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EDITORIAL

We greet the reader on the occasion of the publication of the twelfth issue of the Central European Papers (C.E.P.). This number of our scientifical journal is dedicated to different historical, legal and sociological topics. The article regarding history deals with the comparison of the situation of Freistaat Danzig and Saarland under the auspices of the League of Nations. One article focuses on the relationship between nativism, populism and nationalism. Three articles deal with different aspects and levels of referenda in the Central European countries: one with the national referendum in Hungary, one with the local level of referendum in Slovakia and one with the referendum as a medium (demonstration) of freedom and democracy. Unfortunately, the problem of extremism is very actual in Europe again. Our journal, which is open also to sensitive issues, devotes one article to this complicated topic as well.

This year we are celebrating the jubilees of two important professors of our University: the 70th birthday of Professor Rudolf Žáček, who is the former Rector of Silesian University in Opava and currently a Dean of our Faculty. Professor Dušan Janák, who also reached 70 years, many years ago had established the Faculty of Public Policies and was the first Dean of this Faculty. Both professors are recognized historians dealing with modern Czech, Moravian and Silesian history. Two papers represent their scientific and tutorial achievements. Finally, we publish reviews about current books dealing with the logic of political history in Hungary.

The authors of the current volume are respected scholars from Poland, Slovakia and Hungary. Readers can find among them scientific researchers, professors and PhD students as well. We hope that this issue of Central European Papers (C.E.P.) will be useful not only for scholars but also for graduate and undergraduate students as well as for non-professional readers.

Editors

JUBILEE

Life jubilee of professor Rudolf Žáček

prof. PhDr. Dušan JANÁK, Ph.D.

In a time of ever narrower specialization, personages of broad outlook and diverse activities who can assert themselves across multiple professional fields become scarce. These rare exceptions include the Dean of the Faculty of Public Policies at the Silesian University in Opava, professor PhDr. Rudolf Žáček, Dr. The well-known historian, museum operator, university teacher and an experienced manager who after 1989 significantly contributed to the development of higher education and cultural life of the Moravian-Silesian Region, especially in Opava, has already celebrated his 70th birthday in the spring of this year. Let us, therefore, at least briefly commemorate the essentials of his life and work, reminiscent in their breadth and depth of the engagement of Renaissance scholars, as professor Mečislav Borák[1] has put it years ago.

Rudolf Žáček was born on 20 May 1948 in Ostrava-Vítkovice. After leaving secondary school in Ostrava, he studied History and Russian at the Philosophical Faculty of Palacký University in Olomouc in the years 1967–1971. For political reasons, he could not pursue scientific work in the field of modern history and started to work as a historian in the District Museum of National History in Frýdek-Místek. There he remained until 1989 when he transferred as a specialist to the Silesian Institute of the Czechoslovak Academy of Sciences in Opava and became its director in 1991. During the reduction of the Academy of Sciences of the Czech Republic in the spring of 1993, he contributed to the delimitation of the Institute as an independent research centre of the Silesian Museum where he served until 2007 among other positions also as the statutory deputy director of the museum. Already in 1991 he earned a doctoral degree and he started teaching at the Silesian University in Opava while also lecturing as an external lecturer at the philosophical faculties of University of Ostrava and the Palacký University in Olomouc where he became associate professor in

1 BORÁK, Mečislav: Rudolf Žáček – všestranný historik Slezska [Rudolf Žáček – The Versatile Historian of Silesia], in: *Slezský sborník [Silesian Proceedings]*, 106, 2008, 3, 232–240. In addition to this informed analysis of Žáček's professional, particularly research, publishing and exhibition activities, see. e.g. ONDŘEKA, Zbyšek: Setkání s Rudolfem Žáčkem [Meeting Rudolf Žáček], in: *Těšínsko [Cieszyn]*, 51, 2008, 3, 29–31, where a summary of the honoured man's articles in the magazine Těšínsko between the years 1973 and 2008 appears. For his full bibliography for this period, including a brief reminder of his life and fate, see ČAPSKÝ, Martin – ČAPSKÁ, Veronika: K životní dráze Rudolfa Žáčka [On the Life Path of Rudolf Žáček], in: *Acta Universitatis Historica Silesianae Opaviensis 1*, Confinia Silesiae (K životnímu jubileu Rudolfa Žáčka [Upon the Jubilee of Rudolf Žáček]), 2008, 13–14; JIRÁSEK, Zdeněk: Rudolf Žáček jubilující [Rudolf Žáček Jubilant], ibid., 15–16; Bibliografie Rudolfa Žáčka [Bibliography of Rudolf Žáček] (compiled by Markéta KOUŘILOVÁ), ibid., 17–28. Most recently, MÜLLER, Karel: Rudolf ŽÁČEK sedmdesátníkem [Rudolf ŽÁČEK Septuagenarian], in: *Těšínsko [Cieszyn]*, 61, 2018, 1, 145–146.

1999. The following year, he moved for full-time engagement to the Faculty of Philosophy and Science at the Silesian University in Opava, becoming vice-rector for study and social affairs in 2001 and appointed as the rector of University of Silesia by the President of the Czech Republic in 2007. In this capacity, he served until 2015, then moved to the Faculty of Public Policies of the Silesian University in the establishment of which he had played a significant role in 2008. There, he served as vice-dean for science and research, in charge of the leadership of the Department of Central European Studies, and he became the dean of this youngest part of the Silesian University in autumn 2016.

Throughout his activity at the Silesian University, he lectured at the Faculty of Philosophy and Science SU, later at the Faculty of Public Policies SU, and in April 2011, the President of the Czech Republic appointed him as Professor in the field of History, specializing in Czech and Czechoslovak history. Since the early 1990s, he worked in a variety of scientific and editorial boards and committees in the field of museum management and higher education at various levels. An overview of these domestic institutions has been assembled by M. Borák.[2] Nowadays, he also remains member of numerous domestic and international expert committees. We may mention especially his long-term activity in the Conference of Rectors of Silesian Universities, consisting of four Polish and two Czech universities operating in the historical Silesia, in the foundation of which he participated in 2003 and over which he presided 2010–2015, currently being its honorary chairman.[3]

This way, he capitalized on his experience and long-term contacts with Polish academic and scholarly environment that is closely related to his lifelong research activities and publications. Their detailed analysis from the early 1970s to the end of the first decade of the new millennium has been performed by M. Borák who distinguished eight basic topics ranging from the Middle Ages and Early Modern Era to the present, from economic, political or cultural history in different ways and periods to the area of auxiliary historical sciences, museum management and an assortment of other disciplines, from micro-probes into the history of towns and villages over the mapping of the transformations of the historic Silesia to the general considerations of international, especially Czechoslovak-Polish relationships and arrangements in Central Europe.[4] We will therefore focus on the last decade in which we can distinguish three main research directions or currents within which he cooperated closely with professor Irena Korbelářová.

The first one is dedicated to the older and to a lesser extent the more recent history of Silesia and in the context of Czech-Polish relations and the development of Central Europe, or the transformation of Central European society. These include monographs on Cieszyn as a land of the Czech crown since the beginning of the principalities to the 18th century,[5] a set of cultural and historical biographical portraits of significant women of the Silesian history

2 BORÁK, 233.

3 Conference of Rectors of Silesian Universities – Konferencja Rektorów Uniwersytetów Śląskich is a platform for international scientific integration and a Czech-Polish scientific and educational cooperation forum, consisting of Uniwersytet Wrocławski, Uniwersytet Opolski, University of Silesia w Katowicach, Uniwersytet ekonomiczne w Katowicach, University of Ostrava and the Silesian University in Opava.

4 BORÁK, 233–240.

5 KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf: *Těšínsko – země Koruny české/Ducatus Tessinensis – terra Coronae Regni Bohemiae [Cieszyn – A Land of the Czech Crown/Ducatus Tessinensis – terra Coronae Regni Bohemiae]*, Český Těšín [Czech Cieszyn] 2008 (published 2009).

in 15th–18th century,[6] as well as a chapter focusing on the history of Silesia within the Czech state in the Baroque and Enlightenment periods.[7] In this context, we should not forget the edition of statistical population survey in Austrian Silesia in the 18th century.[8] The honoured professor's wide time engagement and orientation in various problem areas is confirmed in his considerations about the beginning of the history of Upper Silesia[9] on the one hand, and by his contribution on the organization of the Church administration in the Czechoslovak Silesia in the 1980s on the other hand, which appear in the collective monograph on the history of the Ostrava-Opava diocese for which he led the team of authors.[10]

The second thematic area represent contributions in collective monographs and journal studies on the history of Silesian towns and villages in the early modern period, especially in the Opava region. This includes both work on the nature and status of Hradec nad Moravicí and Opava and in this period,[11] and probes into the lives of various social groups and strata, especially the burghers.[12]

Nearly all of the above works to some extent touch upon the cultural-historical issues and contexts which together with material culture constitute a third distinct thematic area, ranging chronologically from the beginning of the early modern period to the present day, to which the celebrated professor has been paying attention in recent years. Besides the broader consideration of the specific features of material culture of Austrian Silesia,[13] it is again a number of studies prepared jointly with Irena Korbelářová. The earlier period is dealt with in the case study of courtly ceremonies of the last Piasts or the burial portrait of Anne of Luxembourg,[14] the more recent period appears in a study on Silesian pilgrimages

6 Ibid., *De illustribus Feminis Sielsiae. O znamenitých ženách Slezska 15.–18. století [De illustribus Feminis Sielsiae. The Exquisite Women of Silesia 15th–18th century]*, Matice slezská [Silesian Publishing], Opava 2013.

7 Ibid., Od baroka k osvícenství [From the Baroque to the Enlightenment], in: *Slezsko v dějinách českého státu, II, 1490–1763 [Silesia in the History of the Czech State, II, 1490–1763]*, Prague 2012, 137–301, 416–472.

8 *Obyvatelstvo Rakouského Slezska v pozdně osvícenském období [The Population of Austrian Silesia in the Late Enlightenment Period]*, KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf (eds.), Opava 2012.

9 ŽÁČEK, Rudolf: Górny Śląsk na progu historii, in: *Historia Górnego Śląska. Politika, gospodarka i kultura europejskiego regionu*, BAHLCKE, Joachim – GAWRECKI, Dan – KACZMAREK, Ryszard (eds.), Gliwice 2011, 97–116.

10 ŽÁČEK, Rudolf: K územní struktuře a organizaci církevní správy v československém Slezsku před ustavením ostravsko-opavské diecéze (80. léta 20. století) [On the Territorial Structure and Organization of Church Administration in Czechoslovakian Silesia Before the Establishment of the Ostrava-Opava Diocese (80th Years of the 20th Century)], in: *Ostravsko-opavská diecéze. Kořeny a souvislosti [Ostrava-Opava Diocese. Roots and Context]*, ŽÁČEK, Rudolf et al., Opava 2013, 92–117.

11 KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf: Raně novověký Hradec: město, anebo rustikální lokalita s městskými právy? [Early Modern Hradec: A Town, or a Rural Location with Town Rights?], in: *Hradec v dějinách [Hradec In the History]*, JIRÁSEK, Zdeněk et al., Hradec nad Moravicí 2010, 44–86; ŽÁČEK, Rudolf: Postavení Opavy mezi slezskými městy v první polovině 18. století [Position of Opava in the Context of Silesian Cities in the First Half of the 18th Century], in: *Mesto a dejiny [City and History]*, 1, 2012, 1–2, 158–164.

12 KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf: Opavští erbovní měšťané předbělohorské doby. Prolegomena k výzkumu [Armorial Burghers of Opava of the Period After the Battle of White Mountain. Prolegomena for Research], in: *Slezský sborník [Silesian Proceedings]*, 113, 2015, 5–21; Ibid., Majitelé litultovického statku v 16. a 17. století [Owners of the Litultovice Farmhouse in the 16th and 17th Century], in: *Litultovice 1317–2017*, KOLÁŘ, Ondřej (ed.), Opava – Litultovice 2017, 12–55.

13 ŽÁČEK, Rudolf: Národní a regionální specifika v materiální kultuře Rakouského Slezska [National and Regional Specificities in the Material Culture of Austrian Silesia], in: *Realia zycia codziennego w Europie Środkowej ze szczególnym uwzglednieniem Śląska. Zabrza, seria naukowa Kultura Europy Środkowej, tom XIV*, Katowice-Zabrze 2011, 395–404.

14 KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf: "... I přisedl vévoda do vozu ke knížecí nevěstě..." Příspěvek

in the second half of the 18th century, on how Emperor Franz I. viewed the Opava Grammar School Museum, or on the hospitality facilities of Opava in the second half of the 19th century.[15] The most recent was the interesting and factually rich monograph on the development of university buildings, significant by its contribution to the history of architecture in Opava, which was followed by an independent study on abuilding in Masaryk Sreet in Opava.[16]

The aforementioned research and publication activities are closely related to the part the professor took in teaching the Master's study program Cultural Heritage in Regional Practice at the Faculty of Science and Philosophy SU for which he and I. Korbelářová had prepared an interesting textbook[17] and which also contributed to some instruction in the Bachelor's and Master's study programs in the field of Middle European Studies at the Faculty of Public Policies. Likewise, these activities were associated with his editorial work in the journal Cieszyn whose managing editor he has been since 1993, and in other journals where he is long-standing member of editorial boards, such as Silesian Proceedings, Magazine of the Silesian Land Museum, series B, Acta Historica Universitatis Silesianae Opaviensis Papers and Central European Papers the founding of which he greatly supported as the rector of the University of Silesia. The general public were able to learn about the results of this research primarily through thematic exhibitions organized at various occasions, such as e.g. the 2016 exhibition on the history of the university buildings at the opening of the new building of the Faculty of Public Policies in 14 Bezruč Square, Opava.

A deeper appreciation of the celebrated professor's extensive work is yet to come in future generations. However, a brief reminder of his main activities has shown that despite the demands of the university offices, his work is far from being closed, that professor Žáček is asking himself more and more new questions and seeking answers to problems of cultural history and Silesian history in the Central European context which have not been investigated yet. Let us hope that this work will continue and that we can look forward to many

k poznání dvorských ceremoniálů posledních Piastovců na příkladu Jiřího III. Březského ["... Thus the Duke Sat in the Chariot to Join the Princely Bride..." Contribution to the Knowledge of Court Ceremonies of the Last Piasts on the Example of George III. of Brieg], in: *Acta Historica Universitatis Silesianae Opaviensis*, 2012, 4, 175–197; KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf – DLUHOŠOVÁ, Radmila: "… tělesně krásná a s tváří jemnou a půvabnou..." Funerální portrét Anny Lucemburské, urozené chráněnky knížete Přemka I. Těšínského na cestě do Anglie ["... physically beautiful with a face soft and lovely..." Funeral portrait of Anne of Luxembourg, the Noble Protegé of Prince Přemek I. of Cieszyn on the Way to England], in: *Těšínsko [Cieszyn]*, 57, 2014, 2, 1–12.

15 KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf: Poutě ve slezské části olomoucké diecéze ve 2. polovině 18. století [Pilgrimages in the Silesian Part of the Olomouc Diocese in the 2nd Half of the 18th Century], in: *Acta Universitatis Silesianae Opaviensis 8*, 2015, 27–48; Ibid., Obraz opavského gymnazijního muzea v osobních výpovědích císaře Františka I. [The Image of Opava Grammar School Museum in the Personal Testimonies of Emperor Franz I.], in: *Časopis Slezského zemského muzea [Journal of the Silesian Museum]*, series B, 65, 2016, 233–240; ŽÁČEK, Rudolf – STUCHLÍKOVÁ, Jana: Opavská pohostinství ve světle nejstarších adresářů z druhé poloviny 19. století [Hospitality Facilities of Opava in the Light of the Oldest Directories from the 2nd Half of the 19th Century], in: *Kulinární kultura Slezska a střední Evropy. Východiska, metody, interdisciplinarita [Culinary Culture of Silesia and Central Europe. Background, Methods, Interdisciplinarity]*, KORBELÁŘOVÁ, Irena et al., Opava 2015, 175–188.

16 KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf: *Kořeny i křídla. K historii opavských univerzitních budov [Roots and Wings. On the History of the University Buildings of Opava]*, Opava 2016; Ibid., Ad Fontes! Několik upřesňujících poznámek k historickému vývoji objektu č. 343/37 na Masarykově třídě v Opavě v letech 1784 až 1837 [Ad Fontes! A Few Specifying Remarks on the Historical Development of the Building no. 343/37 in Masaryk Street in Opava in the Years 1784–1837], in: *Acta Historica Universitatis Silesianae Opaviensis*, 2017, 10, 51–67.

17 KORBELÁŘOVÁ, Irena – ŽÁČEK, Rudolf: *Úvod do dějin a kulturního dědictví Slezska [Introduction to the History and Heritage of Silesia]*, Opava 2015.

more of his creative achievements. On behalf of the editors and readers of our journal and of its cooperators at the faculty and university, we wish him good health and creative vigour for the years to come.

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Life jubilee of professor Dušan Janák

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There are two types of significant scientific personages. The first ones mostly contribute to the development of their field in institutional terms: founding scientific journals, learned societies, research centres and faculty departments or organizing congresses and heading research teams. The others contribute to the development of science especially in terms of discourse: standing out among their colleagues by their prolific scientific work, by their works being considered as key to a scientific sub-field, by becoming founders of a certain scientific school, or by succeeding to produce long-quoted work.

Prof. PhDr. Dušan Janák, Ph.D., whose 70th birthday is commemorated by this article, may be ranked in both types. His greatest institutional success is the foundation and successful management of the Faculty of Public Policies of the Silesian University in Opava. Thanks to him, the faculty has established the course of study Central European Studies on Bachelor's, Master's and doctoral degrees and the *Central European Papers* journal was founded. As a lecturer, he has won the respect of many of his secondary school students and university students who were able to attend his lectures during his tenure which took place not only at the Silesian University in Opava, but also at universities in Poland and Slovakia. In terms of discourse, professor Janák may be characterized as a "hardened positivist". He is not attracted by conceptual systems, developmental theories and all-encompassing typologies, but by work with archival sources based on their precise analysis and typologies and theories of "middle range" based on their synthesis. His research has especially contributed to a more detailed understanding of the issues of political repression and the development of prison systems in Central Europe since 1945. On his own or together with his long-time friend and colleague, professor Mečislav Borák, he has created or co-created a body of scientific work no-one dealing with repression of Czechoslovak citizens in the 1940s can really omit.

The later historian and university professor began his educational path in a somewhat unconventional facility, the Mining Vocational School in Ostrava. As a certified hewer, he then completed his secondary education by a school-leaving exam at the Secondary School of Mining Industry. He spent his undergraduate years in Brno, starting his study of Czech language and history at the Philosophical Faulty of John Evangelist Purkyně University in 1968 and completing it in 1973. During his university years, he thus experienced the relaxed late 1960s with an interesting cohort of students and teachers who were not allowed to study or lecture during the 1950s and came to universities transiently in the second half of the 1960s, as well as the onset of the normalization regime.

After his studies, he returned to his native Ostrava and worked as a secondary school teacher for several years. In late 1970s, he started working at the Museum of Revolutionary Struggle, the Ostravan branch of the Silesian Museum. This is where his professional career of an expert historian began, however, the key part of his historian work is tied with Opava. Since 1987, he joined his professional fate with the Czech Silesian metropole, becoming part of the Silesian Institute of the Czechoslovak Academy of Sciences. He also started shaping his scientific profile at this institution.

As witness of a number of turbulent events of Czech and Czechoslovak history of the 20th century, he focused his work precisely on the history of this era. He dedicated his first works to the local history of Silesia, paying gradual attention to the issue of political and economic history of the industrial area of eastern Silesia, however, he even did not avoid the very sensitive Cieszyn question, having re-visited it in his publications in later years as well. In his bibliography, we may encounter some rather general works, dedicated for example to the history of Orlová, or to the issues of heavy industry in the Ostrava region, but also specific case studies which include his descriptive study of the political orientation of the Cieszyn region citizens, or a study following the process of Czech-Polish border formation after 1948. In 2000, he also took part in the creation of a comprehensive two-volume synthesis of the history of Czech Silesia.

Already during his tenure at the Silesian Institute of the Czechoslovak Academy of Sciences, he also began to devote time to topics which may be considered as some of the most troublesome chapters in modern Czech and Czechoslovak history even after many decades have elapsed since. These include especially the issues of persecution of Czechoslovak citizens and of justice and prison systems in Czechoslovakia after 1945. His article dealing with the activities of retributive tribunals in Opava between the years 1945 and 1948 became one of the cornerstones for further explorations into the issue of retributive justice in the Opava region. From these issues, there was but a step towards research into prison systems and forced labour in Czechoslovakia after 1948. In cooperation with professor Mečislav Borák he went on to expand his subject of interest in later years to the pre-war persecution of Czechoslovak citizens in the Soviet Union as well. These research activities eventually culminated in 2014 into the publication of a monograph mapping the issue largely not reflected hitherto, namely the fate of Czechoslovaks who went to live in the Soviet Union as members of expellee associations in the 1920s and 1930s and who suffered persecutions in the 1930s. He also subsequently re-visited the issue of persecution in the Soviet regime several times.

As a native of the industrial agglomeration of Ostrava, he also gravitated in interest toward economic and social issues which he combined on the example of strikes and strike movement with the issues of persecution and forced labour. In recent years, he managed to blend the issue of the strike movement in Czechoslovakia after WW2 with the general history of the working class. A result of this interest will take the form of the forthcoming collective monograph, mapping the development of Czech industrial working class between 1945 and 1948.

In 2000, he defended his doctoral thesis at Palacký University in Olomouc, launching his further university career. An important turning point for him was the transition from Czechoslovak Academy of Sciences to the Silesian University in Opava in 2005. Here, he first worked as head of the Institute of Public Administration and Regional Policy at the Faculty

of Philosophy and Science. A turning point in his university track came in 2008 when he not only was awarded the degree of associate professor in the field of Czech and Czechoslovak history, but also in that same year, an institutional separation of some branches of study from the Faculty of Philosophy and Science also occurred and the Faculty of Public Policies was founded under professor Janák as its first dean. Under his leadership, the range of degree courses on offer broadened, the faculty was successfully stabilized in terms of staff, and as a culmination of his successful management of the Faculty of Public Policies, teaching was moved into newly renovated premises at Bezruč Square 14 in 2016. In 2016, Dušan Janák obtained full university professorship of history with focus on Czech and Czechoslovak history. His active scientific career by no means seems to be closing. After leaving the leading positions at the Faculty of Public Policy, the research publication activity of professor Janák has increased and the administration time at the Faculty was replaced by foreign lecture tours in Poland.

