

Referendum as a medium (demonstration) of freedom and democracy

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Abstract

The constitutional anchoring of the referendum in Slovak Republic is the subject of discussions within professionals and the public since the establishment of the independent Slovak Republic. This paper deals with the Institute of Referendum in the Slovak Republic in connection with the constitutional development of the Slovak Republic, namely the transition to a democratic establishment after 1989. It specifies selected shortcomings of the constitutional anchoring of the referendum at national level and possible proposals for their solution.

Keywords

referendum, direct democracy, constitutional development, limit

Introduction

The political system of the Slovak Republic is based on the principle of rule of law and representative democracy. As well as in other democratic countries, also in the Slovak Republic has the system of representative democracy a prime position and institutes of direct democracy still represent a supplementary way of taking public policy decisions.

The creators of the political and constitutional system of the Slovak Republic, as well as in other democratic countries, have been evidently inspired by the ideas of maximalist theory of democracy. That's why the institute of referendum and later also the institute of popular vote on the dismissal of the President of the Slovak Republic have become a part of the legal order.

The aim of the article is an analysis of the constitutional development of the Slovak Republic after break-up of the Czechoslovak Federative Republic (ČSFR) in connection to the constitutional anchoring of referendum as of the direct democracy form. Our intention isn't to exhaustively focus on theoretical definition of direct democracy and of referendum, but to point out the most urgent problems of the current legal regulation of the institute in question.

A short historical excursion

November 1989 meant a fundamental change in the character of the state regime – in its transformation to a democratic and legal country. The constitutional way of social and political changes, was accepting the constitutional laws, which amended socialist constitution and constitutional law in Czechoslovak federation directly, but also modified important issues of functioning of new system.¹ The development of the Slovak legal order was demanding and complicated after the establishment of the independent Slovak Republic not only for the creation of law but also for its application. In the Czechoslovakia, the transformation process of the whole social and state life was in progress.² Slovakia has thus become part of the third democratization wave.

The fall of communism in the ČSFR also affected the fall of Communist autocracies in all socialist countries under the influence of the change of the bipolar world to unipolar. These contradictions resulted in a revolution that resulted in the fall of the ruling Communism in the ČSFR. Under pressure from democratic civilian and political forces, there have been major changes in the political, state, economic, social and cultural life of the citizens of the federation. These changes have led to the creation of a pluralistic democratic political system, creation of a market economy and formation of respect for the social and ecological aspect. They also aimed to creating a legal and democratic state with a guarantee of fundamental human rights and freedoms.³

The immediate outcome of the events in 1989 was the abolition of Article 4 of the Constitution from 1960, which embodied the leadership of the Communist Party in state and society, and Article 16, in which Marxism-Leninism was embodied as the sole source of ideology. Adopted laws allowed the free formation of political parties and movements and civic associations. The first free elections took place in 1990 and first municipal elections were in the autumn of the same year. Regularly repeated municipal and national elections have become part of the political and civilian life in Slovakia, and the real application of the representative form of democracy also. The Constitutional Act (Act No. 327/1991 Coll. about the referendum) was also adopted, which allowed performance of direct democracy.⁴

The parliamentary elections in June 1992 brought power to political parties that could not agree on a new form of the common state. They agreed on the constitutional route of division and termination of the federation.⁵ The result was the creation of two separate parliamentary democracies. It is worth pointing out the fact, that until 1989 there were not many experiences of direct democracy in Slovakia.⁶

The basic law of the independent Slovak Republic was accepted on 1 September 1992 as the Act no. 460/1992 Coll. The Constitution of the Slovak Republic, which was comparable with the constitutions of traditional democracies.

1 SVÁK, Ján – KLÍMA, Karel – CIBULKA, Ľubor: *Ústavné právo Slovenskej republiky. Všeobecná časť*, Bratislava 2013, 36.

2 CHOVANEC, Jaroslav: *Moderná slovenská štátnosť*, Bratislava 2009, 196.

3 Ibidem.

4 SVÁK – KLÍMA – CIBULKA, 36.

5 Ibidem.

6 IVANČOVÁ, Soňa: Vybrané problémy inštitútu referenda, in: *20 rokov Ústavy Slovenskej republiky – I. Ústavné dni*, Košice 2012, 268.

