracy referendums had a negative impact.*

Key words: *Slovakia, referendum, enlargement of the European Union, democracy, parties.*

1. Referendums: the positives and the negatives

Nowadays, referendums are the most widespread form of direct democracy. Citizens of the particular country make their decisions on a question (or questions) by accepting or denying it. There are two general types of referendums: obligatory (must be held on a particular question) and facultative (held based on the demand of a certain number of citizens). Referendum has not gained the dominant position in any current political system (with the exception of Switzerland). However, in European context, most countries use it to decide some particularly important questions.¹

Among the most positive features of holding a referendum (from the comparative standpoint concerning representative democracy) is often counted the *increase of legitimacy* of decision-making, i.e. the fact that the citizens' decisions have greater legitimacy than those of legislature. Furthermore, it supports *political participation* of citizens, i.e. this type of public domain decision-making should increase their interest in it. In relation to this, sceptics note, that the common voter *often does not possess the sufficient knowledge and experience* and their decisions may be very incompetent. Moreover, the fact that the voters have the possibility to express their view in a positive or a negative way only, may lead to an excessive polarisation of the public opinion and the political community. On the contrary, the

application of the representative democracy provides the advantage for the legislature to make a compromise, to negotiate a decision acceptable for all. While representative democracy enables to create mechanisms for minority protection, although the scope can (sometimes greatly) differ from one representative democracy to another (e.g. see the differences between the competitive British democracy and the strongly consensual democracy in Belgium); in this way, referendum may rather limit the possibilities (compare, for example, Gallagher – Laver – Mair 2001: 331; Buttler – Ranney 1994; Bankowicz 1999: 101 – 106).

This article aims at the explanation of the meaning of referendum in the party system with the help of Slovak referendums. It takes notice of both its legal determination (which, for the reason of various regulation interpretations, proved to be very problematic) and very „live“ referendum practice that brought an array of controversial cases. The special attention is paid to the problem connected with the unsuccessful referendum on NATO accession and the direct election of the president.

2. The legal position of the Slovak referendum

What is the legal definition of the Slovak referendum? The Slovak Constitution contains both of the types of referendums mentioned above (on the national level) – facultative and obligatory. The obligatory referendum, that is concurrently taken as an instrument of ratification, is held in case of decision-making on accessions to state unions or their secession. Accession/secession is made by the constitutional act which is to be confirmed by the referendum. This type of referendum was incorporated into the Constitution in 1992 for the reason of dealing with Czech-Slovak relations. In the period the Constitution was being accepted, most of the Slovak political elite still preferred a certain form of a union with the Czech Republic before the declaration of independence is made (compare the introductory article dealing with the changes in modern Slovak politics) which was to be approved by the referendum (compare Rychlík 2002: 293). For the reason of the separation of the common state based on political agreement, the referendum did not come to play.

The facultative referendum may be held when proposed by at least 350,000 citizens presented in the form of petition, or when it is agreed on by the Parliament (the proposal can be made by MPs or government). It is then proclaimed by the president within the 30 days period from the petition or from the Parliament's resolution. Before the proclamation itself, the president may ask the Constitutional Court for its assessment of the presented question whether the subject of the referendum corresponds to the Constitution or constitutional laws

(this option was added to the Constitution based on the amendment no. 90/2001 Z. z. for the reason of controversial constitutionality of some referendums and the attempts made to them). The results of the referendum are valid and obligatory if the voter turnout exceeds 50% of the voters.