We hereby join all grateful students, colleagues and friends in congratulating professor Janák on his life jubilee and rather than satisfaction with his hitherto scientific track, we wish him a happy continuation and many happy returns.

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ARTICLES

Nativism *versus* nationalism and populism – bridging the gap

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Abstract

This paper identifies the major similarities and differences that nativism shares with nationalism (predominantly its economic dimension) and populism. By doing it, this study contributes to overcoming of one of the major obstacles of this realm of scholarly literature which very often confuses and conflates the three concepts. The author claims that, even though they are more similar then different, nativism has its distinctive features that stem from its origins, evolution and contemporary ways of manifestation. Due to its illiberal, exclusivist and prejudice-driven nature, nativism constitutes a dangerous ideology, which intertwines with nationalism and populism in a potentially explosive mixture. The theoretical deliberations are illustrated with the exemplifications of nativist politics in Central Europe.

Keywords

nativism, economic nationalism, ethnic populism, Central Europe

Introduction

Nativism, nationalism and ethnically based populism are very often confused and conflated. Regardless of the identified differences, they are more similar than different. They intertwine, together with other neighbouring concepts, like racism or xenophobia, in a process of producing and reproducing the industry of fear, prejudice and suspicion. In order to avoid the conceptual chaos, this paper attempts to order and map the three concepts and identify their common and differentiating elements.

This paper sees nativism as a dangerous and aggressive ideology that is rooted in racism and populism as well as it manifests itself in various incarnations, most often and recently as nationalism. On the surface nativism seems to be a moderate and politically correct ideology (close to localism and patriotism) in times of outright nationalist and racist contestation. However looking at the origins and essence of nativism, this paper argues that it uses populist tactics and offers a masking clothing to the ideology of nationalism.

The Central European region (understood predominantly as the Visegrad Countries, or V4: Poland, Hungary and the Czech and Slovak Republics) seems to be an illustrative example

of the evolving problem of nativism due to the trajectory which these states – their populations and elites – took in the recent years. After the "return to Europe" era dominated by cosmopolitan attitudes of most of the above-mentioned societies, the nationalist and xenophobic sentiments come back to the mainstream of the Central European politics. This can be observed in many policy spheres, from refugee crisis and migration policy, through various dimensions of economic nationalism, up to the growing wave of Euroscepticism.
The paper proceeds as follows: in the first section it reconstructs the origins and basic understandings of nativism. This part is predominantly rooted in political science and history, but it also borrows from other disciplines (like psychology) that cover the problematic of nativism. It offers the scholarly recognised definitions of nativism and put them into the historical context. The next section tries to look into the phenomenon of populism in order to show its similarities and differences with nativism. From the early XX century writings up to the most contemporary times, it offers a brief review of the most common ways of understanding populism. This allows identify its vital components, mechanisms and manifestations of populism which potentially intertwine with nativism. The third section focuses on nationalism, since however it is such a rich ideological discourse, it looks predominantly at its economic realm which relates to the economic origins of earlier discussed populism and nativism. Finally, in its conclusive part, the article identifies the major similarities and differences that nativism shares with populism and nationalism.

Nativism – the origins and basic understanding

Nativism has clearly and distinctly American origins. And, surprisingly – taking into account the migration-driven composition of the American society – nativism arose, in its culmination point, as the reaction to the massive wave of migrants from Europe up to 1920s. Nativism gained its name from the native Americans, however it did not have anything to do with the indigenous American Indians but rather the inhabitants of the original Thirteen Colonies. It origins reach XVIII and XIX century and over the course of time, nativism evolved in a chameleonic fashion – it had its anti-Catholic phase in XIX century, or then anti-German phase at the break of the XIX and XX centuries. The Tea Party as an organisation or Donald Trump as a person may be successfully considered to be the XXI century manifestations of the American nativist thinking. They represent the most direct opposition to immigration-friendly policies, which – in their opinion – threaten to transform the American society. As such, nativism is one of the most important elements building American nationalism.
The definition of nativism is deeply rooted in populist logic. It is an ideology which holds that non-native elements – persons, institutions, norms or ideas – are fundamentally threatening to the homogenous "people".[1] It is a belief that protects the interests of local inhabitants over those that migrate to the land. Politically speaking it is a position supporting a favoured status for the established inhabitants (a nation, religion, linguistic community, etc.) as compared to the claims of newcomers.

1 MUDDE, Cas: The Populist Zeitgeist, in: *Government and Opposition*, 39, 2004, 4, 542–543.

Nativism is an intense opposition towards an internal minority on the ground of its foreign connections.[2] Distinguishing between natives and non-natives makes nativism an ideology that is a close neighbour to nationalism and ethnically based populism. Nativism inspires systematic discriminatory actions and sentiments, including restrictive immigration policies and laws, increase in riots and hate crimes, and the rise of nativist organisations.[3]
Nativism is a subject of scholarly investigation also in other scientific disciplines. Psychologically speaking, nativism contends that the most of the people's developmental acquisitions have their roots in the inborn biological structure of the human body. Nativists claim that the human mind is hard-wired into the genetic make-up (like the nativist theory of language learning by Noam Chomsky). It conceives human features and behaviours are much more genetically based than culturally based. In a nutshell, primordialistically speaking, we become who we are due to the predetermined genetic program.[4]
This way of understanding nativism strongly refers to ethnocentric beliefs, but politically defined nativism does not have to be built on ethnic or racist fundament. The natives as imagined community can be based on the nationality, religion, language, historical legacies, or any other element that constitutes "our way of life". Therefore, in a moderate way, it also means a return to or emphasis on indigenous customs (anti-modernisation), in opposition to outside influence. That is the essence of nativism understood as the "common sense" and here it connects directly to the ideology of populism (hegemony of the natives). It demonises the aliens (especially the illegal ones) and brings the dominance of the native religion, language, and narratives.
Obviously nativism is an ideology based on nationalist sentiments separating natives from the foreigners.[5] It is married to defensive nationalism (usually of economic nature) and it is built in contrast to cosmopolitanism or even neoliberalism. Nativism is by definition illiberal, but not always racist, it can be based on religion, or any other element important for the natives. Nativism includes both racist and nonracist arguments, showing that exclusion of groups can be made on cultural or religious background as well as ethnicity.

Populist origins of nativism

The backward-looking ideas of contemporary nativists date back to the origins of agrarian populism promoting the saving of small farm agriculture as the backbone of the economy and society. Populism, as a political idea, is regarded to exist already in nineteenth century (agrarian populism in USA or Russian *narodnichestvo*). The origins of populism itself were economic in nature – it was the political ideology of agrarian radicalism (*People's Party* in USA) and its concept of "cooperative society" that proposed more "fair" economic redistribution of wealth in XIX America. By attacking inequalities in income, assets, and consequently influence they drew the first economic populist program of the "authentic Americans". The other was at that time the enemies of the "ordinary people": the bank-

2 HIGHAM, John: *Strangers in the Land: Patterns of American Nativism 1860–1925*, New Brunswick 1955.

3 LIPPARD, Cameron: Racist Nativism in the 21st Century, in: *Sociology Compass*, 5, 2011, 7, 591–606.

4 DJERIOUAT, Hakim – TREMOLIERE, Bastien: We are made, not born: Empiricism is existentially useful, in: *Motivation and Emotion*, 38, 2014, 4, 529–539.

5 KNOBEL, Dale: *America for Americans: The Nativist Movement in the United states*, New York 1996.

ers (including funds, investors, and so on) and industrialists (including corporations, stock companies and so on). The non-aristocratic character of the American elite was not a problem for the populists as they quickly invented terms like "money aristocracy" which holds effective until today.[6] It is surprising how the early industrialist era slogans are valid at the beginning of the XXI century: national healthcare system, eight-hour working time, obligatory unemployment and health insurance.

One of the first analytical works on populism appeared in 1928 in "The American Economic Review" where John D. Black published his article on "The McNary-Haugen Movement". He discussed political and economic aspects of the relations between the agricultural sector and commerce and industry. This field of analysis correlates very well with the populist ideology from the agrarian revolt in USA in 1890s and the accompanying concept of the two nations: the nation of the producers (the exploited) and the nation of the well-to-do elites. This distinction gave birth to the political cleavage present in populist politics that is the confrontational relation between the authentic people and the parasitical elite.

In general understanding populism is a set of ideas or argumentation that is catchy and attractive based on emotional and irrational grounds, longing for simple solutions to complicated problems and directly connected to the will of the majority. It very often manifests itself in simplistic equalising democracy with unlimited will of the majority (tyranny of majority thesis). Populists claim that the majority is by democratic logic "right" and must be respected. A populist politician gladly uses negative society's mood of discontent and claims to be the spokesman of the unsatisfied.

Despite a rich interdisciplinary discourse, students of populism still disagree not only how to explain it but more fundamentally – about what it is. We seem to be witnessing a conceptual cacophony. For Jansen[7] a political project is populist when it is a sustained, large-scale political project that mobilizes ordinary marginalized social sectors into publicly visible and contentious political action, while articulating an anti-elite, nationalistic rhetoric that valorises ordinary people. Because of that, it is difficult to imagine democratic politics without populism. The domination of predominantly anti-populist logic – consciously or unconsciously, intentionally or unintentionally – may reduce politics to an administrative enterprise with over proportionate input from colleges of experts and technocrats (depoliticised democracy, post-democracy).[8]

For Jan-Werner Mueller, populism is a particular moralistic imagination of politics, a way of perceiving the political world which places in opposition a morally pure and fully unified people against small minorities, elites in particular (who are placed outside of the authentic people).[9] The populists claim that only they can properly represent the proper people (the proper people extracted from the people). The moralist component of this definition highly depends on the distinguishing the moral from the immoral. And the criterion for this

6 MUELLER, Jan-Werner: Parsing populism. Who is and who is not a populist these days?, in: *Juncture*, 22, 2015, 2, 80–89.

7 JANSEN, Robert S.: Populist Mobilisation: A New Theoretical Approach to Populism, in: *Sociological Theory*, 29, 2011, 2, 82.

8 STAVRAKAKIS, Yannis: The Return of the "People": Populism and Anti-Populism in the Shadow of the Europea Crisis, in: *Constelations*, 21, 2014, 4, 505–517.

9 MUELLER, 83.

is often manipulated by the populist politicians. In the face of a passive political culture, in which very few citizens take an active role in politics, the extracted people may sum up to an actual minority – well organised minority. Populist politicians, acting in the name of the people, may in fact oppress the majority under the moralising flag of radical democracy.

The most recognised and cited contemporary researcher of populism, Cas Mudde, defines it as a thin-centred[10] ideology that focuses on the antagonism between people and elites against the backdrop of popular sovereignty. Such conceptualisation has become the dominant position in the literature.[11] It considers society to be ultimately divided into two homogenous and antagonistic groups "the pure people" and "the corrupt elite"[12] and politics is supposed to be an expression of the general will of "the pure people". This positions populism in opposition to elitism and pluralism. In populist politics there are less spaces left for minorities and they are often presented as traitors to the real will of the nation or even marionettes of foreign powers.

The very core components of populism are highly flexible: the definition of the people, the imagined the other and the general, unified will. This triangle may take various shapes depending from the context. It also affects many important questions of democracy theory – the relation between the authorities and the governed, the legitimacy and representation question, as well as many other related issues on modes of decision making, redistribution mechanisms, relations with the international community, and so on.

The most common ways of understanding populism contain of its minimum components: "the good people" that is endangered by "the evil others". Such an alignment runs crosswise of established party lines and is in essence nativist. Such a definition of populism correlates with the general every day usage of this word whenever, usually for journalist purposes, we refer to a person, party, action or decision that makes claims by appealing to ordinary, non-elite people. In public discourse it is often used as a pejorative epithet implying that the accused is corrupt, cynical, opportunistic or even undemocratic. This opens the way to nativism, which seem to be a more moderate expression, however it contains the same common denominator as populism (understood as ideology). Unlike populism, nativism offers a narrative that sets up solidarity of the "common people" against the aliens predominantly. Populism is targeted much more against the elites.

The populism on the ground (as a thin-centred ideology) need to be supplemented with additional values and beliefs. By doing this it cohabits with other more comprehensive ideologies, depending on the context. This is why populism's power (and danger at the same time) lies in its chameleonic nature which is adapting its face according to the context and connecting itself to other political ideas or ideologies. As a consequence it is difficult

10 "Thin" due to the fact that its particular ideas are of limited scope, complexity and ambition, it is not a complete ideology in opposition to full ideologies, like: nationalism, socialism or liberalism. Michael Freeden explained a thin-centered ideology that is arbitrary in serving itself from wider ideational contexts, it flexibly removes or replaces some concepts, it lacks internal integrity and coherence (Freeden 1998).

11 There are however raising concerns about assigning populism's genus to ideology. The controversy on populism as an ideology stems from the fact that it falls short of the status of clear ideology. It went, as a concept, through a dynamic evolution, serving for various associations with fiscal irresponsibility (there is no uncontested clear line between responsibility and irresponsibility), neo-liberal extremism or xenophobic stances. It lacks a stable program (*empty hearted* ideology).

12 MUDDE, 543.

to find one political arena free from populist actors, tactics or statements. We can identify agrarian populism, nationalistic populism, neoliberal populism, radical left-wing populism and so on. All of them contain the nativist gene.

Nationalist manifestations of nativism

Nationalism, psychologically understood, is a state of mind in which the individual identifies himself with the "we-group" to which he or she is loyal. Within the "we-group" prejudice and discrimination is generated by the real or hypothetical threat coming from some other "out-group". To justify the prejudice and discrimination, negative stereotypes of the "out-group" are developed (usually based on the perceived fear about the physical, social or economic health of the "in-group"). There is a number of social psychological works analyzing the link between authoritarian personality and the "in-group" – "out-group" orientations. They inform us that nationalism are highly and positively correlated with ethno-centrism, authoritarianism and conservatism as well as negatively correlated with internationalism.[13] Mainstream politicians are increasingly adopting localism[14] and the concept of authenticity as a framework for policy and politics making. This makes mainstream nationalism a projection and manifestation of nativist way of thinking.

Nationalism as a political slogan carries a strong – very often pejoratively associated – connotation. Used as an epithet in public discourse, it usually means, protective, maybe even isolationist, aggressively oriented towards others policies, actions or rhetoric. Many scholars, especially those who deal with economy, still employ the term almost synonymously with mercantilism or protectionism.[15] Using nativism, which is a much more friendly sounding term, neutralizes all the negative connotations of nationalism. Still, the essential components of both are dangerously similar. The xenophobic and ethno-nationalist frames that are employed that serve to construct meanings about the "other". The combination of differential nativism and comprehensive protectionism (defensive nationalism) seeks to exploit the anxieties and feelings of insecurity originating from the socio-economic determinants, like globalisation, transformation or crisis.[16]

Various disciplines suggest various explanations as regards the determinants of the far right, anti-migrant nationalism and populism. Socio-psychological factors include *authoritarian personality* traits and value orientations which are, in turn, associated with social disintegration coexistent with the times of radical change (like transformation, crisis, etc.). This way of thinking correlates with modernisation theory in which it is suggested that the rapid socio-economic change (post-communism, post-industrialisation, risk-society, etc.) makes individuals and groups aggressive and hostile. Rational choice logic points to the mechanism of scapegoating and group interest conflicts, suggesting that prejudice, dis-

13 BAUGHN, Christopher C. – YAPRAK, Attila: Economic Nationalism: Conceptual and Empirical Development, in: *Political Psychology*, 17, 1996, 4, 759–778.

14 WILLS, Jane: Populism, localism and the geography of democracy, in: *Geoforum*, 62, 2015, 188–189.

15 SHULMAN, Stephen: Nationalist Sources of International Economic Integration, in: *International Studies Quarterly*, 44, 2000, 3, 365–390.

16 KLUKNAVSKÁ, Alena: Enemies among us: The anti-elitist and xenophobic discourses in the Czech Republic and Slovakia, in: *Rexter – Časopis pro výzkum radikalismu, extremismu a terorismu*, 2014, 2, 42–71.

crimination and sometimes outright conflict is a natural result of competition over limited resources. Identity studies focus on perceived threats posed by migrants on the nation and its culture. Socio-structural models explain support for the populist far right by the aggregate level of immigration in a given country or locality (its height and the increasing trend), economic conditions (unemployment, wage levels) and the level of support for the political system (political discontent). Last but not least, it is the media that play a decisive role in formulating, especially young people's attitudes towards migrant and migration.

Young people's support for nationalist and far right ideology consists of negative attitudes towards minorities, xenophobia, welfare chauvinism and exclusionism in relation to migrants. Ethnic nationalism, financial problems and economic insecurity (perceived competition and pressure on socio-economic resources) belong to the most important factors behind the relatively high prevalence of anti-migrant sentiments. Additionally the scholarly research results show that low interest and poor understanding of politics, together with high exposure to media (which, instead of educating and dispelling prejudice, further worsen attitudes towards minorities and migrants) go hand in hand with accepting far right populist message.[17]

The economic aspect of nationalism needs to be emphasised in the context of nativist sentiments and their origins. Economic nationalism may also to be positioned very close to economic populism since nationalism is one of the ideologies that overlap and complement the thin-centered ideology of populism. It refers to the people understood as a nation as well as its economic interest and security. Especially together with the growing salience of economic security, the economic nationalism becomes and increasing component of nationalistic sentiment. It can be most simply understood as discrimination in favor of one's own nation. It is implemented in many various forms and measures, including policy implementation, protectionism, subsidizing domestic producers and service providers, regulatory burdens, export dumping, countervailing duties and many others. Economic nationalism may also take some more soft forms, like for example favoring local products and services by consumers' choices.

Defining economic nationalism as a promotion of given nation's autonomy, unity and interests, allows to argue that nationalists potentially may have strong motivations both for and against close economic ties with foreign economies. Depending on the international position of a given national economy, nationalists may need to make trade-offs and compromises in order to optimize their strategy and tactics. The nationalist calculus of independence and interdependence or integration does not always bring about protectionist outcomes. It is because of the interdependency of the economies and complexity of global economy as such that makes it impossible to separate by nationality.

Economic nationalism remains an important factor that mobilizes population around a state-sponsored economic vision. It can be economic nationalism of mineral resources, or protecting the local population from "free trade imperialism" of an economically powerful neighbor, or persuading the citizens to keep their own currency in order to preserve the rest of national sovereignty, or any other political-economic argument. It may be associated with economic patriotism of those buying local products and services instead of the

17 MIERIŅA, Inta – KOROĻEVA, Ilze: Support for far right ideology and anti-migrant attitudes among youth in Europe: A comparative analysis, in: *The Sociological Review*, 63, 2015, 2, 183–205.

global brands. Economic nationalism has many faces. No question, there are elements of nationalism and economic nationalism in all countries and economies.[18] In Ukraine – nationalists promote closer ties with EU as a counterbalance to the alternative – the Russian domination. In Canada, free trade is supported as a way of reducing the central state's power.[19] But generally it was defined in opposition to economic liberalism and therefore it means predominantly everything that the economic liberals do not like. This is also a reaction to the fact that economic nationalists built their position on criticizing liberal economic policies (*free trade imperialism* of the wealthy and powerful). In scholarly literature the phrase started to be used by international relations experts (increasingly widely in 1970s) as an economic variant of the ideology of realism.[20]

Economic nationalism so far has been regarded rather as a set of attitudes then a coherent theory, however some scholars argue[21] that bringing the concept of nation into political economy may result into systematic theory of economic nationalism. Here however we are much more interested into the ideology of economic nationalism. It usually consists of protectionist and aggressive state intervention.[22] Many of its elements are associated with the nativist way of thinking about the society and economy. It is the promotion of localism, protection of the interest of the domestic and the demonization of the alien influence. Just like populism and nationalism, nativism becomes more valid in times of crisis (like economic recession), migration pressure (flow of refugee or high concentration of migrants), terrorist attacks, wars, etc.

Populism, as well as nationalism and nativism, grow very fast on the fertile ground of political discontent. The populists, once strong, fuel the political discontent.[23] It makes populism both the source and the consequence of political discontent. This mechanism creates a vicious circle of populism and political discontent that are intertwined with nationalism (usually of economic nature today) and nativism. This is crucially salient in the region of Central Europe, where the societies had to keep patient for almost one generation, first suffering the costs of socio-economic transformation and second as a subject to the pre-EU-accession conditionality. Once the strategic, geopolitical and geo-economic objectives (membership in the Western security and economic structures, like NATO or EU) were reached, the taboo of political correctness disappeared. The coincidence of the economic, migration, and other types of crisis stimulated further the discontent and therefore the populist and nationalist politics "exploded".

18 ISAACS-MARTIN, Wendy: National Identity and Economic Nationalism. Can an Economic Perspective Reinforce Nationalism and Nation Building?, in: *Africa Insight*, 41, 2011, 1, 59–70.

19 SHULMAN.

20 HELLEINER, Eric: Economic Nationalism as a Challenge to Economic Liberalism. Lessons from the 19th Century, in: *International Studies Quarterly*, 46, 2002, 3, 307–329.

21 NAKANO, Takeshi: Theorising economic nationalism, in: *Nations and Nationalism*, 10, 2004, 3, 211–229.

22 BEREND, Ivan: The Failure of Economic Nationalism. Central and Eastern Europe Before World War II, in: *Revue économique*, 51, 2000, 2, 315–322.

23 ROODUIJN, Matthijs – VAN DER BURG, Wouter – DE LANGE, Sarah: Expressing or fuelling discontent? The relationship between populist voting and political discontent, in: *Electoral Studies*, 43, 2016, 32–40.

Conclusion

Despite of the fact that nativism has predominantly American origins, its manifestations have appeared all over the world in various forms and re-incarnations. Most recently, Europe – especially Central Europe – has become the battlefield between the liberal versus illiberal forces. Nativism positions itself at the core of the illiberal camp and in opposition to the main liberal values. The open announcement of the illiberal democracy and its wide acceptance among the Hungarian and Polish society represent only a manifestation of the tendencies present in the political sphere. In the realm of economy, liberal forces associated by Central Europeans as the foreign investors, International Monetary Fund or any other external powerful agents are treated with equal suspicion. As the result, the nativist way of thinking reveals itself in xenophobic attitudes, nationalism and ethnically based populism. Building on the discontent with neo-liberalism and widely-understood cosmopolitanism, the Central European version of nativism evolved into an important element of the mainstream political landscape.