Theoretical background of the referendum

The referendum, as a form of direct democracy, is currently perceived as the most widespread and most effective way of enabling citizens to participate in governance and decision-making on fundamental issues, not only at national level but also at regional and local levels. With a constantly functioning representative democracy, the referendum is one of the forms of direct democracy, an inherent and complementary part of decision-making in an advanced democratic and legal country.⁷

The referendum has his roots in Switzerland (15th century). It spread to US in the turn of the 18th and 19th century. In Europe, the referendum began to be used more frequently in the period between the world wars. A new phase of development in Europe has the referendum experienced after the second World War.⁸ The referendum, from the latin a thing to report on is a form of direct democracy, which represents citizens' decision making through direct voting about constitutional and legal questions.⁹

This institute is in the system of parliamentary democracy a basic and from the sovereignty of people point of view a very important tool of direct democracy. In addition to the people as such, the existence of referendum assumes the existence of a representative body – the parliament.¹⁰ It represents voting, through which the electorate can express their opinion on a particular policy issue. It differs from the elections as of a tool of representative democracy in a way, that elections are a way how public office is taken, and not a method how directly and reliably political measures are influenced. As a rule, the referendum is not intended to substitute representative bodies, but to supplement them.¹¹

The referendum is a special way of allocating legislative competences between representative body (parliament) and citizens. In the case of referendum, there is no delegation of legislative competences, as it is the case in executive power and territorial self-government, to which the parliament has delegated legislative power (delegated legislation), but direct constitutional anchoring is the case. It is a division of original legislative competence, which is also referred to as legislative power.¹²

Recently, the referendum institute is experiencing a phenomenal boom, even in those countries where it was used rarely or not at all. That is why there is a need to deal with the Institute of Direct Democracy at the theoretical level as well. It should be remembered that this is not a matter reserved only to some leading disciplines, because most referendums have impacts and require explanation not only in the area of constitutional law but also in political science, economics and sociology.¹³

Under the current governance systems, despite its benefits, the referendum still represents only a supplementary form of public participation. This will probably not change in the

7 PALÚŠ, Igor et al.: *Ústavné právo Slovenskej republiky*, Košice 2016, 225.

8 DOMIN, Marek: *Volebné právo a volebné systémy*, Bratislava 2017, 14–15.

9 CHOVANEC, Jaroslav – PALÚŠ, Igor: *Lexikón ústavného práva*, Bratislava 2004, 116.

10 PALÚŠ, Igor – SOMOROVÁ, Ludmila: *Štátne právo Slovenskej republiky*, Košice 2002, 173.

11 HEYWOOD, Andrew: *Politologie*, Plzeň 2008, 292.

12 SVÁK, Ján – KUKLIŠ, Peter: *Teória a prax legislatívy*, Bratislava 2007, 36.

13 ŠIMÍČEK, Vojtěch (ed.): *Přímá demokracie*, Brno 2016, 9.

near future, because it is not to be expected that the current representational systems will transform into systems, which will be using the institutes of direct democracy. This is true despite the fact, that the use of the referendum as a deciding tool and constitution of the state is recently globally increasing.¹⁴

Discussion on the merits of the mater

The Slovak Republic has since the revolution in 1989 and the subsequent division of the Czechoslovak Federative Republic undergone some significant changes. The transition to the democratic establishment was the most significant change. The emergence of an independent Slovak Republic as a parliamentary democracy also resulted in the constitutional enshrinement of direct democracy, namely the institute of the referendum. In this context, one of the frequently discussed issues is the constitutional regulation of the referendum, which has been one of the problematic areas since the adoption of the Slovak Constitution. One of the fundamental problems of direct democracy in the Slovak Republic is the validity and legal obligation of the results of the referendum. As part of this contribution, I would like to devote to a constitutional adjustment of the referendum at the national level, with emphasis on its limits – the obligation and validity of the results of the referendum.

