Handbook of Direct Democracy in Central and Eastern Europe after 1989

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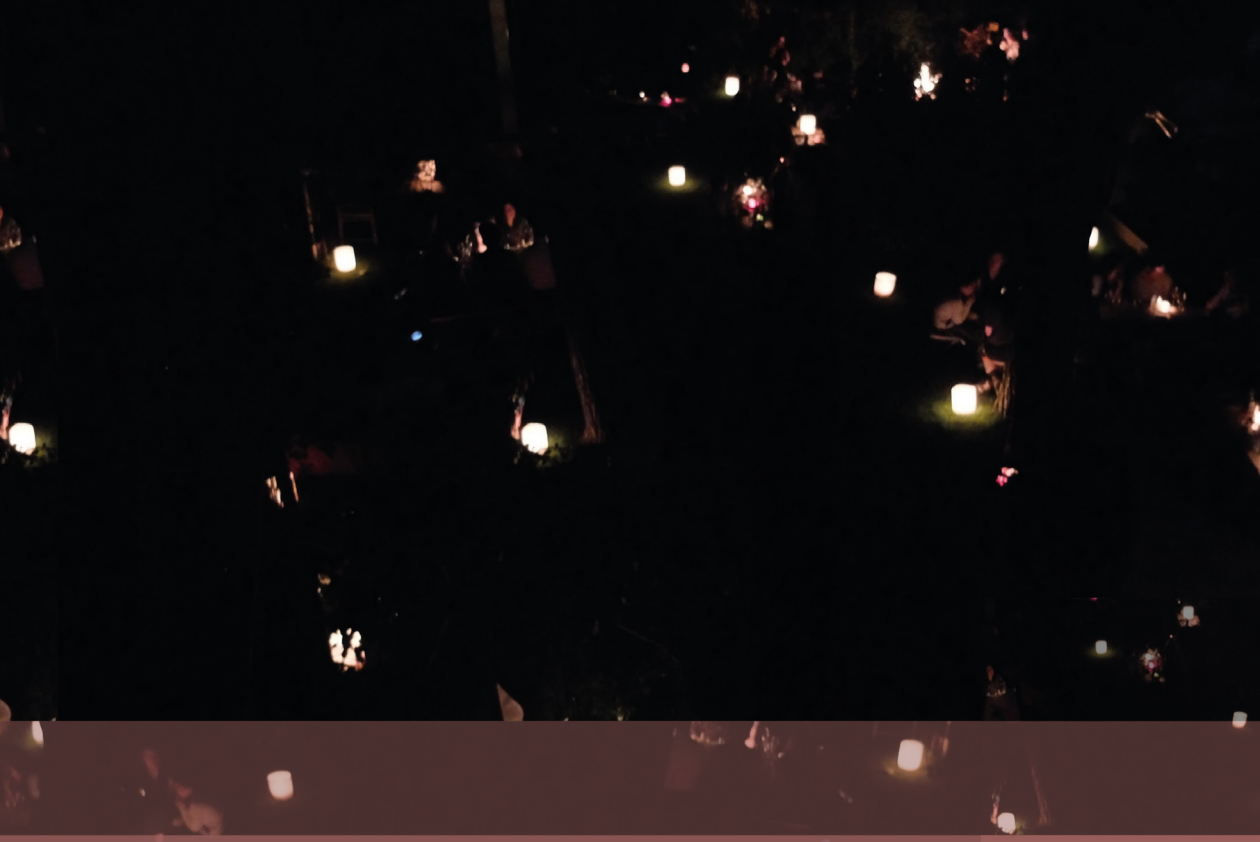

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Contents

Introduction

The idea of democracy which emerged in the Athenian polis constitutes a major determinant of social and political life at the end of the 20th and the beginning of the 21st century. Both indirect and direct democracy finds followers in different civilizational areas. There are many different democracies and different views on the true meaning of the concept of democracy. They result mainly from different uses of the concept in the theoretical domain and in the domain of social and political practice. Two different positions have emerged in the studies of the subject. The first refers to social and political practice and leads to definitions referring to institutions and processes but disregarding problems connected with the idea of justice. The second position refers directly to democratic ideals and their practical implications. This approach to democracy leads to understanding it in terms of such ideals as the rule of the people, political equality or political participation. It leads to the understanding of democracy as one of the methods of political action or as an ideal that particular political systems approach to a lesser or greater degree.

In the modern world representative democracy appears as the dominant form of government (McGrew 1997: 1-24; Held 1996; Sartori 1987). Nevertheless, in particular systems we encounter a number of procedures characteristic of direct democracy (Beigbeder 1994; Cronin 1989; Qvortrup 2014; Butler/Ranney 1994: 11-23; Tallian 1977; Marczewska-Rytko 2001; Budge 1996; Altman 2010; Beramendi 2008; Schiller 2002). The scope and diversity of institutions of direct democracy are affected by many factors connected with tradition, historical experience, political philosophy. Recourse to the institutions of direct democracy can serve both the citizens themselves who participate directly in the decision-making process and the governing elites who can legitimize their power in this way (Barber 1984; LeDuc 2003; Laird 2007; Haskell 2001; Gebhart 2002).

In the course of centuries several institutions characteristic of direct democracy have emerged. The people's assembly denoting a meeting of all empowered with the right to make decisions was known already in the times of the Athenian polis (Hansen 1999). This institution of direct democracy has survived in a rudimentary form until today. Apart from the institution of the people's assembly the institution of the referendum is provided with the right to make decisions. In the modern world the best known kind of referendum is the constitutional referendum in which matters connected with constitutions, their ratification or changes are subjected to people's vote. The importance of questions connected with joining supranational communities and ratification of international treaties has also increased. There are also procedural institutions such as citizens' initiative, agenda initiative, citizens' veto, or recall.

Athenian democracy constituted a system of common participation in matters of state. Political participation of Athenian citizens was connected with attending the meetings of the People's Assembly. At the basis of the functioning community we can find the principles of freedom (*eleutheria*), equality before the law (*isonomia*), and the right to speak (*isegoria*). The principle of full citizen participation in government was seen as an ideal to be reached. In the United States of America and in Switzerland the idea of direct democracy and its institutions enjoy respect and are employed on a large scale. In the United States the institutions of direct democracy are used on the state level (Bowler/Donovan 2010). In Switzerland they are employed both on the municipal, cantonal and federal level (Kobach 1993; Linder 1994; Trechsel/Kriesi 1996: 185-208; Marczewska-Rytko 2011: 323-346). Many countries all over the world have referendums for extraordinary issues such as constitutional amendments (Balsom 1996; 209-225; Mockli 1996; Kost 2013; Kaufman 2004: 11-32; Hug 2002).

The aim of the book is the holistic and interdisciplinary political analysis of direct democracy in the Central and Eastern European countries after 1989, in particular: 1) the diagnosis of the state of democratic processes taking place in this area; 2) the synthesis and analysis of direct democracy institutions used there, and 3) the analysis and comparative study of implementations of solutions characteristic of direct democracy in the area investigated, both on a national and local scale. This research goal is based on the belief that the 20th- and 21st-century processes of democratization of the Central and Eastern European countries would not be possible without the active participation of citizens who, by their involvement in diverse forms of direct democracy, exerted and still exert a significant influence on the political and legal space of this part of the Continent.

The book seeks to verify the following research hypotheses: 1) direct democracy functions in the Central and Eastern European countries both in the formal-legal and practical dimension at national and local level; 2) the use of instruments of direct democracy in the process of exercising power is an indicator of the political awareness of the Central and Eastern European societies; 3) the process of accession of the Central and Eastern European countries to the European Union had an impact on the development of direct democracy in these countries (in the formal-legal and practical aspects).

For the foregoing hypotheses to be verified and the main research task to be accomplished, a number of particular objectives had to be achieved. They are: 1) the analysis of historical, cultural, civilizational, socio-political, and international determinants which contributed to the implementation or rejection of specific institutions of direct democracy in individual Central and Eastern European countries; 2) the analysis of legal regulations in the Central and Eastern European Constitutions, laws and other legal acts which formed the formal-legal dimension of direct democracy in the territory of the coun-

tries investigated by the contributors; 3) large-scale studies on the political practice in the Central and Eastern European countries, including the number of actually implemented institutions of direct democracy, the scope of their binding force, and their political implications and legal effects, both planned and actual.

Not without significance is the fact that the book is focused on Central and Eastern European countries, which have different experiences with implementing the institutions of direct democracy, arising from history, culture or political practice, but they have not yet been comprehensively analyzed in this respect (White/Hill 1996: 153-170; Brady/Kaplan 1994: 174-217; Auer/Butzer 2001). The book makes it possible to answer the question about the state of direct democracy in Central and Eastern Europe, specify similarities and differences in implementing the standards of direct democracy in individual countries in the region under investigation, and to place national and local experiences in the broader international perspective.

Being aware that all attempts to define the geopolitical boundaries of Central and Eastern Europe are imperfect, the book adopted a broad meaning of the term so that investigations would cover as many as 21 European countries: Albania (the Republic of Albania), Belarus (the Republic of Belarus), Bosnia and Herzegovina, Bulgaria (the Republic of Bulgaria), Croatia (the Republic of Croatia), Czechia (the Czech Republic), Estonia (the Republic of Estonia), Hungary, Kosovo, Latvia (the Republic of Latvia), Lithuania (the Republic of Lithuania), Macedonia (the Republic of Macedonia), Moldova (the Republic of Moldova), Montenegro, Poland (the Republic of Poland), Romania, Russia (the Russian Federation), Serbia (the Republic of Serbia), Slovakia (the Slovak Republic), Slovenia (the Republic of Slovenia) and Ukraine. Not without significance is the fact that all these countries have a communist past. This means not only similar historical experience, but also similar social and economic problems and the desire for political reform. In addition, after 1989 all countries of Central and Eastern Europe initiated the process of democratization and economic transformation.

Similarly, aware of the conventionality of all temporal watersheds, particularly in the case of such a vast area of investigation, the contributors adopted the year 1989 as the starting date, and 1991 for the former Soviet Union countries. To a large number of Central and Eastern European inhabitants the two dates are not only of historical but also symbolic significance as they commemorate the severance with the communist past and adoption of democratic standards in internal and foreign policies.

In order to verify the formulated research hypotheses in the book used the methodology characteristic of social sciences, especially political science. The contributors apply first of all the elements of system analysis. They are aware that the events and research processes which are the subject of interest cannot be investigated in isolation but in the context of the broadly defined

political systems in the Central and Eastern European countries. A number of research methods were applied at particular stages of the research process. The analysis of all historical, political, international or cultural-civilizational conditions that determined the state of direct democracy in Central and Eastern Europe required that the contributors use, *inter alia*, a genetic method. The decision method allowed the authors both to look at the phenomena investigated from the perspective of decision-making processes realized in individual national and local centers, and to explain the process of implementing direct democracy solutions. This method was also invaluable in analyzing the practical dimension of direct democracy in Central and Eastern Europe. The analysis of the formal-legal dimension of direct democracy in the Central and Eastern European political practice could not have been conducted without analyzing the legal acts underlying the functioning of the institutions of direct democracy. Consequently, the institutional-legal method was also helpful in this context.

The articles presented in the book were each divided into four parts: determinants, formal-legal dimension, practical dimension and conclusion. The first part consists of the analysis of internal and external conditions that define the shape of direct democracy in the Central and Eastern European countries, first of all a) historical conditions that determine the democratic tradition of the countries in the investigated area, and the events that influenced it; (b) cultural-civilizational conditions connected with such determinants as the religious structure of the countries studied, their ethnic structure, or membership of a specific culture (Western, Eastern); (c) socio-political conditions that define the social and political-system framework for the functioning of the institutions of direct democracy; (d) international conditions that define obligations of the states in the investigated area towards specific supranational structures in respect of direct democracy issues. The second part consists of the analysis of the formal-legal dimension of direct democracy in the Central and Eastern European area. It focuses on examining legal acts (Constitutions, laws) that determine the legislative reality of the countries investigated, in particular those regulating the functioning of the institutions of direct democracy. The third part consists of the analysis of the practical dimension of direct democracy institutions in Central and Eastern Europe. The contributors seek to answer the question about whether and to what extent the forms of direct democracy are used in the Central and Eastern European countries, and also whether direct democratic institutions are an effective way in which the sovereign (the people) expresses its will in individual states, both at national and local level. The fourth part consists of the main conclusions and the results of the process of hypothesis verification.

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Maria Marczewska-Rytko

Marcin Pomarański

Direct Democracy in Albania

Determinants

Contemporary Albania is an example of a European state which has been almost completely deprived of democratic traditions before the political system transformation, not to mention the principles of direct democracy. As a nation that is culturally, politically, and economically fixed on the Western part of the continent, particularly on Italy, and aspiring to the membership of the European Union, the Albanians are determined to make up for the lost decades. The history of Albania is the key to understanding this political determination, especially the negligible democratic and independence experiences of its inhabitants. Until the 12th century these areas were included into the Byzantine Empire and through the two following centuries it was the field of continuous war campaigns of Bulgarians, Serbs, Venetians, and Turks. The Turks won and included the areas of today's Albania in the European province of the Ottoman Empire. They were there for the next 450 years until the Balkan League drove the Turks away in 1912. A long and laborious process of building the national identity started in Vlora where the independence was announced although it was not necessarily connected with democratic changes. Its determinant was the authoritarian rule of Ahmed ben Zogu, who, first as President of the Republic (1925-28) then as King Zogu I (1928-39) exercised a complete authority over the state until the outbreak of the World War II. After the Italian occupation (1939-43) and German occupation (1943-45) the communists took power, forming the People's Republic of Albania in 1946 following Yugoslavia's example. It lasted until the political system transformation at the beginning of the 1990s (Wojnicki 2007: 5-12).

These experiences practically prevented the adoption of any tools of direct democracy both in the Albanian legal system and political consciousness before 1991. The only legal article which introduced the elements of direct-democracy solutions was introduced in the communist Constitution of the People's Socialist Republic of Albania in 1976 and it was an empty declaration without any reflection in the use of law. Moreover, as Jacek Wojnicki states the difficult historical experiences of Albanians were reinforced by the lack of independent state and by Ottoman feudal social relations, and they deprived them not only of the chance for earlier acceptance of the democratic order but generally the acceptance of the written

law whose function was fulfilled throughout the centuries by customary law as well (Wojnicki 2007: 5). Even after a quarter century after the political system transformation this determinant leaves a distinctive impression on Albanian's political and legal culture. It is especially noticed in local politics where tradition and custom sometimes mean much more than legislative decisions *undertaken in Tirana*.

As Aurela Anastasi, one of the most eminent experts in Albanian legislation, observes, this specific position of the law in the consciousness of not only ordinary Albanians but mainly of the local political elites has a direct influence on the way of perceiving the usefulness of mechanisms of direct democracy in the process of exercising power in the state. All initiatives for the application of these mechanisms in practice, from the point of view of those in power, are not interpreted as a supplement to the democratic political processes – important from the point of view of the still forming civil society. They are perceived as interventions in the course of governance which can unnecessarily complicate the progressive political processes (Anastasi 2014: 81-82). Although such attitudes belong to a sphere of private opinions, and no politician admits them publicly, they may explain the lack of enthusiasm of Albanian power elites for using the tools of direct democracy.

Independence experiences of the early 20th century have also influenced the dynamics of the political life of contemporary Albania, continually polarizing the society over two issues: the mutual position of the executive and the legislative powers toward themselves and towards the preferred political system of the state. These issues were the subject of the debate in 1912 and are still the subject of social disputes. Fuelled by rightists and socialists milieus within the radically polarized two-bloc party system of contemporary Albania, they took the form of many mutually exclusive political postulates: to increase the role of the Parliament, to strengthen the position of the President of the Republic, to introduce the monarchy system, to maintain the system of the Republic etc. Throughout the 1990s these issues were the dominant part of all political disputes conducted by the ruling circles and often contributed to fuelling social unrest. The most serious crisis was in 1997. In the era of political conflicts and accusation of rigging of parliamentary elections a year earlier, and a crash (as a result of economic crisis) of a few financial pyramids, all these led to several-week riots all-over the country. In some areas they took a form of a civil war. As a result a few hundred people were killed, the President Sali Berisha and the Prime Minister Aleksandër Meksi, accused of authoritarianism, were forced to resign, and international intervention under the auspices of the UN Security Council restored order.

The political turmoil, whose legislative legacy was, among others, the six-fold change of the election system after 1990 (Stojarova et al. 2003: 39-40), effectively limited the possibilities of implementing the tools of direct

democracy in the process of governance. Moreover, even at the local level, these solutions could not be implemented effectively. As Zdenek Broz and Ake Svensson (rapporteurs to the Council of Europe) underlined in their report on the state of democracy in Albania, although the decentralization of state power constituted one of the key elements of political system in Albania, local self-government was characterized by inefficiency and weakness in the broad sense. The most urgent problems included, *inter alia*, too large independence of some border regions over which Tirana *de facto* did not have any political or legal control, or lack of a clearly marked financial self-independence of the units of territorial local self-government which essentially reduced them to the role of executors of government orders (Broz/ Svensson 2013).

As it seems, the only determinant that clearly and indisputably influences the dissemination of solutions of direct democracy in this country is Albania's activity in the international arena. The membership in the Organization for Security and Co-operation in Europe (since 1991) and the Council of Europe (since 1995) forces those in power to provide the citizens with the ability of direct participation in governing. This issue, *inter alia*, was the subject of monitoring visits to Albania that was conducted by the representatives of the Congress of Local and Regional Authorities of the Council of Europe in 2013 and the Office for Democratic Institutions and Human Rights OSCE in 2015. The progress regarding the dissemination of the instruments of direct democracy is also forced by the government's willingness to join the European Union. Since 2003 Albania has been a potential candidate for negotiations and an official application was submitted on 28 April 2009 (Albania applies for EU… 2009).

However, the inconsistent law concerning direct democracy has been still one of the unsolved matters. The whole list of allegations can be found in the final report from the two above mentioned monitoring visits. Some of the remarks by the representatives of OSCE and the Council of Europe concern very serious matters such as: 1) the political character of the Central Election Commission which does not guarantee the impartiality of voting; 2) reservations on the integrity of the vote registering system; 3) too restrictive criteria for the acceptance of the requests for referendum and the registration of candidates in elections; 4) accusation of exerting pressure on the voters which impairs the impartial character of voting; 5) limited dimension of local direct democracy which rejects many tools that guarantees the citizens' participation in political processes and the right to submit a petition, or the institution of civil committee (Broz/Svensson 2013; Republic of Albania. Local elections... 2015).

Formal-Legal Dimension

The first regulations on direct democracy appeared in Albania's legislation in 1976 in the façade Constitution of the People's Socialist Republic of Albania adopted by the communist regime. In Article 5 it provides for the right to *exercise their state power through the representative organs as well as directly* although it guarantees this right - in accordance with the common practice in communist countries - not to the nation or society, but to a vaguely described *working people*.

Additionally, in Article 67 of this Constitution the People's Assembly has, *inter alia*, the right to decide on popular referendums (The Constitution of The People's Socialist Republic of Albania 1976). However, these regulations were ostensible, being only the expression of the allegedly guaranteed civil rights and never had the chance to be used in practice. Like the whole Constitution of 1976, the articles concerning direct democracy were only an empty declaration formed for the needs of communist propaganda.

The democratic turn at the beginning of the 1990s and the accompanying political system transformation contributed to the legislative specification of the instruments of direct democracy. The Albanian Law on the Main Constitutional Provisions of 29 April 1991 essentially repeated the same scope and sense of the solutions suggested in 1976, eliminating, however, their obvious drawbacks. In this sense the following appeared in the text: the right of *the sovereign people to exercise their power through their representative organs and referendum* (Article 3) and the competence of the People's Assembly to decide on people's referendums (Article 16) in the legislation process. A new provision was the guaranteed right of the President of Albania (the office did not exist under communists) to publicly declare decisions to hold general referendums (Article 28) (The Major Constitutional Provisions... 1991; Enhancing the Powers... 1992). These solutions were specified in The Referendums Act adopted by the Parliament in 1994, which, for the first time in Albanian legislation, defined in detail the conditions necessary for conducting the referendum both at the national and local level (On referendums 1994).

The binding Constitution of the Republic of Albania, adopted by the People's Assembly on 21 October 1998 and ratified by the national referendum on 22 November 1998, introduced two procedures direct democracy. The first one is a civil legislative initiative, the second one – a referendum. According to Article 81 of the Constitution *the Council of Ministers, every deputy and 20,000 electors each have the right to propose laws*. The only exception is a public motion for national referendum which requires the support of 50,000 citizens (Article 150) (The Constitution of the

Republic of Albania 1998; The Electoral Code of the Republic of Albania 2003). In commentaries and interpretations both variants of citizens' initiative are usually differentiated. The Swedish Institute for Democracy and Electoral Assistance, for example, describes them as: *agenda initiative and citizens' initiative*, respectively stressing that they allow the citizens to start the legislative process but the first means that the agencies of legislative power will examine the draft law, the second means that the voter will solve the problem through the referendum (Beramendi et al. 2008).

The scope of the substance that can be the subject of citizens' initiative was not described in Albanian legislature in a precise way, limiting itself only to the general wording: *legislative proposals and issues of special importance.* The formal requirements that should be fulfilled by social legislative initiatives were much more precisely discussed. Thus each project or draft law submitted by the citizens should contain a detailed report justifying the financial expenses resulting from its implementation and according to the Parliament's rule also the documentation explaining the motives for undertaking this initiative and the opinions confirming the compliance of the proposal with the EU legislation. The Chairman of the People's Assembly is responsible for the formal evaluation of the motions (completeness of the motion) and Central Election Commission [Komisioni Qendror i Zgjedhjeve] (the number of signatures). The Constitutional Court [Gjykata Kushtetuese] is responsible for its legal evaluation (The Constitution of the Republic of Albania 1998: Articles 82, 150; The Electoral Code of the Republic of Albania 2003: Articles 124, 126; Republika Eshqipërisë... 2004: Article 68).

According to the resolution of Part 11 of the Constitution of 1998: *The people, through 50,000 citizens entitled to vote, have the right to a referendum for the abrogation of a law, and to request the President of the Republic to call a referendum on issues of special importance.* The decisions connected with the use of the instrument of direct democracy do not need, in this case, the assent of the Parliament, although *The Assembly, on the proposal of not less than one-fifth of the deputies or on the proposal of the Council of Ministers, can decide that an issue or a draft law of special importance be submitted to referendum* and a referendum on the change of the Constitution belongs exclusively to the Parliament. A law approved by the referendum is officially promulgated by the President of the Republic. As in the case of the citizen's initiative, the scope of the substance, which can be the subject of a referendum, is very wide. However, in this case the Constitution specifies the subjects that are categorically not proceeded on under the instruments of direct democracy. The following issues are listed: budget, taxes and financial obligations of the state, limitation of human rights and freedoms, amnesty, announcement and abolition of martial law, territorial

integrity and declaration of war and peace (The Constitution of the Republic of Albania 1998: Articles 150-151).

The Constitution of 1998 was clarified by the regulations of the Electoral Code of 2003. Precise legal regulations were included in Part IX of the Code (Articles 118-132). It should be added that in the amended version of the Code this chapter was omitted because it was to become a separate act. Since such an act was not adopted by the Parliament until 2016, Part IX of the Electoral Code of 2003 is a binding law. The Code distinguishes three types of referendums. The first one is the above mentioned constitutional referendum which can be called by the decision of two-thirds of all members of the Assembly on the request of one-fifth of the members of the Assembly. It is conducted within 60 days of its enactment from its enacting by the Assembly. The second type is a general referendum. It can be held for the repeal of a law or on a matter *of special importance* on the initiative of a nation, the parliament or the Council of Ministers. It is held within 45 days of the announcement of the positive opinion of the Constitutional Court. The third referendum is a local referendum which requires 10% of voters registered in a given constituency or 20,000 of them whichever number is smaller. The referendum is held only in the constituency concerned within 45 days of the positive opinion on its constitutionality (The Constitution of the Republic of Albania 1998: Articles 150-151, 177; The Electoral Code of the Republic of Albania 2003: Articles 118-132; Pajo Bala 2014: 30-31).

The constitution provides for the key role in the referendum process for the Central Election Commission, which, as a permanent agency, prepares, supervises, conducts and controls all matters connected with elections and referendums and announces their results. The CEC has wide competence concerning the general referendum. In this case it not only evaluates the formal part of the motion (e.g. if the request for the referendum contains the reasons why the law or particular provisions should be repealed or if a request to begin the procedures for a referendum is submitted to the CEC by a group of no fewer than 12 initiators who are voters registered in the National Registry of Voters) but also verifies the authenticity of the collected signatures as well. The CEC decides whether to accept the request within 90 days of the day it is submitted and sends it to the President of the Republic and the Constitutional Court. The positive opinion authorizes the Central Election Commission to prepare the referendum from a technical side (The Constitution of the Republic of Albania 1998: Article 153; The Electoral Code of the Republic of Albania 2003: Articles 126-127).

In none of the above-mentioned types of referendums does Albanian legislation require conducting the procedure in an obligatory way. Each time this procedure is meant to be only an alternative to the Parliamentary legislative process. However, if the procedure has been used, it is binding and the winning option needs only a simple majority. There is only one condition

for the necessary quorum. It is one third of registered voters. The only departure from this rule is the change of border between particular regions (qarks/counties), which cannot be done without earlier consultations with their inhabitants; however, it is not binding for the government in Tirana, it is only advisory (The Electoral Code of the Republic of Albania 2003: Articles 118, 132; On the organization and functioning of local government 2000).

Practical Dimension

Apart from the legal guarantees contained in the Constitution of 1998 and the electoral law of 2002 and political declarations of the representatives of the government in Tirana, the use of the instruments of direct democracy in the law-making procedure, both at the national and local level is, in the case of Albania, very small. After the fall of communism at the beginning of the 1990s, the national referendum was held only three times. Moreover, they were organized according to the regulations of the Constitution of 1991. As far as the citizens' legislative initiative is concerned, the statistics is even worse because none of the rare attempts to initiate the legislative changes were successful. However, recently there has been a noticeable increase in the interest of the Albanian society in the instruments of direct democracy that is expressed in the growing number of citizens' requests on starting such legislative procedures.

The referendums organized so far concerned only the key political-system issues. In two cases their aim was to gain social acceptance for the proposed constitutional acts, and in the third it was the expression of an opinion on the choice of the preferred political system of the state. The first referendum was announced on 7 November 1994 to accept a constitutional bill, strongly supported by the then President of the Republic and the leader of the Democrats Sali Berisha, which gave the executive power a wide range of rights. Developed during the communist dictatorship, the fear of a strong executive power was reflected in the high turnout (84.43%) and resulted in the final rejection of the bill. 56.38% of all voters opted against the new constitution and ruined President Berisha's legislative plans.

Table 1. The national referendum of 7 November 1994

Date	Subject	Turnout in %	Results
7 November 1994	Referendum on the draft constitution	84.43	For 43.62% Against 56.38%

Source: Author's own study.

The second constitutional referendum was held on 22 November 1998. Unlike the previous document, the draft constitution, compiled by the ruling socialists at the turn of 1997/1998, gave more power to the parliament and largely restricted the presidential power. It was met with a strong resistance of the Democratic Party of Albania (Sali Berisha was its leader) which was then in opposition. However, the draft, piloted by the then president Rexhep Meidani, was officially adopted by the Parliament on 21 October 1998 and a month later was put to a vote in the referendum. With the turnout of 50.57%, 93.51% voted for the adoption of the new constitution, expressing in this way not so much support for the socialists as the tiredness of the political conflict which was undermining the state. Together with the referendum, held a half year earlier (on 29 June 1997), in which the Albanians, having chosen the preferred form of a political system, opted for the republic (66.75%) against monarchy (33.25%), the constitutional referendum of 1998 became the foundation of the existing political and legal system in Albania (Kume 2014: 67-69).

Table 2. The national referendum of 29 June 1997

Date	Subject	Turnout in %	Results
29 June 1997	Referendum on the political system of Albania	70.06	Republic 66.75% Monarchy 33.25%

Source: Author's own study.

Table 3. The national referendum of 22 November 1998

Date	Subject	Turnout in %	Results
22 November 1998	Referendum on the draft constitution	50.57	For 93.51% Against 6.49%

Source: Author's own study.

Several times in Albania contemporary history its citizens tried to organize the referendum although in most cases they finished at the stage of declaration without even reaching the formal dimension. In this way ended the initiative of the representatives of the Military Academy in Tirana, who in 1989 formed the Movement for the Defence of the Interests of the People and the Homeland, trying to protect the cultural heritage of communism. One of their postulates was the organization of the referendum on the protection of the name and image of Enver Hoxha, who was removed from the public sphere during decommunization (Biberaj 1998: 92). Two most advanced attempts were undertaken in 2003 and 2013, respectively. Both gained the support of 50 thousand citizens and were officially submitted to the Central Election Commission (CEC). The first one concerned the abolition of some provisions of the 2002 law on social insurance of the citizens, the second one

was on the limitation in waste management adopted on the basis of the act of 2011. The request positively passed the verification of CEC but was rejected by the Constitutional Court as unconstitutional. The proposal of 2013 did not reach even this stage. The CEC questioned the authenticity of some of the signatures and the whole procedure was stopped from formal reasons (Kume 2014: 67-68).

None of the citizens' initiatives have so far ended with the organization of the local referendum. The most advanced project, which had a wide resonance on the Albanian political scene and in the Balkan media, was an attempt to organize a local referendum in Vlora in 2005. The assent of the Albanian government to have a gas-oil terminal built by the Italian firm La Petrolifiera on the Adriatic coast was to be the subject of the referendum. The opponents of the investment, foreseeing the negative results for the natural environment and tourism in Vlora, demanded that such an important decision be taken through direct democracy procedures and laid the request for the "Civic Alliance for the Protection of Vlora Bay" referendum with the signatures of 12% of the inhabitants of the area. However, the CEC questioned the authenticity of one fourth of the signatures and dismissed the whole request. The next attempt, undertaken two years later, was also unsuccessful despite the fact that it was supported by the Town Council of Vlora (Kume 2014: 69; Dibra 2015: 75).

The initiatives of 2014 ended with a similar result; they were the expression of discontent with the administrative reform conducted by the authorities in Tirana (the introduction of 61 new territorial self-government units instead of the existing 373). The only result of this highly politically controversial reform, was, *inter alia*, 130 requests for local referendums on the revision of borders of particular counties and districts Although these requests were positively verified by the CEC, the referendums were not held because the decision of the CEC was challenged in January 2015 by the Electoral College of the Court of Appeals of Tirana (Republic of Albania. Local elections... 2015: 4).

Conclusion

Verifying the earlier research hypothesis it should be observed that the direct democracy in Albania functions in a very limited dimension. The noted interest in recent years of Albania's society in the participation in the process of exercising power and, consequently, in the solutions of direct democracy, clearly reflects the growing political consciousness of its citizens and conviction about the necessity of taking responsibility for public matters. The accession process to the European Union can only accelerate this process.

However, these changes cannot be implemented without at least partial involvement of political elites. As Aurela Anastasi stresses, it is the authorities in Tirana that are to a large extent responsible for the ineffectiveness of the last referendums as they sanctioned the lack of support from official institutions for the citizens' initiatives. Evan such a mundane activity as collecting signatures under the requests is treated, from the legal point of view, as private initiatives of the Albanians, who are not supported in any way by the authority of the state (Anastasi 2014: 95). This is reflected in the activity of citizens and the international image of the state. However, it is reflected to the greatest extent in projects concerning direct democracy which, without a dose of sympathy from the administration and without the media hype that accompanies such national initiatives, have minimal chances of success.

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Wojciech Ziętara

Direct Democracy in Belarus

Determinants

The tradition of the statehood of Belarus is relatively short because it comprises two periods: the first one falls on the years 1918-1919, and the second period begun in 1991. While during the latter we are dealing with a sovereign state recognized by the international community, Belarus's attempt to achieve independence in 1918 was unsuccessful. The Belarusian People's Republic (BPR) was not a sovereign entity; it did not have fixed borders and a territory where the state administration rules and norms of national law would apply.

Grigory Ioffe (2003: 1244) said that for the nations their geopolitical position might be a more significant element determining their development than potential autonomy. In the case of Belarusians their civic awareness and political aspirations were influenced by the long lasting period of the existence of the Byelorussian Soviet Socialist Republic (BSSR). Walenty Baluk (2013: 114) pointed out this dependence saying that due to its short life the BPR was not important for the process of the self-determination of the nation in contrast to the Byelorussian Soviet Socialist Republic. This statement was developed by Ryszard Radzik (2003: 82-83), who said that Sovietness, understood in this case as the political-social dependence of Belarusians on the Soviet Union, played an important role in shaping the contemporary attitudes of Belarusians. Radzik perceived the process of Sovietization at two levels. Firstly, the Sovietness limited the freedom aspiration, individual activity, activity for the community and simply created non-conformist attitudes. Secondly, it contributed to emphasize the plebeian and peasant tradition, which counterbalanced the national, independence, autonomous, and intellectual movements. The result of this state of affairs is political culture. For the Belarusians the possession of their own state was not a fundamental value. The dominant conviction was that of locality, regionality, autonomy, and as a consequence of the subordination to and dependence on the Soviet and later Russian authorities. Radzik (2003: 86) argued that the attitudes of opposition to the state authority were, in fact, not present among the Belarusians.

Consequently, there is no doubt that the Sovietization of Belarusians, which lasted until 1991, greatly limited or even eliminated their freedom-oriented and democratic attitudes as well as independence aspirations. The

Belarusian society was largely pervaded with the Soviet influence (Radzik 2007: 173), and Belarusian identity is a reflection of the long-lasting communist indoctrination that made the majority of the citizens enslaved masses - passive, uncritical, and subordinated to the state authority whereas the essence of civil society is an active citizen (Bokajło/Dziubka 2001: 64).

Therefore, with regard to the above, and because of the lack of state and parliamentary traditions, the victory of the authoritarian option after 1994 was largely possible. Admittedly, the years 1991-1994 were the beginning of the formation of civil society but it did not survive the attempt to stand up to the experience and tradition of the BSSR. The Belarusians striving for the independent state had to simultaneously negate the Sovietness, which constituted an essential element of their identity at the same time.

The Sovietness at the institutional level also meant the occurrence of legal-political dualism. On the one hand, the tradition of the Soviet constitutionalism assumed the presence of the institutions of direct democracy in the form of national vote (referendum) and nation-wide discussion; on the other hand, however, practice did not confirm the possibility of use of these institutions. The contents of the Constitution of the Soviet Union, adopted by the Supreme Soviet (Council) of the Soviet Union on 7 October 1977, must therefore be examined only in a theoretical dimension (The Constitution of the Soviet Union 1977). Article 5 of the Soviet Union's Constitution stipulated that major matters of state would be submitted to nationwide discussion and put to a popular vote (referendum). Article 108 said that laws of the Soviet Union would be enacted in two ways: by the Supreme Soviet of the Soviet Union or by a nationwide vote (referendum) held by the decision of the Supreme Soviet of the Soviet Union. Pursuant to Article 76 of the Soviet Constitution, a Union Republic would have its own Constitution conforming to the Constitution of the Soviet Union with the specific features of a particular Republic being taken into account. On the strength of the abovementioned delegation, the Constitution of the BSSR was adopted in 1978. The Constitution determined that, like at the Soviet Union's level, the most important matters would be submitted to nationwide discussion or put to a popular vote (referendum) (Toczek 1993: 3). Meanwhile, in a practical dimension, the institution of a referendum in the Soviet Union did not constitute a permanent systemic element. Between 1946 and 1991 no referendum was held in the Soviet Union (Brady/Kaplan 1994: 178). Referendums were utilized only during the collapse of the Soviet Union (17 March 1991).

On 27 July 1990 the Supreme Soviet of the BSSR adopted the Declaration of the State Sovereignty of the BSSR. This act became part of the process of emancipation of particular Union Republics. Mikhail Gorbachev, the President of the Soviet Union and the author of the concept of political-system transformations turned directly to the citizens, as he wished to stop the

process of the collapse of the Soviet Union. In this way, Gorbachev wanted to gain the public legitimization for his policy of preserving the country's statehood, excluding the divided communist party apparatus at the same time. In December 1990 Gorbachev presented an initiative of holding a referendum on the future of the Soviet Union. The deputies on the IV Congress of People's Deputies of the Russian SFSR (Soviet Federal Socialist Republic) acceded to this suggestion. On 17 March 1991 the first, and at the same time the last national referendum was held in the Soviet Union. The citizens answered the question: *Do you consider necessary the preservation of the Union of Soviet Socialist Republics as a renewed federation of equal sovereign republics in which the rights and freedoms of an individual of any nationality will be fully guaranteed?*

It should be mentioned at the same time that the referendum was used by particular republics to implement their own independence aspirations. This group included six Union Republics: the Baltic Republics (Estonia, Latvia, and Lithuania), Armenia, Georgia, and Moldova. The Parliaments of these Republics adopted the resolutions rejecting the formal participation in the referendum, and the federal central referendum commission was not appointed. This was connected with the parallel actions of the foregoing republics, aimed at gaining independence. In five cases: Kazakhstan, Kyrgyzstan, Russia, Ukraine, and Uzbekistan the referendum question was either modified or the second one was added. Only in Azerbaijan, Belarus, Tajikistan, and Turkmenistan the referendum was held according to the formula proposed by Gorbachev. In Belarus, 82.7% of the voters voted for the preservation of the Soviet Union as a renewed federation, whereas in the whole Soviet Union the support for Gorbachev's policy was 76% (Hill/White 2014: 21).

The Supreme Soviet of the Soviet Union recognized the referendum as valid and its results as binding on the territory of the whole state (Podolak 2014: 227). Consequently, work was accelerated on a new Union Treaty and formation of the Union of Soviet Sovereign Republics (which would also include Belarus). At the same time, the process of decomposition of the Soviet Union continued, which, paradoxically, was strengthened by the coup d'état in August 1991. During the putsch some republics (Estonia, Latvia, and Ukraine) declared independence. This group also included the Byelorussian Soviet Socialist Republic. On 25 August 1991, the Supreme Soviet of the BSSR adopted the Declaration of State Sovereignty that would mean the beginning of the independent state of Belarus (Foligowski 1999: 33-35). However, obtaining independence in 1991 was not a result of the activities of Belarusians; it was an element of internal events.

At the same time we should stress the dynamic of the process of transition of the attitudes of Belarusians. In March they opted for staying in the new union of republics. Half a year later, the Supreme Soviet of the BSSR

declared independence of the Republic. The above decision was the decision of political elites, who took advantage of political changes and, at the same time, rejected the decisions of the voters. In this way, the significance of the results of the vote in the referendum was challenged for the first time. For the Belarusians, the participation in the referendum was a quite new political experience which, as it soon turned out, was not of any legal importance. Moreover, the essence of the referendum was quickly discredited during the first years of Belarus's independence. As early as the beginning of 1992 the political opposition strove to use the institution of a referendum to remove the communists from power. Although they collected the required number of signatures under the draft of a referendum, the Parliament decided that the procedural requirements were not fulfilled. It happened despite the previous decision of the Central Election Commission of the Republic of Belarus which admittedly confirmed that there were some formal mistakes, but at the same time acknowledged that the regulations of the referendum law were too restrictive. Finally, the deputies rejected the motion for the referendum and invoked the necessity of finishing the parliamentary work on the new constitution (Czachor 2014b: 35). Such actions were illegal because the Supreme Soviet was not entitled to the formal and factual evaluation of the motion. After the formal evaluation by the Central Election Commission, the Supreme Soviet should have determined the date of the referendum (Czwołek 2013: 141). Therefore, the abovementioned situation deprecated the rank of the institution of a referendum because it became part of the current political conflict and completely belittled the large civic engagement.

Formal-Legal Dimension

The Constitution of the Republic of Belarus (1994) of 15 March 1994 broke with the primacy of the Supreme Soviet in the system of state organs and introduced the principle of the tripartite division of powers. The legislative power was exercised by a one-chamber parliament: the Supreme Council of the Republic of Belarus. The Council consisted of 260 deputies elected for a five-year term. The executive power was vested in the President, who was at the same time the Head of the State and the chief of the Cabinet of Ministers. The independent courts exercised the judicial power.

On 23 June 1994 the first free elections were held to the post of the President of the Republic of Belarus. The victory of Alexander Lukashenko in 1994 started a new stage of the development of Belarusian statehood and ended a short period of the binding force of the Constitution in the adopted form.

The Constitution was amended through the referendums of 14 May 1995 and 24 November 1996. As a result of the amendments, the solutions suggested by President A. Lukashenko were adopted: a) the establishment of the bicameral parliament, b) granting the President the right to dissolve the Parliament, c) granting the President the right to appoint six members (half the number) of the Central Commission of the Republic of Belarus on Elections and National Referenda, d) call national (also referred to as republican) referendums (Winnicki 2013: 69). These changes meant breaking with the principle of the balance of powers for the superior position of the office of the President in the constitutional system of Belarus.

Two elements in the amended Constitution were included in Chapter III: in Part I - the electoral system, and in Part II- the referendum (plebiscite) (Articles 73-78). It should be stressed that the legislator still used two terms present in the Constitution of BSSR. On the one hand, the more official term *plebiscite* was referred to, while on the other the legislator used interchangeably the common concept of a *referendum* (Szymczak 1996: 14).

The Constitution provides that in order to express the opinion on the most important state or local issues, republican or local referendums may be held. Republican (national) referendums will be called on the motion of the President of the Republic of Belarus, as well as on the motion of the Council of the Republic or the House of Representatives (both chambers of the Parliament), the motion being adopted at their separate sittings by a majority of the full number of deputies of each house, or on the initiative of no fewer than 450,000 citizens eligible to vote, including no fewer than 30,000 citizens from each of the regions (oblasts) and the city of Minsk. The decisions taken by a republican referendum will be signed by the President of the Republic of Belarus.

Local referendums will be called by the relevant local representative bodies on their initiative or on the recommendation of no less than 10% of the citizens who are eligible to vote and resident in the area concerned.

Referendums will be conducted by means of universal, free, equal and secret ballot (Winnicki 2013: 79). The decisions adopted by a referendum may be reversed or amended only by means of another referendum, unless otherwise specified by the referendum. The decisions of the referendum are the basis for the House of Representative or another body to pass legal acts depending on the problem scope of a referendum. When there is no delegation, no organ is entitled to interfere with the result of the referendum and its decisions are binding (a constituent referendum) (Zaleśny 2011: 61).

The procedure for dismissal of a deputy of the House of Representatives, the Council of the Republic, and local councils of deputies is an original tool of direct democracy. The mode of proceeding is similar to a referendum but in this case, the scope of a problem is defined very narrowly (dismissal of a deputy). Citizens may submit a motion for dismissal of a deputy after having

collected the legally required number of signatures; then a dismissal vote is organized which may be of binding character (constituent) if the legally required formal requirements are met.

The popular initiative is the third element of direct democracy in the Constitution of Belarus. At least 50,000 citizens may use the right to popular initiative. It is a civic factor in the process of making law, which is present side by side with the right to a legislative initiative by the President, parliamentary deputies, and the government.

The provisions on electoral law have been regulated in the Electoral Code of the Republic of Belarus of 11 February 2000 (The Electoral Code of the Republic of Belarus 2000). Articles 3 and 7 stipulate that the referendum will be held by way of universal, free, equal and secret ballot. The right to take part in the referendum will be given to citizens of the Republic of Belarus who have reached the age of 18 (Article 4).

The Central Commission of the Republic of Belarus on Elections and Holding of Republican Referendums (hereinafter the Central Commission) is responsible for correct preparation and holding of a republican referendum, whereas particular local election commissions are held responsible for local referendums. Article 22 of the Electoral Code confirms the right of the President to decide to organize a republican referendum and to appoint half of the members of the Central Commission (including its Head). The Central Commission consists of 12 members - citizens of the Republic of Belarus, who will, as a rule, have a degree in law from an institution of higher learning and possess prior experience in the organization and conduct of referendums. Six members of the Central Commission will be appointed by the President of the Republic of Belarus and six members will be elected by the Council of the Republic. The term of powers of the Central Commission will be five years.

Citizens of the Republic of Belarus have the right to debate prior to the planned referendum, while foreigners and stateless persons have been deprived of this right (Article 45). The state-owned mass media are obliged to make available airtime for the presentation of positions in the referendum debate. Within the last 5 days before the referendum, opinion poll results connected with the referendum or prognosis of their results are not allowed (Article 46), and on the referendum day, referendum campaigning is entirely prohibited. Polling stations are open from 8 a.m. until 8 p.m. In the case of a referendum, the voter votes *for* and *against*; in the case of a dismissal of an official the voter marks a *for a dismissal* or *against a dismissal* box (Article 52 and Article 118). The Code admitted of an earlier vote in case a person cannot vote personally on the day of a referendum.

Section seven of the Electoral Code is devoted to a referendum. Article 111 (in reference to the Constitution of the Republic of Belarus) stipulates that the referendum is a method of adoption by the citizens of the Republic of Belarus of decisions on the questions of utmost importance pertaining to the

state and public life. Referendums may be of national (republican) and local character. The following questions will not be submitted to the republican referendum: any questions which may lead to the violation of the territorial integrity of the Republic of Belarus; any questions pertaining to the election and dismissal of the President of the Republic of Belarus and the appointment (election or dismissal) of officials whose appointment (election or dismissal) is within the competence of the President of the Republic of Belarus and the Chambers of the National Assembly (Parliament) of the Republic of Belarus; any questions on adopting and amending the budget and introducing, changing and cancelling taxes; and any questions on amnesty or pardon. The questions that will not be submitted to the local referendum include those specified this Article, the questions of importance for the Republic of Belarus as a whole, the questions that are regulated by the legislation of the Republic of Belarus and the questions, relating to approval and dismissal of officials, which are within the competence of a respective local executive and administrative body and the head of such body (Article 112).

Section VIII, Articles 129-142, regulates the procedure of recalling a deputy of the Chamber (House) of Representatives; section IX, Articles 143-149, regulates the procedure for recalling the Member of the Council of the Republic and Articles 151-152 regulate the recall of local deputies. A deputy of the Chamber of Representatives or a deputy of a local Council of Deputies of the Republic of Belarus who lost the trust of the voters, which has manifested itself in failure to execute the deputy's duties as stipulated by law, in breaching the Constitution of the Republic of Belarus and of the laws of the Republic of Belarus and of acts of the President of the Republic of Belarus, in committing actions discrediting the deputy, may be recalled by the voters according to the procedure established by the present Code (Article 129). The right to initiate the question of recalling a deputy will belong to the voters of the electoral district from which the deputy was elected. The procedure for recalling cannot be initiated in a period shorter than a year before the end of the term of office of the body concerned (Article 130). The ballot paper for voting on recalling a deputy has two versions of the answer - *for recalling* and *against recalling*. The ballot papers for voting on recalling of a deputy will be printed in the Belarusian and Russian languages (Article 139). Voting will be considered valid if more than a half of the voters registered in the lists of citizens having the right to participate in the voting to recall a Deputy, have taken part in it. The deputy will be considered recalled if more than a half of the voters of the district who took part in the voting have voted for recalling him/her. The recall will be considered declined if less than a half of the electors who took part in the voting have voted for recalling, as well as if less than a half of the voters registered in the lists of citizens who have right to take part in voting for recalling a deputy have participated in the voting (Article 141). The repeated initiation of the question of recalling a

deputy on the same grounds within one year after the date of voting on recalling the deputy will not be allowed (Article 142). In the case of deputies to the Council of the Republic or local deputies, the analogous procedures for recalling are applied.

Practical Dimension

After 1991 three national referendums were held in Belarus. The referendums were held on 14 May 1995, 24 November 1996, and 17 October 2004.

The national referendum of 14 May 1995 became part of the ongoing political conflict between President A. Lukashenko and the Supreme Council and the Constitutional Court. Since the end of 1994 the President took measures to strengthen his own constituent position in the system of state organs. Simultaneously, the Supreme Council strove to limit the President's powers. On 1 February 1995 the Supreme Council passed a law which prevented the President from dissolving the Parliament; at the same time the act provided that in some circumstances the Parliament would be able to dismiss the President from his post (an infringement of the Constitution by the President, commission of a crime or health conditions that do not permit him to execute his duties). In answer to this, on 20 March 1995 the President asked the deputies to make the decision on the self-dissolution of the Parliament and announced a national referendum on the amendment of the Constitution and state's policy. The Supreme Council rejected the President's motion, reminding him that the Constitution of the Republic of Belarus prohibited voting on constitutional issues in a referendum. In order to make the Parliament decide to hold the referendum, the financing of the Supreme Council was curtailed and on 12 April 1995 the militia forcibly removed from the office of the Supreme Court the opposition deputies who had gone on a hunger strike to protest against the President's actions that violated the Constitution. The use of physical violence broke the spirit of the rest of the deputies (Karbalewicz 2013: 49) and on 13 April 1995 the Supreme Council ultimately decided to call a national referendum (Foligowski 1999: 162-168).

The referendum was held on 14 May 1995 together with the first round of elections to the Supreme Council. The Belarusians answered four questions suggested by the President:

(1) Do you agree with assigning the Russian language the status equal to that of the Belarusian language?
(2) Do you support the suggestion about the introduction of the new State flag and the State Coat of Arms of the Republic of Belarus?
(3) Do you support the actions of the President aimed at economic integration with Russia?

(4) Do you agree with the necessity of the introduction of changes into the acting Constitution of the Republic of Belarus, which provide for early termination of the plenary powers of the Supreme Soviet by President of the Republic of Belarus in the case of systematic or gross violations of the Constitution?

The questions 1-3 were of obligatory character and the result was binding, whereas question 4 was consultative (Вопросы 1995).

Table 1. The national referendum of 14 May 1995

Date	Subject	Turnout in %	Results
14 May 1995	Referendum on assigning the Russian language the status equal to that of the Belarusian language	64.78	For 83.28% Against 12.72%
14 May 1995	Referendum on the introduction of the new State flag and the State Coat of Arms of the Republic of Belarus	64.78	For 75.11% Against 20.50%
14 May 1995	Referendum on economic integration with Russia	64.78	For 83.34% Against 12.48%
14 May 1995	Referendum on changes into the Constitution of the Republic of Belarus	64.78	For 77.73% Against 17.78%

Source: Author's own calculation on the basis: Протокол Центальной Комиссии Республики Беларусь по выборам и проведению республиканских референдумов http://www.rec.gov.by/sites/default/files/pdf/Archive-Referenda-1995-Post.pdf (15 June 2016).

The Belarusians answered: "For" to all questions. They decided to assign the Russian language the status equal to that of the Belarusian language (83.28% of the voters), to change the state flag from white-red-white to red-green and to change of the State Coat of Arms from the traditional Pahonia to the national emblem that referred to the tradition of BSSR - although with some changes (75.11% of voters) , to support economic integration of Belarus with Russia (83.34% of the voters), to introduce changes to the acting Constitution and to terminate the Parliament before its term expired in case of violations of the Constitution (77.73% of the voters) (see Table 1). At the same time it may be pointed out that most votes "For" were cast in Mogilev and Gomel Regions (Oblasts), and the least support was recorded in Grodno and Minsk Regions, and in the City of Minsk (Аб выниках 1995).

The results of the referendum should be interpreted as the approval by the Belarusians for the return to the policy of dependence on Russia and further social Russification, as well as the approval for further actions of the President towards strengthening his position and widening his rights at the

Parliament's expense (Podolak 2014: 317). It should be stressed that the way the referendum was organized and the wording of the referendum questions were questioned by the opposition. However, the actions of the opposition were rather symbolic and did not stop the shift of the state towards a presidential republic and dictatorship.

Like with the previous referendum, the referendum of 24 November 1996 was held in breach of both the Constitution and laws and in the atmosphere of the growing political conflict between the President and the Parliament. At the same time, the institution of a referendum became for the President a forum of direct dialogue with the society (without the participation of the Parliament). Through a referendum, the President received a political legitimization for his actions meant to introduce the superiority of presidential power even in breach of the existing legal regulations.

On 7 August 1996 the Supreme Soviet received a motion from the President to call a national referendum on 7 November 1996. The President suggested four referendum questions concerning the changing of the date of the country's independence day, amending of the Constitution (transforming of the Supreme Council into the bicameral National Assembly which would consist of the House of Representatives and the Council of the Republic), granting the President the right to terminate the Parliament in some situations before its term expired, granting the President the right to appoint half of the members of the Central Election Commission and half of the Constitutional Court judges, granting the President the right to call a national referendum), free sale of land, and abolition of death penalty. The Supreme Council widened the list of the referendum questions by additional ones and at the same time changed the date of the referendum to 24 November 1996.

On 4 November 1996 the Constitutional Court examined the conformity of the referendum with the Constitution and stated that three of the President's questions were of binding character, whereas the question on the adoption of a new constitution would be consultative. In answer to this verdict, the President issued a decree on 5 November in which he said that the question on the amending of the constitution was a binding one and by a decree of 7 November he recognized the verdict of the Constitutional Court as invalid.

The referendum started as early as on 9 November. But only on 12 November the President's draft constitution was printed, and the Parliamentary draft was published as late as 21 November (Foligowski 1999: 215-224). The citizens who voted in the referendum before these dates could not get acquainted with the contents of the documents they voted on. The Central Election Commission assessed this situation as unacceptable. In response, President A. Lukashenko dismissed the then chairman of the Central Commission. Some of the deputies submitted a motion to dismiss the President from office. On 22 November Russia interceded to resolve the tense

political standoff and negotiated a compromise which was not accepted by the Supreme Council (Foligowski 1999: 224-226). Nevertheless, the foregoing activities did not solve the political crisis. In the referendum, which was held on 25 November 1996, the Belarusians answered four questions proposed by the President of Belarus (1-4) and three submitted by the deputies of the Supreme Council (5-7) (Вопросы республиканского 1996):

Should Independence Day (Republic Day) be moved to 3 July, the day on which Belarus was liberated from the German invaders during the Great Patriotic War?

Do you approve of constitutional amendments to the Constitution of the Republic of Belarus of 1994 (new version of the Constitution of the Republic of Belarus) proposed by President Lukashenko?

Are you in favor of the free, unrestricted sale and purchase of land?

Are you in favor of the abolition of the death penalty in the Republic of Belarus?

Do you approve of the constitutional amendments to the Constitution of the Republic of Belarus of 1994 proposed by the Communists and Agrarians?

Do you support direct elections of the leaders of local executive bodies by the population of the respective administrative-territorial entity?

Do you agree that financing of all branches of power should be public and only come from the state budget?

Table 2. The national referendum of 24 November 1996

Date	Subject	Turnout in %	Results
24 November 1996	Referendum on Independence Day (Republic Day) to 3 July	84.14	For 88.18% Against 10.46%
24 November 1996	Referendum on changes into the Constitution of the Republic of Belarus (Presidential proposal)	84.14	For 83.73% Against 11.16%
24 November 1996	Referendum on unrestricted sale and purchase of land	84.14	For 15.35% Against 82.88%
24 November 1996	Referendum on the abolition of the death penalty	84.14	For 17.93% Against 80.44%
24 November 1996	Referendum on changes into the Constitution of the Republic of Belarus (Communists and Agrarians proposal)	84.14	For 9.42% Against 84.62%
24 November 1996	Referendum on direct elections of the leaders of local executive bodies	84.14	For 28.14% Against 69.92%
24 November 1996	Referendum on financing of all branches of power from the state budget	84.14	For 32.18% Against 65.85%

Source: Author's own calculations on the basis of Сообщение Центальной Комиссии Республики Беларусь по выборам и проведению республиканских референдумов.

Answering the President's questions, the Belarusians opted for changing the date of the Independence Day (88.18% of the voters) and for the project of the constitution presented by A. Lukashenko (83.73%), and rejected both the possibility of unrestricted buying and selling of land (82.88%) and the abolition of the death penalty (80.44%). All questions suggested by the

Supreme Council were rejected by the Belarusians. Only 9.42% of the voters supported the draft constitution presented by the Communists and the Agrarians, while 28.14% of Belarusians voted for the direct elections of the leaders of local executive bodies, and only 32.18% of the voters voted for the financing of branches of power by the state budget (see Table 2). In the case of *Yes* answers the results in particular regions (oblasts) ran as follows: in Gomel and Mogilev Regions, most of the citizens answered "Yes" to questions 1 and 2 whereas the smallest number of voters answered "Yes" to questions 3-7. In Minsk the lowest support was recorded for questions 1 and 2 (it was the lowest support in all regions) while the support for questions 3-7 was the highest (Аб выніках галасавання 1996).

It should be stressed that a very high turnout, amounting to 84.14% of the registered voters, was reported, which means a 16.36 percentage point increase as compared with the referendum of 1995. At the same time, such a big increase in the number of participants might have evidenced the mobilization of the ruling camp and the simultaneous legitimization of the rule of A. Lukashenko; however, the abovementioned increase was deprecated by accusations formulated by the opposition politicians and international observers, directed at the organizers of the referendum. The European states did not acknowledge the results of the referendum because of a gross violation of election procedure and breach of democratic principles (Olejarz 2009: 100). Nevertheless, this did not prevent the President from signing the text of the new Constitution on 27 November 1996. In consequence of this act, the powers of the President were expanded because *the amendment of the Constitution gave the Head of the State a number of important constituent powers and allowed him to issue decrees with the force of law, which provided him a dominant position in the system of the chief state authorities* (Baluk 2009: 29).

On 7 September 2004 President A. Lukashenko signed a decree on the organization of national referendum (Указ Президента 2004). The President decided that the Belarusians would answer one question:

Do you permit the first President of the Republic of Belarus A. G. Lukashenko to participate as a candidate for Presidency of the Republic of Belarus during the presidential elections and do you accept Part I, Article 81 of the Constitution of the Republic of Belarus in the following wording: President is elected for the term of 5 years directly by the people of the Republic of Belarus by means of the universal, free, equal and direct suffrage under the voting by secret ballot?

Table 3. The national referendum of 17 October 2004

Date	Subject	Turnout in %	Results
17 October 2004	Referendum on changes into the Constitution of the Republic of Belarus	90.28	For 87.97% Against 10.97%

Source: Сообщение Центальной Комиссии Республики Беларусь по выборам и проведению республиканских референдумов о резултатах республиканского референдума 17 октября 2004 года, http://www.rec.gov.by/sites/default/files/pdf/Archive-Referenda-2004-Itogi-pdf (16 June 2016) and http://www.c2d.ch/detailed_display.php?/name=rotes&table=votes&id=39265&continent=Europe&countrygeo=116&stategeo=&citygeo=&level=1&recent=1 (16 June 2016).

Significant formal objections to the referendum question were raised. The question was in fact a compound sentence consisting of two questions (Opinion 2004). The turnout was 90.28%. It meant an increase by 6.14 percentage points as compared with the referendum of 1996 and by 25.5 percentage points as compared with the 1995 referendum. 87.97% of the voters voted "for" but the surveys conducted by the Gallup Organization showed that only 48.1% of the voters voted for the amendment of the Constitution (Kużelewska/Bartnicki 2010: 104).

The referendum was an important element in the process of strengthening the power of the President. The accusations of the organizers of the referendum that stressed the infringements and breach of democratic standards failed to mobilize the Belarusians against the President. As Rafał Sadowski (2007: 21) summed up, *the democratic opposition and the structures of civil society are on the margin of social life and are not able to influence the situation in the country. The Belarusian society remains rather passive and its majority accepts the present political-economic situation*. It follows from the foregoing opinion that at this stage of the functioning of their statehood the Belarusians are not interested in active political participation. A high turnout in the national referendum may evidence the submission of the citizens and their subordination to the authorities who encourage participation but only in the way and following the principles that they (authorities) themselves find desirable. One should not forget that a referendum turnout may, in part, be the result of procedural manipulation and election frauds. Consequently, the Belarusians do not engage in political activity and do not make use of the instruments of direct democracy existing in the legal system. Except for the participation in the national referendum, which was a top-down decision, the citizens' initiative was not used, nor was a deputy dismissed from his seat through a recall vote.

A local referendum may be an instrument for expressing social discontent; consequently, all would-be protests and citizens' initiatives are blocked by the state authorities (Łahwiniec/Papko 2011: 52). Arkadiusz

Czwołek (2013: 383-384) said that *many mechanisms that restrict their activities are used against the opposition. Suffice it to mention the law on mass events which deprived independent circles of the right to form associations and to express their own views. Over the recent years important changes in the legislation have taken place, their main purpose being to extend control over all citizens' initiatives*. The refusal by the authorities of Grodno to register an initiative group of local referendum on the revitalization of the Old Town in Grodno in 2007 may serve as an example, which supports the foregoing opinion. The activists and, at the same time, the opponents of the urban changes submitted registration documents, which were rejected for formal reasons (www.wiadomosci24.pl). The above practice confirms that the authorities try to eliminate all cases of civic self-organization at a local level as dangerous for the state.

Conclusion

The institutions of direct democracy constitute an important element in the political system of the Republic of Belarus. The key institution of direct democracy is a referendum, which has become part of the Belarusian legal system. National-level referendums have so far been held three times: in 1995, 1996, and 2004. The Belarusians answered to four, seven, and one question respectively. The characteristic feature of national referendums is that they are part of the current political conflict and they have legitimized the policy of the President Alexander Lukashenko (Czachor 2014a: 67). Serious accusations of the infringement of legal rules and democratic procedures are levied towards the organizers of the referendums both on the part of the political opposition and politicians from European states. However, it does not change the policy of the regime which utilizes a referendum in a very artful way in order to give an impression that the principles of the rule of law are applied (Altman 2014: 108). Magdalena Musiał-Karg (2008: 338) said that in the case of Belarus the democratic institution of a referendum was appropriated for the authoritarian state. Although the President of Belarus tries to maintain an appearance of political pluralism and democracy, he does so instrumentally. On the one hand, he employs the institutions of direct democracy but on the other hand a referendum is used by the President to achieve political aims. In this way a referendum has a façade character and serves to strengthen the presidential power. Owing to the institution of a referendum the position of the President of Belarus has been placed high in the hierarchy of the state authorities (Kużelewska 2014: 436), and we are dealing with a one-man rule system in Belarus (Wojnicki 2014: 457).

The long lasting process of Sovietization and Russification has led to the dependence of Belarus on Russia. This manifests itself in the Russian military, economic, (Czachor 2011: 293) and political presence in the form of support of Alexander Lukashenko's policy. For that reason, the accession of Central-Eastern European states to the European Union in 2004, 2007, and 2013 was not a significant turning point for the development of the institutions of direct democracy. Belarus does not aspire to the European Union membership; consequently, the European Union does not have enough instruments to change the current policy of the Belarusian authorities, all the more that the priority of the Union's policy is the existence of independent Belarus even at the expense of an agreement and cooperation with A. Lukashenko's regime.

Summing up the discussion on direct democracy in Belarus, it should be said that: firstly, direct democracy is present in Belarus in a formal-legal and practical dimension, although an undemocratic and façade way in the latter case in; secondly, the use of the instruments of direct democracy in the process of exercising power is not the determinant of political consciousness of the Belarusian citizens but, first of all, it is a manifestation of the actions of Alexander Lukashenko's regime which, by using these instruments, legitimizes the existing political system; thirdly, on account of the fact that Belarus is neither a member of the European Union nor aspires to be one, the EU accession process of the countries in the region did not influence the development of direct democracy in that state.

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Andrzej Piasecki

Direct Democracy in Bosnia and Herzegovina

Determinants

Bosnia and Herzegovina is one of the most complicated states in Europe as far as its political system and politics are concerned which experts sometimes describe as a "European protectorate" (Gniazdowski 2008). That is why the discussion of direct democracy in this country should be preceded by an outline of a number of its historical, international, and ethnic determinants. The name of the country itself needs a short explanation (Imamović 1997: 24) because it always appears in a two-word form and includes the territories of two historical-geographical regions: Bosnia (about 80% of the area) and Herzegovina (the southern part of the state).

It is a small country (3.8 million citizens and 51 thousand km^2) and its territorial and state history as an independent entity is full of instabilities and ambiguous assessments. The weakness of the representative bodies and diversity of the authorities exercising the role of the head of the state (the so-called collective presidency), the supervision by an omnipotent High Representative of the EU for Bosnia and Herzegovina and a very complicated administrative division (containing elements of federalism and unitarianism) constitute a complicated character of a contemporary Bosnia and Herzegovina. All these determine the possibility of functioning of direct democracy. The history of Bosnia and Herzegovina in the 20^{th} century is connected with the history of Yugoslavia. In 1941-1945 the bloody war with Germany and the fights of Yugoslavian nations between themselves caused the greatest losses in the territory of Bosnia and Herzegovina, where about 8% of Muslims were killed (Muś 2013: 54). After the war, the scope of changes was defined by the dictatorship of Josip Broz Tito and the communist ideology. The Bosnians played the role of a stabilizer between the Serbs and the Croats in the created federal system. This was clearly seen in the 1970s during the census and in the new constitution of the state when Bosnian Muslims were regarded as a separate nation (Malcolm 1996: 202). Bosnia and Herzegovina took advantage of the process of decentralization and autonomy which gave it greater possibilities of empowerment of smaller territorial and ethnic communities. In this way the basis for strengthening the elements of direct democracy was created.

The death of Josip Broz Tito (1980), the progressing development of nationalism in subsequent years, and economic crisis was conducive to

separatist tendencies. Slovenia and Croatia had dynamic economies and demanded a greater part of earned income resources for themselves. However, in Serbia there was a dominant feeling of injustice because of the losses during the German occupation and costs of its commitment in building Yugoslavia's post-war unity. On the other hand, the backwardness of Bosnia and Herzegovina (and also of Macedonia and Montenegro) was reflected in the low gross national income, which in the 1980s constituted about 70% of the whole Federation's average (Singelton 1993: 270).

During the process of disintegration of Yugoslavia, of crucial importance were the referendums held in particular republics in 1990-1992. In December 1990 in Slovenia 89% of voters opted for independence; in May 1991 in Croatia, 92% of voters made the same decision; in September 1991 in Macedonia 95% were for the secession. Thus, ipso facto, the first stage of Yugoslavian conflict started, in which the local communities of Slovenia, but first of all Croatia, were the victims.

The most tragic fights took place on the territory of Bosnia and Herzegovina and they developed with sovereignty being near. At that time, out of 4,377,033 inhabitants 44% were Muslims (Bosnians), 31% Serbs, 17% Croats, and 6% declared "Yugoslavian" nationality. The vast majority of towns and small towns had a mixed ethnic character. The announcement of the independence act was preceded by the formation of a new political system on the territory of Bosnia and Herzegovina. In May 1990 the Party of Democratic Action (SDA) was formed with Alija Izetbgovič as its leader (since December the President of the State). It was a nationalist party, like two other greatest parties of the remaining national groups: the Serb Democratic Party (SDS) and Croatian Democratic Union (HDZ). In November 1991 the Parliament of Bosnia and Herzegovina decided to hold a secession referendum, which the Serbs opposed by leaving the parliament. However, such a referendum was also recommended by Brussels as a condition for a change of the European Economic Community's stance towards the recognition of the independence of Bosnia and Herzegovina. The voting took place between 29 February and 1 March 1992. The total turnout was 63%, of which 99% (the vast majority were Muslims and Croats) voted for independence which was formally proclaimed o 3 March. The referendum question was*: Are you in favour of a sovereign and independent Bosnia-Herzegovina, a state of equal citizens and nations of Muslims, Serbs, Croats and others who live in it?*

Before the results of the referendum were announced (Kasapović 2005: 106), the Serbs from Bosnia, who had boycotted it, proclaimed the Serb Republic with its capitol in Banja Luka and at the end of 1991 they held a referendum on this territory. The vast majority of voters (the referendum was not recognized by the authorities of Bosnia and Herzegovina) opted for its

sovereignty and separation from the Republic in case it would proclaim its secession from Yugoslavia.

As can be seen, the collapse of Yugoslavia was accompanied by the procedures connected with direct democracy. It was a consequence of both the tradition of Yugoslavian socialism (referring to the local self-government and decentralization) and nationalist and populist slogans proclaimed by the politicians of the Republic, who strove for secession. Referendums were of fundamental and normative importance but the parallel process of the formation of paramilitary troops played its role in the direct involvement of wide masses of citizens in public matters. This did not have much in common with the Western understanding of democracy but it is difficult to deny the authenticity and mass scale of these phenomena.

The war in Yugoslavia started in mid-1991 with a ten-day attack of the Yugoslavian People's Army (actually the Serbian army) on Slovenia. Soon the Serbo-Croatian fights started and they lasted until the end of 1991at the early stage. During this time, the first armed clashes took place on the territory of Bosnia and Herzegovina but the announcement of independence started a real war (Nowak 2015).

Since the beginning of the fights, the Serbs controlled over 70% of the territory of the country, since April 1992 (until February 1996) they besieged Sarajevo.

The next stage of the war started in mid-1993, after the referendum held in Serbian Krajina (which belonged to Croatia). A different type of the referendum was ordered by the Parliament of the Serb Republic on 15-16 May 1993. The turnout was 92%, out of which 96% voted against the Vance-Owen peace plan, which assumed the division of Bosnia and Herzegovina into ten autonomous provinces; the plan was accepted by the Croats (Rycerska 2003: 101).

It meant the resumption of fights which assumed a total character. The Muslims were mainly the victims of ethnic cleansings, rapes, and other atrocities. In Sarajevo itself, about 10 thousand people were killed, including 1,600 children. Over 200,000 were killed in the whole conflict and 2 million were expelled. The Serbs from Bosnia were the attacking side, later also the Croats who lived there. Both nationalities were supported by their patrons (Serbia and Croatia). The Muslims were helped on a far smaller scale by the volunteers from the Middle East, Turkey and Arab states.

In the next referendum held in August 1994, the inhabitants of the Serb Republic were against (97% of voters) the peace plans of the international contact group, which looked for agreement and the suspension of military actions. Finally, the Dayton Agreement finished the war (the USA, November 1995) i.e. the so-called *General Framework Agreement for Peace in Bosnia and Herzegovina*, which was officially signed in Paris on 14 December 1995 by the leaders of Bosnia and Herzegovina, Croatia, and Serbia and by the

representatives of 52 states. The parts of the conflict committed themselves to stop the military actions and to withdraw their troops behind the determined zone under the control of international military troops (Walkiewicz 2000: 254-262). The Presidents of the USA and France, and the heads of the governments of Germany, Russia, Great Britain and Spain (which presided over the EU) were the guarantors of the agreement.

The years 1992-1995 were the years not only of a bloody war but it was a period of many events and phenomena that had an influence on the shape of the political system of contemporary Bosnia and Herzegovina as well. An important role was played by the referendums organized by both the Serbs and the Bosnians. Highly significant was also the direct involvement of ordinary citizens during armed struggle, the integration of some communities and disintegration of others. But, first of all, the major factor was the strengthening of deep national divisions and those that arose on based on wrongs caused by the war.

Today, in the political-administrative system of the state, there are many ambiguities in the normative questions; and in the case of the political scene and social issues the personal ambitions of elites cause additional problems. This is also reflected in the party system. It is extremely polarized (Sartori 2005:109) and at the same time weakly institutionalized, which produces a situation that the political leaders can hold their posts for a dozen years or so.

Here are the main political organizations in Bosnia and Herzegovina: the Party for Bosnia and Herzegovina (ZABIH) – the oldest civic, multiethnic group (since 1996) moderate, although not prone to compromise with other parties, appeals to the equality of all nations but it is treated as a nationalist party because it relies on the Muslim electorate (WWW.zabih.ba); the Croatian Democratic Union of Bosnia and Herzegovina (HDZ) – a national party, social and Christian Democratic, which supports the formation of the third, Croatian entity in the state (WWW.hdzbih.org.hr); the Party of Democratic Action (SDA) – the strongest party of Bosnian Muslims, it exercised power (except 2000-2002) in both the Federation of Bosnia and Herzegovina and the whole state (WWW.sda.ba); the Social Democratic Party of Bosnia and Herzegovina (SDP) – a post-communist party that opts for the reconciliation of the nations residing in the state (WWW.sdp.ba); the Alliance of Independent Social Democrats (SNSD) – operates in the Serb Republic, the strongest supporter of keeping special relations with Serbia, its national distinctiveness makes it treat social issues as secondary; the Party of Democratic Progress (PDP RS) – a moderate, central and liberal party of the Serbs in Bosnia, more prone to a coalition than SNSD but for personal reasons it is very often regarded as a national party (Stanisławski 2009).

The political system reflects the meanders of Bosnian democracy both in the normative, institutional, empiric, and personnel sense. All general elections are held on the first Sunday of October. The term of the office of

elected bodies lasts four years. The lower chambers of the Parliament of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina (FB and H) and the Serb Republic (RS) are elected in general elections. Municipality Councils, Cantonal Assemblies in the Federation of Bosnia and Herzegovina, and Municipality Councils in the Serb Republic and three representatives to the Presidium are elected in direct elections. The Presidium is elected in the territory of the FB and H (two representatives) and RS (one representative). Then the members of the Presidium choose the Head for two years and every 8 months there is a rotation.

The representative bodies are weak: this is reflected in, *inter alia*, a small number of parliamentary sessions (Muś 2011: 370). The possibility of blocking the decision of the Parliament by a majority of 2/3 of deputies who represent one of the entities effectively hinders the proceedings. The Presidium takes decisions based on the principle of a consensus. The state functions in the conditions of constant political struggle. During the 1990s even about 90% of eligible voters took part in the elections, later the frequency was smaller. National parties usually won. The so-called civil groups from the Federation of Bosnia and Herzegovina gained power only once, at the central level and in the Federation of Bosnia and Herzegovina (2000). The lack of an ideological partner in the RS was their weakness. The policy statements of the majority of parties express the need to strive for the integration with NATO and the EU while socio-economic issues are not so often mentioned.

National and religious issues have dominated the contemporary policy of the parties in Bosnia and Herzegovina. Public entities, characteristic of democratic systems (NGOs, independent local self-governments, free media) are of little importance. As far as the economy is concerned there is no strong, private ownership which would be the basis of the free market. The state belongs to the poorest in Europe; the foreign debt is growing, the deficit on the current account is high, and a 40% unemployment rate is conducive to populist moods (Bujwid-Kurek 2011: 4). There is no trust in political parties (they are not trusted by 80% of voters) and in the institutions of the state (60%). International expert institutions rated the government of Bosnia and Herzegovina as 3.29 (on a ten point scale) and classified it as *a hybrid regime* as far as the quality of government is concerned (Economist 2007).

But one can see some chances for direct democracy in the weakness of the representative bodies and in the moral decay of elites. This statement is even more justified by the fact that the democratic system is a little more firmly established (Nita 2014:303), it has an international support, and in the domestic criticism addressed to the institutions and people connected with the politics there are not reservations about the essence of democracy. The politically minded society, frequent elections, the small area of the state is

conducive to the implementation of direct democracy although it is not conducted according to the model that exists in democratic Europe.

The main political problems are caused by the extended parliamentary system, the boycotting of the sittings of one of the chambers, blocking of the staffing of offices, the mechanism of nationality parity, making decisions that are beyond the powers of the bodies Another barrier is the ignoring of the institutions (the Parliaments) created to work out compromise during informal meetings of the party leaders that can form a temporary agreement. The basic line of the division in political life at the state and local level is determined by the nationality and religion (they are usually identical). The Bosnians (Muslims), the Serbs (members of Orthodox Church), and the Croats (Roman- Catholic) are the three ethno-political communities that are in conflict, first of all, over the perspective on the inviolability of Bosnia and Herzegovina. The Bosnians tend to consolidate their statehood and territorial integrity; the Bosnian Serbs want to keep their identity and autonomy, they also hope to establish their own, sovereign organism (although their incorporation into Serbia is not the aim of the political elites of the RS). The Croats also emphasize their identity, and, afraid of Bosnians domination, form a common front with the Serbs from Bosnia.