3. Referendums in Slovak political practice: outweighing negatives

The above mentioned limit of 350,000 signatures needed to hold a referendum from the citizens' initiative seems (in comparison to the total population of Slovakia) rather high at first sight. However, the practice revealed it was not unsurpassable. Thus, the referendums were (often without major respect for the possible consequences) repeatedly used as an instrument mainly by the opposition political parties. Thus, in the period of Slovak independence several referendums were held; while most of them (with the exception of the referendum on the EU accession) were unsuccessful, they had not an insignificant effect on the political party system. Worth attention is undoubtedly the *first attempt* to hold a referendum in spring 1994 encouraged by the Movement for Democratic Slovakia (HZDS). Its aim was to reach (1) setting up the imperative mandate, (2) shortening of the Parliament's period of office and announcement of a new election and (3) proving the origin of money in privatisation.² (It is interesting that the second and the third topics became frequent in relation to other referendums.) President Kováč, however, rejected to hold the referendum with the argument that the number of valid signatures in the petition documents did not achieve the requested figure of 350,000, but there was more than 100,000 less of them (a big number of signatures in the documents did not correspond to the requirements in the petition law).

Later on, the chairman of the petition committee (HZDS MP) Augustín Marián Húška filed a complaint at the Constitutional Court. However, its statement was that the president's approach accorded with the Constitution. The whole matter left an afterclap in 1995. The Parliament majority of that time HZDS – ZRS – SNS (Slovak National Party) pressed the amendment of the executive regulation on referendum (no. 564/1992, on the method of holding a referendum), while the authority to judge whether the petition fulfils all the requirements, would pass to the chairman of the Parliament (at that time the chairman was I. Gašparovič, the member of the HZDS). At this point president Kováč, for a change, turned to the Constitutional Court for the reason of unconstitutionality. The Constitutional Court agreed stating the president's right "to hold (...) a referendum based on the citizens' petition is connected with his constitutional right to inspect the constitutionality and lawfulness of such a

petition” (Laštic 2001: 84). This caused the change in the law on the method of holding a referendum to lose its effect and the situation de facto returned to its previous state.

Even before that, the first referendum “in history” was held. It took place shortly after the parliamentary elections in 1994. It was brought about by the left-wing Union of Slovak Workers (ZRS) led by Ján Ľupták that achieved to collect the sufficient number of (valid) signatures to hold a referendum on proving the origin of financial means in the process of privatisation. The referendum was, however, unsuccessful for there was a very small interest of voters (turnout of less than a fifth of the rightful voters; even Ľupták himself did not vote), but then it had certain consequences. 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 the 1994 election.

Even more serious consequences were brought by the referendum that took place or was meant to take place in May 1997 on *direct election of the president and Slovakia NATO accession*. The year 1997 became part of Slovak political history as the year of the (unsuccessful) referendum. The beginning of its history goes back to the end of 1996 when most opposition “anti-Mečiarian“ parties on the ground of the Parliament tried to press the amendment of the Constitution and establish a direct election of the president. They justified the attempt – and rightly as the vacation of the president’s seat in 1998 – 1999 demonstrated – by the expected incapability of the Parliament to elect president. However, at the background of the matter there still persisted their pursuit of increasing their political support with the help of this topic that was very popular among voters. After finding out that the whole matter was unacceptable for the Parliament, the opposition launched an extensive and successful petition procedure for direct election of the president in January 1997 (apart from the success in collecting the signatures, the fact that they “activated” and mobilised the voters was, from the opposition’s point of view, undoubtedly very important, too).

At the same time Mečiar’s government decided to face the criticism stating that their policy eliminates Slovakia’s presence in the group of the NATO candidate countries, and piloted the referendum on the NATO accession via NR SR (the Slovak Parliament). The questions chosen for this issue admittedly gave evidence of government’s very “specific” attitude to the accession. Apart from the necessary question “Do you agree with the accession of the Slovak Republic to the NATO?”, the other two questions were, from the perspective of a positive reply, expressed in a rather “inadequate” way (“Do you agree with deployment of nuclear weapons on the Slovak territory?” and “Do you agree with deployment of military bases on the Slovak territory?”). President Kováč integrated both referendums into one; his

motive was to increase the turnout above the required 50% limit and hence ensure its validity (therefore the fourth question read: “Do you agree with that the president of the Slovak Republic will be elected by the citizens of the Slovak Republic according to the attached constitutional law proposal directly?”).