The Slovak Republic has been very open to anchoring direct democracy and has included a section devoted to the referendum directly to the newly adopted constitution after the division of the federation. Consequently, the Slovak constitutional system allowed the development of direct democracy (referendum) through several constitutional adjustments.¹⁵ Referendum and the assembly of the population of the municipality are the instruments by which direct democracy is implemented in the case of the Slovak Republic. The referendum can be held at the national level, at the municipal level (local referendum) and also at the level of the self-governing region (referendum of the self-governing region). At the municipal level, besides the referendum as a tool of direct democracy, the municipal assembly is also included. On the basis of the other characteristics of the referendum, it is necessary to distinguish obligatory and optional referendum at the level of national and general constitutional and legal order.¹⁶

The basic framework for the application of direct democracy is Art. 2 section 1 of the Constitution of the Slovak Republic (hereinafter referred to as the Constitution of SR), based on which the state power comes from the citizens who carry it through the representatives or directly. Articles 93 to 100 of the Constitution of the SR contain the constitutional amendment to the national referendum, which the Constitutional Court has inserted in the fifth chapter of the Constitution of the Second Division entitled "Legislative Power", which also sets out the basic terms of its declaration.¹⁷

By 2014, a more detailed regulation of the national referendum was adjusted in the Act No. 564/1992 Coll., about the way of holding a referendum as amended. Since July 2014, this

14 KROŠLÁK, Daniel et al.: *Ústavné právo*, Bratislava 2016, 498.

15 IVANČOVÁ, 270.

16 KRESÁK, Peter: Uplatňovanie priamej demokracie v SR, cesta plná ústavných prekážok, in: *Přímá demokracie*, ŠIMÍČEK, Vojtěch (ed.), Brno 2016, 167.

17 Ibidem.

82	ARTICLES Jana VOLOCHOVÁ	Referendum as a medium (demonstration) of freedom and democracy	
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law has been replaced by Act No. 180/2014 on the Conditions of Electoral Law and change and completion of certain laws as amended.

From a constitutional point of view, we differ two types of nationwide referendums: an obligatory referendum (Article 93 section (1)) and an optional referendum (Article 93 section (2)).

In the Slovak Republic, the declaration of the referendum belongs to the full competence of the President of the Slovak Republic, in cases implied by the Constitution of the Slovak Republic, and if at least 350,000 citizens request it by a petition, or if the National Council of the SR decides to do so. The President of the Slovak Republic announces the referendum no later than 30 days from the date of receiving the petition or from the resolution of the National Council of the Slovak Republic. The decision of the President of the Slovak Republic is valid and unchangeable, which means that there is no state authority that can change the formulation, number or advice of the issues that were declared for the referendum by this decision. The referendum will then take place within 90 days from its announcement.¹⁸

An obligatory referendum means that its making and fulfilment is in certain cases directly provided and prescribed by the Constitution, which means that it must take place.¹⁹ In the case of referendum at Slovak Republic, the referendum confirms the constitutional law on the entry into the state union with other states, or the withdrawal from such a bundle. This is called a ratification referendum. The character of the referendum result is constitutive, which means, that the entry of the Slovak Republic into a state bundle or the withdrawal from such a union will not happen unless it was accepted by the law established by the National Council of the SR in a subsequent referendum.²⁰