Only on the surface, nativism looks as a friendly concept, especially when associated with localism, authenticity, patriotism and "our way of life". In fact, it shares many exclusivist, illusive and potentially destructive components with nationalism and populism. The advent of economic globalization and the perceived threat to national identities encourage the protection of local cultures, which takes the form of nationalism, tribalism or nativism. Some of the most intensive outbursts of nationalism may be observed in nations which have felt themselves exploited (post-colonialism) or have believed that the benefits of globalization are passing them (inequality problem). The feeling of unjust and instability is a fertile ground for religion, traditional culture, tribalism and ethnicity to step in. Secularism found itself in defense and has been targeted as an enemy. The same some other alien religions and ethnicities that are supposed to clash with ours. It coexists very often with self-victimization and messianicism. This kind of *Zeitgeist* is a fertile ground for the emergence of strong nativist movements. They coexist and intertwine with the related nationalism and populism – this article offers some conceptual ordering of the three overlapping terms.

In this article, the author claims that nativism is a close ally of nationalism, especially in its economic dimension, and populism – understood both as a thin-centred ideology as well as a political tactic. In the public discourse they are even sometimes used inter-exchangeably. In the academic literature they tend to be mixed and confused. In fact they are substantively related. Parts of their meaning overlap and parts remain distinct, however they seem to be more similar then different.

In relation to nationalism, nativism too correlates with xenophobic and racist sentiments. It is built on the assumption of homogeneous and united "people". It suggests protecting the interests of "the domestic" over the interests of "the other". The newcomers or minorities are treated unequally compared to the favoured status of the established inhabitants. Therefore both nationalism and nativism inspire discriminatory actions and rhetoric. It means the demonization of the strangers. The "outer group" is associated with mostly or exclusively negative stereotypes. The hegemony of the natives is supposed to stop the dangers of the outside influence. Therefore the nativist focus on indigenous customs (even at the cost of modernisation).

At the same time, nativism does not share with nationalism the exclusive orientation on the nation as the only or main political community. It goes beyond that perspective, offering other criteria of the communitarian feeling or the "common sense". It may be in-born genetic make-up, but it can also be localism language or dialect, historical legacy or religion. Nationalism is in this sense much more reductionist but also offers much more developed ideology that spread globally.

The most obvious differentiating point between nativism and populism is the populist focus on elitism. For nativism "the ordinary people" are threatened by the newcomers. Whereas in the case of populism "the others" may be migrants, but equally often they are establishment, bankers, experts, intellectuals or any other members of the "imagined elite". The both concepts do not share the same definition of solidarity. Unlike populism, in which case it is anti-elitist mobilisation, nativists understand solidarity as the loyalty to the authentic people. The "imagined community" in this way is constructed in opposition to the non-natives.

However it shares a lot of similarities with populism. Historically speaking, the agrarian origins of both are symptomatic. In contemporary public discourse they both focus on anti-migrant narrative. Agrarian or xenophobic, they are both radical in form and they are both economically justified and determined. The critics of inequalities and the postulates of fair economic redistribution are present in both over time. The non-native elements are treated as a threat. They both use emotions, usually negative emotions like fear, prejudice or suspicion. Just like populism it is built on the contrast to cosmopolitanism or elitism. They are both illiberal concepts as they do not tolerate plurality of ideas, attitudes or actions. The "heartland people" need to be homogeneous and united. And the nativist way of thinking justifies policies oriented at protecting the interest of the native-born.

Nativism constitutes a dangerous ideology, potentially destructive at the levels equal to nationalism or populism. It is hidden behind the positive connotation of the word "native", whereas it contains the same poisonous essence (as in the case of nationalism): like to feeling of superiority over everything that is alien, exclusionism and – in more aggressive versions – protectionism or even xenophobia and racism. Nativism, nationalism and populism use simplistic, but therefore attractive and effective, argumentation referring to emotional and irrational rhetoric. They all mobilise the ordinary people and valorise their authenticity. Glorification of morally pure "commoners" resonates very well not only with the nationalist ideology or populist tactic but predominantly with the realm of nativist way of perceiving the world.

References

BAUGHN, Christopher C. – YAPRAK, Attila: Economic Nationalism: Conceptual and Empirical Development, in: *Political Psychology*, 17, 1996, 4, 759–778.

BEREND, Ivan: The Failure of Economic Nationalism. Central and Eastern Europe Before World War II, in: *Revue économique*, 51, 2000, 2, 315–322.

BLACK, John D.: The McNary-Haugen Movement, in: *The American Economic Review*, 18, 1928, 3, 405–427.

DJERIOUAT, Hakim – TREMOLIERE, Bastien: We are made, not born: Empiricism is

existentially useful, in: *Motivation and Emotion*, 38, 2014, 4, 529–539.
HELLEINER, Eric: Economic Nationalism as a Challenge to Economic Liberalism. Lessons from the 19th Century, in: *International Studies Quarterly*, 46, 2002, 3, 307–329.
HIGHAM, John: *Strangers in the Land: Patterns of American Nativism 1860–1925*, New Brunswick 1955.
ISAACS-MARTIN, Wendy: National Identity and Economic Nationalism. Can an Economic Perspective Reinforce Nationalism and Nation Building?, in: *Africa Insight*, 41, 2011, 1, 59–70.
JANSEN, Robert S.: Populist Mobilisation: A New Theoretical Approach to Populism, in: *Sociological Theory*, 29, 2011, 2, 75–96.
KLUKNAVSKÁ, Alena: Enemies among us: The anti-elitist and xenophobic discourses in the Czech Republic and Slovakia, in: *Rexter – Časopis pro výzkum radikalismu, extremismu a terorismu*, 2014, 2, 42–71.
KNOBEL, Dale: *America for Americans: The Nativist Movement in the United states*, New York 1996.
LIPPARD, Cameron: Racist Nativism in the 21st Century, in: *Sociology Compass*, 5, 2011, 7, 591–606.
MIERIŅA, Inta – KOROĻEVA, Ilze: Support for far right ideology and anti-migrant attitudes among youth in Europe: A comparative analysis, in: *The Sociological Review*, 63, 2015, 2, 183–205.
MUDDE, Cas: The Populist Zeitgeist, in: *Government and Opposition*, 39, 2004, 4, 542–543.
MUELLER, Jan-Werner: Parsing populism. Who is and who is not a populist these days?, in: *Juncture*, 22, 2015, 2, 80–89.
NAKANO, Takeshi: Theorising economic nationalism, in: *Nations and Nationalism*, 10, 2004, 3, 211–229.
ROODUIJN, Matthijs – VAN DER BURG, Wouter – DE LANGE, Sarah: Expressing or fuelling discontent? The relationship between populist voting and political discontent, in: *Electoral Studies*, 43, 2016, 32–40.
SHULMAN, Stephen: Nationalist Sources of International Economic Integration, in: *International Studies Quarterly*, 44, 2000, 3, 365–390.
STAVRAKAKIS, Yannis: The Return of the "People": Populism and Anti-Populism in the Shadow of the Europea Crisis, in: *Constelations*, 21, 2014, 4, 505–517.
WILLS, Jane: Populism, localism and the geography of democracy, in: *Geoforum*, 62, 2015, 188–189.

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Comparison of the situation of Freistaat Danzig and Saarland under the auspices of the League of Nations

Renáta SOMOGYI

Abstract

Administration and supervision of crisis zones is a frequently discussed topic these days. This study focuses on a specific segment of this issue rooted in the specificities of international transitory administration. By presenting and analysing the legal standing of Saarland and the situation of the Freistaat Danzig between the two World Wars, the reader may gain an insight into the first wing beats of the international community aimed at crisis management. The study looks in detail into legal legitimacy, the credibility of efficiency and control functions through the work of the two bodies temporarily appointed by the League of Nations. The presentation of the administration of Saarland, so important for Germany, could significantly contribute to deepening Hungarian-German economic and political relations, and to an accurate determination of the deficiencies of current crisis management.

Keywords

international transitory administration, League of Nations, legal legitimacy, Danzig, Saarland, Governing Commission, efficiency

Introduction or new dimensions in crisis management

The establishment of the League of Nations set up as a consequence of World War I may be referred to as a milestone in international relations which strongly influenced international administration and most probably opened up new dimensions in the history thereof. In many cases antecedents and experiences could constitute an adequate basis for verifying the legitimacy of an organisation, or even a given major power, or quite to the contrary, for questioning it. Naturally, every region struggles with different problems and has different characteristics even with regard to crises; yet, lessons drawn from practice, and the failures and achievements of earlier administrative actions could contribute to the success and efficiency of future crisis management. In the 1990s, international communities consisting of

states gained new roles restricted to the administration of various crises. Back then, several regions of the world struggled with severe problems, as a result of which and perhaps as the best solution available at the time, they were temporarily made subject to international administration.[1] The need for such international crisis management administrative actions have only rarely been questioned, or not at all in general. The greatest and most frequently occurring problem relates to the instruments applied by the international community consisting of states and in some cases by the representations of international organisations and their efficiency and their legal legitimacy.

The League of Nations

The League of Nations[2], or La Société des Nations in French, was established by signing the Covenant[3] in January 1919. This was the first intergovernmental organisation, whose primary objective was to maintain international peace and security. World War I tragically proved that the systems of alliances set up earlier by the Great Powers (Concert of Europe, Triple Alliance, Entente Cordiale) were unable to build up an efficient and lasting security system. There was a need for an organisation capable of preventing the outbreak of another war over the longer term. The first initiative is tied primarily to the name of Woodrow Wilson, who already then foresaw permanent and just peace as the basis of international cooperation in his famous Fourteen Points[4]. Naturally, in addition to the American initiatives and ideas, the British and the French also presented their views, of which several elements were transferred later to the Covenant, which entered into force in January 1920. As part of the Paris Peace Conference, the Covenant became an integral part of the Treaty of Versailles, calling for the maintenance of international peace and security.[5] The most important provisions of the Covenant included guaranteeing territorial integrity and political independence, protection for minorities, the establishment of the system of mandates, disarmament and regional agreements.[6] Neither the elaboration, nor the implementation of these decisions and the various provisions was a simple processes. Despite this, however, the organisation can be commended for a number of achievements, such as this being the first serious attempt at establishing a collective security system, or the recognition of the fact that international security cannot be separated from general international cooperation. Without the Covenant, it would not have been possible to adopt the Geneva Protocol of 1924[7], nor the Briand-Kellogg Pact. Yet, the negative features should not be disregarded, as they cast a shadow on the results achieved by the organisation. First and foremost, no

1 HALÁSZ, Iván: Nemzetközi igazgatás a válságövezetben – adalékok a nemzetközi igazgatás történetéhez és jelenlegi dilemmáihoz [International administration in the crisis zone – Addenda to the history and current dilemmas of international administration], in: *Külügyi szemle*, 4, 2005, 1–2, 248.

2 The League of Nations is established (online: http://mult-kor.hu/cikk.php?id=3449).

3 A négyhatalmi szerződés [Four Power Pact], online: http://www.grotius.hu/publ/displ.asp?id=HNHDDJ.

4 Woodrow Wilson's Fourteen Points, online: http://www.historylearningsite.co.uk/woodrow_wilson1.htm.

5 BLAHÓ, András – PRANDLER, Árpád: *Nemzetközi szervezetek és intézmények [International organisations and institutions]*, Budapest 2005.

6 Ibidem.

7 The Protocol adopted in Geneva in 1924 aimed at the peaceful settlement of international disputes.

deliberate, coherent policy came into being, envisaging long-term cooperation, and this was only aggravated by the internal contradictions of the "Versailles-Washington peace system". The lack of efficient and collective work manifested itself as a sign of weakness; several of the major powers withdrew from the activities of the organisation.[8] We could list a number of institutional and organisational problems which prevented the success of the League of Nations; these, however, are irrelevant from the viewpoint of this study. As far as the subject matter of this study is concerned, the work of the organisation in the two regions studied is of interest.

Freistaat Danzig under the rule of the League of Nations

As a result of the decision of the major powers victorious in World War I, Danzig became an independent city-state governed by the High Commissioner appointed by the League of Nations.[9] In terms of the history of the city, this scheme was not unknown since Napoleon had created the independent state of Danzig already in 1807 in the course of his Eastern expansion. Naturally, little similarity is shown by the examination of the administration of the two states apart from the city's legal status.[10]

Until 1920, Danzig was the capital of the province of Westpreussen[11], whose position was substantially altered by World War I. During the war, Point 13 of President Wilson of the USA called for the establishment of an independent Polish state[12], which he envisaged with access to the sea. Several arguments were put forward in favour of this, primarily ethnic and economic interests. As to the ethnic aspect, the official explanation was that there were more Poles living in this region than Germans.[13] As later revealed by research, this argument was somewhat on the wrong side as the Kashubs were counted as if they were Poles[14]. Naturally, the Germans did not accept the data of the census, and even the Poles had their doubts about the number of the German population. The other argument was the economic one, according to which *"one of the guarantees of Polish independence is access to the sea, thus Polish exports would not be at the mercy of the German port cities"*.[15]

8 BLAHÓ – PRANDLER, 57–58.

9 Danzig und seine Vergangenheit 1793–1997 [Danzig and its past 1793–1997], online: https://perspectivia.net/publikationen/ev-warschau/loew_danzig.

10 Under section 19 of the Prussian-French peace treaty of Tilsit, Danzig became an independent republic subject to the protectorate of the Saxon king. Effective power, however, was in the hands of the French governor. Later, Danzig had an important role to play in the war against Russia, primarily as a military base. The first independent Danzig state, i.e. Republic, lived no more than seven years (1807–1814), from the peace of Tilsit to the Vienna Congress, when it was again made part of Westpreussen. "From 1814, it began to develop as part of Germany over 104 years, and grew into a significant industrial and port city in just over a century. Its population exceeded 170,000 in 1910." (Online: http://pangea.hu/2014/11/02/danzig).

11 Danzig und seine Vergangenheit 1793–1997…

12 Woodrow Wilson's Fourteen Points…

13 528,000 Poles against 385,000 Germans (online: http://pangea.hu/2014/11/02/danzig).

14 "This ethnic group has its own identity and derives its language from the Pomeranian. Poland does not recognise them as an independent ethnic group; during the years of socialism Poland was expressly hostile against them, questioning their loyalty to the socialist state. The German, the Polish and the Kashub population were not sharply separated at around 1920; most of West Prussia had mixed population." (Online: http://pangea.hu/2014/11/02/danzig).

15 Ibidem.

Without dividing the German areas, it would not have been possible to provide access to the sea and because of that West Prussia was split into four separate parts in 1919.[16] The eastern part with its centre in Marienwerder was left under German rule, but it was integrated into East Prussia for the purposes of administration. The central part of West Prussia with the Hel Peninsula and the seashore became part of Poland; this area is often referred to as the Polish corridor. Finally, which is of importance for the subject matter of this study, the Free City of Danzig (Freistaat Danzig) was established.[17] The victorious states got into a very difficult position strategically because they were aware that they could not annex the city to Poland as 95 % of the city's residents were German speakers[18], yet the city could not remain part of Germany because of its excessive strategic and economic significance.

In February 1920, Danzig was subject to British occupation, indirectly guaranteeing the protection of the League of Nations over the new state. Poland continued not to recognise the separation of the city and did not give up its claims in relation to it. In this respect, Poland could rely on the support of the French, for whom the reinforcement of Poland with a port city constituted a major issue of national security.[19] These endeavours, however, failed in part and they managed to achieve little by way of results. On 15 November 1920, the League of Nations officially recognised Freistaat Danzig as a new European state, and the organisation of the government and administration of the city began under the auspices of the international organisation.[20]

Poland continued to deal with Danzig's foreign affairs and, in addition, it had direction over the railway and telecommunications network, as well as the supervision of the port. It was the Polish postal service that continued to operate in the city and the Poles were responsible for the land defence of the city. In 1922, a mandatory customs union was established between the two states which gave Poland even more elbow room "in exercising power" over the free city. An elected leader, the High Commissioner was the head of the "state" appointed by the League of Nations. The High Commissioner had the right to approve the constitution of the city state and to take action in disputes arising between the city and Poland.[21] As far as the League of Nations was concerned, it was understandable to appoint a "foreign" leader, as the goal was to create an efficient and smoothly running state focusing on international interests. If, however, the local population and the interests of the city are considered, an "outsider" official might not be the best choice. Naturally, lack of knowledge of local relationships and political parties and the absence of the "personal" interests of the city could give rise to substantial disadvantages both for the new leadership and for the population. The League of Nations ordained the Volkstag (the assembly), elected by the locals, to be subject to the British, the Italians, the Swiss and the Danes, which resulted

16 NÉMETH, István: Németország a weimari köztársaság időszakában (1919–1933) [Germany during the period of the Weimar Republic (1919–1933)], online: http://www.grotius.hu/doc/pub/WNAWSU/2013-01-29_nemeth_istvan_grotius-e-konyvtar-57.pdf.

17 Online: http://pangea.hu/2014/11/02/danzig.

18 HALÁSZ, 250.

19 NÉMETH, István: *Németország története [History of Germany]*, Budapest 2003.

20 Danzig und seine Vergangenheit 1793–1997…

21 RUHNAU, Rüdiger: *Die Freie Stadt Danzig 1919–1939*, Berg am See 1988.

in the restriction of "local forces" and their substantial loss on power.[22] The goal of the League of Nations was to develop a secure medium, which would prevent the outbreak of yet another conflict or war. But irrespective of all this, the League of Nations enabled the new state to allow every German political party to run at the local elections, respecting the desires and interests of the population. Thus, the most influential parties, such as the German National Democratic Party (DNVP), the Social Democrats and the German Centre Party all got mandates. The members of the Senate consisted of representatives elected by them; they were responsible for the appropriate operation of the executive power.[23] At first, this system operated smoothly, it seemed that the international supervision and the interests of the German population could coexist. At the time, the League of Nations was still taking its first steps in learning about how to guarantee international peace and security, and it seemed it was able to control matters and the state could function efficiently under the supervision of the organisation. Unfortunately, it did not last long and the NSDAP came to power in 1933[24], which radically altered power relations in this German speaking city. Despite the supervision of the League of Nations, this party achieved the slow liquidation of all the other democratic parties and took over full governance of the city. They were so much in control that they managed to have the Race Laws of Nuremberg adopted in a state, which was in principle governed by the League of Nations.[25] Naturally, this is an excellent illustration of the fact that the League of Nations whose mandate was to guarantee international peace and security allowed the implementation of laws, which subsequently led to an ethnic catastrophe. Of course, administration by the League of Nations and its lack of success cannot be deducted exclusively from the deficiencies of the organisation. In addition to administrative problems and deficiencies, other reasons also had a role in the failure of the League of Nations. One such reason was the intensification of animosity between the Germans and the Poles in the city which also had a serious role to play in the outbreak of World War II.[26]

On the eve of World War II, Germany also claimed the return of the city of Danzig, which was fully opposed by the League of Nations in general and the Poles in particular, and the Polish soldiers did not leave their posts. World War II broke out. The rest of the story of course is already known: the last moment came in 1945 when the Free City of Danzig finally disappeared as a state.

The specific situation of the territory of the Saar Basinin the light of the League of Nations supervision

The establishment of the League of Nations – which opened new doors in the history of international administration – was of major significance not only for the Free City of Danzig,

22 Ibidem.

23 Érisz almája Poroszországban [The apple of Eris in Prussia]: Freistaat Danzig, online: http://pangea.hu/2014/11/02/danzig.

24 Die Nationalsozialistische Deustche Arbeiterpartei, online: https://www.dhm.de/lemo/kapitel/weimarer-republik/innenpolitik/nsdap.html.

25 Érisz almája Poroszországban...

26 NÉMETH, *Németország története*, 250–255.

but also for the Saar Basin. The Saar Territory operated in subordination to a five-member governing commission appointed by the League of Nations. A study of this area may reveal the initial steps of international administration, the legal background to legitimatisation, and most importantly, their practical implementation. The Saar Basin was not a state taken in the modern sense as it was subject to transitory administration by an external agency, the League of Nations. An organisation oversaw the agencies of public powers, such as the legislation, public administration and the administration of justice. At the same time, the League of Nations had no control, it had no official controlling body. State efficiency cannot at all be measured here on the basis of economic policy, as it is not possible to determine how "cheap" the given state was relative to its size.

Under the Versailles Peace Treaty, the Saar Basin was subject to rule by the League of Nations in 1920; the international community regarded this as a transitory situation as they called for a referendum with respect to where the area should belong to for 1935.[27] This area, rich in coal and subject to the rule of the League of Nations for 15 years, can be regarded as a highly specific case of international administration because while the international organisation safeguarded the territory, France obtained the right to economically exploit it where the majority of the population was German speaking.[28]

Power in the Saar Territory was exercised by a five-member Governing Commission, whose members were selected by the Council of the League of Nations, of which one position was held by France and another one by a permanent local resident. The remaining three positions were given to citizens of other countries. This body was responsible for all the administrative powers, including the right to create elected bodies.[29] The Governing Commission had to consult with the elected body representing the local population about introducing new taxes or amending legal regulations formerly in force in the area. Later, a ministry-like agency was set up, which governed the Saar Basin in five central areas, such as foreign and home affairs, economics and finance, labour, welfare and agricultural affairs, and religion and education.[30] The League of Nations endeavoured to cover virtually all the administrative aspects of the life of the population; even the administration of justice was headed by a Swiss lawyer, whose work was assisted by judges and officials from various countries until the referendum in 1935, when Germany annexed the Saar Basin.[31] The population made its own decision about where they would like to belong to and ultimately the citizens of the city voted for Germany.

The League of Nations ran a much better prepared administration based on much more stable institutions in the case of the Saar Basin than in Danzig. A primary reason for this can be attributed to France, which had both economic and political interests in the maximal supervision of the area. France could not afford to let administration slip out of its hands, that is why they tried to bring every single administrative area of the Saar Basin

27 HALÁSZ, 250.

28 ZENNER, Maria: *Parteien und Politik im Saargebiet unter dem Völkerbundsregime, 1920–1935 [Parties and Politics in the Saar Basin under the League of Nations regime, 1920–1935]*, Saarbrücken 1966.

29 LINSMAYER, Ludwig: *Politische Kultur im Saargebiet 1920–1932*, St. Ingbert 1992.

30 ZENNER, 363–375.

31 LINSMAYER, Ludwig (ed.): *Der 13. Januar. Die Saar im Brennpunkt der Geschichte [The 13th January. The Saar Basin in the focus of history]*, Saarbrücken 2005.

under international governance. Here, the work of the League of Nations was not for an indeterminate period as in the case of the Freistaat Danzig, but was linked to a specific date and event, the referendum of 1935. From this point of view, the comparison and the study of organisational efficiency is very difficult because it does make a difference whether a state or area under study is aware of being subject to transitory international administration or whether that administration was final. The common element in the two cases is unambiguously the fact that the international administration "was forced" onto a German speaking population in spite of their will.