The examples of conflicts in Bosnia and Herzegovina are included in many official reports and journalist publications. From the point of view of direct democracy it is important to distinguish the problem of the census. After the war, in 2008 there was an attempt to determine the date of the census and the principles of its conduct. However, it only sharpened the tension between the political elites of the Bosnians and the Serbs. The RS leaders opted for the census which would take into consideration the ethnic origin and religion of the residents. Bosnian's leaders, referring to the European Union standards, supported the quantitative census without declarations of nationality and religion (Tanty 2003:351). Finally the census was held between 1 and 15 October 2013 (the results were published in 2016). It showed a general decrease in the population in comparison with 1991 (by about 13.5%), but the number of Muslims rose by about 10%. According to nationality criterion, the Bosnians constituted 54%, the Croats – 11.5% of the population (www.bhas.ba).

Formal-Legal Dimension

Bosnia and Herzegovina is not a typical federal republic; one can speak rather of a confederation. It consists of the Federation of Bosnia and Herzegovina (51% of the area) and the Serb Republic (RS). The first of the constitutional-territorial entities (the FB and H) consists of 10 autonomous cantons, most of

them being national ones i.e. either the Bosnians (about 1.770 thousand) or the Croats (about 545 thousand) dominate. The cantons are divided into 79 municipalities (communes).

The second entity - the RS, populated by about 1.87 thousand people (90% are the Serbs) has a unitary character and its territorial division comprises only 62 municipalities. The Brčko District has a separate character. It is an important town in north-eastern Bosnia and Herzegovina. This district, populated by 80 thousand people and with an area of 0.5 square km, is outside of the FB and H and RS and its authorities constitute in practice the third constitutional entity of the Federation.

The state is based on democratic institutions but the political-administrative structures are highly expanded (www.Vijeceministra.gov.ba). This applies both to the executive and judicial agencies of the state as well as to its two main components (especially in the FB and H where the public management is mainly the responsibility of the canton administration). National parities are taken into consideration in the agencies and institutions; however, it does not make the agreement on many current issues easier and raises the administrative costs. Bosnia and Herzegovina is a state with a highly extended administration that employs over 150 thousand people.

The lack of stability in this area is very dangerous for the whole continent and for the process of the European integration but the progressive reduction of the military engagement of the international community in Bosnia and Herzegovina allows us to think that political and economic instruments will be sufficient. These activities are accompanied by the original attempts to strengthen pro-integration attitudes through direct dialogue with citizens. For example, in February 2008, the High Representative inaugurated a series of debates on the European integration in 16 biggest towns of Bosnia and Herzegovina. In 2014 the EU presented a political strategy whose aim was to unblock the integration process of Bosnia and Herzegovina and to encourage the local elites to hasten the reforms. On 16 February 2016 this state filed an official application for accession (Szpala 2016).

The Constitution of Bosnia and Herzegovina is a specific document which is an annex to the Dayton Agreement, which ended the war. Apart from this document, the decisions of the High Representative of international community and the constitutions of the Federation of Bosnia and Herzegovina and the Serb Republic are also the source of law. The next political-legal basis is the acts adopted by the Parliament of Bosnia and Herzegovina and the verdicts of the Constitutional Court of this state. There is no direct reference in the Constitution to referendums, only public consultations are mentioned (Sochacki 2015: 118). Nor do the decisions of the High Commissioner have anything in common with direct democracy. The rules regulating the procedure for implementation of direct democracy can be found in the laws, especially in the norms that are binding in the Serb Republic and at the local

level. However, it is not the law that sets the political standards in Bosnia and Herzegovina, which is also true for direct democracy.

The most important feature of legal and political-system solutions in Bosnia and Herzegovina is the domination of ethnic issues which, connected with the political and party division of the society are best expressed in consensual democracy. This definition is quoted by many experts who deal with the political system of this country. Explaining this term, constitutionalists stress the importance of coalitions, protection of the rights of minorities, the right of veto, the principle of proportionality of representation in the governing bodies (Ademović 2012: 61).

There is therefore no place here for direct democracy in the West European sense but representative democracy is additionally equipped with many instruments that force negotiations, compromises, agreements. As a result, we are dealing with constitutionally decreed participation, deliberation, and direct participation of many ethnic groups (or their representatives). Therefore, it can be assumed that the Bosnian model of the political-system norms of consensual democracy can be treated to some extent as a hybrid of direct democracy.

In 2009 a campaign was held for the introduction of direct democracy into the Constitution of Bosnia and Herzegovina through the laws on referendum, peoples' initiative, veto and, dismissal of the authority. The activities in this matter were coordinated by the Antifascist Action and some NGOs. Their representatives demanded inclusion in the Constitution of the right to recall a deputy in the House of Representatives on the motion of 10% of voters from a given constituency and after a referendum in this matter. Another motion concerned the right to submit a law and other normative acts to the Parliamentary Assembly, the National Chamber, and the Council of Ministers by at least 5 thousand voters. The next proposal involved the obligatory announcement of a referendum on the motion of 30 thousand people and the obligation of the Parliament to execute decisions taken in such a referendum Consultative (advisory) referendums were also provided for. The organizers of this action wanted to first of all introduce into the Constitution an explicit reservation that the citizens exercised direct power where it was possible and indirect power through freely elected representatives (Podržavamo 2016). The action had educational and political importance and although it was not implemented, it pointed to the trends of the constitutional-legal evolution confirmed by experts' instructions (see Chapter: Conclusion).

Practical Dimension

The referendums of the war period already showed the instrumental treatment of this form of direct democracy. The Bosnians from the Federation of Bosnia and Herzegovina and the Serbs from the Serb Republic referred to them when they were sure of their success. Therefore, the results showed an overwhelming support for the authorities (Bosnian or Serbian) that organized the referendums, and the boycott on the part of minorities. In 2000, basing on such a principle, the party of Croats inhabiting Bosnia and Herzegovina (HDZ) demanded a referendum on the third Croat entity in the state.

There were many similar (and not implemented) referendum initiatives. With deep ethno-political conflicts and lack of stability of the state, reference to direct democracy could always lead to successive confrontations. Meanwhile, the Serb elites influenced, *inter alia*, by the referendum in Montenegro (2006) and the proclamation of the independence of Kosovo (2008) announced the next general voting. On 10 February 2008, the Parliament of the Serb Republic adopted a resolution on the referendum; two years later it passed a law on holding it. The initiators were the ruling Party of Independent Social Democrats (SNSD) and Prime Minister Milorad Dodik. This act was criticized by the representatives of the EU, opposition parties in the Serb Republic and, first of all, by the leaders of Bosnian elites.

In political-science terms, a referendum can be regarded as a consultative vote because its results are not binding. Moreover, the act only regulated the technical issues concerning the procedures of announcement while the course of the referendum and specific referendum questions were to be determined each time by the parliament. Nevertheless, the adopted law was evaluated as a threat to the territorial integrity of Bosnia (Republika 2011).

During the next year the politicians of Bosnia and Herzegovina and the EU were debating over the act. The media statements by the participants show the temperature of the dispute. When Catherine Ashton, the EU's foreign policy chief, threatened the Serb Republic with economic sanctions and a visa ban, Prime Minister Dodik announced the same retaliations towards the EU. Dodik's rhetoric was calculated for the domestic political market. The conflict distracted attention from the ineffective policy of the government during the economic crisis and from the prime minister himself, who was accused by the central authorities of Bosnia and Herzegovina of embezzlement of public funds. The peak of the dispute was reached after the adoption by the Parliament of the Serb Republic (13 April 2011) of the act on the referendum on the legality of decisions of the High Representative, particularly on the determination of the powers of the judiciary bodies at the central level. The subject of the referendum was the powers of the central judiciary on the territory of the Serb Republic. Its authorities stated that the

court created by the international community in 2002 to investigate cases of war crimes and organized crimes in Bosnia and Herzegovina sentenced ten times more Serbs than representatives of other ethnic groups and was prejudiced to the Serbs from Bosnia. In contrast, the authorities of Bosnia and Herzegovina thought that as a result of the referendum, war criminals would be unpunished on the territory of the Serb Republic and that voting itself meant the beginning of secession.

The Bosnian Constitution provides that the consent of the authorities of all three entities that form the state is needed to implement the results of the referendum; consequently, it was certain there would not be an agreement. The High Commissioner Valentin Inko was also against the idea of the referendum, and threatened Dodik to dismiss him, alarming the world with the words: *We have the worst crisis in the history of that country* (Wieliński 2011). On the other hand, the prime minister of the Serb Republic announced the he would not allow his dismissal and he would appeal to the nation. The subject of the referendum in the Serb Republic became even the topic of the meeting of the UN Security Council on 9 May 2011; however Russia's veto and the lack of interest of China prevented the achievement of an effective stance. Finally, on 12 May 2011 in Sarajevo, Catherine Ashton (responsible for EU's foreign and security policy) supported by the Republic of Poland's chief of the Foreign Affairs Ministry (Radosław Sikorski) managed to persuade Dodik to abandon the referendum (although the enacted law remained unchanged).

The matter of the referendum in the Serb Republic was surprisingly revived in 2015 (Mišljonevič 2016). This time the arrest in Switzerland in June 2015 of a former military commander from Srebrenica was the direct reason for referendum tensions. Prime Minister of the Serb Republic Milorad Dodik once again questioned the superiority of the judiciary of Bosnia and Herzegovina over the Serb Republic, accused the central authorities of the high costs of maintenance of these institutions, and, in the National Assembly of the Serb Republic, he forced through the vote for referendum (45 voices – for, 31 abstained from voting , and 7 deputies were absent). The referendum question contained a clear suggestion: *Do you support the unconstitutional and illegal imposition of laws by the High Representative of the international community, and in particular the imposed law on the Court and the Prosecutor's Office of Bosnia-Herzegovina, and the implementation of their decisions in the territory of the Serb Republic?* (Zarichinova 2016).

Russia supported the plans of voting already in June although the President of Serbia was against the referendum in the Serb Republic. Those definitely against were: the High Representative and the Constitutional Tribunal of Bosnia and Herzegovina whereas the Constitutional Court of the Serb Republic was in favour of the referendum. Finally, the stance of international diplomacy once again proved decisive. The ambassador of the

EU and diplomats from the USA, Great Britain, France, Germany, and Italy went to Banja Luka, where they made a statement, regarding the planned voting as unacceptable and unconstitutional and that it could weaken the state authorities and, at the same time, constituted a threat to the sovereignty and security of the state as a whole. At first, the authorities of the Serb Republic set the date of the referendum on the 15 November 2015; then they postponed it for an indefinite time from February 2016 onwards.

Nevertheless, the perspective of local self-government elections in the Serb Republic (2 October 2016) and the falling ratings of the ruling party made Prime Minister Dodik try to push through another referendum plan, which was implemented that time. The pretext for starting the referendum campaign was the sentence of the Constitutional Court of Bosnia and Herzegovina of 26 November 2015 (repeated on 17 September 2016), which questioned the legal validity of the act adopted in 2007 by the National Assembly on the National Day of the Serb Republic (NDRS) which fell on 9 January (this meant, *inter alia*, the introduction of a non-working holiday in the Serb Republic). This date is the day of Orthodox St. Stephen and it historically refers to the creation of the Serb Republic in 1992, which started a war among other things. The Constitutional Court of Bosnia and Herzegovina found that the holiday of 9 January did not refer to the values shared by the three constitutive nations of the state. The National Assembly of the Serb Republic passed a resolution on the referendum on 15 July 2016 with the support of all Serb parties (the Bosnian deputies boycotted the vote).

The voting was again criticized by the USA, EU (Seroka 2016), Croatia, and Serbia; Russia supported this initiative. Three days before the referendum, President Vladimir Putin met in Kremlin with Prime Minister Dodik, who, during the campaign, posed as the upholder of the Dayton agreement and defended the sovereignty of the Serb Republic against the authorities in Sarajevo (Kokot 2016). The leader of the Bosnians, Bakir Izetbegovič, regarded the referendum as illegal and said that the organizers would be prosecuted. Meanwhile, Dodik strengthened the tension by announcing the results of the referendum not in the capitol of the Serb Republic (Banja Luka) but in Pale, the place from where Radovan Karadžič, former President of the Serbs in Bosnia found guilty of genocide in April 2016 by the International Court of Justice in The Hague, directed ethnic cleansing. 56% of the voters from the Serb Republic participated in the referendum which was held on 25 September 2016. 99.8% voted "yes" to answer the question *Do you want to maintain the Statehood Day holiday on January 9?* (Закључци 2016).

The referendum activity of the RS dominated direct democracy in Bosnia and Herzegovina; nevertheless, we can take into account its various manifestations and some specific features so characteristic of this atypical state. In the case of widely understood civil participation the ethnic factor

does not always dominate. This is observable in the functioning of local communities, in the process of modernization of public management, and social communication; it is also perceived during social and economic protests. When in 2005, in front of the Parliament in Sarajevo about 5 thousand farmers were on strike, who demanded that the ministry of agriculture be established and food imports be reduced, among the strikers there were both Bosnians, Croats and Serbs. Students and pupils (of all nationalities) joined the protesters and demanded a higher education law and the computerization of educational institutions. The economically based social protests in February 2014 in Bosnia and Herzegovina, were also regarded by journalist as manifestations of direct democracy (Kovačevič 2016).

Technological development brings another model of direct democracy. A panel on "The day of a freedom of speech on the Internet" organized in Banja Luka in June 2016 by local non-governmental organizations can be an example (www.internews.ba). However, the activity of NGOs requires larger expenses and a longer perspective than in any other European country. In this context, education is highly important (Belloni 2016). The EU provides patronage for the initiatives of civil and democratic education. The EU money pays for trainings, historical education, for the formation of platforms to exchange views of the opinion-forming circles (teachers, journalists, officials). The textbook Ordinary People in an Extraordinary Country, Every Day Life in Bosnia-Herzegovina, Croatia and Serbia 1945-1990 Yugoslavia between East and West (www.skolegium.ba). was published under these initiatives. However, there are also some negative phenomena in civil education that weaken the process of normalization and democratization in this state. In the Serb Republic children are taught at school that they live in Serbia which comprises such towns as Belgrade and Sarajevo. School maps show only the Serb Republic or "mother homeland" – Serbia (Rekść 2011).

Many manifestations of direct democracy can be found at the local level because the local self-government traditions in former Yugoslavia are deeply rooted here although their socialist (not democratic) foundations are conducive to negligence, irresponsibility, and administrative pathologies (Bujwid 1991). They are strengthened by deep ethno-political divisions which are often present among local communities. *Inter alia*, as a result of a dispute between the councilors representing Bosnian and Croat groups, after the local elections in October 2008 it was impossible for a long time to elect the mayor of Mostar, the third most important town in Bosnia and Herzegovina. Bosnian memorial sites (e.g. Potočari) have their equivalents on the Serb side (e.g. Kravice). Local communities organize annual "counter-celebrations", with veterans and the victims of displacements playing an important role in their life.

The experts point to the *low risk of antagonizing local politicians* (Stanisławski 2009:40) as one of the few assets in the process of reformation of the state. It strengthens the clarity of public management at the municipal level. According to the act on local self-government, a mayor comes from direct elections and his/her competence is wide (Zakon 1998). In the Federation of Bosnia and Herzegovina a serious systemic limitation of the authority of mayor and councilors is the constitutional competence (also in the financial sphere) of the canton, whose agencies have the greatest tax revenues and decide on the amount of subsidy for a municipality.

The abovementioned local self-government act (Article 61) enables the municipality to apply direct democracy through a referendum. However, this is specified by the municipality's statutes. On their basis, a referendum can concern the establishment of a new settlement (village council seat) and other important matters of a municipality. In Tešanj – one of the best developing municipalities of the country and an average one as far as its population and area are concerned, the mayor has the right to a referendum initiative (as do 1/3 of the Council or 20% of voters). The statute provides for the possibility of calling a town meeting (assembly) of inhabitants (by 10% of electors) that has consultative and initiative powers. The meeting is headed by a chairperson, chosen by the participants). A civil initiative is also provided for in the municipality statute, with 100 signatures of voters need to start it. The Municipal Council has 90 days to examine such an initiative (Statut 2016). In each town there are public consultations while establishing a local area development plan. The openness of activities of public administration is increasing, substantially helped by the Internet (www.novosarajevo.ba/aktuelno/javne-rasprave).

Conclusion

An attempt to diagnose the condition of direct democracy in Bosnia and Herzegovina entitles the author to present simple conclusions: even under the most unfavourable conditions within a democratic state, the model of co-management based on deliberative democracy, civil participation, and involvement of office workers is successful. What is necessary is social trust, transparency of procedures, and opening for innovations. The functioning of direct democracy both in the formal-legal and dimensions concerns here the local level and the two main constituents of the state: the Federation of Bosnia and Herzegovina and the Serb Republic.

Experts see the chances for Bosnia and Herzegovina in direct democracy solutions applied in Switzerland, which can be an interesting solution taking into consideration the weaknesses and inefficiency of the representative

bodies of Bosnia and Herzegovina. An impulse would be to apply here the system of obligatory and facultative referendums, both at central and local levels, with the simultaneous use of the institution of a double referendum (Walkiewicz 2011). Therefore, in case of Bosnia and Herzegovina, the instruments of direct democracy should be regarded as an especially important determinant of political consciousness of the Bosnians, the Serbs, and the Croats. It is significant in the perspective of European integration.

However, the long-term EU programs, e.g. USAID (Civil 2013-2018) for Bosnia and Herzegovina have not taken direct democracy into account while referendums in the Serb Republic, which has a unitary system and is ethnically homogenous, cause the slogans of direct democracy to meet with favourable response (Директна 2016) but they do not strengthen the political system of Bosnia and Herzegovina. All the more that after the success of the referendum of September 2016, the Prime Minister of the Serb Republic announced next votes. Their subjects are to be, *inter alia*, the accession of Bosnia and Herzegovina to NATO and first of all an independence referendum. Recommendations and forecasts for Bosnia and Herzegovina are uncertain and generally pessimistic (Stanisławski 2003; Skieterska 2008; Szpala 2011). This also concerns direct democracy, which can be a danger rather than a chance in this country.

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Dobrinka Peicheva

Direct Democracy in Bulgaria

Determinants

The introduction of direct democracy in Bulgaria has had several categories of determinants, which include historical-political, ideological-political, and social-political.

Historical and political preconditions are related to the lag in the institution of constitutional order in Bulgaria as a result of the five-century-long Ottoman rule.

The political and civilizational issue of direct democracy was not raised immediately after the Liberation of Bulgaria in 1878. The countries directly engaged in building the Bulgarian state did not think the time had yet come to develop the political culture of Bulgarians. However, the cultural and civilizational beginnings of democratic political rights were not absent from the new Tarnovo Constitution (adopted on April 16, 1879), which has been qualified as *one of the most democratic constitutions of the time in Europe* (Slavov, Kabakchieva, Docho, Hristov 2010: 38) and which contained certain European cultural and civilizational models.

The first Bulgarian Constitution guaranteed a wide range of democratic political rights to people. It stipulated that the inviolability of private property, guaranteed equality before the law, excluded censorship and ensured freedom of speech and the press. People were endowed with the right to participate in different types of associations, to create political and social formations. Democratic governance was institutionalized and embodied in the National Assembly, which was based on the principle of representation. The National Assembly would function in two variants: as a regular National and as a Grand National Assembly. The National Assembly debated and passed laws, voted the state budgets and taxes, exercised control over the executive power, etc. The Grand National Assembly would be convened only when important changes were to be adopted, such as the selection of the Prince or Regency, modification or adoption of a new constitution, change of the state borderlines, etc. The established form political governance in Bulgaria was constitutional monarchy.

After the historic change of the form of Bulgaria's government from monarchy to republic in 1947, ideology became the political precondition for the governance of the people.

Although the existing Tarnovo Constitution was not abrogated by the rules laid down in it, preparations began for the creation of a new constitution. The latter already contained a provision for direct democracy: "to consult the people". Later, in 1971, an ad hoc law was passed for holding a referendum that would vote on the adoption of yet another new constitution.

The new Constitution of 1971 made provision for referendums. However, in the context of the totalitarian ideology and political system of the time, referendum could not, and did not, fulfill its democratic purpose.

In the brief political and cultural history of modern Bulgaria, ordinary people could not implement the instruments of direct democracy without the consent of the authorities. It is believed that the main reason why direct democracy, particularly the referendum, has been used to a limited extent in Bulgaria, is the lack of an adequate legal and political institutional framework, and of knowledge of, and compliance with, the specifics of the various forms and practices of direct democracy in other countries (Krasteva/ Todorov 2016; Slavov/Kabakchieva/Docho/Hristov 2010). Not least, totalitarian rule was a factor which negatively affected the political freedoms of Bulgarians.

The new democratic Constitution of Bulgaria, drafted and adopted in 1991, reflected the refusal of political forces in the country to continue the socialist path development. This constitution explicitly provides for holding referendums as a form of direct democracy at the national and local level. Since 2009, referendums are regulated by a special Act: the Direct Citizen Participation in State and Local Government Act, amended several times (2010, 2011, 2013, 2014, 2015) as well as by the Electoral Code adopted by the National Assembly in 2011 (also amended several times).

Cultural and civilizational determinants are also important factors of the practice of direct democracy. The following forms of democratic participation (as classified by Giovanni Sartori (1992: 173)) are in effect in Bulgaria: direct democracy, referendum democracy, electoral democracy and representative democracy; of these, the direct participation of the people is the form most problematized by politicians and voters.

A widely advocated cultural-civilizational thesis is that modern democracy is founded on the principle of representation. It is believed that modern democracy is protected by the constitution and is representative in character, allowing for the direct participation of ordinary people only on a limited number of defined issues.

Socio-political determinants are another important aspect of the acceptance and rejection of direct forms of participation of people in decision-making processes at the national and local level. Underlying these determinants are the "concerns" of politicians with regard to the social consequences of these forms. It is not accidental that the arguments for and

against, found in the relevant literature, can be summarized as *fear of the consequences*.

A variety of fears have led parliamentary deputies (and not only them) to neglect the form of direct popular participation in governance. There are many examples of referendums being censored based on previous political decisions of the ruling political elite. The latest referendum in Britain, concerning the country's exit from the European Union, is one case when citizens have rejected a previous political decision made by the political elite.

The restrictions the Constitution puts on direct democracy are also indicative of a kind of fear of the involvement of ordinary people in decision-making on public affairs. Modern democracy in Bulgaria offers abundant pluralistic views on how to resolve social issues, but in practice, the different forms of participation in governance are not placed on an equal footing.

There are several reasons for concern.

In the view of those holding political power, the first and most important disadvantage of referendums is that people are not sufficiently aware. The characteristic of awareness is judged in several aspects:

- As insufficient. It is believed that people, or most people, do not have the necessary information and cannot make informed choices;

- As influenced by "significant others". The dependence of awareness on the significant others, on public ideas and personalities serving as role models, is considered to be an interference in independent thinking and behavior (e.g., the referendum in 2016 , initiated by TV showman Slavi Trifonov, on the issue of switching the voting system to full majority elections in two consecutive rounds).

- Bias in interpreting information. It is believed that the personal experience and practices of people, their biases, fears or hopes, may influence their referendum choices.

- The fourth determinant is related to the use of direct democracy as an instrument of populist ideas advanced by leaders of parties, movements and coalitions of pseudo-nationalists and pseudo-patriots who manipulate the emotions of the public.

- The fifth determinant is the often-expressed mistrust in the ability of the people to directly participate in governance decision-making. This concern stems from the excessive self-confidence of those who call themselves the elite and consider themselves superior to others.

Belonging to the elite, they often consider themselves to be first among the first, the most intelligent, most gifted, most enterprising, and most knowledgeable of all (Peicheva 2016; Todorov 2016)

Certain other assumptions are also relevant.

Among large communities, the financial aspect is not to be underestimated when listing arguments against the use of direct democracy.

The latest democratically held national referendum, that of October 2016, illustrates the failure of politicians and party headquarters to provide information to voters about the pros and cons of the referendum questions. The success of populism and anti-elitist behavior displayed by the showman Slavi Trifonov became a model of "chalgarizing" the socio-cultural processes in the country.

Assessments of direct democracy in Bulgaria usually vacillate between positive and negative, without taking into account the relevant determinants, historical facts or constitutional models.

The fact is that people are disappointed by the political situation in Bulgaria and the model of political representation is in crisis: society's trust in political parties is at its lowest. Petya Kabakchieva (2010: 8-9) presents social survey data revealing clear disappointment in how democratic institutions are functioning. 87% of the people are dissatisfied with the way democracy is developing in the country. In 2016 alone, two national referendums were initiated – the aforementioned one by Slavi Trifonov and another by the businessman Veselin Mareshki, which is yet to be held. Both requests for a referendum indicated a restriction of representative democracy.

To sum up, the historical-political, ideological-political, cultural-civilizational and socio-political factors of direct democracy in Bulgaria function as balancers between democratic forms rather than as supporters of "direct democracy".

Formal-Legal Dimension

Bulgaria has had a relatively short history of formalized direct democracy. The 1971 Constitution of the People's Republic of Bulgaria stipulated that people's councils may decide to hold a referendum on important issues affecting the interests of the population of an administrative-territorial unit or a separate village.

The first special Law of 8 April 1983 on Consulting the People was meant to develop and improve socialist democracy, and to elevate the role and importance of direct democracy in the management of public relations.

According to this law, consultation of the people is carried out by means of discussion or referendum (Article 3 (1)). The right to participate in a plebiscite is vested in all Bulgarian citizens. Voters themselves can submit motions to the National Assembly if the initiative is supported by at least 30,000 voters. Unfortunately, despite the underlying democratic principles, this law was for ideological show and had no practical effect.

It was only after the democratic changes in 1989 that provisions were introduced which gave content to the law. The 1991 Constitution of the

Republic of Bulgaria made provision for several significant democratic elements:

Equal positioning, i.e., equal treatment, of different forms of participatory democracy in the electoral processes. Art. 10 of the constitution states *The elections, national and local referendums are held on the basis of universal, equal and direct suffrage by secret ballot*.

Conceptual and programmatic pluralism. Protection against attempts to implement the tyranny of minorities through direct democracy is guaranteed in Article 11, where paragraph 1 stipulates that political life in Bulgaria is based on the principle of political pluralism.

All-nationality principle. Article 11(1) stipulates that states and political parties cannot be formed on ethnic, racial or religious grounds.

Pro-state principle. Moreover, Article 11 (1) states that political parties cannot strive for violent seizure of state power.

Formally, it is guaranteed that power is exercised by the people directly, through the two basic democratic forms: direct democracy (referendums and people's initiatives) and representative democracy (by public authorities, the Parliament, the Government, and the President).

The Constitution is unambiguous on the issue and contains safeguards against the misappropriation of popular sovereignty - no state institutions, including the Parliament, can in fact restrict the right of citizens to participate directly in government at the national and local level.

There are formal provisions related to the territorial limits of the municipalities themselves, which can be changed only after a plebiscite (Art. 136).

The 1991 Bulgarian Constitution stipulates that a special law will specify the democratic participation of people. The Referendum Act, adopted five years later, in 1996, lists four forms: national referendum, local referendum, a general assembly of the population and collection of signatures.

The Referendum Act does not give citizens the right to submit motions for calling a national referendum. Furthermore, the referendum becomes legitimate if it involves more than half of the voters and more than half of the votes cast are "yes".

In 2009 the special Direct Citizen Participation in State and Local Government Act was passed. It regulates the conditions, organizational arrangements and procedure for direct participation of citizens of the Republic of Bulgaria in performing the tasks of state and local government. The Act is consistent with the enforcement measures of the European Regulation (EU) № 211/2011 of the European Parliament and of the Council, of 16 February 2011 on citizens' initiative (OJ, L 65/1 of March 11, 2011) referred to as Regulation (EU) № 211/2011.

In addition to the forms listed in the Act of 2009, two new forms of direct citizen participation have been set down: citizens' initiative and

European citizens' initiative (ECI) within the meaning of Art. 2 par. 1 of Regulation (EU) № 211/2011.

In the 2009 Act, four forms of direct democracy are defined (Art. 3. (1)): referendum; civil initiative; European citizens' initiative; general populace meeting.

Special emphasis is placed on the principles of direct democracy and direct participation of citizens in governance, specifically:

(1) Free expression of will;
(2) Universal, direct and equal participation by ballot;
(3) Equal access to information in respect of the question put forward;
(4) Equal conditions for presenting the opinions involved.

Motions in the National Assembly on calling a national referendum can be effected by:

(1) Not less than one-fifth of the deputies of the National Assembly;
(2) The President of the Republic;
(3) The Council of Ministers;
(4) Not less than one-fifth of the municipal councils in the country;
(5) The nomination committee of voters, if no less than 200,000 signatures of registered voters have been gathered.

By amendment (SG. 56 of 2015), effective as of 24 July 2015, the National Assembly adopted that a national referendum is held if so requested by an initiative committee through a petition containing the signatures of not less than 400,000 Bulgarian citizens eligible to vote.

Vote by secret ballot is stipulated for all kinds of voting, and the new requirement for permanent residence of voters has been introduced.

In the latest acts, changes are envisaged regarding the persons who may submit motions for referendums. Proposals are to be made by the nomination committee of voters, but for the purpose, no less than 200,000 signatures of registered voters must be collected.

This amendment of the Act, unlike the Act of 1983, introduces the possibility for a citizens' initiative to hold a national referendum; the Law of 1996 did not make such a provision. However, the amendment imposes very serious obstacles to citizens' nomination committees. The amendment of the Act, voted on 24 July 2015, regarding the required number of signatories, was even more drastic. Art. 10, par. 2 states that *The National Assembly shall adopt a decision to hold a national referendum, where requested by an initiative committee based on a petition which contains a minimum of 400,000 signatures of Bulgarian citizens eligible to vote*. A change was made with respect to the regularity and adoption of the motion subject to referendum. The Act of 1996 states that *a referendum is considered regularly held if more than half of the voters have voted in it, and more than half of the*

cast votes are valid. The motion for the referendum shall be considered and adopted if voters have participated at least in the last general elections and if more than half of the participants in the referendum vote "yes". A national referendum on the same issue may be initiated no sooner than two years after the date when the referendum was held. Art. 17 (4) of the Consultation of the People Act of 1996 sets the term as three years.

An amendment was also made in the provisions concerning a local referendum. Under the Act of 1996, a municipal council could not refuse to hold a local referendum. The latest Act, however, provides for rejection of the motion to conduct a referendum. Article 31 (2) states that the municipal council may, by a reasoned decision, refuse to accept the motion to hold a referendum.

The motion for a referendum is accepted if it involves no less than 40% of registered voters in the municipality and the answer "yes" has been given by more than half of the participants in the referendum.

Through the national citizens' initiative, the citizens submit motions to the National Assembly or to the authorities of the central executive body on issues of national importance. This is effected through a petition organized by an initiative committee of the whole country.

The European citizens' initiative was introduced in 2012. It was conducted through the collection of signatures in accordance with the requirements of Regulation (EU) № 211/2011. For the first time, it included the possibility of online participation of citizens.

The analysis of the postulated legal solutions and practical implementation of referendums and citizens' initiatives discloses the existence of significant problems in several fields:

The requirement of a very large number of signatures in initiating a national referendum leads to concerns that the steering committees may be linked to specific political parties or other institutions. The deadline for collecting signatures for a national referendum is too short.

Citizens' initiatives still fail to be established as a tool and procedure for putting forward legislative initiatives by citizens.

Under ECI, citizens can initiate an on-line collection of signatures to change the legislation of the European Union, while they have no such an opportunity in Bulgaria at the national and local level.

The main reasons for the limited use of direct democracy, particularly the referendum, in Bulgaria was and still is the lack of relevant legal and political culture and of an adequate institutional framework; conditions are favorable for the use of referendums by corporative power structures. Another significant obstacle is the conservatism of the political class.

The current Act of 2009 uses the term direct citizen participation in state and local government, but with certain limitations. It is only seemingly more democratic than the previous one.

Practical Dimension

From the date of the Liberation of Bulgaria from the Ottoman rule in 1878 to the first referendum held in 1922, eleven attempts had been made to hold referendums, but they failed due to various objective and subjective reasons**.**

The first successfully held referendum was conducted in 1922 at the initiative of the government of Alexander Stamboliyski, which ruled the country for several years after World War II. The question in the referendum concerned the prosecution of specific ministers who had brought Bulgaria to two national catastrophes (the Balkan War and World War I). The first national referendum in the history of our country has been described as an attempt by the ruling party to eliminate the opposition. On 14 October 1922, the 19th National Assembly in Bulgaria passed a special Act on Referendum Concerning the Responsibility of Ministers. The question was whether or not to prosecute Ivan Evstratiev Geshov, Dr. Stoyan Danev and Aleksandar Malinov for their responsibility with regard to the national catastrophes.

The Ministers had already been arrested and their property had been distrained. Alexander Stamboliyski's secret intention by this referendum was to strengthen the power and authority of the Bulgarian Agrarian Union. Various manipulative means were used for the purpose. The ballots signifying "guilty" were white in color and "not guilty" were black and heavily inked. A total of 926,490 voters took part in the referendum. Of them, 69.87% (called upon by the Agrarian Union and the Communist Party) voted in favor of convicting the former ministers. The accused were imprisoned immediately after the referendum but they were freed after the coup carried out on June 9, 1923, which removed Prime Minister Stamboliyski from power .

The second national referendum was held in 1946 and concerned changing the form of government of Bulgaria into a republic. It was convened by the Constituent Assembly which was drafting a new socialist constitution.

The referendum took place in a confrontational atmosphere under the Communist-dominated government of the so-called Fatherland Front, which gradually imposed a totalitarian regime in Bulgaria. The result was 95.6% in favor of changing the form of government and the turnout reached 91.7%. A year after the referendum the republican Constitution was adopted.

The third national referendum is known as the Constitution Referendum. It was held on 16 May 1971 and aimed to win approval for the new constitution (called the Zhivkov Constitution, after Todor Zhivkov, who was the Party and state leader at that time). The first article of this new constitution emphasized the "leading role" of the Bulgarian Communist Party. The result was 99.6% in favor, with a turnout of 99.7%. The notorious Article 1 of the constitution reads: The leading force of society and the state is the Bulgarian Communist Party.

The fourth, fifth and sixth referendums were held after 1989, when a democratic change of the economic and political system had been made.

The fourth, held on 27 January 2013, was on the question of nuclear energy in Bulgaria. The voters had to vote "yes" or "no" on the following question: *Should nuclear energy be developed in Bulgaria through construction of a new nuclear power plant?* It was initiated by the leftist Bulgarian Socialist Party.

To be legally binding in favor of nuclear power, it had to meet two conditions: the number of voters had to be at least the same as the number of voters in the previous parliamentary elections, i.e., 4,345,450 out of those registered on the voter lists (6,949,120), and 50% plus one should have voted "yes".

The turnout did not reach the required minimum number of voters, but more than half who did vote responded "yes". Under the current rules, the dispute on the completion of the Belene nuclear project was to be returned to the National Assembly, where lawmakers were to again discuss the future of nuclear energy in Bulgaria and take the final decision. The motion was subsequently rejected by the National Assembly.

The fifth referendum was held on October 25, 2015 and concerned online voting in Bulgaria. It was initiated by the President of Bulgaria, Rosen Plevneliev, and was held simultaneously with local elections.

Despite the great electoral support in favor of electronic voting, 69.5%, this proposal could not enter into force because the required number of voters had not been reached.

The most recent referendum was held in the autumn of 2016.

It was initiated by TV showman Slavi Trifonov and concerned a change of the electoral system for parliamentary elections (for a two-round plurality-majority system), a reduction in the state subsidy for political parties and obligatory vote. The turnout in the referendum, which took place simultaneously with the presidential elections in Bulgaria in October 2016, was very high (over 2,500,000 people), a very high percentage (over 70%) of the votes were "yes". However, the turnout did not reach the 51% required for the referendum to have a mandatory effect. The subsequent resignation of the government after the candidate of the ruling GERB party failed to win the presidential election, and the subsequent scheduling of new parliamentary elections, did not give the National Assembly the possibility to make a decision concerning this referendum.

Table 1. The national referendum of 27 January 2013

Date	Subject	Turnout in %	Results
27 January 2013	Building a new nuclear power plant	20.22	For 61.29 % Against 38.51 %

Source: Central Election Commission http://results.cik.bg/referendum/rezultati/index.html

Table 2. The national referendum of 25 October 2015

Date	Subject	Turnout in %	Results
25 October 2015	Remote voting in Bulgaria	40.05	For 72.29 % Against 27.21 %

Source: Central Election Commission

Table 3. The national referendum of 6 November 2016

Date	Subject	Turnout in %	Results
6 November 2016	1. Do you support the election of MPs through a majority electoral system with an absolute majority in two rounds? 2. Do you support the introduction of compulsory voting in elections and referenda? 3. Do you agree that the annual state subsidy for the financing of political parties and coalitions will be one lev for a valid vote received in the latest parliamentary elections?	1. 50.81 2. 50.81 3. 50.81	1. For 71.95% 2. For 61.89% 3. For 72.16%

Source: Central Election Commission

In fact, it was only during the socialist period of Bulgarian history that referendum questions were legally adopted. Today, the neoliberal democratic system provides conditions that almost prevent the implementation of direct democracy.

Local referendums in Bulgaria are held often. Although municipalities are required by law to register referendums that are held in their administrative territorial boundaries, most of them do not meet this strict requirement. This is why in Bulgaria there is no available general information as to the direct participation of citizens in governance processes at the local level or the decisions made in local referendums. Bulgaria lacks a uniform register of local initiatives and referendums. Therefore, the status of this important form of local government cannot be analyzed, and appropriate action to improve the functioning of local democracy cannot be taken. As part of individual projects of some civic organizations, attempts have been made to gather information on referendums held since 2000, but the data are not complete.

Most of the referendums were related to the following categories of questions:

(1) administrative-organizational problems connected with the administrative boundaries of local governments units
(2) issues regarding the population's agreement to some significant investments to be made on the local territory;
(3) issues on environmental problems, etc.

No correct data is available concerning local referendums, citizens' initiatives and European citizens' initiatives.

Conclusion

The analysis of the practical implementation of direct democracy reveals some significant problems in several areas:

The requirement that a very large number of signatures be collected to initiate a national referendum leads to linking of the steering committees to specific political parties or other institutional forms; hence, referendums have become a tool of party-political or institutional pressure rather than a tool to mobilize active citizenship.

Direct democracy de jure is equal in legal strength to representative democracy, but the Acts in question are deliberately worded in a way that strongly restricts this equality.

Citizens' initiatives have still not been established as a tool of, and procedure for, carrying out the legislative initiatives of citizens.

Under ECI, citizens can initiate on-line collection of signatures to change the legislation of the European Union, while they do not have this opportunity at the national and local level.

The conditions in Bulgaria are not conducive to promoting equal status between the instruments of direct democracy, the referendum in particular, and between representative and direct democracy.

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Maria Marczewska-Rytko

Direct Democracy in Croatia

Determinants

Croatia gained independence in 1991 as a result of the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY). On 21 February 1991 the Croatian Parliament (Sabor) adopted the declaration on the initiation of the process of separation from SFRY and on the possibility of joining the Confederation of Sovereign States. Croatia, together with such republics as Slovenia, Macedonia, and Bosnia and Herzegovina, decided to leave the federation. In May 1991 a referendum was held on the questions whether to remain in Yugoslavia or to become a sovereign and independent state. The citizens voted in favor of an independent and sovereign state. In July 1991 the governments of Croatia and Slovenia declared independence, but they introduced a three-month moratorium on the decision to solve the conflict in SFRY. The period of moratorium ended on 8 October 1991 and this date is regarded in the Croatian literature on the subject as the date of the birth of Croatia as a sovereign state (Składowski 2013: 62).

The basis of the functioning of the state is the Constitution of 22 December 1990 (i.e. before the proclamation of independence) (Ustavni Sud Republike Hrvatske). Its legitimizing and stabilizing character to the new system is stressed in the literature on the subject. It consists of the Preamble which refers to various forms of statehood in the history of Croatia and the Articles (initially 142, and 150 after adding amendments).

Generally, the Constitution has been amended five times: in 1997, 2000, 2001, 2010, and 2014. In its original version, the Constitution introduced a semi-presidential system of government. Four principles were accepted on which the functioning of the state would be based: the republican form of the state, principles of a unitary state, democratic state, and a social state (Karp/Grzybowski 2007: 18; Wojnicki 2014: 13-26). Historical determinants were reflected in the first part of the Constitution of 22 December 1990, titled Historical Foundations.

The millennial national identity of the Croatian nation and the continuity of its statehood, confirmed by the course of its entire historical experience in various political forms and by the perpetuation and growth of state-building ideas based on the historical right to full sovereignty of the Croatian nation, manifested itself:

- in the formation of Croatian principalities in the 7th century;

- in the independent medieval state of Croatia founded in the 9th century;
- in the Kingdom of Croats established in the 10th century;
- in the preservation of the subjectivity of the Croatian state in the Croatian-Hungarian personal union;
- in the autonomous and sovereign decision of the Croatian Parliament of 1527 to elect a king from the Habsburg dynasty;
- in the autonomous and sovereign decision for the Croatian Parliament to sign the Pragmatic Sanction of 1712;
- in the conclusions of the Croatian Parliament of 1848 regarding the restoration of the integrity of the Triune Kingdom of Croatia under the power of the Vice-Roy (Ban) on the basis of the historical state and natural right of the Croatian nation;
- in the Croatian-Hungarian Compromise of 1868 regulating the relations between the Kingdom of Dalmatia, Croatia and Slavonia and the Kingdom of Hungary, on the basis of the legal traditions of both states and the Pragmatic Sanction of 1712;
- in the decision of the Croatian Parliament of 29 Oct 1918, to dissolve state relations between Croatia and Austria-Hungary, and the simultaneous affiliation of independent Croatia, invoking its historical and natural right as a nation, with the State of Slovenes, Croats and Serbs, proclaimed in the former territory of the Habsburg Empire;
- in the fact that the Croatian Parliament never sanctioned the decision passed by the National Council of the State of Slovenes, Croats and Serbs to unite with Serbia and Montenegro in the Kingdom of Serbs, Croats and Slovenes (1 Dec 1918), subsequently proclaimed the Kingdom of Yugoslavia (3 Oct 1929);
- in the establishment of the Banovina of Croatia in 1939 by which Croatian state identity was restored in the Kingdom of Yugoslavia;
- in laying the foundations of state sovereignty during World War Two, through decisions of the Anti-Fascist Council of the National Liberation of Croatia (1943), to oppose the proclamation of the Independent State of Croatia (1941), and subsequently in the Constitution of the People's Republic of Croatia (1947), and several subsequent constitutions of the Socialist Republic of Croatia (1963-1990).

At the historic turning-point marked by the rejection of the communist system and changes in the international order in Europe, the Croatian nation reaffirmed, in the first democratic elections (1990), by its freely expressed will, its millennial statehood and its resolution to establish the Republic of Croatia as a sovereign state (Konstytucja Republiki Chorwacji z 22 grudnia 1990 r.; Czerwiński 2013: 6-64).

The 12 December 1997 amendment to the Constitution provided for several changes (Składowski 2013: 73-75). Firstly, changes in the naming were introduced (*inter alia*, the change of the name of the Parliament from Sabor Republike Hrvatske [Parliament of the Republic of Croatia] to Hrvatski Sabor [the Croatian Parliament]; the change of the name of the state from the Republic of Croatia to the State of Croatia). Secondly, a ban was introduced on the association of Croatia with other states which might lead to the restoration of Yugoslav State Federation (Article 135, para 2). Thirdly, amendments that open the Croatian legal system to international law were included. Fourthly, the Articles that lost their raison d'être due to the proclamation of Croatia sovereignty were removed. The reasons for these changes should be sought in such factors as the political dominance of the Croatian Democratic Union (HDZ) which had a majority in the Parliament as well as the office of the

President (Franjo Tuđman) and strove to guarantee its own vision of the state; consolidation of state's sovereignty; and in striving to achieve Croatia's membership in the Council of Europe.

The next amendment of the Constitution of 9 November 2000 was connected with the parliamentary and presidential elections in which the ruling Croatian Democratic Union (HDZ) lost (Krysieniel 2009: 85-111; Krysieniel 2007). The Social Democratic Party of Croatia (SDP) with its leader Ivica Račan won and formed a coalition government; Stipe Mesič, from the Croatian Independent Democrats (HND), won the presidential elections. Both politicians, despite differences, agreed on the need to carry out systemic changes in the state and to introduce the parliamentary-cabinet system. Ultimately, over seventy Articles underwent changes. The changes concerned, first of all, Chapter 4 The Structure of State Power. The amendments of the Constitution were referred to the Constitutional Court. The complaint was lodged by a group of deputies from the Croatian Democratic Union pointing to the negative opinion of the upper chamber of the Parliament (*Županijski dom).* The Constitutional Court did not share this opinion and dismissed the complaint (Ustavni Sud Republike Hrvatske).

The third amendment of the Constitution took place on 28 March 2001 and concentrated on the liquidation of the upper chamber of the Parliament. The supporters of the liquidation of Županijski dom invoked, first of all, the lack of the tradition of a bi-cameral parliament. HDZ, which had a majority in the upper chamber, lodged a complaint to the Constitutional Court. This complaint was also dismissed (Ustavni Sud Republike Hrvatske). The fourth amendment of the Constitution took place on 16 June 2010 and was connected with Croatia's aspiration to become a member of the European Union. The most important amendment was the introduction to the Constitution, of a new chapter titled The European Union. It should be stressed that Croatia became a member state of the European Union as a result of an accession referendum. The fifth amendment of the Constitution was the result of the referendum held in 2013 on the definition of a marriage as *a living union of a woman and man* and such a provision is included in the amended Constitution (Ustav Republike Hrvatske).

Formal-Legal Dimension

The issues of direct democracy are reflected in the Constitution of Croatia and the Act on Referendum and Other Forms of Personal Participation in the Performance of State Powers and Local and Regional Self-government (Zakon o referendum i drugim oblicma osobnog sudjelovanja u obavljanju državne vlasti i lokalne samouprave). In the Part Two of the Constitution of

22 December 1990 titled Basic Provisions Article 1 stipulates that *The people exercise this power through the election of representatives and through direct decision-making* (Ustav Republike Hrvatske). Article 2 says that *The Croatian Parliament (Sabor) or the people directly shall, independently and in accordance with the Constitution and law, decide: on the regulation of economic, legal and political relations in the Republic of Croatia; on the preservation of natural and cultural wealth and its utilization; on association into alliances with other states* (Ustav Republike Hrvatske). Article 80 of the Constitution (Part Four Organization of Government) says that calling a referendum is among the competences of the House of Representatives. Today this competence is included in Article 81 of the Constitution as amended in 2010 (The Constitution of the Republic of Croatia).

Article 87 of the 1990 Constitution settled the issues of referendum, which was an optional referendum (Konstytucja Republiki Chorwacji z 22 grudnia 1990 r.). The Croatian Parliament may call a referendum on a proposal for the amendment of the Constitution, on a bill, or any other issue within its competence. The President of the Republic may, at the proposal of the Government and with the counter-signature of the Prime Minster, call a referendum on a proposal for the amendment of the Constitution or any other issue which he considers to be important for the independence, unity and existence of the Republic. According to Article 87 decisions made at referendums will be binding if they be made by the majority of the voters who voted, provided that the majority of the total number of electors have taken part in the referendum (Konstytucja Republiki Chorwacji z 22 grudnia 1990 r.).

Article 87 was changed after the amendment of the Constitution in 2000. The solution in the form of citizens' initiative was then adopted. This change was introduced on the motion of the Croatian Party of Rights – a small party whose votes were indispensable to reach a parliamentary majority of two thirds in order to introduce in Croatia the parliamentary system instead of a semi-presidential one (Podolnjak 2015: 129-149). Pursuant to Article 86 of the amended Constitution of 2000 the Croatian Sabor may call referendums on the issues specified in paragraphs 1 and 2 of this Article if such a motion was submitted by ten per cent of the total number of registered voters. The decision in a referendum was taken by a majority vote provided the majority of all voters participated in it. The result of a referendum was binding in such cases (Karp/Grzybowski 2003). In the present Constitution the rights of Sabor to call a referendum are included in Article 87 (The Constitution of the Republic of Croatia).

According to Article 98 of the Constitution, the President of the Republic may call referenda in conformity with the Constitution. The President of the Republic may do so on the motion of the Government and with the countersignature of the Prime Minister (Składowski 2013: 292). Consequently, it is the government's initiative and the government controls the President's deci-

sion. However, the President may refuse to call a referendum. A referendum called by the President may concern the questions of the amendment of the Constitution and independence, unity, and statehood of the state. The literature on the subject points to the fact that the expression "statehood" can be very widely interpreted.

In Part Six of the Constitution on Community-level, Local and Regional Self-Government Article 129 stipulates that *Citizens may directly participate in the management of local affairs, in conformity with law and the statute of local self-government units. Citizens also have the right to establish, in conformity with law, other forms of local self-government in localities and parts thereof* (Konstytucja Republiki Chorwacji z 22 grudnia 1990 r.). In the Constitution amended in 2010 pursuant to Article 133 *Citizens may directly participate in the administration of local affairs, through meetings, referenda and other forms of direct decision-making, in compliance with law and local ordinances* (The Constitution of the Republic of Croatia).

The next change connected with the amendment of the Constitution in 2010 concerns the requirements of the validity of a referendum. The questions regarding the association of Croatia with international structures were regulated in the original Constitution by Article 135 (now 142). Any association of the Republic of Croatia shall first be decided upon by the Croatian Parliament by a two-thirds majority of all deputies. Any decision concerning the association of the Republic of Croatia shall be made in a referendum by a majority vote of all voters voting in the referendum. Such a referendum shall be held within 30 days from the date on which the decision has been passed by the Croatian Parliament. The provisions of this Article concerning association shall also pertain to the conditions and procedures for the dissociation of the Republic of Croatia. After amending in 2010 the paragraph on the majority vote of all registered voters was removed. Since many Croatian citizens possessed also Bosnia and Herzegovina citizenship it was feared that this requirement would not be fulfilled. In today's Constitution a result of a referendum is valid if it is supported by a majority of voters (The Constitution of the Republic of Croatia).

All citizens of Croatia with voting rights can take part in a referendum. The previous act on a referendum granted such right only to the citizens residing in Croatia for at least a year (Składowski 2013: 258). The Constitutional Court found provision unconstitutional (Ustavni Sud Republike Hrvatske).

Particular issues on holding a referendum are regulated by the abovementioned Act (Zakon o referendum i drugim oblicma osobnog sudjelovanja u obavljanju državne vlasti i lokalne samouprave). The subject of a referendum is defined in Article 1 of the Act on Referendum. The next Article points to the forms of direct democracy in Croatia (the concept of referendum is defined, two kinds of referendums are distinguished, and other forms of direct participation of citizens are mentioned: meetings and petitions). Article 3

defines who, and in which circumstances, may call a national referendum. Article 4, in turn, refers to a local referendum. Article 5 specifies who is entitled to participate in a referendum. According to Article 6 voting in a referendum is secret and a majority vote of all participating voters decides about the result of a referendum. The next Article stipulates that no one can be held responsible for not taking part in a referendum. Article 8 says that the decision made in the voting is binding and a proper organ of central administration, local self-government unit or a local body or regional self-government may file a legal act of make a decision fundamentally incompatible with the decision undertaken in a referendum no sooner than one year from the date of the referendum (unless it is an obligatory referendum). Additionally, it was assumed that a given problem cannot be voted on again before the elapse of a period of six months from a referendum.

Articles 8a-8b regulate the issues connected with the activity of an organizational committee that gathers declarations of voters supporting the motion on holding a referendum. Thus, Article 8a deals with the formation of a committee. Article 8b specifies the requirements concerning the decisions of the committee on the necessity of holding the referendum. The decision should contain referendum questions and the period, no longer than 15 days, of collecting declarations of support for the referendum. The decision should be published in press and other media. Articles 8c, 8d, 8e concern the condition for collecting the declarations of support for the referendum. According to Article 8f after the elapse of the period of collecting signatures, the lists are delivered to the organization committee. Then, pursuant to Article 8g, after the requirement of support of 10% of voters is fulfilled, the motion on holding a referendum is sent to the Speaker of the Parliament to order the voting. Article 9 concerns the decision on ordering the voting. Article 10 stipulates the way of announcing the decision of holding a referendum and Article 11 specifies the date of voting.

Articles 12-19 concern the bodies that hold a referendum, their composition and powers. Articles 20-25 are devoted to the committee holding a local referendum. Articles 26-42 specify the details on holding a referendum (polling station, voting by the citizens residing abroad, work of a commission, way of voting, time of voting, reports of a commission on the conduct of voting and its results). According to Article 43 the State Commission defines the result of a referendum considering the following data: the total number of registered voters, total number of voters, total number of invalid votes, total number of votes "For", total number of votes "Against", and total number of votes for each motion. Article 44 determines the requirements regarding further activities of the State Commission (reports on its activity, publication of the decision taken in the referendum). Articles 45-46 concern the results of a local referendum. Articles 47-48 regulate the issues of the costs of a referen-

dum and Articles 49-56 concern the issues of possible improprieties of the voting and the ways of lodging an appeal.

The next part of the Act regulates other issues on direct participation of the citizens in the decision-making processes: a consultative referendum (Articles 57-59), citizens' meetings (Articles 60-62), and filing petitions by the citizens (Articles 63-65). The last part of the Act contained Temporary and Final Provisions.

In 2001 the Parliament attempted to amend the acts on referendum. According to the amendment the Parliament was to regain the right to refer to the Constitutional Court the question on the constitutionality of the subject of a referendum when the referendum would be held on the motion of the citizens. The point was to give the Parliament the right to block a referendum, the motion of which was supported by 10% of the citizens. The purpose was to block those initiatives that apparently had a chance of success in the voting and concerned, *inter alia*, the adoption of an act forbidding handing over the Croatian citizens to the International Criminal Tribunal in Hague for the Former Yugoslavia. The Constitutional Court regarded it as unconstitutional (Article 86 of the then binding Constitution) (Ustavni Sud Republike Hrvatske).

There are the following forms of direct democracy in Croatia: national referendum, local referendum, and local citizens' meeting. A national referendum can be obligatory or optional. An obligatory national referendum is called by the Parliament (Sabor) in a situation when the motion for a referendum is supported by at least 10% of the citizens with voting rights (Karp/Grzybowski 2007: 19). The Croatian Parliament may call an optional referendum on proposals to amend the Constitution, a bill or any such other issue as may fall within its purview. The President of the Republic may, on the motion of the Government and with the countersignature of the Prime Minister, call a referendum on a proposal to amend the Constitution or any such other issue as he/she may deem to be of importance to the independence, integrity and existence of the Republic of Croatia (Karp/Grzybowski 2007: 19). The amendment of the Constitution enter into force when the majority of voters vote in favor of it (the turnout of 50% is not required). According to Article 3 of the Act on Referendum, a referendum may be called to take a decision regarding the accession of Croatia to an association with other states (Zakon o referendum i drugim oblicma osobnog sudjelovanja u obavljanju državne vlasti i lokalne samouprave).

A local referendum is of optional character (consultative). It may be called by a representative organ of a unit of territorial self-government on issues connected with its scope of activity or by the government on the territory of one or more units of administrative division of the state (Składowski 2013: 96-97). Boundaries of the territorial division of self-government units and the structures of organs of public administration may be the subject of a

local referendum (Karp/Grzybowski 2007: 19). Before the amendment of the Constitution in 2010, the result of a referendum was binding if more than half of the citizens entitled to vote took part in a referendum. As a result of the amendment this provision was removed. According to Article 84 on Local and Regional Self-government, the government may dissolve the representative body of territorial self-government if, within 30 days from the date a motion was put forward, it fails to call a referendum on the amendment of the statute or on other issues within the scope of interest or activity of the territorial self-government when the motion is supported by 20% of the voters residing on the territory of a given unit of territorial self-government (Zakon o lokalnoj i područnoj (regionalnoj) samoupravni). A referendum on the dissolution of an executive body of a given unit is ordered by its representative organ. The result of a referendum is binding if at least one third of the registered voters residing on the territory of a given territorial unit have taken part in the vote.

A local meeting can be convoked in the smallest territorial units. A group of citizens inhabiting a village, a residential district, municipality (commune), or town can vote on important issues for the local community. The meetings are called by the bodies that manage a village, residential district, municipality, or town. The regulations of local meetings are included in the statutes of the units of territorial self-government (Karp/Grzybowski 2007: 20). The decisions are taken through a majority vote. They are binding only for the managing bodies of a village or district. In municipalities and towns they are of a consultative character.

On the basis of Article 42 of the Parliament regulation, each citizen may submit a petition on enacting or amending an act (Składowski 2013: 226). It has a character of an independent legislative initiative (Grabowska 2005: 20; Karp/Grzybowski 2007: 45). Petitions are submitted to the Speaker of the Parliament. The petition is then handed over to proper working bodies which, within 3 months, present the results of their work to the Parliament, which may initiate the legislative process.

Practical Dimension

Three national referendums were held in Croatia: the independence referendum of 1991, Croatian European Union referendum of 2012, and the referendum on the institution of marriage of 2013.

On 18 April 1991 the Presidents of federal republics decided in Ohrid to hold separate votes in all federal republics until the end of May 1991. According to the decision of the Parliament of 25 April 1991, President Franjo Tuđman ordered to hold a referendum in Croatia on 19 May without a consul-

tation with other presidents. Two mutually exclusive issues were voted on (Odluku o raspisu referendum).

The first question concerned the issue of independence and sovereignty of Croatia: *Do you approve that, as an independent and sovereign state, the Republic of Croatia, which guarantees cultural autonomy and civil rights to the Serbs and other nationalities in Croatia, can unite with other republics (as has been proposed by the Republics of Croatia and of Slovenia for the solution of the state crisis of the SFRY)?.*

The second question concerned the issue of Croatia remaining in Yugoslavia as a federal state. The question was: *Are you in favor that the Republic of Croatia remains in Yugoslavia as a federal state (such as the Republic of Serbia and the Socialist Republic of Montenegro so as to solve the state crisis of the SFRY)?.*

3,051,881 (i.e. 83.56%) out of 3,652,225 registered voters took part in voting. 93.24% voted in favor of the first question. Only 4.15% of the total number of voters were against. The second referendum question, proposing that Croatia should remain in Yugoslavia, was declined with only 4.5% votes in favor and 77.02% against (Državno Izborno Povjerenstvo Republike Hrvatske; Centre for Research on Direct Democracy).

The referendum was held in compliance with Article 135 of the Constitution and Articles 87 and 98 of the Constitution of 22 December 1990. The results of the voting were binding as they fulfilled the conditions for the turnout (at least 50% of the registered voters) and the support of majority of voters (Muś/Szpala 2011; Puszczewicz 2013). In the voting the citizens rejected the proposal of the Republic of Croatia remaining as a federal state in Yugoslavia. They voted in favor of the rise of an independent and sovereign state without conclusively deciding whether to join the structures of a federal Yugoslavia.

Table 1. The national referendum of 19 May 1991

Date	Subject	Turnout in %	Results
19 May 1991	The independence referendum	83.56	
	First question		For 93.24% Against 4.15%
	Second question		For 4.5% Against 77.02%

Source: Author's own study based on Državno Izborno Povjerenstvo Republike Hrvatske; Centre for Research on Direct Democracy.

Croatia's EU Accession referendum was held on 22 January 2012. It was preceded by Croatia's government actions meant to join the structures of the EU. On 21 February 2003 Croatia applied for EU membership and was grant-

ed the status of a candidate country on 18 June 2004. This opened the way for starting accession negotiations, officially launched in 2005. A common declaration of the government and the Parliament on cooperation in the association negotiation process with the European Union was published (Izjava Hrvatskoga sabora i Vlade Republike Hrvatske o zajedničkom djelovanju u procesu pregovora za članstvo u Europskoj uniji). In fact, the issue of the Croatia's membership in the EU was the subject of a consensus between almost all political forces of this country. After Croatia had closed the negotiations on 24 June 2010, the Parliament of Croatia decided on the constitutional reform on 6 July 2010 on account of the accession (Babić 2012: 89-113). Pursuant to Article 142 of the amended Constitution, the voting was to be held within thirty days after the accession treaty had been signed.

On 9 December 2011 both parties signed the accession treaty pursuant to which Croatia was to become the EU's 28th member state on 1 July 2013. On account of the parliamentary elections, which were held on 4 December 2011, the new parliament set the date of holding the accession referendum on 22 January 2012 (Odluku o raspisivanju državnog referendum o pristupanju Republike Hrvatske Europskoj Uniji). It was a one-day voting. The polling stations were open from 7 a.m. to 7 p.m. 1,960,231 (43.51%) out of 4,504,765 of the registered voters took part in the vote (Državno Izborno Povjerenstvo Republike Hrvatske; Croatia EU membership referendum 2012). The voters answered the following question: *Are you in favor of Croatia's accession to the European Union? For/Against* (Odluku o raspisivanju državnog referendum o pristupanju Republike Hrvatske Europskoj Uniji). 66.27% of the voters answered in favor of the accession of Croatia to the European Union. 33.13% were against (Državno Izborno Povjerenstvo Republike Hrvatske; Centre for Research on Direct Democracy). The official results of the referendum were announced on 27 January 2012.

Table 2. The national referendum of 22 January 2012

Date	Subject	Turnout in %	Results
22 January 2012	The accession referendum	43.51	For 66.27% Against 33.13%

Source: Author's own study based on Državno Izborno Povjerenstvo Republike Hrvatske; Centre for Research on Direct Democracy.

The referendum on defining marriage as a union between a man and a woman was held on 1 December 2013 (Odluku o raspisivanju državnog referendum). The Catholic organization In the Name of the Family, supported by the Catholic Church, collected between 12-26 May 2013 even a surplus of the required number of signatures under the motion on referendum. The motion was submitted to the Parliament on 14 June 2013 and voted on 8 November

2013. The Parliament supported the initiative with 104 votes "for" and 13 "against". The citizens answered the question: *Are you in favor of the constitution of the Republic of Croatia being amended with a provision stating that marriage is matrimony between a woman and a man?* (Odluku o raspisivanju državnog referendum). The polling stations were open from 7 a.m. to 7 p.m. The government wanted the Constitutional Court to review the constitutionality of the referendum question because it infringed on the rights of the minorities, provided for in the Constitution. On 13 November 2013 the Constitutional Court ruled that the voting was in compliance with the law and its result was binding. The final results of the referendum were announced on 12 December 2013. The turnout was 37.88%. 964,433 (66.28% of the total voters) voted "yes". 481,534 voters (33.72%) voted "no" (Državno Izborno Povjerenstvo Republike Hrvatske; Centre for Research on Direct Democracy).

Table 3. The national referendum of 1 December 2013

Date	Subject	Turnout in %	Results
1 December 2013	The referendum on defining marriage as a union between a man and a woman	37.88	For 66.28% Against 33.72%

Source: Author's own study based on Državno Izborno Povjerenstvo Republike Hrvatske; Centre for Research on Direct Democracy.

The attempts to call an initiative-based referendum were generally unsuccessful. Except one initiative of 2013 which ended in holding a referendum (Smerdel 2011: 186-188). For example, in 2007, on the basis of the right of citizens' initiative, signatures were collected under the motion for a referendum on the accession of Croatia to NATO. However, the number of signatures was not enough – the petition was signed only by 124,457 people (Łakota-Micker 2011: 173-176). In 2010 the government prepared the project on the amendments to the Labor Act (Zakon o radu), which ended in social protests and the collection of signatures under the motion for a referendum. In June 2010 the trade unions collected over 800,000 signatures (Podolnjak 2015: 129-149). As a result, the government gave up its project of the suggested changes and the Parliament rejected the motion for a referendum as a pointless one (in such a situation). The trade unions referred this decision to the Constitutional Court which rejected it as groundless (Ustavni Sud Republike Hrvatske). The decision was criticized by the Centre-Left opposition parties.

A referendum motion on the amendment of minority language rights was another example. Under the current legislation in Croatia, national minorities must represent at least one third of the population to be able to claim these rights. In their motion the initiators wanted the Act to be amended in such a

way that minority language rights would only be granted in local self-government units where at least half of the population belongs to an ethnic minority (Podolnjak 2015: 129-149; Jagiełło-Szostak 2014: 43-63). The direct cause of submitting a motion for a referendum was the conflict in Vukovar, where the local government installed bilingual public signs, which were destroyed. The motion for a referendum was examined by the Constitutional Court which ruled that the referendum question was unconstitutional (Ustavni Sud Republike Hrvatske). In 2014 a motion for referendum against outsourcing public service jobs was put forward (Croatia: Outsourcing of non-core services to the private sector, European Observatory of Working Life). The trade unions collected over 600,000 signatures. A petition for a referendum on selling the rights to manage highways to private companies was another example of a citizens' initiative. The civic initiative, "We Are Not Giving up our Highways", collected more than 500,000 signatures demanding a referendum. In both cases the Constitutional Court recognized the referendum questions as unconstitutional (Ustavni Sud Republike Hrvatske). Finally, the government resigned from its plans.

In contrast, the citizens' initiative to define marriage in the Constitution as a union of a man and a woman ended in calling a referendum. After an over six-month debate, the decision was taken in November 2013. The Constitutional Court recognized that the referendum would be accordance with the Constitution (Ustavni Sud Republike Hrvatske).

There is no official list of local referendums in Croatia. A local referendum is optional, which means, in practice, that all cases regarding the functioning of a local community can be put to a vote. The decisions of the voters are binding except the issues concerning the territory of the state – in this case referendum is only of a consultative character. In practice, a referendum is very rarely used in a decision-making process at a local level. The results of the already held referendums were mostly negative (Koprić/Klarić 2015: 397). To make a referendum valid, the turnout has to be over 50% of the total number of registered voters and over 50% of the voters who took part in the vote have to vote "for" a given issue.

The citizens' initiative is also rarely used in practice (Koprić/Klarić 2015: 397). It is applied when more that 10% of the registered voters in a given unit at a local level sign a petition. Local authorities may take a positive decision within three months. However, they are not obliged to accept this citizens' initiative.

Consultative meetings may be organized only at the level of units of local self-governments or of parts of such units. In practice, such meetings are not commonly used; they are rather an occasional form of direct democracy. As the studies on the subject show, they are held only in 23% of local units, while in about 77% of such units they are not used at all (Koprić/Klarić 2015: 397).

The law has introduced direct elections of the executive body of units of territorial self-government. The first elections were held in Croatia on 17 May 2009. The next ones took place in May 2013. During the term of 2009-2013, the dismissal procedure remained with, first of all, the Council, although the citizens were formally entitled to use this procedure. On the other hand, during the term of 2013-2017 the citizens were in a much better position as far as the use of a dismissal procedure was concerned. The procedure is approved by the Council if the demand for it is supported by 20% of the voters. Moreover, it should be remembered that the dismissal procedure cannot be applied within the first twelve months since the executive organ of a given unit took office and in 2017 until the end of its term. The dismissal procedure is binding when at least one third of the voters eligible to vote in local elections will take part in the vote and the majority of them support the motion (Koprić/Klarić 2015: 397).

Conclusion

It should be noticed that before 2000 neither the President nor the government called the referendum on the strength of Article 86 of the then binding Constitution (Podolnjak 2015: 129-149). On the other hand, between 2000 and 2012 no referendum was called as a result of citizens' initiative. It should be stressed that the referendum on defining marriage is, so far, the only national referendum that was held on the citizens' initiative on the strength of Article 87 of the Constitution. 10% of the registered voters (i.e. about 400,000 citizens) have to sign the motion for a referendum. The signatures must be collected within 15 days, which in practice is difficult to achieve. Consequently, only the citizens' initiatives in which well-organized organizations or unions (e.g. trade unions or war veterans associations) are involved are likely to succeed. Until 2013, the attempts to call a referendum on a citizens' initiative were unsuccessful. It should be stressed that after the amendment of the Constitution in 2010 the minimum turnout is not required.

Generally, it should be stated that the solutions characteristic of direct democracy at a local level in Croatia are not often used in practice. The reason for this state of affairs can be sought, *inter alia*, in the low level of government decentralization in this country (Koprić/Klarić 2015: 405). Consequently, it seems, the citizens are more interested in the functioning of the authorities at the national level rather than local level. The low interest of citizens in the functioning of authorities at local levels is evidenced by the poor turnout in local elections, and consequently, by low turnout in various forms of direct participation in the decision-making process.

The accession of Croatia to the structures of the European Union and the utilization of the accession referendum may positively influence the debate and the use of various forms of direct democracy.

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Elżbieta Kużelewska

Direct Democracy in Czechia

Determinants

The Czech Republic[1] is one of the youngest and least experienced states in Europe as far as direct democracy is concerned. The roots of its statehood should be sought in Czechoslovakia, which was founded in 1918. As T. Siwek rightly remarks Czechoslovakia, since its beginning, had an encoded inner division which was capable of breaking up this state (Siwek 2016: 164). It is difficult not to agree with the thesis that, in principle, there were no Czechoslovakians but Czechs and Slovaks inhabiting separate territories and besides, they were not territorially mixed, separated by a clear border that did not change over centuries although it was then only of administrative character (Siwek 2016: 164).

On 25 November 1992, the Federal Assembly of Czechoslovakia adopted an act on the dissolution of the state on 31 December 1992. In the meantime, Regional Assemblies adopted the constitutions of the new states and on 1st January 1993 the regional governments of Czechia and Slovakia assumed the role of the governments of the new states: the Czech Republic and the Slovak Republic. It is surprising that there was no national referendum on the division of Czechoslovakia into two sovereign states: the Czech Republic and Slovakia. The then president of Czechoslovakia, Vaclav Havel, pushed a referendum act through the Federal Assembly in 1991 but it largely concerned the issue of the organization of the state and stipulated, among others, that the results of the referendum were the basis for the secession of the Czech Republic and the Slovak Republic from the Federation. However, Havel did not foresee that the dissolution of the Federation might be the outcome not only of the secession of a member state but simply of a decision by the Federal Assembly about its dissolution; hence the act on the referendum was not applicable in this case (Czyżewski 2016: 7-8).

The decision on the division of Czechoslovakia was undertaken by the ruling parties without social consultations and without using the institutions of direct democracy. The ruling parties supported this approach, which did not take into consideration the opinion of the parliamentary opposition, which called for a referendum (Bookman 1994: 176) although according to opinion polls conducted in September 1992 over 80% of the respondents clearly de-

[1] The Czech Republic and Czechia are the official names of the state in English.

clared support for the idea of a referendum on this matter (Holy 1996: 198).The ruling coalition explained its objection to refer to the nation's will arguing that the referendum as a tool of direct democracy would negate the principle of representative democracy which functioned well in the legal system of the Czech Republic while the political will of the people was well represented by the deputies elected to the Assembly. According to the government, the pressure of the opposition to conduct the referendum on the division of Czechoslovakia did not result from its concern for the preservation of the federal structure of the state but it was actually an attempt to influence the results of the elections (Holy 1996: 198).

The Czechs are not supporters of the direct exercise of power by the nation. They definitely are for a representative form of government, which is manifested not only in a small number of the conducted referendums but also in the adopted legal solutions concerning one of the forms of direct democracy – referendum. It should be stressed that in 1920 there was an attempt to refer to the plebiscite on state affiliation of the disputed territories of Cieszyn (Těšin), Spiš, and Orava. Both Poland and Czechoslovakia used propaganda to convince the inhabitants to opt for one of the sides. Both states used paid agents who tried to persuade the voters not only verbally but also by bribing them: offering scarce goods such as flour, sugar, salt, as well (Matula 2013: 58). Finally, the plebiscite was not held but the issue was settled by international arbitration.

Formal-Legal Dimension

The legal bases of referendum are included in the Constitution of the Czech Republic of 16th December 1992, the Act on Local Referendum of 2004 (Zakon 2004), and the Regional Referendum Act (Zakon 2010). Despite many legislative initiatives, there are still no acts on a national referendum in the Czech legal order (Jirásková/Skotnicki 2009: 14). An exception is the constitutional act regulating the referendum on Czechia's membership in the EU, but it is of incidental character (Rytel-Warzocha 2011: 132).

The Constitution of the Czech Republic in Article 2, section1 states that *All state authority emanates from the people; they exercise it through legislative, executive, and judicial bodies*. Section 2 specifies that *A constitutional act may designate the conditions under which the people may exercise state authority directly*. The provision for the possibility of a referendum is very important because this institution permanently encounters strong resistance from politicians (Skotnicki 2000: 17). The analysis of the above-mentioned legal articles allows the author to formulate a conclusion that the institution of a referendum is regulated rather laconically and the representative form of

government is superior. Moreover, as Skotnicki rightly points out (Skotnicki 2000: 17), the term *may designate the conditions* in section 2 shows that the nation may exercise indirect power on the basis of each constitutional act and without any permanent legal bases.

Thus the Czech law does not provide for an obligatory referendum. Each time the decision of ordering this form of direct democracy may depend on different circumstances. As a result of amendments to the Constitution of 2003, Article 10a was added which says that *1. Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution. 2. The ratification of treaty under the paragraph requires the consent of Parliament, unless a constitutional act provides that such ratification requires the approval obtained in referendum*. Amending the Constitution with Article 10a introduced the so-called *integration clause* and referred to the possibility of conducting the referendum on the membership in the EU. Under Article 62 of the amended Constitution the President was authorized to call a referendum and declare its results. The President was to call the referendum within 30 days of signing the accession treaty (Hanley 2005: 142). This solution was limited to the referendum on the EU membership exclusively and, paradoxically, it was obligatory. At the same time it was asserted that in case of a negative result of the accession referendum, the next one might be called after two years at the earliest (in the same case and on the same conditions). Pursuant to Act of 2002 on the Referendum on the Accession of the Czech Republic to the European Union (Law No. 515/2002 Coll) each registered voter was empowered to petition the Constitutional Court pointing to legal objections concerning the validity of the referendum within 10 days after voting.

The Local Referendum Act of 2004 stipulates that all eligible residents of a municipality (commune) can vote (§2). Thus every Czech citizen, who until the day of voting has reached 18 years of age and is the resident of a municipality (town), is allowed to vote. A foreigner with a permanent residence permit has a right to vote as well.

Voting in a local referendum is universal, secret, equal, and direct (§3). The cited law, in §4, enumerates the conditions which prevent one from taking part in the local referendum. They are: limitation of personal freedom connected with a detention, limitation of legal capacity to vote, statutory limitation of personal freedom in order to protect health of people, doing mandatory military service or its alternative forms arising from duties associated with serving abroad. The Act says that the voting in a local referendum will be held within one day. It admits that in case a local referendum is held concurrently with the election to municipality councils, regional parliaments or to one of the Chambers of the Parliament of the Czech Republic or the European Parliament, it will be held at the same time as the election. The act also admits that in case of emergency or war, a local referendum is not held.

When the crisis situation is over, the authorized organs will undertake a decision on the date of local referendum within 90 days (§5).