The optional referendum follows from the formulation of Art. 93 section 2, which provides that a referendum may also decide on other important issues of public interest. This constitutional regulation provides relatively broad interpretation options.²¹ Thus, an optional referendum can be held on any important issue of public interest, unless this question of public interest, is in the Constitution of the Slovak Republic explicitly referred as a question that cannot be voted for in referendum. In Art. 93 section 3 are defined questions which are important issues of public interest in the taxable calculation, although they are excluded from both obligatory and optional referendums. These are fundamental rights and freedoms, taxes, levies and the state budget. All other issues not covered by Art. 93 section 3 of the Constitution of the Slovak Republic may be the subject of an optional referendum if they have the character of an important public interest and do not make a threat of collision with the constitutional norm, which cannot be changed by the result of the referendum.²² We are dealing here with a problem of public interest, as this concept is not defined in the Constitution or in any other legal regulation. In the case of the public interest, this means a cardinal issue, because this term is not defined, so the decision of the Constitutional Court of the SR, according to which the public interest is assessed individually, is applied.

18 BRÖSTL, Alexander et al.: *Ústavné právo Slovenskej republiky*, Plzeň 2015, 225.

19 Ibidem, 224.

20 KROŠLÁK et al., 499.

21 BRÖSTL et al., 225.

22 DRGONEC, Ján: *Ústavné právo hmotné*, Bratislava 2018, 252.

*"The public interest under consideration in the expropriation proceeding is subject to proper consideration under the current expropriation concept and is assessed in the course of the proceedings on the basis of a wide range of particular interests, after considering all contradictions and comments. It is clear from the recitals in the preamble to the Decision, which is the question of the existence of a public interest, why the public interest overrides other, private or public interests (e.g. the construction of a motorway on the site where the school is located). Public interest is the subject of evidence in the decision-making process on a particular issue, expropriation, and cannot be determined a priori in advance. For this reason, the detection of the public interest falls under the power of executive and not legislative power."*²³

In the mentioned context, it should be noted that if all the constitutional and legal conditions for the implementation of the optional referendum are fulfilled, the optional referendum has an obligatory character, which means, that it must take place.²⁴

The subject of the referendum can be apart from the questions of legislative decision-making, also other legitimate issues of public interest. The proposals accepted in the referendum, whether on normative or non-normative issues, are because of the Article 98 section 2 of the Constitution of the Slovak Republic, declared the same way as the law is. This means that the constitution does not distinguish between the referendum, the result of which is or should be a normative act and a referendum on non-normative questions, which are unadjusted by law.²⁵ The question put to the referendum vote, not only must be a question that is not excluded from the constitution but also have to be capable of producing a legal effect. The legal effect means not only amending or supplementing the current legislation, but the result of the referendum may also be a validation of the current legislation.²⁶ According to Drgonec²⁷ there is no point in linking the legal effect with any decision on public issues. If the subject of a referendum is not capable of producing a legal effect, or there is no reason to associate the result of the referendum with a legal effect, then it is a matter of public interest, which is not suitable for decision-making in a referendum, even if it is important to society.

The results of the referendum are valid if the majority of eligible voters participated in the vote and at the same time, if the decision was taken by the majority of the participants in the referendum.²⁸ Here we come across one of the limits of the constitutional adjustment of the nationwide referendum. The quorum for the validity of the results of the referendum provided by the Constitution of the SR probably disrupt its use. The quorum thus established is difficult to achieve as it was confirmed by the previous realized referendums. The paradox is, that if a citizen transmits his right to decide on public affairs in legitimate elections to elected representatives, no quorum of validity is set. The election will be valid even if only 10, 20 or 30 % of the eligible voters are involved. However, if the voter chooses to

23 Nález Ústavného súdu Slovenskej republiky sp. zn. PL. ÚS 19/09.

24 KRUNKOVÁ, Alena: Ústavné limity v participácii občanov Slovenskej republiky na správe vecí verejných, in: 20 rokov Ústavy Slovenskej republiky – I. Ústavné dni, Košice 2012, 264.