Summary, conclusions

International intervention is a fairly sensitive area to this day and not only with regard to legitimatisation but also to implementation itself. These events were the first wing beats of guaranteeing international peace and security. Administration and supervision could perhaps been operated better, had these regions been governed by a better prepared organisation, having a more stable backing and adequate experience. The body controlling the work of the agencies appointed by the League of Nations (Governing Commission and High Commissioner) was also missing. This frequently happens under current international relations, which creates the basis for abuse of power. Deliberate control is one of the key elements of transitory administration. In addition, it is important to underline the ethnic fragmentation of the organisation conducting administration. The two regions were excellent examples of foreign interests, that is, French and Polish interests had the upper hand and they did achieve their objectives causing damage to the true interests of the regions.

A further study of organisational structures and control unambiguously reveals that the administrative regime of the Saar Basin was much more complex. Although there was "transparency" in both cases, power was concentrated in the hands of a single person in the case of Freistaat Danzig, it was held by a five-member commission in the case of the Saar Basin and hence this regime was much more "interoperable" and controllable. It is very difficult to determine to what extent the League of Nations as the body responsible for the transitory administration of an area fulfilled the hopes pinned on it by the major powers. From the viewpoint of public administration, the designated agencies carried out their tasks and the administration of these territories functioned for long years. The referendum and World War II prevented the League of Nations from continuing the supervision and administration of these regions. The Freistaat Danzig and the Saar Territory were the first and the last regions in the history of the League of Nations over which it ruled.

References

A négyhatalmi szerződés [Four Power Pact], online: http://www.grotius.hu/publ/displ.asp?id=HNHDDJ.

BLAHÓ, András – PRANDLER, Árpád: *Nemzetközi szervezetek és intézmények [International organisations and institutions]*, Budapest 2005.

Die Nationalsozialistische Deustche Arbeiterpartei, online: https://www.dhm.de/lemo/kapitel/weimarer-republik/innenpolitik/nsdap.html.

HALÁSZ, Iván: Nemzetközi igazgatás a válságövezetben – adalékok a nemzetközi igazgatás történetéhez és jelenlegi dilemmáihoz [International administration in the crisis zone – Addenda to the history and current dilemmas of international administration], in: *Külügyi szemle*, 4, 2005, 1–2, 248, 250.

Létrejön a Népszövetség [The League of Nations is established], online: http://mult-kor.hu/cikk.php?id=3449.

LINSMAYER, Ludwig: *Politische Kultur im Saargebiet 1920–1932*, St. Ingbert 1992.

LINSMAYER, Ludwig (ed.): *Der 13. Januar. Die Saar im Brennpunkt der Geschichte [The 13th January. The Saar Basin in the focus of history]*, Saarbrücken 2005.

LOEW, Peter Oliver: *Danzig und seine Vergangenheit 1793–1997. Die Geschichtskultur einer Stadt zwischen Deutschland und Polen*, Osnabrück 2003.

NÉMETH, István: Németország a weimari köztársaság időszakában (1919–1933) [Germany during the period of the Weimar Republic (1919–1933)], online: http://www.grotius.hu/doc/pub/WNAWSU/2013-01-29_nemeth_istvan_grotius-e-konyvtar-57.pdf.

NÉMETH, István: *Németország története [History of Germany]*, Budapest 2003.

RUHNAU, Rüdiger: *Die Freie Stadt Danzig 1919–1939*, Berg am See 1988.

Woodrow Wilson's Fourteen Points, online: http://www.historylearningsite.co.uk/woodrow_wilson1.htm.

ZENNER, Maria: *Parteien und Politik im Saargebiet unter dem Völkerbundsregime, 1920–1935 [Parties and Politics in the Saar Basin under the League of Nations regime, 1920–1935]*, Saarbrücken 1966.

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Models of national referenda in Hungary – an overview starting from the change of political regime to the present day[1]

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Abstract

The aim of this paper is to identify the trends and direction of Hungarian referenda-related legislation and their interpretation. The paper tries to determine the beneficiaries of the different models – for example the political elite (governmental or opposition parties), emerging political groups, or voters as non-professional (occasional) partakers of politics. The paper relies on the methodology of the science of constitutional law and it applies temporal comparison: it gives an overview of the changes in the regulation of national referenda in Hungary since the change of political regime. During three decades of the Third Hungarian Republic, the national referendum's constitutional role and model changed several times owing to the amendment of the relevant legislation and the changes in the Constitutional Court's and the Hungarian Supreme Court's – called Curia – jurisprudence. A clear trend may be identified from the regulation of referenda: the clearly "referendum-friendly" 1989 rules were amended to become mainly "parliament-friendly". It must be noted, that while the Hungarian constitutional system (unlike German or US system) still contains the institution of national referendum, the citizen-initiated "referendum threat" is decreasing tendentiously. Meanwhile, the political elite, especially the Government and the strongest parties have the greatest chance of organizing a successful referendum. The jurisprudence of the Constitutional Court and the Curia did not follow such a clear trend as the regulation. Both these bodies' jurisprudence contains decisions in favour of referenda and against this form of direct democracy, so their jurisprudence is in a constant flux.

Keywords

national referendum, Hungary, fundamental rights, Constitutional Court, interpretation of the constitution, direct democracy, representative democracy

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Introduction

Finding the balance between the different forms of democracy is a key issue in all modern, democratic states. There is no general, ideal solution in the balance between representative and direct democracy that could easily be applied to all countries. In fact, this diversity in the role and forms of direct democracy may also be described and examined from a territorial and temporal perspective. The territorial perspective focuses on comparing states, while the temporal approach examines the changes of an issue over time in the very same country. This paper applies the temporal comparison: it gives an overview of the changes in the regulation of national referenda in Hungary since the change of political regime. Two constitutions[2], one relevant constitutional amendment, three acts on referenda and two acts on procedural issues, several decisions of the Constitutional Court (CC) and the supreme court – now called Curia – mark the three decades of referendum rules in the Third Hungarian Republic, that is, this period abounded with model changes.

The aim of this paper is to identify the trends and direction of Hungarian referenda-related legislation and their interpretation. The paper tries to determine the beneficiaries of the different models – for example the political elite (governmental or opposition parties), emerging political groups, or voters as non-professional (occasional) partakers of politics.

For this purpose, the paper relies on the methodology of the science of constitutional law: primarily, the examination and interpretation of legal sources – constitutions, statutes and decisions. I examine the Hungarian regulation of national referenda by concentrating on its most important elements. Firstly, I focus on the basic regulation-model of national referenda asking the question: is the model state-centred or fundamental rights oriented? The state-centred interpretation of direct democracy leaves a broader margin of appreciation to the legislator in determining the limits of referenda, while it does not pay much attention to the availability of remedy forums. Meanwhile, the fundamental rights oriented approach is beneficial for individual voters, since they have better chances of enforcing their interests. Secondly, the form of regulation raises the problem of institutional guarantees: which state body is best placed to decide on referendum questions? This aspect sheds light on another face of referenda: the system of separation of powers. On the one hand, the referendum per se can be interpreted as an element of the system of separation of powers[3]. On the other hand, state bodies having competences in the referendum process can also shape the system of checks and balances via the application and interpretation of the relevant legal rules. Thirdly, I will focus on the changes of issues, which affect the role of national referenda: the personal scope of rules governing the submission of referendum initiatives (who?), issues on which holding a referendum is compulsory, admissible and excluded topics (about what?), result (is there a minimal turnout?), effect of the referendum (is the result of the referendum binding?).[4]

2 To distinguish the two constitutions, the paper uses the term "Constitution" to refer to the first codified constitution of Hungary, namely, Act XX of 1949, which was largely amended in 1989. The new constitution of Hungary was adopted by the Parliament in 2011, and its official designation is "Fundamental Law".

3 ACKERMAN, Bruce: The New Separation of Powers, in: *Harvard Law Review*, 113, 2000, 3, 667.

4 On the main points of referendum-regulation see also: KOMÁROMI, László: Közvetlen demokratikus hagyományok és modellek: alapkérdések, kockázatok és esélyek [Direct Democracy Traditions and Models: Funda-

State-centred and fundamental rights oriented models governing referenda

General remarks

The dual nature of suffrage is commonly accepted in the field of constitutional law: it is first and foremost a means of establishing the representative bodies of the state – raising problems of legitimacy and sovereignty – but it also contributes in part to the creation of the system of state bodies. Meanwhile, suffrage also has a fundamental right aspect, it being a political participation right declared by constitutions. Although this Janus-faced nature of suffrage is well-known, dealing with its fundamental right aspects is exceptional both in the jurisprudence and the practice of courts or constitutional courts.[5]

Even less attention is paid in jurisprudence to the other important political participation right, the right to take part in a referendum. The dual nature of suffrage, as emphasized above, is also a relevant characteristic of the right to take part in a referendum. Referenda – and all other forms of direct democracy – are closely associated with the problem of legitimacy and sovereignty, so their constitutional role, the limits of these institutions are interpreted rarely in the frames of fundamental rights and in the context of fundamental rights' dogmatics. The lack of a fundamental rights oriented interpretation of referenda is further reinforced by constitutions, too. While suffrage belongs to the minimum-content of constitutions, the right to take part in a referendum can easily be left out of the list of fundamental rights – even in those countries, which recognize the institution of national referendum and have a codified constitution.[6]

A fundamental right is born

In the course of the nearly three decades history of the third Hungarian republic, the instrument of referendum played an important role in the political and constitutional system. For example, the first referendum was held just one month after the 'regime changing' constitutional amendment which came into effect on 23 October 1989. The so-called "four-times-yes referendum"[7] was initiated by four parties of the former opposition and thanks to its success the President of the republic was elected at the constitutive session of the parliament formed in April 1990. This led to the amendment of the procedure for the election of the head of state, a system originally conceived by the "national roundtable"[8] which

mental Questions, Risks and Opportunities], in: *A népszavazás szabályozása és gyakorlata Európában* és *Magyarországon [Legal Framework and Practice of Referendums in Europe and Hungary]*, GÁVA, Krisztián – TÉGLÁSI, András (eds.), Budapest 2016, 144–146.

5 BODNÁR, Eszter: *A választójog alapjogi tartalma* és *korlátai [The Substance and Limits of the Fundamental Right of Suffrage]*, Budapest 2014, 9.

6 CSINK, Lóránt: A Kúria határozata a Paksi Atomerőmű bővítésével kapcsolatos népszavazásról [The Decision of the Curia on the Referendum About the Enlargement of the Nuclear Power Station in Paks], in: *Jogesetek Magyarázata [Explanation of Legal Cases]*, 5, 2014, 3, 40.

7 The commonly known name of this referendum derived from the number of the questions posed in this referendum and the initiating parties' suggestion for the outcome of the vote ("yes" instead of "no").

8 The National Roundtable was a special body involved in the change of regime, which included the state party

has as its aim to prevent the appointment of a socialist politician.[9] Hence, one of the crucial turning points of the change of political regime was decided by way of referendum, it had an influence on the form of government, the system of the separation of powers and finally, it prevented the Socialist Party from preserving its power.

While this form of direct democracy was of key significance, exercising referenda was not based on a fundamental right, since the 1989 text of the constitution did not set forth the right to take part in a referendum. It merely declared that the people shall exercise their power "through their elected representatives or directly".[10] With a 1994 amendment of the constitution[11] the right to take part in a referendum became a genuine fundamental right.[12] Between 1989 and 1994 the right to take part in a referendum was provided for and regulated by the Act on referendum.[13] The only constitutional basis for exercising direct democracy was the abovementioned general declaration in the constitution on the forms of democracy. But this also meant that there was no constitutional restriction on the concrete method(s) of exercising direct democratic power. The exercise of direct democratic power may take several forms: from the compulsory referendum through agenda initiatives[14] to the exercise of the freedom of assembly[15]. At the same time, the textual – and restrictive – interpretation of the constitutional provision would allow for the abolition of the referendum as long as one – necessarily weaker – form of direct democracy exists.[16] Nevertheless, in 1991 the Constitutional Court opted for a different interpretation of Article 2 (2) of the Constitution, and declared that "the right to take part in a referendum is a fundamental right derived from the sovereignty of the people".[17] Thus, the right to take part in a referendum was treated as a fundamental right in the period between 1991 and 1994, notwithstanding the fact that it was (merely) based on the CC's extensive interpretation of a principle enshrined in the Constitution.[18]

(Hungarian Socialist Party of Workers), the oppositional forces (which could not function as real political parties owing to the single party system) and the so-called "Third Side" (quite weightless next to the state party and the opposition). The role of the National Roundtable was to ensure the peaceful change of regime, to prevent a revolution. Decisions made by the National Roundtable were accepted by the parliament of the party state, so the Roundtable – and not the parliament – was the forum of real political negotiations and decision-making in questions which were crucial for the democratic transition.

9 The direct election of the head of state would have presumably resulted in the victory of a socialist politician, because just after the change of regime socialist politicians were well known by the people.

10 Act XX of 1949 on the Constitution of the Republic of Hungary Article 2 (2).

11 Act LXI of 1994 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary.

12 Article 70 (1) of the Constitution: "All adult Hungarian citizens residing in the territory of the Republic of Hungary have the right to be elected and the right to vote in Parliamentary elections, local government elections or minority self-government elections, provided that they are present in the country on the day of the election or referendum, *and furthermore to participate in national or local referenda or popular initiatives*."

13 Act XVII of 1989 Article 2 (1): "Voters have the right to take part in a referendum and people's initiative."

14 For the forms of direct democracy see: BERAMENDI, Virginia et al.: *Direct Democracy. The International IDEA Handbook*, Stockholm 2008.

15 Although it is quite strange to classify the freedom of assembly as a form of direct democracy, it is based on the decision no. 30/2015. (X. 15.) of the Constitutional Court, which stated that "the freedom of assembly shall be interpreted as a manifestation of direct democracy".

16 GYŐRFI, Tamás et al.: Alkotmányos alapelvek, ellenállási jog [Constitutional principles, right to resistance], in: *Az Alkotmány kommentárja [Commentary of the Constitution]*, JAKAB, András (ed.), Budapest 2009, 227, footnote 355.

17 Decision no. 987/B/1990/3. of the CC.

18 At this point, it should be noted that the extensive interpretation of the constitution was a common phenom-

Irrespective of the CC's 1991 decision, in 1994 the referendum received a more solid, codified constitutional basis, creating a new model of referendum: a fundamental right. Since the emergence of the institution of referendum raised a special aspect of the separation of powers by directly involving the people in legislation, the new model also impacted on the parliament's autonomy (increasing its constitutional elbow-room).
A constitutional amendment which came into effect in 1997 also affected the scope of the right to take part in a referendum. Namely, several detailed rules on the scope of this right were enshrined in the constitution, such as the requirements surrounding the initiation of a referendum (e. g. the subject-matter of the referendum must fall under the competence of the parliament, meanwhile, several subject-matters were also excluded from referendum at the time).[19]
Hungary's new constitution of 2011, the so-called Fundamental Law preserved the right to take part in a referendum as a fundamental right. It followed the 1997 regulatory model on the detailed regulation of direct democracy, albeit the list of excluded subject-matters was partly amended.[20] However, it wasn't just the constitutional provisions that were renewed after 2010: new acts on referendum[21] and the electoral procedure[22] were adopted by the parliament.

The structure of the right to take part in a referendum

Objective and subjective scope of the right

The CC examined the structure of the right to take part in a referendum in its 1997 decision. It clarified, that this right covers both participation in voting in the referendum (the narrow substance of the right) and submitting the referendum initiative, supporting the initiative by signing it and, what is implied: the collection of signatures (broader substance of the right). The implicit limitations of the fundamental right model must be also noted: initiation cannot be interpreted as a fundamental right in case the initiator is a state body. This is important, because according to the Constitution and the Fundamental Law, voters, the Government and the President of the republic may submit a referendum initiative. Since 1997 the rules governing referenda are located in three chapters of the constitutional document – be it the Constitution or the Fundamental Law.[23] The declaration of the existence

enon in the CC's jurisprudence, especially in the first era of its operation. The so-called "Sólyom Court" – which was named after the president of the CC – developed the concept of the "invisible constitution" in the 1990s. The invisible constitution was constructed from the decisions of the CC, and its name reflected the concept that the real meaning of the constitution could not be gleaned merely from the constitution's text. Instead, it only became visible through the jurisprudence of the CC, with the CC stipulating for itself a great freedom in the interpretation of the constitution. Following the millennium and owing to personnel changes in the CC, the level of the court's activism was consolidated.

19 See point 5.1.

20 Article 8 of the Basic Law.

21 Act CCXXXVIII of 2013 on Initiating Referenda, the European Citizens' Initiative and Referendum Procedure.

22 Act XXXVI of 2013 on Electoral Procedure.

23 Since 1997 – when the right to take part in a referendum and the detailed regulation on referenda became part of the Constitution – the Constitution and the Fundamental Law regulated this aspect of the referendum in

of direct democracy is enshrined in the chapter on principles. The detailed rules can be found in the chapter on state organization (following the rules on parliament), and the right to take part in a referendum is part of the chapter on fundamental rights. Although the possibility of submitting a question for referendum by voters, the Government and the head of state is foreseen in the same article of the constitution (in the chapter on state bodies), an initiative submitted by the Government or the head of state cannot be interpreted as exercising a fundamental right, since state bodies do not have fundamental rights. As such, the possibility of state bodies to submit referendum initiatives is a simple competence-rule, not a fundamental right provision. It strengthens the state-centred model of regulating referenda. The CC solved the discrepancy between the fundamental right oriented model of referendum and the competence of the Government and the president of the republic to initiate a referendum in a peculiar way: the CC declared, that the only real form of direct democracy is the referendum initiated by the voters.[24]
Focusing only on the right to take part in a referendum it must be noted, that the Constitution and the Fundamental Law declared it to be a right which can be exercised by "every adult Hungarian citizen". That is, the constitution-making power regulated this right as the right of those persons who have Hungarian citizenship. The CC enlarged the personal (subjective) scope of this right, by deeming it a collective right: collectives of voters (adult Hungarian citizens) – especially parties – can also exercise the right to take part in a referendum, because they play relevant role in the referendum process, in particular, in the collection of signatures.[25]

Test for reviewing the restriction of the right to take part in a referendum

The CC distinguished between the permissible levels of restricting the right to take part in a referendum depending on the status of the referendum process. In the majority of the cases (the initiation, the collection of signatures, supporting the referendum initiative by signing it, taking part in the voting) the right may be restricted according to the general test governing the restriction of fundamental rights.[26] Such a restriction then affects the subjective aspect of this right, since individual rights are affected in these cases. However, there are several points in the process, where the objective aspects of the right will be stronger than the protection of individual rights. This aspect is particularly apparent at the point where the certification of the referendum question initiated takes place (namely, the checking of its admissibility), because at this point, the whole constitutional system is affected by the referendum process. The protection at this point is aligned with the constitutional function of the referendum.[27] While the CC did not expressly emphasize this, in

the very same way.

24 Decision no. 52/1997. (X. 14.) of the CC.

25 Decision 31/2013. (X. 28.) of the CC. For a critical interpretation of this decision see: TÉGLÁSI, András: A népszavazáshoz való jog mint alapjog [Right to Take Part in Referenda as a Fundamental Right], in: *Acta Humana*, 2, 2014, 2, 91–103.

26 The test has been termed "necessity and proportionality" test.

27 See also: PETRÉTEI, József: Az országos népszavazásról [On the National Referendum], in: *Kodifikáció [Codification]*, 2016, 2, 15.

practice, this meant that at the time, the level of protection was lower than the strict general test for the restriction of fundamental rights.

Models for protecting the right to take part in a referendum

Just like the evolution of the right to take part in a referendum, the creation of the system for protecting the right was not a straightforward process, involving several changes to the protection models of the referendum process.

The parliament-centred model

In the first years of the Third Republic, the right to take part in a referendum was not supported by a real – judicial – protection mechanism. The first Act on referendum[28] established a parliament-centred model of referendum procedure. The procedure officially kicked off with the delivery of at least 50,000 signatures to the parliament's speaker. The certification of the submission meant only the checking of the number of valid signatures.[29] There was no preliminary control of the referendum-question to ascertain whether it meets the requirements set forth by the act (i.e. that it falls under the competence of the parliament, and does not pertain to any of the excluded subject matters). This had two important consequences: (1) at the time the signatures were collected it was not for certain, that the question put forward by the referendum initiative was even admissible; and (2) it was the parliament who was to decide on the admissibility of the question (whether it pertains to any excluded subject matter, etc.).

This raised a serious question: is the parliament as a political body the appropriate forum for deciding on the legal admissibility of the referendum question initiated? With other words: is this a political or a legal question? Can the parliament be the ultimate guardian of the right to take part in a referendum, a right that in fact challenges its autonomy?

From a textual perspective it is questionable whether the lack of judicial protection was unconstitutional or not. The right to take part in a referendum was a statutory right, since the 1989 Act on referendum contained it as the right of each voter. Although "ubi ius, ibi remedium" is a general principle in democracies[30], the exact scope of the right to legal remedy was seriously restricted by the Hungarian Constitution, which stipulated: "In the Republic of Hungary everyone may seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions, which infringe on his rights or justified interests."[31] Since the parliament is not a judicial, administrative body nor an

28 Act XVII of 1989.

29 The 1998 and 2013 Acts on referendum treat the certification of initiated questions and the verification of supporting signatures (i.e. the checking of the number of valid signatures) as different institutions.

30 See also Marbury v. Madison 5 U.S. 137 (1803): "The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right. […] [W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy."

31 Act XX of 1949 Article 57 (5) In this context "official decision" means "decision made by an authority (part of the executive power)".

authority, there was no express constitutional basis for creating a remedy against a parliamentary resolution ordering a referendum or rejecting it. Meanwhile the situation remained unchanged notwithstanding the 1991 decision of CC, who declared the right to take part in a referendum to be a fundamental one. In fact, even after the 1994 constitutional amendment that enshrined this right into the text of the Constitution the situation remained the same, since the right to legal remedy was not premised on the statutory or fundamental character of the right concerned. In conclusion it may be noted, that when it came to the right to take part in a referendum the text of the Constitution required a lower level of protection than what should have been guaranteed based on general democratic principles and common sense (namely, it could be the case that it is not in the interest of the parliament to order a referendum).

The Constitutional Court-centred model

In its decision no. 52/1997. (X. 14.) the CC set forth the constitutional requirement that the remedy of a constitutional complaint against decisions on referendum be established, for taking part in a referendum is a fundamental political right. The CC further declared that the preliminary control of the constitutionality of initiated referendum questions must be ensured.