In its §7 the Act clearly defines what cannot be the subject of voting in a local referendum: local fees and the budget of a municipality or statutory town; the establishment or abolition of statutory or municipal bodies of a town; election or dismissal of a mayor or other members of Municipality or Town Council and other members of chosen bodies of a municipality or a town; if the questions (the subject of a referendum) are contrary to law or there is a justified suspicion that the decision of the local referendum will be contrary to law; conclusion of public contracts contracting to execute delegated powers; and approval, change or repeal of generally binding municipal orders. At the same time the act imposes a requirement to formulate the question in such a way that it can be answered "yes" or "no". The legislator therefore opts for the clarity and brevity of a referendum question which is to facilitate the answer. The question should be transparent, explicit and without any disinformation elements. Moreover, when several issues are simultaneously voted on, the questions should not exclude one another. The Supreme Administrative Court of the Czech Republic (Nejvyšší správní soud ČR; NSS) in its ruling of 2012 stressed the need for an open attitude to the interpretation of the concept of uniqueness because too intensive formalism and narrow interpretation would be contradictory to the character of a local referendum as a tool of implementation of citizens' basic political rights. NSS has also stressed many times that voting in a local referendum should be interpreted with reference to concrete local and historical conditions. A question that may seem ambiguous in one municipality may be clear and understandable in another. The size (population) of a municipality should be also taken into consideration because in smaller municipalities the questions are usually clear and easy to understand by the residents (Rozsudek 2012).

The entities that are authorized to initiate a local referendum pursuant to §8 are: a municipality council or a town council (by a resolution on holding a local referendum) and Preparatory Committee. This last entity renders the fullest the direct dimension of democracy at a local level because in this case the idea comes from the people (residents of a municipality) and not from their representatives. In a wider sense it may be described as people's initiative. The Preparatory Committee must first of all develop a suggestion concerning the territory where the referendum will be held. Furthermore, the proposal must be justified and a question (questions) which will be asked in the referendum must be formulated. Interestingly, the motion must contain the estimate of costs connected with the implementation of decisions taken in the referendum although, as the NSS underlined in its judgment of 2012, a general estimate will be enough; it is not necessary to attach the detailed prices of particular items (NSS 2012). Moreover, the motion must contain a list of the members of the initiative, their signatures, and identification of a plenipoten-

tiary for members of the Preparatory Committee, who is authorized to act on their behalf.

Chapter VIII of the Local Referendum Act determines the conditions for the validity of the referendum and its binding force. The referendum is valid if at least 35% of registered voters have taken part in it. Originally, the act provided for 50% but in 2008 the number was reduced to 35% due to the fact that it was generally impossible to reach such a high turnout in big towns. The Green Party initiated this change after the invalid referendum in Brno in 2004 (Smith 2011: 42-43). The decision undertaken in a local referendum is valid if it has been supported by the absolute majority of voters who have taken part in the local referendum and it has constituted at least 25% of registered persons in the census. If the subject of voting has been a merger or division of municipalities, the decision is binding if it has been supported by the absolute majority of the voters.

The Local Referendum Act of 2010 was an answer to the appeal of the European Council and the EU concerning the implementation of local and regional referendums (Pechanec 2011: 77). The act on the regional referendum is essentially an extension of the local referendum on the territory of the whole region because the legal rules are the same. The regional referendum is a supplement (or complement) of representative democracy: however it does not substitute it. The regional referendum must concern the whole region. The act clearly defines what cannot be the subject of voting in a regional referendum: imposition of fines, regional budget, establishment or abolition of regional organs and their inner process of elections, dismissal of a governor, his/her deputies and members of a Regional Council and also of elected or appointed members of other regional bodies, approval, change or annulment of regional directives. Like in the act on the local referendum, the regional referendum cannot be held if the question that is the subject of voting is contrary to the law or there is a reasonable suspicion that the decision expressed in the regional referendum will be in conflict with the law. The change of a border region also cannot be the subject of voting. The question that is the subject of the regional referendum must be formulated clearly and in such a way that the voter can answer it “yes” or “no”.

The right to vote in the regional referendum is vested in everyone who is entitled to vote in elections to the County Council. The legislator does not use here a direct definition but refers to the rules of the Act on Election to Regional Councils, and to some amended acts (no 130/2000 Sb.), in which §4 says that a Czech citizen who is over 18 years of age and is a permanent resident of the region is entitled to take part in voting. Contrary to the local referendum, foreigners have no right to vote in the regional referendum. The voting in the regional referendum is secret, universal, equal, and direct.

The regional referendum is valid if at least 35% of registered voters have taken part. The decision of the regional referendum is valid if it has been

supported by the absolute majority of the voters who have taken part in the local referendum, this number being at least 25% of the registered voters. The fact that the legislator has established the same indicators for both the local and regional referendum is intriguing. It seems that in the case of the regional referendum these values should be higher due to a much greater number of the residents of the region. On the other hand, the decisions undertaken in the regional referendum are of greater importance in comparison with the local one therefore this balance in the conditions of the validity and binding character of the referendum can be understandable.

Practical Dimension

In the Czech Republic, only one national referendum has so far been held, i.e. the voting concerning the EU accession. Previously, there had been unsuccessful attempts to order a referendum on Czech accession to the North Atlantic Treaty Organization (NATO) (Vachudová 2001: 351). Incidentally, it should be pointed out that in 2013 the populist political party Úswit Přímé Demokracie (Dawn of Direct Democracy) emerged on the Czech political scene. Its main postulates concerned the enlargement of the role of direct democracy following the example of Switzerland (Kużelewska 2014: 100).

In 2014 a bill on a national referendum was prepared. Its initiators were deputies: Jan Krycer (CMUs), Vaclav Grulich (CSSD), and František Trnka (LSU later CMUs), who pointed out that there was no act on general referendum although Article 2 section 2 of the Constitution indirectly provided for the possibility of such a solution. They stressed that the suggested solution did not stand in contradiction to international treaties binding in the Czech Republic. Moreover, on the basis of comparisons with international solutions it could be explicitly stated that the countries regarded as consolidated democracies (the USA and Swiss Confederation) treat national referendum as a standard and common instrument of national policy. Also the EU adopted solutions that enact the forms of direct democracy, i.e. the European Citizens' Initiative

Regardless of parliamentary work on the bill on national referendum, the Czechs held only one national referendum. The ruling coalition announced that it would respect the result of the accession referendum regardless of the turnout and victory of any of the parties. The use of referendum and the respect for the will of the nation was a kind of "replacement" of the parliament's decision (Pavliček 2000). The then ruling authorities were sure of the support of the citizens for the idea of the European integration; however, the results of the surveys of the public opinion showed a small but gradual decline in the number of EU supporters (Mendez/Mendez/Triga 2014: 78). The

situation complicated a little after Vaclav Klaus was elected President in February 2003, which changed the narrative of the referendum campaign (Hanley 2003). Since Klaus was not an advocate of Czech membership in the EU, it was rightly feared that his attitude could discourage the Czechs from taking part in the referendum and this would result in a low turnout. To prevent this from happening, the ruling coalition took the decision on a two-day accession referendum (13-14 June 2003; Friday and Saturday) (Valach 2004: 50). Before the referendum, each Czech citizen received a ten-page brochure which contained the basic information on the Accession Treaty and the conditions for the membership. The full text of the treaty was also available on the web page of the Ministry of Foreign Affairs (Marek/Baun 2010: 26).

The parties jointly forming the government: the Social-Democratic Party, Christian Democratic Union, People's Party, and Democratic Union were firm supporters of the accession. Those against were: the Civic Democratic Party and Communist Party (Perottino 2005: 27). The turnout in the accession referendum was 55% (Czech Statistical Office (ČSÚ); (Baun et al. 2006: 265).

78% of the voters supported the membership of the EU. The highest support for the accession was recorded in Prague, in the regions: Praha-zapád, Plzeň-mesto, Brno-město, Brno-venkov, in south-east Moravia, in Ostrava-město and in the Opava region. The fewest supporters of the European integration were in central Bohemia and the regions bordering Germany, Austria, and Poland (Baum et al. 2006: 264).

According to Hanley (Hanley 2003: 11), it is interesting that majority of the voters in all analyzed criteria (except the electorate of the Communist Party of Bohemia and Moravia) opted for Czechia's membership of the EU. Secondly, the higher the education, the larger was the support for the integration. Thirdly, comparable support for the EU can be noticed in urban and rural regions (the difference is only 3%). This means that the Czechs are not a Eurosceptic nation and generally supported the accession to the EU. But the turnout (not much above 50%) causes some dissatisfaction (Kużelewska 2015: 189). It can be safely said that it is a low turnout due to the fact that it was the first national referendum (thus, the effect of the so-called "novelty" failed in this case) and it concerned the fundamental question for the future of the Czech Republic: its place in the European order.

It is difficult to evaluate precisely Czechia's experience of local democracy because municipalities are not obliged to send the reports of the local referendums results to the Czech Statistical Office. The available information demonstrates that in 2004-2014, 258 local referendums were held. Originally, the local referendums concerned mainly the division of a municipality into two or more territorial units. The local referendums became more important as a result of the change of law in 2004 and 2008 (Blokker 2014: 121) and nowadays they shift the decision-making centre from the representative bod-

ies to municipality residents. The so-called "green policy" is actively pursued by the Czechs. The first local "green" referendum was held in the Czech town Tábor and was a success. The residents voted against the project of building the road crossing the botanical park in the centre of the town (Nyzio 2013: 113). It was a crucial referendum because its result proved that the residents could influence the policy of the municipality where they lived; furthermore, it initiated a series of "green" local referendums, promoted by non-governmental organizations.

In 2000-2005 the subject of the local referendum in the Czech Republic was dominated by the place of storage of nuclear waste (44%). After the experts had indicated the most optimal municipalities in which nuclear waste could be stored, the local community did not consent to this by holding a local referendum. The problem of municipal ownership and the development of local infrastructure was also a frequent subject of voting in referendums – 17% (Vojtechova 2009: 21).

In 2005-2008 25 local referendums on the deep repository of nuclear waste were held. Except one, all the others were valid. In all referendums, the inhabitants were against locating the site of nuclear waste storage in their municipality. The results of the local referendums compelled the authorities to look for other places of repository localization and continue to store the waste in question on the premises of two Czech nuclear plants in Dukovany and Temelin (Vojtechova 2009: 22).

In 2007 a local referendum was held on the assent to the location of American radars which were the elements of the anti-missile shield. By an overwhelming majority of votes (95-98%), the inhabitants of Hvožďany, Těně, and Zaječov rejected the proposition.

The local referendum on the railway station in Brno was held twice: in 2004 and 2016. Both were invalid because of a low turnout, nevertheless the subject of voting is very interesting. In 2004 the Brno authorities, in consultation with the state government started the promotion of the project Europoint which assumed the reconstruction of the railway junction: the main railway station was to be shifted from the centre of the town one kilometre south. The main railway station in Brno is one of the oldest in Europe and is situated in the historical centre of the town. A group of local organizations expressed its objection and suggested the reconstruction of the existing railway station without moving it (Smith 2011: 44). For this purpose a referendum initiative was prepared and the Town Council (which was reluctant to this initiative) proclaimed a referendum. Although as many as 86% of the voters supported the idea of the reconstruction of the railway station on the site of its previous location, only 80 thousand residents of Brno took part in the referendum which was 25% (much below the needed threshold).

The case of the railway station in Brno returned in the local referendum in October 2016. The main railway station is still small, uncomfortable, and

squalid but located near the centre. And these two visions continued to clash: the reconstruction of the existing railway station and its transfer to another place. The inhabitants of the town, the authorities, and political parties are divided on this issue. So are families. Brno, as a university town with a great number of students, has become the host for the Czech greens and "pirates". Although the local referendum was held together with regional elections, the turnout was poor and the issue of the railway station is still unsolved.

Conclusion

The Czech legal system shows representative democracy as the main form of exercising power by the nation. The majority of politicians are unwilling to regulate and make use of the institution of the national referendum. It is the CSSD and the Greens that referred to the need of writing a law on the national referendum. Today, this is a much sought-after position appropriated by the populist and eccentric movements on the Czech political scene. Their attitude results from bad experience connected with direct elections of Czechia's president, which polarized the country and political scene for many years. It is highly probable that Czech politicians are afraid of the repetition of the Slovak experience with the national referendum, which, instead of solving the matters, multiplies them and causes reluctance among the voters to participate in voting.

In the Czech Republic the use of the instruments of direct democracy at the national level while exercising power is not a determinant of the political consciousness of the society. This was not changed by the accession process to the EU which "forced" the carrying out of the referendum on the membership of the EU, after the introduction of proper changes in the constitution, but it is not legitimate to say that it has influenced the development of direct democracy either in the formal-legal or practical dimension.

Despite very modest referendum experience at the national level, the Czechs have often have utilized local referendums. Local referendums were not always successful due to a low turnout, which decided the validity of a referendum. However, some unquestionable advantages of direct local democracy should be pointed out. Firstly, the inhabitants are better informed because of the referendum campaign. Secondly, specific problems are discussed and analyzed - there is no place for empty slogans. A referendum often initiates a public debate and strengthens the authority of the rule-of-law principle because in this case the municipality inhabitants make law and obey it. The political consciousness of the Czechs has increased: in the so-called "green" local referendums they were able to mobilize themselves and effectively vote against top-down initiatives which were unfavourable for their

municipalities. The absence of the possibility to vote in the national referendum is compensated for by the growing number of (often effective) local referendums.

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Dorota Maj

Direct democracy in Estonia

Determinants

Estonia is another country that gained independence as a result of geopolitical changes in Europe after World War I. The revolution of 1905 was an impulse for the Estonians to launch independence actions but at that time the main aim was to achieve national-cultural independence. The ideas of Estonia's independence revived during World War I. Estonia put its hopes for state independence on Russia. The outbreak of the revolution in Russia in 1917 was regarded by the Estonians as a suitable moment for obtaining autonomy. The project of Estonian autonomy was adopted in Dorpat (Tartu) on 11 March 1917 by the representatives of Estonia's national organizations (Lewandowski 2002: 165). The project assumed the autonomy within the Estland [Estonian] Governorate and within the part of Livland [Livonia] traditionally inhabited by the Estonian population. The structure of the executive and judiciary bodies and its own army were included in this structure.

On 30 March 1917 the autonomy was announced by the Provisional Government in the document titled The Order on the Provisional Formation of Administration and Local Government in Estland Governorate. The first governing authority was the Provisional Land Council [also referred to as Provisional National Council – Maapäev]. However, the legitimacy of this body did not stem from free elections; it was designated by the Russian authorities. The Maapäev included many distinguished Estonian politicians, *inter alia*, Jaan Tõnisson, Jüri Vilms, Konstantin Päts, Ado Birk, Karl Ast, and Kaarel Parts [Estonian Provisional Land Council]. The newly formed authority was headed by Jaan Raamot and then Konstantin Päts. On 14 February 1917 in the White Hall of Toompea Castle the Maapäev convened for the first time. However, already in November 1917, power in Estonia was taken over without bloodshed by the Bolsheviks, who gradually started to liquidate the Estonian power structures. The situation changed on 19 February 1918 when the Council of Elders which operated in secret set up the Estonian Salvation Committee [Eestimaa Päästekomitee or Päästekomitee]. It consisted of Konstantin Päts and Jüri Vilms, and Konstantin Konik, each member of the Committee being of equal status but sometimes it is indicated that Päts was its Chairman. The Estonian Salvation Committee was the executive body of the Maapäev which, before the troops entered the territory

of the Estonian governorate, decided to declare independence. The declaration of independence provided, for the first time, for the creation of Estonia as an independent democratic republic (Manifest Eestimaa rahwastele 1918). The document was announced in Estonia's larger towns between 23and 27 February 1918; in Parnu (23 February), in Tallinn, Tartu, and Fellinn (24 February), and Rakvere (27 February).

In February 1919 Maapäev met for the last time. During this meeting it decided on the organization of elections to the Estonian Constituent Assembly [Eesti Asutava Kogu]. The elections were held on 5-7 April 1919; the turnout was high (80%). The fact that left-wing parties (including the Estonian Social Democratic Workers' Party) won in the elections was important for the shape of the adopted regulations. The first meeting of the Estonian Constituent Assembly was held on 23 April 1919. The main aim of its activity was to draw up the State's Constitution but altogether 88 legal acts that regulated issues connected with education or social welfare were passed. On 4 June 1919 the Assembly adopted the Provisional Constitution of Estonia, and the Constitution proper was adopted on 15 June 1920. The reservation against the Constitution of Estonia was its excessive brevity and generality and the use of too many Swiss patterns (Sepełowski 2014: 324; Kierończyk 2013: 45). This was of course reflected in the shape of political-system solutions adopted in the Constitution which determined the parliamentary-cabinet form of government and the introduction of the principles of direct democracy. The Constitution of Estonia sanctioned the sovereign power of the nation and the appropriate regulations were included both in Article 1 of the Constitution (*Estonia is an independent and sovereign democratic republic wherein the supreme power of the state is vested in the people*) and in Article 29 in which *The people exercise the State Power (a) by plebiscite; (b) by their initiative in legislation; and(c) by the election of the State Assembly* [Riigikogu, Estonia's one-chamber parliament] (Constitution of the Republic of Estonia 1920; Sepełowski 2014: 324). Pursuant to Article 30 of the Constitution *Every law passed by the State Assembly remains unpromulgated for a period of two months dating from the day of its passing if one-third of the legal number of members of the State Assembly requires it. If during this period 25,000 enfranchised citizens demand that this law be submitted to a plebiscite for acceptance or rejection, the promulgation or non-promulgation of this particular law will depend on the results of this plebiscite*. What is important, the further functioning of Riigikogu was connected with the results of the plebiscite: if the Estonians rejected a particular law adopted by the parliament or adopted the law rejected by the State Assembly then the State Assembly was dissolved and new elections of the State Assembly would be proclaimed (the elections had to take place not later than75 days after the plebiscite).

A group of 25,000 people had the right to require that the law would be passed, changed or cancelled. The State Assembly could either pass this draft

as a law or reject it. In this latter case the draft would be submitted to the people in form of a plebiscite for acceptance or rejection. If in the plebiscite the majority decided in the favour of the law in question it acquired the force of a law (Article 31).

The initiative for the alteration of the Constitution belonged to the people in the way of the initiative of the people, although the State Assembly had the right to take this initiative (Article 87). The project of the alteration of the Constitution had to be communicated to the people at least three months before the day of the plebiscite (Article 89). Finally, the result of voting decided about the acceptance or rejection of the alterations of the Constitution.

The Constitution of Estonia pointed out the issues that could not be solved by the plebiscite. Article 34 stipulated: *The Budget, the raising of loans, income tax laws, declaration of war and the making of peace, declaration of a state of defence and termination of same, declaration of mobilisation and demobilisation, as well as treaties with foreign States, are not subject to a plebiscite and cannot be decided by a plebiscite.*

The institutions of direct democracy were referred to five times between 1918 and 1940: 1923, 1932, 1933 (two times), and in 1936.The first plebiscite in Estonia concerned the issue the State – Church relations. Pursuant to the provisions of Article 11 of the Constitution, in Estonia Church and State were separated. Article 11 of the Constitution stipulated that there was no State religion in Estonia (Ringvee 2008: 181). As a consequence of this constitutional regulation there were changes in laws regulating religious instruction at public schools. Estonia was a one of the first States where non-confessional model of education was introduced (Kiviorg 2013: 92). In the first place, the law of 7 May 1922 introduced a prohibition of teaching religion in primary schools, then on 7 December 1922 similar solutions were introduced in secondary schools. There were fierce discussions over the above-mentioned acts both before they were passed and after their adoption, which, as Merilin Kiviorg stresses (2011: 116), was a rare phenomenon among rather reserved Estonians. The fact is that even before the referendum the teaching of religion at schools was continued at the express wish of parents and pupils and on condition that it did not conflict with obligatory classes. The plebiscite was held between 17 and 19 February 1923. Over 70% of the participants voted for the facultative classes of religion which would be financed from the state budget. As a result of the voting, the laws of 1920 and 1922 were annulled and religion became an optional subject for teachers and pupils; but at the same time, schools were obliged to teach it .In principle, until 1940, these issues were no longer discussed.

At the beginning of the 1930s the results of economic crisis in Europe began to be felt, which additionally exacerbated the crisis of the parliamentary system, which grew stronger in the Baltic Republics. In the

case of Estonia, the problem was there was no presidential office and that too much role was assigned to the Parliament. It should also be mentioned that during the period in question Estonia faced the development of the fascist movement which sought to strengthen the executive power (Żebrowski 2004: 44). The change of the constitutional regulations had to be approved in the plebiscite, which was planned between 13 and 15 August 1932. The draft put to the vote assumed the introduction of a strong presidential office that was elected in direct elections for a five-year term. The President was to have many rights: the right of a veto against the Parliament, dissolution of Riigikogu, and issuance of decrees. Moreover, the proposition of financial independence of the Parliament, shortening its term of office from 4 years to 3, reduction of the number of MPs from 100 to 80 were put to the vote. 90% of registered voters took part in the voting (in Estonia the formal obligation to vote was introduced) but the project was not accepted, nor was it, however, explicitly rejected.

The issues voted on in 1932 became the basis for further work on changes of the Constitution. The next suggestion was put forward by the so-called Vaps Movement (commonly referred to as the vapsid) or the Union of Participants in the Estonian War of Independence [Eesti Vabadussõjalaste Keskliit]. The vapsid criticized political parties, they demanded the creation of the presidential office and introduction of "strong-arm rule" (Lewandowski 2002:194). This project, aside from the proposals put to the vote in 1932, proposed to introduce proportional elections with the option to vote on persons, rather than on tickets. The vote was planned to be held on 10-12 June 1933. Although the threshold was met, the project did not gain enough support.

As a result of the defeat in the vote, martial law was declared on the whole territory of Estonia. The project proposed by the vapsid was again submitted to the Parliament in November 1932. To receive a sufficient support the threshold was lowered from 50% to 30%. The voting was held on 14-16 November 1933. This was a third attempt to force the changes in the Constitution; this time it was a success.

From 1935 the epoch of authoritarian government began in Estonia. As early as 1936 the state authorities organized the vote that was to implement successive changes in the system of government in Estonia, which would be achieved through the new Constitution. This time the proposals involved the prolongation of the term of the presidential office to 6 years, the establishment of two chambers of the Parliament [Riiginõukogu and Riigivolikogu], raising the age of suffrage from 20 to 22 years, and substitution of the institution of popular plebiscite and initiative by a presidential plebiscite. The result of the voting showed that the Estonian authorities enjoyed high public confidence because over 70% of the voters supported the presented proposals.

The new constitution came into force on 1 January 1938. Pursuant to the adopted principles, the executive power was strengthened and at the same time it limited the civil rights. Not only the suffrage age was raised but first of all, the ability of citizens' influence on decision making processes was weakened because they were deprived of the right of initiative.

The situation in Estonia changed radically in 1940. In August 1940 Estonia was formally incorporated into the Soviet Union and ceased to exist as an independent state. The union membership of the Estonian Soviet Socialist Republic was confirmed on 25 August 1940 in the Constitution of the Estonian Soviet Socialist Republic, based on the Soviet Constitution of 1936. As in the Constitutions of the Lithuanian Soviet Socialist Republic and the Latvian Soviet Socialist Republic, this document provided for national plebiscites but without details in what situations they could be applied. The next Constitution came into force in 1978 and, as the previous one, was based on Soviet solutions. As far as direct democracy was concerned, the Constitution provided for national plebiscites but both the solutions of 1940 and 1978 did not fulfil the role traditionally attributed to direct democracy.

Actions to restore independent statehood were undertaken from the end of the 1980s, the Estonian strategy can be described, after Jacek Zieliński (2004: 112-117), as "one of anticipation". It should be also pointed that because of its sizable Russian population, Estonian independence initiatives were cautious. The Declaration on the Sovereignty of the Estonian SSR was issued on 16 November 1988 and was met with objection from the Soviet authorities. Successive legal acts regulated the issues of the state language and economic independence of the Estonian Soviet Socialist Republic. The unsuccessful coup d'état in August in Moscow gave rise to the declaration of independence. In the wake of the transformations, Estonia proclaimed independence on 21 August 1991 while political changes were reflected in the Constitution adopted by Estonia's Constitutional Assembly on 28 June1992.

After gaining independence, Estonia started to express its European aspirations; they were supported by privatization and monetary and agricultural reforms. Estonia submitted an application for EU membership in November 1995. Three years later Estonia began accession negotiations. On 24 September 2003 the Treaties of Accession were signed in Athens. The Estonian EU Accession referendum took place on 24 September 2003. Since 1 May 2004 Estonia has been a Member State of the European Union.

Formal-Legal Dimension

According to the Constitution Estonia is a democratic republic wherein the supreme power is vested in the people and wherein the principle of the division and balance of power is applied.

The issues of direct democracy in Estonia after 1992 are regulated in the Constitution of the Republic of Estonia (Constitution of the Republic of Estonia 1992) and in the Referendum Act (Referendum Act 2002).

The Estonian Constitution emphasizes very strongly that the supreme power is vested in the people (§1). Pursuant to §56 the supreme power of state shall be exercised by the people through citizens with the right to vote: 1) by electing the Riigikogu; 2) through a referendum and an Estonian citizen who has attained eighteen years of age and has legal capacity is eligible to vote has. Participation in voting may be restricted by law for Estonian citizens who have been convicted by a court and are serving sentences in penal institutions. The Riigikogu decides the holding of a referendum (§65). The Riigikogu also has the right to submit a bill or other national issue of national importance to a referendum (§105). The Constitution explicitly lists the issues that cannot be submitted to a referendum: issues regarding the budget, taxation, financial obligations of the state, ratification and denunciation of international treaties, the declaration or termination of a state of emergency, or national defence (§106). *The decision of the people is made by a majority of the votes cast in the referendum. A law which is passed by a referendum is promptly be promulgated by the President [of the Republic]. The decision of the referendum is binding on all public bodies. If a bill which has been submitted to a referendum fails to receive a majority of the votes cast, the President calls an extraordinary election to the Riigikogu* (§105).

A referendum vote is one of the possibilities of amending the Constitution (§163). However, *A three-fifths majority of the membership of the Riigikogu is required to submit a bill to amend the Constitution to a referendum and an amendment to the Constitution concerning an issue in respect of which a Bill to amend the Constitution was rejected in a referendum or in the Riigikogu may not be initiated within one year following the rejection of the Bill in the referendum or in the Riigikogu* (§ 168). Only through such a procedure can Chapter I of the Constitution – General Provisions and Chapter XV - Amendment of the Constitution be altered.

In October 2007 the Constitution of the Republic of Estonia was supplemented by the decision no. 447 of the President. It decides the issues of the membership of Estonia in the European Union. This act may be amended in a referendum only.

The procedure for and principles of conduct a referendum in Estonia were regulated in the Referendum Act of 13 March 2002. According to the principles specified in the Act: *A referendum is free, general, uniform and*

direct (§2(1)). *A referendum shall be held not earlier than three months after the passage of a resolution to this effect by the Riigikogu* (§3(1)). The referendum shall be held on a Sunday and *a referendum shall not be initiated or held during a state of emergency or a state of war. A referendum shall not be held at a time when less than ninety days remain until elections to the Riigikogu. A referendum on a draft Act to amend the Constitution or on another national issue may be scheduled for a time after the next elections to the Riigikogu. A referendum on another draft Act shall not be scheduled for a time after the next elections to the Riigikogu. A referendum may be scheduled for the same day as Riigikogu elections or local self-government council elections* (§3(3)).

According to the Act, voting may take place in polling stations on the territory of the state, in polling stations abroad, at home, and in custodial institutions. Voting can be held in a traditional form, using ballot papers or electronically. In 2005, Estonia introduced the possibility of electronic voting. Electronic voting is possible by using three methods: 1) by means of ID; 2) by means of electronic ID (digital signature), and 3) by portable carriers (SIM card, computer with internet link, or mobile phone) (Solvak/ Vassil 2016: 5-8). However, due to a small frequency of referendums in Estonia, such solutions have not been used so far.

Estonia's membership in the EU enables the citizens to participate in the European Citizen's Initiative. In case of Estonia, the minimal number of signatures is now 4,500 (for the projects registered after 1 July 2014).

It should be emphasized that the legal solutions in Estonia introduce direct democracy only at the national level. In this case the acts regulating the functioning of a local self-government can be of some form of supplement. Citizens can collect signatures to initiate a local law or they can organize local referendum. These forms of local direct democracy were never used since 1989 (Sootla/Toots/Ruutsoo 2006: 249). More often local referendums are initiated by municipal councils. Pursuant to § 158 of the Constitution of Republic of Estonia *the administrative area of a local authority may not be changed without hearing the opinion of the authority* (Constitution of Republic of Estonia). In fact, local referendum is not only way to consult territorial changes with residents.

Practical Dimension

The Estonian Constitution of 1992 clearly limited the possibility of influence of citizens on the decision-making process in the state, which, first of all, was connected with the lack of the right of legislative initiative. A referendum, which is guaranteed by the Constitution and the laws, does not belong to the

most frequently used solutions of direct democracy in Estonia. Since the 1990s, a referendum has been organized four times.

The first referendum after 1991 was about the independence issues. It should be mentioned that the referendum was held on the same day in all the Baltic Republics. The question put in the referendum was: *Do you support the restoration of national independence and sovereignty of the Republic of Estonia?* The number of registered voters was 1,144,309. 78.41% of the voters voted "for" (the turnout was 82.86%). These results should be perceived from the perspective of the unwillingness of the Russian speaking population that traditionally resided in East Virumaa county (Table 1).

Table 1. The national referendum of 3 March 1991

Date	Subject	Turnout in %	Result
3 March 1991	Independence of Estonia	82.86	For 78.41% Against 21.59% Valid, motion passed

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch (15 November 2016).

The two next referendums were held in 1992 on the basis of the regulations of the Constitution of 1938 and the specially adopted laws: the 20 May 1992 resolution of the Supreme Council on Organization of a Referendum on the Draft Constitution of the Republic of Estonia and a resolution on The Constitution of the Republic of Estonia Implementation Bill and the Consequent Additional Question (Zieliński 2003: 127). In the first referendum on the citizenship the question was: *Are you in favour of adding the following provisions to the Constitution of the Republic of Estonia Implementation Act: 'To allow the applicants for the Estonian citizenship who have filed their application by 5 June 1992 to also participate in the first elections of Riigikogu and the President of the Republic after the entry into force of the Constitution*. The second part concerned the Constitution and the question was: *Do you accept the Constitution of the Republic of Estonia and the right to use this Constitution*. What is important, the ballot cards where the answer was not marked or it was impossible to identify the will of the voter were regarded as invalid. This was done because the authorities feared that people with voting rights would ostentatiously destroy this part which contained the question on citizenship. The number of registered voters was in both cases 690,080. As a result of the referendum the new Constitution was approved (Table 2), the motion on granting of citizenship was rejected (Table 3).

Table 2. The national referendum of 28 June 1992

Date	Subject	Turnout in %	Result
28 June 1992	Adoption of the Constitution	66.73	For 46.52% Against 53.48% Valid, motion passed

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch (15 November 2016).

Table 3. The national referendum of 28 June 1992

Date	Subject	Turnout in %	Result
28 June 1992	Citizenship	66.76	For 91.86% Against 8.14% Valid; motion rejected

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch (15 November 2016).

The last referendum in Estonia concerned the accession to the EU. It became possible to hold the referendum after the Act of the Constitution had been adopted because pursuant to §106, the issues regarding international treaties were not submitted to a referendum. Finally, the referendum was held on 14 September 2003. The Estonians voted on the accession to the EU. The question was: *Are you in favour of the accession to the European Union and passage of the Act on Amendments to the Constitution of the Republic of Estonia? Yes/No*. The number of registered voters was 867,714 and although the referendum was binding, the threshold of validity of the referendum was not determined (Jabłoński 2007: 81-82). The turnout was high (64%). Taking into consideration particular counties and the largest cities, the highest turnout was in Tallinn (68%), and Harju county (68%), and Hiiu county (66%). The lowest turnout was in East Virumaa county (Table 4).

Table 4. The national referendum of 14 August 2003

Date	Subject	Turnout in %	Result
14 August 2003	Accession to the EU	64.06	For 66.83% Against 33.17% Valid, motion passed

Source: Author's own studies on the basis of: Vabariigi Valimiskomisjon, http://www.vvk.ee/varasemad/rh03/tulemus/enghaaletus.html (15 November 2016).

There is one more regularity in the use of direct democracy in Estonia after 1991: all referendums held during this period were valid and each one had a high turnout, above 60%.

One may certainly point out a few reasons for this high turnout as far as a referendum in Estonia is concerned. Firstly, a referendum is now the only

form of the influence of citizens on the decision-making process in Estonia. Admittedly, elections to Riigikogu do give such an indirect chance but in this case one can only influence the personal composition of the Parliament (the principle of free mandate) Secondly, the threshold of referendum validity has been very clearly defined. Pursuant to the law, motions presented for voting are accepted by a majority vote of all deputies present. Thus, there is no requirement of obligatory participation in a referendum by people with voting rights or who have participated in the parliamentary elections prior to a referendum. Thirdly, alternative forms of voting (correspondence voting, e-voting) considerably facilitate participation.

As has been mentioned above, there are no regulations in Estonia which would allow the authorities to hold a referendum at a local level; nonetheless, Estonia has some experience in this matter. This procedure was first applied in 1927 and concerned the sale of alcoholic beverages (Ruus 2011: 281). According to the then law on the request of 1/10 of the residents of a town, there a ban on the sale of such products should have been introduced. Other votes were held in Tallinn after 2004. One of them concerned the lowering of charges for parking a car; the second one – the limitation of places of night sale of alcoholic beverages (Ruus 2011: 281).

The referendum held in East Virumaa county in 1993 had a different character. The vote was of unofficial, and while organizing the referendum the organizers referred to general rules concerning referendum. The area is one of the fifteen counties and it is situated in the north-easternmost part of Estonia. As far as its ethnic composition is concerned, East Virumaa differs much from the rest of the country because the vast majority of its residents are Russians. Their large population started to form during World War II, which was connected with the relocations and the march of the Red Army. After the independence of Estonia had been proclaimed, the Committee for the Defence of Soviet Power and Civil Rights in Estonia was established in the area (Melvin 1995: 48). The main problem of the residents of this region is the lack of Estonian citizenship because they were not granted it by the Act "On Foreigners" of 1992. On the grounds of the ethnic composition and the feeling of threat from the nationalist movement, the Russians initiated a referendum in 1993, in which they demanded autonomy. The referendum was to be held in three towns: Narva (Estonia's second largest industrial centre after Tallinn), Sillamäe, and Kohtla-Jarve. The authorities of the third town refused to take part in the referendum. Finally, the vote took place between 16 and 17 July 1993 in two towns. Nearly 99% of registered voters opted for the autonomy.

However, it should be pointed out that even before the referendum the authorities amended the Act on Foreigners and obliged those without a citizenship to regulate their status until 1995. The results of the referendum of

1993 were invalidated by the decision of the Highest Court in July 1993 (Judgement of The Constitutional Review 1993).

Conclusion

Direct democracy in Estonia functions in the formal-legal and practical dimension. The functioning of direct democracy in Estonia has a long tradition dating back to the establishment of the independent state in 1918. The solutions of the institutions of direct democracy in the Estonian Constitution of 1920 were modelled on and influenced by the Swiss regulations. The aspirations to introduce the authoritarian form of government and to emphasize the executive power (which was achieved in 1938 with the adoption of the third Estonian Constitution) put an ended to the practice of direct democracy in 1918-1940. The years 1940-1991 are the period in which, despite constitutional guarantees of direct participation of citizens in the decision-making process, direct democracy did not *de facto* exist. After 1992, the opportunities to use direct democracy were clearly restricted. According to the Constitution, a referendum is the only institution of direct democracy which is available to the citizens. Nevertheless, it should be stressed that there are some things, including technological assistance, that make voting easier, such as e.g. e-voting, which may in the future translate into a higher turnout in referendums. These solutions are reserved only for the national level

The functioning of direct democracy in Estonia can be regarded as a manifestation of the political consciousness of its citizens; on the other hand, however, we should take into consideration the complicated ethnic situation and tense relations with Russia, which also translates into limiting access to direct democracy. The separatist tendencies and the unofficial referendum held in East Virumaa confirm these fears.

The accession to the European Union clearly did not influence the development of direct democracy in Estonia. The accession referendum was, so far, the last referendum held in Estonia. On the other hand, the right to participate in the European Citizens' Initiative can be regarded as a positive influence.

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Marcin Pomarański

Direct Democracy in Hungary

Determinants

Hungary is characterized by moderate experience in attempts to implement the solutions of direct democracy. Like other Central-East European countries the first legal provisions concerning the instruments of direct democracy were introduced as late as in apparent legislative solutions during the communist period. However, the idea of direct democracy already emerged in a public debate at the end of the 18th century. In the legal system of contemporary Hungary these solutions acquire a specific character, however. Their status is not equal to direct democracy, which is stressed at the beginning of the present Constitution of Hungary of 2011. As a consequence, it leads to the situation in which the tools of direct democracy such as a referendum that are, by definition, to guarantee the participation of society in the process of exercising political power in the state, gradually cease to be the subject of interest of citizens, remaining only a plebiscite of the government's popularity and a touchstone of existing public feelings.

The concepts of the actualization of the ideas of direct democracy on the territory of contemporary Hungary go back to the end of the 18th century when the postulates of an obligatory constitutional referendum and the popular veto were included in the draft constitution by Ignàc Martinovics (a Hungarian political philosopher and leader of the Hungarian Jacobin movement). The document of 1793 - the first not implemented attempt to reform the state towards the solutions of direct democracy - became a precedent referred to later by, *inter alia*, Lajos Kossuth suggesting in 1851 that power be directly exercised by local people's communities and also by the Social Democratic Party of Hungary (Magyarországi Szociáldemokrata Párt) which postulated from 1903 the right to direct legislation that was manifested in the people's right of initiative and the right to veto (Komáromi 2013: 41-44).

The next, quite new experiences in the implementation of the solutions of direct democracy were characteristic of Hungary in the interwar period. The dissolution of the Austro-Hungarian Empire as a result of World War I gave Hungary a complete political independence. However, at the same time, this provoked a series of territorial conflicts with other states which arose on the ruins of the Habsburg Empire. That rivalry led to the necessity of setting in motion the procedures for territorial plebiscites in which the inhabitants of the

disputed territories were to decide about their political affiliation. The plebiscite of 1921 on the town of Sopron, in which 65% of the residents rejected Austria's claims and voted in accordance with the expectations of the new government in Budapest, was a consequence of the Treaty of Trianon of 1920, unfavourable for Hungary. It was the first example of the implementation of the procedure of direct democracy (as well as the first example of the general national voting) in the history of the state (Komáromi 2013: 45-46).

During the Hungarian People's Republic (1949-1989) period, the communist Constitution of 1949 introduced the paragraph which provided the Presidential Council – the collective Head of State – with the right to put issues on national importance to the vote through a nationwide "plebiscite". Additionally, "The Local Council Act" of 1971 introduced the possibility of consulting important social problems by way of direct "rural meetings" (Constitution of the People's Republic of Hungary 1949: Article 20; Law on Local Council 1971: Article 35). However, the legislation was of a facade character and was never implemented in practice. The first really functioning rules of direct democracy were introduced by the amendment to the communist Constitution of 1989 which liquidated its temporary character and totalitarian overtone and gave it a form of a constitution worthy of the real rule-of-law state (Law on Referendum and Popular Initiative 1989).

The characteristic feature of the Hungarian political system transformation, which directly influenced the condition of direct democracy, was the fact that the National Assembly (Országgyűlés) adopted the new Constitution extremely late, i.e. 22 years after the collapse of communism. In case of rules concerning the implementation of solutions of direct democracy this fact translated into the lack of stability of this law and its constant changes. During 1989-2011 the issues of a referendum and people's initiative were the subject of at least two amendments to the Constitution (both in 1997) as well as of Act on Electoral Procedure of 1997 and Act on National Referendum and Popular Initiatives of 1998, and 5 decisions of the Hungarian Constitutional Court (Magyarország Alkotmánybírósága) issued in 1993, 1997, 1999, 2001, and 2008. This made direct democracy the subject of a longstanding political dispute between the government and the opposition. It also caused general indifference to the subject among the citizens (as demonstrated by the surveys conducted by the International Social Survey Program of 2004). On the eve of Hungary's accession to the structures of the European Union, the pollsters asked citizens about their attitude to the principles of direct democracy. Compared with 16 states of Europe and North America, Hungary received the worst grades and 60% of the respondents estimated their attitude as negative or did not have their own opinion on the subject at all (Toplak 2013: 36).

In 2004-2010 there was a particularly fierce confrontation between the government and the opposition (between the ruling left representing the Hungarian Socialist Party [Magyar Szocialista Párt] and the conservatives of the Fidesz - Hungarian Civic Alliance [Fidesz – Magyar Polgári Szövetség]). The attempts undertaken during this time by the opposition to initiate a national referendum were of mass character, and the choice of questions in the motions to the National Election Commission, which were to be the subject of the vote, explicitly showed their political and anti-government nature. The success of such a referendum in 2008 very clearly contributed to the victory of Fidesz in the later elections, and it guaranteed its leader Viktor Orban the position of Prime Minister. The role that the tools of direct democracy played in the return of Orban and the Fidesz to power explains, at least partly, the later attempts of the ruling party to limit the possibilities of their application, the culmination of which was the legal regulation adopted by the Constitution of 2011.

The above mentioned legislative amendments to a large extent changed the character of direct democracy in Hungary. The solutions introduced in 1989 were very liberal: they guaranteed the citizens the possibility of a real influence on the political decision-making process. According to the opinion of the International Institute for Democracy and Electoral Assistance the referendum law of this period was superior to the solutions of the majority of European states (Medve 2008: 104). However, during the successive years there were attempts to gradually restrict it. The Constitution of the Republic of Hungary of 2011 in article B, the "Foundation" section says that *The power shall be exercised by the people through elected representatives or, in exceptional cases, directly* (The Fundamental Law of Hungary 2011). It thereby gave the procedures of direct democracy the status of "singularity" clearly stressing their subordinate character to the principles of representative democracy and limiting the possibility of the application of these procedures only to special situations.

Formal-Legal Dimension

As has been mentioned above, the principles defining the functioning of the instruments of direct democracy in Hungary are specified in the Constitution of 25 April 2011. Article 8, Part The State specifies two kinds of a national referendum: mandatory and optional. Both are ordered by the National Assembly: however, the first one is ordered at the initiative of at least two hundred thousand voters exclusively and the second - at the initiative of the President of the Republic, the Government or one hundred thousand voters and the National Assembly itself decides whether it wants to call the

referendum or not. National referendums may be held about any matter falling within the functions and powers of the National Assembly. No national referendum may be held on: a) any matter aimed at the amendment of the Fundamental Law (Constitution); b) the contents of the Acts on the central budget, the implementation of the central budget, central taxes, duties, contributions, customs duties or the central conditions for local taxes; c) the contents of the Acts on the elections of Members of the National Assembly, local self-government representatives and mayors, or Members of the European Parliament; d) any obligation arising from international treaties; e) personal matters and matters concerning the establishment of organizations within the competence of the National Assembly; f) the dissolution of the National Assembly; g) the dissolution of a representative body; h) the declaration of a state of war, state of national crisis or state of emergency, furthermore on the declaration or extension of a state of preventive defence; i) any matter related to participation in military operations; j) the granting of general pardons (The Fundamental Law of Hungary 2011).

After 1989 the provisions about a national referendum were considerably transformed in the Hungarian legislation, the Constitution of 2011 playing a crucial role in this respect. In comparison with the legal order of 1989-2011, for example, the array of entities authorized to initiate the whole procedure changed. The group of 1/3 of the members of the Hungarian National Assembly lost this right. For a change, the range of issues excluded from the competence of a national referendum was gradually widened. In comparison with the period before 2011 the Constitution "enriched" it with the acts referring to the elections of the members of the National Assembly, local self-government representatives, and mayors, and the amendment of the Constitution (Fundamental Law). An accidental symbol of these changes turned out to be the threshold of recognition of a referendum as binding, which was changed with every large amendment of the law on direct democracy. Pursuant to the legislation of 1989 the referendum *would be considered successful if more than half of the votes of the citizens voting were valid*; in 1997, due to a successive amendment of the Constitution the threshold was changed to 25%. It should be noticed that the amendment of 1 July 1997, adopted by the Hungarian Parliament, not only lowered the threshold but changed the way of its calculation as well (Komáromi 2013: 51, 57). The required 25% of the eligible voters were the people who not only took part in the referendum but also gave the same answer. The Constitution of 2011 again restored the threshold of 50% , stipulating that *A national referendum shall be valid if more than half of all voters have cast valid votes, and it shall be conclusive if more than half of those voting validly have given the same answer to a question* (The Fundamental Law of Hungary 2011: Article 8).

The National Election Commission (Nemzeti Választási Bizotsag) supervises the correct course of referendum voting. Its ten members (seven regular members and three substitute members) are elected for a term of 9 years by the Parliament based on the recommendation of the President. Their primary tasks are: authentication of the referendum questions, ensuring the impartiality, fairness and legality of elections, establishing the results of the elections and their announcement. It is helped by National Election Office (Nemzeti Választási Iroda), whose Head is appointed by the President. The Election Office is responsible for the technical preparation of a referendum, from the introductory evaluation of a motion, compilation of a form for collecting signatures and their verification in the Central Register of Voters to the adaptation of the polling stations and conducting the whole procedure on the territory of the whole country (Law on Initiating Referendums, the European Citizens' Initiative and Referendum Procedure 2013).

The Constitution of 2011 in Article 31 allows holding a referendum *on any matter within the responsibilities and competences of local self-governments as defined by law* (The Fundamental Law of Hungary 2011: Article 31) except budgetary issues of their units, local taxes, issues connected with a personnel and structure of bodies of local self-government, and motions for a dismissal of representatives of local self-government authorities. The initiators of such a referendum may be the representatives of local self-government authorities – ¼ of members of local legislatures and the representatives of local executives as well as registered voters in the area. The number of the latter is described by particular local legal acts; however, in each case there has to be no less than 10% and no more than 25%. As in the case of the procedure for a national referendum, the rules concerning the local one admit of its organization in the mandatory or optional mode, unless otherwise provided by the rules of individual municipalities and districts (Law on Initiating Referendums… 2013).

The amendment to the Constitution of 1989 introduced the institution of legislative initiative (national popular initiative) into the Hungarian legal system, At least 50,000 voting citizens are required submit a motion for a national popular initiative. Its main purpose was to guarantee the society's influence on the law-making process, at the same time emphasizing the Parliament's complete autonomy regarding legislative issues. That is why the national popular initiative imposed only the obligation upon the Parliament to debate the subject defined by it, the final decision about its legislative future resting with the Parliament. In 2011 the new Fundamental Law (Constitution) abolished this qualification. The initiative was left in a vestigial form in some legal acts, in particular those concerning the local law. In some cases these acts still admit of the possibility of initiating a local referendum initiative with the support of not less than 5% and no more than 10% of the citizens residing in a given unit of local self-government (Best/Augustyn/Lambermont 2011:

46). In 2013, the government in Budapest adopted the legal regulations enabling the citizens of Hungary to take part in the European Citizens' Initiative and to submit motions directly to the European Commission (Law on Initiating Referendums… 2013).

Practical Dimension

Since 1989 the Hungarians have held national referendums seven times asking the public thirteen questions. The first two were inextricably connected with the then ongoing transformation process. In November 1989, after a few months of disputes between the Hungarian Socialist Workers' Party (MSZMP, Magyar Szocialista Munkáspárt) and the opposition, concerning, *inter alia*, the date of presidential elections, a referendum was organized in which the citizens were asked four questions: 1) Should the President be elected after parliamentary elections? 2) Should organizations related to the Hungarian Socialist Workers' Party be banned from workplaces? 3) Should the party account for properties owned or managed by it? 4) Should the Workers' Militia be dissolved? (The Workers' Militia was formed in Hungary after the social unrest in 1956). 58% of the Hungarian citizens took part in the vote and all four proposals were passed.

Table 1. The national referendum of 26 November 1989

Date	Subject	Turnout in %	Results	
26 November 1989	Presidential election	58.04	Referendum valid.	
			For	50.07%
			Against	49.93%
	Organizations related to HSWP		For	95.15%
			Against	4.85%
	Party account		For	95.37%
			Against	4.63%
	Workers' Militia		For	94.94%
			Against	5.06%

Source: Author's own studies based on: National Election Office.

Eight months later, in the next national referendum, the issue of the presidential election returned. The public was asked whether the Head of the State should be elected in direct elections. Once more, the voters answered "yes", however, due to the low turnout (14%) the referendum proved invalid. The direct reason for such a sudden apathy of the Hungarian society was probably

that they were tired of one more voting (the fourth in eight months) (Kużelewska 2015: 182-183).

Table 2. The national referendum of 29 July 1990

Date	Subject	Turnout in %	Results	
29 July 1990	Referendum on the direct election of the President of the Hungarian Republic	13.91	Referendum invalid For Against	 85.90% 14.10%

Source: Author's own studies based on: National Election Office.

The next referendums were connected with the necessity of expressing consent by the Hungarian citizens to the state's membership in the international structures: NATO (1997) and the European Union (2003).They were held on the basis of the amended law, which altered, *inter alia*, the threshold of validity of the whole procedure. This largely decided the success of both the referendum on the Hungarian membership of NATO (in which the turnout was 49.2%) and in the referendum on joining the European Union (the turnout was 45.6%). In both cases the proposals were supported by over 4/5 of the voters. Probably, the success of the latter resulted in the dissemination in 2004-2010 in the society of the tendency to make use of the instrument of a national referendum as a tool in political games between the government and the opposition.

Table 3. The national referendum of 16 November 1997

Date	Subject	Turnout in %	Results	
16 November 1997	Referendum on Hungarian membership in NATO	49.19	Referendum valid. For Against	 85.33% 14.67%

Source: Author's own studies based on: National Election Office.

Table 4. The national referendum of 12 April 2003

Date	Subject	Turnout in %	Results	
12 April 2003	Referendum on Hungary's European Union Membership	45.62	Referendum valid. For Against	 83.76% 16.24%

Source: Author's own studies based on: National Election Office.

Already in 2004 the opposition pushed through a motion for a referendum in which the following questions were asked:

1) Do you agree with the notion that public health service institutions and hospitals should remain state or local self-government property, and, in accordance with that, the Parliament should repeal the contradictory law?

2) Do you want the Parliament to pass a law that enables ethnic Hungarians with non-Hungarian citizenship and residence, who affirm their Hungarian nationality, either with a Hungarian identity card described in Par. 19 of Act LXII/2001, or in a way specified in the forthcoming law, to apply for and be granted Hungarian citizenship?

Since both these issues aroused (and still arouse) controversies and were contrary to the plans of the then ruling government the whole preparatory procedure proceeded in a tense atmosphere. The voter turnout was low (only 37.5%) and the supporters of changes in both the first and the second question slightly exceeded the opponents. Consequently, the government representatives of the government announced with unhidden satisfaction that the referendum did not cross the required threshold and none of the questions reached the required 25% of the general public.

Table 5. The national referendum of 5 December 2004

Date	Subject	Turnout in %	Results	
5 December 2004	Public health care system	37.41	Referendum invalid.	
			For	65.01%
			Against	34.99%
	Hungarian dual citizenship		For	51.57%
			Against	48.43%

Source: Author's own studies based on: National Election Office.

The next attempt to use the referendum procedure in election competition was made in 2008 by the opposition party Fidesz, which in circumstances similar to those of four years before initiated a referendum on the abolition of some obligatory medical and tuition fees. The questions were:

1) Do you agree that inpatient care should be exempt from daily hospital fees with effect from 1 January in the year after the referendum is held on the present issue?
2) Do you agree that family doctor care, dentistry care and special outpatient care should be exempt from consultation fees with effect from 1 January in the year after the referendum is held on the present issue?
3) Do you agree that students in state-subsidized higher education should be exempt from tuition fees?

This time the referendum was valid and binding for the government in Budapest. The turnout was 50.5% and each of the three questions was accepted by over 80% of voters. This spectacular and rather unexpected success of Fidesz translated into its political success and a victory in the parliamentary elections of 2010 (National Election Office 2016).

Table 6. The national referendum of 9 March 2008

Date	Subject	Turnout in %	Results	
9 March 2008	Daily hospital fees exemption	50.51	Referendum valid.	
			For	84.08%
			Against	15.92%
	Consultation fees ecemption		For	82.42%
			Against	17.58%
	Tuition fees exemption		For	82.22%
			Against	17.78%

Source: Author's own studies based on: National Election Office.

The so far national referendum was held on 2 October 2016; it was intently observed by political commentators from all the EU states. It concerned the verification of the migrant relocation plan suggested by the European Commission in 2015 (mandatory quotas for relocating migrants from Syria and Eritrea who fled before the war). Although at the moment of voting the plan itself was no longer relevant, the referendum was important for the ruling Fidesz party. It was a criterion for the public support for Prime Minister Victor Orban and his tough policy towards the EU. Finally the turnout was 41.32% and the poll was thereby invalid. However, over 98% of the voters answered "no" to the question: *Do you want the European Union to be able to mandate the obligatory resettlement of non-Hungarian citizens into Hungary even without the approval of the National Assembly?* (National Election Office 2016).

Table 7. The national referendum of 2 October 2016

Date	Subject	Turnout in %	Results	
2 October 2016	Referendum on migrant quotas	41.32	Referendum invalid.	
			For	1.64%
			Against	98.36%

Source: Author's own studies based on: National Election Office.

The awareness that it was possible to use a national referendum during the legislative process has obviously arisen gradually in Hungarian society. In the 1990s the activity of citizens as the initiators of a referendum was negligible. Some intensification took place during the first years of the 21st century. In the period between 2001 and 2006 the National Election Office received, on average, 20-30 referendum motions per year. During the next years the number of motions significantly rose (ranging in 2007 and 2008 between 200 and 400 motions) (Best/Augustyn/Lambermont 2011: 45) because the political opposition was engaged in a struggle with the government. Since the adoption of the new Constitution this number has remained at an average level i.e. about 60-70 motions annually. From January 2012 to June 2016 the NEC received exactly 328 motions on holding the national referendum. As

much as 79% of them was submitted by private persons, 16% - by political; parties, and 5% - by other entities (Pallinger 2016).

Of course, the vast majority of them were rejected for formal reasons. Nevertheless, at least in two cases the technical requirements were fulfilled and only the political actions of the ruling party made the referendum projects unsuccessful. In the first case, in answer to the announcement of the authorities that they would permit private investments in the public health care sector, the Hungarian couple named Albert demanded the organization of a national referendum on retaining the unity of the health insurance system. Although the National Assembly even set the date of the vote (on 9 June 2008), it withdrew this decision arguing that the plans of public health care reform were abandoned. The second case was even more controversial. In 2009 Maria Seres submitted a motion for a national referendum on the limitation of expenses of the National Assembly deputies and reimbursing them only for the costs which were substantiated by invoices. This initiative proved very popular and gathered 600,000 signatures i.e. three times as many as were needed. The Parliament was forced to call a referendum but also in this case it withdrew its earlier decision adopting over political divisions cosmetic amendments on financing the deputies' activities and accusing the referendum initiative of irrelevance (Pallinger 2012: 129-130).

Contrary to national referendums, an attempt to present the full data on local referendums which were held in the state after 1989 causes many problems. The difficulty with reconstructing the lost data from over half the 1990s as well as the lack of a national register of such undertakings compels the researchers to remain at the level of at conservative estimates at best. The most complete data on this subject – from the end of the 20th and the beginning of the 21st century – inform about 120 such undertakings between 1999 and 2006 i.e. on average 15-20 cases annually (Schiller 2011: 22). Csilla Nagy and Veronica Tamas, who conducted extensive studies in 2004 on the local referendum in Hungary, seem to agree with this. On the basis of the data they managed to collect, between 1990 and 1993 there were 79 such undertakings in Hungary; between 1999 and 2001 there were 58 (Nagy/ Tamás 2004: 198-199).

As the two scholars emphasize, all these referendums were on one of the following issues: 1) organizational questions usually connected with the change of administrative boundaries of local self-governments units (23 cases in 1999-2001); 2) economic issues on the population's agreement to begin large-scale investments on the territory of the interested municipality (17 cases in a given period); 3) environmental regulations most often concerning the opinion of citizens residing on a particular area about controversial matters e.g. building new garbage dumps or waste incineration plants (14 cases); 4) widely understood social issues connected with, *inter alia*, local

education or the system of health care under the control of local self-governments (4 cases) (Nagy/Tamás 2004: 200-202).

As far as the next form of direct democracy is concerned, legislative initiative has never been a particularly popular tool of direct democracy in Hungary. This resulted first of all from the necessity of collecting 50 thousand signatures for the motion to initiate the procedure. For that reason - between 1989 and 1999 - twenty public initiatives were rejected (Medve 2008: 104). Secondly, it also resulted from the fact that the legislative initiative was only of consultative character, meant to persuade the National Assembly to only debate over controversial issues. It could not force the deputies to change the law, which negatively affected the evaluation of the usefulness of this form of direct democracy. In the period of 1989-2010 the Hungarian Parliament was obliged only 11 times to debate over the issues put forward through the legislative initiative:

1. Initiative against privatization of the Energy Industry proposed in 1995 by The Hungarian Justice and Life Party (political party).
2. Initiative on introduction of voluntary military service instead of compulsory proposed in 2000 by The Alliance of Free Democrats (political party).
3. Initiative on dependence of remunerations of public officers on the results of their work proposed in 2002 by The Union of Pedagogues.
4. Initiative on changing the classification of cruelty acts to animals in the criminal code proposed in 2003 by The Animal and Environmental Protection Association of Tolna County.
5. Initiative on granting the Huns the status of a national minority proposed in 2005 by Mr Imre Josua Novak.
6. Initiative on assertion of minimum wages for home nursing care proposed in 2005 by The Society for Protecting Mentally Ill and Their Families.
7. Initiative on granting the Bunjevci the status of a national minority proposed in 2006 by Mr Mihaly Muity.
8. Initiative on limitation of IVF treatment proposed in 2007 by The Union for the Hungarian Families National Association.
9. Initiative on stopping the increase of teachers' workload proposed in 2007 by The Democratic Union of Pedagogues.
10. Initiative on dependence of remuneration of public officers on the results of their work proposed in 2007 by The Union of Pedagogues (repeated motion).
11. Initiative on dissolution of the Parliament proposed in 2009 by The Endowment for a Civic Democracy in Hungary.

Out of this number, only two problems were adopted by the National Assembly (animal protection and the scale of remuneration of public officers)

and only one turned into the generally binding law (animal protection) (Pallinger 2012: 121-123).

Finally, it should be observed that in 2010 the Hungarian authorities also created a tool of National Consultations which, they believed, would mobilize the public for the display of civil attitudes as another form of direct democracy and would in practice replace the legislative initiative procedure. Through the National Consultations the voters would express their opinion on specific subjects by means of a survey questionnaire distributed on the territory of the whole country, whose results would be publicly announced after it was edited by the government administration. However, from the beginning this tool aroused some reservations as a pro-government political manipulation organized using the taxpayers' money because the assessment would cover only the subjects suggested by the government, while Budapest's full control over the evaluation of the survey results cast doubt on their impartiality. Nevertheless, between 2010 and 2016 the Hungarian authorities held National Consultations five times, the subjects consulted on being as follows: 1) pensions – only by people who were entitled to retirement benefits (2010); 2) principles of a new constitution (2011); 3) social issues (2012); 4) economic issues (2012); immigration and terrorism (2015) (Pallinger 2016).

Conclusion

Zoltán Tibor Pálinger, a scientist from Andrássy University in Budapest, when trying to evaluate the state of direct democracy in Hungary, pointed to the problem of a complete difference of the legislation procedures permitted in the Constitution of 2011 – a representative procedure, implemented by the deputies of the National Assembly and a direct procedure achieved through a national referendum. Regardless of the legislatively guaranteed rights, citizens have small chances of pushing through desired changes of the law without the consent, or at least neutrality, of the government administration. On the other hand, the constitutionally described "uniqueness" of direct democracy guarantees, as it were, a legislative monopoly to the Parliament. This legal situation of the society and its ruling representatives does not, according to Pállinger, ensure any chances of a dialogue between the two sides; what's more, it constitutes a contradiction that causes political tensions and conflicts (Pallinger 2016).

It should be observed, referring to the research hypotheses formed at the beginning of the article, that all three have been verified for Hungary. Direct democracy functioned in this country in the formal-legal and practical dimension after 1989 both at local and national levels. Its popularization was the effect of both the process of spreading political consciousness in the

society as well as the accession to the European Union. Apparently, the Fidesz Government turned out to be the main obstacle to direct democracy standards during the last years. Victor Orban's tendency to gradually limit the applicability of the tools of direct democracy in Hungary, particularly in the context of the role that these procedures played in this party's coming to power, is explicit evidence of the will to completely minimize the importance of this form of democracy. The abolishment of the legislative initiative procedure and toughening of the procedural requirements in case of a national referendum seem to assure the ruling party's virtually complete legislative monopoly. The national referendum, held on 2 October 2016, on emigration quotas did not change anything in this matter. The controversial nature of the issues voted on in the referendum and the fact that the idea was voted on when it was practically no longer topical make us examine this last example of direct democracy in Hungary only in terms of *the plebiscite on the popularity of Orban's government* and as an attempt to legitimize the policy of tough attitude towards the European Union on the part of the society.

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Magdalena Musiał-Karg

Direct Democracy in Kosovo

Determinants

The analysis of determinants present in Kosovo causes serious interpretation difficulties for many reasons, the principal one being the question of the current international-law status of Kosovo, and the difference between the scope of formal and actual jurisdiction of both the Kosovo authorities and representatives of the international community. To understand the specificity of the current political system it is necessary to show its transformation. This approach is also justified by the fact that the only referendum that was held in Kosovo was the independence referendum of 1991 (Podolak 2012: 12). When independence was declared in 2008, the institution of a referendum was not referred to.

Kosovo is the region that gave rise to many problems in the Balkan area during the breakup of the Yugoslavian Federation, i.e. between 1991 and1999, also becoming the subject of contention that divided the Serbs and Albanians (Bujwid-Kurek 2008: 195). The region is now predominantly inhabited by Albanians but from the 12th to the 14/15th centuries it was associated with the Serbian power, being the cradle of Serbian statehood, whose ethnic structure began to change because of Turkish expansion in the Balkans (of crucial significance was the battle of Kosovo Polje in 1389, which began the Serbo-Albanian antagonism over the contentious province). As a result of the Ottoman conquest the ethnic composition of Kosovo gradually changed. Subsequent wars and population migrations drove away the Serbian population from Kosovo, at the same time creating better conditions for sociopolitical development to (Muslim) Albanians. In actual fact, the Albanians, also called Kosovars, dominated the territory of the province as late as in the 20th century. According to many hypotheses, in 1905 Albanians accounted for 65% of the population in this area. During the period between World War I and World War II, the rule of the Kingdom of Yugoslavia was conducive to making Kosovo more Serbian as a result of policies favouring the influx of settlers and at the same time displacing Albanians regarded as a hostile factor that destabilized the state of Southern Slavs, created after World War I.

The changes introduced at that time unquestionably influenced the contemporary history of Kosovo. According to Ewa Bujwid-Kurek, they were interpreted by the Serbs as a manifestation of totally unjustified concessions to Albanian nationalism, jeopardizing the interest of the Serbian nation. An

expression of anti-Serbian policy was granting of the status of an autonomous region to Kosovo and Metohija. Other manifestations threatening the unity of Serbia and Kosovo were the adoption by the Albanians of the Tosk dialect of Albanian and the Albanian flag, which resulted in the gradual replacement of the flag of the Serbian Republic and the flag of the Yugoslavian Federation (Stawowy-Kawka 2002: 39). In 1963 the state was renamed the Socialist Federal Republic of Yugoslavia (SFRY), with Kosovo becoming a fully autonomous province.

After the passing of the Constitution of 1974, Serbian discontent and embitterment increased, which was because they lost power in over one third of the area of the Serbian Republic (Gibas-Krzak 2009: 129). With the enactment of the Constitution of Yugoslavia in 1974, Kosovo obtained a fully autonomous government and the Socialist Autonomous Province of Kosovo was established. At the beginning of the 1980s conflicts between the Albanian and Serbian population began to grow. The Albanian community sought to further broaden the autonomy of the region while the Serbian community wanted to strengthen relationships with Serbia.

After Josip Broz Tito died in 1980, national antagonisms, previously suppressed by his authority and dictatorship, revived, exacerbated by the growing economic crisis. The possibility of the Federation's breakup fomented an increase of nationalism among Serbs. It should be noted that in August 1987, during the last period of the communist regime in Yugoslavia, Kosovo was visited by Slobodan Milošević, who became interested in the question of Kosovo and promised to improve the situation of the Serbs in the region. At the end of the year he became head of the government. When he became President of Serbia (which he was until 1997), the autonomy of Kosovo was severely restricted.

The situation was consequent upon the fact that Milošević proposed the Constitution to be approved in a general referendum, which was boycotted by Kosovo Albanians (Surówka 2009). The turnout in the referendum was 25%. The Kosovo Albanians refused to take part in the referendum and did not recognize its validity. It should be observed that they were a minority in the Serbian-dominated state, and their participation would probably have had no influence on the final result (Gibas-Krzak 2009: 159; Waldenberg 2005: 282-283). The enacted Constitution of Serbia abolished the existing status of autonomous countries, which were thereby independent of Serbia (Gibas-Krzak 2009: 160; Waldenberg 2005: 282). As a result of the referendum and adoption of the new Serbian constitution, the autonomy of Kosovo and Voivodina was significantly restricted, all power being concentrated in Belgrade. Constitutional powers were centralized to control the police, the judicial system, economy, educational system and language issues that were an element of multi-ethnic Serbia.

In the wake of the foregoing circumstances the political scene witnessed the appearance of the leader of Albanians, Ibrahim Rugova, who founded the Democratic League of Kosovo. That party demanded that the province be granted the status of a republic within Yugoslavia; however, influenced by the radicals, it gradually put forward the program of complete sovereignty and entirely unconstrained autonomy. Pressurized by this party, on 2 July 1990 the local parliament declared Kosovo the seventh republic of the Yugoslavian Federation: – it was Rugova, who became head of the new republic (Bujwid-Kurek 2008: 201). Because of these events, President Milošević dismissed the government of the province and dissolved its parliament. In September 1990 the autonomy of Voivodina and Kosovo was abolished.

In 1990 democratic parliamentary elections were held in the federal republics. Apart from Serbia and Montenegro, where the winners were the Socialist Party of Serbia originating from the Union of Communists of Yugoslavia, and the Union of Communists of Montenegro, the elections were won by national parties (Staniul 2008).

The revived nationalist tendencies in individual countries of the Federation caused a war between the Serbs, Croatians, Slovenians and Bosnians, and eventually to the breakup of Yugoslavia in 1991 and 1992. The emergence of new states encouraged the Albanians in Kosovo to intensify their efforts to break away from Serbia (Staniul 2008).

In June 1991, Slovenia and Croatia proclaimed independence, which became the cause of another civil war in Yugoslavia. After the declarations of sovereignty by Bosnia and Herzegovina in October 1991 and by Macedonia in November 1991, the SFRY finally collapsed.

In April 1992, Serbia and Montenegro formed the Federal Republic of Yugoslavia. *On account of the support for the Serbian irredenta in Bosnia and Herzegovina, the UN Security Council imposed economic sanction on the new Yugoslavia (May 1992), which resulted in the collapse of its economy. After support for Bosnian Serbs was abandoned in 1994 and after the November 1995 Dayton (USA) agreement on peace in Bosnia and Herzegovina, the UN sanctions were gradually lifted* (Sochacki 2015: 155; Historia Jugosławii).

Due to the armed intervention by the Yugoslavian authorities against Albanians in Kosovo, between 1997 and 1998 the policy of lifting sanctions was halted, and in 1997 Milošević was elected President of Yugoslavia by the Federal Parliament. The rejection by Milošević of the peace accord for Kosovo negotiated in Paris under the auspices of the Contact Group (USA, France, Germany, Britain, and Russia) and the policy of ethnic cleansing against the Kosovar Albanians resulted in NATO air raids against Yugoslavia (Sochacki 2015: 155; Historia Jugosławii).

Ultimately, on 31 May 1999 Yugoslavia's government accepted the international accord on Kosovo. After Yugoslavian troops began to withdraw

from Kosovo, NATO suspended air raids and deployed International Peace Forces (KFOR) there (Korzeniewska-Wiszniewska 2008: 238; Resolution 1244 (1999)).

On 24 September 2000, as a result of the lost election, Slobodan Milošević lost power and was arrested a year later. With the absence of the president, the will to implement the Yugoslavian idea was gone, which, according to Mirella Korzeniewska-Wiszniewska, was a significant spur for abolishing the name of Yugoslavia. On 14 March 2002, the new name Serbia and Montenegro was adopted. Serbia and Montenegro were the last two republics that remained in the federal union after the breakup of the former Yugoslavia under the agreement of 14 March 2002. The relations between the two countries were gradually loosened, with the two republics having eventually only their international policy in common. In May 2006 therefore, the Montenegrins held a referendum, in which they explicitly opted for the establishment of the independent state. In 2006, the peaceful breakup of the Federation of Serbia and Montenegro ensued, and two separate states emerged: Montenegro and Serbia. Kosovo was still an autonomous province in Serbia. However, separatist tendencies grew in its territory resulting in incidents and terrorists acts perpetrated by the Liberation Army of Kosovo in 1997 and 1998, whose Macedonian faction provoked Albanian-Macedonian fighting in the spring of 2001 (Korzeniewska-Wiszniewska 2008: 238; Koseski 2003: 160-161).

Until 17 February 2008, Kosovo was called the Autonomous Province of Kosovo and Metohija. When independence was proclaimed, the authorities of Kosovo adopted the name the Republic of Kosovo. In view of the lack of compromise among the permanent members of the United Nations Security Council on the future status of Kosovo, of the "consenting" attitude of individual Western countries (*inter alia* the USA) and the *de facto* pro-independence approach of the EU, on 17 February 2008, an extraordinary session of the Assembly of Kosovo was held (without any Serbian MP present), during which the Assembly unanimously adopted the Kosovo Declaration of Independence. In accordance with the document, Kosovo is an independent and sovereign state (Kosovo Declaration of Independence).

The authorities of Kosovo took rapid steps meant to emphasize the exercise of complete jurisdiction over Kosovo. On 9 April 2008, the Assembly adopted the Constitution of the Republic of Kosovo, which came into force on 15 June 2008.

It should be observed that from the standpoint of international law and in accordance with UN resolutions, the problem is still relevant regarding the international status of Kosovo, which some states perceive as a part of Serbia, while others see it as a separate independent state (Reynolds 2008). The question of the conformance of Kosovo's declaration of independence with the international law was explicitly resolved by the International Court of

Justice in Hague on 22 July 2010, pointing out that the declaration of independence was not illegal because nothing in international law prohibits such declarations (Accordance with international law of the unilateral…).

This country is recognized by 105 out of 193 UN Member States, 23 out of 28 EU countries and 24 out of 28 NATO members.

Formal-Legal Dimension

The current Constitution came into force on 15 June 2008. Under Articles 1 and 2 of the Constitution, the Republic of Kosovo is an independent, sovereign, democratic, and indivisible state, whose sovereignty stems from the citizens, belongs to the citizens and is exercised through elected representatives of the Kosovar citizens in conformance with the provisions of the Constitution (Constitution of the Republic of Kosovo, art. 2). The Constitution also stipulates that Kosovo is a democratic republic based on the principle of separation of powers, the democratic rule of law, constitutionalism, independence of the courts, freedom and respect for human rights of citizens, respect for the rights of minorities, political pluralism, the secular character of the state and freedom of religion, market economy, decentralization of public authorities, and local self-government (Constitution of the Republic of Kosovo, art. 4 & 12). The Assembly of the Republic of Kosovo exercises the legislative power; the executive power is vested in the President of the Republic of Kosovo and the Government of the Republic of Kosovo, the judicial power being exercised by independent courts (Constitution of the Republic of Kosovo, art. 4). On account of the strong powers of the Assembly, it should be assumed that the political system of the Republic of Kosovo is a parliamentary-cabinet system. The Assembly consists of 120 deputies whose mandate lasts four years. Under Article 64 par. 2 of the Constitution, out of 120 seats in the Parliament, 20 seats are guaranteed for representation of national minorities: 10 for the Serbs and 10 for remaining minorities: 1 seat for the Roma community, 1 seat for the Ashkali community, 1 for the Egyptian community, and one additional seat for the party representing the Roma, Egyptians or the Ashkali; 3 seats for the Bosnian community, 2 seats for the Turkish community, and 1 seat for the Gorani community (Gibas-Krzak/Krzak 2010: 193).

As far as the provisions concerning direct democracy are concerned, it should be observed that the Constitution deals with the question of referendum in several places. Article 2 par. 1 says: "The sovereignty of the Republic of Kosovo stems from the people, belongs to the people and is exercised in compliance with the Constitution through elected representatives, referendum and other forms in compliance with the provisions of this

Constitution" Moreover, Article 81 lists the matters of vital state interest that cannot be submitted to a referendum. These include *inter alia* the questions of municipal boundaries, local self-government, local elections, the use of language, protection of national heritage, religious freedom, laws on education, or the question of state symbols or national holidays (Constitution of the Republic of Kosovo, art. 81 par. 2). Furthermore, the Constitution stipulates that the Assembly of Kosovo, the President of the Republic of Kosovo and the Government are authorized to refer to the Constitutional Court the matter of the constitutionality of a proposed referendum (Constitution of the Republic of Kosovo, art. 113 par. 3) part from a referendum, Article 79 provides for the institution of legislative initiative that can be proposed by the Head of State, the Government, Deputies, or by at least ten thousand citizens eligible to vote.

Practical Dimension

Today's Republic of Kosovo has practically no experience with the use of the institution of direct democracy. This state of affairs is probably the result of its extremely difficult political situation determined by national and ethnic conflicts that grew increasingly strong throughout history. They implied dynamic changes in the Western Balkan region, where, after the end of the Cold War, its countries entered the path of system transformation, overcoming many difficulties arising from complicated geopolitical and historical conditions.

It should however be noted that in Kosovo, when it was a part of the SFRY, one referendum was held whose aim was to proclaim the country's independence. It needs to be remembered that on 2 July 1990 the Albanian members of the Kosovo's Parliament proclaimed it a republic. In Marek Waldenberg's view, it was a decision without legal grounds (2003: 283). Emphasis should be put on the fact that on 5 July, the Serbian Parliament passed a law on the dissolution of Kosovo's Parliament and government; as a result the Kosovars declared a general strike several months later. In September, the Albanian members of the dissolved Parliament passed the new Constitution of the Republic of Kosovo. In July 1990, the Albanian-dominated Parliament of the province proclaimed a declaration of independence, which was recognized by Albania only. On 30 September 1991, a referendum was held in which about 99% of Kosovars eligible to vote expressed their support for the declaration of Kosovo's independence (Stańczyk 1999: 141). As a result of the referendum the so-called Independent Republic of Kosovo was proclaimed, which triggered Serbian protests. It should be added that at that time the majority of the countries of

the early European Economic Community supported the restoration of the status of autonomous district to the Kosovo region (Wojciechowski 2002: 186; Balcer 2003: 18-22).

An interesting example in the context of the use of direct democracy can be the referendum held on 14-15 February 2012 in the north of Kosovo. The subject of voting was the recognition of Kosovo's state institutions on that territory. The vote was opposed both by the authorities of Serbia and Kosovo (Serbskie referendum w Kosowie*)*. The referendum was organized several days before the fourth anniversary of the proclamation of independence by the Albanians in Kosovo, which is recognized neither by the Kosovar Serbs nor by Serbia. 82 polling stations, set up where the Serbian population was in the majority, were open from 7 a.m. to 7 p.m. Over 35 thousand Kosovar Serbs were expected to answer "yes" or "no" to the question: *Do you accept the institutions of the so-called Republic of Kosovo established in Pristina?* Out of ca. 2 million inhabitants of Kosovo, 120 thousand were of Serbian nationality, of which 40 thousand lived in the territory of the state. It should be added that Serbian President Boris Tadić found referendum unconstitutional, observing at the same time that the voting might exacerbate the existing crisis. The mayor of the Serbian part of Kosovar Mitrovica, Krstimir Pantić, pointed out in turn that the referendum being held was meant to show that the northern Serbs did not want the Kosovar state institutions to be located on their territory (Serbskie referendum w Kosowie).