However, in relation to referendum on the direct presidential election, the collision connected with an unclear referendum disposition definitions in the Constitution and the various possible ways to interpret it occurred. In the first place it was about the controversial question *if the Constitution may or may not be changed through referendum*. The whole affair finally got to the Constitutional Court again. The Court took a stand according to which the Constitution does not explicitly deny its changes; the results, however, cannot lead to direct change of the Constitution (the decision of the NR SR is required to achieve this). Furthermore, the appendix to the fourth question of the referendum did not contain its detailed explanation as the “executive” law (with respect to question’s nature) requested (no. 564/1992).³ The citizens’ acceptance to the referendum has, however, the relevance in the sense of giving an order to the Parliament to change the Constitution according to the referendum. In the conclusion of the finding the Constitutional Court stated that its interpretation *does not and may not have any influence on the referendum already proclaimed by the president*.

The government officials interpreted the decision of the Constitutional Court in a very tendentious way and applied the CC’s opinion that the appendix to the fourth question does not accord with the law on the method of holding a referendum. Minister of the Interior G. Krajčí let the ballots distribute *without the fourth question on the direct election of the president*. The opposition then exhorted to boycott the referendum and their appeal was successful (the turnout was less than 10% of the rightful voters). The Central Committee for referendum subsequently described the referendum (due to the decision of the Minister of the Interior) as unsuccessful. The consequences were both the domestic affairs – the further escalation of the political confrontation in the political community and uniting a part of the “anti-Mečiarian” parties into the Slovak Democratic Coalition (SDK) – and the international ones. The referendum was taken as an evidence that the Slovak democracy is not stable which led to eliminating Slovakia from the first wave of the NATO enlargement concerning the Central and Eastern Europe, and the relations with the EU were seriously harmed.⁴

The unsuccessful referendum became the subject of the Constitutional Court’s decision-making again and the CC certified that the Ministry of the Interior had really violated the constitutional rights of the citizens. After releasing the CC’s decision president

Kováč proclaimed that the referendum would be repeated in April 1998. However, when his period of office expired in March 1998, a portion of his authorities passed to the Prime Minister Mečiar, who cancelled the referendum and granted pardon to all those who violated law in case of the 1997 referendum (the case of the Minister of the Interior Krajčí in the first place). The direct election of the president was finally established by the amendment to the Constitution in January 1999.⁵

Concurrently with the parliamentary election in 1998 another referendum was held, the impact of which was much smaller than the results of the referendum (not) held in May 1997. The referendum was initiated (through a petition) by the HZDS; the question of the referendum was aimed at the prohibition of the privatisation of some strategic companies.⁶ The motivation of the proposer most probably was the effort to increase the support from voters (the practical policy of the Mečiar's government in 1994 – 1998 was entirely opposite, i.e. this era is renowned for sometimes very “wild” privatisation of an array of significant firms). However, the results of the referendum were not valid again, because the required majority of the voters did not participate (although - compared to 1994 referendum - the turnout was higher – 44%).

The next referendum, that was of a relatively controversial political nature again, was held in the beginning of November 2000. It was initiated (through a petition again) by the HZDS and the SNS. They wanted to accomplish the shortening of the NR's period of office, i.e. to hold the parliamentary election earlier. The problem of referendum's constitutionality came up again which meant the question if the Constitution could be changed by referendum (the Constitutional Court, however, dismissed the demand of a group of MPs to clarify the situation for procedural reasons). For the reason of a small interest of voters (one fifth turnout only) the referendum was unsuccessful again. (the HZDS and the SNS made an effort to hold a referendum on language usage of the national minorities in official procedures and non-privatisation of the strategic companies and they were successful once again in collecting the sufficient number of signatures. President Schuster, however, decided not to proclaim the referendum for its unconstitutionality.)