The timing of the CC' decision was quite peculiar: as outlined above, the right to take part in a referendum had been a fundamental right since 1991, that is, the CC waited six years before stipulating these constitutional requirements. Otherwise it was clear, that the lack of remedy against the parliament's resolution on the rejection of a national referendum was unconstitutional irrespective of whether the right concerned was a fundamental right or just a statutory right.

In 1997 the CC declared, that the protection of the objective side of the right to take part in a referendum must be reinforced by procedural guarantees, to ensure that referenda initiated can in fact be held with no political factors influencing the process, apart from the will of the voters. This requirement made the establishment of legal controls and remedies necessary at several points of the process. The CC stated that this control shall be ensured by the ordinary courts or by the CC itself. While the CC did not differentiate between the two types of legal control in the grounds of the decision, the operative part of the decision stipulated the mandatory involvement of the CC in the system of remedies against certification decisions.[32]

The Parliament fulfilled these constitutional requirements, establishing the National Election Committee[33] as a body responsible for the preliminary[34] certification of referendum questions submitted with the CC controlling the decisions rendered by the NEC. The ordinary remedy forum of NEC's decisions was the CC, which was empowered and obliged

32 Although this paper focuses primarily on the models established for the protection of the right to take part in a referendum, it must be mentioned that the CC extended its own scope of competences with this decision. Later, this competence of the CC acquired great significance, and with it, the CC actually strengthened its status in the system of separation of powers to the detriment of the parliament.

33 Hereinafter: NEC.

34 It was preliminary, because it preceded the collection of signatures.

to control whether the NEC's decisions conformed to the requirements laid down in the Constitution and in the Act on referendum. In fact, this competence is an outlier among the ordinary competences of the CC, which are related only to constitutional issues.
The Parliament elaborated a detailed referendum process in 1998, with explicit regard to the right to remedy. Besides supervising the certification of referendum questions, the CC controlled the parliament's resolutions ordering or rejecting referenda. Ordinary courts – namely the Supreme Court – were the remedy forum proceeding in cases where NEC decisions rendered on the authentication of the number of supporting signatures, the number of votes and issues relating to referendum campaigns were challenged. Although the ordinary courts also held remedy competences, the most important points of the process were controlled by the CC with the opportunity to influence NEC practice, developing hereby the conditions of direct democracy on the national level. Since the CC had the final say at the most crucial points of the referendum process, this system is called a Constitutional Court-centred model.
Of course, the CC-centred model also has its benefits and disadvantages. The most important argument speaking for this model is the strong constitution-centredness of the certification of referendum questions. The interpretation of the requirements governing the referendum question's certification (both as to whether it falls under the parliament's competence and is not an excluded subject-matter) and the relationship between direct and representative forms of democracy (fine-tuned by each decision rendered on the certification of a referendum question) go to the heart of constitutionalism, often resulting in "hard cases". From this point of view, the most competent forum for taking the final decision on the referendum question's certification is the CC. The difficulty of this task is well evidenced by the fact that in respect of the scope of parliamentary competence, the CC changed its jurisprudence twice within just two decades.[35] But the interpretation of several excluded subject-matters – such as hidden amendments of the constitution or questions concerning fiscal issues – were also specified in the CC's practice, which must be interpreted in the light of other rules and principles of the constitution. Owing to its competence in referendum cases, the CC could develop a consistent practice on issues related to referenda and other cases, too.
The biggest disadvantage of this model was that it exacerbated the case-load of the CC. Especially in 2006 and 2007, when the number of the referenda initiated and remedy cases was extremely high, their topics often frivolous[36], adjudicating these cases necessitated ample time, increasing the number of remainder cases[37].

The Curia-centred model

In the framework of the general overhaul of Hungary's legal system between 2010 and 2014, the referendum procedure and the competences of the CC were also amended. The

35 See point 4.

36 For example: "Do you agree that the beer shall be free in restaurants and bars?" or "Do you agree that the president of the republic shall use a scooter instead of ministerial car?". Although these questions are obviously inappropriate for a referendum, the decision-making was nevertheless surprisingly complex.

37 In 2010 the CC was in four years' (!) delay. https://alkotmanybirosag.hu/uploads/2017/08/statisztika_ossz.pdf.

first step of the referendum procedure remained almost unchanged: the NEC decides on the certification of the referendum questions initiated. The remedy forum against NEC's decision changed: the Curia – formerly named SC – became the general control body of the NEC.

The disadvantages of this model must be also mentioned. Firstly, as a formal aspect, the issue of case-load should be addressed: Curia judges have a much higher case-load, than the members of the CC owing to their other competences. Accordingly, the Curia can dedicate much less time to a referendum case than the CC.[38] This is all the more problematic, if we take into account the difficulty of these cases. As mentioned above, several aspects of the certification of referendum questions require the interpretation of the constitution. Besides the lack of time, another problem may be raised in relation to the interpretation of the constitution: due to the Curia's new competence, the number of the constitution-interpreting body's members was doubled. Although the decisions of the CC are binding upon everyone, in practice, the Curia can cut itself adrift from the CC. The reason for this is quite simple: the real chance to relegate the Curia's decision to the CC is quite low. With 2012 the institution of constitutional complaint was extended and, following the German model, the so-called 'real constitutional' complaint was introduced by the Fundamental Law and the 2011 Act on the CC.

The point of the real constitutional complaint is to create a quasi remedy forum against the decisions of the ordinary courts, if they are based on an unconstitutional interpretation of the law. The real constitutional complaint is not an ordinary type of remedy[39], and it is really difficult to submit an admissible complaint. The following requirements must be met for an admissible complaint:

a) it can be submitted by the person or organisation affected by the court decision;
b) the court decision is contrary to the Fundamental Law;
c) the court decision violates their rights laid down in the Fundamental Law, and
d) the possibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available to him or her;
e) the decision was made regarding the merits of the case or was another decision terminating the judicial proceedings;
f) the conflict with the Fundamental Law significantly affects the court decision, or the case raises constitutional law issues of fundamental importance.

Points e) and f) are classical 'de minimis'-rules giving a broad margin of discretion to the CC in deciding whether or not to accept a complaint. These conditions are the most important filters preventing the CC from turning into a part of the judiciary. The CC relies on these points often as the basis for refusing complaints[40], but it has particularly stressed the significance aspect in referendum cases, because the CC only deals with those parts of the

38 RADICS, Katalin Adél: Ami a Parlamentet is köti: népszavazás a jogalkalmazók szemszögéből [By What Even the Parliament is Bound: Referendum from the Point of View of Those Applying the Law], in: *Parlamenti Szemle [Parliamentary Review]*, 3, 2018, 1, 161.

39 In the exact words of the Hungarian law, the constitutional complaint is not a "remedy", it just has the characteristics of a remedy.

40 Decision no. 3195/2015. CC.

Curia's decision that are directly based on the Fundamental Law. As pointed out above, there are several requirements that must be met for the certification of the referendum question; these are based on Act on referendum, not the constitution. The CC's decision will be without prejudice to the Curia's decision in these (non-constitutional) aspects, even if they influence the enforcement of the right to take part in a referendum.[41]

The condition laid down in point d) is automatically met, since the Curia is the highest forum in the system of the ordinary judiciary, therefore, legal remedy is not available against its decisions. The requirement under point b) is fulfilled in case the complaint meets the requirement set forth in point c): a decision that violates a fundamental right is *per se* contrary to the Fundamental Law (because it is the Fundamental Law that contains the fundamental rights).

In respect of point c), it is of course the right to take part in a referendum and the right to fair trial upon which the complaint may be based. Therefore, most of the decisions of the CC dealing with Curia decisions on the certification of referendum questions interpret the scope of the right to take part in a referendum. This element of the acceptance-test is particularly strict: there are hundreds of rules in a constitution that do not form part of the chapter on fundamental rights (fundamental principles, values, procedural rules, rules on competences, etc.). The CC interprets this requirement extremely narrowly: a complaint stated, that the Curia erred in its interpretation of the parliaments' competence (see the requirements applicable to the certification a referendum question), yet the CC did not consider this to be grounds for allowing the complaint. Hence, a general reference to the violation of the right to take part in a referendum owing to the misinterpretation of a certification requirement (even where this is contained in the Fundamental Law) shall not suffice for the CC to declare the violation of this right.[42]

Point a) is also a narrowly interpreted element of the acceptance-test, because the CC stated, that the mere fact that an individual has the right to vote shall not make him directly concerned by the Curia's decision.[43]

Some issues affecting the status of referenda in the constitutional system

Subject-matters

Subjects-matters play the most important role in increasing or limiting the relevance of referenda in a constitutional system: if there are topics where holding a referendum is compulsory, direct democracy has automatic avenues to prevail. On the other hand, the legal and political elbow-room of the bodies of representative democracy can be ensured by stipulating topics excluded from referendum subjects. The greater the number of compulsory subject-matters, the stronger direct democracy will be, meanwhile, increasing the number of excluded topics will weaken direct democracy.

41 Decision no. 28/2015. (IX. 24.) CC.

42 Decision no. 3003/2014. (I. 31.) CC.

43 Decision no. 3150/2016. CC.

Although the 1989 Act on referendum expressly declared that a new constitution shall be reinforced by a national referendum, the CC excluded the people from partaking in the constitution-making power, as this is the exclusive competence of the parliament.[44] Between 1989 and 1993 no new constitution was made, hence, this compulsory referendum topic was never applied in practice.

There was only one topic where holding a referendum was compulsory according to the constitution, namely, EU-accession. Of course, it was not a normative rule of the Constitution, and after the holding this referendum in 2003, this rule was automatically repealed.

Except for the unconstitutional requirement laid down in the 1989 Act on referendum and the "single use" rule on the compulsory referendum on EU-accession, the mandatory referendum was not part of the Hungarian constitutional system.

Since the change of political regime, the most important requirement regarding the subject matter of the referendum initiative is that it must fall under the competence of the Parliament. Because of the general legislative competence of the Parliament, at first sight this requirement is only a distinction between the subjects regarding national and local issues – and accordingly, between national and local referenda[45], but it can be used as a real restriction of national referendum initiatives. The role of this requirement must be interpreted in the light of the Parliament's legislative power. As mentioned above, the CC's jurisprudence changed twice in this subject-matter, but finally the CC chose the 'referendum-friendly' interpretation. On the other hand, the Curia interprets this requirement in a highly restrictive – and in my opinion unconstitutional – way. The concrete question was the following: if the Parliament authorized the Government or a member of the Government to regulate a topic, does the Parliament lose its legislative power this very area? Although acts adopted by the Parliament rank higher in the hierarchy of legal norms, than governmental decrees, the Curia declared that Parliament loses its legislative power in such cases.[46] The Curia's interpretation favours the parliamentary majority and its politically loyal Government. This makes it easy to forego referendum initiatives on certain topics: the Parliament only needs to authorize the Government to regulate that topic, and the topic is thereby excluded from the competence of the Parliament and hence, from the subject-matters of referenda.[47] It was debated, whether the question underlying the "migrant quota referendum" falls under the competence of the Parliament, since it read as follows: "Do you want to allow the European Union to mandate the resettlement of non-Hungarian citizens to Hungary without the approval of the National Assembly?" The question had as its subject the competences of EU decision making bodies, not the Hungarian Parliament. Nevertheless, the Curia interpreted this requirement in a referendum-friendly way.[48]

44 Decision no. 2/1993. (I. 22.) of the CC.

45 Distinguishing between national and local questions is rarely a difficult task. This is well illustrated by the "NOLYMPICS" referendum initiative. Although the tender for the right to organize the 2024 Olympic Games seemed to have national relevance, formally it was Budapest as the capital city who was the candidate of the Olympic tender (not the whole country). Therefore, only a local referendum could be held on rejecting Hungary's – Budapest's – application.

46 Decision no. Knk.37.807/2012/2. of the Curia.

47 For the history and questions related to the Parliament's competence see: ERDŐS, Csaba: A rendeleti szabályozás esete az Országgyűlés hatáskörével – avagy az Országgyűlés hatáskörébe tartozás mint népszavazási szűrő értelmezésének változásai [Changes in the Interpretation of the Parliament's Competence as a Filter for Referendum Initiatives], in: *Új Nemzeti Kiválóság Tanulmánykötet [Proceedings of the New National Excellence Program]*, Győr 2017, 168–179.

48 The CC rejected the constitutional complaint submitted against the Curia's decision, because it was not admissible. (See point 4.3.). Decision no. 3151/2016. (VII. 22.) of the CC.

Legal provisions governing referenda traditionally abound with excluded subject-matters. Excluded topics are those on which holding a referendum is prohibited, notwithstanding the fact that they actually do fall under the competence of the Parliament. The 1997 constitutional amendment not only elevated the rules on excluded subject-matters to the level of the constitution, but also extended the scope, the number of excluded topics. The 1989 Act on referendum foresaw only three excluded subject-matters (fiscal questions, personnel decisions and issues relating to international treaties), while the 1997 constitutional amendment listed ten (!) excluded topics. The Parliament, as the legislator of the constitutional amendment, did not follow the CC's decision on declaring constitutional amendments to be an excluded topic, because the Constitution following its 1997 amendment merely declared its provisions on national referenda to be excluded subject-matters. In spite of the Constitution's text, the CC upheld its jurisprudence on this question, and it defended the entire text of the constitution from referendum initiatives.

The Fundamental Law changed the scope of excluded subject-matters, but it was much rather a fine-tuning than a model-change: it specified constitutional amendments in conformity with CC jurisprudence, extending the list of excluded topics with acts governing the election of MPs, MEPs, local self government representatives and mayors. The next table shows the changes made regarding the extent of excluded subject-matters:

Table 1 Overview of excluded subject matters

1989–1997	1997–2011	2012–
-	provisions of the Constitution on national referenda	any matter aimed at the amendment of the Fundamental Law
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		
-	-	the contents of the Acts on the elections of Members of the National Assembly, local government representatives and mayors, or Members of the European Parliament
any obligation arising from international treaties		
personnel matters and matters concerning the establishment of organizations falling within the competence of the National Assembly *(Government's program)*		
-	the dissolution of the National Assembly	
-	the dissolution of a representative body of a self-government	
-	the declaration of a state of war, state of national crisis or state of emergency, **furthermore the declaration or extension of a state of preventive defence**	
-	any matter related to participation in military operations	
-	the granting of general pardons (amnesty)	

Source: own compilation

The interpretation of excluded subject-matters affects the relationship between direct and representative democracy. Although both the CC and the Curia stated the need for a narrow interpretation of this requirements, their jurisprudence are in flux, particularly on budgetary issues.

Personal scope of rules governing the submitting of referendum initiatives

The most important indicator of the popular or elite (government or opposition)-friendly models of referenda is the personal scope of rules governing the submitting of referendum initiatives. The 1989 Act on referendum, the Constitution after 1997 and the Fundamental Law also foresaw a competence for initiating referenda for the head of state and the Government, but they also knew the popular initiative. The 1989 and 1997 rules ensured the submitting of referenda as a collective right of MPs. From 1989 to 1997 50 MPs (approx. 13 % of MPs) could initiate a facultative referendum, between 1997 and 2011 one-third of the MPs held this right. Since this right could be exercised by a qualified minority of MPs, it was a right of the parliamentary opposition.[49] This oppositional right was quite weak, because – just like the head of state and governmental initiated referendum, the one initiated by the opposition was a facultative referendum. This means, that the Parliament (with relative majority) decided freely on whether or not to order the referendum (i.e. it was a political question). Initiating a facultative referendum cannot be a tool for obstruction,[50] therefore, the opposition could not force the parliamentary majority to comply by submitting the initiative.

Although the referenda initiated by the Head of state or the Government were also facultative, thanks to party- and faction-discipline, the Government – leaning to the governmental side of parliament (the parliamentary majority) – can easily achieve the ordering of a national referendum. From this point of view, the rules governing initiating and ordering referenda are government-friendly. But what is the reason for a government-initiated referendum, if the Government – thanks to its majority in the parliament – can rule the legislative activity of the Parliament without the need for any form of direct democracy? On the one hand, political communication, and need for setting the agenda of political discourse may be the explanation for the existence of government initiated referenda.[51] Another reason could be the system of qualified majority legislation: in Hungary there are several topics, which may be regulated by cardinal acts, i.e. acts adopted by a two-thirds majority of the MPs present. If the Government wants to amend a cardinal act, but does not have a two-thirds majority in the Parliament, the Government can force the Parliament's hand via a valid and conclusive referendum, because the decision made in a referendum is binding upon the Parliament.[52]

49 For the oppositional rights see: SMUK, Péter: *Ellenzéki jogok a parlamenti jogban [Rights of Opposition in Parliamentary Law]*, Budapest 2008.

50 SMUK, Péter: *Rights of Opposition in Parliamentary Law*, Győr 2007, online: http://www.sze.hu/~smuk/DoktoriIskola/Fokozatszerzes/Smuk/Summary_Smuk.pdf.

51 The last Hungarian referendum – the so-called "migrants-quota referendum" – was initiated by the Government and it suited to governmental policy, which has an anti-migration focus since 2015.

52 For this problem see point 4.4.

A voters-initiated referendum can be compulsory or facultative, depending on the number of signatures collected. In 1997 the number of signatures necessary was doubled, which made initiating a referendum much more difficult. It was a "parliament-friendly", and, accordingly "counter-referendum" amendment. It may be understood as a step, which confines the "civilian face" of referenda and emphasizes the role of the political elite in the referendum procedure – especially parties from the side of both the government and the opposition. Since 1997 the strongest form of direct democracy, the compulsory national referendum can only be initiated by 200,000 voters, representing approximately 2.5 % of the voters. Although it is an not a strict requirement in international comparison[53], collecting 200,000 valid signatures is almost impossible without the help of a party.[54] Meanwhile, this threshold it is not a strong limitation for a well-organized party[55].

The following table shows the changes affecting the initiation of compulsory and facultative referenda:

Table 2 Changing of the minimum number of signatures needed for initiating a referendum

	1989–1997	1997–2011	2012–
Compulsory	- 100,000 voters	- 200,000 voters	- 200,000 voters
Facultative	- 50,000 voters - head of state - Government - 50 MPs	- 100,000 voters - head of state - Government - one-third of MPs	- 100,000 voters - head of state - Government

Source: own compilation

Finally, another restriction of administrative nature to voter-initiated referenda should be noted: where the organiser of a citizen-initiated referendum is a private individual, the question shall be submitted with supporting signatures of at least twenty voters whose maximum number must not exceed thirty. This rule, which aims to prevent frivolous initiatives, was put into effect by the 2013 Act on referendum.

53 BERAMENDI et al., 69; KOMÁROMI, 153.

54 In the past decade there was only one initiative, that could collect more than 200,000 signatures without party support: in 2009 a private individual, Mária Seres initiated a referendum on the topic of the MP's allowance. Later she established a political party, this however did not become a relevant power in the Hungarian political system. In 2017 a local referendum initiative, the "NOLYMPICS" initiative was how the Momentum Movement entered the national political arena. Momentum become a party a few months after its referendum campaign, and it gained more than 1 % in the 2018 parliamentary elections. It must be noted, that these two initiatives did not result in the holding of referenda, because the Parliament modified the regulation on MP's allowances and the representative body of the Budapest self-government withdrew its application for the 2024 Olympic games, following the collection of the necessary signatures, albeit just before the day of voting.

55 The incumbent governing party, Fidesz initiated a referendum on three questions in 2007. In that year Fidesz was an opposition party. The three questions were about social issues, which were in the focus of the Government's reforms, but they were extremely unpopular (university tuition fee, doctor's visit fee, fee for hospital stay). Fidesz collected more than 300,000 signatures within 48 hours(!). The Act on referendum ensured 120 days for collection.

Result

Requirements set forth in respect of the referendum's result attest to the level of difficulty of achieving a legally binding result by referendum. The stringency of the relevant rules is evidenced by the legal distinction made between validity and conclusiveness. Validity means a turnout quorum, while conclusiveness refers to the distribution of valid votes. The stricter the turnout threshold, the less "referendum-friendly" the regulation is, because mobilization of voters is a difficult task.

During the three decades examined in this paper, two models of referendum results existed: between 1989 and 1997, and after 2012 distinction was made between validity and conclusiveness. In these periods, validity meant that more than half of all voters had cast valid votes (turnout). The referendum was considered as conclusive if more than half of those who had voted validly gave the same answer to the referendum question. In practice, this meant that a valid referendum could be non-conclusive, if each options of answer gains the same amount of votes. Since it is only a hypothetical possibility, it is clear, that it is validity, which is the relevant requirement.

The other model regarding referendum results was introduced only a few days prior to the referendum on NATO-accession. Surveys showed, that the expected turnout will not reach the 50 % limit. An amendment of the constitution the formally abolished the turnout quorum, yet in the framework of the requirement of conclusiveness it was retained as an approval quorum[56]: the votes cast in favour of a proposal must reflect 25 % of registered voters. Hence, there was no explicit turnout quota, but a referendum would not be considered conclusive, if less than 25 % of voters cast a valid vote.[57]

Effects of referenda – Legal consequences

The effect of a referendum may be binding or consultative. Before the Fundamental Law came into effect, the Hungarian rules governing direct democracy provided for a consultative type of national referendum. Despite the fact that the law foresaw a possibility of organizing a consultative referendum, no such referendum was held during this period. From this point of view, the Fundamental Law did not change the relationship between the direct and representative democracy *de facto*, but merely adjusted the rules to actual practice (reality).

The result of a referendum was never considered to be a source of law, so it was never directly applicable. The Parliament is the only addressee of the result of a valid and conclusive referendum. In light of the voters' decision, the Parliament shall adopt a new act, or amend, repeal or leave intact existing regulation. The result of a referendum shall bind the Parliament for a period of three years: during this period, law must meet with the ref-

56 BERAMENDI et al., 69.

57 The national turnout was 49.24 % at the NATO referendum, so without the modification of the result requirements, this referendum would have been invalid (source: http://www.valasztas.hu/nep97/index.htm). The turnout at the referendum on EU-accession was 45.62 %, so it would have also been an invalid referendum according to the old/new regulation. The 2016 referendum on the migrant quota would have been conclusive, if the Fundamental Law would not have reintroduced the validity requirement (the turnout was 44.08 %).

erendum's result. This is the strongest effect of the referendum when compared with other forms of direct democracy. There are several institutions, procedures which may be used to put political pressure on the Parliament (for example, by exercising the freedom of assembly), but the referendum is the only one which can restrict the Parliament's political and legislative elbow-room for a certain period of time.[58]
At the same time, the need for the Parliament to take action to implement the result of the referendum reflects the limitations of this form of direct democracy. The legally binding force of the referendum decision becomes illusory, if it cannot be enforced *de facto*. The Parliament as a whole (as a constitutional body) is obliged 'execute' the decision taken in referendum. But the single MPs have a free mandate, they shall not be called to account for their vote. If the Parliament neglects its legislative duty arising from a referendum decision, the only legal consequence can be the CC's decision establishing the Parliament's omission. Nevertheless, the rules stipulated by the referendum's results cannot be enacted without the Parliament.