Conclusion

The referendum in Kosovo, like the other referendums in the post-Yugoslavian countries as well as in other both Central and Eastern European states at that time, confirmed the will of individual nations to establish sovereign state entities and independent national communities. The independence referendums are usually classified as the vote that seals the pro-democratic aspirations of the countries that organize them. In the case of the referendum in Kosovo, voting did not bring about the establishment of an independent state entity. On the contrary, it put the inhabitants of the province in a very difficult political and ethnic-national situation, resulting without doubt in the escalation of the Serbo-Albanian conflict.

Furthermore, from the time perspective, the aspirations of Kosovars consequently contributed to Serbia's actual loss of Kosovo. It needs to be remembered that it was only after almost twenty years that Kosovo proclaimed its independence and it was not voted on through a referendum on that occasion. To sum up, the idea of the citizens participating in the process of state decision-making in the post-Yugoslavian states is a significant part of

the European history in the late 1980s and early 1990s. The referendum in Kosovo, however, is an example that not all pro-independence public votes, even if ending with a positive answer, result in the emergence of autonomous state entities in the international arena.

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Dorota Maj

Direct Democracy in Latvia

Determinants

All the Baltic republics, in Jacek Zieliński's view, followed the identical pattern of restoration of independence after the end of World War I. Consequently, Latvia also underwent three phases: 1) the development of the idea of sovereignty and search for the protector of the sovereign state; 2) an attempt to impose the Soviet system, and 3) the establishment of statehood based on the declaration of independence (Zieliński 2004:17). It is necessary to point out that during the first stage the prevailing hope among the Latvian political elite was for the democratization of the Russian system and for broad autonomy within it. Another considered option was the establishment of buffer states between the Russian and German spheres of influence (Grzybowski 2013: 214).

Soon after the cessation of hostilities and the signing of the Treaty of Brest-Litovsk, the People's Council [Tautos Padome] was constituted in the Latvian territory, having in turn chosen the Provisional Government headed by Prime Minister Kārlis Ulmanis. Significantly enough, the legitimacy of the members of the People's Council did not stem from elections because they were designated by the political forces and independence parties. The history of independent Latvia began on 18 November 1918 when the People's Council proclaimed the country's independence. According to the proclaimed Declaration of Independence, Latvia was meant to be an independent, democratic republic whose political system would be defined by the future Parliament (Kierończyk 2008: 28).

On account of the armed conflicts still going on, the parliamentary election in Latvia was held as late as on 17-18 April 1920. From the beginning, the Parliament was dominated by social democrats but at the same time the right-wing parties were a substantial voting force, represented for example by the Peasant Party and national minorities. One of the main tasks of the Parliament – the Legislative Assembly [Satversmes Sapulce] was to draft a constitution. Prior to that, the functioning of the state was regulated by the provisions consisting of the Declaration of Independence and the fundamental constitutional principles of the system (announced on 27 May 1920) and the provisional status of the state, law, and civil liberties (published on 1 June 1920). The adoption of the Provisional Constitution did not solve basic problems associated with the state's political system,

including the attitude to the principle of the tripartite division of powers, the constitutional position of the president, and the relations between Church and State (Grzybowski 2013: 216).

Work on the Latvian constitution began soon after the parliamentary elections, and the Constitution (fundamental law) was ultimately adopted by the Constitutional Assembly on 15 February 1922, to come into force on 7 November 1922. The solutions adopted in the Constitution were a compromise between the radical draft constitution of the social democrats, which provided for the limitation of the president's competence and the broad scope of the parliamentary mandate, and the proposal of the right wing, emphasizing the role of executive power. The authors of the Constitution were accused of being inspired by the constitutions of other states, particularly Germany (the so-called Weimar Constitution), Czechoslovakia, Estonia, and Finland (Kierończyk 2013: 45). When characterizing the Constitution of the Republic of Latvia [Latvijas Republikas Satversme], Jarosław Mirończuk stressed that its characteristic feature is the brevity of its provisions, the conservative content layout, and the placement of different emphases on the regulated issues (Mirończuk 2010: 387). Furthermore, the Constitution did not regulate many important aspects of the functioning of the state. Like with the other Baltic republics, the Constitution of Latvia emphasized the principle of the sovereign power of the people. The principle is expressed in Article 2 of the Constitution: *The sovereign power of the State of Latvia is vested in the people of Latvia* (The Constitution of the Republic of Latvia). The adoption of the solution on the one hand implied the introduction of the principle of representative government as a component complementing the principle of the sovereignty of the people, while on the other hand it enabled the introduction of the institution of direct democracy. Trying to find the sources of that solution Przemysław Kierończyk points out that they should be sought first of all in Latvian history:

> reference to the role and importance of the native people (and the institutions that the people legitimizes) was an attempt to, on the one hand, write off the experience of the absolutist rule in an autocratic Russia, and on the other – to break the domination of the foreign-speaking social elites (Kierończyk 2013: 47).

The Latvian Constitution pointed to two institutions of direct democracy: referendum and legislative initiative. Between 1918 and 1939 the two institutions were applied in practice: legislative initiative – three times, and referendums – four times. It should be added that the referendums of 1923, 1931 and 1934 were linked with the citizens' bills, which were rejected by the Parliament.

The legislative initiative was first used in the voting of 2 September 1923, when the question of the expropriation of Churches for the benefit of other confessions was put to the vote. What gave rise to the initiative was the adoption by the Saeima (the Latvian Parliament) in March 1923 of the law

under which St. Jacob's Lutheran cathedral in Riga [Svētā Jēkaba Katedrāle] was handed over to the Roman Catholic Church. Latvia's President Jānis Čakste postponed signing the law for two months but in April the Parliament adopted an even more restrictive version of the law which in turn provided for handing over the Riga Dome Cathedral [Rīgas Doms] to the Protestants. Importantly enough, the law in this version was not implemented for a long time. In response, the Baltic Germans, using their right guaranteed by the Constitution, launched a legislative initiative. The initiative motion that banned the expropriation of church property and handing it over to other confessional communities was signed by 143,577 people, which was ca. 15% of the eligible voters. The initiative was rejected by the Saeima and put to the national vote, but in this case the required turnout was not met.

In 1931 the question of ownership of the Riga Dome Cathedral was raised again. As has been said above, the law providing for handing over the church to the Protestant community was passed by the Parliament but its principles were not implemented for a long time. As a result, the Parliament repealed the law in March 1931. In response to these measures by the Saeima, the nationalist parties presented a legislative initiative, having gathered 231,000 signatures of support for the initiative, which constituted 19% of the electorate. The initiative was rejected in the parliamentary voting, and the national referendum was soon held. However, the required turnout threshold was not met in this case. Eventually, the matter of the Riga Cathedral was resolved by a decree issued by the Latvian Cabinet of Ministers on September 1931. Under the decree the Riga Dome Cathedral was handed over to the bishop of the Evangelical-Augsburg Church.

In 1933 the social democrats launched an initiative for enacting a law ensuring pensions and social assistance to those unable to work and the unemployed. The initiative was rejected by the Saeima and put to the national vote. The result of voting was invalid because the turnout was too low.

In 1934 a referendum was held whose purpose was to repeal the citizenship law in force. Under the law, any person applying for Latvian citizenship had to inhabit the territory of Latvia from a least 1925 and half a year before a world war. The statutory regulations mostly pertained to the problem with the citizenship of Germans, Russians, Jews as well as stateless persons. Nevertheless, the referendum failed to meet the required turnout. Consequently, none of the attempts to use direct democracy in the first period of the functioning state was successful, which stemmed first of all from the required turnout threshold. It should be pointed out, however, that in the foregoing period Latvia was far ahead of the other Baltic republics in respect of the use of direct democracy.

In principle, soon after the passing of the Constitution, opinions critical of the Saeima were voiced as well as demands for a constitutional reform. The coup d'état perpetrated by the then incumbent Prime Minister Kārlis

Ulmanis on the night from 15 to 16 May 1934 was an answer to the impossibility of carrying out the reform of the Constitution, which would strengthen the executive power. Among all the Baltic states, it was the authoritarian regime in Latvia that turned out to be the most oppressive. After the coup d'état, the activities of political parties and local self-government authorities were suspended, and the decision to dissolve the Parliament was also taken. The authoritarian authorities did not even make an attempt to legitimize their power, postponing the adoption of a new constitution and focusing first of all on governing the state on a daily basis.

A significant change in the functioning of Latvia and the other Baltic republics took place during World War II. Three stages can be distinguished in the relations between Latvia and the Soviet Union: 1) forcing the Latvian government to sign the treaty of mutual assistance in case of potential external aggression; 2) imposition of the right of the Soviet Union's government to determine the number of its troops stationed in the territory of Latvia, an attempt to interfere in Latvia's internal affairs; 3) the change of the state's political system, proclamation of the Soviet Republic and incorporation in the Soviet Union (Zieliński 2004: 49-57). The motion to proclaim the Latvian Soviet Socialist Republic and incorporate it in the Soviet Union was voted through by the People's Parliament on 21 July 1940, while the Supreme Soviet of the Soviet Union readily accepted the "Latvian motion" on 5 August 1940. Another step towards the Sovietisation of the Latvian Soviet Socialist Republic was the introduction of the Constitution of the Latvian SSR, based on the 1936 Constitution of the Soviet Union. The next Constitution of the Latvian SSR was adopted in 1978 and was essentially the carbon copy of the Soviet Union's Constitution of 1977. In terms of direct democracy institutions the former Constitution provided for national plebiscites, the latter – the national voting. In practice, both institutions did not fulfil the role traditionally attributed to direct democracy.

Despite the repressive nature of the Soviet regime, in the late 1980 Latvia witnessed the development of community organizations such as the Popular Front of Latvia [Tautas Fronte, TF], which played a crucial role in the struggle for independence in the later period. In the process of regaining independence, Latvia adopted the tactics of "gradual steps". At the beginning of 1990 the process of departing from the leading role of the communist party was initiated. On the rising tide of transformations, on 12 January 1990 the regulations concerning the state symbols of the Latvian SSR were adopted. The declaration by which Latvia proclaimed its complete and immediate independence was announced on 21 August 1991 (Żebrowski 2004: 29).The complement to the political transformations was the parliamentary elections held on 18 March 1990. As their consequence, the Popular Front became the leading political force in Latvia.

The factor that without doubt has an influence on the functioning of direct democracy in Latvia is its accession to the European Union. Latvia established diplomatic relations with the European Community in 1991, and the agreements on trade and economic cooperation were signed in 1992. Latvia failed in the first stage of negotiations, which increased anti-accession sentiments. The Latvia – EU Association Agreement was signed in June 1995, while in 1995 Latvia applied for the European Union membership. Negotiations on Latvia's accession to the European Union ended in 2002. The accession referendum in Latvia was held on 20 September 2003, and Latvia became a European Union member state on 1 May 2004.

Formal-Legal Dimension

Under the 1989 Declaration of the Latvian SSR Supreme Soviet on the National Sovereignty of Latvia the binding force of the 1922 Constitution was restored. It should however be observed that initially only the constitutional and legal foundations of the state were invoked whereas it was necessary to update and re-edit the other parts of the Constitution. Additionally, in 1991 the constitutional "Human and Civil Rights and Obligations" Act was passed, and then Chapter VIII on human rights was added to the Constitution. For that reason, the provisions of the Constitution of 1978 and other legal acts were in force in the transition period. The Constitution of 1922 was fully restored on 27 January 1994 (Jagusiak 2013: 63).

According to the Constitution, Latvia is a democratic republic, in which sovereign power is vested in the people (citizens). Legislative power is vested in the Parliament [Saeima], and executive power is in the hands of the Cabinet of Ministers and the President, judicial power being vested in independent courts of law.

The Constitution of the Republic of Latvia regulates the fundamental question associated with direct democracy. Under Article 2 of the *Constitution the sovereign power of the State of Latvia is vested in the people of Latvia*. *All citizens of Latvia who enjoy full rights of citizenship and, who on election day have attained eighteen years of age, shall be entitled to vote* (Article 8). The Constitution guarantees two institutions of direct democracy: referendum and legislative initiative, the two forms being provided for at the national level.

The issues pertaining to the organization of a referendum and monitoring its process are the responsibility of the Central Election Commission [Centrālā Vēlēšanu Komisija – CVK]. The duty of the CVK is to set and announce the date of the referendum. An exception to this rule is the referendum on a citizens' bill rejected by the Parliament and the referendum

on the matters related to Latvia's membership in the European Union. In such cases the referendum date is set by and announced by the Saeima. Referendums are always held on Sunday, with polling stations being open between 7 AM and 8 PM. In addition, in every town there has to be one polling station in which voting lasts until 10 PM. In Riga, four such stations are chosen, and in Daugavpils and Liepaja – two in each.

For a referendum to be valid it is necessary to satisfy the formal requirement of achieving a sufficiently high turnout. Initially, the threshold was 50% of citizens eligible to vote. Since it was difficult to mobilize the electorate to vote, on 1 March 1933, the constitutional act introduced an amendment, under which a referendum is valid if it is attended by at least 50% of those voting in the previous parliamentary election.

All citizens of Latvia who have the right to vote in elections of the Saeima may participate in national referendums (Article 80). Under the Constitution, the referendum must be ordered in seven cases. First, when the Saeima passes amendments to the Constitution: to Article 1 (*Latvia is an independent democratic republic*), Article 2 (*The sovereign power of the State of Latvia is vested in the people of Latvia*), Article 3, (*The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale*), 4 (*The Latvian language is the official language in the Republic of Latvia. The national flag of Latvia shall be red with a band of white*), 6 (*The Saeima shall be elected in general, equal, and direct elections, and by secret ballot based on proportional representation*), and 77 (*If the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, such amendments, in order to come into force as law, shall be submitted to a national referendum. For the changes to come into force, they must be accepted by a national referendum*). These matters are regulated in Article 77 of the Constitution. Secondly, under Article 48, a referendum is held, if the President proposes the dissolution of the Saeima. If the proposal is voted in favour by at least half of the voters, the Parliament will be considered dissolved and new elections will be called. If, however, the proposal is not voted in favour by the required number of votes, the Saeima removes the President from office (Article 50). Thirdly, if the President exercises the right to suspend the proclamation of a law for a period of two months, the law can be put to national referendum if so requested by at least one tenth of the eligible electorate (Article 72). A law is considered repealed if the number of voters in the referendum is least half of the number of the eligible voters participating in the previous parliamentary election, and the proposal is supported by at least half of them (Article 74). Significantly enough, this procedure does not apply to laws passed by the Saeima as urgent and adopted by at least a two thirds majority vote. Fourthly, referendums endorse citizens' bills that are submitted to the President by one tenth of the

Latvian citizens and that have been passed by the Parliament after introducing substantial changes (Article 78). Fifthly, the national referendum is called if at least one tenth of the electorate propose a motion to dissolve the Saeima. For the referendum to be binding in such cases, at least two thirds of the voters who participated in the previous parliamentary elections have to vote, and the motion has to be supported by the majority of the voters (Article 14). In 2009, additional restrictions were added to these provisions: this kind of referendum cannot be held within one year of the parliamentary elections, in the last year of the Saeima's term of office, during the last six months of the President's term of office, and earlier than six months after the previous referendum on recalling of the Saeima was held.

Two more cases when a national referendum is called were introduced in Latvia's Constitution in 2003 in connection with the process of accession the European Union. Pursuant to the amendment, a national referendum is necessary to approve of Latvia's membership in the European Union. Moreover, substantial changes in the terms of Latvia's membership in the European Union are decided by a national referendum called by the Saeima.

Article 73 of the Constitution specifies which questions cannot be submitted to a national referendum. These are:

> Budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilisation and demobilisation, as well as agreements with other nations.

Provisions concerning the holding of a referendum are specified in the Law on National Referendums, Initiation of Laws and European Citizens' Initiative, adopted by the Saeima on 31 March 1994 (Likum par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu 1994). Pursuant to this law, every person eligible to vote in the referendum has to cast a vote in person in a polling station (Article 17). Voting outside of a polling station is possible only for health reasons and can take place in the place where the voter is located (Article 18). If a voter is abroad, s/he may vote in the polling stations established in Latvia's diplomatic missions of consulates, or by mail. Furthermore, soldiers may vote in their place of deployment, whereas for persons serving a sentence or temporarily detained in a penitentiary, voting is conducted in accordance with the procedure prescribed by the Election Law adopted by the Saeima (Article 20). Ballot papers are prepared by the CVK. If a national referendum is held on more than one matter, separate ballot papers must be issued for each question. (Article14). The costs of organizing and holding a referendum are covered by the state (Article 26).

The other institution of direct democracy guaranteed by the Latvian law is legislative initiative. The right to initiate legislation is the right of every Latvian citizen who is eligible to vote in a referendum (The Constitution of

the Republic of Latvia: article 64). The coordination of this institution of direct democracy is the responsibility of the Central Election Commission.

According to the Constitution of the Republic of Lithuania, at least one tenth of Latvian electorate may submit draft laws (Article 65). The initiative group may be political parties or an association of at least 10 electors that has been formed and registered in accordance with the provisions of the Associations and Foundations Law (Article 23). The submitted draft law or draft amendment to the Constitution is registered by the CVK. The required number of signatures in support of the registered draft law should be collected within 12 months. The signatures are gathered on CVK-approved sheets or via the Internet (e.g. the portal: latvija.lv). Each signature has to be certified by a notary public or local authorities. The signatures are verified and counted by the CVK. If the formal requirements concerning the appropriate number of votes are met, then within three days the CV notifies the President about the initiative and sends the President the draft law or the draft amendment to the Constitution.

Owing to Latvia's membership of the European Union, the citizens of this state may participate in the European Citizens' Initiative. This is an instrument of direct influence by European Union citizens on the decision-making process through a legislative proposal. Appropriate EU-level regulations were adopted in 2011, and the first proposals were registered in 2012. The formal requirement of submitting an initiative is to register a citizen's committee consisting of at least seven citizens permanently residing in seven European Union countries. The proposal has to be supported by at least one million of citizens from at least seven EU countries. In the case of Latvia the minimum number of signatures is 6,000 (for proposals registered after 1 July 2014).

The solutions concerning direct democracy in Latvia apply exclusively at the national level. Like in the case of the other Baltic republics, no solutions were adopted that would permit holding a referendum at the local level.

Practical Dimension

Referendum is the most popular form of direct democracy in Latvia, where it performs legislative, organic, and ratification functions. Between 1990 and 2016 the institution of national referendum was used in Latvia as many as nine times.

The first referendum vote was about the issues concerning Latvia's independence. It was connected with the proclamation of the Declaration of the Latvian SSR Supreme Soviet on the National Sovereignty of Latvia on 28 July 1989. In the referendum the Latvians answered the question *Are you in*

favour of a democratic and independent Republic of Latvia? Yes/No. The number of the eligible voters was 1,902,802. The referendum was decided in favour (Table 1).

Table 1. The national referendum of 3 March 1991

Date	Subject	Turnout in %	Results
3 March 1991	Latvia's independence	87.56	For 74.90% Against 25.10% Valid; motion passed

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

The second referendum in Latvia pertained to alterations in the citizenship law adopted by the Parliament under pressure from the Organization for Security and Cooperation in Europe (OSCE) in July 1998. The amendments to the law provided for the abolishment of restrictions on obtaining Latvian citizenship, the granting of citizenship to children born in the territory of Latvia, at the request of one of the parents, and simplification of the language examination for people of 65 years of age. The proposal to suspend the law was submitted by the Party "For Fatherland and Freedom." The referendum question was: *Are you for or against the repeal of the law 'Amendments in the Law of Citizenship' (Law on Simplified Naturalization)? Yes/No.* The number of the eligible voters was 1,348,535. The referendum met the formal validity requirements but the proposal was rejected (Table 2).

Table 2. The national referendum of 3 October 1998

Date	Subject	Turnout in %	Results
3 Oct. 1998	Citizenship	68.82	For 46.08% Against 53.92% Valid; motion rejected

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

The third referendum was held in 1999 and was about the changes in the law on the pension system, adopted by the Saeima on 5 August 1999. The amendments to the law entailed raising of the retirement age for women from 57.5 to 62 years of age and for men from 60 to 62 years of age. The retirement age would be raised gradually until 2006. Another amendment pertained to withholding retirement privileges in cases when additional earnings of the pensioners exceeded more than double the state pension. Shortly before the referendum the Cabinet of Ministers [Ministru Kabinets] introduced simplifications to the law in order to discourage citizens from

taking part in the referendum. The referendum asked the question *Are you for or against the repeal of the Amendments in the Law on State Pensions of 5 August 1999? Yes/No*. The referendum was declared null and void because of too low a turnout (Table 3).

Table 3. The national referendum of 13 November 1999

Date	Subject	Turnout in %	Result
13 November 1999	Changes in the law on the pension system	-	For 90.63% Against 5.37% Invalid

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

The fourth referendum was held on Latvia's accession to the European Union. For that purpose, the Constitution of the Republic of Latvia and the Referendum Act had to be amended because the Latvian legislation did not provide for the possibility of putting to referendum the questions connected with Latvia's membership in international structures (Jabłoński 2007: 83). In the referendum the Latvians were asked: *Do you support the membership of Latvia in the European Union? Yes/No*. The number of registered voters was 1,381,890. The referendum met the formal requirements to be binding, the decision being in the affirmative (Table 4).

Table 4. The national referendum of 21 September 2003

Date	Subject	Turnout in %	Result
21 Sept. 2003	EU membership	73.12	For 67.49% Against 32.51% Valid; motion passed

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

The next two referendums were held in 2007, pertaining to the questions of state security. At the end of 2006 and beginning of 2007 the Saeima passed a new law which gave broader access to information for intelligence services, police and special military service. Latvia's President Vaira Vīķe-Freiberga twice used the presidential veto, rejecting both the amendments to National Security Law and amendments to the State Security Authorities Law. Within two months of the President's veto, citizens' legislative initiative was launched. Two questions were asked in the referendum: *Are you for the repealing of the law Amendments to the National Security Law of March 1, 2007? Yes/No* and *Are you for the repealing of the law 'Amendments to the State Security Authorities Law' of March 1, 2007? Yes/No*. The number of

registered voters was 1,497,946. Eventually, both referendums failed because of too low a turnout (Table 5).

Table 5. The national referendum of 7 July 2007

Date	Subject	Turnout in %	Result
7 July 2007	Repealing of the amendments to the National Security Law	22.59	For 96.97% Against 3.03% Invalid
7 July 2007	Repealing of the amendments to the State Security Authorities Law	22.59	For 96.89% Against 3.11% Invalid

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

In 2008 two referendum votes were also held. The first was on the adoption of a draft law concerning amendments to the Latvian Constitution. It was a proposal submitted as part of legislative initiative but because the Parliament rejected the bill in the vote, a referendum was organized (Fact Sheet 2008). The referendum asked the question *Do you support adopting Draft Law 'Amendments to the Constitution of the Republic of Latvia'? For/Against* The number of registered voters were 1,514,936. The referendum was invalid because the required validity threshold was not met (Table 6).

Table 6. The national referendum of 2 August 2008

Date	Subject	Turnout in %	Result
2 August 2008	Amendments to the Constitution	41.54	For 96.78% Against 3.00% Invalid

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

The subject of the second national referendum in 2008 was the Draft Law "Amendment to the Law 'On State Pensions'". The Latvians answered the question *Do you support adopting the Draft Law 'Amendment to the Law 'On State Pensions'? For/Against*. The number of registered voters was 1,516,097, but also in this case the referendum result was not binding (Table 7).

Table 7. The national referendum of 23 August 2008

Date	Subject	Turnout in %	Result
23 August 2008	Amendments to the Law on pension State system	22.90	For 96.38% Against 3.62% Invalid

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

The referendum of 2011 was the first case in which the incumbent President Valdis Zatlers, using his powers under Article 48 of the Constitution, proposed the dissolution of the Parliament. The immediate cause of the President's decision was the Saeima's refusal to strip an MP of his seat: he was wanted in connection with corruption charges. The referendum asked the question: *Do you support dissolution of the 10th Saeima? For/Against*. The registered electorate numbered 1,542,593. In the referendum more than half of the voters supported the dissolution of the Parliament; consequently, the parliamentary elections were held on 17 September 2011 (Table 8).

Table 8. The national referendum of 23 June 2011

Date	Subject	Turnout in %	Result
23 June 2011	Dissolution of the 10th Saeima	44.72	For 94.30% Against 5.48% Valid; motion passed

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv

The latest referendum in Latvia was held in 2012 on introducing amendments to the Constitution, whereby Russian would become the second official language in Latvia. The proposal required amendments to Articles 4, 18, 21, 101 and 104 of the Constitution. The referendum was initiated by the Russian minority communities, and it was supported first of all in the regions bordering on Russia and Belarus (Radziwinowicz 2012). The Latvians answered the question: *Do you support the adoption of the Draft Law 'Amendments to the Constitution of the Republic of Latvia' that provides for the Russian language the status of the second official language? For/Against* The number of eligible voters were 1,545,004. Eventually, the referendum rejected the proposal, which resulted in tensions with Moscow on the one hand, but on the other hand it showed the consistency of the Latvians in their language policy (Table 9).

Table 9. The national referendum of 18 February 2012

Date	Subject	Turnout in %	Result
18 Feb. 2012	Russian language as the second official language	71.12	For 24.88% Against 74.80% Valid; motion rejected

Source: Author's own studies on the basis of: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/; Central Election Commission of Latvia, https://www.cvk.lv (20 November 2016).

As regards the use of direct democracy, Latvia stands out not only among the other Baltic republics but also among other European countries: it is one of the few states that guarantee their citizens the right to referendum and the right to initiate legislation on amendments to the Constitution, creation of new laws, and rejection of laws adopted by the parliament. Nevertheless, as Jüri Ruus (2011: 274) observes, the Latvian system is also extremely unfavourable to citizens' activities, primarily because of the high referendum validity threshold. That is why most of the undertaken initiatives end in failure.

An increasingly popular institution of direct democracy in Latvia is legislative initiative. Under the law in force, the right to initiate legislation may concern both a draft law and a bill on amendments to the Constitution. It should be also pointed out that citizens' initiatives are often rejected by the Saeima or are passed after substantial changes in their content have been introduced: the practice of legislative initiative is connected with referendum practice. It should be also added that between 2012 and 2016 the CVK refused to register ten legislative initiatives, which was first of all caused by failure to meet formal requirements (e.g. proposals could not be accepted as a completely developed draft law).

The Latvian legislation does not provide for direct democracy solutions at the local level. It is stresses, however, that public opinion is important to local authorities. Under the law on local self-government, local authorities are obliged to hold sittings of the authorities (town councils). The sittings should be held at least once a month, and provide opportunities for interested citizens to participate. Additionally, in some cities (e.g. in Riga) public consultations concerning area development planning are organized (Vagans/Vilka 2000: 129; Ruus 2011: 274).

Conclusion

The present study has positively verified the hypothesis that direct democracy in Latvia functions both in the formal-legal and practical dimensions. The provisions that regulate direct democracy in Latvia are contained in the

Constitution of the Republic of Latvia and in relevant acts. Importantly enough, the Latvian legislation does not indicate the institutions of direct democracy as an instrument of decision-making on matters important for the state and the people, and it specifies in detail when referendums and legislative initiatives can be used, as well as cases when they cannot be invoked. The main barrier to using direct democracy is difficulties in achieving a high turnout, which determines referendum validity. It appears that the problem was not solved by the amendment to the Constitution of 1933, which theoretically lowered the referendum validity threshold. Regarding the right to initiate legislation, it should be pointed out that this institution of direct democracy is of relatively little efficacy. The barrier in this case is both the necessity of preparing an appropriate proposal and agreeing on its final content before it is submitted to the Saeima. Direct democracy solutions can, however, be used exclusively at the national level.

The second hypothesis has also been positively verified: it assumed that the use of direct democracy solutions in the decision-making process is a determinant of the state's political consciousness. It should be emphasized that Latvia as one of the few European states guarantees its citizens a wide range of issues that can put to a referendum or be the subject of legislative initiatives.

Similarly, the hypothesis has been positively verified which assumed that the accession to the European Union had a favourable effect on the development of direct democracy in Latvia. It should be stressed that Latvia held an accession referendum, and since 2004 the use of institutions of direct democracy has steadily increased. In addition, since 2012 the European Citizens' Initiative is available to the Latvians.

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Dorota Maj

Direct Democracy in Lithuania

Determinants

The functioning of direct democracy in Lithuania after 1989 has been influenced by the historical and legal premises including the state's administrative reform in particular.

The events related to the course of World War I resulted in the appearance of new states - including Lithuania - on the map of Europe. It is worth pointing out here that the tradition of Lithuanian sovereignty dates back much further than in the case of other Baltic States (Kierończyk 2008: 12). As a result of the so-called Second Declaration of Independence announced on 16 February 1918, Lithuania proclaimed independence, rejecting all bonds with other nations (Poland, Russia, and also with Germany, which had been prearranged in the First Declaration of Independence).

Institutions of direct democracy were introduced in Lithuania shortly after the proclamation of independence in 1918. Initially, the state's governing principles were laid out in the three provisional Constitutions adopted in 1918, 1919 and 1920 respectively, whereas the principles took the final form with the passing of the Constitution of the Lithuanian Republic in 1922. As Krzysztof Prokop (2009: 90) points out, the Lithuanian Constitution was grounded not only on the French model but also on the Swiss and Weimar ones, which considerably distinguished its substance and the array of solutions from the March Constitution of Poland for example. The inspiration of the Western solutions resulted in the Constitution regulating the matters of the President's political responsibility or the application of direct democracy (Kierończyk 2005: 280; Łossowski 1972: 22-23). Moreover, as in the case of the Constitutions of other Baltic States: the nation's sovereignty principle was emphasized (Lietuvos Valstybės Konstitucija 1922 m. rugpjūčio 1 d.: art. 1; Prokop 2009: 98). As far as direct democracy is concerned, the 1922 Constitution guaranteed two institutions to the citizens of Lithuania; the legislative initiative and the referendum.

In accordance with Article 20 of the Constitution the right to a legislative initiative was granted to a group of 25,000 citizens of Lithuania who had the full rights as citizens whereas the Parliament was obliged to consider the citizens' bill. Article 102 of the Constitution guaranteed the right to a legislative initiative also in regard to amending the Constitution. In this case, aside from the government and the parliament, a referendum motion could be

filed by a group of at least 50,000 citizens with full voting rights. The Constitution bill, if approved by the majority of three fifths of the statutory number of MPs, was enacted within 3 months of its announcement. It was then, in the period of *vacatio legis*, that a referendum on the amendment of the Constitution was conducted on the President's initiative, one quarter of the statutory number of MPs or a group of 50,000 citizens. If the referendum was attended by more than a half of the citizens with full voting rights, and the majority of them were against amending the Constitution, then such amendment did not come into effect (Lietuvos Valstybės Konstitucija 1922 m. rugpjūčio 1 d: art. 103; Kierończyk 2008: 46-47).

The coup that took place in 1926 in Lithuania gave rise to the authoritarian rule under President Antonas Smetona. It was in consequence of these events that an effort was made to reform the 1922 Constitution; however in 1928 President Antonas Smetona imposed a new Constitution. What is more important, in the new Constitution it was stipulated twice that the Constitution would have to be put to a referendum within the next 10 years. In 1936, because of the imminent deadline of the referendum, it was decided that a parliamentary election would be conducted. Ultimately, the new Parliament enacted the new Constitution on 11 February 1938. It came into force on the day of its proclamation that is on 12 May 1938 (Lietuvos Konstitucija 1938 m. gegužės 12 d.). As in the 1922 Constitution, the nation's sovereignty principle was maintained, and the citizens with full voting rights were guaranteed the right to elect MPs. In comparison with the 1922 Constitution, the statutory position of the President was substantially reinforced, which could be seen in the departure from the separation and counterbalancing of powers, towards one and indivisible authority executed by the President, Parliament, government and courts. Thus, the institutions of direct democracy were not indicated unlike in the 1922 Constitution, in which they were guaranteed.

After the outbreak of World War II, Lithuania found itself in the Soviet zone of influence, having been included in the Soviet state on 3 August 1940. Within the next three weeks the Constitution of the Soviet Socialist Republic of Lithuania was adopted, which was based on the Soviet Union's Constitution of 1936. The new Constitution did not include any resolutions of either the 1922 or 1938 Constitution. In regard to direct democracy the Soviet Union's Constitution, in Article 49, listed national plebiscites among the powers of the Presidium of the Soviet Union's Supreme Soviet (Конституция Союза Советских Социалистических Республик 1936). However, as Jacek Zieliński points out, under the Soviet rule, expressing anything 'in the name of the nation' could be voiced without allowing the nation to express its will (Zieliński 1996: 166).

Despite the inclusion in the Constitution of such a regulation, it did not specify in which circumstances this institution was to be applied. These

matters were specifically defined in the Lithuanian Soviet Socialist Republic Constitution of 1978 that was modelled on the Soviet Union's Constitution of 1977. According to Article 5 of the Constitution, the most important matters of the nation are subject to a nationwide discussion as well as national voting (referendum) (Konstytucja Związku Socjalistycznych Republik Radzieckich 1977).

What is significant though is that in the Constitution there was no mention of a direct form of citizen participation in exercising official authority, emphasizing only that the people exercise authority through the Council of People's Deputies of the Soviet Union. The lack of a referendum law was a substantial problem in the period of the functioning of the Lithuanian Soviet Socialist Republic. The legal act in question was passed only in 1990. The subject matter to be decided by way of referendum concerned mainly draft laws (enactment, amendments or a loss of legal validity) but also other issues under the authority of the Union. The adopted law also listed a number of issues that were excluded from the referendum. The right to initiate a referendum was vested in the citizens, the Congress of People's Deputies, the Supreme Council, the Union Council, the Council of Nationalities, the Soviet Union President, and in the highest authorities of the republics. The referendum had to apply to the whole of the Union and not to its part. A referendum motion that was submitted by the citizens had to be supported by at least 2 million people. The institution of the citizens' initiative was thereby a form of legal fiction, especially if the number of citizens in each Baltic State is taken into account (Zieliński 1996: 168).

After fifty years of dependence on the Soviet Union, on 11 March 1990 the Supreme Council of the Lithuanian Republic proclaimed the independence of Lithuania. On the same day the Soviet legislation was repealed and the Provisional Fundamental Law (Constitution) of the Lithuanian Republic was introduced. The interim constitutional period went under pressure to develop a new Lithuanian Constitution. Due to the clashing tendencies in establishing a new system the final work on the Constitution was continued based on the general principles of the country's development that were postulated by the Supreme Council of the Lithuanian Republic. The Constitution was enacted on 25 October 1992 by way of referendum.

In 1995 Lithuania began the EU accession process: in June the association agreement was signed and in December Lithuania applied to become a member of the EU. In February 2000 the negotiations process started and it ended in December 2002. The European Parliament supported Lithuanian aspirations on 9 April 2003, whereas the national referendum was held between 10 and 11 May 2003. Lithuania became the EU member on 1 May 2004 (Jagusiak 2013: 155-157).

Another factor that determined direct democracy in Lithuania is the country's administrative and territorial division. In the formal dimension a

certain substitute of self-government, in a form of local self-government, was maintained during the whole period of the existence of the Lithuanian Soviet Socialist Republic. Nevertheless, however, both the way of electing the local self-government and managing local matters was subordinated to the central authority thus it was in contradiction with the idea of territorial self-government.

The new regulations of the local administrative reform are based on the European Charter of Local Self-government and on outside legislation. In compliance with Local Self-government Foundation Act on 12 February 1990, Lithuania introduced local self-government with a two-tier structure, formed by 55 regions [apskritys] and 581 communes divided into three categories (Vietos Savivaldos pagrindų Įstatymas 1990; Czyż 2007: 49). In 1994 the Lithuanian government laid out a new territorial self-government reform in the Parliament, introducing one-tier structure, within which 10 regions and 55 local self-governments were distinguished. The new law was enacted in 1995. According to its assumptions the territorial structure of Lithuania consists of 10 constituencies (a higher level of administration), 56 local self-governments – 44 rural and 12 urban ones (lower level of administration) and 500 wards that are formally outside the structure. Among the premises that the reform authors were inspired by, the crucial significance was attributed to the direct participation of citizens in the preparation, discussion, acceptance and deployment of decisions concerning local issues (Beksta/Petkevicius 2000: 169; Vanags/Vilka 2003a: 328). The consequence of the substantial defragmentation of the public administration is the fact that among other European states, Lithuania can be characterized as having the largest number of local self-government units as compared with the number of its citizens (Vanags/Vilka 2003b: 125). What is significant, according to the statistical data, only in the case of nine local self-governments the number of citizens residing in them did not exceed 30,000, in the other cases the number ranged between 35,000 and 100,000. In accordance to the assumptions accepted by the Lithuanian authorities the target number of local self-governments is to rise from 56 to 93. This is conditioned by two tendencies: firstly, by an increasing interest of citizens in the local issues, and secondly, the need of a better access to the local self-government institutions (Beksta/Petkevicius 2000: 201).

Formal-Legal Dimension

The general principles of direct democracy were laid in the Constitution of Lithuania Republic from 1992 (Lietuvos Respublikos Konstitucija 1992). According to the Constitution, Lithuania is a democratic parliamentary

republic. The Constitution expresses the principle of the division of powers into the legislative power exercised by the Parliament [Seimas], the executive power vested in the President [Respublikos Prezidentas] and the Government [Lietuvos Respublikos Vyriausybė] as well as the judicial power executed by courts [Teismas] and the Constitutional Court [Konstitucinis Teismas]. The current Lithuanian Constitution guarantees the nation's sovereign superior power (Article 1), and this power must not be limited or restricted (Article 3). The right of citizens to participate in exercising power was formulated in the first chapter of the Constitution, called the Lithuanian State. According to Article 4 of the Constitution, the sovereign authority belongs to the nation, and it can be exercised directly or indirectly by the democratically elected representatives. The Lithuanian Constitution distinguishes two institutions of direct democracy applied on the national level: the referendum (and the referendum initiative) and the legislative initiative.

The referendum was sanctioned as the means of resolving the most important issues of the nation and the state (Article 9). It thereby fulfils the legislative and constitutional functions. According to the Lithuanian Constitution, only by way of referendum can Article 1 of the Constitution be altered, which stipulates that the Lithuanian State is an independent democratic republic on condition that ¾ of the citizens with voting rights are in favour of the decision to change that (Article 148). Similarly, the referendum is the means of changing Chapter I of the Constitution: the Lithuanian State and Chapter XIV: the Alteration of the Constitution. The right to administer the referendum was assigned to the Parliament (Article 9 and 67.3), which can resort to this form of exercising power in the cases laid down by a specific legislative act. The referendum can also be administered on demand by a group of at least 300,000 citizens with voting rights.

As regards the mode of administration and implementation of the referendum the Constitution make reference to a specific law. It should be emphasized here that the legislative act governing the referendum matters has been substantially altered over time. The first referendum law was passed on 3 November 1989 by the Supreme Council of the Lithuanian Republic but (Lietuvos Respublikos referendumo įstatymas 1989), because of the changing contexts, it was amended ten times and on 1 January 2003 it ceased to apply. Another law on referendum was enacted on 4 June 2002 (Lietuvos Respublikos referendumo įstatymas 2002).

According to that law, the right to participate in the referendums is granted to every Lithuanian citizen who is at least 18 years old and has full voting rights. This excludes persons with official court sentence depriving them of public rights. In addition, Article 2 of the law stipulates that none of the referendum participants is to be discriminated based on their gender, race, nationality, language, origin, social status, religion or ideology (Article 2). Article 9 specifies the entities having the right of a referendum initiative.

These are the MPs (at least ¼ of the statutory number of MPs) and the citizens with voting rights (a group of 300,000).

The new law distinguishes two kinds of referendums: obligatory and consultative (Article 3). According to Article 4 of the statute, the obligatory referendum is administered in five cases: 1) in the case of the altering of Article 1 of the Lithuanian Constitution, 2) in the case of approving amendments in Chapter I of the Constitution, 3) in the case of approving amendments in Chapter XIV of the Constitution, 4) in the case of the replacement of the Constitutional Act of 8 June 1992 On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, 5) in the case of Lithuania's accession to the international organizations if that entails transferring some competences of the national authorities to the agencies of these organizations. Other acts and statutes can be the subject of the obligatory referendum if an appropriate motion is filed by the entities having the right to initiate a referendum. In accordance with Article 7 of the law, the referendum result is binding if at least half of the citizens with voting rights, included in the voters' lists, participated in the ballot and if the option put to the vote received at least 50% of support, but at the same time, the support has to amount to at least one third of the citizens with voting rights and registered in the voters' lists. What is interesting is that in the cases indicated in Article 4 of the law, different formal requirements apply. The referendum whose subject is the amendment of Article 1 of the Constitution and the replacement of the Constitutional Act of 8 June 1992 requires the participation of at least three thirds of the citizens with voting rights and registered in the voters' lists. The approval of amendments to Chapters I and XIV of the Lithuanian Constitution requires the support of at least 50% of citizens with voting rights and placed in the voters' lists. On the other hand, the issue of Lithuania's participation in international organizations, which entails transferring sovereign competence of the state, is positively decided if with the turnout of 50%, the motion is supported by at least 50% of citizens with voting rights and registered in the voters' lists.

The consultative referendum can be concerned with all important issues of the state and nation if the issues are not subject to the obligatory referendum. In the consultative referendum the validating attendance level is 50%. If the 50% level threshold is exceeded and at the same time one option put to the vote is supported by at least half of the vote participants, then the result is binding for the authorities. When the required threshold of 50% is not met, the result is taken into account only as the citizens' opinion which may not be considered in the legislative process.

The Central Electoral Commission [Lietuvos Respublikos Vyriausioji Rinkimų Komisija] is the organ responsible for the organization of the referendums. Articles 10 and 11 of the referendum law regulate the referendum organization upon request by a group of citizens. The process is

commenced by the registration of an initiative group with the Central Electoral Commission (CEC). The group must consist of at least 15 citizens with voting rights. At the request of the CEC, a referendum voting project needs to be submitted and a project coordinator has to be designated. Within 15 days the CEC draws up a registration act and delivers it to the project coordinator, the President of Lithuania and the Parliament. Within 5 days of registration, the CEC must deliver paper forms for collecting signatures to the initiative group, as well as ensure an access to an electronic system that enables signature collection. At least 300,000 signatures must be collected within 6 months. After the delivery of signatures, the CEC has 30 days for their verification and count. Should the formal requirements be met, a final version of the document is agreed on between the initiative group and the Parliament, and subsequently the Parliament issues the resolution to organize the referendum. The referendum must be scheduled no sooner than 2 months and no later than 3 months from the issuance of the resolution.

The second institution of direct democracy laid out in the Constitution of Lithuania is the legislative initiative. The matters associated with legislative initiatives are regulated by the legislative initiative law (Lietuvos Respublikos piliečių įstatymų leidybos iniciatyvos įstatymas 1998). As stated in Article 68 of the Constitution, the right to a legislative initiative is granted to the MPs, the Government and the President of Lithuania. Additionally, a group of 50,000 citizens with voting rights can launch a legislative initiative. The legislative initiative law specifies that in the case of an attempt to change or amend the Constitution, a group of 300,000 citizens with voting rights must submit the proposal, whereas in the case of other laws (acts), the required number of citizens with voting rights is 50,000. A minimum of a 10-man operating group, responsible for collecting support signatures for the project, is required to successfully carry out a citizens' legislative initiative. Depending on the kind of project, the periods of collecting signatures vary. In the case of the project that alters or amends the Constitution it is four months and for other projects it is two months (Article 9). Upon collection of the required number of signatures by the initiative group, the CEC has 15 days for its verification. Should the formal requirements be met the proposal is registered in the Parliament.

Owing to the membership of Lithuania in the EU structures, the citizens of this country can participate in the European Citizens' Initiative. It is an instrument of direct influence on the decision making process through the legislative proposal, by the citizens of the EU member states. This procedure was launched in 2011, and in 2012 the first proposals were registered. The formal requirement for putting this initiative forward is to register a citizens' committee that consists of at least 7 citizens permanently residing in 7 EU states. In the case of Lithuania the minimum number of signatures is currently 8,250 (for the projects registered after 1 July 2014).

It needs to be pointed out that all the regulations referring to direct democracy in Lithuania relate to the national level. The Constitution of the Republic of Lithuania and other acts do not regulate the problems of direct democracy on a local level. Some forms of direct participation in the local decision making process by the citizens are guaranteed by laws regulating the functioning of the territorial self-government: The Law on Territorial Administrative Units and Their Boundaries (Lietuvos Respublikos Teritorijos Administracinių Vienetų Ir Jų Ribų Įstatymas 1994) and The Law on Territorial Planning (Lietuvos Respublikos Teritorijų Planavimo Įstatymas 2013).

Practical Dimension

Since it regained its independence in 1990, Lithuania stands out among other Baltic Republics in respect of utilizing referendums . Between 1990 and 2016 the institution was resorted to altogether 12 times. The first national voting in Lithuania was conducted on 9 February 1991 on the initiative of the Supreme Council and it was about the independence of Lithuania. According to the applicable legislation the vote was not a referendum [referendumas], but the opinion poll of the whole nation [gyventoju visuotines apklausos]. The Lithuanians responded to the question*: Should the Lithuanian State have an independent, democratic government?* It should be pointed out that the vote had the biggest turnout in history in Lithuania. The number of citizens eligible to vote was 2,652,738. The proposal under vote was approved by the Lithuanian citizens (Table 1).

Table 1. The national vote of 9 February 1991

Date	Subject	Turnout in %	Results
9 February 1991	Independence of Lithuania	84.74	For 90.24% Against 6.54% Valid; motion passed

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

In May 1992 the society voted on the restoration of the President's office in Lithuania and adopting the Constitutional Act on the President of the Republic of Lithuania. As was previously the case, the referendum was conducted on the initiative of the Supreme Council. Putting the system changes to the vote was to finally resolve the dispute over the shape of the new Lithuanian Constitution. During the work on the Constitution two polarised positions were evident; one supported solutions ensuring the

advantage of the Parliament, the other promoted the dominant position of the President. Because of that polarisation the Parliament passed a resolution to carry out a referendum. It took place on 23 May 1992. The number of eligible voters was 2,578,711 and the validation threshold was met but the vote lacked the needed majority (Table 2).

Table 2. The national referendum of 23 May 1993

Date	Subject	Turnout in %	Results
23 May 1993	Restitution of the President's office in Lithuania and adopting the Constitutional Act on the President of Republic of Lithuania	59.18	For 69.27% Against 25.57% Invalid

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

In June 1992 based on the Article 3 of the provisional Constitution a referendum took place. It concerned the unconditional and immediate withdrawal of the Soviet troops from the Lithuanian territory and the payment of compensation for destroyed property. The referendum was initiated by the Supreme Council. The number of eligible voters was 2,539,433. The referendum was positive (Table 3).

Table 3. The national referendum of 14 June 1992

Date	Subject	Turnout in %	Results
14 June 1992	Unconditional and immediate withdrawal of the Soviet troops from the Lithuanian territory and payment of compensation for destroyed property	76.05	For 90.67% Against 7.25% Valid, motion passed

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

After completing work on the Constitution, on 25 October 1992 a referendum on the adoption of the Constitution was conducted. The Constitution introduced the presidential system, one-chamber parliament and the institution of direct democracy. The referendum was initiated by the Supreme Council. The number of eligible voters was 2,549,952 (Table 4).

Table 4. The national referendum of 25 October 1992

Date	Subject	Turnout in %	Results
25 October 1992	Adoption of the Constitution	75.26	For 75.42% Against 20.98% Valid, motion passed

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

In August 1994, citizens represented by the Homeland Union requested a referendum on the matter of privatisation. Because of the diverse legal bases of the referendum, it was divided into eight parts: 1) the law on the illegal privatisation, lost bank accounts, the violation of the legal order; 2) the law on the illegal privatisation; 3) the repeal of the consequences of illegal privatisation, and the principles of privatising national assets in the future; 4) re-establishment and return of the devalued private bank accounts; 5) recording of the value of long term capital investments; 6) restoration of the value of understated national assets; 7) the unification and transparency of the protective legislation; 8) implementation of the law on the illegal privatisation of accounts, shares, and about the violation of the protective provisions. The number of eligible voters was 2,428,105. Because of the low turnout the referendum was invalidated (Table 5).

Table 5. The national referendum of 27 August 1994

Date	Subject	Turnout in %	Results
27 August 1994	the law on the illegal privatisation, lost bank accounts, the violation of the legal order	36.98	For 30.85% Against 3.81% Invalid
	the law on the illegal privatisation	36.98	For 30.79% Against 3.91% Invalid
	the repeal of the consequences of illegal privatisation, and the principles of privatising national assets in the future	36.98	For 30.79% Against 3.91% Invalid
	re-establishment and return of the devalued private bank accounts	36.98	For 30.88% Against 3.79% Invalid
	recording of the value of long term capital investments	36.98	For 30.81% Against 3.85% Invalid
	restoration of the value of understated national assets	36.98	For 30.80% Against 3.87% Invalid
	the unification and transparency of the protective legislation	36.98	For 30.97% Against 3.70% Invalid
	implementation of the law on the illegal privatisation of accounts, shares, and about the violation of the protective provisions	36.98	For 30.86% Against 3.81% Invalid

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

The next referendum in Lithuania was held on 20 October 1996. There were three matters put to the vote, proposed by the Parliament. The proposals were concerned with the change of Articles 55, 57 and 131 of the Constitution (the reduction of the number of MPs from 141 to 111; fixing a permanent date for the national election, which was set to be the second Sunday of April; at least a half of the budget was to be allocated for social, medical and cultural

needs). These three issues were put on the ballot paper. The number of eligible voters was 2,597,530. Ultimately, the referendum was invalidated because none of the points being voted on gained at least 50% of support of the eligible voters (Table 6).

Table 6. The national referendum of 20 October 1996

Date	Subject	Turnout in %	Results
20 October 1996	Amendments to Articles 55, 57 and 131 of the Constitution	52.11	For 65.00% Against 17.63% Invalid

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

A referendum was also carried out on 20 October 1996. The subject matter put to the vote was compensation for the lost assets. The referendum question was as follows: *The profit generated by the sale and privatisation of the state-owned companies (the state and the communes may own the maximum of 20% of all shares) should be used to recover the savings and the pensions which were taken over by the Soviet Government before 1990*? The question was proposed by the Homeland Union. The number of eligible voters was 2,597,530. The referendum was invalidated because that the proposal did not gain the needed support (Table 7).

Table 7. The national referendum of 20 October 1996

Date	Subject	Turnout in %	Results
20 October 1996	Compensation for the lost assets	52.46	For 74.31% Against 19.10% Invalid

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

In 1996 the Lithuanians gave their votes for changing Article 47 of the Lithuanian Constitution. The issues put to the vote were specifically associated par. 3 of the foregoing Article that regulates the matters of land ownership. As stated in the Article, the right to acquire land is granted to natural persons, but also legal persons (including publishers and international organizations). The purpose of the referendum was to change Article 47 of the Constitution so that only the country's citizens and Lithuanian companies could own land in Lithuania. The Referendum was initiated by Seimas. It should be noted that the referendum was carried out after the signing of the association agreement with the EU. The main purpose behind the organization of the referendum was to prevent foreign subjects from purchasing Lithuanian land. The number of eligible voters was 2,596,662.

The referendum was invalidated – the turnout did not meet the required 50% (Table 8).

Table 8. The national referendum of 10 November 1996

Date	Subject	Turnout in %	Results
10 November 1996	Amendments to Article 47 of the Constitution	39.73	For 43.41% Against 40.05% Invalid

Source: Author's own studies; Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

In 2003 an obligatory referendum was held. It concerned Lithuania's accession to the EU. Worth noting is the fact that some amendments were made in the Referendum Act prior to its organization, which was motivated by the concerns of the Lithuanian Government that the required minimum threshold would not be met. As a result of the amendments, for a referendum to be valid a minimum of 50% turnout was required, and a two-day voting term was introduced (10-11 May 2003), the polling station working hours were extended (from 6 p.m. to 10 p.m.) and the postal voting was simplified to enable voting from abroad. The decision to carry out the referendum was taken on 27 February 2003 by the Parliament, based on Articles 9 and 67 of the Lithuanian Constitution. The question was: *I agree to the accession of the Republic of Lithuania to the European Union - Yes/No*. The number of eligible voters was 2,638,886. The referendum was positive and binding. (Table 9).

Table 9. The national referendum of 10 May 2003

Date	Subject	Turnout in %	Results
10 May 2003	Lithuania accession to the European Union	63.37	For 89.95% Against 8.82% Valid; motion passed

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

In October 2008, based on the Parliament's resolution, a referendum was carried out concerning the further functioning of the nuclear plant in Ignalina. What is important, the cessation of the plant's operations (it was built in the seventies) was a prerequisite of Lithuania's EU accession (Mažylis 2012: 119-120). The main problem was, however, that the Ignalina nuclear plant supplied around 90% of electricity in Lithuania. As a result of negotiations, the EU declared to cover the costs of the plant's closure, and compensate for the lack of electricity. The referendum question was as follows: *I am in favour of the extended service of the Nuclear Power Plant Ignalina for a technically certain timeframe but no longer than until the construction of a*

new nuclear power plant. Yes/No. The number of eligible voters was 2,696,090. The referendum was invalidated as the turnout did not meet the necessary 50% threshold (Table 10).

Table 10. The national referendum of 12 October 2008

Date	Subject	Turnout in %	Results
12 October 2008	Further functioning of the nuclear plant in Ignalina	48.43	For 88.58% Against 8.33% Invalid

Source: Author's own studies on the basis of: Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

In 2012 another – consultative - referendum was conducted on the issue of building a new nuclear reactor in the Visaginas Nuclear Power Plant. The new reactor was to deliver the electricity supplies after the closure of the Ignalina plant. The agreement on the construction of the power plant was reached by Lithuania, Latvia, Poland and Estonia. In 2011, Poland withdrew from the project and its place was filled by a Japanese investor. The initiative to stop the project was launched by the Greens and ecological groups. Ultimately, the construction of the new power plant was supported by the Parliament, but at the same time it was decided to put this matter to the consultative vote. In referendum which was initiated by the Parliament, the Lithuanians were asked the question: *I support the construction of a new nuclear power plant in the Republic of Lithuania Yes / No*. The number of eligible voters was 2,588,418 (2012 m. Lietuvos Respublikos Seimo rinkimai ir referendumas dėl naujos atominės elektrinės statybos Lietuvos Respublikoje). The voting was valid, and this resulted in the rejection of the proposal to build the power plant (Table 11).

Table 11. The national referendum of 14 October 2012

Date	Subject	Turnout in %	Results
14 October 2012	Consultative referendum on the issue of building a nuclear reactor in the Visaginas Nuclear Power Plant	52.55	For 34.09% Against 62.68% Valid; motion rejected

Source: Author's own studies on the basis of: *2012 m. Lietuvos Respublikos Seimo rinkimai ir referendumas dėl naujos atominės elektrinės statybos Lietuvos Respublikoje*, http://www.vrk.lt/statiniai/puslapiai/2012_seimo_rinkimai/output_lt/referendumas/referendumas.htm (25 Novemver 2016).

The last national referendum was conducted in 2014 upon request by a group of 300,000 citizens. The referendum was voted on changing of Articles 9, 47 and 147 of the Constitution of the Republic of Lithuania (the right to launch a

referendum initiative for a group of 100,000 citizens with voting rights, referendum decisions changed only through another referendum, forest and underground waters owned only the State, prohibition of selling land to foreigners). The number of eligible voters was 2,538,430. The referendum was invalidated due to low turnout. It needs to be pointed out that this referendum had the lowest turnout in the history of the independent Lithuania (Table 12).

Table 12. The national referendum of 29 June 2014

Date	Subject	Turnout in %	Results
29 June 2014	Amendments to Articles9, 47 and 147 of the Constitution	14.98	For 72.83% Against 27.17% Invalid

Source: Author's own studies; Lietuvos Respublikos Vyriausioji Rinkimų Komisija, http://www.vrk.lt/ankstesni (25 Novemver 2016).

Another aspect showing that Lithuania is among the states with a high rate in terms of use of direct democracy is the number of referendum initiatives that had an insufficient number of support signatures and could not be registered with the CEC, and because of that they were not referred to the Parliament to be worked on. Altogether, between 1990 and 2016 the referendum initiative was taken 19 times. The scope of the referendum subjects covered a wide spectrum of issues, from those relating to the political system in Lithuania to the social and economic problems. As many as eight times the subject of the planned referendums was amendments to the Constitution. What is significant is that the amendments were to a large extent concerned with limiting the size of the group of citizens that had the right to initiate a referendum: from 300,000 to 100,000. The referendum projects also included the proposals to limit the number of MPs, the alteration of the election legislation as well as the introduction of the referendum initiative at a local level. Regarding social issues, worth noting is the proposal to raise and to index pensions, and the changes to the way land can be owned by foreigners, whereas the economic matters focused on privatization, development of the energy sector and the replacement of the national currency with the Euro.

Somewhat less popular is the theme of legislative initiative. In the period from 1990 to 2016 this institution of direct democracy was used only 9 times. In the case of the legislative initiative it is also necessary to note the wide range of subjects because the initiatives were concerned with both the regulatory matters in reference to the Constitution, acts and codes, and also with the need of legislative regulation in the area of social matters. It is also important to point out that a significant barrier for the initiative to be effective is the requirement of high social support.

Because of the lack of proper regulations, the solutions of direct democracy are not applied in practice on a local level. Nevertheless, the instruments guaranteed by the acts regulating the functioning of the local self-government could be considered as a poor substitute of direct democracy. For example, Article 9 of the Law on Territorial Administrative Units and Their Boundaries makes it possible to consult the citizens about changing the name of a town or village. The other of the abovementioned laws requires mandatory public consultations about the area development plans.

After regaining its independence Lithuania stands out as one of the most active states in utilizing the institution of direct democracy. The rate of both the conducted referendums as well as the undertaken referendum initiatives is very high. However, a less popular institution is the legislative initiative. The too high numerical strength of a group with the right of a referendum initiative and the high threshold of the validity of a referendum are significant barriers to the application of referendum in practice. In the case of a legislative initiative, the problem is the achievement of social support, which in turn results in difficulties in collecting signatures that are needed to register the project with the CEC and forward it to the Parliament.

Conclusion

The conducted research positively verified the hypothesis assumed that in Lithuania direct democracy functions in the legal and formal as well as practical dimension. It should be pointed out though that the constitutional and statutory provisions regulate the institutions of direct democracy only on a national level while there are no solutions that make it possible to resort to a referendum on a local level. The question of a local referendum was the subject of a referendum initiative only once.

Secondly, the hypothesis assuming that the implementation of solutions of direct democracy in the decision making process is an indicator of the political awareness of Lithuanians was also positively verified. An observable regularity in the history of Lithuania is that the direct democracy institutions are prevented from operating (or are only a superficial facade) in the periods of authoritarian and totalitarian rule. On the basis of the analysis of the referendums organized in Lithuania, it should be pointed out that a major problem of Lithuania's direct democracy is the low level of public interest in the issues put to the vote, which results in a low turnout. Because of the problems with meeting referendum validity thresholds, four out of twelve referendums were unsuccessful. In other three cases the required turnout levels were achieved but the proposals lacking the appropriate level of citizens' support.

Thirdly, the hypothesis assuming that the EU accession had a positive impact on the development of direct democracy in Lithuania was also positively verified. It should be stressed that Lithuania administered the accession referendum and since 2004 the application of the institution of direct democracy has been growing systematically. In addition, since 2012 the Lithuanians have been able to use the European Citizens' Initiative.

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Magdalena Musiał-Karg

Direct Democracy in Macedonia

Determinants

The events of 1989-1991 symbolically created for Central and Eastern Europe a chance of political change and an opportunity to join the West European countries while the political system transformation and the integration process started a new wave of democratization. The Central and East European countries were not experienced in making use of democratic procedures, which was a result of the long-lasting functioning of the socialist system. Peaceful revolutions and also the European integration appeared important instruments of political change in post-communist countries at the turn of the 20th and 21st century.

At the beginning of the 1990s the Yugoslav state began to collapse and as a consequence of these processes particular republics of the Yugoslav federation decided to proclaim their independence and started to implement democratic rules and standards. Democratization required that system changes be carried out by successive states and new fundamental laws (constitutions) be adopted that would draw on democratic solutions. The adoption of these new constitutions was the first step on the way to democratization of the state (Biernat 2012: 100) .

As a result of the dissolution of the Socialist Federal Republic of Yugoslavia, at the beginning of the 1990 new states appeared on the map of Europe: Bosnia and Herzegovina, Croatia, the Federal Republic of Yugslavia (it included Serbia and Montenegro), Macedonia, and Slovenia (Wojnicki 2009).

Since the formation of the Federal Republic of Yugoslavia (on 29 November) until the moment of declaring its independence on 17 September 1991, Macedonia was a part of the Yugoslav federation (Bujwid-Kurek 2008: 115).

The first President of Macedonia, Kiro Gligorov, in January 1991 supported the creation of a sovereign Macedonia; a few months later, in May the same year, he initiated the preparation of a draft and the adoption of the new state constitution. The draft of the new constitution was prepared in the Parliament within four months. Despite controversies, which arose around the status of the Albanians in the regulations of the new constitution and despite an intensive parliamentary debate on this subject, the Parliament adopted the

proposed version of the constitution on 23 August 1991. At the beginning of October, the Parliamentary Constitution Commission adopted the final draft of the new constitution which was presented to the Parliament for final debate and voting on 10 November 1991. However, it should be noted that the Parliament postponed voting on the proposed constitution after the deputies of Albanian parties had left the chamber. The deputies walked out in protest against the passage of the amendment which defined Macedonia as the mother country of the Macedonian people. On 17 November 1991, after ten days of debate, the Parliament approved the final draft with the amendment intact. Ninety-six of the 120 deputies voted for the constitution (Macedonia 1991). Deputies of Albanian parties and three deputies from other parties (the Internal Macedonian Revolutionary Organization-Democratic Party for Macedonian National Unity [VMRO-DPMNE]) voted against it[1]. The Constitution, despite difficulties, took effect on 20 November, 1991 when Macedonia declared its independence.

The secession from the Yugoslav federal system was uneventful – without the need of military resistance to the intervention of the Yugoslav People's Army (Wojnicki 2003: 56). The Macedonian government fairly quickly negotiated the agreement on the withdrawal of the Yugoslav army which, according to the agreement, was supposed to end until 15 April 1992 (Bujwid-Kurek 2008: 115; Wojnicki 2003: 57; Rycerska 2003: 96-97). It should be observed that the situation in Macedonia was not easy because Greece and Albania, *inter alia*, put forward some claims against Macedonia. Greece strongly opposed the use of the name Macedonia (which is the name of its northern region) and Albania stated that the Albanians constituted half of the population of Macedonia. The conflict with Greece was additionally exacerbated by the fact that the Macedonians used the Vergina Sun as the symbol of their state (it was depicted on the tomb of Philip of Macedon, the father of Alexander the Great) (Rycerska 2003: 96). It should be stressed that the issue of international recognition of Macedonia could be effectively resolved only through a compromise. In this context, difference of opinion appeared inside European Communities as a result of Greece's objection. The Greek government, afraid of revindication claims against Aegean Macedonia, brought claims concerning the change of the name of the state. Therefore, under the influence of these accusations, a new name, accepted by Greece, was adopted: the Former Yugoslav Republic of Macedonia (FYROM) (Bujwid-Kurek 2008: 116). Greece's veto delayed the acceptance of Macedonia by the European Union and the NATO. In order to de-escalate the conflict, on 8 April 1993 Macedonia became a member of the United Nations

[1] As Ewa Bujwid-Kurek (2008: 118) points out, these deputies demanded the constitutional guarantee of the Macedonian national interests and defining the symbols of the new Macedonian state: the emblem, the flag, the hymn. The mentioned state symbols were not included in the new constitution, because it left these issues for regulating in bills.

under the name of the Former Yugoslav Republic of Macedonia. Despite Greece's attempts, all EU countries recognized the existence of Macedonia (Janev 1999: 155-156; Korban 2016). However, it should be added that the relations between Macedonia and Greece were perceived from the perspective of a relatively high tension which usually accompanied them (*inter alia* a dispute over the flag, embargo, fears concerning territorial claims). On 13 September 1995 there was a turning point in bilateral relations when the Greek Minister for Foreign Affairs, Carlos Papulias and Macedonian Prime Minister Branko Crvenkovski signed an interim accord in New York, under which Greece recognized Macedonia as independent and sovereign state. The neighbors from the North were ready to abandon the Vergina Sun and desist from actions against the integrity of the Greek province Macedonia. Both parties confirmed their mutual existing frontier as an enduring and inviolable international border and dropped territorial claims (Korban 2016). As a result of the signed accord the Macedonian Parliament adopted a new law on the change of the national emblem and the flag in October 1995. On the other hand, the Greek government decided to abolish the previously imposed embargo on Macedonia.

It should be noted that the states which were formed after the dissolution of Yugoslavia adopted a republican form of government. As Jacek Wojnicki rightly noticed, the choice of a democratic way of exercising authority was a strategic choice for Macedonia as well as for the rest of the post-Yugoslav republics. However, it took place in the shadow of the formation of the new state organisms.

The adoption of the Constitution by the Macedonian Assembly in 1991 started the process of strengthening the guarantees of civil and political rights and also the adaptation of the political system to democratic standards. According to Article 2 par. 2 of the Constitution of Macedonia, Macedonia is a republic with the president as its head. The President is elected in general and direct elections, by secret ballot, for a term of five years. The legislative power of the Republic is vested in one-chamber Assembly of the Republic of Macedonia. The Assembly of the Republic of Macedonia is composed of 120 to 140 Representatives elected in general elections for a term of four years. The executive power is exercised by the government. Judicial power is exercised by autonomous and independent courts. The Supreme Court of the Republic of Macedonia is the highest court in the Republic providing uniformity in the implementation of the laws by the courts. It should be noted that the political-system position of the Parliament, the President and government allows the inclusion of Macedonia into the group of states with the rationalize parliamentary-cabinet system (Ribarič 2001: 319).

Formal-Legal Dimension

The Constitution of the Republic of Macedonia states that: *in the Republic of Macedonia sovereignty derives from the citizens and belongs to the citizens* (Article 2). From this point of view of the sovereign (the people) it is very interesting how the Constitution treats very complicated nationality issues. Some articles of the Constitution (Introduction, Article 9, and Article 48) stipulate that *Members of nationalities have a right freely to express, foster and develop their identity and national attributes. The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of the nationalities. Members of the nationalities have the right to establish institutions for culture and art, as well as scholarly and other associations for the expression, fostering and development of their identity. Members of the nationalities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in the language of a nationality, the Macedonian language is also studied* (Article 48). The nationality issues are in so much important from the point of view of the Constitution as Macedonia is a multi-ethnic state: the Macedonians constitute 64% of the population, and then Albanians – 25%, the Turks – 4%, Gypsies- 3%, Serbs – 2%, and other ethnic groups are represented by 2% of residents (Bujwid-Kurek 2008: 117).

The Constitution of Macedonia provides for both direct and indirect forms of democracy, conducted through a referendum and other direct forms of expressing the citizens' will (Article 2 par. 2). According to the Constitution, the Assembly of the Republic of Macedonia has wide competence: *inter alia* pursuant to Article 68 the Assembly calls a referendum. The resolution to hold a referendum is passed by a majority vote of the total number of the parliamentary deputies and the decision is binding if at least half of the eligible voters participated in the referendum. Furthermore, the Assembly is obliged to call a legislative referendum when the proposal is submitted by at least 150,000 voters (Article 73; Musiał-Karg 2008: 201-202), and the decision reached is thereby binding. In addition, the Constitution provides for holding a referendum on changing the border of the Republic. The decision to change the border of the Republic will be considered adopted in referendum if the majority of the total number of voters voted for that in the referendum (Article 74). Article 120 of the Constitution stipulates that *a proposal for entering/joining a union or community with other states, or for dissociation from a union or community with other states, may be submitted by the President of the Republic, the Government or by at least 40 Representative*s.There are two kinds of referendums: a consultative referendum (for issues of broader significance to the citizens) and mandatory (for adopting a decision of the Assembly for changing the border of the

Republic and the decision for joining or abandoning an alliance or unity with other states). Particular rules on the procedures of holding a referendum are included in Law on Referendum and Civil Initiative.

The Constitution of Macedonia also provides for a form of direct democracy other than a referendum: legislative initiative (Kaufmann/Büchi/Braun 2010: 211). According to Article 71 *The right to propose the adoption of a law is given to every Representative of the Assembly, to the Government of the Republic and to a group of at least 10,000 voters*.

As far as direct democracy at a local level is concerned it is regulated by the Law on Local Self-Government (Official Gazette of the Republic of Macedonia no. 5, from 29th January, 2002). In accordance with the stipulations of the Law the citizens have three tools of direct democracy:

- firstly, the civil initiative - the citizens shall have the right to propose to the council to enact a certain act or to decide upon a certain issue within its authority (Article 26). However, *civil initiative shall not be raised for personnel and financial issues* (Article 27). Furthermore, the council will be obliged to discuss if it is supported by at least 10% of the voters in the municipality or community, that is of the neighborhood self-government to which a certain issue refers and the council will be "obliged to hold the discussion from para 3 of this Article (27) at the latest 90 days after the launching of the initiative and to inform the citizens on its decision,
- secondly, the citizens' gathering that *may be convened for the territory of the entire municipality or for the territory of the neighborhood self-government. The citizens' gathering shall be convened by the mayor of the municipality upon his/her own initiative, at the request of the council or at the request of at least 10% of the voters in the municipality, that is in the neighborhood self-government that a certain issue elates to* (Article 27). The municipality organs will be obliged "within 90 days to review the conclusions made at the citizens' gathering and to take them into account when making decisions and determining measures on issues they relate to, and to inform the citizens on their decisions",
- thirdly – a referendum. *Through a referendum the citizens may decide on issues from under the competency of the municipality, as well as other issues of local importance. The council shall be obliged to issue a notice of a referendum at the request of at least 20% of the voters of the municipality. The council may issue a notice of a referendum on issues within its authority, at its own initiative. The decision adopted on the referendum shall be binding for the council* (Article 28).

Practical Dimension

Although it is possible in Macedonia, as far as the legal requirements are concerned, to apply some of the tools of direct democracy – both at the national and local levels – it should be noted that the Macedonians use virtually only the institution of a referendum. The civil initiative, although is legally sanctioned, is not applied in Macedonia.

The institution of a national referendum was used in Macedonia two times. In January 1991 the Parliament announced the sovereignty of the Republic of Macedonia and its right to separate from Yugoslavia. The Macedonians, both the Croats and Slovenians, decided to secede from the Yugoslav federation.

Table *1*. The national referendum of 8 August 1991

Date	Subject	Turnout (%)	Results
8 August 1991	Independence	71.85	valid

Source: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/ (22 October 2016); eds. Butler/Ranney 1994: 177; Musiał-Karg 2008: 201-202.

Following the neighboring republics that formed the Yugoslav federation, Macedonia tried to achieve full independence and create a separate state. To do this, a referendum was announced and it was held on 8 September 1991. About 71% of the registered voters took part in the referendum, out of which 95% voted for the state's independence. It should be observed that the Macedonian referendum was boycotted by the Albanians who lived on the territory of Macedonia and who constituted 23% of the population of the country (Podhorecki 2000: 202). It should be also reminded that the absence of Albanians in the voting was a consequence of their dissent from the provisions in the new Constitution adopted by the Parliament in August 1991 on the lower status of the Albanian nation.

The Parliament, after the consideration of the results of the referendum, proclaimed the independence of Macedonia on 18 September 1991. Two months later, on 17 November 1991 the President Kiro Gligorov announced the creation of a sovereign state – the Republic of Macedonia The secession of Macedonia from the Yugoslav federation became a fact (Stawowy-Kawka 2000: 293).

A referendum was a tool that was used by the societies of the Soviet bloc to express their will to change the political system and break with the socialist tradition. The choice of referendums in the newly emerging democracy of Central and Eastern European countries was perceived as the transfer of a real power into the hands of the registered voters. *In the process of national and state revival, independence referendums were held in the countries that*

belonged to two different federations: the Soviet and the Yugoslav Federations. During the years 1990-2006 the independence referendums were held in the following states: Lithuania, Latvia, Estonia, Ukraine, Georgia, Armenia, Turkmenistan, Azerbaijan, Uzbekistan, Slovenia, Bosnia and Herzegovina, Macedonia, Montenegro, and Kosovo (Podolak 2012: 8).

The referendum in Macedonia was the seventh voting on the proclamation of independence in Central and Eastern Europe. Out of the states of the Federal People's Republic of Yugoslavia Macedonia voted as the third country after Slovenia (23 December 1990) and Croatia (15 May 1991). Analyzing the use of referendums in Central and Easter Europe with special regard to the general vote, it may be stated that the referendums of the Yugoslav republics legitimized the aspirations of their nations to create national communities and to become independent of the previous system. The high turnout at the first referendum vote in Macedonia shows without doubt that there was a great mobilization and activation of the society. It should be also added that generally the participation of the citizens in independence referendums was very high and, what is important, apart from the high turnout, all the votes expressed the unequivocal attitude of the voters, about 90% of whom supported independence. Macedonia was not an exception.

Table *2.* The national referendum of 7 November 2004

Date	Subject	Turnout (%)	Results
7 November 2004	Administrative division	26.58	invalid

Source: Centre for Research on Direct Democracy (c2d), http://www.c2d.ch/ (22 October 2016); eds. Butler, Ranney 1994: 177; Musiał-Karg, 2008: 201-202.

The second referendum vote in Macedonia concerned the territorial and administrative division of the country. The referendum was announced by the Macedonian Parliament on 3 September 2004 and was held on 7 November 2004. It should be noted that many citizens interpreted the suggested changes (in 2004) as the instrument which limited the status of the Macedonians and which, at the same time, improved the position of the Albanians. It was feared that the reduction of municipalities from 120 to 84 would allow the Albanians to constitute a majority in some local communities (e.g. Struga and Kicevo). To sabotage the reform, groups of Macedonians initiated 41 local "plebiscites" on decentralization asking whether the reform should be implemented. Consequently, the result of the voting was not a surprise: the voters were against the changes in all plebiscites. In July 2004, about 20 thousand citizens gathered in Skopje to protest against the new law. The World Macedonian Congress collected 150 thousand signatures against the reform which, *inter alia*, resulted in calling the referendum on the change of

administrative borders of the state (Petersen 2011: 236; Report on the Referendum in the Former Yugoslav Republic of Macedonia 2004) .

The voting was held on the opposition's initiative, who did not want to allow the government to introduce changes in the territorial organization of the state that were favorable for local Albanians. Finally, most of 26.2% of the voting inhabitants of Macedonia were against the territorial reform of the state. Since the turnout in the referendum was too low to recognize it as valid, the changes the line with the direction of the reform were continued. Among the reasons for the low participation of the citizens in the referendums were the appeals of the Albanian parties which called for the boycott of the voting by the Albanian minority. *On the other hand, many Macedonians did not take part in the voting – a relevant appeal was launched by the ruling social-democrats. Interestingly enough, the United States, the European Union and NATO also appealed to boycott the voting. Many hesitant residents of Macedonia voted (or simply did not vote) according to the government's directives under the influence of the administration of George W. Bush which, (...) against Greece's stance, unexpectedly recognized the name of the state the Republic of Macedonia (the name is used only by several states – inter alia Turkey, Russia, and China)* (Macedonia/Fiasko referendum… 2004) .