25 PALÚŠ, Igor – SOMOROVÁ, Ľudmila: Štátne právo Slovenskej republiky, Košice 2008, 183.

26 DRGONEC, 253.

27 Ibidem, 253–254.

28 PALÚŠ – SOMOROVÁ, 2008, 192.

84	ARTICLES Jana VOLOCHOVÁ	Referendum as a medium (demonstration) of freedom and democracy	
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vote in a referendum, the quorum is set to 50 % + one vote.²⁹ In this context, it is important to note that the Constitution of the SR does not distinguish the quorum for the validity of the referendum by type of the referendum.³⁰

The Constitutional Court, in the reasoning in the judgment sp. no. PL. UC 42/95 expressed the legal opinion, according to which the constitutional body modified the legislative power in a double way, which means that this power belongs not only to the National Council of the SR but also directly to the citizens. In its resolution on the interpretation of Art. 72 and Art. 93 section 2 of the Constitution of SR, the Constitutional Court concluded that the adoption of a proposal in the referendum is constitutional in the sense that citizens will express their will by means of a vote to amend or complement the Constitution or the law according to the adopted proposal in the referendum if it was the subject of a referendum. However, according to the second section of the fifth chapter of the Constitution, the Constitution of the SR cannot be changed directly on the basis of the result of the referendum vote, since the Constitution of the SR does not contain a provision that would allow citizens to vote directly on the formulation of the proposed constitutional change or laws or other legal norms.³¹

According to Art. 98 Par. 2 of the Constitution of the Slovak Republic, proposals adopted in the referendum will be announced in the same way as the law (not by the law), and they will be announced in a publication intended for the proclamation of law. Subsequently, the National Council of the SR declares the results of the referendum as well as the law. This means that The Constitutional Court expressed the intention to combine legal effects with the results of the vote in the referendum and to declare their legal obligation.³²

If the referendum ends with the adoption of a proposal in accordance with the Constitution of the SR, it will create a constitutional obligation for the National Council of the SR to declare the proposal adopted in the referendum as a law. This is one of the forms of Parliament's positive commitment, which establishes the obligation to declare the results of a referendum in the Collection of Laws of the Slovak Republic (hereinafter referred to as the "Collection of Laws"). On the day of the result's declaration of the referendum in the Collection of Laws, the proposal adopted in the referendum shall enter into force. This proposal becomes effective fifteen days after the date of its publication in the Collective of Laws unless a later date of its entry into force is established.³³

The issue of the binding referendum results and ensuring its legal effects is the most discussed issue among professionals, especially with regards to the free mandate of the members of the National Council of the Slovak Republic.

The supporters of binding referendum justify their statements with several arguments. Representatives of legal science argue that in the Slovak Republic, it is one of the subjects

29 KRUNKOVÁ, 265.

30 Since the establishment of the Slovak Republic, eight referendums have been announced and executed, from which one was obligatory. It was an obligatory referendum on the accession of the Slovak Republic to the European Union, which took place in 2003. Citizen's participation in the referendum was 52.15 %. In the case of the other realised referendums, their invalidity was due to the failure to reach the constitutionally established quorum needed for the referendum to be valid.

31 PALÚŠ – SOMOROVÁ, 2008, 192.

32 Ibidem, 192–193.

33 DRGONEC, 260.

that has the power to decide on proposals for the adoption of normative acts by citizens (voters) in the national referendum. Another argument is Art. 98 2 and Art. 99 section 1 of the Constitution of the Slovak Republic, according to which the results of the referendum are to be declared in the same way as the law and for three years they cannot be changed or abolished, even by constitutional law. The constitutional concept of the referendum also according to the decision-making activity of the Constitutional Court of the SR, supports the legal obligation of the results of the referendum. Another argument is Art. 2 Par. 1 of the Constitution of the SR, which states that the state power belongs to the citizens of the Slovak Republic who carry it out directly or through their elected representatives. This provision of the Constitution of the SR does not therefore justify the rejection of the results of the referendum. As a significant argument of the supporters of the referendum, we consider the absence of any legislation on the basis of which the National Council of the SR would have the power to discuss the results of the referendum. The results of the referendum have to be declared as a law in the Collection of Laws of the SR and do not have to be signed by the President of the Parliament or the President. This means, that there is no reason to deal with the results of the referendum by ministers.³⁴