Conclusion

During three decades of the Third Hungarian Republic, the national referendum's constitutional role and model changed several times owing to the amendment of the relevant legislation and the changes in the CC's and Curia's jurisprudence. As a conclusion, it can be stated that a clear trend may be identified from the regulation of referenda: the clearly "referendum-friendly" 1989 rules were amended to become mainly "parliament-friendly". It must be noted, that while the Hungarian constitutional system (unlike German or US system) still contains the institution of national referendum, the citizen-initiated "referendum threat"[59] is decreasing tendentiously. Meanwhile, the political elite, especially the Government and the strongest parties have the greatest chance of organizing a successful referendum. Restrictions have increasingly been put in place at crucial points of the regulation: the abolition of the compulsory referendum in the constitution-making process, increasing the number of the excluded subject-matters, doubling the number of the signatures needed for a citizens-initiated referendum reflect this course.

58 This is why the legality of not ordering a compulsory referendum is questionable, though the Act on CC foresees such an opportunity: the "CC shall only carry out an examination regarding the merits of the resolution if, between the authentication of the signature-collecting sheets and the ordering of the referendum, the circumstances changed to a significant degree in a manner that may significantly affect the decision, and if said changes could not be taken into account by the National Election Committee or the Curia when making a decision on the authentication of the question or the decision on the review thereof." Act CLI of 2011 on CC, Section 33.
It is typical in respect of "hot topics", that Parliament acknowledges the success achieved in collecting the necessary signatures, and thus modifies the regulation underlying the referendum initiated, in the way that conforms to the presumed will of the people. Such backing down can prevent a referendum which may easily be interpreted as a vote against the Government. (Such successful initiatives covered for example: MP's allowance, compulsory closing on Sundays in the retail sector, NOLYMPICS.)

59 The "referendum threat" can force professional politicians (the political elite) to consider the voters' will. This is an indirect effect of referenda, because it affects political conditions only through a mere possibility of a popular referendum. BÜCHI, Rolf: Reflections on the Social Production of Incompetent Citizens, in: *Direct Democracy in Europe*, PÁLLINGER, Zoltán Tibor – KAUFMANN, Bruno – MARXER, Wilfried – SCHILLER, Theo (eds.), Wiesbaden 2007, 76.

There were some points in the regulation, which aimed at the strengthening of the citizen-initiated referendum. The most important element of this trend was the establishment of the fundamental rights-oriented model of direct democracy and the creation of a remedy system in the referendum process. As I have pointed out, it is difficult to interpret several aspects of referendum in the fundamental rights oriented model of the direct democracy, so it could not counterbalance those elements of the regulation which pose limitations to the citizen-initiated referenda. The changes in the models of protection for the fundamental right to take part in a referendum had institutional consequences, too. In fact, the interpretation and protection of this right led to the modification of the system of the division of powers. Bodies involved in the application of the relevant rules, and in particular, the CC had a great impact on the development of the regulatory framework. Indeed, the jurisprudence of the CC was decisive for the most recent change of protection model: without the strict interpretation of the acceptance test elements for the admissibility of constitutional complaints, access to the CC would be easier, and, as a result, the Curia would not have a leading role in the interpretation of the constitutional rules regarding the certification of referendum questions.

The role of those bodies which apply the rules governing referenda, namely the Curia and the CC is decisive for determining the place of the referendum in the constitutional system. The jurisprudence of these bodies did not follow such a clear trend as the regulation. The CC played a relevant role in the development of the regulation, sometimes even directly, by formulating constitutional requirements to be implemented by the legislator. Both the CC's and the Curia's jurisprudence contain decisions in favour of referenda and against this form of direct democracy, so their jurisprudence is in a constant flux. For example, the development of the fundamental rights oriented model of referendum was important for supporting and protecting direct democracy, and in particular, its strongest form, the citizen-initiated referendum. On the other hand, the enhanced protection of the Parliament's constitution-making power weakened direct democracy.

There are several break-out points in the Hungarian regulation of referenda. It is worth considering a conceptual turn in the relevant regulation: the present model focuses on the restriction of direct democracy; this is clearly shown by the number of excluded subject-matters. There are several examples from other countries, that the subject matters presently excluded in Hungary, are less threatening than they seem. Even if it is the political and constitutional culture that is decisive in the extension of direct democracy, introducing a compulsory referendum to approve constitution-making or amending legislation is recommended to ensure greater legitimacy for the Parliament's constitutional decision.

References

ACKERMAN, Bruce: The New Separation of Powers, in: *Harvard Law Review*, 113, 2000, 3, 633–729.

BERAMENDI, Virginia et al.: *Direct Democracy. The International IDEA Handbook*, Stockholm 2008.

BODNÁR, Eszter: *A választójog alapjogi tartalma és korlátai [The Substance and Limits of the Fundamental Right of Suffrage]*, Budapest 2014.

BÜCHI, Rolf: Reflections on the Social Production of Incompetent Citizens, in: *Direct Democracy in Europe*, PÁLLINGER, Zoltán Tibor – KAUFMANN, Bruno – MARXER, Wilfried – SCHILLER, Theo (eds.), Wiesbaden 2007, 71–81.

CSINK, Lóránt: A Kúria határozata a Paksi Atomerőmű bővítésével kapcsolatos népszavazásról [The Decision of the Curia on the Referendum About the Enlargement of the Nuclear Power Station in Paks], in: *Jogesetek Magyarázata [Explanation of Legal Cases]*, 5, 2014, 3, 37–42.

ERDŐS, Csaba: A rendeleti szabályozás esete az Országgyűlés hatáskörével – avagy az Országgyűlés hatáskörébe tartozás mint népszavazási szűrő értelmezésének változásai [Changes in the Interpretation of the Parliament's Competence as a Filter for Referendum Initiatives], in: *Új Nemzeti Kiválóság Tanulmánykötet [Proceedings of the New National Excellence Program]*, Győr 2017, 168–179.

GYŐRFI, Tamás et al.: Alkotmányos alapelvek, ellenállási jog [Constitutional principles, right to resistance], in: *Az Alkotmány kommentárja [Commentary of the Constitution]*, JAKAB, András (ed.), Budapest 2009, 127–238.

KOMÁROMI, László: Közvetlen demokratikus hagyományok és modellek: alapkérdések, kockázatok és esélyek [Direct Democracy Traditions and Models: Fundamental Questions, Risks and Opportunities], in: *A népszavazás szabályozása és gyakorlata Európában és Magyarországon [Legal Framework and Practice of Referendums in Europe and Hungary]*, GÁVA, Krisztián – TÉGLÁSI, András (eds.), Budapest 2016, 144–146.

PETRÉTEI, József: Az országos népszavazásról [On the National Referendum], in: *Kodifikáció [Codification]*, 2016, 2, 5–42.

RADICS, Katalin Adél: Ami a Parlamentet is köti: népszavazás a jogalkalmazók szemszögéből [By What Even the Parliament is Bound: Referendum from the Point of View of Those Applying the Law], in: *Parlamenti Szemle [Parliamentary Review]*, 3, 2018, 1, 157–161.

SMUK, Péter: *Rights of Opposition in Parliamentary Law*, Győr 2007, online: http://www.sze.hu/~smuk/DoktoriIskola/Fokozatszerzes/Smuk/Summary_Smuk.pdf.

SMUK, Péter: *Ellenzéki jogok a parlamenti jogban [Rights of Opposition in Parliamentary Law]*, Budapest 2008.

TÉGLÁSI, András: A népszavazáshoz való jog mint alapjog [Right to Take Part in Referenda as a Fundamental Right], in: *Acta Humana*, 2, 2014, 2, 91–103.

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Local referendum and assembly of municipality inhabitants in the Slovak Republic[1]

PhDr. Tomáš ALMAN, PhD.

Abstract

The paper deals with the local referendum and assembly of municipality inhabitants as the forms of direct democracy under the conditions of the Slovak Republic. The paper pays the special attention to highlighting the legal and application problems connected with these institutions in the Slovak Republic. The problems are caused especially by the legal regulation which is terse in its content, unambiguous and essentially incorrect, what, in the end, influences the exercise of local self-government. The aim of the paper is to identify the position of local referendum and assembly of municipality inhabitants as the form of exercise of local self-government, along with other forms, through the analysis of respective scientific literature, legal regulations and other sources and I will try to highlight the specific lacks mainly in the legal regulation, to evaluate the situation and to provide some suggestions and solutions.

Keywords

local referendum, assembly of municipality inhabitants, municipal self-government, direct democracy

Introduction

The given paper is content-oriented to the legal and application problems of local referendum and assembly of municipality inhabitants as the forms of direct democracy in the Slovak republic. The paper pays a special attention to highlighting the functions of self-government, the democracy principle within the given forms and, by analogy, to express their nature and significance. I will follow these institutions from the point of view of the current public administration in the Slovak Republic, from the constitutional point of view and with regard to the focus of the mentioned grant (VEGA grant project: 1/0340/17 Forms of Implementation of municipal self-government), not from a historical and political point of view or from a theoretical point of view. Thus, the target focus of the paper has several lines that determine a formulation of the content and structure. In addition to above men-

1 The paper was elaborated as part of the VEGA grant project: 1/0340/17 Forms of Implementation of municipal self-government.

tioned, after the evaluation of the problems detected, the paper will focus on the possible solutions of making both, the local referendum and assembly of municipality inhabitants, functioning in order to guarantee the relevant participation in governance from the part of a municipality inhabitants as well as general public.

The constitutional departures of local referendum and a municipal inhabitants' assembly

The essence of self-government as a whole, including the local self-government[2], is autonomy. However, this autonomy is not based on an absolute wilfulness, it always must be within the framework of the legally defined remit. It is possible to identify common features such as collective decision making, majority rule, citizenship rights, easier organization (in small entities), savings of finances, close interconnection of the inhabitants and problem etc. Differences we find in the organization, the opportunity to present, the exclusion of the debate (referendum). Similar conclusions can be found in several works.[3]

However various forms the decision-making may have, the intended target should be the same. The main purpose of the decision-making should be a chance of the largest possible number of subjects (a municipality inhabitants) to participate in the exercise of self-government and thus to properly ensure the public good and the municipality development. Similar starting points and theses are also found in the European Charter of Local Self-Government or the Venice Commission' Code of Good Practice on Referendums. The first mentioned international document contains key ideas in the preamble or in the individual articles. For example based on the Art. 3 *"local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of local population."*

The significance and essence of the forms of direct democracy under examination are, according to my opinion, emphasized also by a "higher" legitimacy, since the historical context and social development confirmed the cardinal position of direct forms of democracy at the legitimacy of taking the principal decisions that are connected with the interests of a local society. The given trend is confirmed especially at the level of a municipality, the forms of local direct democracy are logically more easily feasible within a smaller territory, what demonstrates the immediacy and interconnection of the exercise of self-government and the rights and interests of inhabitants of those territorial units.[4]

The local referendum and assembly of inhabitants are undoubtedly the institutes of general significance in which the above mentioned functions and especially the democratic principle are coupled. Therefore, the local referendum and assembly of municipality inhabitants as the forms of direct democracy under the conditions of the Slovak Republic should have the proper significance, legal status and weight, legal protection and, in particular, the precision constitutional regulation. First of all, the last mentioned reproach is confirmed by the application practice, since many problems arise in this sphere and on its basis.

2 Local self-government in the following meaning also as municipal self-government.

3 For example in KROUSE, Richard W.: Polyarchy & Participation: The Changing Democratic Theory of Robert Dahl, in: *Polity*, 14, 1982, 3, 442 and the following.

4 BERAMENDI, Virginia et al.: *Direct Democracy. The International IDEA Handbook*, Stockholm 2008, 50 and the following.

The constitutional regulation of the local referendum and assembly of municipality inhabitants under the conditions of the Slovak Republic or of other Member States of the European Union has a heterogeneous nature. Taking the fact that the Union leaves the Member States free in the regulation of local administrations, the forms of direct democracy follow various trends and specifications. Most of the Member States of the European Union have the elements of the local direct democracy directly in the constitutions to a varying extent (e.g. a brief regulation in Belgium or Portugal, or wider incorporation by content of direct democracy in Italy or Spain). Most of the states have the reference to the regulation of the organic special ruling and it is also worth noting that there are provisions defining the subject and course of the given forms. The forms of local direct democracy do not find their position in the constitutions of the states such as Denmark, Finland or the Netherlands, where the organic law plays the dominant role.

The constitutional regulation of the local referendum and assembly of a municipality inhabitants in the Slovak Republic has a special regime. In addition to the general provisions on a legal, democratic state and provisions about political rights especially in Article 67 of Act No. 460/1992 Coll., the Constitution of the Slovak Republic as amended by later regulations (hereinafter referred to as the Constitution of SR). Pursuant to Article 67 of the Constitution of SR, municipality inhabitants' assemblies shall realize a territorial self-government by local referendum, by referendum on the territory of the higher territorial unit, by municipality authorities or by higher territorial unit authorities. The manner of carrying out the local referendum or referendum on the territory of a higher territorial unit shall be laid down by a law.[5]

It results from the legal listing that the constitution-maker disregards purposefully the assembly of higher territorial unit's inhabitants by the reason of a larger area and high number of inhabitants of a self-governing region.

The organic law of the regulation of local referendum and a municipality inhabitants' assembly is not a special law which would exclusively regulate the areas under examination, for this purpose there is the Act on Municipal Establishment. Municipality inhabitants' assembly has no reference to a regulation by special ruling.

Comparison with other legal institutes at the national level

Both the manners of the exercise of territorial self-government resemble, by their titles and to a certain extent by their forms, another two institutes that are also incorporated in the Constitution of the Slovak Republic – nationwide referendum and public assembly. The analogy is more considerable and distinct in the case of local and nationwide referendum. The nationwide and local referendum differ by the extent of regulation in the Constitution of SR and in law. The Constitution of SR deals with referendum in its whole Section two (Articles 93 to 100) of Title Five, the local referendum is mentioned only in above mentioned Article 67, Subsection 1. The Constitution of SR, in relation to nationwide referendum and local referendum states that the manner of their carrying out shall be laid by a law. In rela-

5 Acts Nos. 369/1990 Coll. on Municipality Establishment as amended by later regulations (hereinafter as Act on Municipality Establishment) and 302/2001 Coll. on Self-Government of Higher Territorial Units (Act on Self-Governed Regions) as amended by later regulations.

tion to the nationwide referendum, there is Act No. 180/2014 Coll. on Conditions of Execution of the Right to Vote and on amendments to some acts. In relation to the local referendum, there is a legal regulation in the above mentioned Act on Municipal Establishment.
The right to peaceful assembly is guaranteed by the Constitution in Article 28 as one of political rights. The individual legal regulation of this execution is included in Act No. 84/1990 Coll. on the Right to Assembly as amended by later regulations (hereinafter referred to the right to assembly). Despite the terminological similarity between (public) assembly and the municipality inhabitants' assembly, they are two diametrically different legal institutes. While in the case of the assembly pursuant to Article 28 of the Constitution of SR and to Act on the Right to Assemble, it is the exercise of one of the fundamental rights and can be convened for any purpose[6], the municipality inhabitants' assembly is the manner of the exercise of self-government by the municipality's inhabitants. While, in relation to the public assemblies, the Constitution of SR explicitly regulate that an assembly shall not be subject to a permission of a body of public administration (Article 28, Subsection 2), the municipality inhabitants' assembly can be held on the basis of a decision of the municipal council (Article 11, Subsection 4, Paragraph f)) of the Act on Municipality Establishment).[7] While a public assessment can be convened by any citizen of the Slovak Republic over the age of 18, a municipality inhabitants' assembly, following the amendment of Act on Municipality Establishment, can be convened by the municipality council or mayor of the municipality or, under certain circumstances, also by a district authority office in the seat of region. It is their reserved power. The municipality inhabitants' assembly cannot be convened by other self-government body (a council board, a commission, a municipal office) and neither can anyone else. If such assembly convened anyone else than above mentioned subjects, it would not be the assembly of municipality inhabitants pursuant to the Constitution of SR and the Act on Municipality Establishment.[8]
Taking into account the structure of paper, it is necessary to note here the above mentioned amendment to the Act on Municipality Establishment No. 70/2018 Coll. This amendment enlarged the list of subjects that are authorized to call a municipality inhabitants' assembly along with a municipality council. The change raised can be understood as the response to long-term discussions that refer just to this problem, while the discourse was noted both in practice as well as among theoreticians. For example Krunková[9] considered the municipal council's disposal of exclusive power to call the municipality inhabitants' assembly to be the misstep of the lawmaker since other subjects were excluded and omitted at its initiation. The given author offered as possible subjects the municipality inhabitants or the council board.

6 Except for purposes that are excluded by Act on Right to Assemble in Section 10 Subsection 1.

7 From 1 April 2018, after the amendment of the Act on Municipality Establishment, the municipality inhabitants' assembly can also be called by mayor of the municipality. The municipality inhabitants' assembly can also be called by the district office in the region seat, within the territorial area of which, the non-functioning municipality is located. The municipality inhabitants' assembly is called upon the initiative of the Ministry. See details in Section 2aa of the Act on Municipality Establishment.

8 STODOLA, Dušan – DOSTÁL, Ondrej – KUHN, Ivan: *Zhromaždenia obyvateľov obce a miestne referendá*, Bratislava 2013, 3–6, online: http://samosprava.institute.sk/zhromazdenia-obyvatelov-obce-a-miestne-referenda-2013#.WdPHu9FpHIU.

9 PALÚŠ, Igor – JESENKO, Michal – KRUNKOVÁ, Alena: *Obec ako základ územnej samosprávy*, Košice 2010, 184.

The addition of district office in the region seat is clear response to a municipality malfunctioning. In my opinion, the addition of a mayor of municipality can be considered as the more considerable attribute. Since it is whole new institute, the evaluation is limited by time and it is not possible to offer the respective findings based on the application practice. I believe that this reform will bring at least polemics and discrepancies among experts for the area under examination. In my opinion, the disputes will relate, in particular, to the principle of the separation of powers among the municipality bodies, "settling things" between them, searching for an analogy with similar institutes at various levels at home and abroad. Regardless of an inducement and motive of this transformation, it is necessary to leave some time for practice and subsequently it will be possible to take a strict standpoint. The assemblies of municipality inhabitants and local referendum are regulated also by other provisions of the Act on Municipality Establishment. The Act on Municipality Establishment confers the right to elect the bodies of municipality self-government on municipality inhabitants and to be elected into the above mentioned bodies (Section 3, Subsection 2, Paragraph b)) and the right to vote about important issues of the municipality life and development (local referendum) (Section 3, Subsection 2, Paragraph b)) and the right to participate in the municipality inhabitants' assemblies and to express their opinions within the assemblies (Section 3, Subsection 2, Paragraph c)). In Section 4, Subsection 2, the Act on Municipal Establishment defines that the self-government is exercised by the municipality inhabitants through a) the municipality bodies, b) a local referendum, c) an assembly of the municipality inhabitants. A local referendum announcing is the exclusive competency of the municipal council (Section 11, Subsection 4, Paragraph f)). In relation to the local referendum, Section 11a of the Act on Municipal Establishment also regulates the reasons (particular types of facultative and obligatory referendum) and the manner of its announcing, the creation of a commission for local referendum, giving the information to qualified voters, determination of validity and the manner of announcing of the results. It is also worth noting the regulation of specific types of local referenda – in the case of merging and division of municipalities (Section 2a) and in the case of the local referendum about removal of mayor of municipality (Section 13a). The validity of the results of local referendum is regulated directly in the Act on Municipality Establishment. Pursuant to Section 11a, Subsection 9 of the Act on Municipality Establishment, the results of the local referendum are valid, if at least a half of qualified voters participated in the referendum and if the decision was taken by absolute majority of valid votes of the participants of the local referendum.

Local referendum and assembly of municipality inhabitants – practice and problems

Taking into account the proved lackadaisical, stark and ambiguous polemics and the constitutional regulation which gives rise to two opinions, it is possible to divide the problem areas into two larger groups, while both the institutes under examination are concerned. For the first group the problems with constitutional aspect are typical, while the second group of problems relates to application practice. However, both the groups have, logically, the common content line.

It is possible to consider sometimes mentioned too vague and ambiguous constitutional regulation as the most significant problem. This fact causes the obstacles in practice for the right to participate in governance by municipality inhabitants, therefore also to their chance to achieve a self-realisation and to make to adopt self-decision about the most important issues.[10] I believe that failure to conduct the local referendum and assembly of municipality inhabitants gives rise to a negation of fundamental bases of democracy and self-governing. It forms the real requirement and obligation for liable entities to response such condition and to precise the position of both forms of direct democracy in the rule of order of the Slovak Republic. It is also possible to search for an inspiration in V4-countries, where the regulation is of better quality with more extensive content; the problems that are occurring in the Slovak Republic are often already solved in these countries. For example, the Czech Republic adopted the special law No. 22/2004 Coll. on Local Referendum and on amendment to several acts and made the institute of the local referendum functioning in comparison with the local conditions, removed many restrictions and thus contributed to the possibility of self-realisation of municipality inhabitants. Poland or Hungary also particularized the individual provisions relating to these institutes in the cardinal laws as well as in the laws dealing with the municipal self-government or in some special rulings.
The consequence of this negative regime under the conditions of the Slovak Republic is another problem – a disputable quorum for an initiation and subsequently of validity and effectivity of results of the local referendum. Nowadays, the loss of interest to utilize the right to participate in governance makes the initiation of a local referendum by at least 30 % of qualified voters, the participation of at least half of qualified voters and the necessity to take the decision by at least absolute majority of valid votes of the participants of the local referendum the problem that is hardly to overcome. Similarly, as for the previous area, there is also relevant an inspiration taken from surrounding countries, where the quorum is lower or staggered by the municipality size. It is necessary to state that the interest to participate in governance is also small in those countries but the quorum laid down in this way could be understood as a mean for recovery of the interest about self-governance from the part of municipality inhabitants also under the conditions of the Slovak Republic.