It should be noted at this point that after the referendum of 2004, in accordance with the new administrative division of Macedonia, in all municipalities where the Albanians constituted more than 20% of inhabitants, Albanian became the second official language. According to the new regulations, the employment in administration should correspond to the ethnic proportions. The opposition thinks that the implementation of such solutions will result in the Albanization of Macedonia and/or dissolution of the state into the Albanian and Macedonian parts (Macedonia/Fiasko referendum… 2004).

It should be observed that inasmuch as the holding of a referendum is one of the ways of democratic governance, in the ethnically diverse country it may bring the risk of deepening the existing divisions. As Kamelia R. Dimitrova writes, in such circumstances direct democracy may be easily transformed into the tyranny of the majority that often outvotes the minority. Thus, it is not surprising that the announcement of the referendum caused the reaction of the Albanian parties (2004: 172-186).

The intensive involvement of international communities in Macedonia (particularly the USA and EU) was connected with the fact that the Macedonian government convinced the citizens to boycott the referendum because this might consequently weaken the position of the Albanians (Wood 2004). The commentators stressed that the revocation of the reforms connected with autonomy might destabilize the state and reduce Macedonia's chances to join the EU or NATO (Testorides 2004).

The Special Representative to the EU, Michael Sahlin, explicitly stated that the referendum was a step backwards and therefore it was the step away from EU membership (Sahlin 2004). The attitude of the USA was similar, which was reflected in the opinion of Marc Grossman, US Under Secretary of State for Political Affairs, who said that the November referendum was a choice *between the past and the future* (US Voices Concern Over Macedonia Referendum).

On the other hand, the leader of VMRO-DPMNE, Nikola Gruevski said that the referendum was citizens' right where they could express their opinion and will.

Analyzing the use of direct democracy at the local level in Macedonia it should be observed that this type of solution has been very rarely applied. A local referendum was held only once – on 27 April 2015 - on the restoration of the famous shopping mall in Skopje. It should be added that the referendum was declared invalid due to a low turnout. Only about 40% of the registered voters took part in the referendum: 95% of them opted for keeping the previous appearance of the shopping center (Jakov Marusic 2015). The other two institutions of direct democracy are not applied at the local level.

Conclusion

Macedonia is an example of states that managed in legal terms to create the foundations of democratic power: the forms of direct exercise of power are sanctioned both at the state and local level.

The analysis of the constitutional provisions and mainly referendum-based experiences of Macedonia allows the author to conclude that a not fully established democracy, ethnic diversity of the state, and the lack of a fully developed civil society largely influence the practice of utilizing the institutions of direct democracy in this state. Under the provisions of the Constitution, Macedonia can apply the institutions of direct democracy such as referendum and civil initiative. Until now, referendum has been held twice: the only referendum that was valid was the one on the independence of the Republic and in which, on the basis of the subject of the referendum and the then situation in Europe, the results could be predicted; the second one, which was invalid due to too low a turnout, is a confirmation of the lack of developed practices of direct governance and the lack of habit of engagement in the political life. The existing experience with the use of this tool of citizens' participation in the decision-making process has showed that the institution of referendum did not work in less important matters than the state's independence. Consequently, it can be concluded that the forms of

direct democracy are used in Macedonia to decide on the most important issues. The existing, rather modest, practice associated with direct forms of democracy allows a presumption that there will be no greater changes in this field in Macedonia.

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Marta Drabczuk

Direct Democracy in Moldova

Determinants

Twenty five years have passed since the former Moldavian Soviet Socialist Republic, established after WW2 on three-quarters of the area of an old Romanian province – Bessarabia – declared independence (Pienkowski 2013: 155). Moldova or officially the Republic of Moldova is struggling to build the fundamental bases of the state. This process is difficult due to Moldova's multi-nationality and historical affiliation of particular ethnic groups of citizens to different state organisms (Kuzio 2001: 168-170). The feeling of affiliation - characteristic of the Moldovans as well as of many other citizens of the post-Soviet states - to various (ambivalent or many-sided) ethnic, religious, language groups - is not conducive to nation-building processes and creating of relationships between citizens and the government based on confidence and a feeling of community (Kapuśniak/Słowikowski 2009: 21-23).

Russian political scientist and historian Dmitri Furman says that Moldova is a state as if halfway between the states with uniform democratic principles of the game i.e. the Baltic States, and the rest of the post-Soviet states. And it seems closer to the Baltic States.

Moldova is an interesting research territory because the authority is *de facto* exercised by three Presidents, three Parliaments, and three Cabinets: of the Republic of Moldova, the Autonomous Territorial Unit of Gagauzia (Gagauzia), and the Pridnestrovian Moldavian Republic (Transnistria). However, only the Republic of Moldova is regarded as an entity of international law. Hence a hypothesis arises that the state named the Republic of Moldavia exists; however it does not have its own nation i.e. a group of citizens with established national consciousness (Cazacu/Trifon 2010: 22-25) and the question: Moldavia – a republic cracked into how many parts? (Solak 2009). Nevertheless, the Constitution of the Republic of Moldova stipulates that Gagauzia is an autonomous territorial-unit (Article 111) and that *Places on the left bank of the Dniester river may be assigned special forms and conditions of autonomy* [Transnistria] (Article 110) (Baluk 2007: 106-107).

It should be stated that despite many political, economic, and social difficulties, Moldova has made great progress in transformation and many observers of political life of this country describe it as the most Europeanized and advanced state among the post-Soviets countries as regards the process of

democratization. On the other hand, neither the Moldovan elites nor any political party suggested a national idea that would unify the society, which proves that the political class and administration are undeveloped and irresponsible. Without the effective elite, the functioning of the state and the consolidation of the society around the regulation and resolution of problem issues, as well as the development of the feeling of responsibility for the shape of their own state, seem impossible. Nevertheless, Moldova makes use of the institutions of direct democracy while making decisions of national importance in order to integrate various social groups.

After 25 years of independence Moldova can be described as a so-called failed state, being in permanent transformation, without a long-term vision of development. The political system in Moldova is an example of the post-Soviet oligarchic system in which the richest citizens exercise direct political power or interfere in the policies through their economic influences. The functioning of the key areas and state institutions (such as administration, courts, and state services) has been subordinated to the interests of a narrow group of oligarchs gathered around Vlad Plahotniuc[1]. The party system of Moldova, although characterized by pluralism, is dominated in reality by leader's parties and presents the interests of its leader (or even a sponsor) on the political arena[2]. Moreover, Moscow – supporting financially and conducting image campaigns – expects the implementation of its policy towards Moldova. Political groups, as the presidential and parliamentary elections indicate use geopolitical issues and historical interrelationships as a tool of rivalry rather than specific issues of a national idea or plans and visions of economic development.

The weak legal system of Moldova makes it possible to overinterpret legal acts, which results in corruption at all levels of government administration, and to use overinterpretation for political games.

The Constitution of Moldova, adopted in 1994, is an imprecise document, the laws adopted by the Parliament being very often contrary to the provisions of the Constitution. On the other hand, the laws of lower rank are often only a modification of the constitutional provisions. This makes the legal system internally inconsistent and underdeveloped and the Constitutional Court of Moldova is used by the leaders of state apparatus and political-business groups to produce new legal regulations outside of the Parliament through free interpretation of constitutional provisions.

The main problem that influences the political life of Moldova is the problem of the identity of Moldovan society based on historical-political

[1] The appointment of Pavel Filip, a close partner of Vlad Plahotniuc, to the post of the Prime Minister (since January 2016) can be an example of such "appropriation".

[2] Democratic Party of Moldova represents the interests of Vlad Plahotniuc; Party of Socialists – Igor Dodon; Our Party (formerly Party of Communists of the Republic of Moldavia) – Renato Usatii.

grounds. There are two dominant models of identity which co-exist in the Moldovan society: pan-Romanian and Moldovanism. The duality of identity of the national majority – the Moldovans/Romanians – directly influences the shaping of political preferences of the citizens, the formation of an effective state and local administration, and creation of civil society.

Formal-Legal Dimension

Despite all these difficulties and challenges, Moldova manages to use the institutions of direct democracy. Referendum is the most frequent form of direct democracy used in Moldova. According to Eugeniusz Zieliński's definition, *referendum is a direct way of how the voters decide, through the vote, about various issues of the state's life or of a specific territory, which is the subject of voting, and with the efficacy described in the act constituting the grounds for voting* (Zieliński 1968: 7–8).

The institutions of referendum are regulated by the provisions in the Constitution of Moldova of 1994 and the Electoral Code of 1997. Before 1997, referendum was regulated by the Law on Referendums of 1992, which lost legal validity (Republica Moldova Parlamentul Lege nr. 1040 din 26.05.1992 cu privire la referendum). Today, particular principles of using the institution of referendum are described in Chapter Four of the Electoral Code (Articles 142-174).

The legislative initiative, according to Article 73 of the Constitution *shall belong to the Members of Parliament, the President of the Republic of Moldova, the Government and the People's Assembly of the autonomous territorial-unit of Gagauzia*. Article 73 provides for the passage of three categories of laws: constitutional laws (aimed at revising the Constitution), organic laws (which will govern the electoral system, the organization and holding of referendums, the functioning of the Parliament and Government, the Constitutional Court, the Superior Council of Magistrates [Supreme Judicial Council], local administration etc.) and ordinary laws.

Article 2 of the Constitution stipulates that national sovereignty resides with the Republic of Moldova people, who shall directly and through its representative bodies exercise it in the manners provided for by the Constitution (Republica Moldova Parlamentul Constituția din 29.07.1994). However, the Constitution also *provides that problems of utmost importance confronting the Moldavian society and State shall be resolved by referendum* (Article 75). On 20 October 2014 the Parliament amending the Constitution granted the results of republican referendums the highest force of law. That means that similarly to the amendments to constitutional provisions, referendum decisions can be changed or repealed through referendum

exclusively or in the manner provided for amendments to the Constitution. Referendum in the Republic of Moldova is optional except for the amendments on the sovereignty and unitary character of the State and its permanent neutrality. *The provisions regarding the sovereignty, independence and unity of the State, as well as those regarding the permanent neutrality of the State may be revised only by referendum based on a majority vote of the registered voting citizens*. (Article 142 section 1). However, Article 141 stipulates that a revision of the Constitution may be initiated by at least 200,000 voting citizens of the Republic of Moldova. Citizens initiating the revision of the Constitution must cover at least a half of the territorial-administrative units of the second level, and in each of these units must be registered at least 20,000 signatures in support of the said initiative; at least a third of the Parliament members; the Government. After the presentation of draft amendments of the Constitution, Article 143 states that Parliament shall be entitled to pass a law on the amendment of Constitution following at least 6 months from the date of the corresponding initiative launch. The law shall be adopted by a vote of two-thirds of the Parliament members. 2. If, within a year from the date when the initiative on the amendment of Constitution was launched, the Parliament has not passed the appropriate constitutional law, the proposal shall be deemed null and void.

The types of referendums, the manner of holding them, and the legal validity of the referendums results are described in the Electoral Code. There are three types of national referendums (depending on the subject asked in the referendum) – constitutional, legislative, and consultative (Republica Moldova Parlamentul Cod nr. 1381 din 21.11.1997).

Article 146 of the Electoral Code, like the Article 141 of the Constitution, stipulates that the subject of the vote in the constitutional referendum may be the adoption and amendments of the Constitution of Moldova. As has been mentioned earlier, the manner of conducting a constitutional referendum is regulated by the provisions of the Constitution of Moldova. It should be stressed that in the case of simultaneous motions for the amendment of the Constitution submitted by the Parliament and by the citizens, the citizen initiative has priority. The legislator prohibited voting in a referendum on the amendments of the Constitution that deprived citizens of their basic rights and freedoms or guarantees of the rights. The Constitution does not describe the scope of these exclusions. However, Article 147 of the Electoral Code enumerates such questions. They are the issues related to the State budget, taxes; issues regarding amnesty or pardon; extraordinary or emergency measures for establishing public order, health or security; electing, appointing or dismissing persons for/to/from positions which is the competence of the Parliament, Government or President of the Republic of Moldova; issues which are the competence of judicial and prosecution bodies.

Only the Parliament can initiate the process of impeachment of the President of the Republic of Moldova (Article 149). The legislator imposed restrictions on holding a national (republican) referendum. *A republican referendum may not be held in territories under a state of war or emergency, nor within 120 days after the respective state is suspended or terminated and a republican referendum cannot take place in a period within 60 days before or after the day of parliamentary, or local elections or the day of another referendum, as well as on the day of their conduct* (Article 145).

Legislative referendums are another type of referendums. They consider draft laws or some of their provisions of major importance.

Consultative referendums consider issues of national interest, in order to consult public opinion on such issues and for further adoption of relevant final decisions by competent public bodies. Article 143 of the Electoral Code stresses that the questions in a referendum should be formed in a neutral way, without suggesting the answer. The Electoral Code also regulates the manner of initiation of referendums by citizens including the establishment of *a citizen initiative group to initiate a republican referendum* (Article 152), its registration (Article 153), signatures collection for holding the referendum (Articles 154-157), and also the method of holding the referendum and voting (Articles 158-165), and validation of republican referendum results (Articles 166-174). On the day of the submission of the motion with signatures to the Central Electoral Commission, the procedure for holding the referendum is initiated. The submitted motion does not mean the necessity to call a referendum; however, the Parliament does not have the right to reject the motion of citizens or the President if the formal requirements are fulfilled. Moreover, the Parliament can make a decision on solving the issues addressed in the referendum without conducting the referendum (Article 150 section 1). Article 142 section 2 stipulates that *the vote in the referendum is universal, equal, secret and freely expressed, pursuant to the Constitution and this Code*. The Republic of Moldova's Constitution provides that a referendum is regarded as valid if at least one third of the registered voters took part in the voting. The results of the legislative and constitutional referendum are considered binding if at least half of the citizens who participated in a referendum voted. To adopt the results of a constitutional referendum at least half of the registered voters should vote after the adoption of the constitutional law or its amendment.

General regulations on the institutions of direct democracy are in the Constitution of the Republic of Moldova and Electoral Code but particular elements are included in the basic legal acts of the Autonomous Territorial Unit of Gagauzia and the Pridnestrovian Moldavian Republic (Transnistria).

The territory of the Autonomous Territorial Unit of Gagauzia is a peculiar phenomenon on the territory of the former Union of Soviet Socialist Republics (USSR). The autonomy was established in 1994 as a result of a

compromise between the leaders of the Gagauzian national resistance movement (which began at the end of the 1980s) and the authorities of the Republic of Moldova. The autonomy is treated as a form of a territorial-political self-determination of Gagauzian nation. The autonomous Territorial Unit of Gagauzia is not an entity of international law. Such a solution of a national issue is perceived as a unique phenomenon in the post-communist world (Kosienkowski 2007: 216).

The legal basis of the functioning of the Autonomous Territorial Unit of Gagauzia is: the Legal Code of Gagauzia adopted by the Moldovan Parliament and the basic legal act (a kind of Constitution) - The Law on the Special Legal Status of Gagauzia (Gagauz Yeri) adopted by the People's Assembly of Gagauzia. The first document states that Gagauzia is *an autonomous territorial unit, with a special status as a form of self-determination of the Gagauzes, which constitutes an integral part of the Republic of Moldova* (Закон Об особом правовом статусе Гагаузии (Гагауз Ери)). Article 3, section 1 of the Legal Code says that the only source of power, the bearer of political and economic independence of Gagauzia is its people, which carries out its power as independently, as well as through the bodies of public administration. The main bodies of public authority at the level of the Autonomous Unit are the People's Assembly, the President or Bashkan, and the Executive Committee. The People's Assembly of Gagauzia, which performs the role of legislative authority, is composed of 35 deputies, elected by general, equal and direct suffrage. Since 2003 the People's Assembly has the right *to appeal in a manner fixed by law to the Constitutional Court of the Republic of Moldova with a case concerning the voiding of enactments by the legislative and administrative authorities of the Republic of Moldova if they infringe on the authority of Gagauzia* (Article 12 of Gagauz Yeri). The competence of the People's Assembly will also include calling local referendums concerning issues that are within the competence of Gagauzia. The right of legislative initiative also belongs to the Executive Committee of Gagauzia and the Governor (Bashkan).

The Constitution of Transnistria, like the Constitution of the Republic of Moldova and Gagauz Yeri, states that the Pridnestrovskaia Moldavskaia Respublica [the Pridnestrovian Moldavian Republic (Transnistria)] is a sovereign, independent, democratic, legal State. Its people is the bearer of sovereignty and the only source of power in the Pridnestrovskaia Moldavskaia Respublica The people exercises its power directly, as well as through organs of State power and institutions of local self-government (Article 1). According to the Constitution *the Supreme Soviet [Supreme Council] shall be the representative and the only legislative organ of State power*. The Supreme Soviet makes decisions on holding on the territory of the Pridnestrovskaia Moldavskaia Respublica a referendum or nationwide discussion of most important matters of state or public life; and it interprets

the laws (Article 70) (Конституция Приднестровской Молдавской Республики (текущая редакция по состоянию на 25 июня 2016 года). The right of legislative initiative is vested in the President of the Pridnestrovskaia Moldavskaia Respublica, deputies of the Supreme Soviet, Prosecutor General of the Pridnestrovskaia Moldavskaia Respublica, as well as in district and city Soviets [Councils] of People's Deputies of the Pridnestrovskaia Moldavskaia Respublica. *The right of legislative initiative shall also belong to the Constitutional Court, the Supreme Court and to the Court of Arbitration of the Pridnestrovskaia Moldavskaia Respublica in the matters under their respective jurisdiction, as well as to republican associations of trade unions as regards employment and social and economic matters* (Article 64). The Supreme Soviet passes resolutions: by a majority of votes of the established number of deputies (at least 22) on the adoption of codes, (including codes, laws on introduction of changes and amendments into the laws currently in force e.g. economic programs, directions of internal policy, annulment of legal acts, ratifies international treaties and agreements – Article 63 section 3); it introduces changes into the Constitution (they must be approved by two-thirds of votes of the established number of deputies (at least 29); it also holds national referendum (Article 63 section 3).

Within 7 days from the adoption by the Supreme Soviet, the adopted legislative act will be sent to the President of the Pridnestrovskaia Moldavskaia Respublica for signing and promulgation in accordance with the legislative process. The President of the Pridnestrovskaia Moldavskaia Respublica, within the period of 14 days from the date of receiving a law, will consider, sign and promulgate it (Article 65, section 2). However, Article 65 excludes the possibility of rejecting a constitutional act, changes and amendments to the Constitution, and the decision of the Supreme Soviet on earlier dissolution of the Soviet of People's Deputies (The President of the Pridnestrovskaia Moldavskaia Respublica cannot reject and send for reconsideration constitutional laws, changes and amendments to the Constitution adopted by the Supreme Soviet in the established order, but must sign and promulgate them).

Practical Dimension

The Republic of Moldova does not often resort to the institution of referendum (Musiał-Karg 2008: 416)[3]. Referendum is not an instrument of

[3] Magdalena Musiał-Karg categorizes European states taking into consideration the existence of the institutions of national referendum in the constitutional provisions, and use of it.

influence of Moldovan citizens on the exercise of authority. Between 1991 and 2016 there were two national referendums. One plebiscite was held before the current Constitution came into force.The first national plebiscite was held on 6 March 1994. It was initiated by the President Mircea Snegur and concerned the questions of independence. The Question asked was as follows *Do you want the Republic of Moldova to develop as an independent and unitary state, within the frontiers recognized on the day when Moldova declared sovereignty, to promote a policy of neutrality and to maintain mutually-benefiting economic relations with all the countries of the world, and to guarantee its citizens equal rights, according to international law?*. The results were as follows:

Table 1. The national referendum of 6 March 1994

Date	Subject	Turnout in %	Results
6 March 1994	The independence of the state	75.1	For 97.9% Against 2.1%

Source: Author's own study based on Є. Юрійчук, *Референдна легітимізація влади в Республіці Молдова: зовнішньополітичні аспекти*, «Науковий вісник Чернівецького університету. Історія. Політичні науки. Міжнародні відносини», (вип. 607-609) 2012, pp. 294-300.

The majority of citizens voted for the independence of the Republic of Moldova, thereby expressing their unwillingness to join Romania. The voters residing in Gagauzia were against. The plebiscite did not have the force of law and was often referred to as a public opinion poll called "Consultation with the people". However, after the results of the referendum had been announced, the authorities treated it as binding. The critics accused the organizers (the referendum was organized by a specially created republican commission after the Central Elections Commission had refused to become involved) of two things: the name, which suggested sociological studies, and complexity of the question, which *de facto* related to several issues at the same time. The documents concerning the national referendum are kept in the archives of the Central Election Commission of the Republic of Moldova (however, they were published neither in an official gazette nor on the official web page of the CEC).

The next two republican referendums were about political-system issues. The first one was held on 23 May 1999 and was initiated by the President Petru Lucinschi: it was concerned with the question of changing the system of government. The resolution of the Central Election Commission no. 536 of 28 May 1999 approved the protocol on the results of the republican consultative referendum. There were 2,382,457 registered voters, and 1,393,827 received the ballot papers. 1,398,731 votes were valid. The results were as follows: 58.33% of the registered voters took part in the voting; out of which 55.33%

voted "for" the changing of the governing system in the Republic of Moldova, while 30.85% were "against". On the basis of Articles 26, 166-168, and 171 of the Electoral Code, the CEC recognized the results of the republican referendum as valid and accepted the positive result of the referendum in favor of which the majority of the participating citizens voted. Due to the consultative character of the referendum held in 1999, its results did not entail any legal consequences (Постановление Конституционной Палаты о подтверждении результатов республиканского консультативного референдума от 23 мая 1999 года). It should be mentioned that the Parliament, which was in opposition to the President, carried out the changes in a quite opposite direction to those reached in the referendum (Твердохліб 2000).

Table 2. The national referendum of 23 May 1999

Date	Subject	Turnout in %	Results
23 May 1999	Changing the system of government	58.33	For 55.33% Against 30.85%

Source: Author's own study based on Постановление Конституционной Палаты о подтверждении результатов республиканского консультативного референдума от 23 мая 1999 года, Конституционный Суд, CCO32/1999, Monitorul Oficial Nr. 067.

The next national referendum and the first constitutional one was held on 5 September 2010: in the referendum the citizens expressed their opinion on the procedure of the direct election of the President. The voters answered the referendum question, answering "yes" or "no". The question was: *Would you agree with the Constitutional amendment, which would allow the election of the President of the Republic of Moldova by the entire population?*

Of those who had cast their vote, the majority (87.83%) chose "yes". However, due to a too low turnout the referendum was found invalid (30.29% as opposed to the necessary 33% for the referendum to be considered valid)[4]. According to the protocol of CEC on the results of the constitutional republican referendum held on 5 September 2010, on the basis of Articles 26, 60, and 166 of the Code on Elections the results are as follows:

[4] Pre-referendum polls show that the idea of electing the President in direct popular elections is close to the Moldovans. 90% of respondents declared that they would support the changes in the Constitution. Nor did the survey show any problems with the turnout: over 70% of respondents declared their willingness to take part in the voting. That is why the parties of the ruling coalition were sure that the referendum would be a success.

Table 3. The national referendum on 5 September 2010

Date	Subject	Turnout in %	Results
5 September 2010	Changing the system of government	30.29	For 87.83% Against 16.13%

Source: Author's own study based on Постановление Центральной Избирательной Комисии Республики Молдовы nr. 3531 от 09.09.2010 о подведении итогов конституционного республиканского референдума, проведенного 5 сентября 2010 г., HCEC3531/2010, Monitorul Oficial Nr. 179-181.

The institutions of direct democracy at the local level enjoyed somewhat greater popularity popular. Since 1991, 19 local referendums have been initiated: eight having been considered invalid due to insufficient turnout, and one referendum was not held because of the CEC's decision (in Seşte in Orhei district, on the dismissal of the mayor (primarul) (Центральная Избирательная Комисия Республики Молдовы, Постановление Nr. 2586 от 13.06.2014 о приостановлении процесса организации и проведения 15 июня 2014 года референдума по отзыву примара коммуны Селиште района Орхей). The majority of local referendums concerned the dismissal of a person from his/her function e.g. in 2006 – the dismissal of the mayor of the village of Filipeni, district of Leova (Центральная Избирательная Комисия Республики Молдовы, Постановление о назначении дня проведения местного референдума в селе Филипень, района Леова, 28.02.2006); in 2012 – the dismissal of the mayor of Nihoreni, district of Rîşcani (Центральная Избирательная Комисия Республики Молдовы, Постановление о назначении даты проведения местного референдума об отзыве примара села Нихорень, район Рышкань, 4.09.2012), in 2013 – the dismissal of the mayor of the municipality of Lebenco, Cahul district (Центральная Избирательная Комисия Республики Молдовы, Постановление о назначении даты проведения местного референдума об отзыве примара коммуны Лебеденко района Кахул, 28.05.2013), 2013 - the dismissal of the mayor of the city Anenii Noi, district of Anenii Noi (Центральная Избирательная Комисия Республики Молдовы, Постановление о назначении даты проведения местного референдума об отзыве примара города Анений Ной, район Анений Ной,), in 2016 – the dismissal of the mayor of the city of Pituşca, Călăraşi district (Electorală Centrală a Republicii Moldova, HOTĂRÎRE cu privire la stabilirea datei desfăşurării referendumului local privind revocarea primarului satului Pituşca, raionul Călăraşi, 26.09.2016). Between 1989 and 2016, seven referendums were held in the Transnistria. Their subjects and results are presented in the table below.

Table 4. Referendums held in the Pridnestrovian Moldavian Republic (Pridnestrovskaia Moldavskaia Respublica) between 1989 and 2016

Date	Subject	Turnout in %	Results
December 1989-November 1990[5]	Referendum on the creation of the Pridnestrovian Moldavian Republic (Pridnestrovskaia Moldavskaia Respublica – PMR) with its capital in Tiraspol	79	For 95.8% Against 4.2%
17 March 1991	Referendum on the retention of the Soviet Union in a reformed form	N/a	N/a
1 December 1991	Referendum on formal independence of the now-renamed Pridnestrovian Moldavian Republic (PMR)	78	For 97.7 %
26 March 1995	Referendum on the stay of the 14th Russian Army troops within Transnistria's borders.	N/a	For 90.0% Against 10%
24 December 1995	Constitutional referendum (1.) on the adoption of Transnistria's new Constitution and (2.) request for accession to the United Nations	N/a	For 81.8% Against 8.2% For 90.6% Against 9.4%
6 March 2003	Constitutional referendum on the introduction of private land ownership.	less than 50%	Invalid
17 September 2006	1. The second independence referendum of the Pridnestrovian Moldavian Republic 2. The question of free association with the Russian Federation[6]	78.6	For 97.1% Against 2.9% For 94.6% Against 5.4%

Source: Author's own study based on А. З. Волкова, Референдумы в Приднестровской Молдавской Республике (1989-2006 гг.), Тирасполь 2006, ss. 392; Є. Юрійчук, Референдна легітимізація влади в Республіці Молдова: зовнішньополітичні аспекти, «Науковий вісник Чернівецького університету. Історія. Політичні науки. Міжнародні відносини» 2012, вип. 607-609, s. 294-300.

The Government of the Autonomous Territorial Unit of Gagauzia has also used the tools of direct democracy. On 2 February, the regional authorities in Gagauzia - an autonomous region of the Republic of Moldova - carried out two simultaneous referendums. In the first one, local residents were asked to

[5] The referendums were held in various towns in Tiraspol, Bender/Tighina, Parkany, Dubăsari

[6] Two questions were asked: 1. Do you support the course towards the independence of Transnistria and the subsequent free association with the Russian Federation? 2. Do you consider it possible to renounce Transnistria's independent status and subsequently become part of the Republic of Moldova?

declare their support for the country's integration either with the EU or with the Moscow-led Customs Union (CU); the second referendum sought their opinion on the draft law "On the deferred status of the Autonomous Region of Gagauzia". Under the proposed legislation, if Moldova were to lose its sovereignty (for example, through the unification of Moldova and Romania, or through Moldova's further integration with the EU) the autonomous region would automatically become the independent Republic of Gagauzia. According to the figures released by Gagauzia's Central Electoral Commission, 98.5% of the voters supported Moldova's integration with the Customs Union, while 98% voted in favor of the 'deferred independence' bill. Support for closer integration with the EU was marginal, reaching just over 2%. Despite the one-sided outcome of the referendum, there is no reliable evidence to suggest that the ballot was rigged. It should also be noted that voter turnout was very high, reaching about 70%. Representatives of the Moldovan Central Electoral Commission, however, believe that the figure may have been artificially inflated by excluding many of the voters currently residing abroad from the count. As expected, the outcome of the vote has shown overwhelming support for both the CU and for the draft law.

Conclusion

The analysis of the functioning of the institutions of direct democracy in the Republic of Moldova in the formal-legal and practical dimension allows the author to formulate the thesis about a decreasing interest of the citizens in the political life of the State. The diminishing turnout in national referendums is the argument in support of the thesis. In 1994, the turnout was 75.1%, in 1999 – 58.33%, and in 2010 – 30.29%. The next conclusion drawn from this analysis is that the citizens are much more engaged in decision-making on local issues than in the decisions that are important for the whole Republic. This is a sign of the fragmentation of the Moldovan society, tiredness of political and economic transformations of the State, and lack of confidence in the political forces gathered in the Parliament.

The survey conducted by the Society of Sociologists and Demographers [of the Republic of Moldova] indicates that the citizens are disappointed with political and social life. 1193 respondents from 79 places on the territory of the Republic Moldova took part in the survey. The respondents were political and economic experts and the citizens who took part in the street protests. 74% of them think that Moldova is on the wrong track of development. What is more, 76.1% think that the reforms being carried out in the state are ineffective. 41% of respondents support the integration with the Customs Union while 37% are for the integration with the European Union. Half of

them regard the current situation in Moldova as tense. The citizens blame the oligarch Vlad Plahotniuc (17% of the respondents) for the bad internal situation, 11% believe that all political parties that describe themselves as pro-European are to blame for the poor administration of the State. About 10% think that various sides are to blame: the citizens, corruption, and greed. The respondents stress that poverty, rising prices, and corruption are the three main problems of the Republic of Moldova, and the incomes of 43.7% of the citizens are enough only to buy bare necessities (Ассоциация социологов и демографов Молдовы: 79.9% опрошенных считают, что Молдова движется в неверном направлении). The surveys also show that the Moldovans often do not know what the institutions of direct democracy are. They do not trust the binding results of the referendums, therefore they regard voting as unnecessary and not important for undertaking decisions.

On 13 November 2016 the second round of direct presidential election was held (since 1996 the Head of the State was chosen by the Parliament).The new President of the Republic of Moldova, Igor Dodon, who criticized the pro-Union course of the State in his election campaign and opted for the strategic partnership with Russia, announced he would hold a referendum on the termination of the Association Agreement with the EU (Молдавия проведет референдум о вступлении в ЕАЭС). However, there will be no sudden turn of Moldova towards Russia. The powers of the President of Moldova – a parliamentary republic - are very limited and the parliamentary majority is controlled by Vlad Plahotniuc. A potential referendum can be held on the modification of the provisions on the Association Agreement between the European Union and the Republic of Moldova, particularly the economic part of the DCFTA (The Deep and Comprehensive Free Trade Area) in order to facilitate trade relations with Russia rather than terminate the agreement completely.

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Maria Marczewska-Rytko

Direct Democracy in Montenegro

Determinants

Montenegro came into existence after the breakup of the Socialist Federal Republic of Yugoslavia (SFRY). Out of six constituent republics, only Montenegro and Serbia decided to form a Federal Republic of Yugoslavia in April 1992. The issue of the formation of a new federation was the subject of a referendum in which the citizens supported the idea of a federation. Between 2003 and 2006 Montenegro functioned in a union with Serbia as Serbia and Montenegro. As an independent state, Montenegro has functioned since 3 June 2006. In the independence referendum held in 2006, the citizens decided to reject the state union with Serbia and decided to form a sovereign state.

Montenegro's independence and sovereignty was recognized at the Congress of Berlin (the Treaty of Berlin) in 1878. As a result of the defeat in World War I and dethronement of King Nicolas I, in 1918 Montenegro ceased to exist as an independent state entity and became a part of the Kingdom of Serbs, Croats and Slovenes (Felczak/Wasilewski 1985; Podhorecki 2000; Dymarski 2010: 246-248). Although there was a government in exile, it could not make other states respect the statehood of Montenegro. During World War II Montenegro was initially under the Italian occupation, and then, after Benito Mussolini's capitulation in 1943, under the German occupation. On its territory there were strong partisans' groups, *inter alia* under the leadership of Josip Broz-Tito, Draža Mihailović, and Milovan Djilas. Montenegro, liberated in 1944, became a part of the Socialist Federal Republic of Yugoslavia (SFRY) as its smallest republic. The complicated relations of Montenegro within the SFRY are expressed in the following opinion: *In 1974, on the basis of the new Constitution, Montenegro gained identity within Tito's state. To many it meant the beginning of the reconstruction of the dependent state, which was Montenegro in the nineteenth century, culturally deeply-rooted in the Serb tradition. This inseparability with Serbia did not seem an obstacle to building its own regional identity* (Dymarski 2013: 402).

Under the influence of changes in Central and Eastern Europe which started in 1989, Montenegro itself also underwent changes. The law that permitted the functioning of a multiparty system came into force from 1990. The main actor on the political scene of Montenegro, the Communist Party of Montenegro, was transformed into the Democratic Party of Socialists of Montenegro (Demokratska Partija Socijalista Crne Gore, DPS). Other new politi-

cal parties also sprang up. After the outbreak of the Balkan war and secession of four republics (Croatia, Slovenia, Bosnia, and Macedonia) and under the pressure of the authorities of Serbia, a referendum on the question of this state remaining within Yugoslavia was held in Montenegro. The Communist Party supported the union with Serbia. The citizens of Montenegro voted for the formation, together with Serbia, of the Federal Republic of Yugoslavia, which started functioning on 27 April 1992. The literature of the subject points to many reasons which decided that Montenegro did not choose independence and sovereignty, e.g. generally difficult economic situation, close ties with Serbia, or cooperation within the communist movement. With the development of the situation in the Balkans, the relations between Serbia and Montenegro became more and more complicated. From the beginning, the position of these two political entities was not equal. Serbia played the dominant role because of its large territory and the level of economic development. Due to the national policy of Greater Serbia, the President of Serbia, Slobodan Milošević, became the object of criticism from international public opinion. On the other hand, the Prime Minister of Montenegro, Milo Đukanović was perceived as a desired partner in the policy of the West.

In 1997 there was a split in the ruling post-communist party. One faction, headed by the then President Momir Bulatović, opted for a close cooperation with Serbia while the other, with the then Prime Minister Milo Đukanović as its head, strove for a greater independence of Montenegro (Krysieniel/Wojnicki: 118). The victory of Milo Đukanović in the presidential elections of 1998 strengthened the tendencies of the country's distancing itself from Serbia. In 1999, due to the hyperinflation affecting the Yugoslav dinar, Montenegro's authorities introduced the German Mark as the second official currency. Next year the Mark became the only currency in the territory of Montenegro (in 2002 it was replaced by the euro). These steps were of great importance for developing the feeling of their own identity among the Montenegrins. The separatist moods in Montenegro were also strengthened by the Kosovo conflict. The fact that Slobodan Milošević lost in the presidential elections on 24 September 2000 and that on 1 April 2001 he was arrested by the Serb police and handed over to the International Court of Justice was also important for the development of the situation (Walkiewicz 2013: 445-446). The authorities of Montenegro intended to hold a referendum on independence, yet the results of the parliamentary elections of 22 April 2001 showed that neither the supporters nor the opponents of the idea of independence gained enough support from the voters. President M. Đukanović was explicitly for the referendum on the exit of Montenegro from the federal structure and announced it would be held in 2002 (Bujwid-Kurek 2008: 153). The European Union, fearing that the conflict would be intensified, joined to solve the problem and postulated that both states should remain in one state organism. As a result of the talks conducted between Serbia and Montenegro, an

agreement was concluded on 14 March 2002 (Agreement on Principles of Relations between Serbia and Montenegro within the State Union). The agreement was signed by the President of Yugoslavia, the President and Prime Minister of Montenegro, and the Prime Minister and Deputy Prime Minister of Serbia in the presence of the representative of the European Union, Javier Solana. This determined the establishment of a new state for a trial period of three years. After that time, Montenegro was to decide about its future.

On 4 February 2003 Serbia and Montenegro replaced the Federal Republic of Yugoslavia (Szczepański 2013: 461). Under Article 60 of the Constitutional Charter of Serbia and Montenegro, either party was granted the right to call an independence referendum upon the expiry of a three-year period (The Constitutional Charter of the State Community of Serbia and Montenegro). The literature on the subject analyzed both the functional and dysfunctional factors connected with the functioning of a new state entity (Szczepański 2013: 470-473). The functional elements include the sentimental attachment to the idea of Yugoslavia, common coordination of defence policy, common hope of both states for the integration with the structures of the European Union, and the support from the International Monetary Fund (a factor that stabilized the situation in the Balkans). On the other hand, among the destabilizing factors the literature points to the emergence of a new state on an experimental basis under influence of the European Union, the weakness of the functioning of the government structures, disproportions between these two entities, decentralist tendencies among a large part of political forces and Montenegrin citizens, the formation, in the territory of Montenegro, of the basis for a new independent state, a lack of joint measures that aimed to reform the state. One can agree with the opinion that the several-year functioning of the state, *despite including into its system some beneficial solutions which in practice make Montenegro and Serbia equal, was only a prolongation of 'parting with Yugoslavia', which was ending its days despite 'a sustaining therapy' unable to cure itself from numerous afflictions* (Szczepański 2013: 474).

The independence referendum was held in Montenegro on 21 May 2006. The Assembly of the Republic of Montenegro approved the results of the referendum and proclaimed the independence of Montenegro on 3 June 2006. The President and the Prime Minister of Serbia accepted the results of the referendum. Successive states declared the recognition of the declaration of independence. As a result of the breakup of Serbia and Montenegro two states emerged: Montenegro and Serbia with the autonomous provinces of Kosovo and Vojvodina.

Until 2007 the political system of the Republic of Montenegro was regulated by the Constitution of 12 October 1992 (Ustav Republike Crne Gore 1992; Constitution of the Republic of Montenegro 1992). Pursuant to Article

1 of the Constitution, the Republic of Montenegro was a democratic, social, and ecological state. It was the member of the Federal Republic of Yugoslavia. Article 3 refers to the principles of democracy, stating that the authority must result from the freely expressed will of citizens. Article 4 guarantees that the state is founded on the rule of law. The legislative power is vested in the Parliament [Skupština]. The President of Montenegro was a representative and a symbol of state's unity. The government exercised the executive power, issued decrees, acts, and other decisions. The government was composed of the Prime Minister, Deputy Prime Ministers, and ministers. When a member of the government was a parliamentary deputy, s/he did not have to resign from his/her seat (mandate). The government was responsible before the Parliament. The Constitutional Court decided on the conformity of law with the Constitution.

After Montenegro regained independence, the new Constitution which regulated the political system was adopted. The current Constitution of Montenegro was ratified and adopted by the Constitutional Parliament of Montenegro on 19 October 2007 at an extraordinary session by achieving the required two-thirds majority of votes (Ustav Crne Gore 2007; Constitution of Montenegro 2007). The Constitution was officially proclaimed on 22 October 2007. The name of the state was changed into Montenegro. The Constitution stipulates that *The citizen shall exercise power directly and through the freely elected representatives (i.e. indirectly).*

The main grouping at the political scene as the ruling party is the Democratic Party of Socialists (DPS), the successor of the League of Communists of Montenegro, which (DPS) has won all the elections since the first post-communist elections in 1991 (Montenegro. Early Parliamentary Elections 14 October 2012, OSCE/ODIHR Needs Assessment Mission Report). During the first three terms until 1998, it was the rule of one party with Milo Đukanović as the Prime Minister. Since 1998 DPS has been in a coalition with other political parties. It also won in parliamentary elections of October 2016. The authorities of Montenegro have been undertaking actions for the accession of country state to the structures of the European Union (Strategy for Montenegro. Report on the Invitation to the Public to Comment. Document of the European Bank for Reconstruction and Development). According to the regulations in Article 9 of the Constitution of Montenegro of 19 October 2007 the international law has supremacy over the national legislation and it may be directly applicable (Ustav Crne Gore 2007; Constitution of Montenegro 2007). Pursuant to Article 15 of the Constitution the Parliament will decide on the manner of accession to the European Union. The Parliament also confirms international agreements (Article 82). The government, however, pursuant to the Constitution, is responsible for holding accession negotiations. Article 100 stipulates that the government is, among others, responsible for

signing international treaties. The European Union officially invited Montenegro to accession negotiations in June 2012.

Formal-Legal Dimension

The questions of direct democracy are reflected in the Constitutions of 1992 and 2007, the Law on Referendum and the Law on Local Self-Government. Pursuant to Article 33 of the Constitution of the Republic of Montenegro of 12 October 1991 *every person shall be entitled to a free initiative, to submit representation, lodge a petition or a proposal to a state authority and shall be entitled to receive an answer thereto. No person shall be held responsible and neither shall suffer any other detrimental consequences for opinions expressed and contained in the initiatives, representations, petitions or proposals except in case the person in question has therethrough committed a criminal offence* (Ustav Republike Crne Gore 1992; Constitution of the Republic of Montenegro 1992). At the local self-government level – according to Article 66 – citizens will decide through local self-government directly or through their freely elected representatives. Article 81 enumerates the powers of the Parliament (National Assembly), which include announcing a referendum, while Article 88 lists the powers of the President, who has the right of initiative to call a referendum. With reference to the responsibilities of the Constitutional Court, under Article 114 *All persons are entitled to initiate the proceedings of assessing the constitutionality and legality*. A proposal to amend the Constitution may be submitted by at least 10,000 voters. Pursuant to article 117 the Assembly will decide on the proposal for amending the Constitution by the two-thirds majority of votes of all its Deputies. If the proposal to amend the Constitution is not adopted, the same proposal may not be submitted again before one year has elapsed from the day the proposal was refused.

In the Constitution of 2007, pursuant to Article 2 *The citizen shall exercise power directly and through the freely elected representatives* (Ustav Crne Gore 2007; Constitution of Montenegro 2007). In Article 45 on the electoral right, the principle of domicile was introduced – a minimum of two years of residence in Montenegro. According to Article 57 *Everyone shall have the right of recourse, individually or collectively with others, to the state authority or the organization exercising public powers and to receive a response* and *No one shall be held responsible, or suffer other harmful consequences due to the views expressed in the recourse, unless having committed a crime in doing so*. Article 82 states that among other powers the Parliament is entitled to call for the national referendum. With the majority vote of the total number of Members, the Parliament will adopt the laws that regulate,

among others, the institution of a referendum and the question of calling for a referendum (Article 91). Under Article 93 *The proposal to call for the national referendum may be submitted by: at least 25 Members of the Parliament, the President of Montenegro, the Government or at least 10% of the citizens with the right to vote*. Likewise: *The right to propose laws shall also be granted to six thousand voters, through the Member of the Parliament they authorize* (Article 93). At the local level Article 113 stipulates that *In the local self-government the decisions shall be made directly and through the freely elected representatives*. As far as the responsibilities of the Constitutional Court are concerned, according to Article 150 *Any person may file an initiative to open the procedure for the assessment of constitutionality and legality*. Pursuant to Article 157 the amendments to the constitution may be introduced if *minimum three fifths of all the voters support the change in the national referendum*. The changes concern the following Articles: 1- the State defined as democratic, ecological, and social, 2- the republican form of government, 3- unity and indivisibility, 4 - state symbols, 12- questions of a citizenship, 13 - language and alphabet, 15- the relations with other states, 45- questions of electoral right, 157 - changes in the Constitution that require a national referendum.

The Law on Referendum, adopted by the Parliament on 19 February 2001, regulated the issues of referendum at the national and local levels (Zakon o referendumu 2001). The regulations were included in general provisions: Articles 1-16; regulations on the kinds of referendums, composition of their commissions and the powers of their commissions: Articles 17-28; the course of a referendum: Articles 29-42; and final conclusions. The right to vote in a referendum is vested in the citizens who, pursuant to election laws, enjoy voting rights. *No one shall, on whatever account, hold any citizen liable for having voted in a referendum, nor shall any citizen be requested to state who he has voted for or why he has abstained from voting* (Article 9). Every citizen will vote only in person. *No less than 45 days and no more than 90 days shall pass between the day a referendum is called and the day it is held* (Article 7). *If citizens have voted in a referendum against a specific question, a 12-month period is required to pass before the same question can be re-proposed for the vote in a referendum* (Article 12).

The Law on the Referendum of 2 March 2006 regulated the issues of a national referendum on the state status of the Republic of Montenegro (Zakon o referendumu o državno-pravnom statusu Republike Crne Gore 2006). Articles 4-6 regulated the issues concerning the calling of a referendum; Articles 7-26 regulated the composition and functioning of electoral commissions; Articles 27-33 regulated referendum campaign; Articles 34-42 regulated the financing of the referendum expenses; Articles 43-55 regulated the media coverage of the referendum campaign; Articles 56-62 regulated the status of the observers of the referendum. Under Article 4, the decision on calling the

referendum on define the legal status of the Republic will be taken by the Assembly (Parliament) of the Republic of Montenegro by a majority of votes of the total number of Deputies. The referendum should be held no less than 75 days between the day the referendum is called for and the day it is held. Article 5 contains the referendum question: *Do you want the Republic of Montenegro to be an independent state with full international and legal personality?* Article 6 regulates the requirements for the validity of the referendum: *The decision in favour of independence shall be considered as valid if 55% of the valid votes are cast for the option "yes", provided that the majority of the total number of registered voters has voted on the referendum* (Article 6).

The questions concerning direct democracy are also regulated by the Law on Local Self-government (Law on Local Self-government 2003, 2004, 2005, 2006, 2009, 2010). According to Article 6 of the Law, citizens may directly participate in decision-making processes. One of the duties of a Municipal Assembly (a local self-government unit) is, among others, to call a referendum on its territory or on a part of its territory and to decide upon citizens' initiative (Article 45). The procedure for the dismissal of the executive body of the local self-government (mayor/municipality head) is regulated in Article 61. The procedure may be initiated by the citizens: *The procedure of recall of the Mayor may be initiated by at least 20% of voters in the Municipality* (Article 61) and *The procedure of recall may not be re-initiated within 6 months from the date the previous proposal of recall is decided upon*. The Assembly may request a vote of no confidence. This right is regulated by Article 62. The voting may be ordered when 10% of the citizens of the municipality have signed such an initiative. The Assembly will decide on the initiative within 30 days from the date the initiative is filed. Pursuant to Article 64 *Citizens shall vote on no-confidence of the Mayor, in accordance with the law*.

Article 100 of the Law on Local Self-government enumerates the forms of direct citizen participation in expressing their views and in decision-making. They are: initiative, civil initiative, the assembly of citizens, referendum (at the level of the local community and municipality), and other forms of expressing views and decision making provided for in the law. Article 101 is devoted to the institution of initiative. Citizens may submit an initiative to the competent authorities for the purpose of considering and deciding on certain matters that are of interest for the local population. The competent body will take a position on the submitted initiative within 30 days and inform the applicant on it. According to Article 102 *Citizens shall be entitled to launch a civil initiative. The civil initiative shall propose adoption or amending a regulation that defines important matters falling under the local self-government jurisdiction. If the competent authority does not accept the civil initiative, the matter that was subject of the initiative may be submitted to a*

referendum that shall be held within 90 days from the date the decision has been passed.

The questions of the assembly of citizens are regulated in Article 103. The assembly of citizens shall adopt requests and proposals by a majority vote of citizens present, and it shall forward them to a competent authority. Local government authorities shall discuss the requests and proposals and inform citizens within 60 days from the date the assembly of citizens is held. The Law on Local Self-government adopted two kinds of referendums at the local level: a community referendum and a municipal referendum. The community referendum is regulated by Article 104: Citizens living at one part of the municipal territory shall express their views on matters that fall under the jurisdiction of the local self-government on a community referendum. Article 105 stipulates that a municipal referendum may be called with the purpose that citizens living in the territory of the Municipality express their views on certain matters that fall under the jurisdiction of the local self-government. Article 106 provides for other forms of direct citizen participation: citizens may participate in the exercise of the local self-government by lodging petitions, suggestions and complaints, in accordance with the Municipal Statute.

The Law on the Territorial Organization of Montenegro of 2 November 2011 regulates the issues of, *inter alia*, the use of the initiative and referendum concerning territorial changes within the state (Zakon o teritorijalnoj organizaciji Crne Gore). According to Article 9 the initiative of merging and building new settlements may be put forward (beside the assembly of a municipality) by a group of 30% of citizens who have the right to vote. Similar regulations apply to the change of the name of a place (Article 10). According to Article 29, a consultative referendum may be held. The decision of calling a referendum may be undertaken within 90 days from the date the motion is lodged. The period of time from the date of voting to that of a referendum cannot be less than 45 days and more than 90 days.

Practical Dimension

Two national referendums were held in Montenegro: the referendum to remain a part of a united Yugoslavia as a sovereign republic and fully equal to all other Yugoslav republics and the referendum on Montenegrin independence. The first referendum was held on 1 March 1992. Serbia, fearing the further dissolution of the state, pressed for a referendum. The public debate was shortened to seven days. The electorate overwhelmingly chose to remain in union with Serbia, with a yes vote of 95.94%.

Table 1. The national referendum of 1 March 1992

Date	Subject	Turnout in %	Results
1 March 1992	The referendum to remain a part of a united Yugoslavia as a sovereign republic and fully equal to all other Yugoslav republics	66.04	For 95.94%

Source: Author's own study based on Centre for Research on Direct Democracy.

The second referendum on the independence of Montenegro was held on 21 May 2006. It was held pursuant to Article 60 of the Constitution of Serbia and Montenegro according to which *Upon the expiry of a 3-year period, member states shall have the right to initiate the proceedings for the change in its state status or for breaking away from the state union of Serbia and Montenegro*. Unsuccessful attempts were made by the government of Montenegro earlier in 2001 and 2002. On 1 March 2006, due to the votes of the government and opposition a decision on holding a referendum was voted through (with the vote ratio of 60:10). The European Union set a controversial threshold requirement: the support for the idea of independence would have to be 55% to make the referendum valid. Moreover, the majority of those entitled to vote would have to take part in the referendum. If the supporters of Montenegro remaining in the federation won, the next vote could not be held earlier than after the period of three years (Centre for Research on Direct Democracy). During the pre-referendum campaign there was a great mobilization of both supporters and opponents of the idea of Montenegro's independence.

The referendum question was *Do you want the Republic of Montenegro to become an independent State with a full international and legal personality?* The independence referendum was held on 21 May 2006. Out of 484,719 registered voters, 419,240 voted in the referendum (i.e. 86.49%). 55.49% voted for independence, 44.51% were against. The official results of the referendum were announced on 31 May 2006. On 3 June 2006 the Assembly of the Republic of Montenegro made a formal Declaration of Independence (Commision Staff Working Document. Montenegro 2006 Progress Report). Montenegro was accepted by the United Nations and became its 192th member (General Assembly approves admission of Montenegro to United Nations, increasing number of member states to 192). In 2007, Montenegro became the 47th member of the Council of the Europe (Accession of the Republic of Montenegro to the Council of Europe).

Table 2. The national referendum of 21 May 2006

Date	Subject	Turnout in %	Results
21 May 2006	The referendum on Montenegrin independence	86.49	For 55.49% Against 44.51%

Source: Author's own study based on Centre for Research on Direct Democracy.

On the basis of analysis of both referendums, the literature on the subject formulated the opinion that in this case the referendum was not a tool of direct democracy but in fact its contradiction because, as a result of the breakup of former Yugoslavia, referendums are used for political purposes, mainly to legitimize particular decisions of the ruling groups (Pavićević, Džamić). The lack of mechanisms of direct democracy is perceived as one of indicators that in practice democracy is fragile, unconsolidated, and a façade (Pavićević, Džamić). In Montenegro, the decision on the first referendum was taken on the basis of the Constitution of 1963, which was in force until the autumn of 1992 rather than until the year in which a new constitution was adopted. As scholars stress underline, this referendum was planned on 1 March 1992, i.e. when Yugoslavia was still an international relations entity and a member of the UN (Pavićević, Džamić). In this complicated situation on the Balkans, referendum became a kind of a plebiscite. The Democratic Party of Socialist (DPS), which had a majority in the Parliament opted for the referendum, whereas the biggest opposition parties were against it. It should be added that the opposition boycotted the referendum. With regard to the second referendum, it should be noted that the European Union was the main mediator in redefining the Yugoslavian Federation and in the regulations concerning referendums. The literature on the subject points to many irregularities in the course of the referendum (Pavićević, Džamić). For example, the citizens of Montenegro residing in Serbia were not allowed to vote although they had the right to do so. Many irregularities were noted concerning the ID documents of people participating in the vote. In practice, both national referendums polarized the already divided society of Montenegro because the subject of the vote was to remain in or leave the union with Serbia.

At the local level, after many years of the functioning of the centralized system, in July 2003 a system of legal acts regulating the activity of local self-government was introduced (the law on local self-government, the law on financing it, and the law on direct election of the executive body of a municipality council) (Local Democracy in Montenegro, Chamber of Local Authorities). The citizens could directly participate in the decision-making process at the local level through the institutions of a referendum, the initiative, citizens' assembly and petitions. In practice, the citizens prepare petitions and launch citizens' initiatives mainly on improving their living conditions through the improvement of local infrastructure. As a rule, they are supported by local

authorities. For example, in practice citizens' initiatives petitioning for the acceptance of procedures to legalize illegally constructed buildings were accepted. The units of local self-government also put forward initiatives of holding a consultative referendum. However, despite those legal guarantees, the use in practice of the solutions of direct democracy at the local level is negligible. This stems, *inter alia*, from the lack of trust between the authorities and citizens, from the conviction that at the local level one can do nothing against the will of the superior authority, and from the weakness of civil society (Šarenac 2012: 117-165; Šarenac 2008; Montenegro. Sida Country Report 2007). According to the 2013 Report of Freedom House, democracy at the local level is generally underdeveloped, ineffective, and weak (Montenegro. Freedom House Report). An additional challenge is the high rate of corruption.

Conclusion

One may agree with the opinion according to which *Montenegro is an example of a post-communist state in which power alternation has not taken place since 1945. Power is still exercised by the post-communist group, which emerged in 1990 as a result of transformations within the then League of Communists of Montenegro. The main axis of the conflict between the country's political groups concerned the question of relations with Serbia and the formation of a federal state with it* (Wojnicki). One should also stress a relatively short period of Montenegro's functioning as an independent and sovereign state. Out of the formal-legal regulations on direct democracy in Montenegro some of them did not so much express the aspirations of the society and political elites as the aspirations of political and geopolitical participants in international relations. Among those, the role of Serbia and the European Union deserves to be particularly emphasized. Moreover, the formal-legal regulations were to serve the political elites to legitimize their power and political decisions.

The situation at the local level is similar. The striving of Montenegro's authorities to accede to the structures of the European Union has influenced the adoption of many new solutions at the level of local self-government. However, in practice, the problems facing post-communist states are clearly noticeable: the issues of building a civil society, consolidation of the democratic system, deficit of social confidence including the lack of confidence in the authorities, corruption, economic problems, and many others.

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Direct Democracy in Poland

Determinants

Like all over the world, the referendum is the most often used institution of direct democracy in Poland. Apart from being a popular assembly it also has a binding nature. The use of this form of direct democracy in Poland has a comparatively short history. As M. Jabłoński points out, during the interwar period such solutions were not known in Poland; similarly, they were not provided for in the 1952 Constitution (Jabłoński 2001). In practice, the institution of public consultations was utilized. During its sessions, the First Congress of the Patriotic Movement for National Rebirth (PRON) declared support for the law on public consultations and referendum (Wnioski uczestników I Kongresu Patriotycznego Ruchu Odrodzenia Narodowego). As a result, a group of 115 parliamentary Deputies submitted a bill on public consultations and referendum, which was met with many doubts and controversies (Odpowiedzi na wnioski I Kongresu Patriotycznego Ruchu Odrodzenia Narodowego). A significant role was played by fears of granting many powers to the citizens. It was recognized that the binding nature of the referendum required that the Constitution of People's Poland should be amended. This evidenced the change in the status of the referendum institution as compared with 1946 and its established position in the supreme law.

The referendum held on 29 November 1987 also became part of the negative practice of politicizing this instrument of direct democracy (Kuciński 1989: 47-56). Like the 1946 referendum, it was initiated top-down, and its main objective was to gain acceptance of the policy pursued by those in power and thereby to legitimize the authorities. The resolution adopted by the Sejm [the lower chamber of the Polish Parliament] stated that the subject of the planned referendum would be the matters of reforming the State and economy.

The subject of the referendum was expressed in two questions:

1) Are you in favour of fully implementing the programme of radical improvement of the national economy, submitted to the Sejm and intended to markedly improve the living conditions, even though you realize that this requires a difficult transition period of two to three years during which rapid changes will take place?; 2) Are you for the Polish model of a profound democratization of political life intended to strengthen self-government, to extend civil rights and to increase citizens' participation in the government of the country? (Wróbel 2013).

It appears that the initiators of the referendum were not sure of the adequacy of the presented questions in relation to the actual subject of the referendum because additional explanations were published in the press. Furthermore, the explanations left much to be desired in respect of the clarity and lucidity of information (Jaskiernia 1995: 77-88). In accordance with the Announcement of the Central Commission for Referendum of 30 November 1987 on the results of the national referendum held on 29 November 1987, the turnout was 67.32% of the total number of eligible voters (Obwieszczenie Centralnej Komisji do Spraw Referendum z dnia 30 listopada 1987 r.). Regarding the first question, 44.28% of voters were in favour and 18.57% against. In the case of the second question, the "yes" votes were 46.29%, and those against: 16.48% (Obwieszczenie Centralnej Komisji do Spraw Referendum z dnia 30 listopada 1987 r.). The result of the vote did not go beyond the required threshold on both counts. Each of the two questions was voted on by fewer than half of the eligible voters. Consequently, the obtained result could not be recognized as binding.

Formal-Legal Dimension

In December 1989 an act was passed on the amendment to the Constitution, in which the principle of the supremacy of the nation was adopted (Ustawa z dnia 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej). This did not entail the explicit acceptance of the possibility that the sovereign (the people) would be able to express their opinion on significant matters. Article 2 par. 2 stated: *The Nation shall exercise power through its representatives elected to the Sejm, the Senate* [the upper chamber of the Polish Parliament] *and to national [or people's] councils; power is also exercised by expressing one's will through a referendum. The rules and procedure for holding a referendum shall be specified by statute* (Ustawa z dnia 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej).

The Constitutional Act of 23 April 1992 on the procedure for the drafting and passing of the Constitution of the Republic of Poland recognized that the Constitution would be adopted by the nation through the vote in the constitutional referendum (Article 1, par. 1) (Ustawa konstytucyjna z dnia 23 kwietnia 1992 r. o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej). Pursuant to Article 9, par. 1, the referendum would be called by the President within fourteen days of the passing of the constitution on the third reading. The President would set the date of holding the referendum not later than within four months after the referendum had been proclaimed. Every citizen of the Republic of Poland who has active voting rights could vote in

the referendum. The result of the referendum would be binding when the adoption of the Constitution was supported by the majority of the voters (Article 11, par. 1).

The Constitutional Act of 17 October 1992 on mutual relations between the legislative power and executive power provided for the possibility of using the institution of referendum on matters of particular significance to the State (Article 19, par. 1) (Ustawa konstytucyjna z dnia 17 października 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym). The right to call a national referendum was vested in the Sejm (following a resolution taken by an absolute majority of votes) or in the President with the consent of the Senate given by an absolute majority of votes. The referendum would be binding if more than half of the number of the eligible voters participated in it (Article 19, par. 3). Pursuant to the provisions of the Constitutional Act of 22 April 1994 on the amendment of the Constitutional Act on the Procedure for the Drafting and Passing the Constitution of the Republic of Poland, the principles on which the Constitution would be founded could be put to the vote in a referendum (Article 2 c, par. 1) (Ustawa konstytucyjna z dnia 22 kwietnia 1994 r. o zmianie ustawy konstytucyjnej o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej).

The final version of the law on referendums was passed by the Sejm on 29 June 1995 (Ustawa z dnia 29 czerwca 1995 r. o referendum). Its provisions regulated the principles and procedures for holding a referendum. The essence of a referendum is the expression of their will by the Republic of Poland's citizens through the vote on the manner of solving the problem being voted on. Polish citizens having the right to vote can participate in a referendum. Pursuant to Article 4 of the Referendum Act, a referendum can be called by the Sejm (through a resolution taken by an absolute majority vote with the presence of at least half of the statutory number of Deputies) or by the President (with the consent of the Senate given by an absolute majority of vote with the presence of at least half of the statutory number of senators). The matter that is the subject of the referendum cannot be voted on again earlier than after four years of the date of holding the referendum.

In accordance with the law on referendum a particular matter can be voted on the initiative of the Sejm or upon the motion of the Senate, Council of Ministers or a group of citizens. Article 5 of the Referendum Act contains a solution in the form of a popular initiative concerning a referendum. Detailed provisions are contained in Article 6 which states *inter alia* that the Sejm may decide to submit a specific matter to a referendum on the initiative of a group of citizens whose motion can be endorsed by at least 500,000 persons who have the right to vote in the parliamentary elections (Ustawa z dnia 29 czerwca 1995 r. o referendum). A referendum on the initiative of a group of citizens cannot concern the State's expenditure and revenue, or defence as well

as amnesty. Under Article 7 of the Act the President submits a draft order calling a referendum to the Senate. It contains questions and variant solutions to the matter to be put to the vote, and specifies the date of holding the referendum. The referendum is held within 90 days of the Sejm's resolution or the President's order and is binding if more than half the number of eligible voters have participated in it.

Chapter Two of the Referendum Act distinguishes a constitutional referendum. Article 12 par. 2 stipulates that Polish citizens staying abroad may participate in voting in accordance with the provisions of the Sejm Electoral Law. The Constitution will be adopted in a referendum when it has gained support of the majority of voters who participated in the voting (Article 13, par. 2). The provisions emphasize that the subject of a constitutional referendum may be exclusively the matters concerning the draft of the Constitution of the Republic of Poland. Chapter Three specifies the referendum agencies and their responsibilities (the State Electoral Commission, provincial referendum commissions, and district referendum commissions). Chapter Four is devoted to the procedure for voting in a referendum. Chapter Five discusses the matters concerning the establishment of voting results and results of referendums. Problems pertaining to the validity of referendums are regulated in Chapter Six. Chapter Seven contains provisions on referendum campaigns and on funding referendums.

The current Constitution of 1997 provides for the institution of referendum in Chapter Four, which deals with legislative power (Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. wraz z indeksem rzeczowym). A referendum is an alternative procedure to expressing consent to ratify an international agreement and serves to adopt a law on the amendment of the Constitution. A national referendum is treated as an exceptional procedure listed after the principles of operation of the Sejm and Senate. The right to order a referendum is vested only in the Sejm and in the President acting with the consent of the Senate. The resolution to hold a referendum is adopted by an absolute majority of votes with the presence of at least half of the statutory number of Deputies.

The Constitution provides for three kinds of national referendum: 1) constitutional (Article 235 par. 6); 2) ratification referendum (Article 90 par. 3); 3) referendum in respect of matters of particular significance to the State (Article 125 par. 1). A constitutional referendum (to confirm the amendments to the Constitution) may be held on the initiative of one fifth of the statutory number of Deputies, or the President acting with the consent of the Senate within 45 days of the adoption of the bill by the Senate. The petition to hold a referendum is submitted to the Marshal of the Sejm, who will order the holding of a referendum within 60 days of the day of receipt of the petition. The result of the referendum is binding if the majority of those voting express support for the amendment. Its validity is confirmed by the Supreme Court. A

ratification referendum may be used to ratify an international agreement that delegates to an international organization (or an international institution) some competence of the State authority. A referendum on matters of particular significance to the State may be ordered by the Sejm by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, or by the President with the consent of the Senate expressed by an absolute majority of votes with the presence of at least half of the statutory number of Senators. The result of the referendum is binding if more than half of the eligible voters have participated in it. The validity of the referendum is confirmed by the Supreme Court.

On 14 March 2003 the law on the national referendum was adopted (Ustawa z dnia 14 marca 2003 r. o referendum ogólnokrajowym), and an amendment to it in connection with the planned referendum for the EU entry (Ustawa z dnia 10 maja 2003 r. o zmianie ustawy o referendum ogólnokrajowym). Under Article 5 of the Act, one can vote only in person. Article 7 admitted of the establishment of constituencies in student hostels or groups of student hostels if at least fifty persons having the right to vote in a referendum informed the university/college president in writing about the fact of staying in a hostel on the day of the referendum. A two-day referendum was allowed. The organs to hold a referendum are the National Electoral Commission, electoral commissioners, and district commissions for referendum. Articles 11-16 specified the responsibilities of particular agencies for referendums. Chapter Three contains the requirements concerning the ballot paper, the manner of voting and the terms of validity of a vote. Chapter Four specifies the requirements related to the establishment of the results of voting and the result of a referendum Chapter Five is concerned with the question of the validity of a referendum. Of significant importance is Chapter Six, which presents the rules of holding a referendum campaign and funding it. The next Chapters of the Referendum Act deal with the following problems: funding of a referendum by the State budget (Chapter Seven); a referendum in respect of matters of particular importance to the State (Chapter Eight); a referendum on the consent to ratify an international agreement (Chapter Nine); a referendum to approve the amendment of the Constitution of the Republic of Poland (Chapter Ten); criminal provisions (Chapter Eleven); special provisions (Chapter Twelve); and amendments to the current provisions in force, as well as final and transitional provisions (Chapter Thirteen). The amending of the Referendum Act aimed at enabling the public announcement of information on the turnout while a referendum lasted.

The Constitution provides legislation initiative first of all for Deputies, the Senate, the President of the Republic and the Council of Ministers. The right to introduce such legislation also has a group of at least 100,000 citizens having the right to vote in elections to the Sejm (Article 118) (Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. wraz z indeksem rzec-

zowym). On 24 June 1999 the law on the legislation initiative was adopted (Ustawa z dnia 24 czerwca 1999 r. o wykonywaniu inicjatywy ustawodawczej przez obywateli).

The forms of direct democracy at the local level are different forms of local assemblies (village meetings, general meetings of the people in a housing estate/rural settlement, consultations with *gmina* [municipality/commune] inhabitants), and referendums. In a *sołectwo* (village/subgmina) the *sołtys* (village head/administrator) and the *sołectwo* council are elected in a secret ballot by the permanent residents, with a possibility to nominate an unlimited number of candidates for the post of *sołtys* and for the *sołectwo* council (Leoński 2001: 147-161; Taras 1997: 169-183; Levrat 1991). This is specified in Article 36 par. 2 of the Law on Gmina Self-government, while in Article 35 par. 3 of this Law the legislator adopted a view that the statutes of the auxiliary unit (which is *sołectwo*) should contain solutions concerning the principles of and procedures for election of both the *sołectwo* council and the *sołtys*. Therefore, in s*ołectwo* we are dealing with the forms of direct democracy (village meetings) or with the organs elected by the village community (the *sołectwo* council and the *sołtys*). In a housing estate (but not a town district) a form of direct democracy, i.e. a general meeting of the estate residents is admissible. Consultations with gmina residents introduced into the law on local self-government of 1996 are a form of asking the residents to voice their opinion. Unlike a referendum, this opinion does not have a binding power, but it should be taken into consideration by the gmina council and its agencies.

As regards the institution of referendum, initially this was a gmina referendum, and subsequently, in the course of further changes, a local referendum (Piasecki 2003: 64; Olejniczak-Szałowska 1993). Referendum is legitimized in the Constitution and in legislation (Ustawa z dnia 15 września 2000 r. o referendum lokalnym; Ustawa z dnia 15 lutego 2002 r. o zmianie ustawy o samorządzie gminnym, ustawy o samorządzie powiatowym, ustawy o samorządzie województwa, ustawy – Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw oraz ustawy o referendum lokalnym). The local dimension of the referendum appeared in the Act on Amending the People's Poland's Constitution of 6 May 1987. Article 2 par. 2 defines the scope of the referendum: national and local. The right to adopt a resolution on putting a specific matter to the vote in a local referendum was vested in the then national councils. The Local Self-government Act of 8 March 1990 regulated the issue of a gmina referendum (Ustawa z dnia 8 marca 1990 roku o samorządzie terytorialnym). Its Article 11 stipulated that gmina inhabitants would participate in decision making, *inter alia*, through a referendum. The matters not specified in the Act were still decided by the Social Consultations and Referendum Act (6 May 1987). This situation lasted until 1991, when the law on a gmina referendum was passed on 11 October (Ustawa z dnia 11

października 1991 r. o referendum gminnym). The law distinguished two kinds of referendums: mandatory and optional (facultative). The former concerned matters related to the inhabitants' self-taxation for public purposes and dismissal of the gmina council before the expiry of its term. The latter was to be held in order to decide important matters for the gmina. Such a referendum could be initiated by the gmina council or by 10% of its inhabitants having the right to vote. The referendum was considered valid if at least 30% of those having the right to vote participated in it. For a conclusive decision in a referendum more than half of the number of valid votes were required, whereas the inhabitants' self-taxation required at least two-thirds of valid votes. The costs of holding a referendum would be covered by the gmina budget (Wytyczne w sprawie referendum 1994: 20-21, 25). For the first time the term local referendum was included in the Small Constitution in Article 27, par. 2. Poland's Constitution of 1997 includes the local referendum as a form of direct exercise of power in Article 170: *members of a self-governing community may decide, by means of a referendum, the matters concerning their community, including the dismissal of an organ of local self-government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute* (Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.).

The Local Referendum Act of 15 September 2000 made reference to the self-governing community of gmina, district (poviat) and province (voivodeship), including the capital city of Warsaw (Ustawa z dnia 15 września 2000 r. o referendum lokalnym). Pursuant to Article 2 par. 1 the inhabitants of a local self-governing community *express, by means of voting, their will regarding the manner of deciding a matter concerning their community within the scope of tasks and competence of the agencies of a unit or in respect of dismissal of the decision-making body of their unit*. A referendum is held on the motion of the decision-making body or on the motion of 10% of inhabitants having the right to vote at the gmina or district level, or of 5% of those having the right to vote at the province level. Regarding the dismissal of a relevant council, it is not possible to hold a vote within a year after the elections or the date of the last referendum, and within six months before the end of term. Self-taxation of inhabitants for public purposes was retained at the gmina level only and can be introduced exclusively through a referendum. Upon the motion of the inhabitants, the initiative to hold a referendum can be launched by a group of at least 15 citizens who have the right to vote; five persons at the gmina level and a community organization with the status of legal personality. The measures connected with the holding of a referendum are as follows: notifying in writing the chairman of the town, district or provincial council by the initiator (Article 12, par. 1; Article 22); collecting of inhabitants' signatures (Art 14, par. 1); submission of the motion to hold a referendum (Article 15, par. 1); the appointment of a commission by the

council or the local assembly to verify whether the motion submitted complies with the provisions of the Act (Article 16); passing of a resolution by the council or the local assembly in respect of holding a referendum or turning down the motion (Article 17; Articles 23, 24). A referendum will be held on a holiday, within the period between 30 and 40 days of the promulgation of the resolution in the provincial official journal, or of the promulgation of decision by the Supreme Administrative Court (Article 21). The Referendum Act has regulated the matters relating to the conduct of the referendum campaign (Chapter Six); funding of a referendum by the local self-government budget; and the powers of the referendum initiator and his/her helper (Chapter Seven); the procedure for holding a referendum as well as determining and promulgating its results (Chapter Eight). A referendum is regarded as valid when at least 30% of inhabitants having the right to vote have participated in it (Article 55). The decisive result is when more than half of the number of votes are in favour of one of the solutions; the issue of self-taxation requires a two-thirds majority of valid votes (Article 56).

Practical Dimension

Five national referendums have been held in Poland to date: on the general granting of property rights to citizens (enfranchisement) (1996), on the use of State property (1996), the constitutional referendum of 1997, on Poland's integration with the European Union of 2003, and the referendum on single-seat constituencies in the elections to the Sejm, on the attitude towards the way of funding political parties from the State budget, and on introducing a presumption in favour of the taxpayer in disputes over the tax law (2015).

This motion to hold a referendum on the enfranchisement of citizens was approved because it was initiated by the President and then supported by the motion by a group of the SLD [the Democratic Left Alliance] Deputies concerning the sharing out of State property. Under those circumstances the motion submitters had a guaranteed majority necessary for adopting an appropriate resolution. It became the grounds for the referendum on the use of state property, which was held on the same day.

On 29 November 1995 President Lech Wałęsa ordered a referendum on the enfranchisement of citizens (Zarządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 29 listopada 1995 roku w sprawie przeprowadzenia referendum o powszechnym uwłaszczeniu obywateli). The referendum date was fixed on 18 February 1996. The President proposed one question: *Are you for the general granting of property rights to citizens?* The "yes" answer was given by 96.15% of the voters. Out of 28,009,715 eligible voters 9,076,004

voted in the referendum, which was 32.4%. The referendum was therefore invalid.

Table 1. The first national referendum of 18 February 1996

Date	Subject	Turnout in %	Results
18 February 1996	The referendum on the enfranchisement of citizens	32.4	For 96.15%

Source: Author's own study based on Obwieszczenie Państwowej Komisji Wyborczej z dnia 20 lutego 1996 r. o wynikach głosowania i wynikach referendów przeprowadzonych w dniu 18 lutego 1996 r. and Centre for Research on Direct Democracy

On 21 December 1995 the Sejm passed a resolution on the directions of the use of State property. The referendum date was set for 18 February 1996. Four questions were asked:

(1) Are you for or against: obligations arising from the Constitutional Tribunal's decisions towards pensioners, annuitants and retirees, and employees in the Civil Service will be fulfilled with the privatized state-owned assets?;
(2) Are you for or against: a part of the privatized state-owned assets will be assigned to public pension funds?;
(3) Are you for or against: the value of joint stock certificates in National Investment Fund will be increased?;
(4) Are you for the use of privatization bonds in the universal property restitution program? (Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 21 grudnia 1995 roku w sprawie przeprowadzenia referendum o niektórych kierunkach wykorzystania majątku narodowego).

Question 1 was answered "yes" by 92.89% of voters; Question 2 received 93.70% of "yes" votes; Question 3 gained 72.52% of "against" votes, and Question 4 was answered "yes" by 88.30% of voters. 9,085,145 out of 28,009,715 eligible voters took part in the referendum, which was 32.44% (Obwieszczenie Państwowej Komisji Wyborczej z dnia 20 lutego 1996 r. o wynikach głosowania i wynikach referendów przeprowadzonych w dniu 18 lutego 1996 r.). Consequently, the result of the referendum was invalid.

Table 2. The second national referendum of 18 February1996

Date	Subject	Turnout in %	Results
18 February 1996	The referendum on the directions of the use of State property	32.44	
	First question		For 92.89%
	Second question		For 93.70%
	Third question		Against 72.52%
	Forth question		For 88.30%

Source: Author's own study based on Obwieszczenie Państwowej Komisji Wyborczej z dnia 20 lutego 1996 r. o wynikach głosowania i wynikach referendów przeprowadzonych w dniu 18 lutego 1996 r. and Centre for Research on Direct Democracy.