The opponents of the binding referendum results argue that the members of the National Council of the SR are not bound by anybody or anything during the exercise of their mandate or even by the results of the referendum, or by Art. 72 of the Constitution of the SR, based on which is the National Council of the SR the only constitutional and legislative body. Based on these arguments, they claim, that the referendum has only a recommendatory character, respectively, that the choice of citizens is binding only politically but cannot be binding legally.³⁵

Opponents of the referendum as of a form of decision-making in the state often find the constitutional limit of the referendum in its enforceability. The proposal adopted in the referendum is, in their view, unenforceable. This is because the Constitutional Court of the Slovak Republic has stated, that the draft adopted in the referendum does not become directly binding by itself, but it must be approved by the National Council of the SR, which is bound by the proposal adopted in the referendum, as it posits a positive commitment.³⁶ Proposals in a referendum have to produce a legal effect and this is to be ensured by the procedure of the Parliament, whose duty is to declare the bill accepted in the referendum as well as the law. This is explicitly confirmed by Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic as amended, namely Sec. 43 Par. 2, letter e): "The President of the National Council of the Slovak Republic ensures the proclamation of the laws of the National Council of the Slovak Republic and the announcement of the proposals adopted in the referendum."³⁷ Ensuring the proposal adopted in the referendum by law does not consist only in the adoption of the law, or in the constitutional act in real time, but it is also linked to the quality of the law and to ensuring that the result of the referendum is enforceable in all the parameters that emerged from the referendum.³⁸

34 ČIČ, Milan et al.: *Komentár k Ústave Slovenskej republiky*, Bratislava 2012, 540–541.

35 Ibidem, 541.

36 DRGONEC, 258.

37 PALÚŠ – SOMOROVÁ, 2008, 193.

38 DRGONEC, 258–259.

86	ARTICLES Jana VOLOCHOVÁ	Referendum as a medium (demonstration) of freedom and democracy	
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The unenforceability of the results of the referendum is closely related to the mandate of the members of the National Council of the Slovak Republic. Members of the National Council of the Slovak Republic perform their function based on a representative mandate, so they cannot be given orders. They carry out their mandate only based on their knowledge and belief, while they are bound by the Constitution of the SR, constitutional laws, laws and other legal regulations. The Constitutional Court also expressed the view that the results of an optional referendum may not be a generally rule of conduct with the force of the law, or of the constitutional act: "The Constitutional Court does not, however, ignore the tension between the result of an optional referendum which may (but not necessarily) in order from used formulation require another legal acts of National Council and the representative nature of the mandate of a member of the National Council (Article 73 section 2). Therefore, the Constitution does not imply the obligation of a Member of the National Council to contribute by voting to transform the proposal adopted in the referendum into an adequate form of the text of the law. There is no right to a regulated sanction that would apply to a member of the National Council if he would vote against the will expressed by citizens in a valid referendum. Any action that could be taken in such a situation is reduced to a level of political responsibility."³⁹

The referendum as a tool of direct democracy and sovereignty of people, should outweigh the representative democracy. The setting up of the deadline comes into consideration in order to ensure necessary legal effect to the proposal adopted in a valid referendum by the parliament. The deadline could be the same as the deadline according to the third paragraph of the Article 125 of the Constitution of the SR, which mentions that legal acts should be in accordance with the Constitution of the SR. As the Constitutional Court has decided it should be within six months that the parliament should ensure the necessary legal effect of the result of the referendum. A constitutional sanction should be considered after the expiration of the deadline.⁴⁰