The only successful referendum so far (based on NR's decision) was held in May 2003 and the EU accession was being decided in it (the referendum question read: “Do you agree the Slovak Republic will become a member of the European Union?”). Referendum's turnout was 52.15% of the rightful voters while 92.46% of them said “yes” to the accession. This – from the standpoint of the turnout – very close victory, despite the fact the pre-referendum surveys had shown otherwise – was the outcome of many factors. Among the most important

is *the general discrediting of the referendum institute* for the majority of voters (see the course and the consequences of the previous referendums). Furthermore the *not very successful campaign* that preceded the referendum also had its effect (among the most visible moments ironically was the illegal use of the old Hungarian song from the 1980s which became the campaign's anthem). The pre-referendum statements of some government politicians who testified *that in case of the referendum's non-validity the EU accession would be accepted by the Parliament* (by which the redundancy of the referendum in this particular case was demonstrated; this did not contribute very much to the citizens' willingness to vote).

To explain the low turnout it is also necessary to stress the fact that for the majority of voters the boycotting the referendum meant to express the dissatisfaction with the restrictive social policy of the current government of Mikuláš Dzurinda. Therefore, in spite of its validity and the positive reply, the referendum on the EU accession in principle confirmed the inconsistent impression of the meaning of referendums in the Slovak political practice.

Apart from the EU accession referendum, a very heterogeneous political initiative (with the following sample participants: Communist Party of Slovakia, Slovak National Party, True Slovak National Party, Green Party in Slovakia, but also for example the former chairman of the Christian-democratic Movement Ján Čarnogurský) tried to reach the holding of a new referendum on the NATO accession. The petition action, however, was unsuccessful, that means the goal of collecting the sufficient number of signatures during the spring 2003 was not achieved (though the petition committee proclaimed that they collected more than a quarter of a million signatures).

4. Conclusion

To sum up the general meaning of the referendum in the Slovak political practice (if we exclude the in a way exceptional referendum on the EU accession), it may be said that *the institute of referendum has become one of the important instruments (mis)used by parties in political competition*. Its use by other – non-party – participants proved to be unrealistic. Its legal regulation in the Slovak Constitution led to the situation when *its application produced more problems than it solved*. Thus, from the standpoint of its significance, it effected the consolidation of the Slovak democracy in a rather negative way.

Notes:

¹ This study was published in Czech in volume “Od Mečiara k Dzurindovi. Slovenská politika a politický systém v prvých desiatich samostatnosti” (“From Mečiar to Dzurinda. The Slovak Politics and the Political System in the First Decade of Independence.”), editor Lubomír Kopeček, Brno, Masarykova univerzita 2003.

² The questions were as follows: 1) Do you agree to consider the behaviour of the MP who ceased to be a member of a political movement or a party he stood as a candidate in the National Council of the Slovak Republic elections for as a manifestation of surrendering mandate?; “Do you agree the period of office of the National Council of the Slovak Republic to the end in June 1994, on the day of the National Council of the Slovak Republic elections?; 3) “Do you agree with the principle that the privatisation could be realised only by the person who proved the origin of his money in a trustworthy way?” (cited after Prusák 1999: 228).

³ The misinterpretation became, however, the object of criticism. The specialist in constitutional law Daniel Lipšic, for example, demonstrated in this context that the Constitutional Court overstepped its authority as the Constitution did not enable it to present the interpretation of “ordinary” law (Drgonec - Kvasničková 2000: 32).

⁴ An outline of a detailed analysis of the referendum held in May 1997 see Mesežnikov – Bútorá 1997.

⁵ One of the probably most interesting reactions to this procedure was the decision of the local board of representatives in (prevalently Hungarian) Štúrovo that declared the local referendum on all of the four questions. In spite of the harsh threats of the state power the referendum was realised; the fourth question concerning the direct election of the president was answered by almost 90% voters in a positive way (Hrabko 1999).

⁶ The referendum question read: “Do you support the view that the National Council of the Slovak Republic adopted the Constitutional containing the prohibition of the privatisation of the following strategic enterprises: Západoslovenské energetické závody, s. p.; Stredoslovenské energetické závody, s. p.; Východoslovenské energetické závody, s. p.; Slovenský plynárenský priemysl, s. p. a Transpetrol, a. s.?” (cited after Prusák 1999: 232).

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