On 25 May 1997 the Constitution-approving referendum was held, having become a kind of primary election. The political scene was divided into the supporters and opponents of the new Constitution. The Electoral Action Solidarity [Akcja Wyborcza Solidarność (AWS)] and the Movement for Reconstruction of Poland [Ruch Odbudowy Polski (ROP)] took measures aimed at influencing the parliamentary majority - the Democratic Left Alliance [Sojusz Lewicy Demokratycznej] and the Polish People's Party [Polskie Stronnictwo Ludowe] so that this bloc included in the new Constitution the solutions contained in the citizens' draft Constitution (Mołdawa 1996; Projekty Konstytucji 1993-1997 1997). When this turned out to be unrealistic, a demand was advanced that the two drafts: the one passed by the National Assembly and the citizens' draft be voted on in a referendum, which was obviously inconsistent with the law on the procedure for passing the Constitution. Then, the AWS and ROP called on the people to vote "no" in the referendum. Out of 28,324,965 of eligible voters 12,139,790 voted in the referendum, which was 42.86% (Obwieszczenie Państwowej Komisji Wyborczej z dnia 26 maja 1997 r. o wynikach głosowania i wyniku referendum konstytucyjnego przeprowadzonego w dniu 25 maja 1997 r.). 52.71% of voters were for the Constitution and 45.89% were against (Obwieszczenie Państwowej Komisji Wyborczej o skorygowanych wynikach głosowania i wyniku referendum konstytucyjnego, przeprowadzonego w dniu 25 maja 1997 r.). From the formal point of view this result was sufficient to adopt the Constitution. In practice, however, we can speak of many political and social embroilments (Gebethner 1997).

Table 3. The national referendum of 25 May 1997

Date	Subject	Turnout in %	Results
25 May 1997	The Constitution-approving referendum	42.86	For 52.71% Against 45.89%

Source: Author's own study based on Obwieszczenie Państwowej Komisji Wyborczej o skorygowanych wynikach głosowania i wyniku referendum konstytucyjnego, przeprowadzonego w dniu 25 maja 1997 r. and Centre for Research on Direct Democracy

On 17 April 2003 the Sejm passed a resolution on ordering a national referendum concerning Poland's membership of the European Union (Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 17 kwietnia 2003 roku o zarządzeniu ogólnokrajowego referendum w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej). The resolution was adopted by the votes of 417 Deputies, with one vote against and two abstaining. The date of the referendum was set for 7 and 8 June 2003. The question asked in the referendum was: *Do you consent to the Republic of Poland's entry into the European Union?* The question worded in this way was voted for by 366 Deputies, with 16 against, and 22 abstaining. Poland was among three countries, together with Slovakia and the Czech Republic, where the referendums were to last two days. This largely stemmed from fears about the turnout in the referendum and the wish to make it possible for as large a number as possible of the eligible voters to vote in the referendum. It should be also emphasized that the voting result in the accession referendum in Poland was binding on the authorities. The threshold for the validity of the referendum was set very high. In Poland it was over 50% of the turnout of citizens eligible to vote.

58.85% of those having the right to vote participated in the referendum, of which 77.45% voted in favour of Poland's entry in the European Union while 22.55% were against (Uchwała Sądu Najwyższego z dnia 16 lipca 2003 r. w przedmiocie ważności referendum ogólnokrajowego w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej, wyznaczonego na dzień 8 czerwca 2003 r., w którym głosowanie przeprowadzono w dniach 7 i 8 czerwca 2003 r.; Obwieszczenie Państwowej Komisji Wyborczej o wyniku ogólnokrajowego referendum w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej; Uchwała Państwowej Komisji Wyborczej z dnia 21 lipca 2003 r. o skorygowanym wyniku ogólnokrajowego referendum w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej). A comparatively high turnout and support for Poland's accession was reported in gminas [municipalities] with over 100,000 inhabitants (turnout over 60%, support for accession over 80%) (Obliczenia REGIOset). Generally, higher support for Poland's entry into the EU was expressed by town

inhabitants (82.80% in town versus 65.76% in the countryside). Similarly, the turnout in referendums in towns was higher as compared with the turnout in the countryside (63.12% in towns versus 51.22% in the countryside) (Obwieszczenie Państwowej Komisji Wyborczej z dnia 21 lipca 2003 r. w sprawie skorygowania wyników głosowania w referendum ogólnokrajowym w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej; Uchwała Sądu Najwyższego z dnia 16 lipca 2003 r. w przedmiocie ważności referendum ogólnokrajowego w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej, wyznaczonego na dzień 8 czerwca 2003 r., w którym głosowanie przeprowadzono w dniach 7 i 8 czerwca 2003 r.). The highest support for Poland's entry into the European Union's structures was reported in the provinces in western and south-western Poland (Opole, Silesia, Western Pomerania, Lubulskie, and Lower Silesia provinces). The lowest support for Poland's accession was reported in eastern Poland's provinces (first of all in the Podlasie and Lublin provinces).

Table 4. The national referendum of 7-8 June 2003

Date	Subject	Turnout in %	Results
7-8 June 2003	The referendum on concerning Poland's membership of the European Union	58.85	For 77.45% Against 22.55%

Source: Author's own study based on Uchwała Sądu Najwyższego z dnia 16 lipca 2003 r. w przedmiocie ważności referendum ogólnokrajowego w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej, wyznaczonego na dzień 8 czerwca 2003 r., w którym głosowanie przeprowadzono w dniach 7 i 8 czerwca 2003 r.; Obwieszczenie Państwowej Komisji Wyborczej o wyniku ogólnokrajowego referendum w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej; Uchwała Państwowej Komisji Wyborczej z dnia 21 lipca 2003 r. o skorygowanym wyniku ogólnokrajowego referendum w sprawie wyrażenia zgody na ratyfikację Traktatu dotyczącego przystąpienia Rzeczypospolitej Polskiej do Unii Europejskiej and Centre for Research on Direct Democracy.

On 6 September 2015 a referendum was held on single-seat constituencies in the elections to the Sejm, on the attitude towards the way of funding political parties from the State budget, and on introducing a presumption in favour of the taxpayer in disputes over the tax law. The referendum was initiated by the then President Bronisław Komorowski, who, having lost the first round of the presidential election, concluded that the decision would earn him the votes of the electorate. The debate over the referendum pointed to the ill-considered decision, hasty action motivated by the results of the first round of the presidential election unfavourable to President Komorowski, attempts to take over the votes cast for Paweł Kukiz, who supported single-seat constituencies. It

was emphasized that a referendum was not the best solution as far as the tax issues were concerned. The measures taken by the President were seen as political marketing because these actions, it was argued, were meant to gain advantage in the elections. Objections were emphatically raised against the excessive use of the institution of national referendum. The turnout was 7.8%. The answers were as follows: Question One – 78.75% of votes "for", Question Two – 82.63% of votes "against", Question Three – 94.51% of votes "for".

Table 5. The national referendum of 6 September 2015

Date	Subject	Turnout in %	Results
6 September 2015	The referendum on the single-seat constituencies in the elections to the Sejm, on the attitude towards the way of funding political parties from the State budget, and on introducing a presumption in favour of the taxpayer in disputes over the tax law	7.8	
	First question		For 78.75%
	Second question		Against 82.63%
	Third question		For 94.51%

Source: Author's own study based on Obwieszczenie Państwowej Komisji Wyborczej z dnia 7 września 2015 r. o wynikach głosowania i wyniku referendum przeprowadzonego w dniu 6 września 2015 r.; Obwieszczenie Państwowej Komisji Wyborczej z dnia 23 listopada 2015 r. o skorygowanych wynikach głosowania i wyniku referendum przeprowadzonego w dniu 6 września 2015 r. and Centre for Research on Direct Democracy.

After 1989 many initiatives of Deputies were launched as draft resolutions on holding referendums. For example, motions were submitted proposing referendums on the question of nuclear energy; on the electoral system, the structure of the Parliament, the model of Poland's political system, the second parliamentary chamber; on privatization and reprivatisation of property; on the enfranchisement of citizens; a referendum on reprivatization, on admissibility of tuition fees in public schools, on the system of local self-government; a referendum on the reform of administrative division of the Republic of Poland's territory and its political system; a referendum on reprivatization (proposed by the PSL Deputies in September 1999); a referendum on privatization and reprivatization of forests; a referendum on consent to ratify Protocol No. 6 to the European Human Rights Convention; a referendum on the scope, forms and costs of reprivatisation of public property taken over by the

State under the nationalization laws in 1944-1962; a referendum on the refusal to sell land to foreigners. Draft resolutions on holding a referendum on the admissibility of aborting pregnancies aroused most controversies, triggering stormy discussions (Rachwał 2010).

Between 1999 and 2012 over a hundred committees were registered in order to submit citizens' draft laws (inicjatywa obywatelska). One third of them submitted their proposals for debate in the Sejm, and only in eight cases the laws were passed. Examples of citizens' legislative initiatives include bills on amending the law on old-age and disability pensions paid by the Social Insurance Fund (FUS); on amending the law on the revenues of local self-government units; on amending the law on the education system and revenues of local self-government units; on the return to the Republic of Poland of persons of Polish descent deported and exiled into the mainland Soviet Union by its authorities; on amending the law on the protection of nature; on amending the law of 10 October 2002 on the minimum wage; on amending the law on the revenues of local self-government units; on the refund of medicines, food products for special nutrition purposes and medical devices, and the law on the profession of physician and the profession of dentist; on amending the law on the protection of animals; on amending the law on national and ethnic minorities and on regional language, and on some other laws; referendums on establishing 17 October as the Direct Sales Day; on the profession of physiotherapist; on amending the law concerning the pension entitlements of the Police, Internal Security Agency, Foreign Intelligence Agency, Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, Government Protection Bureau, State Fire Service, and Prison Service officers and their families, as well as on amending some other laws (Wykaz obywatelskich inicjatyw obywatelskich znajdujących się w Sejmie).

In the practice of the functioning of direct democracy at the local level what is still a problem is the material scope of the referendum. On the basis of regulations we can state that the scope of the mandatory referendum is very precisely determined while the scope of the optional referendum raises considerable doubts. They largely stem from the fact that the wording *a matter of particular importance to a gmina, district and province (voivodeship)* can be interpreted in various ways. The insight into the system in force is made possible by the decisions of the Supreme Administrative Court, which has repeatedly settled contentious issues concerning the referendum (Kisiel 2002). We can indicate, *inter alia*, an example from Oświęcim, where the town council put forward a proposal for a referendum concerning the area of the former Auschwitz concentration camp (Kisiel 2001).

Motions to dismiss a *wójt* (gmina head) or a mayor can also apply to the relevant council. Practice has confirmed the thesis on the difficulties connected with the dismissal of an executive body that has been directly elected. Out

of the referendums held, only a small number of them decided about the dismissal. This happens first of all because of the low turnout of voters. The motion to recall an executive body can also apply to mayors of large towns (called 'town presidents'). One can cite the example of Szczecin, where the motion to dismiss the mayor concerned the highly merited Solidarity movement activist Marian Jurczyk (Sawka 2004). Worth noting is also the form of the local referendum held in a town district [*dzielnica*]. For example, the authorities of Krakow's *dzielnica* III called a referendum in which the inhabitants voted for or against the introduction of one-way traffic in one of the streets (Nałęcka/Bukowski 2004). A proposal was also put forward that the dates of parliamentary and presidential elections be also the dates of holding local referendums. It appears that this move would increase turnout and prevent the referendum institution from functioning as an expensive toy.

The report on local referendums shows that between 2010 and 2013 over one hundred and thirty referendums on the dismissal of local self-governments were held (Raport o referendach lokalnych z dnia 6 września 2013 r.; Piasecki 2005; Piasecki 2009; Sieklucki 2012). Only in 20% of cases the referendums were valid, in the remaining cases the turnout was insufficient: during the 2010–2014 term of local self-government authorities there were 111 local referendums on the dismissal of local self-government units before the expiry of the term, including 81 referendums concerning executive organs and thirty concerning decision-making bodies (double referendums). *Regarding the dismissal of a wójt or a mayor, referendums were held in 55 gminas; referendums on the dismissal of a wójt or a mayor and the council were held in 26 gminas, and in four gminas the referendums concerned the dismissal of the local councils. 16 referendum initiatives turned out to be valid* (Raport o referendach lokalnych z dnia 6 września 2013 r.).

In practice, other controversial issues also appeared. One of them is enabling the *sołectwo* (subgmina) inhabitants to file an election protest in strictly defined cases (Andruszkiewicz 2003). Considerable confusion was caused by a news item published in the "Gazeta Wyborcza" daily, according to which the *sołtys* in one of *sołectwo* in the vicinity of Warsaw was a mobster, but he was trusted by the *sołectwo* inhabitants, who even changed the *sołectwo* statutes so that he could be elected to the post. Symptomatic were the voices of the so-called public opinion that *it is not the country bumpkins who rule*, but the regulations in the statutes. The problem thus appeared concerning the range of the matters that can be dealt with within local direct democracy (Zych 2003; Szarek 2004). Another question is connected with the striving of *Sołectwo* Associations for being granted the rights and responsibilities which would not be arbitrarily determined by gmina councils. We should remember that the gmina council has powers concerning the rules of electing a *sołtys*, members of the village meeting and of the *sołectwo* council. This is carried out through a resolution, the local statutes or regulations. *Sołectwo* Associa-

tions find it a very important matter to regulate by law the property rights exercised by the *sołectwo* (Wileński 2003).

Conclusion

The right to order a referendum is vested only in the Sejm and in the President acting with the consent of the Senate. Its practical implementation appears therefore to be very unlikely because it is difficult to gain a broad political consensus, which is necessary when a resolution to hold a referendum is taken by an absolute majority vote in the presence of at least half the statutory number of Deputies. That is why it is more likely that the use of this institution at the national level will be exceptional; it will serve to confirm the appropriate social and political support rather than to decide on matters of particular importance to the State. One of the essential problems is the complicated issues in and the vague construction of referendum questions (the referendums of 1996 and 2015). The referendum on the adoption of the new Constitution of 25 May had an effect on the introduction of new political-system solutions; however, it was a mandatory referendum. A similar situation took place with the accession referendum when the ruling elite regarded Poland's accession to the EU structures as very important. In practice, the national referendum is used instrumentally by diverse political entities. In other words, the use of this institution was an expression of calculations meant to implement their own political objectives rather than the consideration for the voice of the people (Marczewska-Rytko 2013: 199-214; Marczewska-Rytko 2010; Marczewska-Rytko 2015: 126-134).

Numerous controversies arise in connection with the problem of the validity of a referendum. It is a fact that the most important reason for the invalidity of a referendum is the failure to exceed the required turnout threshold. Consequently, there are opinions demanding that the required threshold be reduced or abolished altogether. Others, for example representatives of local self-government authorities, who have a negative attitude towards the institution of the referendum to dismiss the decision-making organ, rather support the idea of raising the turnout threshold. Some authors point out the lack of the political will to use the institution of the referendum on the part of politicians of all stripes (Zieliński/Bokszczanin/Zieliński 2003).

Over the last dozen years we can speak of many changes that specify the position and practice of the use of local referendum. Their aim was to eliminate ambiguities or to take a stance on the problems not resolved by law. In practice, all ambiguities have not been eliminated. On the contrary, we are dealing with arguments both among scholars studying the problem in question and lawyers, politicians or so-called ordinary citizens. These polemics seem

to show that the institution of referendum plays a significant role. However, some would like to diminish its role while others would seek to increase the frequency of its use. Changes in the current model of local authorities entail changes in resolutions concerning referendums. An example of such modifications can be the direct elections of *wójts* and mayors (Ustawa z dnia 20 czerwca 2002 roku o bezpośrednim wyborze wójta, burmistrza i prezydenta miasta). The law has widened the possibility of using the referendum institution to dismiss an executive organ elected in this way (Żarowski; Marecki 2004; Jendra 2003; Kowalik 2003).

Poland's accession to the structures of the European Union, together with the recourse to the accession referendum, had a positive effect on the debate and the use of different forms of direct democracy.

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Valentina Marinescu

Direct democracy in Romania

Determinants

In the case of Romania few theoretical approaches were made in order to explain the pecularities of direct democracy in comparison with the classical (”canonical”) models which exist in academic literature.

As a starting point of the present study, we adopt the assumption that, unlike the other East-Central European countries, where the transition from the communist rule to democracy was the result of peaceful movements or negotiations around a round table, Romania experienced a violent change of regime in December 1989 (Datculescu 1999).

After the change of the previous political system in December 1989, the political system which functions in Romania may be described as a representative democracy, governed by the directly elected President and Parliament (semi-presidential system), according to the provisions of the new Constitution (Camera Deputaţilor 1991). Executive power is exercised by the President of the Republic and the government. Romania has a multi-party system, with legislative power vested in the government and the two chambers of parliament: the Chamber of Deputies and the Senate. The judiciary power (Courts, prosecutors) is independent of the executive and the legislature.

The Romanian economy is the 16th largest in the European Union by total nominal GDP and the 13th largest based on the purchasing power parity (International Monetary Fund 2009). In 2015 and 2016, according to the International Monetary Fund, Romania had one of the biggest economic growths in Europe (Agerpres 2016).

At the same time, however, Romania is witnessing huge social inequalities, having one of the highest income inequalities in the European Union (Stanculescu 2007: 63-64). In 2005, for instance, the money incomes of the richest 20% were on average 7.1 times bigger than those of the poorest 20%, while in the European Union this ratio varied between 3.3 in Slovenia and 7.2 in Portugal (Stănculescu 2007). Following the 2008-2010 economic crisis, there is a corresponding social polarization in terms of geographical distribution, and some authors (Țâra 2013: 143) speak about “two Romanias”: one poor, without chances for development, and one dynamic, with the potential to bridge the gaps between it and the advanced European states.

The slow pace of economic development (although accelerated after Romania became a member of the European Union) and the high social polarization within the society have been mixed with the ambiguities of the Romanian electoral system. Thus, the legal provisions may lead to situations where a coalition of parties obtaining an absolute majority in the Parliament, or a party holding a relative majority in the Parliament, would be unable to nominate a prime minister because the President would refuse the nomination (with no party holding an absolute majority in the Parliament).

The consequence of this state of affairs is a strong politicization of the public life and limited access to the citizens' right to directly exercise power as direct democracy.

The present paper will try to present the pecularities of direct democracy in Romania after 1989.

The paper will seek to fill the lack of analysis related to the pecularities of direct democracy in Romania and try to verify the following research hypothesis:

The use of instruments of direct democracy in the process of exercising power is an indicator of the political awareness of the Romanian society.

The process of accession of Romania to the European Union had an impact on the development of direct democracy in this country (on the formal-legal and practical aspects of direct democracy).

The main methods of analysis used in this report were the secondary analysis of social documents, and the institutional-legal method applied to legal acts, historical recordings of the forms of direct democracy (people's assembly, referendum, citizens' initiative, and popular referendum-popular veto) that were used in Romania after 1989.

Formal-Legal Dimension

The present political system in Romania may be described as a representative democracy, governed by the directly elected President and Parliament (semi-presidential system), according to the provisions of the new Constitution of 1991 (Nohlen/Stöver 2010: 1589).

The new Romanian Constitution was adopted by referendum, on December 8, 1991, when, with a turnout of 66%, 53% voted in favor of the new Constitution (Nohlen/Stöver 2010: 1590).

The provisions of the Constitution regarding the subject matter of referendums and popular initiative: According to Article 72, paragraph 3, line (c), the organization and conduct of the referendum is regulated through organic law (Camera Deputaţilor 1991). Article 73 on legislative initiative provides that (Camera Deputaţilor 1991): *Legislative initiative belongs to:*

the Government; every member of the Parliament; at least 250,000 citizens entitled to vote (coming from at least ¼ of the counties, and at least 10,000 signatures per county or the city of Bucharest).

Article 90 of the Romanian Constitution provides that (Camera Deputaţilor 1991): *The President of Romania, after consulting the Parliament, may ask the people to express its will, through referendum, in matters of national interest.*

If the Constitution can be said to have set the general framework of the functioning of the direct democracy in Romania, the specific legal acts which refer to the functioning of popular referendum (as an instrument of direct democracy) were adopted later. On 22 February 1999 the Romanian Chamber of Deputies and the Romanian Senate adopted the Law regarding the organization and conduct of the referendum, which was submitted for promulgation to the President of Romania. On 2 April 1999, President Emil Constantinescu asked the Constitutional Court to analyze the constitutionality of a number of the provisions of this law. The Constitutional Court, during the debate held on 5 May 1999, decided that some of these provisions were unconstitutional and sent the decision to the presidents of the Chamber of Deputies and of the Senate, in order to start the procedure of re-examination of the law. Only after one year, in 2000, the law was re-formulated and adopted by both Chambers of the Romanian Parliament and, subsequently, the President promulgated it (Monitorul Oficial 2000).

Alongside with the Law 3/2000 on the organization and holding of a referendum (Monitorul Oficial 2000) the general functioning of the direct democracy's instruments in Romania was also regulated by the Decree-Law 92/1990 for the election of the Parliament and of the President of Romania (Monitorul Oficial 1990). According to the Decree-Law 92/1990 (Article 3) (Monitorul Oficial 1990): *The Parliament of Romania constituted of the Chamber of Deputies and the Senate, as well as the President of Romania, is elected by universal, equal, direct and secret, freely expressed vote.*

In the same vein, the instruments of direct democracy are put into function at the local level. The Law 215/2001 of the local public administration states in Article 5 that (Monitorul Oficial 2001): *The authorities of public administration, fulfilling the local autonomy in communes and cities are the local councils, functioning as deliberative authorities, and the mayors, functioning as executive authorities.*

The same Law (215/2001) provides in Article 13 that (Monitorul Oficial 2001): *The councils of communes and cities are constituted of councilors elected through universal, equal, direct secret and freely expressed vote, under the conditions of the law regarding the local elections.*

As stated in the Romanian Constitution (Camera Deputaţilor 1991), the national referendum represents the form and means of direct consulting and expression of the sovereign will of the Romanian people in the following

matters (Camera Deputaţilor 1991): 1. Problems of national interest; 2. Dismissal of the President; 3. Revision of the Constitution on problems of national interest.

But what may the expression *problems of national interest* mean, taking into consideration the fact that a general definition of this broad term was not given? Over the years the debates in the public sphere pointed out several problems which can be assessed as being *of national interest* in Romania's case:

(1) There were fervent debates regarding the revision of the Constitution on what concerned the parliamentary immunity. According to the Constitution (Camera Deputaţilor 1991): *A deputy or a senator may not be arrested, searched or sent on trial, criminal or civil, without the agreement of the Chamber of Deputies, respectively of the Senate, after hearings on the matter have been organized.* There were various proposals for the revision of the Constitution, but the popular belief is that *members of Parliament take advantage of their position to avoid criminal or civil charges and trials* (Culic 2000).
(2) Another public debate concerned the possibility of revising the Constitution regarding the form of government, i.e. should Romania be a republic or a monarchy? The debate was not so frequent in the last years but even at present certain monarchist groups would like to see King Michael I back on the throne of Romania. Also, certain public personalities suggested that there should be held a referendum regarding this issue.

The principle of consultation of citizens on matters of local interest (or local referendum) is a component of local democracy, allowing the direct intervention of local communities in solving certain problems (Soós/Tóka/Wright 2002). The principle of consultation of citizens derives from local autonomy, as the local referendum is a genuine feature of it (Soós/Tóka/Wright 2002).

In Romania, as in other European countries, local collectivities have the right to intervene directly in the administration in some cases, through a referendum or other forms prescribed by law (Dragoş/Neamţu 2007). The principle of consultation of citizens on matters of local interest or local referendum is a component of local autonomy secured by constitutional regulations (Dragoş/Neamţu 2007).

The local referendum as well as the national one is an element of direct democracy, as it provides local communities with the opportunity to intervene directly in resolving issues of local interest (Devas/Delay 2006).

In Romania the organization of a local referendum is regulated through Law 3/2000 regarding the organization and holding of a referendum, the same

law that regulates the organization of national referendums (Monitorul Oficial 2000).

Article 13 of this law states that (Monitorul Oficial 2000):

(1) Issues of particular interest in the territorial administrative units and territorial-administrative subdivisions of municipalities may be subject to the residents' approval by local referendum in the condition of this law.
(2) A local referendum can be organized in all villages and towns of the commune or city or only in some of them. If the referendum is at the county level, it can take place in all municipalities and cities in the county or only some of them that are directly concerned.

In the next article (Article 14) of the same general law (Law 3/2000) it is provided that (Monitorul Oficial 2000):

(1) The issues subject to referendum shall be determined by local or county councils, as appropriate, on a proposal from the mayor or the president of the county council.
(2) All citizens are called upon to decide "yes" or "no" on the question submitted to referendum, deciding by majority of votes cast at the respective administrative-territorial unit.

As in the case of putting in function the instrument of direct democracy at the national level there are some observable issues raised by the use of those instruments at the local level.

Thus, according to opinion polls made in the last twenty-six years the Romanian population generally believe they do not have a significant say in the decisions taken at a local level. The general attitude towards local administration and local government was and remains one of high distrust. People feel and frequently complain that the local administration and local government are unwilling or unable to satisfy their requests or wishes.

After the accession of Romania to the European Union as a full member (2006) the use of the instrument of direct democracy at the local level was more frequent than in the past (Coulson/Campbell 2013). In recent years, popular consultations take place much more often, especially in rural areas or small localities, at which public matters are discussed and decisions affecting the whole population are made (Baldersheim/Illner/Wollmann 2013). The number of cases has also increased when different political personalities suggested that the public will should be consulted in taking decisions affecting the local population (Baldersheim/Illner/Wollmann 2013).

One such instance in which direct democracy's instruments were involved was the case of anti-fracking movements in Romania 2013-2016.

Practical Dimension

Referendums which are held at the national level can be initiated only by elected representatives of the citizens. Under the legal provisions in force in Romania it is not possible for an initiative for a national referendum to be initiated by citizens (Setälä/Schiller 2012).

Since 1989, six national referendums have been held until now: two about a constitutional referendum (1991 and 2003), two on presidential impeachments (2007 and 2012), one on reforming the Romanian voting system (2007) and one on parliamentary reform (2009).

We can distinguish between three levels of use of the national referendum as an instrument of direct democracy in Romania: 1) Constitutional; 2) Electoral and Parliamentary system; 3) Presidential tenure.

At the constitutional level, the first Romanian referendum was held in Romania on 8 December 1991 on the topic of approving the new post-communist, democratic Constitution.

With a turnout of 67.3%, the Romanian democratic Constitution was approved by 79.1% of voters.

Table 1. The national referendum of 8 December 1991

Date	Subject	Turnout in %	Results
8 December 1991	Approval of the Romanian Constitution	67.3	Approved (79.1%)

Source: Nohlen/Stöver, 2000: 1591.

Twelve years later, on 18 and 19 October 2003, a referendum on the revision of some articles of the Romanian Constitution from 1991 was held. With a turnout of 55.7% the proposed amendments to the Constitution were approved by 91.1% of voters.

Table 2. The national referendum of 18-19 October 2003

Date	Subject	Turnout in %	Results
18 -19 October 2003	The revision of the Romanian Constitution	55.7	Approved (91.1%)

Source: Dinita, 2012. https://www.democracy-international.org/sites/default/files/PDF/2012-07-15_Events_SummerAcademy_Romania%20%281%29.pdf.

Until now there has been no other referendum related to amendments to the existing Constitution or the approval of a new one.

At the next level – that of the electoral and Parliamentary systems – in Romania the referendum as an instrument of direct democracy was used twice. Thus, on the same day with the first elections for the European

Parliament (after Romania became on 1 January 2007 a full member of the European Union) a referendum on changing the voting system to single-member voting was held in Romania (Asociația ProDemocrația 2008). The referendum was called by the then President, Traian Băsescu, on 23 October 2007 when the Parliament of Romania failed to meet the deadline he had set for passing the changes of the voting system in Romania (Asociația ProDemocrația 2008).

The Romanian voters were asked to say "yes" or "no" to the following question: *Do you agree that, beginning with the next elections that will be held for the Romanian Parliament, all deputies and senators should be elected in single-member constituencies, based on a majority vote in two rounds?*

The reform of the voting system would in fact lead to the elections of Senators and Deputies in a two-round electoral system (Asociația ProDemocrația 2008) and would also reduce the number of members of the Parliament by around 20% (Asociația ProDemocrația 2008).

Table 3. The national referendum of 25 November 2007

Date	Subject	Turnout in %	Results
25 November 2007	The reform of the Romanian voting system	50	Approved (81.36%)

Source: Asociația ProDemocrația, 2008. http://www.apd.ro/files/publicatii/brosura_uninominal.pdf.

Due to the fact that the Law no. 3/2000 on organizing and holding the referendum states that, in order to validate the referendum results, the turnout should be *at least half plus one of the persons registered on electoral lists* (Asociația ProDemocrația 2008) the results of the referendum were declared invalid by the Constitutional Court of Romania (Asociația ProDemocrația 2008).

On 22 November 2009, on the same day with the first round of the Presidential elections, a referendum on modifying the size and structure of the Parliament from the current bicameral one with 137 senators and 334 deputies to a unicameral one with a maximum of 300 seats was held (Dinu 2009).

The electors were asked two questions on two separate ballots as follows: *1. Do you agree to Romania's adoption of a unicameral Parliament?2. Do you agree to the reduction of the number of parliamentarians to a maximum of 300 persons?*

Table 4. The national referendum of 22 November 2009

Date	Subject	Turnout in %	Results
22 November 2009	The reform of the Romanian Parliament – The adoption of an unicameral Parliament	50.95	Approved (77.78%)

Source: Biroul Electoral Central, 2009. http://www.bec2009p.ro/Documente%20PDF/Rezultate/Rezultate%20finale%20turul%20I/RPU_BEC.pdf.

Table 5. The national referendum of 22 November 2009

Date	Subject	Turnout in %	Results
22 November 2009	The reform of the Romanian Parliament – The reduction of the number of parlamentarians	50.95	Approved (88.84%)

Source: Biroul Electoral Central, 2009. http://www.bec2009p.ro/Documente%20PDF/Rezultate/Rezultate%20finale%20turul%20I/RPU_BEC.pdf.

To validate the referendum, as the Law 3/2000 stated, a turnout of 50% +1 of the number of voters was needed. The Romanian Central Electoral Commission validated the referendum stating that 50.16% (9,320,240 of the 18,293,277) of eligible voters had cast their votes (Biroul Electoral Central 2009).

Despite the fact that the referendum of 2009 on the parliamentary reform was validated immediately by the central authorities, no further action was taken after that moment to implement the will of the people and the Parliament remains both bicameral and with well over 300 members.

The two referendums on the impeachment of the president (2007 and 2012) marked the new use of these direct democracy instruments in the recent history of Romanian democracy.

On 19 April 2007 the Romanian Parliament suspended President Traian Băsescu (Institutul "Ovidiu Șincai" 2007) and a national referendum was to be held on this issue (Institutul "Ovidiu Șincai" 2007) to decide by popular vote whether to dismiss the incumbent president (Institutul "Ovidiu Șincai" 2007).

According to the law (article 5(2) of the Law 3/2000 on the organization and holding of a referendum), an absolute majority of all Romanians with the right to vote is required for a dismissal referendum to be valid (50% +1), which means that almost nine million people would have had to vote against Băsescu (Institutul "Ovidiu Șincai" 2007). Otherwise, he would regain full prerogatives. If President Băsescu had been dismissed by the referendum, early presidential elections would have been called in 2007 (Institutul "Ovidiu Șincai" 2007).

The question printed on the ballots was (Institutul "Ovidiu Şincai" 2007): *Do you agree with the removal of the President of Romania, Mr. Traian Băsescu, from office?*

It should be noticed that the question was modified to include the name of the president even though article 9 in the Law 3/2000 already established the content of the question without names of presidents (Institutul "Ovidiu Şincai" 2007).

On 24 April, the Romanian Parliament voted to organize the referendum on 19 May 2007 and included an amendment proposed by the opposition which stipulated that in case the Constitutional Court found the referendum invalid, the Parliament would decide on further procedures (Institutul "Ovidiu Şincai" 2007).

The Romanian Parliament's decision started a debate on the referendum issue generated by the law not providing for the hypothesis that the referendum to dismiss the president would be considered formally not valid by the constitutional Law on account of low turnout.

According to paragraph (2) of Article 5 in the Law 3/2000, a referendum is valid only if the majority of citizens registered in the electoral lists participate in the referendum, regardless of their votes or the validity of their votes once they have participated. This condition applies to all referendums and only if met, the referendum will be regarded by the Constitutional Court as formally valid. But neither the Constitution nor the law on referenda give any solution to the invalidity issue, as to what would happen afterwards with the legal effects of the suspension vote or the re-instatement of the President with full prerogatives (Institutul "Ovidiu Şincai" 2007).

Table 6. The national referendum of 19 May 2007

Date	Subject	Turnout in %	Results
19 May 2007	The dismissal of the President of Romania, Mr. Traian Băsescu	44.45	Not approved –small turnout (vote for the impeachement: 24.94%)

Source: Institutul "Ovidiu Şincai", 2007. http://www.fisd.ro/PDF/mater_noi/Referendum_Raport_FINAL_1%20iunie%202007.pdf.

Due to the fact that turnout was under the threshold prescribed by law (50% +1 of the number of voters, that is, around nine million voters recorded at the polls) (Institutul "Ovidiu Şincai" 2007) the Romanian Central Electoral Commission invalidated the referendum, its results having no legal force and the President remained in office (Institutul "Ovidiu Şincai" 2007).

Five years later, in 2012, a new national referendum on the impeachment of President Traian Băsescu was held (Romanian Academic Society 2012). The referendum was required after the Parliament voted in favor of impeaching the incumbent president on 6 July 2012, and it had to take place

within a month after the vote (Romanian Academic Society 2012). On the day before the vote in the Parliament, the government changed the Law 3/2000 to enable an impeachment referendum to be valid if a majority of voters voted in favor (Romanian Academic Society 2012).

Following the criticism of this tactics from the European Union (Romanian Academic Society 2012), which accused the Parliament of *undermining the rule of law* (Romanian Academic Society 2012) the leaders of the main opposition parties (Victor Ponta and Crin Antonescu) called for obeying the ruling by the Constitutional Court to require a turnout of 50% plus one to render the result of the referendum valid (Romanian Academic Society 2012).

The opinion polls made in July 2012 showed a majority of Romanians favoring the impeachment of the President (Romanian Academic Society 2012), but they also estimated a low turnout - around 46% (Romanian Academic Society 2012).

On 29 July 2015 the voters were asked the question: *Do you agree with the dismissal of the President of Romania, Mr. Traian Băsescu?*

Once again, as in the case of the referendum of 2007, the question was modified to include the name of the President even though the Law 3/2000 stated that the question should not make any reference to a specific person (Romanian Academic Society 2012)

The exit polls made on 29 July 2012 showed that more than 80 % of the voters voted for the impeachment of the President, but the turnout was under the 50% required by the Law 3/2000 – in fact, it was of 46.24% (Romanian Academic Society 2012).

Table 7. The national referendum of 29 July 2012

Date	Subject	Turnout in %	Results
29 July 2012	The dismissal of the President of Romania, Mr. Traian Băsescu	46.24	Not approved – small turnout (vote for the impeachement: 88.70%)

Source: Romanian Academic Society, 2012. http://sar.org.ro/romania-economia-politica-a-unei-crize-constitutionale/

The turnout was estimated to have been around 51.6% in rural areas and 41.8% in cities, with Bucharest at 40.0% (Romanian Academic Society 2012). The highest turnout was reported in Muntenia with a turnout of over 50% and some counties having over 60%, including Olt, 74.7%; Mehedinți, 70.5%; Teleorman, 70.2%; Giurgiu, 60.7%; and Vâlcea, 60.4%. Eight polling stations in Olt County had a turnout of over 100%, the highest being 126% (Romanian Academic Society, 2012). In other parts of Romania the turnout was below 50%, with the lowest level in Transylvania. The counties with the

lowest turnout were Harghita, 11.6%; Covasna, 20.6%; Satu Mare, 28.2%; Mureş, 34.0%; and Arad, 35.0% (Romanian Academic Society 2012).

Under the law, the Constitutional Court issues the final verdict in the case of the validity of the referendum. Final results from the Central Electoral Bureau were published on 1 August 2012. On 2 August 2012, the Court announced that a verdict for the validity of the referendum would be pronounced after 12 September 2012 (Romanian Academic Society 2012). Up to that date, all the authorities would have to clear up the electoral lists, in order to calculate correctly the voter turnout. Finally, the verdict would be presented in a joint session of Parliament. Meanwhile, the Constitutional Court rescheduled the verdict for 31 August 2012 (Romanian Academic Society 2012). A second rescheduling placed the verdict on 21 August 2012 (Romanian Academic Society 2012) The Constitutional Court of Romania subsequently declared the referendum invalid, reinstating Băsescu as President of Romania, which took place on 28 August 2012 (Romanian Academic Society 2012).

The Romanian Constitutional Court declared the referendum invalid in September 2012 (Romanian Academic Society, 2012) by a vote of 6–3 due to the fact that the turnout did not reach 50%+1, as requested by the Law 3/2000 and, consequently, the President remained in office until the presidential elections in November 2014.

At the end of 2013 and in the first months of 2014 (Vaslui County) a protest movement (”revolt”) took place in Pungeşti village after Chevron Company had obtained a building permit for the location of the first derrick for shale drilling in Vaslui County. Moreover, in 2013 Chevron Company received all the necessary approvals from the state authorities for soil exploration in a perimeter within the Siliştea village in Pungeşti (Vesalon and Creţan 2015). Three years later – in March 2016 – a referendum on “local interest issues” was organized in Pungeşti (Vesalon/Creţan 2015). Although the results of the referendum are still under debate in Court (Vesalon/Creţan 2015), the Pungeşti case showed some strength and weakness of the Romanian instruments of direct democracy at the local level.

On 14 October 2013 a manifestation of the people from Pungeşti against Chevron started with 150 protesters. The protesters blocked the access of Chevron machineries to install the derrick near the village. Protests escalated in the next three days. On 16 October, more than 500 villagers of Pungeşti and surrounding localities, joined by activists from Bârlad, Iaşi and Bucharest, formed a human shield in front of the bulldozers (Goussev/Devey/Schwarzenburg/Althaus 2014). On the spot, over 200 gendarmes were mobilized because the Vaslui-Gârceni county road was blocked by angry protesters (Goussev/Devey/Schwarzenburg/Althaus 2014). Likewise, the gendarmes formed a cordon meant to release the traffic. The protesters tried to break the cordon, but the gendarmes intervened in force. In

fierce clashes between the protesters and gendarmes 10 people were injured, including an 81 year old man who suffered a panic attack (Goussev/Devey/Schwarzenburg/Althaus 2014). The protesters installed tents and gathered food and warm clothes as they continued their protest overnight. They also created an Internet TV channel, TV Pungeşti, that covered 24 hours of 24 the events on the protest camping site (Goussev/Devey/Schwarzenburg/Althaus 2014). Even if it did not appear on the TV program, TV Pungeşti amassed up to 75,000 views in a month and a half (Goussev/Devey/Schwarzenburg/Althaus 2014).

About one month later, after Chevron representatives announced the suspension of works in the area, civil conflicts re-emerged. On 2 December, when Chevron decided to resume exploration operations, an impressive convoy of gendarmes, police and firefighters went to the area before the break of dawn to secure the movement of Chevron machineries. Gendarmes occupied the village, blocking all access points, preventing entry or exit from the perimeter for 24 hours (Goussev/Devey/Schwarzenburg/Althaus 2014). Early in the morning, about 100 villagers blocked the road, trying to obstruct the access of Chevron equipment to the concessioned land (Goussev/Devey/Schwarzenburg/Althaus 2014). Hundreds of gendarmes were mobilized on the spot and ordered the protesters to clear the way. While activists claimed that around 1,000 law enforcers were taking part in the operation, police put the number at 300 (Goussev/Devey/Schwarzenburg/Althaus 2014). In the ensuing clashes, two people were injured and 30 were loaded into vans and transported to the police station (Goussev/Devey/Schwarzenburg/Althaus 2014).

Maria-Nicoleta Andreescu, executive director of the Helsinki Committee Association for the defense of human rights in Romania, declared afterwards (Vesalon/Creţan 2015): *There are important signs that indicate that the gendarmes' actions were at least abusive if not illegal. It is very clear that by restricting the access of the press in the area the authorities did not allow the public to be informed.*

The protests continued in the following days. They escalated, and the elderly, women and children rushed to fight against the gendarmes, throwing firecrackers. Security forces used tear gas and formed a human shield around the plot of land where Chevron would install the first derrick in Romania (Goussev/Devey/Schwarzenburg/Althaus 2014). The protesters broke the cordon of gendarmes and penetrated into the land concessioned to Chevron. Angry people threw stones at gendarmes and knocked down the entire perimeter fence installed by the U.S. company workers (Goussev/Devey/Schwarzenburg/Althaus 2014). Gendarmes regrouped and responded with force. The vans with the 22 people arrested during altercations were stopped by 50 protesters that lay on the roadway (Goussev/Devey/Schwarzenburg/Althaus 2014).

On 8 December, Chevron announced that it resumed work in the commune of Pungeşti, after they had suspended operations the day before because of violent demonstrations (Vesalon/Creţan 2015).

The command of Vaslui Police issued an order according to which the commune of Pungeşti became *a special area of public safety*, the fact that required strict control of people and vehicles crossing the locality (Vesalon/Creţan 2015).

On 26 March 2014, the Romanian Ombudsman sent a recommendation to the Minister of Internal Affairs on respecting citizen rights and freedoms, in the context of establishing a *special area of public safety* (Kadar 2014; Vesalon/Creţan 2015).

On 8 April, up to 200 villagers from Pungeşti and neighboring communes gathered near the Chevron site to protest against the company's intention to begin shale gas exploration. Protesters threw eggs and apples at the Chevron coach and clashed with law enforcers (Kadar 2014; Vesalon/Creţan 2015). The same month, on 25, another incident occurred in Pungeşti: the mayor of the commune was hiding in his office in the city hall, while an angry crowd demanded his resignation (Kadar 2014; Vesalon/Creţan 2015).

The protests of solidarity with the so-called "Pungeşti revolt" took place in Bucharest, Cluj-Napoca, Timişoara, and Sibiu (Kadar 2014; Vesalon/Creţan 2015). In Bucharest, more than 4,000 people gathered in University Square, from where they marched to the Government headquarters in Victory Square (Kadar 2014; Vesalon/Creţan 2015).

The "Pungeşti revolt" and accompanying movements were also extensively covered by the major media.

In October 2013, during a meeting of local councilors, it was agreed that a local referendum would be held on the use or banning of shale gas exploration and exploitation in the commune. Furthermore, one of the councilors demanded that the question of resignation of the mayor be included in that referendum (Ziare.com 2016a).

In the meantime, representatives of the Chevron Company announced, on 17 October, that they would suspend work on shale gas exploration in Siliştea, Pungeşti commune. The statement said that the company's priority was (Ziare.com 2016a): *To conduct these activities in a safe and environmentally responsible manner.*

Despite the fact that Chevron ceased to operate in the Vaslui County, a referendum was held in Pungeşti on March 20, 2016 on the dismissal of the mayor in office, since he was held responsible for the agreement between the local administration and Chevron Company.

The referendum registered a turnout of 34.3%, of which one third voted for the dismissal of the mayor in office. The result caused new tensions within

the community due to a low turnout of the voters and the regulations regarding the necessary results to validate a local referendum.

According to the law, a local referendum is regulated in Romania both by the Referendum Law (Law 3/2000) and the Local Government Act (Law 215/2001). To be more specific, while the first law (Law 3/2000) provides that the referendum is valid if at least 30% of people registered in permanent electoral lists participate in it, the second one (Law 215/2001) requires a quorum of 50% plus one of the total constituency in order to validate a local referendum.

At present the final verdict concerning the results of the local referendum in Pungeşti is still under debate by the Court (Ziare.com 2016b).

Citizens' legislative initiative has been regulated in Romania by the 1991 Constitution (Article 74) and by the specific Law 198/1999 (Monitorul Oficial,2004). The way in which the Romanian Constituent Assembly and, further, the Romanian Parliament regulated it was assessed as "excessively cautious" by Romanian political scientists (Iordache 2011). The number of total signatures requested for the promotion of the citizens' initiative varied, and, in time, one could record a decrease in it– from 250,000 signatures, according to the Romanian Constitution to 100,000 signatures according to the Law 1989/1999. But the entire process of promoting it at the level of the Romanian Parliament is rather a complicated one: after the required number of citizens' signatures is reached, the proposal is sent to the Romanian Constitutional Court to verify the fulfillment of conditions stipulated by the Constitution and to validate (or invalidate) the lists of its supporters. If the proposal is accepted by the Romanian Constitutional Court, then the citizens' legislative initiative goes to the Parliament, which has the obligation to submit it to debate, but it can change, and may ultimately adopt or reject the initiative (Monitorul Oficial 2004).

In view of the complex process outlined above, the number of successful citizens' legislative initiatives was a small one over the last twenty-eight years.

In 2004 a citizens' legislative initiative requested at least 6% of GDP for Education. The proposal was submitted to the Parliament by an initiative group consisting of 19 people, mostly union leaders in education. In a few months they succeeded in collecting 190,135 signatures from citizens, almost double the number of signatures required by law. This bill entered the parliamentary debate on August 30, 2004, and at the outset, all parties represented in Parliament declared their full support for this project. After being adopted by the Chamber of Deputies, the project reached the Senate, the decisional Chamber, where it was blocked in April 2005 when the Committee on Budgets of the Chamber of Deputies requested an additional report. In the meantime, the Law of Education had been amended by the Government, and the Education Ministry received 6% of GDP in 2007.

Meanwhile, the citizen's initiative remained blocked at the Romanian Senate until 2010, and starting with 2011 it remained without its object, as the old education law was repealed with the entry into force of the new Law on National Education (Law 1/2011).

On 23 October 2009, an initiative committee headed by a GP from Mures county, Dr. Dorin Gabor, at that time vice president of the National Society of Family Medicine, submitted to the Senate a bill which provided that the total annual funds for financing health would be at least 6% of GDP and the annual fund for primary care would represents less than 12% of the National Unique Health Insurance. The proposal never reached the Parliament due to the fact that during the verification procedure of the lists of signatures, the Constitutional Court found a number of cases that were not certified by a signature and the Constitutional Court decided that the initiative did not meet the constitutional requirements (Iordache 2011).

The third example of a citizen's initiative is related to the Romanian Constitution, namely the definition of the "family" as it appears in the Romanian fundamental law. On 20 June 2016 the Romanian Constitutional Court approved a proposal initiated by the NGO "Coalition for Family" to amend Article 48, paragraph 1 of the Romanian Constitution ("Family"). The proposal intends to change the current text of the Constitution which refers to marriage between spouses with the following statement: *The family is created through free marriage between a man and a woman, their equality and the right and duty of parents to ensure the upbringing, education and instruction of children* (Antena3 2016). At present the project is under debate in the Romanian Parliament.

Conclusion

As has been explained in the present paper, direct democracy is a real instrument in Romania, especially at the national level. In this case direct democracy is used mainly as a "weapon" in political battle and not as a structural way of expressing people's empowerment. At the same time, the activities of grass-roots movements are observable at the local level - they use the instruments and methods of direct democracy but its general image at this level is still weak and fragmented.

No research hypothesis presented at the beginning of the article was validated by our analysis. In other words, we cannot affirm that, on the one hand, the use of instruments of direct democracy in the process of exercising power is an indicator of the political awareness of the Romanian society at the national level. The national referendums were initiated and conducted by the political parties after 1989. At the local level, as the Pungeşti case study

shows, the instruments of local democracy (e.g. referendums) were used with a certain delay, and also in relation to electoral campaigns (Ziare.com 2016b). At the same time, the complexity of the legislative process made the citizens' legislative initiative directly dependent on the games that the political parties play within the Parliament, as was obvious in the case of 2006 and 2009 proposals (Iordache 2011).

On the other hand, as the chronology of the instruments of direct democracy proved, the process of Romania's accession to the European Union did not have any impact on the development of direct democracy in this country. The increase in the number of national referendums in Romania after 2006 (four referendums) was related to the peculiarities of the use of this instrument of direct democracy in Romania (e.g. referendum). The most important peculiarity is directly related to the results of the Romanian presidential impeachment referendums (2007 and 2012). Due to the great popular debate surrounding the results of those referendums in Romania, it is possible to ask whether the tensions between the Parliament, Government and the President favor or not the use of presidential impeachment as a method of dealing with political conflicts. A possible answer is that although the Romanian semi-presidential system is predisposed to conflicts between the President, Parliament and Government especially when the head of state has to carry out his/her mandate while having to deal with a hostile parliamentary majority, we cannot point to a strict causal relationship between the tendencies of the semi-presidential form of government and the practice of suspension of the President (Dimulescu 2010: 129). Taking the national-based data into consideration we cannot now offer a robust answer to this question. To this end, we have to make a comparative analysis at the European level of the ways in which impeachment referendums operate in semi-presidential political systems – such as France, for example.

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Wojciech Ziętara

Direct Democracy in Russia

Determinants

The history of the Russian Federation as an entity of international law is relatively short because it dates back to 1991 and is connected with the collapse of the Union of Soviet Socialist Republics (USSR). Nevertheless, the Russian statehood is definitely longer and it goes back as far as the 9th century. Specific patterns of the political culture of the Russians were largely influenced by repressive regimes. In the 13th century the majority of Ruthenian lands were ruled by Tatar khans, who were defeated by the Moscow rulers in the 14th century. However, the political culture of the state of Muscovy was pervaded with Eastern traditions. Ivan IV (the Terrible) was one of the most known rulers of the Russian Empire who exercised power in a despotic way. During the reign of Peter the Great and Catherine I of Russia the absolute monarchy was consolidated. The Romanov dynasty ended its rule over Russia with the victory of the Bolsheviks in the October Revolution of 1917. In 1922 the Soviet Union (USSR) was born which became a totalitarian state under the rule of Vladimir Lenin and then Joseph Stalin (Broda 2007: 49). Political changes which started after Stalin's death limited repression of the citizens only to some extent. The state in its essence remained centralized, anti-democratic, and anti-civic.

In view of the foregoing, the model of political culture formed over centuries in Russia is characterized by the subordination of citizens to the state power. Russian and Soviet rulers were not subordinated to any civil control and that is why there are no democratic, civic and participatory attitudes among the citizens. Józef Tymowski (2011: 43) even said that *there has never been a civil society in Russia. The system of behavior and the system of values, both under the czarist and Soviet rule, did not have any or only a limited connection with the freedom of the individual. The civil society in contemporary Russia is still in the embryonic stage of development*. Victoria Dunaeva (2011: 106) similarly assessed the political culture in Russia saying that we are dealing with *weak* civil society and the problem of civil trust in Russia. At the same time, however, she stressed that valuable social initiatives are emerging at the local level, without being continued at the national level.

Jakub Potulski (2007: 225) summed up the subject: *the political culture of Russians was an important barrier in the process of democratization of the*

country, whereas the institutions of direct democracy can be utilized only with active civil participation. Otherwise, direct democracy may be used by the authorities to implement their own political aims. This can be exemplified by the institution of a referendum which was treated instrumentally in Russia . Initially, in 1917, the Bolsheviks saw the referendum as a method of guaranteeing the nation's right to self-determination. The 1924 Constitution of the Soviet Union granted each republic the right to leave the state but no referendum on this subject was held in the Soviet Union's history (Brady, Kaplan 1994: 178). A similar assessment should apply to the intentions of the Soviet authorities which, after introducing a referendum into the Constitutions of the USSR of 1977 (The Constitution of the Soviet Union 1977) (in Articles 5, 108, 115, 137) adopted neither regulations nor executive acts about it. Only the political system changes begun by Mikhail Gorbachev led to the adoption of the law on referendum on 27 December 1990 (Hill/White 2014: 18). Until that time, a referendum as an example of direct democracy was an institution which existed only theoretically while its implementation was impossible in practice.

A national referendum was held three times in the history of the Soviet Union and the Russian Federation. For the first time, still under the Soviet Union, a referendum was held on 17 March 1991.One question was asked at the Soviet Union level, whereas, at the level of the Russian Soviet Federative Socialist Republic (RSFSR), a second referendum question was added. The referendum which was held on 25 April 1993 was organized within the Russian Federation and the citizens answered four referendum questions. The referendum of 12 December 1993 was a constitutional one and the citizens voted on a new draft of the constitution. It should be stressed that the abovementioned referendums were organized at the downturn of the state of the Soviet Union and at the beginning of the Russian Federation and they served to strengthen the political-system position of the President and to legitimize his policy. After the approval for the political system model, the organization of referendums at the national level was abandoned. In order to limit the usage of this institution, legal solutions which hindered the organization of a referendum by the citizens were introduced. That is why a referendum remained a domain of the central authority (the president of the Russian Federation).

Formal-Legal Dimension

The legal system of the Russian Federation is understood in this section as the Constitution of the Russian Federation and the Constitutions of twenty two federal Republics that make up the Russian Federation (without the statutes of

the particular territories, regions (okruga), cities of federal importance, autonomous regions, and autonomous areas (oblasts). Furthermore, the article refers to the level of federal constitutional law omitting federal acts and the decrees of the President of the Russian Federation treating them as lower-level legal acts.

The most important legal act in the Russian Federation is the Constitution adopted as a result of the constitutional referendum of 12 December 1993 (The Constitution of the Russian Federation 1993). Russia is a federal state consisting of many entities (subjects) which constitute the state community. Pursuant to Article 65 of the Constitution of the Russian Federation, the Russian Federation includes republics, territories, cities of federal importance, autonomous regions, and autonomous areas. Republics occupy the most important position in the system of federal subjects (entities) (Zieliński 2005: 43). The essence of separate autonomy is the fact that particular republics have their own constitutions. They were adopted in the period between 1993 and 2003, and the last one in 2014 (The Crimea Constitution 2014). The constitutions of the republics have to comply with the federal law, which is why the legal regulations on a referendum contained in the Constitution of the Russian Federation were reflected in the Constitutions of particular Federal Republics. The Constitutions are coherent as far as the language and their position in constitutional classification. Five main articles on referendum were placed in the Constitution of the Russian Federation; all of them were repeated in the constitutions of particular republics.

Legal regulations of referendum as an institution of direct democracy were adopted in the Constitution. Article 3 sections 1 and 2 stipulates that the only source of power in the Russian Federation will be its multinational people and that they will exercise their power directly, and also through the bodies of state power and local self-government. According to Article 3 section 3, the supreme direct expression of the power of the people will be referenda and free elections. Eugeniusz Zieliński (2005: 20) concluded that the term *people* in this article was used in a socio-political sense, meaning *all those who make up a community tied together with personal fates and who exist in the federal Russian state*.

Another reference to the institution of a referendum may be found in Chapter II "Rights and Freedoms of Man and Citizen", in which a list of rights and freedoms was specified. Article 32, section 1 says that *Citizens of the Russian Federation shall have the right to participate in managing state affairs both directly and through their representatives*. Article 32 section 2 specifies that this right comprises the participation of citizens in referendums. It should also be stressed that Article 33 of the Constitution guarantees that *Citizens of the Russian Federation shall have the right to address personally,*

as well as to submit individual and collective appeals to state organs and local self-government bodies.

The institution of a referendum is also referred to in Chapter IV The President of the Russian Federation, where under Article 84 the President of the Russian Federation *shall announce a referendum according to the rules fixed by the federal constitutional law*. At the same time Article 92 regulates a negative situation because *In all cases when the President of the Russian Federation is incapable of fulfilling his duties, they shall temporarily fulfilled by the Chairman of the Government of the Russian Federation. The Acting President of the Russian Federation shall have no right to dissolve the State Duma, appoint a referendum, and also provisions of the Constitution of the Russian Federation*.

Chapter VIII refers to the institution of a referendum in the context of the rules on local self-government. Article 130 section 2 says that *Local self-government shall be exercised by citizens through a referendum, election, other forms of direct expression of the will of the people, through elected and other bodies of local self-government*. Zielinski (2005: 90) sums up that the system of local self-government is composed of rural and urban regions, quarters in towns, villages, settlements, and small towns. This system consists of the meetings of inhabitants, meetings of the representatives of residents, elective representative organs and executive bodies that decide on local affairs. Autonomy (self-government) is also manifested in the participation of the residents in referendums and general elections in order to elect their representatives to elective bodies.

Pursuant to Article 135 a referendum was included in the mode of adopting the new Constitution of the Russian Federation. The draft of the amendment of the Constitution of the Russian Federation will be considered adopted if over half of the voters who came to the polls supported it and on condition that over half of the electorate participated in the referendum.

The Constitutions of twenty two Republics of the Russian Federation are similar to the content and layout of the Constitution of the Russian Federation. The constitutional norms on a referendum were also included in the Constitutions of particular Republics. The differences concern the numbering of the Articles although it is a matter of technical nature. In most cases, however, the contents of the Articles remained the same. It should be stressed that in the Constitutions of selected Republics, (the Republic of Altai, Republic of Buryatia, Karachayevo-Circassian Republic, Republic of Karelia, Republic of Sakha (Yakutia), Republic of North Ossetia – Alania, Republic of Tatarstan, Republic of Tuva, and the Udmurtian Republic) it was specified that possible changes in territorial borders had to be adopted through a referendum. Moreover, a referendum and at the same time the adoption of laws on a referendum was included in the competence of the legislative bodies. In most cases (except the Republic of Bashkortostan, Republic of

Karelia, and the Republic of Tuva) a meeting of representatives decides on holding a republican referendum (constitution.garant.ru/region).

After the adoption of the Constitution of the Russian Federation in 1993, two federal constitutional laws regulating the mode and scope of the organization of a referendum were adopted. The Law of 10 October 1995 consisted of six chapters and 43 articles while the law of 11 June 2004 was more specific because it comprised fifteen chapters and 93 articles.

On 10 October 1995 the law On Referendum in the Russian Federation was adopted. Tits provisions may be assessed as restrictive because over the period of nine years of its binding force no national referendum was held. The Law stated that the change of the Constitution would be effected through an obligatory referendum. At the same time, the subject scope of a referendum excluded the change of status of federal subjects, shortening or prolongation of the terms of office of the Russian Federation President, the Federation Council, or of the State Duma, the announcement of early elections, adoption and changes of the state budget, the change of financial duties of the citizens towards the state, and the tax regulation and the right to amnesty. The motion for calling a referendum must be signed by at least two million citizens of the state (Kużelewska/Bartnicki 2010, 85).

On 11 June 2004, the State Duma of the Russian Federation adopted the amended federal constitutional law On Referendum in the Russian Federation, which came into force on 28 June 2004. The law was amended in 2006, 2008, 2014, and 2015 (Federal Constitutional Law 2004).

In comparison with the repealed law of 1995, this law was more specific and also more restrictive because it limited the possibilities of organizing a referendum by the citizens. In the preface to the law, it was stated that (...) *referendums shall be the supreme direct expression of power that belongs to the people* (...).

Chapter I General Provisions (Articles 1-13) specified the mode of organization of a referendum. The provisions set forth the basic principles, i.e. a universal, equal, direct, secret, and free referendum (Article 2). Citizens of the Russian Federation who have attained to the age of 18 years will be entitled to vote in a referendum. The scope of a referendum question (questions) was defined in a negative way i.e. by enumerating the areas that could not be decided through referendum were enumerated. Consequently, the following were excluded: the change of the status of federal subjects, shortening or prolongation of the term of office the Russian Federation President, the terms of the Federation Council, or the State Duma, the early or adjourned elections to the above mentioned bodies, the election of representatives to public functions in the Russian Federation, the election of people participating in federal authorities or federal government agencies, the selection of people appointed to a particular position as a result of international agreements adopted by the Russian Federation, adoption of

emergency measures in order to provide public security and health (Article 6). Referendum questions must be formulated in such a way that they prevent various interpretations. A referendum will not be held if a martial law or a state of emergency have been imposed on the territory of the Russian Federation or on the territory in which the referendum is to be held or within a part of this territory, or within three months after the martial law or the state of emergency have been lifted (Article 8). Furthermore, legislation forbade holding a referendum during the election campaign at the federal level, and during the last year of term of office of the President, the State Duma, and the Federation Council (Article 8).

Chapter II, Initiatives to Hold a Referendum, (Articles 14-23), specifies the questions concerning the referendum initiative. Article 14 stated that the right to initiate a referendum was vested in the citizens, no less than 2 million, with the reservation that no more than 50 thousand of them live on the territory of one federal entity, or a total of them outside the borders of the Federation.

A referendum is announced by the President of the Russian Federation within 10 days from the date of receiving the documents. The President sets the date of the referendum on Sunday within 60-100 days from the date of official announcement. The date of a referendum cannot be joined with the date of elections to the bodies of federal authorities (Article 23). In case of the application of Article 135 on amending the Constitution, the Constitutional Assembly (Article 21) takes a decision to hold a referendum, while in case of a referendum on the adoption of international treaties and agreements (Article 22), the initiative to hold one is launched by the federal authorities.

Chapter III, Referendum Commission, (Articles 24-35) presents the system of referendum commissions functioning in the Russian Federation. Chapter IV defines the status of observers, foreign observers, and media representatives (Articles 36-38). Chapter V describes the procedure for the formation of referendum commissions in military units and abroad (Articles 39-41) and Chapter VI presents the procedure for making the list of referendum participants (Articles 42-44). Chapter VII describes the questions of funding the referendum (Articles 45-46).

Chapter VII is devoted to the problem of informing and promoting the referendum process (Articles 54-68).In Russia the publications of polls and surveys are banned within last five days of a referendum campaign (Article 56); on the day of the referendum, until the last polling station is closed on the territory of the state, the results of the referendum are not allowed to be published (Article 55). In the case of the draft version of the new Constitution it has to be published in the state press and on the Internet (Article 57). Chapter IX presents the procedure of voting (Articles 69-75). The Central Election Commission may start the early referendum vote (not earlier than 15

days prior the proper date of a referendum). The voting is held between 8 a.m. and 8 p.m. of the local time. Chapter X presents the issues connected with the determination of the results of the referendum (Articles 75-81). Chapter XI describes the way of announcing the results of a referendum (Articles 82-83). The Referendum Act concludes with Articles XII – XV. They define the manner of keeping the documents, ways of appeal in cases of infringement of the referendum law, responsibility for the infringement, and they contain final and temporary provisions.

The system of legal acts on the referendum (except federal constitutional laws) is supplemented with: Federal Law (2002).

Practical Dimension

The practical dimension of direct democracy in the Russian Federation is limited to the organization of referendums at three levels: the federal (national) level, at the level of entities included in the Russian Federation (Republics, territories, regions (okruga), cities of federal importance, autonomous regions, and autonomous areas) and at the local level (parts of entities included in the Russian Federation). It is the most developed scope of referendums in federal states (Musiał-Karg 2008: 69). At the federal level two referendums were held: on 25 April 1993 and 12 December 1993 whereas on 17 March 1991, in the Russian Soviet Federative Socialist Republic (RSFSR) and the USSR, two referendum were held which substantially influenced the shape of the political system of the future state. All the foregoing referendums were included in the present analysis, which also referred to some selected referendums at the republican and local levels.

The referendum question asked to all the citizens of the Soviet Union in the national referendum of 17 March 1991 was: *Do you consider necessary the preservation of the Union of Soviet Socialist Republics as a renewed federation of equal sovereign republics, in which the rights and freedoms of an individual of any nationality will be fully guaranteed?* Ronald J. Hill and Stephen White (2014: 20) reiterated that the referendum question should be formulated in a simple, unambiguous, and decisive way, whereas this question did not satisfy the above mentioned criteria e.g. *What will be the relations among the entities in this restored federation? How would the rights of particular nations be guaranteed? How is the sovereignty of particular republics understood?* That is why it should be said that without complementary legal acts in which the legal-political position was specified, the referendum was rather a plebiscite for or against the Soviet Union.

Russia was one of the five republics in which the referendum question was changed and an additional referendum question was added

(Brady/Kaplan 1994: 190-191). This additional question was: *Do you think it necessary to introduce the post of RSFSR President, who would be elected by a republic-wide vote?* (Jach 2011: 111). In the case of the first question the turnout was 75.4% of the registered voters. 71.3% voted for the preservation of the USSR. 26.4% were against and 2.3 cast invalid votes (Brady/Kaplan 1994: 191). In case of the second question the turnout was 75.09% of the registered voters. Out of 101,776,550 of registered voters 76,425,110 people participated in the referendum. Out of 74,791,427 of valid votes, 53,385,275 (69.9%) were for the introduction of the post of the RSFSR President; 28% were against (21,406,152 voters) and 2.1% (1,633,683 people) cast invalid votes. Following the results of the second question, on 12 June 1991 the presidential elections were held in which Boris Yeltsin gained the post of the President (having won 57.3% of votes) (Jach 2011: 123).

A conflict between the executive and legislative powers steadily grew after the presidential elections in 1991. The formal scope of the President's competence limited the actions of Boris Yeltsin, who strove to widen his powers, whereas the Congress of People's Deputies (CPD) and the Supreme Council (SC) wanted to limit the presidential power. Consequently, the institution of a referendum was utilized as an instrument that could solve this lasting political conflict (Walker 2003: 73). In my assessment, the referendum was used in an instrumental way. On 29 March 1993, the CPD approved the content of the four referendum questions and the referendum was planned to be held on 25 April 1993. The questions were:

(1) Do you have confidence in the President of the Russian Federation, B. N. Yeltsin?
(2) Do you support the economic and social policy that has been conducted since 1992 by the President and Government of the Russian Federation?
(3) Should there be early elections for the President of the Russian Federation?
(4) Should there be early elections for the People's Deputies of the Russian Federation?

On 21 April 1993 the Constitutional Court of the Russian Federation judged that the results of the referendum would be binding if at least 50% of the registered voters answered "yes". However, in case of questions 1 and 2 the calculation should be based on the number of participants in the voting, whereas in case of questions no. 3 and no. 4 the calculation should be done on the basis of the number of registered voters (Zieliński 1996: 159); the citizens who did not participate in a referendum vote were formally regarded as the citizens who were against early presidential and parliamentary elections. In this way, the ruling of the Constitutional Court preserved the existing legal-political status in view of the turnout in the referendum of 1991.

Table 1. The national referendum of 25 April 1993

Date	Subject	Turnout in %	Results
25 April 1993	Referendum on confidence in the President of the Russian Federation	64.51	For 59.95% Against 40.05%
25 April 1993	Referendum on Presidential and Government economic and social policy	64.51	For 54.35% Against 45.65%
25 April 1993	Referendum on early elections for the President of the Russian Federation	64.51	For 31.71%* Against 30.21%*
25 April 1993	Referendum on early elections for the People's Deputies of the Russian Federation	64.51	For 43.08%* Against19.30%*

*the number of registered voters was the basis of calculation.
Source: http://www.c2d.ch (27 October 2016).

Out of 107,310,373 registered voters, 69,222,585 people took part in the referendum (64.51%). The confidence in the President B. Yeltsin was expressed by 59.95% of the participants in the referendum. The economic and social policy conducted by the President and the Government was supported by 54.35% of the participants; the questions concerning early elections for the President and for the People's Deputies of the Russian Federation did not win the required majority (31.71% and 43.08% of registered voters respectively) (www.c2d.ch). If the number of participants in the referendum were taken as the basis for calculation, then in both cases the participants would vote for early elections. However, as Anna Jach (2011: 283) rightly stressed, *the results of the referendum did not provide grounds for dissolving the Supreme Council, which was the most important to the President*. The lack of the unambiguous resolution of the referendum caused the political conflict between the executive and legislative bodies to persist, and it continued to determine the Russian political scene until it was resolved by force. With the dissolution of the Supreme Council and the Congress of People's Deputies by the President's decree of 21 September 1993, the conflict escalated, culminating on 3 October 1993 when demonstrators took over the White House. The army, which supported the President's authority, stormed the Supreme Soviet building (Medvedev 2000: 103-120). In this way the presidential power center pacified the communist political opponents, imposing the political system with the superior position of the President (Ostrow/Satarov/Khakamada 2007: 38). However, the President lacked formal legitimization of his non-legal and forcible actions to fully seize power. In order to do so, the institution of a national referendum was utilized.

The constitutional referendum of 12 December 1993 became part of the process of the President achieving the dominant position in the system of the legal organs of the Russian Federation. It should be emphasized that it was the presidential power center that was the initiating side which imposed the mode of drafting a new constitution, which was easier because with the pacification of communist deputies the political opposition was effectively eliminated. The final draft submitted by the President was supported by the members of the Constitutional Convention (443 out of 685 opted for the draft). As the Parliament was dissolved, the only possible way of adopting the draft constitution was a national referendum. In his decree of 15 October 1993 the President announced the mode of adoption of a new constitution through referendum. In order to adopt the constitution, at least half of the registered voters had to take part in the referendum and the majority of them would have to vote "for" (Jach 2011: 361-362). Some conclusions were drawn from the April referendum: firstly, the voters participating in the voting should decide on the result of a vote, without taking into consideration the number of registered voters; secondly, there should be only one referendum question: that is why only one draft rather than many drafts should be voted on.

The constitutional referendum was organized simultaneously with the elections to the lower chamber of the Federal Assembly – the State Duma. The simultaneous organization of both the parliamentary elections and the constitutional referendum might have an influence on the increased public interest in taking part in both political events.

In the constitutional referendum the citizens of the Russian Federation answered the question: *Do you agree to the constitution of the Russian Federation?* 58.187.755 registered voters took part in the vote (being a majority of 54.8%). 58.43% of participants in the referendum voted "For" the adoption of the new constitution (see Table 2).

Table 2. The national referendum of 12 December 1993

Date	Subject	Turnout in %	Results
12 December 1993	Referendum on the Constitution of the Russian Federation	54.80	For 58.43% Against 41.57%

Source: Results of voting in the national referendum on the draft constitution of the Russian Federation of 12 December 1993 (Итоги всенародного голосования по проекту Конституции Российской Федерации 12 декабря 1993 года). http://cikrf.ru/banners/vib_arhiv/referendum/1993_ref_itogi.html (10 November 2016).

The greatest support, over 80%, was reported in the Khantia-Mansi Autonomous Okrug (District) (81.84%), Taymur Autonomous Okrug 81.80%), Komi-Permyak Autonomous Okrug (81.44%), Ust-Orda Buryat Autonomous Okrug (80.89%), and in Yamalo-Nenets Autonomous Okrug

(80.34%). However, it should be said that the above mentioned Autonomous Okrugs are not numerous as far as the population size is concerned e.g. 102,909 people were entitled to vote in the Komi-Permyak Autonomous Okrug. For comparison, the results in the biggest entities of the Russian Federation need to be mentioned. In the Moscow Oblast, 62.94% of voters opted for the new constitution (5,374,056 people were entitled to vote). In Moscow, the city of federal importance, 69.94% of the registered voters supported the constitution whereas in Sankt Petersburg, the city of federal importance, 71.61% of the voters voted for the constitution. On the opposite side were two republics in which less than 30% of the voters supported the constitution. They were the Republic of Dagestan (20.86%) and Karachay-Cherkess Republic (28%). Moreover, the Chechnya Republic boycotted the constitutional referendum because its people did not acknowledge the jurisdiction of the Russian Federation on the territory of the former republic (Results of voting 1993).

On 25 December 1993 the Constitution of the Russian Federation was adopted in the constitutional referendum closing a temporary period of the country's development and defining the Russian political system (Podolak 2014: 312). It is noteworthy that this constitutional referendum of 1993 was the last one organized at the national (federal) level. In my assessment, the foregoing situation may be the sign of the instrumental treatment of a referendum in political fight in order to legitimize the political system with the superior position of the President of the Russian Federation. In Russia, a referendum at the national level cannot be perceived as an instrument of mobilizing the citizens and the binding legal rules simply limit this activity. Consequently, I think that there is no political will of the ruling elites to develop direct democracy because it may constitute a real danger to the stability of the existing political system.

At a level of the entities (subjects) included in the Russian Federation one can name eleven cases of the organization of a referendum on the territory of particular republics. In the Tuva Republic three referendums were held, in the Chechnya Republic five referendums were formally held but due to the fact that they were held on one day, the voting was carried out only twice; in the Kabardino-Balkar Republic there were two referendums, and in the Republic of Tatarstan the institution of referendum was used only once.

In case of the Tuva Republic, parallel to the constitutional referendum of the Russian Federation, the constitutional referendum on the ratification of the constitution adopted by the Grand Khural of Tuva was organized. The separatist tendencies of the citizens of the Republic were confirmed in both votes because, on the one hand, the Constitution of the Republic was adopted but on the other hand the citizens of the Republic said "no" to the Constitution of the Russian Federation (only 31.21% of the citizens of the Republic voted "yes"). However, since the compliance of the Constitution of

Tuva with the Constitution of the Russian Federation was challenged, the central authorities forced the Grand Khural into preparing and adopting a new draft of the Constitution (on 6 May 2001. The Constitution was supported by 82.35% of the voters and the turnout was 61.04%. On 11 April 2010 the third constitutional referendum was held. This time 11 amendments to the Constitution were voted on, *inter alia* the introduction of a bicameral parliament and strengthening of the power of the Prime Minister. The amendments were accepted by the citizens in the voting (www.c2d.ch).

Table 3. The republican referendum in the Kabardino-Balkar Republic of 29 December 1991

Date	Subject	Turnout in %	Results
29 December 1991	Referendum on Borders of the Kabardino-Balkar Republic	n/a	For 98.40% Against n/a

Source: http://www.c2d.ch (31 October 2016).

Table 4. The republican referendum in the Republic of Tatarstan of 21 March 1992

Date	Subject	Turnout in %	Results
21 March 1992	Referendum on Independence of the Republic of Tatarstan	82.00	For 62.23% Against 37.77%

Source: http://www.c2d.ch (31 October 2016).

Table 5. The republican referendum in the Tuva Republic of 12 December 1993

Date	Subject	Turnout in %	Results
12 December 1993	Referendum on Constitution of the Tuva Republic	n/a	For n/a Against n/a

Source: http://www.c2d.ch (31 October 2016).

Table 6. The republican referendum in the Kabardino-Balkar Republic of 1 January 1994

Date	Subject	Turnout in %	Results
1 January 1994	Referendum on Borders of the Kabardino-Balkar Republic	n/a	For n/a Against n/a

Source: http://www.c2d.ch (31 October 2016).

Table 7. The republican referendum in the Tuva Republic of 6 May 2001

Date	Subject	Turnout in %	Results
6 May 2001	Referendum on Constitution of the Tuva Republic	61.04	For –82.35% Against –17.65%

Source: http://www.c2d.ch (31 October 2016).

Table 8. The republican referendum in the Chechnya Republic of 23 March 2003

Date	Subject	Turnout in %	Results
23 March 2003	Referendum on Parliamentary election law	n/a	For 96.05% Against 3.95%
23 March 2003	Referendum on Parliamentary election law	n/a	For 95.40% Against 4.60%
23 March 2003	Referendum on Constitution of the Chechnya Republic	89.49	For 95.97% Against 4.03%

Source: http://www.c2d.ch (31 October 2016).

Table 9. The republican referendum in the Chechnya Republic of 2 December 2007

Date	Subject	Turnout in %	Results
2 December 2007	Referendum on Parliamentary election law	99.15	For 97.01% Against 2.99%
2 December 2007	Referendum on Amendments to Constitution of the Chechnya Republic	99.15	For 96.98% Against 3.02%

Source: http://www.c2d.ch (31 October 2016).

Table 10. The republican referendum in the Tuva Republic of 11 May 2010

Date	Subject	Turnout in %	Results
11 May 2010	Referendum on Amendments to the Constitution of the Tuva Republic	83.94	For 96.92% Against 3.08%

Source: http://www.c2d.ch (31 October 2016).