One side of the lack of legislation is the absence of a deadline and also sanction in case which was mentioned in previous paragraph. The second one is the process of realisation of the results by parliament. In case that parliament would adopt legal act in six month period, there is basic question. Who would be responsible for assessment of the proposal with result of referendum? One of the subject, which could be authorized to comment the proposal of legal acts, could be the president of SR due to veto. President would have the opportunity to assess whether results of the referendum have been implemented into legal act. In case of delays or inactivity of the Parliament according to implementation of the results of the referendum, the sanction would be possible, for example, the president would be able to dissolve the Parliament. In this issue there is also the opportunity to discuss about obligatory dissolving of Parliament after expiration of deadline. This fact could effect that the president would not have the opportunity to apply evaluation criteria. In the case of facultative dissolving of the Parliament, the sanction would be weakened due to possibility not the duty of implementation, but on the other side arbitrary position of the president would not be created. There is necessary to mention that political will has a significant force as well as it is caused by fact that any other sanction does not exist.⁴¹

39 Nález Ústavného súdu Slovenskej republiky sp. zn. PL. ÚS 24/2014.

40 BALOG, Boris – TRELLOVÁ, Livia: Povinnosť parlamentu prijať zákon?/!, in: *Právny obzor*, 95, 2012, 1, 33–34.

41 Ibidem, 34.

If the Parliament had unnecessary delay in passing the result of the referendum or would not pass it at all, the sanction for such behaviour and failure to fulfil a positive commitment to citizens is based on the Constitution of the Slovak Republic, and it is the dissolution of Parliament by the President of the Slovak Republic.

The proposal adopted in the referendum generates several moments of legal relevance (obligation, validity, effectiveness and enforceability) as is strictly necessary. This creates room for disputes and doubts not only for the political spectrum but also for theoreticians of constitutional law about abolishing the Institute of Referendum and preserving the management of society by means of laws and constitutional laws adopted exclusively by the Parliament.⁴²

The legal force of the results of the referendum is embodied in Art. 99 of the Constitution of the SR, according to which the result cannot be changed or cancelled within three years from its effective date. After this period, the National Council of the SR may amend or repeal the result of the referendum by its constitutional law. The two constitutional conditions for the change, respectively the abolition of the results of the referendum are applied, namely three years from the effectiveness of the results of the referendum and as a form of constitutional law, which means 3/5 by a qualified majority of all members of the National Council of the SR.⁴³ Previously mentioned provision constitutes a contradiction between the content of Art. 2 section 1 of the Constitution of the SR, according to which the state power derives from the citizens, who carry it out directly or through its elected representatives, and Art. 99 section 1 of the Constitution of the SR, which allows the National Council of the SR to change or abolish the result of the referendum.⁴⁴

The results of the referendum are thus subject to protection against the activities of public authorities which might conflict with them. On the other hand, we can also see that such legislation is not adequate and the results of the referendum should only be changed by the new referendum. The referendum institute is the highest form of decision-making, which is connected with the application of the sovereign power of the people from which parliamentary power is derived.⁴⁵

A referendum on the same matter can be repeated three years after its execution at the earliest. Referendum is considered as executed whenever citizens have applied their right to vote in a referendum, regardless of the validity of referendum results. This three-year period for repeating the referendum on the same subject as well as on change or the abolition of the results of the referendum should be seen as a rule that is probably intended to ensure the stability of the rule of law but also the socio-political stability, to prevent the possible abuse of the referendum and the rational handling of funds, because the implementation of a nationwide referendum represents a considerable financial burden on the state.⁴⁶

On the issue of abolishing the results of the referendum by adopting a constitutional act after a constitutionally stipulated period, the Constitutional Court expressed the following:

42 DRGONEC, 260.

43 PALÚŠ – SOMOROVÁ, 2008, 193.

44 PALÚŠ et al., 236.

45 KROŠLÁK et al., 503–504.

46 PALÚŠ – SOMOROVÁ, 2008, 193–194.

88	ARTICLES Jana VOLOCHOVÁ	Referendum as a medium (demonstration) of freedom and democracy	
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*"The purpose of the referendum is to ensure the citizens of the state – as the bearer of the primary (original) power, to immediately co-operate in the creation of state will. In a democratic parliamentary system, as it is enshrined in the Constitution of the Slovak Republic, citizens themselves acknowledge that their original power is limited by the constitution adopted by the constitutional authority and to which the citizens delegated their power. If, on the one hand, the Constitution of the Slovak Republic confers to citizens the right to decide on certain fundamental issues of public interest directly in the referendum (Article 93 section (2)), on the other hand, they limit their right by prohibiting certain issues, for example issues of fundamental rights and freedoms cannot be the subject of a referendum (Article 93 section (3)), respectively, prohibits the referendum on the same matter from repeating it until the expiration of three years after its execution (Article 99 section (2)). Thus, the basic right of citizens to exercise state power in the form of a referendum is not an absolute, it arises and is realized only within the conditions provided by the Constitution."*⁴⁷

The referendum, as a direct democracy instrument, has the potential for the further development of democracy on the one hand, provides direct control over public decision-making on the basis of political equality to citizens. However, on the other hand, it is not possible to use this tool without careful preparation and consideration of the consequences. The referendum is only an instrument which does not guarantee greater democratic legitimacy of the decision-making process as long as it serves only as a means of promoting the interests of ruling elites. Even the referendum has its limits and the result of a referendum that would interfere with the fundamental rights of individuals, even assuming that it is based on the majority, cannot be acceptable.⁴⁸

Palúš⁴⁹ considers that the referendum as one of the forms of direct democracy is an important and irreplaceable form of direct citizen participation in public administration. However, if the referendum has to be effective, two fundamental conditions must be fulfilled. The first condition is to create social, political and legal conditions from the part of the state. The second condition is the active and conscious attitude of citizens to citizens' interests in the life and problems of society and their related political and legal culture. Both of these requirements overlap each other, and the active development of the second requirement is directly developed from the first. The decisive factor of an effective referendum is the country, and its everyday activity that affects all areas of the individual's life.⁵⁰

Conclusion

The Institute of the referendum undoubtedly has in the constitution its merit. However, on the other hand, it is one of the areas that is problematic. Since the adoption of the Constitution of the SR, the constitutional mooring of the referendum has often been a topic of discussion, not only in the professional public. In connection with the above mentioned facts, we can state that the constitutional regulation of the referendum in the Slovak legal

47 Uznesenie Ústavného súdu Slovenskej republiky sp. zn. I. ÚS 22/00.

48 RYGL, Vojtěch: Formy přímé demokracie a participace a jejich uplatnění ve světě, in: *Volby, demokracie, politické svobody*, ANTOŠ, Marek – WINTR, Jan (eds.), Praha 2010, 127.

49 PALÚŠ et al., 228–229.

50 Ibidem, 229.

order has shortcomings, especially in the case of an optional referendum. Considering not only interpretation problems but also problems of the practical realization of the referendum, our opinion is that the constitutional and legislative modification of the referendum should undergo changes that would help the more frequent and efficient use of this institute in practice. These changes are:

- the reduction of the quorum for a facultative referendum at national level to 30 % of the eligible voters and for accepting a proposal 50 % of the votes of the participating voters,
- the explicit embodiment of the binding effect of the referendum results and enforceability, irrespective of a type of a referendum and the more precise legal modification of putting the results of the referendum into practice,
- the deletion of the provision of Art. 99 Par. 1 of the Constitution of the SR based on which the National Council of the SR shall modify or annul the results of the referendum by the constitutional law after the expiration of three years from their effective date and the introduction of a provision according to which the referendum results can be modified or annulled only by a new referendum. On the other hand, it is also important to note that this mode of change, the abolition of the results of the referendum is a pure solution on the theoretical level, but not at a pragmatic level. This means, there may be a situation where the new referendum may not be valid (we cannot forget the financial costs involved in holding a referendum), or the result of a new referendum will be the same as the previous result.

Negative experiences with the institute of referendum in the Slovak Republic are not due to the problematic legal order. It is also political-social problem. Citizens are not manifesting their disinterest in public affairs by voting against a question in referendum, but with their absence in the voting. It is the government in charge, that should deal with this problem, take its position and offer proposals for solutions.

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