(Non)committal nature of the results

Another key, and currently still unsolved, problem is a (non)committal nature of the result of a local referendum and of municipality inhabitants' assembly for the municipality bodies or other subjects.[11] This institute is omitted by the Constitution of SR and Act on Municipality Establishment.
I think that the result of the local referendum should be obligatory for the municipality bodies. However, with respect to the existing polemics in the given area, it must be noted and highlighted the nature of direct democracy. I hold the view that the results of the forms of direct democracy have not only equivalent, but rather stronger position compared with the elements of the representative democracy. The basis of my statement consists in the principle of democracy and also in the fact that the municipality bodies come also from the result

10 The Constitutional Court of the Slovak Republic stated the similar conclusions in its judicature.

11 The situation occurred at a mayor removal by local referendum is the exception.

of the decision of the municipality inhabitants, what is, in principle, the same mechanism of decision-making of respective subjects. The nature of the representative democracy does not mean that the municipality inhabitants give absolute power to members of municipality council for all the term without keeping any for themselves. The members and mayor are only representatives of the municipality inhabitants, they do not downgrade other forms of the exercise of the municipal self-government.

As I mentioned before, the municipality inhabitants' assembly like the local referendum, presents the significant form of direct democracy and thus it deserves the solution of the problem of (non)committal nature of the assembly result. The trend is also highlighted by the fact that the constitution-maker ranked the municipality inhabitants' assembly as number one in the list of manners of the exercise of territorial self-government. Using the analogy at the local referendum, the municipality inhabitants' assembly is the form of direct democracy that follows the same attributes and thus it deserves at least the equal respect and, logically, the binding force of the resulting decisions. The legitimacy of the decisions taken at the municipality inhabitants' assembly is also highlighted by the fact that every citizen can participate in it.

On the other hand, there are also contrary opinions, which strictly deny any committal nature of the results of the municipality inhabitants' assembly: "*The Constitution of SR does not determine the legal effect of the deliberation at the municipality inhabitants' assembly. The clear legal effect is neither specified by Section 11b of Act No. 369/1990 Coll. as amended by later regulation ... The legal regulation does not determine any ratio of the municipality inhabitants that must take part in the municipality inhabitants' assembly in order they could adopt the generally binding resolutions. The legal regulation does not determine that the municipality inhabitants' assembly has the power to take a decision about a municipality issue. The resolutions adopted at the municipality inhabitants' assembly are informal, they are not connected with any legal effect. The municipality inhabitants' assembly can be assessed as the local plebiscite. The opinions presented at the municipality inhabitants' assembly can be of a recommendation nature for the municipality bodies*".[12]

Regardless of the polemics about a committal or noncommittal nature, the municipality inhabitants' assembly and local referendum are certainly functioning, more easily organized and inexpensive ways of the exercise of municipal self-government in selected countries. Despite hardly feasible comparison of conditions in Switzerland and in the Slovak Republic, it is possible to take some inspiration also for the municipality inhabitants' assembly, in particular in the spheres which appeared in this country as suitable, purposeful and inhabitants interest-increasing.

Pursuant to Palúš[13] the problematic Section 11a of the Act on Municipality Establishment, which determines that the municipality council will announce the local referendum in the case of the municipality division, if the conditions of division specified in the Act on Municipality Establishment are fulfilled, is also worth noting. One of the conditions is connected with a necessity to have at least 3,000 inhabitants in the separated newly formed municipality. Considering the fact that the rule of law of municipalities does not regulate the obligatory number of inhabitants in any form, does not distinguish the powers of mu-

12 DRGONEC, Ján: *Ústava Slovenskej republiky s komentárom*, Bratislava 2004, 446–447.

13 PALÚŠ – JESENKO – KRUNKOVÁ, 150.

nicipalities by number of inhabitants, does not deal with the financial possibilities of the exercise of self-government in municipalities with various number of inhabitants, therefore the requirement of minimum number of inhabitants 3,000 seems to be illogical, however, at the same time, it is possible to identify a non-conformance with other provisions of the Act on Municipality Establishment or with the Constitution of SR itself.[14]

The elimination of the disputable provision of the Act on Municipality Establishment, according to which the fact that mayor of the municipality breaks the Constitution of SR or other general binding regulations, respectively the "hard" and repeated failure to fulfill its duties is the reason for the removal of the mayor of the municipality might be considered a good step. It was more than questionable, how the members of the municipality council are capable to make a relevant legal assessment in such case.

From the point of view of the wording of the Act on Municipality Establishment, there are also other unsolved areas related to the local referendum and the municipality inhabitants' assembly. Within the framework of the problems of the local referendum, there are, for example, the affairs such as the power of the members of the municipality council to adopt the own decision after the performance of the referendum in the same affair, the institute of repeating the referendum in the same affair, the absence of the negative list of social relations, which cannot create the subject of the local referendum, many times unfeasible following of the period of 90 days[15] at the announcement of local referendum, which is carried out based on delivery of the petition of the municipality inhabitants. Within the framework of the last mentioned problem, there is a possibility how to solve the exercise of the local referendum by a body of local government.

In the constitutional regulation of the municipality inhabitants' assembly, such areas are missing at which it is possible identify the analogical features as for the local referendum. For example, the omitted institutes of repeating in the same affair, the power of members of the municipality council to adopt the own decision in the same affair after the performance of the municipality inhabitants' assembly (even wholly discordant), nonexistence of the explicit obligation of the municipality bodies to deal with the results of the municipality inhabitants' assembly, the more detailed regulation of the assembly course is also absent, etc.

The practical aspect of the local referendum and the municipality inhabitants' assembly consists in particular in insufficiently explicit constitutional regulation and in above mentioned lacks. The regulation formulated in this way in a synergy with an apathy of the municipality inhabitants connected with the governance in practice causes a rare utilization of both forms of direct democracy.[16] There is also the proceeding from the part of municipalities consisting in the failure to regulate the conditions of the organization of the local referendum by a generally binding regulation. Most of the villages and towns have no such generally binding regulation. The regulation of the municipality inhabitants' assembly in

14 PALÚŠ, Igor: Uplatňovanie princípu deľby moci v obecnej samospráve, in: *Justičná revue*, 95, 2013, 5, 659–660.

15 A failure to meet the time limit based on justified reasons (the municipality council does not form a quorum during longer period of time), but also on based on a purposeful conduction from the part of members of the municipality council.

16 There are exemptions in the mentioned trend, for example Vrable town.

municipality practice is also minimal, only in extraordinary cases there is a mention in the statutes of towns and villages or, partially, in the general binding regulations.

Conclusion

In the Slovak Republic, just as in other states, there are traces of the crisis of representative democracy. The people, whom the power comes from, clearly lose their trust in the representativeness of public authorities and in representatives, who form the authorities. The distrust does not relate only to highest public authorities in the state, but also to municipal bodies.

A change in approaches could be based, in particular, on strengthening of the institutes of direct democracy at all levels. Despite the existence of other manners of a participation of the municipality inhabitants in governance (the right of petition, requests for information, complaints and so on), in my opinion, the forms of direct democracy under examination are the most closely connected with a material core of democracy at the level of towns and villages also with the self-government functions.

However, the Act on Municipality Establishment after many amendments (including the last amendment) still considerably ignore the local referendum, but, in particular, the municipality inhabitants' assembly, what makes both institutes non-functional at the practical level. The solution of problems is to particularize the legal regulation, to add some relevant provisions into the constitutional regulation in order to avoid the discussions, unclear interpretation, a divergence in the application practice at the execution of local referendum and municipality inhabitants' assembly, a purposeful conduct of liable persons, but the main attention must be turned to the original and fundamental idea of democracy as the government and supremacy of the people in self-government, which is to have such relevant and functioning means and tools that will make it capable to intervene the administration of its affairs.

References

ALMAN, Tomáš: Miestne referendum a zhromaždenie obyvateľov obce ako formy priamej demokracie, in: *Formy uskutočňovania obecnej samosprávy*, Košice 2017, 81–90.

BERAMENDI, Virginia et al.: *Direct Democracy. The International IDEA Handbook*, Stockholm 2008.

DRGONEC, Ján: *Ústava Slovenskej republiky s komentárom*, Bratislava 2004.

KROUSE, Richard W.: Polyarchy & Participation: The Changing Democratic Theory of Robert Dahl, in: *Polity*, 14, 1982, 3, 441–463, online: http://people.brandeis.edu/~woll/krousedahl.pdf.

PALÚŠ, Igor: Uplatňovanie princípu deľby moci v obecnej samospráve, in: *Justičná revue*, 95, 2013, 5, 652–661.

PALÚŠ, Igor – JESENKO, Michal – KRUNKOVÁ, Alena: *Obec ako základ územnej samosprávy*, Košice 2010.

STODOLA, Dušan – DOSTÁL, Ondrej – KUHN, Ivan: *Zhromaždenia obyvateľov obce a miestne referendá*, Bratislava 2013, online: http://samosprava.institute.sk/zhromazde-

nia-obyvatelov-obce-a-miestne-referenda-2013#.WdPHu9FpHIU.

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Freedom, democracy and extremism in the Slovak Republic

PhDr. Matúš VYROSTKO

Abstract

The issue of the rise of extremism in the Slovak Republic and other Central European states – especially in Hungary, the Republic of Poland and the Czech Republic, has been intensively discussed especially in recent years. The aim of our contribution is to answer the question of when measures directed against extremism in the Central European diapason focusing on the Slovak Republic are legitimate and when they become a counterproductive "fight". We offer the answer based on an analysis and comparison of the legal order related to extremism and freedom of speech in the Slovak Republic, identification and analysis of measures against extremism in the Slovak Republic and, last but not least, case study in the town of Snina. Is the restriction of the freedom of speech or the restriction of the freedom of assembly a legitimate measure in the fight against extremism in the Slovak Republic? How does Government of the Slovak Republic try to combat extremism?

Keywords

extremism, Central Europe, freedom of speech, freedom of assembly, measures against extremism

Introduction

It has been a hundred years since the independence of Central European countries known as V4 – Hungary, Republic of Poland, Slovak Republic and Czech Republic. One of the main manifestations of their independence is their sovereignty linked to freedom of decision, which states apply for example, in the case of inadequate reception of migrants under the so-called mandatory quotas. In practice, this means that the states decide who they want to cooperate with, which treaties they want to sign, what international structures or organizations they want to join or leave.

In addition to international relations, freedom is a core social value within states. When are measures against a negative phenomenon such as extremism a legitimate fight against extremism and when such measures limit one of the fundamental expressions of freedom – freedom of speech and freedom of assembly?

In the globalized world, there is no doubt that the expressions of extremism that arise from inspiration, influence and communication between people are mutually similar. Extremism

thus shows similarities in the V4 countries as well as in other European countries. This fact is confirmed by the strategy document Concept of Combating Extremism for 2011–2014, according to which extremism in the Slovak Republic ("hereinafter: SR") is heavily influenced by extremism in the surrounding states, especially in the Czech Republic, the Republic of Poland, the Federal Republic of Germany, Hungary and Republic of Serbia. A contiguous phenomenon, according to the strategic document Concept of Combating Extremism for 2011–2014 (Resolution of the Government of the Slovak Republic No. 379 of 8 June 2011), is increasing serious crime and intolerant attitudes of certain groups of the population towards certain minority groups, especially those belonging to the Romani ethnic group and aliens.[1]

As we mention in the contribution below in the part where we analyze the definition of extremism, it should be emphasized that since it is possible to distinguish between different types of extremism, the measures against extremism will naturally differ. For the purpose of this contribution, we focus in particular on "universal" measures, respectively measures aimed at right-wing extremism.

Why are there manifestations and acts associated with extremism in Central Europe in 2018?

The rise of extremism is a problem that has come to the attention of the broad professional and lay public in the Slovak Republic, especially in recent years. Because we also deal with irregular migration in our scientific work, we believe that it is first and foremost possible to look for a connection with so-called migration crisis, when a large number of irregular migrants arrive in the European Union. Although this fact is used by certain political parties for political marketing purposes, we believe that this is not the main reason for the rise of extremism in the Slovak Republic. There are at least two reasons why we can say so. In our opinion, one of the reasons why migration crisis in the European Union is not the main reason for the increase in extremism, is the number of crimes of extremism in the years 2013–2017. If the migration crisis was the main reason for the increase of extremism in the Slovak Republic, we suppose it would have resulted in a higher number of crimes associated with extremism in recent years, which is not true according to Table 1. As the second reason, we agree with the argument of Slovak expert on extremism Daniel Milo, according to which the rise of extremism can be perceived in the Slovak Republic from 2008 to 2009 when extremists began to change their image, rhetoric, way of expression or themes to obtain greater public support.[2] Therefore, we think that the reason for the rise of extremism can be found in several factors.

1 Uznesenie vlády Slovenskej republiky č. 379 z 8. júna 2011. Koncepcia boja proti extrémizmu na roky 2011–2014, online: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-11819?listName=Uznesenia&prefixFile=m_ (Downloaded 20 May 2018).

2 BALÁŽOVÁ, Daniela: Milo: Problém extrémizmu nevyrieši len zákon, online: https://spravy.pravda.sk/domace/clanok/387550-milo-problem-extremizmu-nevyriesi-len-zakon/ (Downloaded 2 April 2018).

Table 1 Number of crimes of extremism detected in the Slovak Republic in 2013–2017

Year	2013	2014	2015	2016	2017
Number of detected crimes of extremism in the Slovak Republic	78	66	30	58	145

Source: Customized according to: Ministry of Interior of the Slovak Republic. Criminal Statistics in the Slovak Republic for the years 2013, 2014, 2015, 2016, 2017

We believe that another reason why it is possible to monitor the increase in expressions and actions associated with extremism is the success of political parties whose representatives and adherents justify such actions and mitigate their gravity for society or even openly support them. We believe that such statements by representatives of political parties can encourage potential extremists to behave like this. In this context, some proposed solutions to the issue of the migration crisis in the EU, which may appear to be radical or populist, do not seem to contribute to limiting the rise in extremism.
Last but not least, it is possible to say that the problems in society, which may appear to be inadequately and unsuccessfully solved, might contribute to the radicalization of the population and the increase in extremism. We believe some of these problems could be Roma integration, poverty, or poor quality education and health care.
In the Slovak Republic, in the last years, the issue of audience violence has been perceived as a central issue in the context of extremism, as evidenced by the existence of the Department of Extremism and Audience Violence of the Criminal Police Office of the Presidium of the Police Corps. In 2017, however, it is possible to talk about the increased interest of the government of the Slovak Republic in the fight against extremism.

The result of this effort is an amendment to the Criminal Code, as well as the beginning of the operation of the National Unit for Combating Terrorism and Extremism (Office of the Government of the Slovak Republic 2017).[3]
The discussion of the professional and lay public in the Slovak Republic as well as in other countries in Central Europe has intensified the mentioned electoral success of such political parties that can legitimately be considered extremist. In the Slovak Republic, this is especially the political party "Kotleba – Ľudová strana Naše Slovensko" ("The People's Party Our Slovakia", hereinafter: "ĽSNS").
In Hungary, according to Dariusz Kalan, an expert on Central Europe from the Polish Institute of International Affairs, it is especially "Jobbik", as a movement that has strong anti-European, anti-Semitic and anti-Romani statements.[4] In this case, however, it is necessary to add, as stated by several experts who are concerned with current political developments in Hungary, that in the 2018 parliamentary elections, the Jobbik party shifted from the radical-right position to the center, which even by political scientists, was one of the main reasons for "Weak" electoral results. At the moment, it is questionable whether the party can still be considered as extremist.

3 Na Slovensku začína pôsobiť Národná jednotka boja proti terorizmu a extrémizmu, online: http://www.vlada.gov.sk/na-slovensku-zacina-posobit-narodna-jednotka-boja-proti-terorizmu-a-extremizmu/ (Downloaded 13 August 2018).

4 MATIŠÁK, Andrej: Maďarskí extrémisti sú skutočná hrozba, nie papierový tiger, online: https://spravy.pravda.sk/svet/clanok/314189-madarski-extremisti-su-skutocna-hrozba-nie- papierovy-tiger/ (Downloaded 20 July 2018).

Mesežňikov complements another political party known as "Úsvit přímé demokracie Tomia Okamury" ("Direct Democracy Dawn in the Czech Republic – Tomio Okamura"), as a extremist threat, and also the right-wing extremist party "DSSS" and the "Nechceme Islám v České republice" ("We Do not Want Islam Movement in the Czech Republic") and the ultra-nationalist "Liga Polskich Rodzin" ("League of Polish Families") in the Republic of Poland as an extremist threat in Central Europe.[5]
Based on the above information, there is a question as to what measures states should use against extremism and whether such measures are legitimate and legal.

Theoretical background – How can we define extremism?

Even before specific proposals to combat extremism, it is necessary to define it. In the Slovak Republic, extremism is not defined in the legal order of the Slovak Republic, leaving room for its interpretation in practice. How different authors understand extremism has a direct impact on what measures should be used against extremism. This is all the more complicated, we can claim almost impossible, to define extremism in Central Europe or even in the European Union.
The complexity of defining extremism naturally results either in the refusal to create a definition associated with the view of the impossibility of such a universal definition, the attempt to create it, or the identification of an existing definition of extremism. In our case, we are particularly inclined to the last alternative.
In the diapason of the Slovak republic, the extensive definition of the Ministry of Interior of the Slovak republic, which is also used by the Government of the Slovak republic in the Concept of Combating Extremism for the years 2015–2019, appears to us as adequate. *"Extremism denotes acts and manifestations based on attitudes of the extremist, hostile ideology to the democratic system which, either directly or at a certain time horizon, are destructively affecting the existing democratic system and its basic attributes. The second characteristic feature of extremism and its associated activities is that they attack the system of fundamental rights and freedoms guaranteed by the Constitution and international human rights documents or seek to make their exercise more difficult or impossible by their activities. The other characteristics of extremism are the attempt to restrict, suppress, impede the exercise of fundamental rights and freedoms for certain groups of the population defined by their gender, nationality, race, ethnicity, skin color, religion, language, sexual orientation, belonging to the social class, as well as the use of physical violence or the threat of using violence directed against opinion or political opponents or their property…"* (Resolution of the Government of the Slovak Republic No. 129 of 18 March 2015, p. 3).[6]
The Ministry of Interior of the Slovak Republic also points out the types of extremism and states, that extremism is divided into right-wing, left-wing, religious and extremism focused on one question.

5 MESEŽNIKOV, Grigorij: Pravicový extrémizmus v strednej Európe: Nacionalistická politika, utečenecká kríza a výzvy pre demokratov, online: http://www.ivo.sk/buxus/docs/publicistika/subor/Mesez_Boell_23_10_15.pdf (Downloaded 12 August 2018).

6 Uznesenie vlády Slovenskej republiky č. 129 z 18. marca 2015. Koncepcia boja proti extrémizmu na roky 2015–2019, p. 3, online: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-14720?listName=Uznesenia&prefixFile=m_ (Downloaded 15 June 2018).

Although the understanding and definition of extremism is not the essence of our contribution, fighting the rise of extremism, effective measures against extremism, and conflicts with constitutionally guaranteed freedom of expression can not be said without clearly identifying what actions and manifestations we consider to be extremist. In the context of the perception of extremism, it is therefore necessary to emphasize that extremism can be understood in several forms.

There may be at least 3 forms of understanding extremism. The first form is extremism as a criminal activity. According to this understanding, only those acts, that are classified as a criminal offense under the Criminal Code, can be called extremists. The second form is the understanding of extremism as actions and manifestations that are not universally recognized and accepted in a democratic society. The third is the understanding of extremism as any behavior or manifestations that do not correspond to the views of the functioning of society and the state that a person, who understands extremism as such, considers as universally and absolutely correct.[7]

As stated by sociologist Zora Bútorová, on the basis of her research it is possible to pronounce a sentence: *"Tell me who you vote for in the elections and I will tell you how you understand extremism. In this way, it would be possible to summarize the findings on the influence of political preferences on the perception of extremism."*[8]

In addition to the above considerations, it should be emphasized that since it is possible to distinguish between different types of extremism, the measures against extremism will naturally differ. For the purpose of this contribution, we focus in particular on "universal" measures, respectively measures aimed at right-wing extremism.

Regarding the issue of defining extremism, it would naturally be possible to talk about other important aspects, for example the determination of the boundary between radicalism and extremism, or the clear definition of other terms, such as nationalism or fascism. Since however, such a comparison would exceed the possibilities of this contribution, with regard to the subject of this contribution, we are dealing with measures against extremism in the Slovak Republic in the next part.

We believe that there is one important fact that needs to be mentioned. In order to be able to combat the negative social phenomena in a democracy, including extremist actions and expressions, it is essential for the democratic system to be able, along with the guarantee of fundamental rights, to legitimately limit them as well. This is the principle of so-called "Defensive Democracy". The practical outcome is a legal guarantee of fundamental rights, which can be limited in legitimate cases, as is the case with the Slovak Republic.

One possible manifestation of the application of "Defensive Democracy" is the restriction of political parties that can threaten the democratic system. As Navot points out in this regard, after the Second World War, one of the main aims was to restrict Nazi and Fascist political parties, while at the present time limiting political parties is also extended to radical or religious political parties.[9]

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7 VYROSTKO, Matúš: Extrémizmus v právnom poriadku Slovenskej republiky, in: *Zborník príspevkov z 5. ročníka Jarnej internacionalizovanej školy doktorandov UPJŠ 2018*, Košice 2018, 245–250.

8 BÚTOROVÁ, Zora: Extrémizmus? Čo to vlastne je?, online: https://dennikn.sk/868358/extremizmus-co-to-vlastne-je/ (Downloaded 17 March 2018).

9 NAVOT, Suzie: Fighting Terrorism in the Political Arena: The Banning of Political Parties, in: *Party Politics*, 14,

Legal tools to eliminate extremism in the Slovak Republic

In this context, it should be noted that the Slovak Republic, as a Member State of the European Union, respects the legal regulation of extremism at international and European level. The legal treatment of extremism at international level consists of, for example, The International Convention on the Elimination of All Forms of Racial Discrimination and at European level, The Convention for the Protection of Human Rights and Fundamental Freedoms or Council Framework Decision 2008/913 / JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
We believe that measures against extremism can be divided into preventive and repressive. Extremism can only be solved by a set of premeditated and follow-up measures that have a legal basis and do not restrict the freedom of persons with illegitimate reason and in an illegitimate manner.
One of the basic measures are the legal tools to eliminate extremism, which is mostly criminal sanction of criminal offenses related to extremism. In the Slovak Republic these are classified as criminal offenses in Act no. 300/2005 Coll. Criminal Code as amended (hereinafter: "Criminal Code"). These include, for example, the production, dissemination and preservation of extremist materials, or incitement to national, racial and ethnic hatred. The crimes of extremism are precisely defined in § 140a of the Criminal Code.[10]
According to Zachar and Zacharová, the model of the continental legal system was respected in the Slovak Republic in the drafting of the Criminal Code. Progressive criminal-law institutes from the whole period of the first Czechoslovak Republic, from 1948 to 1989 and from 1990 to 1996, were accepted. *"The new codification removes from criminal law all the elements that have been subject to the ideological and political postulate of the totalitarian period of our state's development."*[11]
In 2016 a number of changes have been made in the area of criminal offenses of extremism, with both a general and a specific part of the Criminal Code being changed. According to Škrovánková, the amendment has reworded many facts about the crimes of extremism.[12]
In the SR, minor acts and acts associated with extremism are qualified as offenses. These are, for example, the use of written, pictorial, audio, or audiovisual versions of texts in the public, which are aimed at suppressing fundamental human rights and freedoms. For such an offense, the offender faces a fine of up to 500 euros.[13] According to several authors, the SR is the only country in the V4 countries to qualify offenses of extremism.
In the case of the classification of offenses as a criminal offense or offense, it is possible to speak of the preventive and repressive nature of this measure, given that it aims to sanction socially undesirable behavior and discourage potential perpetrators from such actions and manifestations.