Five referendum questions were voted on in the referendum mode in the Chechnya Republic. Three referendums on the adoption of the Constitution and election law to the parliament and to the post of the president were held

on 23 March 2003; two referendums on the introduction of amendments to the constitution and changes in parliamentary election law were held on 2 December 2007. Both the referendums of 2003 and of 2007 had positive results (www.c2d.ch). However, it should be stressed that although the conflict in the Republic was gradually coming to the end (since 2003) owing to the Chechenization policy of the Russian Federation, there were still Russian military troops stationed in the Republic (Falkowski 2007: 20-21). The organization of the referendum during the war should be negatively evaluated and regarded as an instrument which served to legitimize the local authoritarian regime. In the referendum of 2007 the turnout was almost a hundred per cent, with the still existing problem of Chechnya refugees finding shelters in the neighboring Republics or even in other states. Such practices should raise reservations because they prevented the proper use of the instrument of direct democracy and simply led to its grotesque form.

In the Republic of Tatarstan a referendum was held to announce the independence. The referendum was held on 21 March 1992, and the referendum question was: *Do you agree that the Republic of Tatarstan is a sovereign state, a subject of international law, building its relations with the Russian Federation and other republics (states) on an equal basis?*. With a high (82%) turnout, 62.23% of the participants voted "for" the Republic's independence (www.c2d.ch). However, the Constitutional Court of the Russian Federation judged that both the referendum and the adopted constitution were unconstitutional and that they did not comply with the Constitution of the Russian Federation. Nevertheless, unlike in Chechnya, the process of regaining control over the Republic was gradual and peaceful. In 1994 the Treaty establishing the division of competence between the Russian Federation and Tatarstan was signed and in 2002 Article 1 section 1 was introduced into the Constitution of the Republic of Tatarstan, in which Tatarstan was defined as a part of the Russian Federation. It should be said that despite the formal change of the status of Tatarstan, a great political activity among the Tatars and the use of a referendum as an instrument of creating the local community is observable. It can be best perceived based on the number of organized referendums in particular republics at the local level.

In case of the level of the Russian Federation it should be said that referendums are organized in order to announce independence, adopt of a new constitution or introduce amendments to the constitution, adopt of a new legal act of great importance, and make territorial changes in particular entities. In view of the foregoing it should be concluded that referendums have a significant scope of problems and this is the reason why they may contribute to increased civil participation and shaping democratic attitudes. Nevertheless, they may be also used to legitimize the authoritarian power.

3527 local referendums were held in the Russian Federation between 2003 and 2017 (by 31 December) (vybory.izbirkom.w/region/izbirkom).

Unlike a national referendum, which is held on the territory of the whole Russian Federation and a republican referendum, which is organized on the territory of the whole republic, local referendums are held on the territory of part of the republic (or other entity of the Russian Federation). As a rule, it is the area of a village, communes, settlements, towns or regions included in the territory of a republic.

It should also be stressed that among twenty two republics, included in this analysis, local referendums were held in eleven republics: Buryatia, Dagestan, Ingushetia Republic, Komi, Mordovia, Tatarstan, Tuva, Udmurtia, Khakassia, Chechnya, and Chuvasia. The Republic of Tatarstan is particularly worth noting: 2302 local referendums were held there (65% of all referendums). This fact shows a great political culture of the citizens of the Republic of Tatarstan as compared with other republics; however, it should be observed that all referendums were held only in 2016 and 2017. Furthermore, it should be stressed that all local referendums concerned the self-taxation of inhabitants. The funds from this self-taxation are to be used for the improvement of local infrastructure, waste collection and disposal, maintenance of cemeteries, preventing fires etc. In case of other local referendums, their scope comprised the change of the status of particular entities, merger of territorial units or changes of borders of territorial units.

Conclusion

In Russian political system a referendum is perceived as an instrument of direct democracy. It was introduced into the Constitution of the Russian Federation of 1993 and on this basis the federal constitutional laws On Referendum of 1995 and of 2004 were subsequently adopted. The federal law of 12 June 2002 On Basic Guarantees of Electoral Rights and the Right of Citizens of Russian Federation to Participate in a Referendum is a supplement to the Russian legal system. Moreover, the institution of a referendum was, *per analogiam,* entered in the Constitutions and Statutes of particular Republics and entities that constitute the Russian Federation. It should be therefore said that a referendum constitutes a lasting element of the Russian legal system. The crucial problem is the practical dimension of a referendum. At the national level, two referendums were held after 1991. On 25 April 1993 the Russians answered four questions on current social-political situation, whereas on 12 December 1993 they adopted the new Constitution of the Russian Federation. Furthermore, before the formation of the Russian Federation, on 17 March 1991 a referendum was held dealing with the future of the state and embracing the Soviet Union, and concerning the establishment of the office of the Republic's President in the RSFSR. After

1993, a national referendum was not organized therefore it should be said that the institution of a referendum was treated in instrumental way by particular power centers in their lasting political rivalry. The referendum became even a hostage of the political will of the Russian Federation President. Moreover, it should be added that the law On referendum of 2004 is an important restriction which prevents the use of the institution of a referendum by the citizens, and the referendum itself has not contributed to the formation and development of civil society at the level of the whole Federation. The key question in this context is the answer whether in the multinational, multiethnic, and domestically incoherent Russian Federation there is a chance to build social activity in the all-national dimension. The above doubts are legitimate if the local level of practical dimension is taken into consideration. After 2003, local referendums were organized in 63 percent of the subjects of the Russian Federations, the Republic of Tatarstan is the leader (2302 referendums on self-taxation were held in 2016 and 2017). Consequently, it should be said that such activity shows a great responsibility of the citizens for their local communities. Depending on the region of the Russian Federation, referendums are applied and may confirm the development of a local community and social integration around its problems but at the same time there is no identification with the state at the federal level.

An important limitation to the development of direct democracy is the history and political tradition of the Russian state, which comes down to the complete subordination of the citizens to state authorities. Over centuries, in the Tsarist and then in Bolshevik and Soviet Russia there were no conditions for the development of citizens' activity in the social and political dimension whereas it is a necessary element for the permanent presence of direct democracy in a political system.

To sum up, it should said in view of the foregoing that firstly, direct democracy (referendums) are present in the Russian Federation both in the formal-legal and practical dimension. However, the formal dimension is a barrier to the development of the practical dimension Moreover, in the practical dimension, a referendum was treated instrumentally at the federal level whereas, depending on a particular entity of the Russian Federation, it develops (Republic of Tatarstan), its application is confirmed, (e.g. Republic of Tuva, Republic of Dagestan), or it is not organized (e.g. Republic of Adygea, Altai Republic) at the local level. Therefore, secondly, it should be assessed that the application of the instruments of direct democracy only in selected cases at the local level is a determinant of citizens' awareness while at the federal level a referendum serves to implement and legitimize the political actions of the President's power center. In this context it should be remembered that the Russian Federation is not a democratic state in which citizens' rights are respected; this means that a referendum may serve to manipulate the attitudes among the citizens. And thirdly, the Russian

Federation is not a member of the European Union, which is why European integration is not a direct determinant of the position of direct democracy in the state.

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Magdalena Musiał-Karg

Direct Democracy in Serbia

Determinants

The breakup of Yugoslavia in the early 1990s gave rise of many changes in the region. The events in the Balkans were treated as part of the sequence of events connected with the collapse of the Cold War order. At that time, few commentators of international life suspected that the independence Serbia and Montenegro would be a significant step leading to the breakup of Yugoslavia and that it would be accompanied by bloody hostilities. It was assumed that declarations of independence would be a spur to changes in the organization of the state rather than to its collapse (Podgórzańska 2010: 102).

Separatist tendencies of individual nations began to come to the fore more and more often, and the Balkan states started to feel the tremendous impact of diverse political, social, economic or cultural factors. Not without significance was also the intervention of Western European states in the region.

The Socialist Federal Republic of Yugoslavia comprised six republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. In 1991 three of Yugoslavia's six republics unilaterally declared independence after having held referendums: the Republic of Croatia and Slovenia, Republic of Macedonia, and the Republic of Bosnia and Herzegovina also proclaimed its sovereignty in 1992.

The first to put forward demands for self-determination were Slovenia and Croatia. After the two states proclaimed independence, Bosnia and Herzegovina followed suit (15 October 1992). In the case of declaration of independence by Macedonia the question was more complicated, *inter alia* on account of the conflict with Greece over the name of the republic, and over fear of possible future territorial claims. As a result, Macedonia gained independence in 1991 while in the international forum the state uses the name the Former Yugoslav Republic of Macedonia (Wojciechowski 2002: 203).

The Republic of Serbia condemned those decisions and, together with Montenegro, it proclaimed the establishment of the Federal Republic of Yugoslavia in 1992 (Musiał-Karg 2008: 191). Before they became autonomous states, Serbia and Montenegro shared the common fate. It should be added that originally they remained together in the structure of the Socialist Federal Republic of Yugoslavia and later they formed a two-entity union (Bujwid-Kurek 2008: 182).

As a result of transformation processes, only Serbia and Montenegro were left as the remainder of the dismembered Yugoslavia, and in April 1992 they formed a new state entity called the Federal Republic of Yugoslavia. Under the constitution, the bicameral union Parliament: Skupština was established for it. The president of the state was elected by the Parliament, which also designated the federal government. The parliamentary term would be four years (Wojnicki 2005: 12).

The functioning of the federation left much to be desired, which was the consequence of *inter alia* the occurrence of many differences between the two republics in many fields of the state's activity. With time, apart from the visible Serbian desire to dominate the Montenegrins, the competition intensified between two key politicians of the then ruling Democratic Party of Socialists – President Slobodan Milošević and Prime Minister Milo Đukanović. It needs to be pointed out that the emancipatory aspirations of the Serbs were noticeable in many actions of the government: the establishment of own customs service, opening of the borders, abolishment of visas, amnesty for persons who refused to serve in the army, registration of the Montenegrin Orthodox Church, which had previously been absorbed by the Serbian Orthodox Church (Hołowacz 2008: 66-67; Wojciechowski 2002: 203).

A significant determinant of the formation of the state was its striving to join the European Union structures. The general framework of the EU's cooperation with Serbia and Montenegro was determined as early as 1999 in the process of stabilization and association. It was then that the Union's strategy towards the Southern and Eastern European countries was defined. *The conditions for integration, apart from the aim of meeting the Copenhagen criteria, included, inter alia, full cooperation with the International Criminal Tribunal for Former Yugoslavia. The 1999 conflict in Kosovo prevented the EU from beginning negotiations on association with the then Yugoslavia. The European Union therefore created a special cooperation instrument: the Consultative Task Force (EU-Serbia relations…), which was subsequently replaced by the mechanism of Enhanced Permanent Dialogue (Uvalic 2010: 236)* (Kołakowska 2006: 1649-1650).

Further striving to declare independence reached its climax in 2002, when, after the talks conducted with the participation of European diplomats, the decision to change the structure of the state was made (Szpala 2011: 81-83). This was preceded by victory in the presidential election on 26 September 2000 by Vojislav Koštunica – the candidate of the Democratic Opposition of Serbia (DOS), and, in consequence, by the removal of Slobodan Milošević from power. Next, on 23 December 2000, the democratic elections were held which were won by the Democratic Opposition of Serbia with 64.7% of votes, and thereby gaining a majority in the Parliament. These

events opened a new chapter in the history of the state (Stanisławski 2008: 33). The most important political goal of the new government headed by Zoran Djindjić was to carry out complex state reforms. Moreover, the adopted strategic priority objective was the country's accession to the European Union as fast as possible (Szpala 2011: 81-83).

Under the democratic leadership Serbia was expected to become the guarantor of the stability in the region. It was believed that - owing to its high administrative potential – the country would quickly cope with the challenges of the transformation process and adaptation to the political and economic conditions for membership (Szpala 2011: 81). This did not happen, however. After sixteen years of the transformation process and striving for greater integration with the European Union, Serbia failed to gain the status of a candidate state, while the prospect of membership seems to be far more distant than before.

Serbia and Montenegro were two last republics that remained in the federal union after the breakup of the former Yugoslavia under the agreement of 14 March 2002. The negotiated agreement, with the European Union's substantial support, on the normalization of relations between Serbia and Montenegro was signed by President Vojislav Koštunica of Yugoslavia and by President Milo Đukanović of Montenegro. Several weeks after the signing of the agreement – on 9 April 2002 – the Parliaments of both republics adopted a new formula of the functioning of the state. The document provided for the formation of a new state organism and the establishment by Serbia and Montenegro of a loose federation called "Serbia and Montenegro". The mediator in negotiations between the two republics was the High Representative for the EU's Common Foreign and Security Policy, Javier Solana. The creation of the new state of Serbia and Montenegro was the first independent success of the EU's diplomacy in the region of the post-Yugoslav countries (Kołakowska 2006: 1649-1650).

In accordance with the decisions made under the so-called Belgrade Agreement, the union had characteristic features of a confederation with certain elements of federation. It was resolved that Serbia and Montenegro would have common authorities: the unicameral parliament, the president who would also exercise the function of the chief or government, the federal government, and the joint Court of Serbia and Montenegro. The Agreement also safeguarded the smaller republic, Montenegro, from discrimination by Serbia. The administrative capital was established in Belgrade. The Agreement also stipulated that by the end of 2002 the Constitutional Charter of State Union (Constitutional Charter of the State Union of Serbia and Montenegro…) would be drafted and passed (Wojnicki 2005: 13; Stanisławski 2003: 32).

It should be also taken into account that the foregoing agreement was temporary, and, pursuant to its regulations, after three years Serbia and

Montenegro would decide about the future of the established union. The new state had the common language (Serbian), religion, cultural heritage, and history. In the institutional sphere the state had the President, the Government consisting of five ministers, and the Union Parliament.

It should be noted that Serbia faced many challenges related not only to political, economic or social transformations resulting from democratization but also to the consequences of Slobodan Milošević's rule, who involved the country in many conflicts. Furthermore, what left its imprint were the many-year-long economic embargo and the *blame of exclusive responsibility for the conflict, ethnic cleansing, and violations of human rights in the territory of the former Yugoslavia* (Stanisławski 2003: 32). All these translated into the accumulation of obstacles to Serbia's accession to the European Union. Apart from the question of reforms, these were, *inter alia*, *unstable statehood (the problem of Montenegro and Kosovo) and reluctance to account for the war past. The resolution of these problems was the more difficult because Serbia did not adopt a unanimous stance on European integration* (Szpala 2001: 81-82).

The existence of the federation was called into question on 21 May 2006, when in the referendum the inhabitants of Montenegro opted for the establishment of an independent state. On 3 June 2006, when Montenegro declared independence, the union broke up. Serbia's Government recognized Montenegro's independence and announced it would establish diplomatic relations.

Formal-Legal Dimension

After Montenegro declared its independence, the Serbs adopted a new constitution. The previous Constitution was passed in 1992 when S. Milošević became president. When he was deposed on 5 October 2000, one of the election promises was the adoption of the new fundamental law (constitution).

The most important legal act that regulates the political system of the Republic of Serbia is the Constitution of 30 September 2006 (Ustav Republike Srbije, "Službeni glasnik RS" br. 98/2006). The Serbian Parliament adopted the draft constitution unanimously after the referendum held on 28 and 29 October 2006[1] (Serbia back draft constitution, 2006). The

[1] The turnout in a referendum was 53.66%. The constitution was accepted by 51,46% of the voters (50% was required). The Serbs supported the constitution in a referendum. The ethnic Albanians ignored the voting.

Fundamental Law was the first Constitution of sovereign Serbia since the 1903 Constitution of the Kingdom of Serbia (Popović-Obradović 2013: 176).

The draft of the new Constitution of 2006 was a compromise between major political parties. From the standpoint of historical and ethnic determinants, it was significant that the preamble contained the provision that Kosovo is an integral part of the territory of Serbia with the status of an autonomy[2].

The Constitution came into force on 10 November 2006. Article 1 contains the fundamental principles of the state's political system. According to the provisions: *Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values* (Constitution of the Republic of Serbia, art. 1). The document states that the rule of law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary and observance of Constitution and Law by the authorities. (Constitution of the Republic of Serbia, art. 3; Wojnicki 2011: 119-120). The Constitution confirms the principle of the sovereignty of the people. Article 2 states that sovereignty is in the hands of the citizens (people) who exercise it directly or indirectly.

The Constitution of the Republic of Serbia also contains references to the use of forms of direct democracy. The first provision is contained in the abovementioned Article 2: *Sovereignty is vested in citizens who exercise it through referendums, people's initiative and freely elected representatives*. Another article in the Serbian Constitution is Article 105 concerning methods of decision-making by the National Assembly. Pursuant to the provision, the Parliament decides by majority vote of all deputies on laws which regulate *inter alia* the referendum and people's initiative.

The right of legislative initiative – according to Article 107 - is vested in deputies, the Government, assemblies of autonomous provinces and in the voters (if an initiative is endorsed by at least 30,000 citizens), and, within their competence, in the Bank of Serbia and the Commissioner for Citizens' Rights (referred to in the Constitution as Civil Defender). Moreover, a national referendum may be called at the request of the majority of all deputies or at least 100,000 citizens. *The subject of the referendum may not include duties deriving from international contracts, laws pertaining to*

[2] *…the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations…*, *Constitution of the Republic of Serbia*, http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en, 09.10.2016.

human and minority rights and freedoms, fiscal and other financial laws, the budget and financial statement, introduction of the state of emergency and amnesty, as well as issues pertaining to election competences of the National Assembly (Article 108).

At the national level, the referendum can be held on amending the Constitution. The procedure for amending the Constitution is regulated in Chapter IX, Article 203: *A proposal to amend the Constitution may be submitted by at least one third of the total number of deputies, the President of the Republic, the Government and at least 150,000 voters*. In cases when the proposed amendments to the Constitution pertain *inter alia* to the preamble of the Constitution, the rule of law, or human and minority rights and freedoms, the National Assembly is obliged to put forward the act on amending the Constitution in a national referendum. The referendum has to be held not later than sixty days from the date of adopting the bill on amending the Constitution. The amendment will be adopted if the majority of voters who participated in the referendum vote in favour of the proposed amendment.

The Constitution of the Republic of Serbia also provides for the use of direct democracy at the local level – in autonomous provinces. Pursuant to Article 182, *new autonomous provinces may be established, and already established ones may be revoked or merged following the proceedings envisaged for amending the Constitution. The proposal to establish new, or revoke or merge the existing autonomous provinces shall be established by citizens in a referendum, in accordance with the Law*. It should be also noted that the territories of autonomous provinces *may not be altered without the consent of its citizens given in a referendum*. A referendum may be also held in Serbia's local self-government units, which are municipalities (communes), towns and Belgrade – the capital of Serbia[3]. Under the Constitution, the subject of the referendum can be the issues pertaining to the establishment, revocation or alteration of the territory of a local self-government unit(Article 188).

Detailed questions concerning the organization and holding of a referendum and people's initiative were defined in the Law on Referendum and People's Initiative.

Practical Dimension

Serbia does not have ample experience in using the institutions of direct democracy. One constitutional referendum was held which was, in a way a consequence of the secession of Montenegro in 2006. The practice of utilizing

[3] Local self-government units shall be municipalities, towns and the City of Belgrade.

other forms of direct democracy has not become established – either at the national or local level.

When analyzing the practice of using referendums in the Republic of Serbia, it should be borne in mind that the events connected with the declaration of independence by the Montenegrins had significantly impacted the further fate of Serbia. After the independence referendum of 21 May 2006[4] and the proclamation of independence by Montenegro, the Serbian Parliament put the Constitution meant for the already entirely independent Serbia to the citizens' vote[5]. The referendum held on 28 and 29 October 2006 adopted the new Constitution.

Table *1*. The national referendum of 28-29 October 2006

Date	Subject	Turnout in %	Results
28-29 October 2006	Constitution	53.66	valid

Source: Republic Election Commission; Centre for Research on Direct Democracy (c2d) http://www.c2d.ch/ (10 September 2016).

The number of registered voters who had the right to participate in the two-day referendum was somewhat over 6.6 million. For the Constitution to be adopted, it had to be endorsed by over half of the eligible voters. During the referendum campaign, the critics of the Government urged the citizens to boycott the voting because under the new Constitution Kosovo[6] was recognized in it as a part of Serbia – it was feared that before the conclusion of talks on the future status of Kosovo this constitutional provision might be detrimental to Belgrade's interests (Referendum konstytucyjne w Serbii...).

As regards the course of the referendum, it should be noted that according to the announcement of the Election Commission, on the first day of the referendum the turnout was 17.81%[7] (Referendum konstytucyjne w Serbii...). Eventually, the referendum was attended by over 3.6 million of eligible vot-

4 55.5% of voters voted for the independence at the turnout with 86.3% of votes. In this way, the number of votes for Secession has met the increased requirements imposed by the European Union necessary to recognize the full independence of the state. On 3 June 2006 the parliament of the country proclaimed independence.

5 It was adopted at its first special session in 2006 of the National Assembly of the Republic of Serbia on 30 September 2006. Decision was made under Article 73 Item 8 of the Constitution of the Republic of Serbia and Article 10 para.1 of the Law on Referendum and People's Initiative ('Official Gazette of RS', no. 48/94 and 11/98); First Special Sitting of the National Assembly of the Republic of Serbia in 2006, http://www.parlament.gov.rs/First_Special_Sitting_of_the_National_Assembly_of_the_Republic_of_Serbia_in_2006.6387.537.html (11 October 2016).

6 Since mid-1999, Kosovo has been under UN administration. The talks in Vienna on the future of the province in times of referendum were in the deadlock.

7 The results did not take into account the results from Kosovo - the two million province with the majority (90%) of the Albanian population, who seeks independence from Serbia.

ers, the turnout at the referendum being 53.66% (Hawton 2016). The official results were announced on 2 November 2006, and two days later the new Constitution came into force.

Despite some doubts, the European Union and Organization for Security and Cooperation in Europe approved the proposed changes. Cristina Gallach, the then spokesperson for the High Representative for the EU's Common Foreign and Security Policy Javier Solana, said the European Union positively assessed the fact that Serbia introduced changes in the Constitution in force under the Slobodan Milošević regime (Gallach: Eu Positively Assesses Adoption…).

To sum up, it should be stated that despite very small experience in the use of direct democracy institutions in the Republic of Serbia both at the national and local level, the vote for the adoption on the new Constitution may be regarded as an important step in deepening of changes that are the consequence of the breakup of the former Yugoslavia.

Conclusion

Referendum is one of the tools of direct democracy by means of which citizens can make decisions on the matters of utmost significance for the state. In the republics of the former Yugoslavia, referendums played a crucial role: firstly, in the independence aspirations of successive nations as well as in the democratization and reform process.

The political and historical circumstances in contemporary Serbia did not compel the state to hold an independence referendum. However, the vote held in May 2006 in Montenegro impacted the political situation in the already independent Serbia, which, guided by pro-Western aspirations, decided to pass a new Constitution dissociated from the previous government, the Constitution which was endorsed by the Serb voters in the obligatory constitutional referendum as early as in 2006. The formula of obligatory decision-making by the sovereign (the people) on the constitutional questions should be regarded as the realization of the constitutional principle of the people's sovereignty and as the expression of handing over the matter of the most important national legal acts to the citizens to decide.

Constitutional referendums in Central and Eastern Europe, also referred to as in-depth (reform) referendums[8], are the second category of referendums

[8] The definition of deepening referenda was to emphasize the fact that subsequent (after independence) referendums in Central and Eastern Europe or in the republics of the former Yugoslavia aimed to consolidate and deepen the changes that began in the late 1980s and early 1990s. The referenda include referenda on the adoption of new state constitutions, referenda on political system - for example on the electoral system for the parliament or the

held after 1990 (Musiał-Karg 2010). These plebiscites after referendums on independence made it possible to consolidate pro-democratic changes and allowed the states concerned to pursue their goal of EU membership. The 2006 referendum in Serbia is an example of such voting, and the comparatively high turnout appeared to reflect the pro-democratic aspirations of the citizens of this state.

The analysis of Serbia's experiences allows the conclusion that the practice of direct decision-making in this country, both at the national and local level, is nevertheless very limited, and it does not seem that any significant changes will soon occur in this field. The not yet completely established democracy and the lack of fully developed civil society largely determine the practice of the use of direct democracy institutions in Serbia.

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presidential election, or the vote on reforms - eg privatization or insurance schemes. Most of the deepening votings took place in the 1990s. The constitutional referendum in Serbia – that was held in October 2006, five months after the independence vote in Montenegro - could be added to this category.

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Elżbieta Kużelewska

Direct Democracy in Slovakia

Determinants

From 1918 to December 1992 Slovakia and Czechia formed Czechoslovakia, which had the structure of a federal state from 1969 on. The political system of Czechoslovakia defined in the 1920 Constitution drew on representative democracy in the form of optional referendum on ordinary legislation but to a limited extent. The right to participate in a referendum was vested in persons with the right to vote for the Chamber of Deputies. Pursuant to Article 48, calling of a referendum was the exclusive competence of the government which could hold a referendum on a bill that, submitted as the government's draft law, was rejected by the Parliament. A referendum could not be called on draft laws amending the Constitution. The Constitution explicitly stated that the government's resolution to directly invoke the people's will had to be passed by a unanimous vote. The adopted solution, as Rytel-Warzocha rightly observes, meant that the possibility of the people making direct decisions was substantially reduced and that the people was deprived of an opportunity to directly express their opinions on the matters pertaining to the political system (Rytel-Warzocha 2011: 92-93).

In 1990 Czecho-Slovakia was created consisting of two republics: of the Czechs and the Slovaks. In July 1991 the Parliament of Czecho-Slovakia adopted a constitutional law on the referendum. The opinion poll of November 1991 showed that as many as 74% of respondents believed it was necessary to hold a referendum on the division of the country. Contrary to the attitude of the public opinion, the newly passed referendum law was not applied, and the decision about the "Velvet Divorce" (Simon 1993: 2-3) was taken by the parliamentary deputies without reference to the people's will on this matter.

After the breakup of Czechoslovakia, Slovakia became a sovereign state on 1 January 1993, taking on the structure of a unitary state. Slovakia's political system takes into account the institution of direct democracy - referendum and referendum initiative. Slovakia ranks among the group of Central European states with an ample referendum experience. Unlike Czechia, Slovak politicians often appealed to the people's will through referendum.

Formal-Legal Dimension

The legal bases of referendum are contained in the Constitution of the Slovak Republic of 1 September 1992, in Chapter II (Articles 93-100) (Constitution 1992) and the Election Law Act (Zakon 180/2014).

The Slovak Constitution, unlike that of the Czech Republic, amply regulates the institution of national referendum. Article 2 par. 1 of the Constitution specifies that *State power is derived from citizens, who execute it through their elected representatives or directly*. The Article therefore indicates that both forms of democracy (representative and direct) are admissible. This order does not appear to be accidental and suggests the primacy of representative democracy over direct democracy as a form of execution of power by the people. Article 7 and Article 93 par. 1 *de facto* provide for a mandatory referendum on entering into (withdrawing from) an alliance with other states. The strengthening of the direct form of exercise of power is contained in Article. 30 par. 1, which provides for citizens' right to participate in the administration of public affairs by means of a national or local referendum which is one of the fundamental political rights vested in Slovak citizens.

Article 93 specifies the subject of vote in a referendum. A referendum *confirms a constitutional law on entering into an alliance with other states or on withdrawing from that alliance*. A Referendum can be used to decide also on other important issues of public interest. Basic rights and liberties, taxes, levies, and the state budget cannot be the subject of a referendum. Article 94 specifies who has the right to participate in the referendum (every citizen of the Slovak Republic who has the right to vote in elections of the National Council of the Slovak Republic).

Article 95 specifies the authorities entitled to call a referendum. Pursuant to this Article, *the referendum is called by the President of the Slovak Republic if requested by a petition signed by a minimum of 350,000 citizens or on the basis of a resolution of the National Council of the Slovak Republic, within 30 days after the receipt of the citizens' petition or the resolution of the National Council of the Slovak Republic*. Par 2, Article 2 states that the President may, before calling a referendum, request that the Constitutional Court of the Slovak Republic decide whether the subject of the referendum that s/he is to call is constitutional. If the President submits this motion to the Constitutional Court, the time limit referred to in par. 1 (i.e. 30 days) does not run from the date of the submission of the motion to the coming into force of the Constitutional Court's decision). In the Slovak law system, this Article reflects the principle of judicial supervision over the constitutionality and legality of the direct exercise of power by the people.

Under Article 96, *the motion to pass a resolution of the National Council of the Slovak Republic on calling a referendum can be tabled by deputies of*

the National Council of the Slovak Republic or by the Government of the Slovak Republic. The referendum will be held within 90 days after it is called by the President. Article 97 specifies the time limits of holding referendums. A referendum must not be held within 90 days prior to elections to the National Council, but it may be held on the day of elections to the National Council. Article 98 defines the validity of the referendum, and, pursuant to the provision, the results of the referendum are valid if more than 50% of eligible voters participated in it and if the decision was endorsed by more than 50% of the participants in the referendum. It should be noted that it is a universal although high threshold.

Article 99 contains a convenient loophole for the ruling authorities to circumvent decisions adverse to them, taken in the referendum. The National Council can amend or annul the result of a referendum by means of a constitutional law three years after the result of the referendum came into effect, while a referendum on the same issue can be repeated not earlier than three years after it became valid. The adopted solution calls into question the significance of decisions taken by means of a referendum (Láštic 2007: 170). If the Constitution admits of the possibility that the Parliament will amend or annul the decision taken by the people in a referendum after three years, this may mean that the institution of direct democracy does not enjoy full trust and plays a marginal role in the Slovak political system. A different position on this question can also be encountered. It is argued in the doctrine that Article 99 ensures the stability of the decision taken in a referendum since the National Council is prohibited from making decisions contrary to the results of the referendum earlier than three years after it became valid (Rytel-Warzocha 2011: 119). It is therefore a controversial question whether the prescribed three-year period prohibiting the amendment or annulment of the decision directly expressed by the people strengthens the expressed will of the people or whether it (the period) marginalizes the will because after three years the National Council is entirely free to make and alter the law without regard for the results of the referendum of three years ago.

Under the Constitution of the Slovak Republic there are two kinds of referendums: mandatory and optional. The former applies only to entering into (or withdrawing from) an alliance with other states. In the other case the referendum is optional and there is no obligation to hold it. With regard to the subject of a referendum, an arbitration referendum should be distinguished, regulated by Article 101. It appeared in the Slovak legal system as a consequence of introducing the principle of direct election of the head of state and it refers to the possibility of recalling the President from office. If the National Council passes a resolution by a two-thirds majority on the referendum to recall the President, it has to be called within the period of thirty days. The voting is held within sixty days of the day of calling the referendum. The arbitration referendum is binding if the recalling of the President is endorsed

by more than half of all the eligible voters regardless of the size of the turnout. It is necessary to agree with Rytel-Warzocha's stance that the arbitration referendum in Slovakia should not be identified with the classical *recall* (Rytel-Warzocha 2011: 117) because, firstly, the exclusive referendum initiative is vested in the National Council (citizens do not have this right). Secondly, if the result of the vote is in his/her favour, the President is obliged to issue a decision about shortening the term of the Parliament, which means that it is necessary to call ne parliamentary elections within seven days.

Chapter VIII of the Elections Act of 2014 contains provisions concerning referendums (§196-215). A Slovak citizen who is eligible to vote in the election of the National Council of the Slovak Republic has the right to participate in a referendum. Voting can be in person or by mail. A referendum is called by the President at the request of the National Council or the citizens (§ 202). The president does not have the right to initiate referendums. A proposal (proposals) submitted in a referendum has to be formulated in such a way that the voter will be able to unequivocally answer "yes" or "no". The President may refuse to call a referendum if s/he deems the formulated questions unlawful or failing to meet the formal requirements. Section 204 specifies in detail the form of a ballot paper. The questions on the ballot paper should be numbered and there should be two variant answers: "yes" or "no". The Ministry of Internal Affairs is responsible for the preparation of the adequate number of ballot papers. A voter may cast a vote in the territory of the Slovak Republic in the constituency in which s/he is registered or in any other constituency on the basis of the ballot paper. The law also permits voting outside the country. Voting by mail is admissible for persons without permanent residence in Slovakia who are listed in a special register of voters or for persons with permanent residence in Slovakia but who are abroad at the time of voting (then they send the ballot paper to the polling station in the place of their permanent residence).

The Constitution of the Slovak Republic also provides for a local referendum, and stipulates in Art 67 that territorial self-administration is enacted at meetings of municipality (=commune) residents, by means of a local referendum, or through community bodies. The basic regulations on local referendums are contained in the law on the municipality (*obec*) system (Zakon 1992). Voting is announced by community representatives on matters such as the merger, division or dissolution of a municipality; introduction and abolishment of public charges, and on the proposal to introduce and abolish a local tax or local charge, which should be decided on by a local referendum pursuant to the resolution of the community representatives; a petition by at least 20% of the municipality citizens eligible to vote on the division of a community; a petition concerning the division of a municipality after it is submitted by 20% of registered voters residing in this part of the municipality who motion for the secession from the community (municipality). The result

of voting has the binding force of a resolution by the municipality representatives. The vote is valid on condition that more than half of the municipality inhabitants eligible to vote participate in it and the motion is supported by an absolute majority. After the amendment to the Constitution in 2001, Article 64 contains a reference to the second tier of the territorial level: the region and the accompanying institution of regional referendum (Láštic 2011: 238).

Slovakia's legal system also recognizes another institution of direct democracy, which is the public meeting of municipality citizens (§11b of the Elections Act). To discuss matters of significance for a municipality, the municipality representatives/representative body may convene a public meeting of all the municipality residents or of some of them (Barański 1998: 11-112). The main subjects of local referendums are matters concerning e.g. the recall of local authorities or the imposition of local charges (Gebethner 2001: 244). The recall procedure may be initiated by a resolution of the local meeting or at the request of the municipality residents supported by 30% of the eligible voters. The referendum on the recall of local authorities is valid if the turnout was 50%, and the motion was supported by at least half of the voters participating in the referendum.

Despite the fact that there are forms of direct democracy at the local level, citizens' participation is low, particularly in large municipalities. The socialist system of municipalities created for constituencies was not replaced by a more functional system of cooperation between the elected representatives of local authorities and the residents. Systematic meetings of representatives of the local authorities with the voters are not obligatory, they are organized rather ad hoc, particularly at the time of local elections or when a serious problem arises (Nemec/Bercik/Kuklis: 314).

Practical Dimension

Between 1994 and 2016 national referenda were held eight times in Slovakia. The voters were asked to express their position on 18 problems (questions) put to the vote in referendums.

Table 1. The national referendum of 22 October 1994

Date	Subject	Turnout in %	Result
22 October 1994	Retrospective disclosure of financial transactions regarding privatisations	19.97	Referendum invalid For 93.64% Against 3.97%

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

The first referendum (1994) concerned the disclosure by legislation of the sources of funds paid out by investors who took part in the Slovak privatisation. The referendum was essentially not necessary because the law solving the question of the demands for transparency of the sources of funds used in the privatisation process was passed prior to the announcement of the vote results.

Table 2. The national referendum of 24 May 1997

Date	Subject	Turnout in %	Results
24 May 1997	Direct presidential elections	Unknown	Referendum invalid
	Deployment of nuclear weapons	Unknown	
	NATO membership	9.51	
	Creating military bases	Unknown	

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

The second referendum (1997) was the outcome of the evident conflict between the President and the government coalition. The President called a referendum on the direct election of the head of state. The subject of the referendum was put forward by the parliamentary opposition who justified the proposed changes by their fears that a stalemate might arise when the conflict-ridden and politically fragmented National Council would not be able to elect the president. Having failed to gain the required parliamentary majority, the opposition began to collect signatures in support of the citizens' proposal to hold a referendum on the amendment to the Constitution concerning the manner of election of the head of state (Horwáth, 2016). In contrast, Prime Minister Mečiar's government pushed through the Parliament the calling of a referendum on Slovakia's membership of NATO (Hacker 2010: 167). The voters were expected to answer three questions prepared by the government: on NATO membership, deployment of nuclear weapons, and installation of missile bases in the territory of Slovakia. The referendum campaign was dominated by the issue of NATO membership. The unclear activity of the Ministry of Internal Affairs, manifested *inter alia* in printing only three questions on the ballot papers (with the omission of the question about the direct election of president) was confirmed by the decision of the Constitutional Court, which found the Ministry of Internal Affairs guilty of breach of constitutional civil rights (Deegan-Krause, 2006: 53) and ordered the cessation of referendum voting. Furthermore, in some polling stations the registered voters were not given any ballot papers because these were not recognized as official, having been printed illegally, without the required permission of the Central Referendum Commission and were not stamped with the appropriate seal (Rytel-Warzocha 2011: 164). It should be stressed at this point that rather

than show the support for NATO membership, the referendum laid bare the fragmentation of the Slovak political scene. The opposition parties announced they would not take part in the vote (Schwegler, 2008: 119). It should be emphasized that the NATO referendum was groundless for several reasons. Firstly, Slovakia was not a member of the so-called first group of Central European states – candidates for NATO membership (Żarna 2010: 214). Secondly, Slovakia was not officially invited to join the Alliance at that time. And thirdly, irrelevant questions were asked in one package. The deployment of nuclear weapons and installation of missile bases could not obviously count on huge support of the voters (Bebler 1999: 165).

Table 3. The national referendum of 26 September 1998

Date	Subject	Turnout in %	Results
26 September 1998	No privatisations of strategically important enterprises	44.06	Referendum invalid

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

A year after the scandalous circumstances under which the referendum of 1997 was held, the Slovaks again did (not) participate in the referendum (combined with parliamentary elections), whose subject was a ban on privatisations of strategically important state enterprises (Kopeček/Belko, 2003: 196). The initiative of holding a national referendum was launched by Mečiar's party, which proposed to prohibit the privatisation of six state enterprises in the energy and gas sector (Podolak 2014: 352).

It should be noted here that the controversial 1997 referendum had its continuation in 1998, but at the local level. In January 1998 the Constitutional Court decided that the initiative concerning the referendum on direct presidential elections was still valid. The Chairman of the Referendum Commission appealed to President Kováč of Slovakia to again call a referendum on the same issue. Slovakia's President called the referendum on 19 April 1998, the subject of the referendum being four questions. In March 1998 the decision was withdrawn after Prime Minister Mečiar took over the presidential competence when the Parliament had failed to elect the new president. As a response to the recall of the referendum by Prime Minister Mečiar, the local assembly in Štúrovo decided to call a local referendum on 19 April 1998 and put the same four questions to the vote, including the one about the direct elections of the country's president. This decision caused political confusion, with the state authorities attempting to prevent the referendum. The regional court ordered the town authorities to stop the referendum but its decision was reversed by a higher court (Láštic 2011: 238). Several days after the referendum, in which the turnout was 50%, the government proposed an amendment

to the law on municipalities, and, using an expedited legislative procedure, presented a new version of provisions concerning the admissible subject of the vote in local referendums. The amendment to the law adopted by the Parliament explicitly prohibited the municipalities from putting to the vote the matters other than those concerning the local community and their local range in a local referendum.

Table 4. The national referendum of 11 November 2000

Date	Subject	Turnout in %	Results
11 November 2000	Amendments to the Electoral Law in order to hold early elections of the National Council	19.98	Referendum invalid For 95.07% Against 4.63%

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

The reasons for calling a referendum in 2000 to shorten the term of office of the National Council should be sought in the political dispute between the parliamentary opposition and Prime Minister Dzurinda's government accused of growing unemployment and inflation. Interestingly enough, 95% of the referendum participants (with a 20% turnout) opted for shortening the Parliament's term of office despite the fact that the government still had a three-fifth parliamentary majority (Henderson 2003: 6). The same subject of the vote (i.e. shortening of the National Council's term of office and earlier elections) was also the subject of the 2004 referendum, which was held together with the first round of the presidential elections. The referendum was initiated by the opposition parties (mainly the Smer party headed by Robert Fico). Opinion polls conducted just before the referendum indicated the success of the Smer party in the situation of earlier parliamentary elections being called (Podolak 2014: 337).

Table 5. The national referendum of 17 May 2003

Date	Subject	Turnout in %	Results
17 May 2003	Accession to the EU	52.12	Referendum valid For 93.71% Against 6.29%

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

The people's referendum on Slovakia's membership of the EU was attended by 52% of eligible voters, out of which over 90% were in favour of the country's accession to the EU. For the first time the subject of the vote was not identified with the support of political parties but was associated with the country's future and its position in the European arena. For referendum pur-

poses, the document "Information Strategy of the Slovak Republic Government" was compiled which explained the functioning of EU and integration process to the society, and raised the awareness and knowledge on the EU (Podolak 2014: 263). The majority of Slovak political parties opted for the accession to the EU, identifying Slovakia's membership of a united Europe with guarantees of freedom, the integrity and inviolability of frontiers, and security and economic growth. European integration was opposed by the national parties: the Slovak National Party, the Hungarian Party of Justice and Life, and Czech republicans.

The only successful referendum in Slovakia was the referendum on the country's accession to the EU. Over 90% of voters opted for the accession, the turnout being 52%. Compared with the previous referendum experiences, the high turnout probably stemmed from the fact that it was the first time that the subject of the vote did not set the parties against one another but led to a broad consensus between them. Moreover, the Slovaks feared Mečiar's nationalist policy: a counterbalance to it was the accession to the EU, which enjoyed the unquestionable support of the Slovaks.

Table 6. The national referendum of 3 April 2004

Date	Subject	Turnout in %	Results
3 April 2004	Early general elections	35.86	Referendum invalid For 87.91% Against 12.09%

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

During the presidential elections president Schuster organized a referendum on shorten the parliamentary term-of-office in order to conduct early parliamentary elections in 2004. Political disputes resulted again in low turnout and invalidity of referendum.

Table 7. The national referendum of 18 September 2010

Date	Subject	Turnout in %	Results
18 September 2010	Abolition of concession fees for broadcasting and television	22.84	For 90.63% Against 9.37%
	Limitation of parliamentary immunity	22.84	For 98.21% Against 1.79%
	Reduction of the number of parlia-mentary seats	22.84	For 96.01% Against 3.99%
	Ceiling price for official vehicles	22.84	For 93.51% Against 6.49%
	No right of rely for office holders	22.84	For 84.79% Against 15.21%

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

In 2010 the Slovaks voted on several questions, *inter alia* concerning the limiting of parliamentary immunity and the reduction of the number of seats in the Parliament (Krzywoszyński 2014: 60) What the three referendums (2000, 2004 and 2010) have in common is the unconstitutional character of the questions, and legal doubts as to the possibility of changing the Constitution through a referendum (because this is how the consequences of the positive result of the vote would have to be understood). The motion to examine the constitutionality of the referendum questions was submitted to the Constitutional Court by a group of parliamentarians. The Court refused to examine it on procedural grounds (Kopeček/Belko 2003: 198).

The electorate perfectly interpreted the intention of the referendum organizers, who tried to use this tool to either discredit political opponents or gain support. The subject of the referendum was proposed by the ruling parties and the President. The referendum was treated as a convenient tool for the removal of opposition forces from power and influence .It was an (unsuccessful – E. K.) instrument of struggle for influence in the society (Zieliński 2003: 57). Referendum was often used by the political forces that lost support in the parliamentary elections and, by launching the proposed initiatives, intended to regain their position and confidence of their supporters.

Table 8. The national referendum of 7 February 2015

Date	Subject	Turnout in%	Results
7 February 2015	Do you agree that only a bond between one man and one woman can be called marriage?	21.4	For 94.50% Against 4.13%
	Do you agree that same-sex couples or groups should not be allowed to adopt and raise children?	21.4	For 92.4% Against 5.54%
	Do you agree that schools cannot require children to participate in education pertaining to sexual behaviour or euthanasia if the children or their parents don't agree	21.4	For 90.3% Against 7.34%

Source: www.portal.statisctics.sk (8 November 2016) and www.c2d.ch (8 November 2016).

Particularly worth noting is the last referendum of 2015 because it pertained to controversial social issues. In the referendum of February 2015 the Slovaks answered three questions. The first was about the introduction of the constitutional ban on marriages between same-sex persons, by confirming that the term "marriage" is reserved exclusively for a union between a man and a woman, and cannot apply to any other form of relationship. The question was evidently unconstitutional and that was the stance adopted by the Constitutional Court (Krošlák 2015: 152-153). The second question concerned the ban on adoption of children by same-sex couples or groups. The last question was associated with the possibility that children could refuse to attend classes during which sexual behaviours or problems of euthanasia are discussed if the parents or children do not agree with the content of instruction. The initiative to call a referendum on controversial moral questions was launched by a Catholic community organization (and not by political parties as in the earlier cases) called Alliance for Family (Aliancia za rodinu, AZR).

All the three questions were directly linked with a specific worldview. With their liberal approach to the worldview questions, the Slovaks boycotted the referendum hence the turnout was low and the referendum was invalid. It should be emphasized that from the legal standpoint the 2015 referendum was unnecessary. Prior to the referendum, the Parliament inserted the definition of traditional marriage (a union between a man and a woman) into the Constitution (Art. 41). The amendment of 2014 excludes the possibility of recognizing the relationship between people of the same sex. This means that the Slovak law does not permit either same-sex marriages or registered partnerships (Kużelewska 2015: 182). It should be also added that the legal solutions

pertaining to the definition of marriage in Slovakia's Constitution contradict Article 8 of the European Convention of Human Rights (Ruling of the European Court of Human Rights 2010). The referendum was referred to as *anti-homosexual*, *in defence of traditional family*, or *selfish*. The initiators emphasized concern for the protection of traditional family, the interests of children growing up in the family with father and mother, and for stopping inappropriate sexual education at school. The main goal of the AZR was to change the attitude of citizens towards family values, which was the purpose of the referendum. They invoked the successful referendum in Croatia in 2013: its subject was the constitutional definition of marriage (Pavasović/Trošt/Slootmaeckers 2015: 162).

When analyzing the data in the tables above, it should be noted that in all cases (except the 2003 referendum) the referendum was invalid because the 50% turnout threshold was not reached.

Despite the high frequency of holding referendums, the turnout in the other cases was below the constitutional threshold of 50%. Very often, barely one fifth of the eligible voters participated in the referendum. The reasons for the low turnout in referendums are sought *inter alia* in the fact that voters are tired of political disputes between political parties (Kużelewska 2014: 106).

It is difficult to unequivocally assess the experiences of local democracy because the municipalities (communities) are not obliged to send reports to the Statistical Office to present data on the local referendums held. We can guess the number of the local referendums held, based *inter alia* on the fact that the number of municipalities rose from 2669 in 1990 to 2891 in 2006. The new municipalities were created as a result of division of municipalities through the use of local referendums. This means that at least 200 local referendums on the division of municipalities were held.

Conclusion

The Slovak legal system is consistent with the tenets of direct democracy. Direct democracy functions in Slovakia both in the formal-legal and practical dimensions, including at the local level although there are problems with obtaining detailed data. Direct democracy is observable above all at the national level. It should be pointed out that the decisions arrived at in referendums become legally binding at the moment of promulgation, with the binding force of a law, which means the obligation to execute the will of the voters by the state agencies. The adopted legal solutions are actually a guarantee of the efficacy of referendum results. However, in view of the fact that the voter turnout in referendums is very low, and consequently, the condition for referendum validity is not met, this institution is becoming a caricature of the

form of direct democracy. Its perversions are aggravated by politicians who use it a tool serving to discredit the opposing political forces. It should be stressed at this point that the Slovaks are deprived of the right to influence the legislative process through citizens' legislative initiatives. Citizens do not have any powers to call a referendum - they only have the right to participate in the referendum already called. The EU accession process "forced" the holding of the referendum on EU membership after prior introduction of appropriate amendments to the Constitution; therefore, it can be concluded that this process influenced the development of direct democracy both in the formal-legal and practical dimension.

In Slovakia, the referendum did not fulfil the educational function meant to increase the level of citizens' political awareness. It was not conducive to building a consensus, nor did it solve political conflicts (but even reinforced them). It did not ease tense relations between political parties and their programmes. The referendum contributed to distorting the idea of direct democracy and discouraged voters form expressing their will because it was instrumentally exploited by political parties to achieve their narrow party interests. It was an element of political struggle, used by political parties in destabilizing the already fragmented Slovak political scene. Generally, in all national referendums (except in 2003) there were legal and political controversies. The Slovak referendum democracy is just as dangerous as its representative version; in the latter, however, it is easier to conduct constitutional supervision over the state organs.

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Elżbieta Kużelewska

Direct Democracy in Slovenia

Determinants

Slovenia is one of seven countries (apart from Croatia, Serbia, Bosnia and Herzegovina, Montenegro, Kosovo, and Macedonia) that came into existence after the dissolution of the Socialist Federal Republic of Yugoslavia in 1990. In September 1989 the Parliament adopted in the Constitution of Slovenia the provision on the right to the independence and autonomy and the deputies decided to hold a referendum on independence and autonomy in Slovenia. The amendments that were initiated by the Slovenians were a peculiar constitutional "earthquake" in the federal system of Yugoslavia (Accetto 2007; 218). The beginnings of these changes should be sought in the second half of the 1980s when, a few years after the death of Tito, the process of formation of civil society started in Slovenia. Yugoslavia, enfeebled by political crises and futile efforts of changing into a de-centralized state, was not able to suppress new social movements, slogans of true democracy, political pluralism, and free elections for independent Slovenia. The process of democratization of Slovenia could not be stopped (Haček/Brezovšek/Kukovič 2013: 11).

Slovenia became a sovereign and independent country following the independence referendum that was held on 23 December 1990; the results of the referendum obliged the Parliament to declare the country's independence (Ziemele 2001:204). It was the first national referendum, which proved that in the newly created state the use of a form of direct democracy well complemented the representative form of the exercise of power. The referendum on the independence of Slovenia had the character of a successful plebiscite; however, a year later the authorities did not appeal to the will of the nation while adopting the new Constitution.

For the first time, a plebiscite in Slovenia was held in 1920. After World War I, Slovenia became a part of the Kingdom of Yugoslavia. According to the resolutions of the Peace Conference in Paris in 1919 the status of controversial territories at the border of Austria and Slovenia (Styria and Carinthia) was to be solved by a plebiscite held in October 1920. The majority of the inhabitants of Carinthia's municipalities voted in favour of adhesion to Austria (Moll 2007: 212).

The Constitution of the Socialist Republic of Slovenia of 1947 was based on the Yugoslav Constitution of 1946. In Article 74 it established the institu-

tion of the people's referendum on matters within the jurisdiction of the Federal People's Republic of Yugoslavia. The Presidium of the People's Assembly ordered the people's referendum on the basis of a resolution of the People's Assembly of the FPRY or on the proposal of the Government of the FPRY. In the amended Constitution of 1953 Article 25 was added which provided for a legislative referendum that could be held both *ante legem* and *post legem*. A referendum initiative was vested in a group of at least one fifth of the members of one of the Parliamentary chambers (Skupština) or in the Federal Executive Council. The results of the voting were binding because within two years of its date no legal act could be passed whose provisions would be against the will of the people expressed in the referendum. The Constitution of 1953 for the first time introduced the institution of a constitutional referendum - either obligatory or optional. The obligatory referendum was introduced in Article 214. Pursuant to the provision, if on the fifteenth day, at the latest, after the adoption of the amendment to the Constitution by the Federal Council and Nationalities Council, at least three other councils of the Parliament did not agree on the contents of the constitutional amendments, then the issue of the constitution would be solved in a referendum. Article 212 regulated the procedure for optional referendum. It stipulated that in case when the Federal Council and Nationalities Council did not achieve the agreement on the amendments to the Constitution they could pass a resolution on settling the disputable issue through a referendum. On the other hand, the Constitution of 1974 introduced the referendum at the federal, republican, and district (local) levels. The referendum was binding because the Constitution directly stipulated that the act adopted through referendum was binding.

Formal-Legal Dimension

The Constitution of the sovereign and independent Republic of Slovenia of 23 December 1991 (Constitution, 1991) indicates the institutions of direct democracy, which are: legislative initiative, referendum (national and local), and the right to file petitions. The legal basis of the forms of direct democracy is included in the Referendum and Public Initiative Act of 1994 and the Law on Local Self-Government of 1994.

The Constitution of the Republic of Slovenia of 23 December 1991 stipulates that *Slovenia is a state of all its citizens and is founded on the permanent and inalienable right of the Slovene nation to self-determination. In Slovenia power is vested in the people. Citizens exercise this power directly and through elections, consistent with the principle of the separation of legislative, executive and judicial powers* (Article 3).

There are three kinds of national referendums in the Slovenian legal system: constitutional, legislative, and consultative (Mikuli 2004:10). The constitutional referendum (Art.170) is optional but it becomes obligatory if at least one third of the National Assembly deputies demand that the suggested amendments to the Constitution be submitted to a referendum. The amendment to the Constitution is passed if the majority of the voters have voted in favour and the turnout is 50%. As Rytel-Warzocha rightly points out, the Constitution lacks any restrictions on the subject of voting: consequently, each amendment to the Constitution (irrespective of any part it concerns) may be the subject of voting in the referendum (Rytel-Warzocha 2011:191). The entity that initiates the constitutional referendum is the National Assembly. Neither the State Council (the other Chamber of the Parliament) nor citizens are entitled to do this.

The legislative referendum concerning the law that has already been passed by the National Assembly (the first Chamber of the Parliament) is regulated by Article 90 of the Constitution. Until 2013 the National Assembly was allowed to call the referendum on its own initiative and it might concern the submission of a draft law. The Parliament was obliged to call such a referendum if so required by at least one third of the deputies, by the National Council (the second Chamber of the Parliament), or by forty thousand voters (legislation status prior to the amendment to the Constitution in 2013; the contemporary legal regulations will be discussed later). The right to vote in a referendum is held by all the citizens who are eligible to vote in elections. A proposal for a law is passed in a referendum if the majority of those voting have cast votes in favour of the same. A non-binding consultative referendum may be called on the Parliament's initiative and a motion can be put forward by any deputy.

It should be stressed that there were no limitations on the subject of a legislative referendum. The National Assembly cannot refuse to call a referendum on the basis of its potential unconstitutional consequences (Ribičič/Kaučič 2014: 901). The decision on the unconstitutionality of the law is taken by the Constitutional Court. Only the amendment to the Constitution of 2013 expressly introduced the limitations on the subject of the legislative referendum (Bardutzky 2016: 7). They cover three key issues.

The first and most important change adopted is that, in the future, the National Assembly is obliged to call a referendum on the entry into force of an act that it has adopted if so required by only forty thousand voters, with the right of either a parliamentary minority (30 MPs) or the second house to call a referendum having been eliminated.

The second most important aspect of the reform was the exclusion of some issues from the referendum vote. In the future, popular votes will be banned on legislation on urgent measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters, on legis-

lation on taxes, customs duties and other compulsory charges, on acts adopting the state budget, on acts ratifying treaties, and on acts eliminating unconstitutionalities in the field of human rights and fundamental freedoms or any other unconstitutionality.

The third innovation is the adoption of the model of the 'rejective' referendum, according to which an act is rejected in a referendum if the majority of voters who have cast valid votes voted against the act, provided that at least one fifth of all qualified voters voted against the act. The most significant features of this model are: the issue put to a referendum is a complete act, and not only its specific provision/s; a referendum is subsequent (to an act already adopted by the National Assembly, yet still not published and not enforced); in a referendum, voters decide on the enforcement of an act (the so-called suspensive referendum, because the calling of a referendum delays the enforcement of the act until the referendum decision has been made); the referendum vote concerns the rejection, and not the validation of an act. (Podolnjak 2015: 141-142)

Until 2013 the Constitution did not contain precise information if voting in a legislative referendum consists in the confirmation of the act by the voters, its adoption or rejection. The decision on this matter was taken by the legislator. Nevertheless, the decision of the Constitutional Court in 2005 annulled the legislative provisions on the *ante legem* (preliminary) legislative referendum, the only possible way of holding a popular vote on a legislative issue being a *post legem* referendum (Decision of the Constitutional Court 2005). This means that after the National Assembly has adopted an act, 40,000 voters have the right to demand a referendum whereby it will be decided whether the act adopted by the first Chamber of the Parliament) will enter into force or not. In this way the referendum has adopted the form of an abrogative rather than approving model (Ribičič/Kaučič 2014: 900). Detailed regulations are in contained in Article 16c of the Referendum and Public Initiative Act (Zakon 1994). The model of abrogative referendum allows the voters to reject the act passed earlier by the Parliament: it is therefore a typical "suspensive veto". The aim of the introduction of an abrogative referendum was to break with the adoption of an act by the Parliament being dependent on the voters' expectations in a referendum, which could lead to a legislative paralysis. Consequently, in a legislative referendum the voters vote for the adoption of the act or for its rejection.

The national referendum on concluding international agreement should be also mentioned: it transfers some of the powers of state organs to be executed by an international organization. This situation is regulated by Article 3a which empowers the state bodies to transfer some of their sovereign rights to an international organization formed to protect human rights, basic freedoms, democracy, and principles of the rule of law. The cited article also determines the method of ratifying the agreement of Slovenia's accession to

this type of organizations. The ratification of the international treaty by the first Chamber of the Parliament – the National Assembly – can be preceded by a referendum whose result is binding for the first Chamber. A legislative referendum on the ratification act cannot be held in this case. Unlike a constitutional referendum, a ratification referendum is always binding, regardless the level of turnout. Similar solutions on the introduction into the Constitution of the article on the possibility of transferring the powers of state bodies to an international organization were also applied in Poland and Latvia. Only in Slovak and Hungarian constitutions do the corresponding articles directly refer to the EU (Albi 2007: 41).

Article 88 of the Constitution concerns the right to legislative initiative. It stipulates that *Laws may be proposed by the Government or by any deputy. Laws may also be proposed by at least five thousand voters*. This number should be regarded as low because it constitutes not more than above 0.3% of all registered voters (Uziębło 2009: 113).

Article 90 of the Constitution of Slovenia stipulates, after the 2013 amendments that The National Assembly shall call a referendum on the entry into force of a law that it has adopted if so required by at least forty thousand voters. Following the amendment, one third of the deputies and the National Council were deprived of the right of popular initiative. It should be added that between 1991 and 2016 sixty different initiatives on calling a legislative referendum were proposed. Most proposals were put forward at the request of one third of the National Council members, the fewest by State Council (Ribičič/Kaučič 2014:916).The limitation of the entity authorized to launch a referendum initiative increases the role of a referendum as a factor of the people's control over parliamentary work. Referendum also serves as citizens' veto and limits the possibility of using it in party-political conflicts or the conflict between both Chambers of the Parliament. The amendment of the Constitution in 2013 eliminated the opportunity of instrumental treatment of a referendum by conflict-ridden parties.

Additionally, a referendum cannot be called on the exclusive initiative of the National Assembly. However, the National Assembly may call a consultative referendum in cases falling under its jurisdiction and of importance for the citizens. Admittedly, the results of such a referendum are not legally binding for the National Assembly (but only politically), nevertheless the Parliament usually respects them.

Article 45 of the Constitution says that *Every citizen has the right to file petitions and to pursue other initiatives of general significance*.

According to Article 46, par. 2 of The Law on Local Self-government, *The municipal council may call a referendum at the proposal of the mayor or of a member of the municipal council. The municipal council must call a referendum if requested by a minimum of 5% of the municipal electoral body, and if so determined by law or the municipal statute*. A local referendum may

be of double character: it may be a consultative referendum or one that approves the previous decisions of the municipal (commune) council. Article 44 provides, *inter alia*, for another form of direct democracy, i.e. citizens' assembly: *Members of a municipality shall directly participate in decision-making in the municipality through their assembly, referendum and people's initiative*.

Practical Dimension

Slovenia is well experienced in holding national referendum. Slovenia "was born" of referendum as the people decided in a referendum about the independence.

Table 1. The national referendum of 23 December 1990

Date	Subject	Turnout in %	Results
23 December 1990	Independence	93.31	Accepted (95.71%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

In the first national referendum devoted to the issue of independence the majority of 95% of voters decide to leave the Yugoslavia and become independent state. Six months after the referendum the Parliament of Slovenia declared full sovereignty. This decision resulted in attacking the country by the Yugoslav armed forces (Pleskovic/Sachs 2008: 198).

Table 2. The national referendum of 8 December 1996

Date	Subject	Turnout in %	Results
8 December 1996	Electoral system for the National Assembly: Initiative C (launched by 30 deputies of the National Assembly)	37.94	Not accepted Against 35.65%
	Electoral system for the National Assembly: Initiative B (launched by the SDS)	37.94	Not accepted For 34.52%
	Electoral system for the National Assembly: Initiative A (launched by the national council)	37.94	Not accepted Against 40.64%

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

Between 1996 and 2016, 16 legislative referendums were held and 22 matters were submitted to the vote. This number was sufficiently significant for the Government and the National Assembly to attempt to limit the number of referendums which, in a sense, constituted a danger to the legislative process. It was only the amendment of the Constitution in 2013 that introduced limitations on the subjects of a legislative referendum. Until that time, the right to a legislative referendum was almost absolute (Bardutzky 2016: 9). The initiators of the changes rightly argued that only an authorized group of voters had the right to demand holding a referendum because the voters, unlike the parliamentary deputies, did not take direct part in a legislative process (Podolnjak 2015:135).

Table 3. The national referendum of 10 January 1999

Date	Subject	Turnout in %	Results
10 January 1999	The third steam electricity power plant TET 3	27.31	Not accepted (20.20%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

In 1995 and 1996 there have been two attempts to hold a national referendum on the future of the nuclear power plant Krško. The most anti-nuclear members of the Parliament collected signatures supporting the request for the national referendum on the shutdown the Krško plant in next ten years (Stritar 1996: 136). In the 1999 referendum voters rejected the nuclear plant.

Table 4. The national referendum of 17 June 2001

Date	Subject	Turnout in %	Results
17 June 2001	Artificial insemination for unmarried women	35.66	Not accepted (36.69%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

Particularly worth noting is the referendum of 2001 on allowing unmarried women to have fertility treatment. The subject of the referendum was a controversial social issue which revealed the lack of equal status of married and unmarried women. Two months earlier the Parliament adopted the act on amending and complementing the law on infertility treatment that allowed extension of the law onto *in vitro* fertilization in unmarried women. The law was criticized by the Catholic Church and conservative parties that argued that it was inconsistent with the traditional model of the family and deprived children of the right to have a father. Although the turnout in the plebiscite was low, the majority (73%) opted for the rejection of artificial insemination of unmarried women. As a result, unmarried women lost the right granted them by the previous act which was rejected in a referendum. In this case the referendum was an instrument of blocking radical changes (Kużelewska 2006: 31).

Table 5. The national referendum of 19 January 2003

Date	Subject	Turnout in %	Results
19 January 2003	Entire restitution of the too much paid telephone fees	31.14	Accepted (77.59%)
	No subdivision of the railroads	31.14	Not accepted (51.86)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The turnout in a referendum on privatisation was low (31.14%). Voters were asked to answer to two questions. They rejected the idea that Slovenian Railways should have been kept as a single company. The voters supported the Telekom Slovenije proposal to obtain a rebate for the market price fees paid for cable TV before the privatisation.

Table 6. The national referendum of 23 March 2003

Date	Subject	Turnout in %	Results
23 March 2003	Accession to the NATO	60.44	Accepted (66.04%)
	Membership in the European Union	60.44	Accepted (89.64%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The highest turnout was noted in 2003 (60.44%) when the Slovenians voted on the membership in two international organizations: the European Union and North Atlantic Treaty Organization (NATO).

Table 7. The national referendum of 21 September 2003

Date	Subject	Turnout in %	Results
21 September 2003	Only ten Sundays sales per year	27.54	Accepted (57.99%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The Parliament's proposals of Sunday shopping have been accepted by the majority of 58% of voters. The Slovenians approved limiting shops to opening on ten Sundays a year. According to proposal, shops selling essential goods regardless of their size and localization will be allowed to open up to ten Sundays a year, while shops smaller than 200 sq. metres and situated at petrol station, hospitals, hotels, city centres, airports, etc. will be able to remain open all Sundays.

Table 8. The national referendum of 4 April 2004

Date	Subject	Turnout in %	Results
4 April 2004	Renewed residency rights for former minorities stemming from former Yugoslav autonomous republics	31.4	Not accepted (96.1%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The referendum of 2004 concerned the restoration of basic rights to ethnic minorities who had earlier been erased from the citizen registry. According to the Slovenian act of 1991 all people who are not born in Slovenia but reside on the territory of Slovenia have the right to apply for Slovenian citizenship

within one year. After this short time and after fulfilling numerous bureaucratic demands, almost 30,000 people who did not submit an application were erased from the citizen registry in 1992. Almost 11,000 left Slovenia and 18,000 lost the status of a permanent resident which was connected with the loss of many basic rights (Sadurski 2004: 43). It should be stressed that the problem was normalized in the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia. The solutions adopted in this Act did not satisfy the interested people who requested the Constitutional Court to examine the constitutionality of the Act. The Constitutional Court adjudicated that the Act was unconstitutional because it did not restore the status of a permanent resident to the citizens of former Yugoslavia living in Slovenia. The Constitutional Court ordered the issuance of appropriate executory provisions (Rytel-Warzocha 2011: 223-224). In 2003 (with the objection of the opposition emphasizing financial consequences for the state) the proper acts were adopted.

The legislative referendum on the adoption of the act in question was called on the initiative of the opposition party (Social Democrats). Voters were asked whether they approved government proposals to restore basic rights to ethnic minorities who had been erased from the citizen registry in 1992. It was a meaningful question in the context of Article 61 of the Constitution of the Republic of Slovenia, which guarantees the right (...) *to freely express affiliation with his nation or national community, to foster and give expression to his culture, and to use his language and script*. Nevertheless, Article 64 of the Constitution regulates special rights of the Autochthonous Italian and Hungarian National Communities in Slovenia. They are very widely discussed perhaps for the reason that the Italian and Hungarian minorities are treated as national communities, residing in Slovenia for centuries. However, it is neither Hungarians nor Italians who constitute the most numerous ethnic minorities. They are the Croats, Serbs and Muslims. Why, then, are such wide rights granted in a separate article in the Constitution to the Italian and Hungarian minorities which, after all, are not the most numerous ethnic group in Slovenia? Sadurski very accurately observes that such a solution results from the fact that the relations between ethnic Slovenians and Hungarians and Italians are *less politically explosive* than the relations with the remaining ethnic groups that made up the former Yugoslavia (Sadurski 48). That is why it was safer to grant a special and favourable status to the Italian and Hungarian minorities than to the Croats or Serbs. The Romany minority is treated by law in a still different way. Article 65 of the Constitution stipulates that *The status and special rights of the Romany community living in Slovenia shall be regulated by law*. Such an attitude suggests that the Romany people are not covered by the general provisions on minorities and they are not regarded as a national or ethnic minority. The results of the 2004 referendum were also meaningful as over 90% of the voters rejected the pos-

sibility of restoring the right to a permanent residence of ethnic minorities on the territory of Slovenia.

Table 9. The national referendum of 25 September 2005

Date	Subject	Turnout in %	Results
25 September 2005	Regulation of the Slovenian public broadcaster (RTV)	30.6	Accepted (50.2%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The referendum on mass media regulation was accepted by narrow majority of voters.

Table 10. The national referendum of 11 November 2007

Date	Subject	Turnout in %	Results
11 November 2007	Law on transfer of ownership of insurances (35% shares into national fund)	57.91	Not accepted (71.12%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The voters rejected proposal of changes in the ownership of insurance.

Table 11. The national referendum of 6 June 2010

Date	Subject	Turnout in %	Results
6 June 2010	Border Arbitration Agreement with Croatia	42.64	Accepted (51.54%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The referendum of 2010 confirmed the Slovenian-Croatian border. It should be stressed that in 2008 Ljubljana effectively blocked the accession negotiations of Croatia raising the issue of borders between these two states. 13 square kilometres (mostly uninhabited) and the territorial waters at the Piran Bay were the bone of contention. It was the access to the sea that was the main problem of Slovenia, which emphasized the need for *a territorial contact* with the international waters of the Adriatic Sea in order to ensure the profitability of the harbour of Koper and domestic fish industry (Bender/Knaus 2010: 1). In January 2009 a series of tripartite negotiations started between Slovenia, Croatia, and the EU Commissioner for Enlargement, Olli Rehn. The Commissioner suggested settling the dispute by way of interna-

tional arbitration; on the other hand Croatia demanded that the case be referred to the International Court of Justice. Finally, the agreement was signed in November 2009 and the process of ratification started in both countries (Sancin 2011: 161-162). Slovenia had to wait for the ruling of the Constitutional Court that there was no inconsistency with the Constitution. In April 2010 the agreement was adopted by the Parliament and approved by the nation in a referendum.

Table 12. The national referendum of 12 December 2010

Date	Subject	Turnout in %	Results
12 December 2010	Regulation of the Slovenian public broadcaster (RTV)	14.78	Not accepted (72.33%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The December referendum in 2010 was held on the initiative of the parliamentary opposition (Podolnjak 2015: 135).

Table 13. The national referendum of 10 April 2011

Date	Subject	Turnout in %	Results
10 April 2011	Law on part-time work	33.97	Not accepted (80.07%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The April referendum of 2011 was held on the initiative of the parliamentary opposition (Podolnjak 2015: 135). The April referendum of 2011 and the March referendum of 2012 and June referendum of 2014 were held on the motion of a group of electors.

Table 14. The national referendum of 5 June 2011

Date	Subject	Turnout in %	Results
5 June 2011	Law on the protection of legal documents and archives	40.41	Not accepted (70.88)
	Law on pension and invalidity insurance	40.46	Not accepted (72.05%)
	Law against illicit work	40.43	Not accepted (75.41%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The results of the referendum of 2011 on the reform of the pension system and the insurance of disabled people as well as on stronger measures to combat illicit work (the so-called *mini jobs*) were of serious consequences for the politico-social system of Slovenia. Firstly, they prevented the necessary reform of the pension system and secondly, they caused the fall of the social-democratic government in September 2011 (Podolnjak 2014: 9). Just before the vote the Prime Minister warned the voters that if the rules were repealed the rating of Slovenia would fall and the state would plunge into debt crisis.

In 2011 and 2014 the Slovenians voted on the same issue – on the adoption of the Protection of Documents and Archives and Archival Institutions Act. In 2011 the initiators of the referendum were two opposition parties: the Slovene Democratic Party and the Slovene National Party, which argued for the need of appealing to the will of the nation because the Act adopted in 2006, might limit the access to the archival materials of the secret service of the former, socialist regime. Apart from the explanations that for national security reasons only archival materials concerning activities abroad of the former regime's secret service of would be restricted, over 70% of the voters voted against the Act. The referendum result was not a big surprise as the government was very unpopular at that time (Krašovec 2015: 226-227) and to convince the voters to support the three issues which were the subject of the vote in 2011 would verge on the miraculous. In 2014 the situation was repeated; the Government adopted the Protection of Documents and Archives and Archival Institutions Act and the opposition (Social Democrats) started a campaign for the referendum as an alternative to the opening (or closing) the secret archives of the secret service of the former regime although only 2% of the archival materials concerned the secret service of the old regime (Krašovec 2015: 227). The Social Democrats gathered 40,000 signatures and the Parliament ordered to hold a referendum in this case. There was a dispute over the date of the referendum. The opposition opted for holding the referendum on the same day as the election to the European Parliament. Such a solution would guarantee a higher turnout and lower costs of conducting the vote. The government, on the other hand, was afraid that voting on the same day would mix the Euro-parliamentary and referendum campaigns. Moreover, according to the government, the issue of archives was so important that it needed a separate campaign. The Parliament supported the opinion of the Government and decided by a majority vote to hold the referendum on 4 May 2011. This decision was a surprise because 27 April and 1 and 2 May are public holidays in Slovenia and the Slovenians take a leave (making the so-called *bridge*) to go on holidays. There was a well-justified suspicion that this date would result in a low turnout. The Social Democrats appealed to the Constitutional Court, which agreed with their anxieties (Slovenia 2014) and unanimously ruled that the Parliament should appoint another date of the referendum because holding it on 4 May would deprive many voters of the

use of their election rights since many of them might be outside their homes at that time (Krašovec 2015: 227).

Table 15. The national referendum of 25 March 2012

Date	Subject	Turnout in %	Results
25 March 2012	Family code	30.31	Not accepted (54.55%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The March referendum of 2012 and the June referendum of 2014 were held on the motion of a group of electors. The family code bill expanded existing same-sex registered partnership to obtain all rights of married couples, except from adoption. A group of "Civil Initiative for the Family and the Rights of Children" forced a referendum on this law (Novak 2014: 6). The new family code, supposed to bring equal rights to same-sex partners, was rejected in the referendum. Nevertheless, Slovenian Constitutional Court in 2013 found Inheritance Act incompatible with Slovenian Constitution because of unequal treatment of same-sex partners in comparison with different sex partners in access to inheritance rights (Weingler 2016: 555).

Table 16. The national referendum of 8 June 2014

Date	Subject	Turnout in %	Results
8 June 2014	Law on the protection of legal documents and archives	11.74	Not accepted (67.37%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

The lowest turnout was recorded during the last referendum in 2014 on the amendments to the Protection of Documents and Archives and Archival Institutions Act. The significantly low participation in the last popular referendum resulted, *inter alia*, from the fact that the year 2014 was full of referendums in Slovenia. In May 2014 there were elections to the European Parliament, in June – to the National Assembly, and in October to the bodies of local self-government (Haček 2015: 620-621).

Table 17. The national referendum of 20 December 2015

Date	Subject	Turnout in %	Results
20 December 2015	The same-sex marriage	36.38	Not accepted (63.51%)

Source: Author's own studies based on Research Centre on Direct Democracy, http://c2d.unige.ch (28 November 2016).

In the 2015 referendum Slovenian rejected a law giving same-sex couples the right to marry and adopt children. In March 2015 the Parliament passed a bill defining marriage as a *union of two* instead a *union of a man and a woman*. The conservatives opponents were successful in collecting signatures to hold a referendum on this issue, however, the Parliament refused to organise a referendum on the ground of unconstitutionality of human rights and fundamental rights freedom. The Constitutional Court founded the National Assembly as not entitled to declare referendum unconstitutional and allowed to hold a referendum (Ayoub 2016: 186). The voters rejected the bill.

Between December 2010 and June 2014 there were seven legislative referendums directed against important legal acts, previously adopted by the National Assembly. In all these referendums the majority of voters voted against the acts adopted by the Parliament.

Taking into consideration the data included in the tables above the following conclusions should be formulated. Firstly, until the amendment of the Constitution of 2013 that limited both the number of entities entitled to initiate a referendum and the subject of voting in a legislative referendum, the number of referendums called was 15 (out of 16) and the number of matters put the vote in referendums was 21 (out of 22). It means that the amendment of Article 90 of the Constitution largely contributed to the limitation of the number of referendum-initiating motions. The citizens carefully consider issues which they would like to resolve through a plebiscite (popular referendum).

Secondly, out of the twenty two issues put to the vote in a referendum, only seven were accepted by the people. Almost two thirds of the issues put to the vote in referendums were rejected in the direct vote. Thirdly, the relatively low turnout should be noted. According to the Slovenian law there is no defined level of a turnout to regard a legislative referendum as valid (a constitutional referendum being an exception). The results of a referendum are binding if one fifth of the qualified voters have voted for (or against) the issue(s). The average turnout in the 22 cases of the issues voted on in referendums in 1990-2016 was 38.35%.

In view of the great number of national referendums which have been widely described in literature (Lajh/Krašovec 2003; Ribičič 2005; Greif

2008; Ewert 2007; Hendrickson/Ethridge 2004) the author would like to concentrate only on selected popular votes.

In the case of people's initiative, only once a constitutional initiative on the change of the electoral system was launched to be subsequently rejected by the Parliament (Uziębło 2009: 116). A legislative initiative was implemented more often (four times).

Taking into consideration the experience of direct democracy at the local level, it should be stressed that because there are no obligatory and systematic data on local referendums, this field will be discussed on the basis of specific examples and available information. What attracts attention is the fact of a low frequency of the use of plebiscite (popular vote) at local levels. In Ljubljana, the capital of Slovenia, in the course of 20 years not even one local referendum was held. Nevertheless, in 2004, 10% of signatures were gathered that were needed to petition for a people's initiative to hold a referendum concerning the objection of residents to the decision of the municipality council to allocate a building plot for the construction of the Muslim centre. The mayor blocked the motion for calling the referendum on the location of the mosque on the grounds of its unconstitutionality. The Constitutional Court confirmed the unconstitutionality of this initiative (Nežmah 2011: 246).

The example of the held local referendums (Nežmah 2011: 247-248) shows the diversified subjects of voting. Two times the inhabitants of a municipality voted on the change of the name of their locality and in both cases the initiative of the Town Council was rejected in a plebiscite. The results of voting in referendum initiatives launched by the inhabitants of a municipality brought positive results in most cases.

Conclusion

Slovenia has ample experience in using the institution of direct democracy at the national level and very small at local levels. The forms of reference to the nation's will are thoroughly regulated in the Constitution and other legal acts. Emphasis should be laid on the 2013 amendment to the Constitution introducing significant changes to Article 90 which regulates the question of the initiators and subject of referendums. The high number of held legislative referendums was criticized for the obstruction of the legislative process and for contributing to political instability. The narrowing the circle of those empowered to a group of 40,000 citizens entitled to initiate legislative referendums (and the exclusion of the deputies) resulted, first of all, in the withdrawal of the plebiscite formula of a referendum, limitation of the number of issues put to the referendum vote, and preventing the referendum from becoming a tool of political struggle between divided political parties. A significant role was

played by the Constitutional Court, which many times refused their consent to hold a referendum because of its unconstitutionality, especially on economic and social issues. The adopted solutions prove that the implementation of the tools of direct democracy in the process of exercising power is a determinant of social consciousness both in the society and among the Slovenian politicians.

There were 22 national referenda conducted, and the results only of seven of them have been accepted. Considering the fact that in most of the referendums the voters rejected the parliamentary acts, a thesis should be advanced that referendum in Slovenia was an impediment to the legislative process. The Slovenians rejected, *inter alia*, the acceptability of artificial insemination of unmarried women, and the restoration of the right of permanent residence to ethnic minorities. Referendum clearly inhibited the process of liberalization of the policy in Slovenia. The conservative attitude of the society towards moral and ideological issues does not correspond with the dynamic economic modernization of the country.

Slovenia's accession process to the European Union has contributed to the development of Slovenian direct democracy. The accession referendum was held in 2003; however, the other issues concerning the European integration were not voted on in referendums.

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Marta Drabczuk

Direct Democracy in Ukraine

Determinants

Participation in elections is the most frequent form of civil society participation in political life. However, this form of participation is not a sufficient civil activity it derives from the shallow use the possibility of creating a political reality by citizens. Changes in the attitude to a public debate and to the mechanisms of decision-making have resulted in that in cases of great importance for the state or society, the participation of members of a collective sovereign entity is very important (Sartori 1998: 143-146; Grabowska 2009: 9). The participation of citizens making political decisions is possible through the institutions of direct democracy.

With the restoration of its independence in 1991 Ukraine started a gradual transformation based on democratic values. The respect for those values should become an imperative of political life and of the formation of civil society. Nevertheless, the disproportions between the way of the organization and functioning of state institutions and the expectations of the citizens implied difficulties in respecting the will of the nation by the authorities and the unwillingness of the Ukrainians to directly participate in making important and binding decisions. The causes of this state of affairs can be sought in the historical development of political culture of the Ukrainian nation.

The traditions of Ukrainian statehood go back to World War I. As a result of the abdication of Tsar Nicholas II of Russia on 15 March 1917, the Ukrainians decided to undertake actions for their own autonomy. Thus, two Ukrainian states emerged. The first, the Ukrainian People's Republic (UPR, Українська Народна Республіка), was established on 7 November 1917 and comprised the eastern, central, and southern parts of Ukraine; the second – the West Ukrainian People's Republic (WUPR, Західно-Українська Народна Республіка)- was formed on 13 November 1918 and included the majority of eastern Galicia and Lemkivshchyna (Винниченко 1990: 111-118, Hrycak 2000: 82-90). Faced the danger of the Red Army's invasion of Kharkiv and Kiev, the Unification Act was signed on 22 January 1919 in the St. Sophia Square in Kiev between the Ukrainian People's Republic and the West Ukrainian People's Republic. Under the treaty, both states were united, the WUPR retaining its autonomy as the Western Oblast of the Ukrainian People's Republic (Західна Область Української Народної Республіки -

ZOUNR, WOUPR) (Тимчасовий Основний закон про державну самостійність українських земель колишньої Австро-Угорської монархії (про створення Західно-Української Народної Республіки)[1].

Union, Czechoslovakia, Poland, and Romania. On 25 January 1919 the Provisional Government declared the union of the Ukrainian Soviet Socialist Republic with Russia as a Soviet federation and on 10 March 1919 the Constitution of the Ukrainian SSR (Soviet Socialist Republic) was passed. According to Article 6 all national issues were subordinated to the central Soviet authority in Ukraine. Successive Constitutions of Ukraine of 1919, 1937, and 1978 did not include provisions on direct forms of citizen participation in political life (the authority was exercised by the All-Ukrainian Congress of Soviets (Councils) of workers', peasants', and soldiers' deputies, the All-Ukrainian Central. On 23 June 1917 the Ukrainian Central Council issued the First Universal on the formation of the autonomous Ukrainian Government and started work on the Fundamental Law of UPR (Конституція Української Народної Республіки (Статут про державний устрій, права і вільності УНР) 29 квітня 1918 року). Pursuant to the Constitution of UPR (The Statute on the Political System, Rights and Liberties of the Ukrainian People's Republic) of 29 April 1918 the Ukrainian People's Republic was a 'sovereign, independent, and free state,' in which the people of Ukraine held sovereign power (Article 2) and exercised it through the National Assembly of Ukraine (Vsenarodni Zbory). (Article 3) As for the institution of direct democracy the Constitution of UPR guaranteed the citizens' legislative initiative. Article 39 stipulated that a group of at least 100,000 citizens had the right of the citizen's initiative, upon a written motion, signed by all members of the group, verified by the court and submitted to the Chairman of the National Assembly. Citizens who attained the age of 20 years had full civil rights. The Ukrainian Central Council adopted the Act on 29 April 1918 (on the last day of its existence); however it did not come into force. The first attempts to introduce elements of direct democracy failed due to the invasion of German and Austro-Hungarian armies. On 29 April 1918 the Central Council was removed from power after the German-backed military coup by General Pavlo Skoropadsky, and the Ukrainian People's Republic was transformed into the Hetmanate.

After World War I and unsuccessful attempts to gain independence by the Ukrainians, the territory of Ukraine was divided between the Soviet Executive Committee being the highest legislative, executive, and controlling body of the Ukrainian SSR). These Constitutions were the duplications of provisions of particular Constitutions of the Union of Soviet Socialist Republics. On 25 January 1919, the provisional government approved the

[1] The West Ukrainian People's Republic was not recognized in the international arena. Its legal foundations were defined in the Provisional Constitution adopted on 13 November 1918 on the state independence of the Ukrainian lands of former Austro-Hungary .

merger of the USRR with Russia as the Soviet federation, and on 10 March 1919, Basic Law of the USRR was adopted (Конституция Украинской Социалистической Советской Республики, утвержденная Всеукраинским съездом Советов в заседании 10-го марта 1919 года и принятая в окончательной редакции Всеукраинским Центральным Исполнительным Комитетом в заседании 14-го марта 1919 года). All national issues are subject to the central Soviet power in Ukraine (Article 6). The subsequent Basic Laws of the USSR of 1929, 1937, of 1978 did not contain provisions on direct forms of participation of citizens in political (Конституція Української Соціалістичної Радянської Республіки 1929, Конституція (Основний Закон) Української Радянської Соціалістичної Республіки, (Із змінами і доповненнями, прийнятими на четвертій сесії Верховної Ради Української РСР дев'ятого скликання), Конституція (Основний Закон) Української Радянської Соціалістичної Республіки, Верховна Рада УРСР від 20.04.1978). These constitutions were a reduction of the provisions of the various constitutions of the Union of Soviet Socialist Republics.

The Ukrainian SSR was officially dissolved on 16 December 1991. Ukraine is the successor of the legacy of the Ukrainian SSR. *De facto*, the history of the existence of independent Ukraine started on 1 December 1991, from the moment of application of the tools of direct democracy i.e. when the national referendum on the independence of Ukraine was called (Кульчицький 2012: 12-13).

The discussions of scientists, social activists, and politicians on the mechanisms of direct democracy in Ukraine started at the same time as the debate over the formation of civil society in Ukraine. The discussions had wider undertones after the organization of the Maidan in 2004, which was regarded as the highest manifestation of political mobilization of Ukrainian society and confirmation of the process of formation of civil society in Ukraine.

The contemporary history of Ukraine points therefore to the repeated aspirations of Ukrainian society, which demands the democratization of the system of power and guarantees of real participation in decision-making processes that determine the social-political and economic development of the state.

The next sign of democratic participation in Ukraine was the action of the Ukrainian opposition “Ukraine without Kuchma” which was held on 15 December 2000 and between 14 January and 9 March 2001. They caused the state authorities to try to resolve the conflict by force and arrest the activists, and the opposition also unsuccessfully tried to impeach president Kuchma in 2001. The protests of the opposition and the reaction of the authorities also resulted in Leonid Kuchma’s authority in the Ukrainian society becoming largely weakened. It seems legitimate to say that the action “Ukraine without

Kuchma" constituted, in fact, the basis of mass social protests which happened in 2004. The Orange Revolution, lasting from 24 November 2004 to 23 January 2005, was another important event in the process of the formation of civil society in Ukraine. These actions also proved successful because the Constitutional Court decided, under pressure from the protesters, to repeat (against the Law on Presidential Elections) the runoff elections which ended with the victory of Victor Yushchenko. The Orange Revolution was in fact a social phenomenon, an expression of collective and mass opposition to the policy of state authorities. While analyzing direct democracy in Ukraine, we should mention the Euromaidan i.e. the events at the turn of 2013 and 2014, which happened in Kiev and other Ukrainian cities. Mass social protests led to the resignation of the government and the escape of the then President Viktor Yanukovych, earlier presidential and parliamentary elections, and the political mobilization of Ukrainian society.

Formal-Legal Dimension

The bases of direct democracy are included in the Constitution of Ukraine of 1996 (Конституція України). Pursuant to Article 5 of the Constitution the people shall be the bearer of sovereignty and the sole source of power in Ukraine. The people shall exercise power directly or through the state authorities and local self-government bodies. Article 38 stipulates that citizens shall have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to the bodies of State power and local self-government. The Constitution also provides that citizens shall have the right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations upon notifying executive or local self-government bodies in advance (Article 39). In the practice of social life in Ukraine, the assemblies of citizens, which *de facto* are another form of direct democracy, function at the level of a specific social group (meetings of members of trade unions, workers' teams, a union of residents of a block of flats, housing estate or members of allotments) and decide on important issues and social problems for the members of these groups,.

Article 69 states that the expression of the will by the people shall be exercised through elections, referendum and other forms of direct democracy. According to Article 70 of the Constitution citizens of Ukraine who have attained to the age of eighteen as of the day of elections or referendums, shall have the right to vote. Finally Article 72 of the Constitution provides that the All-Ukrainian referendum shall be called by the Verkhovna Rada (Supreme Council) of Ukraine or by the President of Ukraine in accordance with their

powers determined by this Constitution. The All-Ukrainian referendum shall be convened as a popular initiative at the request of at least three million citizens of Ukraine eligible to vote, provided that the signatures in favor of the referendum have been collected in at least two-thirds of the oblasts with at least 100,000 signatures gathered in each oblast. Article 73 stipulates that alterations to the territory of Ukraine shall be resolved exclusively by the All-Ukrainian referendum. *A referendum shall not be permitted with regard to draft laws on taxation, budgetary or amnesty issues* (Article 74). Elections and referendums, according to the Constitution of Ukraine, are priority forms of direct democracy. The organization and procedure for conducting elections and referendums will be determined exclusively by the laws of Ukraine (Article 92). Article 93 states that *the right of legislative initiative in the Verkhovna Rada of Ukraine shall be vested in the President of Ukraine, people's deputies of Ukraine, and the Cabinet of Ministers of Ukraine. Draft laws defined by the President of Ukraine as urgent shall be considered out of turn by the Verkhovna Rada of Ukraine*. It should be mentioned that, in the context of consideration on the forms of direct democracy in Ukraine, the Constitution of Ukraine grants the right for legislative initiative to the President, people's deputies, and the Cabinet exclusively.

According to Article 106 of the Constitution the President will appoint the All-Ukrainian referendum regarding amendments to the Constitution of Ukraine and proclaim the All-Ukrainian referendum initiated through the popular initiative.

Local self-governing shall be exercised by a territorial community in compliance with a procedure established by law, both directly and through local self-government bodies: village, settlement and city radas (councils), and their executive bodies (Article 140). *Rayon and oblast radas shall be the bodies of local self-government representing the common interests of territorial communities of villages, settlements, and cities* (Article 140). According to Article 143 territorial communities of a village, settlement, and city, directly or through the local self-government bodies established by them ensure holding of local referendums and implementation of their results. The Constitution of Ukraine establishes the basic forms of direct democracy, elections and referendums, not excluding other ones.

The issues concerning the procedure for calling and holding a referendum were included in the Law on All-Ukrainian and Local Referendums of 1991 (Закон про всеукраїнський та місцеві референдуми з 3 липня 1991) which was replaced by the Law on All-Ukrainian referendums of 2012, amended in 2015 (Закон Про всеукраїнський референдум).

The issues of local referendums are regulated by Article 7 of the law of local self-government in Ukraine which, incidentally, was amended many times. Item 5 provides for the procedure of organization and holding a local

referendum in accordance with the law on local referendums. Such a law does not exist and this prevents the application of the institution of local referendum in Ukraine.

At present, the binding law on all-Ukrainian referendums, adopted on 6 November 2012 (Закон України "Про місцеве самоврядування в Україні"), points to four kinds of all-Ukrainian referendum (Article 3):

(1) Constitutional referendum (concerning the introduction of amendments to the Constitution of Ukraine, editing, cancellation, or loss of generally binding legal validity).
(2) Ratification referendum (on the alterations of the territory of Ukraine).
(3) Legislative referendum (concerning the introduction of amendments to the current law of Ukraine).
(4) General referendum (on any question except for those not permitted by the Constitution of Ukraine i.e. draft laws on issues of taxes, the budget, and amnesty. [Article 74 of the Constitution of Ukraine]).

According to the provisions of Articles 4 and 14 the President proclaims a referendum on a popular initiative at the request of no less than 3 million citizens who have the right to vote on condition that the signatures for calling the referendum have been collected in no less than two-thirds of the oblasts with no less than 100,000 signatures in each oblast. The results of the referendum are binding.

Citizens of Ukraine who have attained the age of eighteen on the day of referendums are held, have the right to vote at the elections and referendums. Citizens of Ukraine who are entitled to vote in national referendum are the participants of all-Ukrainian referendum. Entry of a voter's name on the list of voters in a local commission is the grounds for the exercise of his/her right to vote in a national referendum. The method of compiling the lists of voters is defined in Articles 53-59. The referendum participant exercises his/her right to vote in a referendum according to the law.

Article 14 of the Law on Referendum refers to the initiators of a referendum. It stipulates that all-Ukrainian referendums can be initiated by the Ukrainian nation or the Verkhovna Rada.

The next chapter of the Law on All-Ukrainian Referendum contains regulations on the organization of a referendum on the motion of the Chairman of the Verkhovna Rada, on the motion of an initiative group. It also describes the procedure for the registration of the motion on holding the referendum (Article 31), collecting of signatures (Article 32), and sending it to the Central Election Committee (Article 33). The next chapter concerns the principles of holding the referendum, the beginning of the referendum process (Article 36), organization of work of referendum rayons (districts) (articles 37-40), and setting up of referendum commissions (articles 42-52). Other articles regulate the financial and material-technical basis of the organization

of referendums (Articles 65-70), principles of agitation (articles 70-77); counting of votes and the announcement of results (Articles 70-94).

Practical Dimension

Between the time Ukraine gained independence in 1991 and 2016 there were two all-Ukrainian referendums. The first was organized on 1 December 1991 to confirm the declaration of independence of the state. There was only one question *Do you support the Act of Independence of Ukraine?* 31,891,742 (84.18%) people took part in the referendum and 90.32% were for independence (Відомість про результати Всеукраїнського референдуму 1 грудня 1991 р.). The results of the referendum started the process of the formation of state institutions of independent Ukraine.

Table 1. The national referendum of 1 December 1991

Date	Subject	Turnout in %	Results
1 December 1991	The independence of the state	84.18	For 90,32% Against 9,67%

Source: Відомість про результати Всеукраїнського референдуму 1 грудня 1991 р., Ф. 1, Оп. 28, с. 144.

The next all-Ukrainian referendum was held on 16 April 2000. Its subject was the reform of the political system of Ukraine. The referendum was called by the President Leonid Kuchma and the Central Election Commission was responsible for holding it (Указ Президента України Про проголошення всеукраїнського референдуму за народною ініціативою, Закон України "Про всеукраїнський та місцеві референдуми").

Table 2. The national referendum on 16 April 2000

Date	Subject	Turnout in %	Results
16 April 2000	Reform of the political system of Ukraine		
	First question[2]	99.89%	For 84.69% Against 15.31%
	Second question[3]	99,88%	For 89 % Against 11%
	Third question[4]	99,88%	For 89.91% Against 10.09%
	Fourth question[5]	99, 90%	For 81.68 % Against 18.32%

Source: Author's own study based on Повідомлення Центральої Виборчої Комісії про підсумки всеукраїнського референдуму 16 квітня 2000 року.

The turnout in the referendum of 2000 was high and the majority of citizens supported the President's suggestion. As a result of the referendum the Verkhovna Rada received two proposals of amendment of the law, directed by the President and by the deputies. However, the results of the referendum were not taken into consideration and none of the voted amendments was implemented.

In 2006 there was an attempt to organize the third All-Ukrainian referendum on Ukraine's accession to the NATO. The Social-Democratic Party of Ukraine was the initiator, the Central Election Commission, having registered the initiative groups and having counted the voices of support, handed over the documents to Viktor Yushchenko to call a referendum. Nevertheless, the referendum was not called.

2 Do you support the proposal to complement Article 90 of the Constitution of Ukraine with a new Part Three with the following content: *The President of Ukraine can suspend the powers of the Verkhovna Rada of Ukraine, if the Verkhovna Rada of Ukraine fails to form a stable and operational majority in one month, or if it fails to adopt the state budget of Ukraine prepared and submitted in due form by the Cabinet of Ministers of Ukraine in three months.* That could be considered as an additional reason for the dissolution of the Verkhovna Rada of Ukraine by the President of Ukraine with a corresponding amendment to paragraph 8 part one of Article 106 of the Constitution of the Ukraine: *and other cases as established in the constitution of Ukraine?*

3 Do you agree with the necessity of limiting the immunity of the People's Deputies of Ukraine and to delete paragraph three of Article 80 of the Constitution of Ukraine which reads: *People's Deputies of Ukraine cannot be held criminally liable, detained or arrested without the consent of the Verkhovna Rada?*

4 Would you agree to reduce the number of People's Deputies of Ukraine from 450 to 300 and to replace, in this context, in the first part of Article 76 the words *four hundred and fifty* by *three hundred*, and to make corresponding changes in the legislation on elections?

5 Do you agree that it is necessary to create a two-chamber parliament where one of the chambers would represent interests of the Ukrainian regions, and to introduce the corresponding changes to the Constitution of Ukraine and legislation on elections?

Between 1991 and 2012, 151 local referendums were organized, from the Crimea referendum (on 20 January 1991) to the referendum in Kiev in May 2009 on the dismissal of the Mayor of Kiev (Leonid Chernovetskyi), the raise of charges on municipal services, and introduction of paid medical services (Місцеві референдуми в Україні: теоретичні та нормопроектні аспекти: матеріали «круглого столу»: 60). However, the results of referendums were not unambiguous and did not imply adequate legal effects (Федоренко 2014: 64-68).

One cannot omit miners' strikes in Donbas and miners' demonstrations in the Maidan in Kiev, which took place successively in 1989, 1991, 1993, 1996, and 1998. Under the miners' pressure the Verkhovna Rada of Ukraine decided to organize a referendum on the vote of confidence for the Verkhovna Rada and the President Leonid Kravchuk, which finally led to earlier presidential elections in 1994, in which Leonid Kuchma became the President of Ukraine.

The next example is the referendum held on 27 March 1994 in Donetsk and Luhansk Oblasts (the legal basis for calling the referendum was the Law on all-Ukrainian and Local Referendums of 1991, which was replaced in 2012 by the new Law on All-Ukrainian Referendum). Four issues were voted on: 1) introduction of the provision into the Constitution about the federal structure of Ukraine, 2) introduction into the Draft Constitution of the provision concerning two official languages; 3) adoption of two official languages in the Donetsk and Luhansk regions, i.e. Russian and Ukrainian; 4) support for signing the Charter of the Commonwealth of Independent States and for Ukraine's full participation the CIS Economic Union of the CIS and the CIS Interparliamentary Union, which was synonymous with Eurasian integration in 1994. According to the data presented by the referendum organizers, 72% of residents of Donetsk and 75% of residents of Luhansk took part in the referendum and 79% and 88% respectively voted for (69% жителей Донецкой и Луганской областей за присоединение к Днепропетровской). The Ukrainian authorities completely ignored both the referendum itself and its results.

The events in Crimea and in the Eastern part of Ukraine also raise a theoretical question whether one should speak of actual separatism, as considered by state authorities and the majority of Ukraine's citizens or – as the minority argues - about a legal people's initiative and the implementation of citizens' right to independently decide on the national status of a region they live in. However, many arguments weigh in favor of the rejection of statements on the validity of independence referendums, acts of secession and the results of local elections held in Crimea and eastern Ukraine. Firstly, one should point out the highly undemocratic character of these activities. In an analogous way, on 11 May 2014 local (independence) referendums were held, and on 2 November 2014 elections to the institutions of local authorities

of Donetsk and Luhansk Oblasts (Donetsk People's Republic [DPR] and Luhansk People's Republic [LPR] (the so-called elections under the sights). The next absurdity was the local referendum held on 11 May 2014 (parallel to the separatist referendums) by the Committee of Patriotic Forces of Donbas with the support of the oligarchy and Governor of Dnipropetrovs'k Oblast Ihor Kolomoyskyi. The voting was to undermine and relativize the results of referendums held by separatist structures. In this case the voting was on the issue of incorporating a part of the Luhansk Oblast and Donetsk Oblast into Dnipropetrovsk Oblast. 2 883 thousand residents took part in the "Kolomoyskyi referendum": 69.1% voted for; 27.2% voted against for DNR and LNR, 3.7% voted "yes" for DPR and LPR. Interestingly, the residents of Dnipropetrovs'k Oblast were not asked whether they agreed to such incorporation. The next problem concerns the human rights protection on the territories that are outside the control of the Ukrainian authorities.

The examples of local referendums in Ukraine show that the institutions of direct democracy are not effective mechanisms for directly solving problems of local importance. The fragmentation of legislation that regulates referendums and a lack of the law on local referendums (after the Act on all-Ukrainian Referendum of 6 November 2013 came into force) make them a not too popular form of citizen participation in decision making. Moreover, challenging of the existing legal order results in social passivity and relativistic attitudes to the institutions of direct democracy which mobilize citizens around the shared possibility of effecting changes.

Conclusion

The Ukrainian authorities are determined to reform the state in accordance with pro-European development priorities. However, instead of holding national referendums on important all-Ukrainian issues, which are too expensive and need political engagement, they prefer to adopt amendments to some chapters of the Constitution. The procedure for passing the amendments does not provide for any participation of the people: first, the Verkhovna Rada (Supreme Council) adopts a draft law (or amendments) by a simple majority, then the draft is submitted to the Constitutional Court, which presents its comments and counter-suggestions; next the draft goes back to the Verkhovna Rada, which has to adopt it by 300 votes i.e. 2/3 of its members.

In view of the small experience of Ukrainian society in implementing the results of referendums and too little significance attached to the quality of participation in social life, one can expect neither an increase in the number of referendums to be held nor an increase of the quality of referendums. With the challenges facing Ukraine, which is fighting against the aggressor in the

East, the incompetent use of the institutions of direct democracy carries an additional risk of pseudo-solutions to problems which affect the society. It should be also stressed that Ukraine is going step by step through the successive stages of the de-centralization reform, during which local self-government is consolidating its position. The lack of competent leaders of state administration among local communities results in the lack of knowledge and information on the available forms of direct democracy. Work on the bill providing for the possibility of initiating and holding local referendums in Ukraine has been carried on for several years now; however, no such law has been adopted so far.

Among the positive signs showing that political leaders are becoming aware of the role of the institutions of direct democracy is the statement of 2 February 2017 by President Petro Poroshenko on holding a referendum on the Ukrainian partnership with NATO. On 7 February 2017 the Chairman of the Verkhovna Rada expressed his supported such a form of manifesting the will of the nation concerning the fundamental directions of the development of the state.

Summing up, it should be said that the institutions of direct democracy, enveloped in populist slogans of Ukrainian politicians are a rather abstract form of expressing the will of the nation. There is also a psychological barrier and the lack of confidence in the authorities of public administration. Moreover, strikes and demonstrations after the social events of 2004 and 2014 became a more effective form of influence on political decisions than going to the polls.

Both the organs of the state power and the organs of local self-government on the one hand, and Ukrainian society on the other, face a difficult task of becoming adjusted to and accepting the forms of direct democracy, which the developed European states use very effectively. Taking into consideration the main tendencies, direction and pace of political transformation in Ukraine, it will be a complicated process so that direct democracy in Ukraine will be not only important but also binding.

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Direct Democracy in Central and Eastern Europe after 1989: Conclusion

The aim of the book was the holistic and interdisciplinary political analysis of direct democracy in the Central and Eastern European countries after 1989. Studies covered the following countries: Albania (the Republic of Albania), Belarus (the Republic of Belarus), Bosnia and Herzegovina, Bulgaria (the Republic of Bulgaria), Croatia (the Republic of Croatia), Czechia (the Czech Republic), Estonia (the Republic of Estonia), Hungary, Kosovo, Latvia (the Republic of Latvia), Lithuania (the Republic of Lithuania), Macedonia (the Republic of Macedonia), Moldova (the Republic of Moldova), Montenegro, Poland (the Republic of Poland), Romania, Russia (the Russian Federation), Serbia (the Republic of Serbia), Slovakia (the Slovak Republic), Slovenia (the Republic of Slovenia) and Ukraine. Three research hypotheses were verified in the book: 1) direct democracy functions in the Central and Eastern European countries both in the formal-legal and practical dimension at the national and local level; 2) the use of instruments of direct democracy in the process of exercising power is an indicator of the political awareness of the Central and Eastern European societies; 3) the process of accession of the Central and Eastern European countries to the European Union had an impact on the development of direct democracy in these countries (in the formal-legal and practical aspects).

The provisions concerning the principles of the functioning of direct democracy in the Central and Eastern European countries are contained in the constitutions and other relevant regulations of individual countries. The current Constitution of the Republic of Albania of 22 November 1998 introduced two direct democracy procedures. One is the civil legislative initiative, the other is referendum. The constitutional regulations were made more specific by the provisions of The Electoral Code of the Republic of Albania of 2003, in which Part IX of the Code is devoted to the direct democracy procedures.

The institution of referendum was regulated in the Constitution of the Republic of Belarus of March 15, 1994 as amended, and in the Republic of Belarus Election Code of 11 February, 2000. The Belarusian law provides for a referendum at the national and local levels. The Constitution of Bosnia and Herzegovina, an annex to the Dayton Peace Agreement of November 1995, does not have a direct reference to referendum, or to social consultations. Provisions regulating the mode of implementation of direct democracy can be found in laws, particularly in the norms binding in the Serb Republic (e.g. the 2010 Act on the Conduct of Referendums of 2010) and at local levels. The questions of direct democracy at the local level are regulated by commune charters.

The Bulgarian constitutions and the special referendum laws are the legal basis of direct democracy. The current Bulgarian constitution was adopted on 13 July 1991. It was amended and supplemented several times. The last amendment was introduced on 18 December 2015. The specific legal basis for direct democracy today is the Law on the Direct Participation of the Citizens in the State Government and Local Self-government of 12 June 2009, amended eight times. The last amendment of 24 July 2015 regulates not only the organization of national and local referendums, but also civil legislative initiatives that are possible at national, European and local levels.

The issues of direct democracy are reflected in the Croatian Constitution of 22 December 1990 (amended in 1997, 2000, 2001, 2010 and 2014) and in the Act on Referendum and Other Forms of Personal Participation in the Performance of State Powers and Local and Regional Self-government. Croatia's regulations provide for referendums and citizen's initiative at the national level as well as consultative referendums, popular assemblies (citizens' meetings) and petitions filed by citizens at local levels.

In Czechia, the legal basis for direct democracy was regulated in the Constitution of the Czech Republic of 16 December, 1992, the Act on Local Referendum of 2004, and in the Regional Referendum Act. Despite many legislative initiatives, there are still no acts on the national referendum in the Czech legal order. An exception is the constitutional act regulating the referendum on Czechia's membership of the EU, but it is of incidental character. The questions of direct democracy in Estonia are specified in the Constitution of the Republic of Estonia of 28 June 1992 with subsequent amendments and in the Referendum Act of 13 March 2002. A referendum is the only institution of direct democracy utilized in Estonia.

The basic legal act defining the framework of direct democracy in Hungary is the Constitution of the Republic of Hungary (The Fundamental Law of Hungary) of 25 April 2011, supplemented by the 2013 election law provisions (Law on Initiating Referendums, the European Citizens' Initiative and Referendum Procedure). The Constitution provides for two types of national referendum: mandatory and optional, their subordinate position to the principles of representative democracy being clearly emphasized, and the possibility of conducting them being restricted to special situations. The current Constitution of the Republic of Hungary does not admit of the forms of direct democracy other than a referendum; however, it should be noted that between 1989 and 2010, the law also admitted of the possibility of applying the procedure of legislative initiative.

In the Constitution of the Republic of Kosovo of 9 April 2008, the regulations provide for a national referendum and legislative initiative, whereas a local referendum is not provided for. The legal foundations of direct democracy in Latvia are defined by the Constitution of the Republic of Latvia of 1922. Regulations on the holding of a referendum were specified in

the Law on National Referendums, Legislative Initiatives and European Citizens' Initiative of 31 March 1994. The Latvian legislation does indicate direct democracy as an instrument for settling important matters of state and nation, but it specifies in detail the situations in which a referendum and a legislative initiative can be applied as well as it stipulates when these institutions cannot be invoked.

Direct democracy in Lithuania was regulated in the 1992 Constitution of the Republic of Lithuania and in the Law on Referendum of 4 June 2002. Two kinds of referendum were adopted: mandatory (called in five cases specified in the law) and optional which can concern any issue important for the state and Lithuanian nation but at the same time it cannot be voted on under the obligatory procedure.

In Macedonia, regulations on direct democracy are contained in the Constitution of the Republic of Macedonia of 8 September 1991, in the Law on Referendum and Civil Initiative and in the Law on Local Self-government. At the national level, consultative and mandatory referendums as well as legislative initiatives are provided for, while a local referendum, citizens' initiative and popular assembly were also adopted.

In Moldova, general provisions on direct democracy are contained in the 1994 Constitution of the Republic of Moldova, the Electoral Code of 1997 and in the legal acts of Gagauzia and Pridnestrovian Moldavian Republic (Transnistria). The law provides for the use of the following institutions of direct democracy: referendum and legislative initiative. Depending on the problem voted on in a referendum, the election code specifies three types of nationwide referendum: constitutional, legislative, and consultative. The right of legislative initiative is vested in the parliamentary deputies, the President, the Government of Moldova and the People's Assembly of Gagauzia, the President of the Pridnestrovian Moldavian Republic (Transnistria), deputies of the Supreme Soviet, Prosecutor General of the Pridnestrovian Moldavian Republic, Commissioner for Human Rights, district and city Soviets (Councils) of People's Deputies, in the Constitutional, Supreme and Appellate Courts, and in the national labor unions.

The provisions concerning direct democracy in Montenegro are reflected in the Constitutions of 12 October 1992 and of 22 October 2007, in the Law on Referendum of 19 February 2001, the Law on Referendum of 2 March 2006, the Law on Local Self-government, as well as in the Law on the Territorial Organization of Montenegro of 2 November 2011. The Acts in question provide for a referendum at the national and local level, citizens' legislative initiative, and filing petitions.

Regulations on direct democracy in Poland are specified in the binding Constitution of 2 April 1997, the Law on National Referendum of 14 March 2003, and the Local Referendum Act of 15 September 2000. The forms of

direct democracy at the national level are referendums (constitutional, ratification referendums, and referendums on matters of special significance to the State) and legislative initiatives. The forms of direct democracy at local level are different forms of local assemblies (village meetings, general meetings of the people in a housing estate/rural settlement, consultations with *gmina* [municipality/commune] inhabitants) and local referendums (at every level of administrative division of the country).

The legal basis of direct democracy in Romania is the Constitution of Romania adopted on 8 December 1991, amended once by a referendum on 18 October 2003. The new text took effect on 29 October 2003 and is considered the basis of the legitimacy of the Romanian democratic government and direct democracy. Citizens' legislative initiative was regulated in Romania by the 1991 Constitution (Article 74) and by the specific Law 198/1999. The direct democracy in Romania at the local level is exercised on the basis of the Law Regarding the Organization and Conduct of the Referendum adopted in 2000 and now binding.

In Russia, at the level of Federation, the referendum institution as a form of direct democracy was adopted in the Constitution of the Russian Federation of 12 December 1993 and in lower-order acts: in the Russian Federation's Federal Constitutional Law On referendum in the Russian Federation of 11 June 2004 and in the Federal Law On Basic Guarantees of Electoral Rights and the Right of Citizens of Russian Federation to Participate in Referendum of 12 June 2002 (The Russian Federation's Federal Law). At the level of the subjects of the Russian Federation, legal regulations are contained in 22 Constitutions of the Republics of the Russian Federation, in 9 Statutes of the Territories of the Russian Federation, in 46 Statutes of Oblasts (provinces) of the Russian Federation, in 3 Statutes of the Cities of federal importance of the Russian Federation, in 1 Statute of the Jewish Autonomous Oblast of the Russian Federation, and in 4 Statutes of Autonomous Okrugs (districts) of the Russian Federation.

In Serbia, the principles of direct democracy are regulated in the Constitution of the Republic of Serbia of 30 September 2006 and in the Law on Referendum and People's Initiative of 1994, which provides for a national referendum and popular initiative, and a local referendum at the local level. The legal basis of referendums is contained in the Constitution of the Slovak Republic of 1 September 1992 and in the Election Law Act. Two types of referendum are provided for: mandatory and optional. The former pertains only to entering into an alliance with other states or on withdrawing from that alliance. In other cases, a referendum is optional and there is no obligation to hold one. Local referendums are also provided for. The basic regulations concerning a local referendum are specified in the law on the municipality (commune) system.

Legal regulations on direct democracy in Slovenia are contained in the Constitution of the Republic of Slovenia of 23 December 1991, in the Referendum and Public Initiative Act of 1994 and in the 1994 Law on Local Self-government. The following institutions of direct democracy are specified: a popular legislative initiative, referendum (national and local) and the right to file petitions.

The legal basis of direct democracy is contained in the Constitution of Ukraine of 28 June 1996. Pursuant to Article 69 of the Constitution: *The expression of the will by the people shall be exercised through elections, referendum and other forms of direct democracy*. The procedures for calling and holding a referendum were included in the Law on All-Ukrainian and Local Referendums of 1991, which was replaced by the Law on All-Ukrainian Referendums of 2012, amended in 2015. The issues of local referendums are regulated by the frequently amended law on local self-government in Ukraine. In contrast, there is no separate law on referendums, which makes it impossible to use the institution of local referendum in Ukraine.

The studies conducted so far show that except Kosovo, the Central and Eastern European countries use in practice the institution of the national referendum. Altogether, 99 nationwide referendums were held between 1989 and 2017 (the full specification is presented in Table 1, as for December 2017).

Table 1. National referendums in Central and Eastern European countries after 1989

Country	**Total number of national referendums**	**Number of national referendums per individual year**
Albania	3	1994 (1), 1997 (1), 1998 (1)
Belarus	3	1995 (1), 1996 (1), 2004 (1)
Bosnia and Herzegovina	5*	1991 (1), 1992 (1), 1993 (1), 1994 (1), 2016 (1)
Bulgaria	3	2013 (1), 2015 (1), 2016 (1)
Croatia	3	1991 (1), 2012 (1), 2013 (1)
Czechia	1	2003 (1)
Estonia	4	1991 (1), 1992 (2), 2003 (1)
Hungary	7	1989 (1), 1990 (1), 1997 (1), 2003 (1), 2004 (1), 2008 (1), 2016 (1)
Kosovo	-	-
Latvia	9	1991 (1), 1998 (1), 1999 (1), 2003 (1), 2007 (1), 2008 (2), 2011 (1), 2012 (1)
Lithuania	12	1991 (1), 1992 (3), 1994 (1), 1996 (3), 2003 (1), 2008 (1), 2012 (1), 2014 (1)

Macedonia	2	1991 (1), 2004 (1)
Moldova	3	1994 (1), 1999 (1), 2010 (1)
Montenegro	2	1992 (1), 2006 (1)
Poland	5	1996 (2), 1997 (1), 2003 (1), 2015 (1)
Romania	7	1991 (1), 2003 (1), 2007 (2), 2009 (2), 2012 (1)
Russia	2	1993 (2)
Serbia	1	2006 (1)
Slovakia	8	1994 (1), 1997 (1), 1998 (1), 2000 (1), 2003 (1), 2004 (1), 2010 (1), 2015 (1)
Slovenia	17	1990 (1), 1996 (1), 1999 (1), 2001 (1), 2003 (3), 2004 (1), 2005 (1), 2007 (1), 2010 (2), 2011 (2), 2012 (1), 2014 (1), 2015 (1)
Ukraine	2	1991 (1), 2000 (1)

* Referendums held in the Serb Republic, one of the three constituents of Bosnia and Herzegovina, were taken into account.

Most votes in national referendums were held in Slovenia (17), Lithuania (12) and in Latvia (9). One referendum was held in the Czech Republic and one in Serbia. None was held in Kosovo. In general, in the Central and Eastern European countries between 1989 and 2017 there was a constant tendency for holding several nationwide referendums each year (the mean being 3.4 referendums per year for 1989-2017). In this respect, the most significant was the year 2003, in which 11 referendums were held. This was directly connected with the process of accession of some Central European countries to the European Union structures and the consequent holding of accession referendums. In 1991, 8 referendum votes were held, mostly related to the declaration of independence. In 2002 and in 2017 no national referendum was held in the Central and Eastern European countries.

On the basis of the conducted studies it should be said that the subject of voting in referendums was also the matters associated with the Constitutions, their adoption, or with the introduction of amendments. That is why the best-known type of referendum is a constitutional one. A large portion of the held referendums pertained to the question of independence and territorial changes. The issues voted on were also those concerning the political system of a country, amendments to and introduction of laws, and expression of confidence to the head of state. Important subjects of votes were the questions connected with entry in supranational communities and ratification of international treaties. Social problems as well as those associated with the sphere of morals were voted on in referendums. A significant role is also played by referendum votes concerning the use of advanced technologies (first of all nuclear energy). The dominant tendency is to formulate one

question in a referendum. The number of referendums in which several questions were put to the vote is relatively small. A full list of the questions voted on in referendums is contained in Table 2.

Table 2. The subjects and results of national referendums in Central and Eastern European countries after 1989

Country	Year of referendum	Subject of a national referendum	Referendum result
Albania	1994	constitutional referendum	binding
	1997	changing of the electoral system	binding
	1998	constitutional referendum	binding
Belarus	1995	amendments to the Constitution; assessment of the State's economic policy	binding
	1996	amendments to the Constitution; land transactions; repeal of death penalty	binding
	2004	amendments to the Constitution	binding
Bosnia and Herzegovina*	1991	declaration of sovereignty of the Serb Republic	not binding
	1992	independence referendum	binding
	1993	in the Serb Republic, against the peace treaty	not binding
	1994	in the Serb Republic, against peace agreements	not binding
	2016	the establishment of 9 January the Holiday of the Serb Republic	binding
Bulgaria	2013	building a New Nuclear Power Plant	not binding
	2015	remote voting referendum	not binding
	2016	changing the electoral system	not binding
Croatia	1991	independence referendum	binding
		the remaining of Croatia as a federal state in the structures of Yugoslavia	not binding
	2012	EU membership	binding
	2013	definition of the institution of marriage as a union between a man and a woman	binding
Czechia	2003	EU membership	binding
Estonia	1991	independence referendum	binding
	1992	amendments to the law on citizenship	binding
	1992	constitutional referendum	binding
	2003	EU membership and amendments to the Constitution	binding
Hungary	1989	the status of the Hungarian Socialist Workers' Party and Workers' Militia	binding
	1990	direct presidential election	not binding

	1997	NATO membership	binding
	2003	EU membership	binding
	2004	public health service and dual citizenship of Hungarians	not binding
	2008	the abolishment of contributions in the health service and in higher education	binding
	2016	immigration quotas	not binding
Kosovo	-	-	-
Latvia	1991	independence referendum	binding
	1998	repeal of amendments to the law on citizenship	binding
	1999	repeal of the reform of the pension system	not binding
	2003	EU membership	binding
	2007	repeal of amendments to the law on State Security Services and repealing of amendments to the law on State Security Agencies	not binding
	2008	restriction on pay increases in public administration	not binding
	2008	amendments to the Constitution	not binding
	2011	dissolution of Parliament	binding
	2012	amendments to the Constitution	not binding
Lithuania	1991	independence referendum	binding
	1992	restitution of the Office of President	not binding
	1992	the withdrawal of Soviet troops	binding
	1992	constitutional referendum	binding
	1994	adoption of the law on illegal reprivatization, accounts, infringements of legal order	not binding
	1996	the compensation for banking property lost as a result of privatization	not binding
	1996	amendments to the Constitution	not binding
	1996	amendments to the Constitution	not binding
	2003	EU membership	binding
	2008	the further functioning of the nuclear plant in Ignalina	not binding
	2012	construction of a new nuclear reactor in the Visaginas Nuclear Power Plant	binding
	2014	amendments to the Constitution	not binding
Macedonia	1991	independence referendum	binding
	2004	administrative division	not binding
Moldova	1994	independence referendum	binding
	1999	the change of the government system	not binding
	2010	direct presidential election	not binding
Montenegro	1992	the remaining of Montenegro within Yugoslavia as an equal sovereign subject	binding

	2006	independence referendum	binding
Poland	1996	universal enfranchisement of citizens	not binding
	1996	the use of State property	not binding
	1997	constitutional referendum	binding
	2003	EU membership	binding
	2015	the introduction of single-seat constituencies in the elections to the Sejm; the question of financing political parties from the State budget; interpretations of the rules of tax law	not binding
Romania	1991	constitutional referendum	binding
	2003	the revision of the Romanian Constitution	binding
	2007	the reform of the Romanian voting system	binding
	2007	the dismissal of the President of Romania, Mr. Traian Băsescu	binding
	2009	the reform of the Romanian Parliament – the adoption of an unicameral Parliament	binding
	2009	the reform of the Romanian Parliament – the reduction of the number of parlamentarians	binding
	2012	the dismissal of the President of Romania, Mr. Traian Băsescu	binding
Russia	1993	confidence to Boris Yeltsin; assessment of the State's socio-political policy	binding
		early presidential and parliamentary elections	not binding
	1993	constitutional referendum	binding
Serbia	2006	constitutional referendum	binding
Slovakia	1994	disclosure of previous transactions relating to privatization	not binding
	1997	direct presidential election; the deployment of nuclear weapons; NATO membership; the establishment of military bases	not binding
	1998	non-privatization of strategically important companies	not binding
	2000	the early election of the National Council	not binding
	2003	EU membership	binding
	2004	early elections	not binding
	2010	the abolishment of the TV and radio license fees; the restriction of parliamentary immunity; the reduction of the number of MPs; the fixing of the maximum prices of government vehicles; the	not binding

		introduction of e-voting; the change in the press law: the abolishment of the right guaranteeing the automatic right of answer for politicians	
	2015	same-sex marriage; adoption of child by homosexual couples; sex education in schools	not binding
Slovenia	1990	declaration of independence	binding
	1996	changes in the election system of the Parliamentary Assembly	not binding
	1999	the third power plant TET3	not binding
	2001	artificial insemination of unmarried women	not binding
	2003	the refunding of too high telephone charges	binding
		no to the division of railways	not binding
	2003	NATO membership; EU membership	binding
	2003	10 shopping Sundays a year	binding
	2004	restoration of fundamental rights to ethnic minorities	not binding
	2005	regulations on broadcasting by public television and radio	binding
	2007	the law on the transfer of ownership of insurance	not binding
	2010	international arbitration in a border dispute with Croatia	binding
	2010	regulations on broadcasting by public television and radio	not binding
	2011	the right to work part time	not binding
	2011	the law on the protection of legal documents and archives; pensions and insurance for the disabled; prevention of illegal employment	not binding
	2012	amendment of the Family Code granting marital rights to same-sex partnerships, including the right to adopt children	not binding
	2014	the law on the protection of legal documents and archives	not binding
	2015	the same-sex marriage	not binding
Ukraine	1991	independence referendum	binding
	2000	reform of the political system	not binding

* Referendums held in the Serb Republic, one of the three constituents of Bosnia and Herzegovina, were taken into account.

On the basis of the figures in Table 2 it should be said that the majority of the held referendums were binding (53 referendums). The referendums that are not binding are those resulting from the too high validity threshold of a referendum, low voter turnout, intricacies and complexities in the formulation

of referendum questions, and from campaigns discouraging people from voting, as well as from the fact that citizens did not have the habit of participating in referendums.

As far as the practical application of other forms of direct democracy in Central and Eastern Europe are concerned, the situation differs in individual countries. In Albania, for example, although the Constitution admits of a civil legislative initiative procedure, which is vested not only in the Council of Ministers and each parliamentary deputy but also in a group of 20 thousand voters, this instrument is largely theoretical in practice. The scope of the substance that can be the subject of citizens' initiative was not described in Albanian legislature in a precise way, being limited only to the general wording: legislative proposals and issues of special importance. This is also the case with the local referendum, which can be theoretically held under the Albanian law but no public initiative of that kind has so far culminated in the organization of such an undertaking.

In Belarus, formally there is the institution of local referendum, but in practice the process of registering a citizens' referendum is very difficult. In Bosnia and Herzegovina, representative democracy is additionally equipped with a range of instruments that impose negotiations, compromises, and agreements. As a result, we are dealing with the politically decreed participation, deliberation and direct participation of a number of ethnic groups (or their representatives). That is why the Bosnian model of the political–system norms of consensual democracy can be regarded to some extent as hybrid direct democracy. The other institutions of direct democracy in Bulgaria have not yet become a real democratic instrument at the national and local level. They are used as a political tool for winning political dividends. Citizens' initiatives and especially European citizens' initiatives have no relevant reflection in Bulgaria.

In Croatia, attempts to propose an initiative to call a referendum generally failed, apart from one initiative of 2013, which resulted in holding a referendum. There is no official list of local referendums that were held. A local referendum is optional, which means in practice that all matters pertaining to a local community can be put to the vote. The decisions of the voters are binding, excluding the matters concerning the State's territory: in this case a referendum can be only a consultative one. In practice, a referendum is very seldom resorted to in the decision-making process at the local level. In the vast majority of cases, the results of the held referendums were negative.

The Czech Republic has ample experience in using local referendums, although it is difficult to estimate in figures Czechia's experience in local democracy because the communes are not obliged to send reports on the local referendums that were held to the Czech Statistical Office. The available information shows that there were 258 local referendums in Czechia between

2000 and 2014. The legal acts in force in Estonia do not provide for referendums at local level, but in some Estonian cities (e.g. in Tallinn) local votes are held concerning solutions to the problems important to the inhabitants (e.g. restrictions on the sale of alcohol, parking spaces in cities).

In Hungary, the local referendum procedure is applied. It usually concerns one of the following questions: changes of administrative boundaries of local government units; public consent to starting large investment in the commune concerned; environmental regulations, or social issues in the wide sense, related *inter alia* to local education or the health care system under the supervision of local governments. The Republic of Kosovo has practically no experience in using the institutions of direct democracy.

Solutions in the area of direct democracy in Latvia are practiced exclusively at the national level and comprise referendums and the legislative initiative. There are no legal solutions in Latvia permitting the holding of referendums at the local level. All regulations on direct democracy in Lithuania apply to the national level only. Constitution of the Republic of Lithuania and the laws do not regulate the questions associated with direct democracy at the local level. Certain forms of the citizens' direct influence on the decision-making process are guaranteed in the laws on the functioning of the local government. In practice, apart from the national referendum, a legislative initiative is also used.

Macedonia's past experience in direct democracy allows a conclusion that the referendum institution does not seem to work in matters of the State that are less significant than the State's independence. The forms of direct democracy are used in Macedonia to decide the most crucial issues. The previous limited practice in Macedonia, associated with the direct forms of democracy, allows an assumption that there will be no greater changes in this field.

Since 1992, 19 local referendums have been initiated in Moldova, of which 8 were found invalid due to insufficient turnout, and one was not held in accordance with the decision of the Central Electoral Commission. The majority of local referendums concerned the dismissal of a person from his/her position. Between 1989 and 2016, 7 referendums (both independence, constitutional and consultative ones) were held in Transdnistria. The governments of the Autonomous Territorial Unit of Gagauzia also utilized the tools of direct democracy.

In Montenegro, despite the established legal guarantees, the use of direct democracy solutions is practically weak at the local level. This stems *inter alia* from the lack of trust between the authorities and citizens, from the conviction that nothing can be done at local level against the will of the superior authorities, and from the weakness of the civil society. According to the Freedom House Report of 2013, democracy at the local level is generally underdeveloped, weak, and ineffective.

In Poland, after 1989 many parliamentary initiatives were put forward in the form of draft resolutions to hold a referendum. Between 1999 and 2012 over a hundred committees were registered in order to submit citizens' draft laws. One third of them submitted their proposals for debate in the Sejm, and only in eight cases the laws were passed. In the practice of the functioning of direct democracy at the local level, the problem is still the material scope of the referendum. On the basis of regulations we can state that the scope of the mandatory referendum is very precisely determined while the scope of the optional referendum raises considerable doubts. Practice has confirmed the thesis that it is difficult to dismiss an executive body that has been directly elected. Out of the referendums held, only a small number of them validly decided about the dismissal. This happens first of all because of the low turnout of voters.

Direct democracy became a real instrument in Romania after 1989. At the national level, direct democracy is used mainly as a *weapon* in political battles. At the local level direct democracy is weak and fragmented and it is used especially by grassroots movements in Romania. Due to the complexity of the legal framework regulating the citizens' legislative initiatives in Romania, they were not as successful as expected. The same situation applies in the case of local referendums which are limited by the interference of the political parties in the system.

Between 2003 and 2017, 3527 local referendums were organized in Russia, at the level of parts of the subjects-constituents of the Russian Federation. 65% of them were held in the Republic of Tatarstan, where referendums were organized in order that citizens in individual territorial units would voluntarily contribute through special taxes to social purposes. At the level of whole subjects-constituents of the Russian Federation, in the Republic of Tuva three constitutional referendums were held, in the Chechen Republic – referendums were held five times, in the Kabardino-Balkar Republic there were two referendums, while in the Republic of Tatarstan the institution of referendum was used only once. In Serbia one constitutional referendum was held, which was in a way a consequence of this country's secession from Montenegro in 2006. The practice of utilizing other forms of direct democracy has not become established in this country either at the national or local level.

Despite the high frequency of holding a national referendum in Slovakia, it was pronounced valid only in one case; in the other cases the turnout was below the constitutional threshold of 50%. It is difficult to conclusively estimate the experiences of local democracy because the communes are not obliged to send reports with data from the held local referendums to the Statistical Office. We can guess the number of the held local referendums on the basis of, *inter alia*, the fact that from 1990 the number of communes (2669) rose to 2891 in 2006. New communes were established as a result of the divi-

sion of the existing communes through the use of local referendums. This means that at least 200 referendums on the division of communes were held.

In Slovenia, between 2010 and 2014 there were seven legislative referendums directed against important legal acts, previously adopted by the National Assembly. In all these referendums the majority of voters voted against the acts adopted by the Parliament. The amendment of Article 90 of the Constitution largely contributed to the limitation of the number of referendum-initiating motions. Worth noting is the low frequency of calling popular referendums at the local level. In Slovenia's capital, Ljubljana, no local referendum was held during 20 years. Between 1991 and 2012, 151 local referendums were held in Ukraine, but in most cases the referendum results were not conclusive and did not imply appropriate legal effects. The information about the course of the referendums and their results is not kept in the archives of the Central Electoral Commission.

The studies presented in the foregoing chapters allowed the verification of the first research hypothesis that direct democracy functions in the Central and Eastern European countries both in the formal-legal and practical dimension at the national and local level. The institutions of direct democracy (the referendum in the vast majority of cases) have been defined in the legal systems of individual countries. These regulations are contained in the Constitutions and in the lower-order laws and acts. This means that the institutions of direct democracy are a permanent element of the legal systems in the Central and Eastern European states. In the course of studies it was found that legal provisions do not translate into the practical dimension both at national and local levels. In the majority of the countries (except Kosovo) the institutions of direct democracy are utilized in practice (especially in Slovenia, Lithuania, and Latvia regarding the nationwide referendum) at the national level. At the local level, however, the institutions of direct democracy are not so widely applied. In selected countries, these types of institutions are not used at all or the authorities deliberately prevent them from being utilized. Taking into consideration the use of institutions of direct democracy in the practical dimension, it should be said that in the Central and Eastern European countries the institutions of direct democracy are complementary to the prevailing indirect democracy.

Consequently, it should be said that the first research hypothesis was positively verified in formal and legal terms, both at the national and local level. It was also affirmatively verified in the case of practical dimension at the national level despite a limited scope of reference to the institutions of direct democracy. The first hypothesis was confirmed only partly in the practical dimension at the local level.

With regard to Albania, it should be said that although direct democracy in the formal-legal dimension is characteristic of this state both at the national and local level, this is not entirely confirmed in the practice of application of

these procedures, particularly at the local level. Direct democracy is present in Belarus in the formal-legal and practical dimensions, yet in the latter case it is used first of all to legitimize the authoritarian regime. In the case of Bosnia and Herzegovina, the functioning of direct democracy both in the formal-legal and practical dimension concerns the local level and the level of the two main constituent parts of the country: the Federation of Bosnia and Herzegovina as well as the Serb Republic. Direct democracy functions in Bulgaria both in the formal-legal and practical dimension at the national and local level. The process of accession of Bulgaria to the European Union did not have an impact on the development of direct democracy in Bulgaria (in the formal-legal and practical aspects). The political forces in Bulgarian society are still not fully aware of the potential behind the use of instruments of direct democracy in the process of exercising power. The subsequent changes to the law are more or less complicated by the difficulty in requesting a referendum.

In Croatia, direct democracy is present in the formal-legal dimension yet in practice it is limited. It should be noted that before 2000 neither the president nor the government called a referendum under Article 86 of the Constitution in force at that time. Only one national referendum has so far been held, on the initiative of the citizens. Due to the adopted legal solutions, the citizens' initiatives that are likely to succeed are those in which well-organized organizations are involved. Solutions characteristic of direct democracy at the local level are not often applied in practice. The causes of this situation can be sought *inter alia* in the low level of decentralization of power in this country.

Direct democracy in Czechia functions mainly in the formal-legal dimension at the local level. At the national level, only one referendum was organized. There is still no law on the national referendum, and most politicians are reluctant to use this institution. Their attitude stems from their negative experiences connected with the direct election of the President of the Czech Republic, which polarized the country and the political arena for many years. Direct democracy functions in Estonia in the formal-legal and practical dimension. Under the Constitution, the only institution of direct democracy available to the citizens is the referendum. In contrast, worth emphasizing are voting facilitations, including technological support, i.e. e-voting, which may in future translate into the referendum turnout. These solutions are limited exclusively to the national level. Studies on direct democracy in Hungary enabled the positive verification of the first research hypothesis. Direct democracy functions in this country both in the formal-legal and practical dimensions.

Direct democracy functions in Kosovo only in the formal-legal dimension at the national level. Today's Republic of Kosovo has practically no experience in using the institutions of direct democracy. This state of affairs

is probably the result of the extremely difficult and complex political situation determined by ethnic-national conflicts, which intensified throughout history. In Latvia, direct democracy functions both in the formal-legal and practical dimensions. The principal barrier to the use of direct democracy is difficulties with obtaining a sufficiently high voter turnout, which determines the validity of a referendum. It appears that the problem was not solved by the amendment to the 1933 Constitution, which theoretically lowered the threshold of referendum validity. With regard to a legislative initiative, it should be noted that in Latvia this institution of direct democracy is comparatively ineffective. The barrier here is both the need to prepare the adequate motion and to agree on its final version before submitting it to the Saeima. The solutions of direct democracy apply, however, to the national level.

Direct democracy in Lithuania functions in the formal-legal and practical dimensions. The provisions of the Constitution and other laws provide only for the institutions of direct democracy at the national level while there are no solutions enabling for example a referendum at the local level. Lithuania remains one of the countries with the highest rate of invoking direct democracy, especially referendum. In Macedonia, direct democracy functions both in the formal-legal and practical dimension first of all at the national level.

The Republic of Moldova resorts to the referendum institution occasionally. The referendum is not an instrument of the influence of Moldova's citizens on the exercise of power. The formal-legal basis of direct democracy contained in the Constitution is inconsistent while the lower-order laws are often only a modification of the constitutional regulations. The political system obtaining in Moldova is an example of the post-Soviet oligarchic system, in which the richest citizens directly exercise political power or interfere in politics through their economic influences. Some of the formal-legal regulations on direct democracy in Montenegro were not so much the expression of the aspirations of society and political elites as the aspirations of the political and geopolitical actors in international relations. Among them, the role of Serbia and the European Union deserves special emphasis.

In Poland, direct democracy is present in the formal-legal and practical dimension. In practice, the resort to a referendum at the national level is exceptional and serves to confirm the existence of sufficient public and political support rather than decide the matters of special significance to the State. The national referendum is used instrumentally by diverse political actors to accomplish their own political goals, not because they heed the voice of the people. Many changes were introduced specifying the legal setting and the practice of the use of local referendums. In 2002 the possibility of using the referendum institution to dismiss a directly elected executive body was extended. In 2006, in turn, the validity thresholds of these

local dismissal referendums were relaxed, which increased their efficacy and extended their application onto large cities.

In the case of Romania, direct democracy functions at both levels: at the formal-legal level and at the practical level. This is true for the national level of direct democracy. As regards the local level there is still a lot to do and direct democracy does not function at the practical level, only at the formal-legal one. To conclude: the hypothesis was confirmed for the national level but not for the local one.

Direct democracy (in the form of the institution of referendum) is present in the Russian Federation both in the formal-legal and practical dimension. However, the formal dimension is a barrier to the development of the practical level. In the practical dimension at the federal level, the referendum was treated instrumentally. At the level of the subjects - the constituents of the Federation, referendums are organized (e.g. the Republic of Tatarstan, Republic of Tuva, Republic of Dagestan) or not (e.g. the Republic of Adygea, the Altai Republic), depending on the constituent subject. In Serbia, direct democracy functions first of all in the formal-legal dimension. The not yet firmly rooted democracy and the lack of the developed civil society significantly determine the relatively limited practice of using the institution of direct democracy in this country.

In Slovakia, direct democracy functions both in the formal-legal and practical dimension, first of all at the national level. The decisions made in a referendum have the force of law when proclaimed, which means that State authorities are obliged to realize the will of the voters. The adopted legal solutions are actually a guarantee of the efficacy of the referendum results. Due to the low turnout in the referendum and the consequent failure to meet the condition for the validity of the referendum, this institution becomes a caricature of direct democracy. Additionally, politicians use it as a tool to discredit their political opponents. The Slovaks are deprived of the right to influence the legislative process through exercising citizens' legislative initiative. The citizens have no powers associated with calling a referendum - they only have the right to participate in the already initiated referendum. The process of accession to the EU "compelled' the holding of a referendum on EU membership.

Slovenia has rich experience in using the institutions of direct democracy at the national level, and little experience at the local level. The forms of referring to the will of the people are thoroughly regulated in the Constitution and other legal acts. Worth emphasizing is the amendment to the Constitution in 2013, which introduced significant changes to Article 90 specifying the initiators and the subject of referendum. The high number of the held legislative referendums was criticized for obstructing the legislative process and contributing to political instability. The narrowing down of the number of those empowered to initiate a legislative referendum to 40,000 citizens (and

exclusion of the members of parliament) resulted in depriving the referendum of the plebiscite formula, reducing the number of issues put to the vote, and in preventing the referendum from becoming a tool of political fight between divided political parties.

The fragmentation of legislation regulating the institutions of direct democracy in Ukraine and the lack of the law on local referendums do not make them a popular form of citizens' participation in decision-making. The undermining of the existing legal order results in public passivity and a relativist approach to the institutions of direct democracy mobilizing citizens to effect changes together.

In the case of the second research hypothesis on the relationship between the state of citizen awareness and the development of institutions of direct democracy in the Central and Eastern European countries, it should be said that it was positively verified only partially. To the citizens and political elites of some countries in the region (Belarus, the Czech Republic, Kosovo, Moldova, Montenegro, Russia, and Ukraine) the institutions of direct democracy are not important or they serve to accomplish particularistic political interests of those in power. The awareness of decision-making mechanisms is very low among the citizens. A significant limitation is the citizens' passivity and their lack of trust in the advisability of using the institutions of direct democracy.

In the countries like Estonia, Lithuania, Latvia, and Slovenia the use of the institutions of direct democracy is closely related to citizen awareness. This connection, although to a smaller extent, is also observable in the case of Albania, Bosnia and Herzegovina, Bulgaria, Macedonia, Poland, and Serbia. To some extent, citizens identify the institutions of direct democracy (especially the referendum) with the realization of the principle of national self-determination. With the use of a referendum at some stage of the independence process, legal solutions of this type are applied more often.

It should be also emphasized that in the case the Central and Eastern European countries we are dealing with great differences in political consciousness, which even determine a specific attitude to direct democracy. In the countries of the former Soviet Union, two opposing attitudes can be distinguished: on the one hand there is the high citizen awareness and political activity of the citizens of the Baltic states (Latvia, Lithuania, and Estonia), which translates to some extent to the use of the institutions of direct democracy, while on the other hand, the majority of Ukrainian, Russian, and particularly Belarusian citizens display passive attitudes, which are utilized by political elites. The state of citizen awareness is an exemplification of historical and national determinants. It should be said therefore that the second hypothesis was confirmed only in some of the countries in question, while in others it was verified negatively.

During the studies, the second research hypothesis failed to be verified positively in the case of Albania. Despite the existing legislative path, the referendum procedure has not been applied in this country for over 19 years both at the national and local level. The use of the instruments of direct democracy in the process of exercising power is not an indicator of the political awareness of the Belarusian citizens but first of all it is an exemplification of the activity of Alexander Lukashenka's regime, who legitimizes his policies by referring to the people. In the case of Bosnia and Herzegovina the instruments of direct democracy should be regarded as an especially important indicator of the political awareness of the Bosnians, Serbs, and Croatians. This is of special importance in view of the European integration. In Bulgaria, its political forces are still not fully aware of the potential behind the use of instruments of direct democracy in the process of exercising power. Also, citizen consciousness in Bulgaria is still developing.

In Croatia, the citizens are largely interested in the functioning of the authorities at the national level rather than local level. The low interest of the people in the functioning of the authorities at the local level is evidenced for example by the low turnout in local elections and the consequent low turnout in all forms of direct participation in the decision-making process. The second hypothesis is not confirmed in the Czech Republic. In Czechia, the use of the instruments of direct democracy at the national level is not an indicator of the society's political consciousness. This was not changed by the process of accession to the EU, which, admittedly, compelled the holding of a referendum on EU membership, after the prior introduction of appropriate amendments to the Constitution, but it is wrong to say that it influenced the development of direct democracy in the formal-legal and practical dimension.

The functioning of direct democracy in Estonia should be regarded as a manifestation of the political awareness of its citizens, but on the other hand we should take into consideration the complicated ethnic situation and tense relations with Russia, which also translate into limiting the access to direct democracy. The confirmation of these fears is the separatist tendencies and the unofficial referendum held in Eastern Virumaa. In the case of Hungary the second research hypothesis was not verified positively. The development of political consciousness of the Hungarian society and Hungary's political elites is connected with the restriction of the legally available direct democracy procedures and gradual deprecation of those still in force. The second research hypothesis is not confirmed in the case of Kosovo.

The use of direct democracy solutions in the decision-making process in Latvia is a determinant of the political consciousness of the State. Latvia, as one of the few countries in Europe, guaranteed its citizens a broad range of matters that may be put to a referendum or be the subject of a legislative initiative. Direct democracy solutions used in the decision-making process are an indicator of the political consciousness of the Lithuanians. A significant

problem of Lithuanian direct democracy is the low level of interest in the questions put to the vote, which translates into the low turnout. Due to problems with exceeding the thresholds of referendum validity, four of the twelve referendums that were held were unsuccessful. In three other cases the required turnout was attained but the proposals put to the vote did not gain the appropriate degree of the citizens' support. Despite the fact that Macedonia's experience is relatively modest, it is first of all the independence referendum that appears to confirm the adopted hypothesis to some extent.

The Moldovan citizens generally do not know what the institutions of direct democracy are. They do not trust the binding force of referendum results; that is why they find voting unnecessary and meaningless in making decisions. The dual identity of the national majority - Moldovans/Romanians – directly influences the development of political preferences of the citizens and the shape of civil society. The growing fragmentation of Moldovan society and the fatigue with transformation of the country, and mistrust of the political forces in the Parliament is evidenced by the greater involvement of citizens in making decisions about local matters than about the matters important for the whole Republic. The formal-legal regulations on direct democracy in Montenegro were meant to serve first of all the political elites to legitimize their power and political decisions. This is also the case at the local level.

The use of direct democracy solutions in the decision-making process is an indicator of the political consciousness of a large number of Poles. This is evidenced by many attempts to decide in a referendum on important and controversial issues concerning the functioning of the State. At the same time it should be pointed out that one of the causes of invalid referendums is failure to reach the required turnout threshold. Direct democracy in Poland is treated instrumentally by politicians, which was demonstrated by the referendum of 2015, with an embarrassing turnout of 7.8%.

The use of instruments of direct democracy in the process of exercising power is not an indicator of the political awareness of the Romanian society both at national and local level. These instruments were frequently used for political reasons without being related to the political awareness of the Romanian society. The use of instruments of direct democracy in Russia only in selected cases at the local level is an indicator of citizen awareness. At the federal level, referendums serve to accomplish and legitimize specific political actions of the State authorities (first of all the presidential circles). Despite the fact that Serbia's experiences are very small, the constitutional referendum may, to a limited extent, confirm the adopted research hypothesis.

With regard to Slovakia, the large number of national referendums which were held should be emphasized. Regrettably, the turnout is low and, consequently, the condition for the validity of referendums is not met. In Slovakia, the referendum did not fulfill the educational function of raising the level of citizens' political consciousness. It was not conducive to building consensus,

and it did not solve political conflicts (and even strengthened them). Nor did it alleviate strained relations between political parties and their programs. The referendum contributed to perverting the idea of direct democracy and discouraged voters from expressing their will because it was used instrumentally by political parties to achieve narrow party interests. It was an element of political struggle, used by political parties, thus destabilizing Slovakia's already fragmented political arena. In principle, there were legal and political controversies in all national referendums (except the one of 2003).

Slovenia has ample experience in the use of referendums and positive results of popular vote. The adopted legal solutions and the role of the Constitutional Tribunal, which often did not consent to holding a referendum because it was unconstitutional, in particular regarding social and economic matters, show that the use of instruments of direct democracy in the process of exercising power is an indicator of public awareness of both the Slovenian society and politicians. The experience of the Ukrainian society with rigging the referendum results and too little significance attached to the quality of participation in public life implies negligible interest in increasing the role of institutions of direct democracy. To many Ukrainian citizens, the institutions of direct democracy are a fairly abstract way of expressing their will. On top of that there is also the psychological barrier and the distrust of the public administration authorities.

The third research hypothesis, which assumed that the process of accession of the Central and Eastern European countries to the European Union had an impact on the development of direct democracy in these countries (in the formal-legal and practical aspects), was partly confirmed only in some Central and Eastern European states. This is largely due to the different situation of the countries in this part of the world at the political and international level. Some countries in the region successfully applied to the European structures, and became members of the European Union. A large portion of these countries confirmed the entry into the EU structures by gaining their citizens' support in the accession referendums (Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia). The countries which gave up the idea of support through a referendum for the approval of the accession decisions by the parliaments of these countries (Bulgaria, Romania) remained in the minority.

The EU accession by the countries of the region did not generally influence the increase in the number of referendums. In the case of the countries that joined the EU in 2004 (Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia, and Slovakia), 38 referendum votes had been held by 2003 (inclusive) while after 2004 the referendums were held 25 times. A quantitative increase took place in the case of Latvia and Slovenia while there was a quantitative decrease in the other cases. With regard to the countries admitted to the EU in 2007 (Bulgaria, Romania), there was a

growth in the use of referendums. In the case of Croatia which joined the EU in 2013, it should be pointed out that only one national referendum was held after the accession to the European Union structures. The foregoing results show that it is difficult to observe that EU membership should directly translate into the growing use of the referendum institution in the EU Member States in the region in question. However, it should be stressed that the accession to the EU structures influenced the development of democracy regarding the access of the citizens of the foregoing countries to the European Citizens' Initiative.

We should also single out a group of countries that have made endeavors at different times to join the European Union structures. They are first of all Ukraine, and Albania, which has been a formal candidate for EU membership since 2009. There is also a group of countries that are not likely to be admitted to the EU in the foreseeable future. We also need to mention the countries that are not the states with the systems of liberal democracy (Belarus, Russia). It should be emphasized that the third research hypothesis was not confirmed in the case of Czechia, Kosovo, Macedonia, Moldova, and Slovakia.

In the case of Albania, a successful accession process to the European Union and the subsequently imposed legislative changes could certainly have a favorable influence on the promotion of direct democracy solutions. Due to the fact that the Republic of Belarus is not a member of the European Union nor does it even aspire to be one, the accession process of the countries of the Central European region did not influence the development of institutions of direct democracy. Recommendations and forecasts for Bosnia and Herzegovina are uncertain and generally pessimistic. This also applies to direct democracy, which may be a danger instead of a chance in this country. The process of accession of Bulgaria to the European Union did not have an impact on the development of direct democracy in this country (in the formal-legal and practical aspects).

Croatia's accession to the European Union structures, together with reference to the accession referendum, may positively influence the debate on and the use of various forms of direct democracy. The third research thesis is not confirmed in the case of the Czech Republic. Its EU membership did not have any effect on the development of direct democracy in Czechia. The accession referendum was the only referendum at the national level. Accession to the European Union obviously did not influence the development of direct democracy in Estonia. The accession referendum has so far been the last referendum that was held in Estonia.

The development of the political awareness of the Hungarian society as well as Hungary's political elites is associated with the restriction of legally available direct democracy procedures and with the gradual disparagement of those still in force, which contradicts the second hypothesis. This process

additionally escalated after Hungary's accession to the European Union, which explicitly falsifies the third research hypothesis. The hypothesis does not apply to Kosovo. Accession to the European Union had a positive impact on the development of direct democracy in Latvia. It should be stressed that Latvia held an accession referendum, and there has been a steady increase in the use of institutions of direct democracy since 2004.

Lithuania's accession to the European Union had a positive effect on the development of direct democracy in this country. It should be emphasized that Lithuania held the accession referendum, and since 2004 the use of institutions of direct democracy has been steadily growing.

The endeavors of Montenegro's authorities to join the European Union structures influenced the adoption of many new solutions at the level of local government. In practice, however, there are observable problems facing the postcommunist countries: building the civil society, consolidation of the democratic system, deficit of public trust, including the trust in the authorities, corruption, economic problems, and many others. Poland's accession to the European Union structures, together with reference to the accession referendum, had a positive effect on debate and the use of diverse forms of direct democracy. It is true that a number of instruments - especially referendums - of direct democracy were used at the national level after the accession of Romania to the European Union, but it is difficult to assess if this use is a consequence of the new status of Romania as a member of the European Union. At the local level there is no indication of the influence exercised by the new quality of Romania - as a member of the European Union – on the development of direct democracy. In conclusion, the third hypothesis was not confirmed in Romania's case. The process of Romania's accession to the European Union did not have an impact on the development of direct democracy in this country (on the formal-legal and practical aspects of direct democracy).

The Russian Federation is not a democratic country. It is not a European Union Member State: that is why the European integration of the countries in the Central European region did not directly influence the position of direct democracy in this country. The third research hypothesis does not apply to Serbia. The hypothesis is not confirmed in the case of Slovakia. Slovakia's membership in the EU did not directly influence the development of direct democracy in this country. The accession referendum held in 2003 did not result in subsequent popular votes. The hypothesis in question is confirmed in the case of Slovenia. Slovenia's EU accession process indirectly contributed to the development of Slovenian direct democracy. Ukraine's authorities are determined to reform the country in accordance with the pro-European development priorities, declaring that they aspire to be an EU Member State. However, instead of holding referendums on important national issues, which are too expensive and would require political commitment, they prefer to pass

amendments to some chapters of the Constitution. The procedure for adopting amendments does not provide for the people's participation or the use of the forms of direct democracy.

The forms of direct democracy – particularly after 1989 – arouse considerable interest on the part of the Central and Eastern European countries, which is manifested *inter alia* in the ongoing public debate on the role of citizen' participation in decision-making processes. It appears that the transformation processes in this part of Europe have become a spur to the broader use of the forms of direct democracy than was previously the case (especially the institution of the referendum). The institutions of direct democracy are perceived as important tools in the empowerment of the society as well as in creating and shaping the civil society. The previous practice of using the forms of direct democracy in the Central and Eastern European countries shows that it may be a long-term process.

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Index

M

N

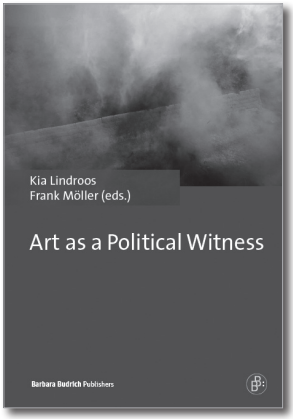
O

P

Y

Z

Political Science



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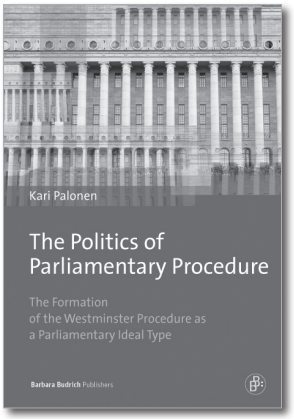

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