2008, 6, 745–762.

10 Zákon č. 300/2005 Z. z., Trestný zákon v znení neskorších predpisov.

11 ZACHAR, Andrej – ZACHAROVÁ, Elena: Čo s problémom pravicového extrémizmu na Slovensku?, in: *Justičná Revue*, 57, 2005, 11, 1347–1363.

12 ŠKROVÁNKOVÁ, Monika: Novelizácia Trestného zákona a Trestného poriadku so zreteľom na extrémizmus, in: *Justičná Revue*, 69, 2017, 5, 638–648.

13 Zákon č. 372/1990 Zb., o priestupkoch v znení neskorších predpisov.

Sanctioning is not and can not be the only measure against extremism. This statement relates to the very understanding of extremism. Not all actions and acts that can be described as extremist are qualified as a crime or an offense, and their social significance is lower. However, this fact should not lead to ignoring such behaviors, but, on the contrary, trying to minimize such behavior by effective preventive measures.

Other measures against extremism in the Slovak Republic

Although criminal sanction and the classification of acts and events as an offense is a major measure against extremism, we believe that further preventive and follow-up are needed to effectively combat extremism. The conceptual document in the SR is in this context the Concept of Combating Extremism for the Years 2015–2019 in which the Government of the Slovak republic defined four main strategic goals of the concept. It is about:

- strengthening the resilience of communities and individuals against undemocratic ideologies and extremism,
- raising awareness of the manifestations and social significance of extremism and the consequences of radicalization,
- effective monitoring and detection of crimes committed by extremism, prosecution of offenders,
- establishment of institutional and personnel capacities for state bodies performing their role in the protection of constitutional regulation, internal order and state security (Resolution of the Government of the Slovak Republic No. 129 of 18 March 2015).[14]

At present, projects involving various actors seeking to eliminate extremism include, for example, the Teach for Slovakia project, the activities of the International Organization for Migration, the challenge against extremism of the President of the Slovak Republic Andrej Kiska, or various public debates, discussions and information campaigns. One solution could be to rethink the number of lessons students spend on the history of 20th century, because it currently appears as inadequate.

Extremism and restriction of freedom of speech and freedom of assembly in the legal order of the Slovak Republic

One of the most frequent arguments of persons who may be defined as extremists by the definition of the Ministry of Interior of the Slovak republic is the restriction of the freedom of speech in the case of their public speeches or proceedings. The question arises when there is a limitation, respectively the banning of acts and expressions by legitimate measures against extremism, and when it is an unjustified restriction of freedom of speech. We think that the answer to this question will be different in any particular case of prohibition or limitation of the expression or encounter of persons associated with extremism.

First of all, as we already mentioned above, before analysing the legal regulation of this issue in the legal order of the Slovak Republic, it must be said that the Slovak Republic,

14 Uznesenie vlády Slovenskej republiky č. 129 z 18. marca 2015...

as a Member State of the European Union, respects the international and European legislation related to the freedom of speech and the freedom of assembly and association. In particular, the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by later Protocols, signed at the level of the Council of Europe (European Convention on Human Rights, hereinafter: "Convention"), is particularly important in this context, where the Slovak Republic, as a member of the Council of Europe, is a contracting party to the Convention, which means that it is bound by this Convention. The commitment of the Slovak Republic highlights and supplements art. 7 sec. 5 of the Constitution of the Slovak Republic (No. 460/1992 Coll., as amended), (hereinafter: "Constitution of the SR"), according to which *"International treaties on human rights and fundamental freedoms, international treaties in which the law does not require implementation, and international treaties which directly establish the rights or obligations of natural persons or legal persons and which have been ratified and proclaimed in the manner prescribed by law, take precedence over the law."* The interest in protecting freedom of expression and freedom of assembly and association is expressed in art. 10 and art. 11 of the Convention, and the Convention does not forget to include cases of a legitimate restriction of those freedoms. According to art. 10 sec. 2 *"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society..."*. Similarly, art. 11 sec. 2 of the Convention states, that *"No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society"*.[15] In the case of suspected violations of their fundamental rights, people can therefore turn to the European Court of Human Rights (ECHR), which also applies to violations of freedom of expression and freedom of assembly and association. Judgments on the breach of rights are binding for the countries concerned. The Committee of Ministers of the Council of Europe subsequently monitor the execution of such judgments.

Freedom of speech is legally anchored in art. 26 of the Constitution of the SR. According to art. 26 sec. 1 of the Constitution of the SR, the freedom of expression and the right to information are guaranteed. According to art. 26 sec. 2 of the Constitution of the SR, everyone has the right to express their opinions in words, in print, in pictures or in other ways and according to sec. 3 of the same article of the Constitution of the SR, censorship is prohibited. This very argument is often used by representatives and adherents of those movements, that can be described as extremist. Purposely, however, they do not mention the art. 26 sec. 4 of the Constitution of the SR, according to which the freedom of expression and the right to search for and disseminate information may be restricted by law in the case of measures in a democratic society necessary for the protection of the rights and freedoms of others, state security, public order, protection of public health and morality. Thus, the area of legal restriction of freedom of expression exists and is legitimate to use it in those cases where such acts endanger the rights and freedoms of others, state security, public order, protection of public health and morality.[16]

15 Oznámenie Federálneho ministerstva zahraničných vecí č. 209/1992 Zb., o Dohovore o ochrane ľudských práv a základných slobôd, online: https://www.noveaspi.sk/products/lawText/1/39918/1/2 (Downloaded 15 January 2019).

16 Ústavný zákon č. 460/1992 Zb., Ústava Slovenskej republiky v znení neskorších predpisov.

Such cases include, for example, cases in which a person is responsible for the offense of denial and approval of the Holocaust, crimes of political regimes and crimes against humanity under § 422d of Act no. 300/2005 Coll. Criminal Code as amended. Limiting the freedom of speech and the consequent sanction is completely legal in this case and, let us argue, even legitimate, but that can be the subject of discussion.[17]

Conflict of freedom of speech and assembly with extremist expressions and actions based on a case in the town of Snina

The freedom of speech is closely related to the freedom of assembly and association, which are also anchored in the Constitution of the SR. In this context, one of the current controversial cases, which leaves room for discussion, is the case of the Mayor of town Snina, who banned the public assembly of representatives and supporters of the political party ĽSNS.

As the official purpose of the ĽSNS assembly, they said they wanted to point out a high increase in criminality of inappropriate citizens, and to demand increased police force work in risky and problematic locations in Snina county.[18]

The town of Snina in the Decree on the prohibition of the assembly no. 01/2018/ZH/Pr prohibits the organization of a public assembly. Right from the beginning, it states that the purpose of the assembly is not in direct or literal contradiction with the provisions of § 10 sec. (1) a) of Act no. 84/1990 Coll. on the assembly right as amended, but in relation to other facts. As other facts, the document indicates suspicion that the ĽSNS is an extremist political party on the basis of an initiative to cancel the ĽSNS filled by the Prosecutor General of the Slovak Republic, Jaromír Čižnár, the ongoing prosecution against NRSR deputy Milan Mazurek or the reason that there is no increased crime in the town of Snina.[19]

In this case, however, we have seen a paradoxical, we assume an unlawful too, ban on the assembly of representatives and supporters of ĽSNS. The Government of the Slovak Republic itself in the Concept of Combating Extremism for 2011–2014 (Resolution of the Government of the Slovak Republic No. 379 of 8 June 2011) states in point 1, the value framework of the concept, that the important rights guaranteed by the Constitution of the SR includes freedom of assembly and the right to association.[20] According to art. 28 sec. 1 of the Constitution of the SR, the right to peaceful assemble is guaranteed. According to Art. 28 sec. 2 of the Constitution of the SR, the conditions for the exercise of this right shall be laid down by law in cases of gathering in public places in the case of measures in a democratic society necessary for the protection of the rights and freedoms of others, the protection of public order, health and morals, property or state security. The Constitution

17 Zákon č. 300/2005 Z. z., Trestný zákon v znení neskorších predpisov.

18 ŠNÍDL, Vladimír: Primátor Sniny zakázal kotlebovcom míting proti Rómom. Oprel sa o dôvody, ktoré zákon nepozná, online: https://dennikn.sk/1205044/primator-sniny-zakazal-kotlebovcom-miting-proti-romom-oprel-sa-o-dovody-ktore-zakon-nepozna/ (Downloaded 15 August 2018).

19 Rozhodnutie o zákaze zhromaždenia č. 01/2018/ZH/Pr, online: https://www.snina.sk/e_download.php?file=-data%2Furedni_deska%2Fobsah559_14.pdf&original=Rozhodnutie%20o%20zákaze%20zhromaždenia%20č%20%20%201-%202018.pdf (Downloaded 14 August 2018).

20 Uznesenie vlády Slovenskej republiky č. 379 z 8. júna 2011…

also states that the assembly must not be subject to authorization by the public administration.[21] Other aspects of banning the assembly are set out in Act no. 84/1990 Coll. on the assembly right as amended (hereinafter: the "Act on the assembly right"). According to § 10 sec. 1 of the Act on the assembly right, the municipality notified by the assembly would disqualify it if the stated purpose of the assembly were to appeal to:

- deny or restrict the personal, political or other rights of citizens for their nationality, sex, race, origin, political or other thought, religion and social status, or to incite hatred and intolerance for these reasons, or,
- committing violence or gross indecency or,
- otherwise violate the Constitution, constitutional laws, laws and international treaties to which is the Slovak Republic bound and which take precedence over the laws of the Slovak Republic.[22]

The municipality would ban the assembly, further under § 10 sec. 2 of the Act on the assembly right, even if the assembly were:

- to be held at a place where the participants would be in serious danger to their health or,
- in the same place and at the same time, a meeting should be held according to a previously served notice, and there was no agreement between the conveners to adjust the time of its proceedings; if it is not possible to determine which notification was received earlier, it shall decide with the participation of the representatives of the appellants by drawing, or,
- to be held in the same place and at the same time as a public cultural or sport event has already been authorized under current legislation.[23]

In addition, the municipality may, according to § 10 sec. 3 of the Act on the assembly right, prohibit a meeting if it would take place in a space where the constraint of traffic and supply would be in serious conflict with the interest of the population, if it is possible, without inadequate difficulty, to hold the assembly elsewhere without compromising the stated purpose of the assembly. According to § 10 sec. 4 of the Act on the assembly right, the municipality cannot ban the assembly for the reasons given in section 2 and 3 if the convener has accepted a municipal proposal pursuant to § 8 (proposal to hold the meeting in another place).[24]

Therefore, the municipality has to consider only the notified purpose of the assembly and the place where the assembly is to be held. In this case, the legal requirements for banning the assembly from the town of Snina were not met.

It is therefore possible to say that such a decision by the town of Snina did not have the legal basis and the notifiers of the assembly, the party of the ĽSNS and its adherents, rather supported the decision to come to the assembly and take advantage of the city's decision in favour of gaining further adherents. The assembly, despite the ban, had taken place.

21 Ústavný zákon č. 460/1992 Zb., Ústava Slovenskej republiky v znení neskorších predpisov.

22 Zákon č. 84/1990 Zb., o zhromažďovacom práve v znení neskorších predpisov.

23 Ibidem.

24 Ibidem.

Let us therefore argue, that this is not an effective form of fighting against extremism and, on the basis of the above case, we propose to start a discussion about the amendment to the Act on the assembly right. However, we think that the proposals to amend the law on the assembly, the content of which would be to tighten the conditions under which citizens can assemble, would not meet with great support and understanding. A similar situation occurred in 2017 in the Republic of Poland and in 2018 in Hungary. Despite criticism, the two laws finally got enough support in both countries and became part of the legal order.

Conclusion

Based on an analysis of the law and the case study of town Snina, we have come to the conclusion, that if a democratic society is interested in fighting extremism legally and legitimately, it is very important to stick to the law and not to deviate from the limits of the law. Otherwise, restrictions of freedom of speech and freedom of assembly as well as other measures against extremism can be considered counterproductive, which unnecessarily contributes to further hatred and motivation to act in order to "fight" against the "unlawful" democratic system.

Last but not least, it must be stressed that democracy can not, in its essence, completely eliminate extremism, it can only be effectively reduced by a set of premeditated and follow-up measures in the form of legal tools and other preventive measures.

References

BALÁŽOVÁ, Daniela: Milo: Problém extrémizmu nevyrieši len zákon, online: https://spravy.pravda.sk/domace/clanok/387550-milo-problem-extremizmu-nevyriesi-len-zakon/ (Downloaded 2 April 2018).

BÚTOROVÁ, Zora: Extrémizmus? Čo to vlastne je?, online: https://dennikn.sk/868358/extremizmus-co-to-vlastne-je/ (Downloaded 17 March 2018).

MATIŠÁK, Andrej: Maďarskí extrémisti sú skutočná hrozba, nie papierový tiger, online: https://spravy.pravda.sk/svet/clanok/314189-madarski-extremisti-su-skutocna-hrozba-nie- papierovy-tiger/ (Downloaded 20 July 2018).

MESEŽNIKOV, Grigorij: Pravicový extrémizmus v strednej Európe: Nacionalistická politika, utečenecká kríza a výzvy pre demokratov, online: http://www.ivo.sk/buxus/docs/publicistika/subor/Mesez_Boell_23_10_15.pdf (Downloaded 12 August 2018).

NAVOT, Suzie: Fighting Terrorism in the Political Arena: The Banning of Political Parties, in: *Party Politics*, 14, 2008, 6, 745–762.

Na Slovensku začína pôsobiť Národná jednotka boja proti terorizmu a extrémizmu, online: http://www.vlada.gov.sk/na-slovensku-zacina-posobit-narodna-jednotka-boja-proti-terorizmu-a-extremizmu/ (Downloaded 13 August 2018).

Oznámenie Federálneho ministerstva zahraničných vecí č. 209/1992 Zb., o Dohovore o ochrane ľudských práv a základných slobôd, online: https://www.noveaspi.sk/products/lawText/1/39918/1/2 (Downloaded 15 January 2019).

Rozhodnutie o zákaze zhromaždenia č. 01/2018/ZH/Pr, online: https://www.snina.sk/e_download.php?file=data%2Furedni_deska%2Fobsah559_14.pdf&original=Rozhodnutie%20o%20zákaze%20zhromaždenia%20č%20%20%201-%202018.pdf (Downloaded 14 August 2018).

ŠKROVÁNKOVÁ, Monika: Novelizácia Trestného zákona a Trestného poriadku so zreteľom na extrémizmus, in: *Justičná Revue*, 69, 2017, 5, 638–648.
ŠNÍDL, Vladimír: Primátor Sniny zakázal kotlebovcom míting proti Rómom. Oprel sa o dôvody, ktoré zákon nepozná, online: https://dennikn.sk/1205044/primator-sniny-zakazal-kotlebovcom-miting-proti-romom-oprel-sa-o-dovody-ktore-zakon-nepozna/ (Downloaded 15 August 2018).
Ústavný zákon č. 460/1992 Zb., Ústava Slovenskej republiky v znení neskorších predpisov.
Uznesenie vlády Slovenskej republiky č. 129 z 18. marca 2015. Koncepcia boja proti extrémizmu na roky 2015–2019, online: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-14720?listName=Uznesenia&prefixFile=m_ (Downloaded 15 June 2018).
Uznesenie vlády Slovenskej republiky č. 379 z 8. júna 2011. Koncepcia boja proti extrémizmu na roky 2011–2014, online: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-11819?listName=Uznesenia&prefixFile=m_ (Downloaded 20 May 2018).
VYROSTKO, Matúš: Extrémizmus v právnom poriadku Slovenskej republiky, in: *Zborník príspevkov z 5. ročníka Jarnej internacionalizovanej* školy *doktorandov UPJŠ 2018*, Košice 2018, 245–250.
ZACHAR, Andrej – ZACHAROVÁ, Elena: Čo s problémom pravicového extrémizmu na Slovensku?, in: *Justičná Revue*, 57, 2005, 11, 1347–1363.
Zákon č. 372/1990 Zb., o priestupkoch v znení neskorších predpisov.
Zákon č. 84/1990 Zb., o zhromažďovacom práve v znení neskorších predpisov.
Zákon č. 300/2005 Z. z., Trestný zákon v znení neskorších predpisov.

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Referendum as a medium (demonstration) of freedom and democracy

PhDr. Jana VOLOCHOVÁ

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 its 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, Ľudmila: *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.

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 Drgonec[27] 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.

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.

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, Lívia: 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.

"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]

Palúš[49] 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.

References

BALOG, Boris – TRELLOVÁ, Lívia: Povinnosť parlamentu prijať zákon?/!, in: *Právny obzor*, 95, 2012, 1, 33–34.
BRÖSTL, Alexander et al.: *Ústavné právo Slovenskej republiky*, Plzeň 2015.
CHOVANEC, Jaroslav: *Moderná slovenská štátnosť*, Bratislava 2009.
CHOVANEC, Jaroslav – PALÚŠ, Igor: *Lexikón ústavného práva*, Bratislava 2004.
ČIČ, Milan et al.: *Komentár k Ústave Slovenskej republiky*, Bratislava 2012.
DOMIN, Marek: *Volebné právo a volebné systémy*, Bratislava 2017.
DRGONEC, Ján: *Ústavné právo hmotné*, Bratislava 2018.
HEYWOOD, Andrew: *Politologie*, Plzeň 2008.
IVANČOVÁ, Soňa: Vybrané problémy inštitútu referenda, in: *20 rokov Ústavy Slovenskej republiky – I. Ústavné dni*, Košice 2012, 268, 270.
KRESÁK, Peter: Uplatňovanie priamej demokracie v SR, cesta plná ústavných prekážok, in: *Přímá demokracie*, ŠIMÍČEK, Vojtěch (ed.), Brno 2016, 167.
KROŠLÁK, Daniel et al.: *Ústavné právo*, Bratislava 2016.

KRUNKOVÁ, Alena: Ústavné limity v participácii občanov Slovenskej republiky na správe vecí verejných, in: *20 rokov Ústavy Slovenskej republiky – I. Ústavné dni*, Košice 2012, 264–265.
Nález Ústavného súdu Slovenskej republiky sp. zn. PL. ÚS 19/09.
Nález Ústavného súdu Slovenskej republiky sp. zn. PL. ÚS 24/2014.
Nález Ústavného súdu Slovenskej republiky sp. zn. PL. ÚS 42/95.
PALÚŠ, Igor et al.: *Ústavné právo Slovenskej republiky*, Košice 2016.
PALÚŠ, Igor – SOMOROVÁ, Ľudmila: *Štátne právo Slovenskej republiky*, Košice 2002.
PALÚŠ, Igor – SOMOROVÁ, Ľudmila: *Štátne právo Slovenskej republiky*, Košice 2008.
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.
SVÁK, Ján – KLÍMA, Karel – CIBULKA, Ľubor: *Ústavné právo Slovenskej republiky. Všeobecná časť*, Bratislava 2013.
SVÁK, Ján – KUKLIŠ, Peter: *Teória a prax legislatívy*, Bratislava 2007.
ŠIMÍČEK, Vojtěch (ed.): *Přímá demokracie*, Brno 2016.
Uznesenie Ústavného súdu Slovenskej republiky sp. zn. I. ÚS 22/00.
Zákon č. 460/1992 Zb., Ústava Slovenskej republiky.

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REVIEWS

Ervin CSIZMADIA

A magyar politikai fejlődés logikája [The logic of Hungarian political development]

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"I consider it's important that Hungarian politics should take over the pre-1990s era of Hungarian politics as soon as possible, and be more courageous in this respect than it has been. Western Political Science is just a good example: let us be Westerners!" – says Ervin Csizmadia's latest book. The author of the book "The logic of Hungarian political development" didn't set himself a small task, he looks at the policy and its development for about 150 years. His hypothesis is that a particular political development is present in Hungary. Furthermore, the "normal" development is not always present in all the events of history, but it is observable and mostly related to each other.

In Hungary, research on the subject was pushed to the background, but in 2017, Ervin Csizmadia puts Hungary on the list of countries undergoing political development. Scientific research of such a serious subject requires a considerable professional experience, with which the author of the political scientist stands out with.

Ervin Csizmadia's researchers as a principal associate of the Hungarian Academy of Sciences (Political Science Institute), as a professor, as an editor-in-chief of professional journal called Political Science Review, and as head of the Fairness Policy Analysis Center. A rich publication list also provides the author's expertise. Thousands of books are an integral part of the Hungarian political science literature. The writings of the 60-year-old political scientist have been continuously appearing in books, textbooks, articles, and studies since 1992. He is a very fertile professional in his own field of research based on the research of party systems and government theories. From his latest research "The logic of Hungarian political development", in all respects, it's a new approach to domestic politics. The Hungarian literature has not suffered from historical-political research, but the study of "political development" has only been found in international science.

The book seeks the answer to fundamental questions that are not novel in the international academic life, and even have an independent trend. The question is rightly whether there is any progress in Hungarian politics. And if it is, then what this is, what can be called development and what is its logic. In Ervin Csizmadia's book he makes a clear reference to the existence of a Hungarian political story. It also goes beyond this, because it argues that there is logic in domestic political development, it is not deadlocked, it does not decline (which has been formulated and accepted as a fact several times), but in the mirror of other countries, Hungarian politics can be called "normal".

Historical politologist author explores, analyzes and compares the works of researchers, thinkers and scholars known and acknowledged in his book, which is reflected in the rich bibliography. But first of all, Csizmadia presents his own vision, describing his position. His work is best for the readers of the Hungarian audience, but the special development of the research results can be a useful example in the international palette.

It is a fact that the explanation of the fundamental questions of political science should always be explored. No political change can be interpreted in the present, so the genre of the book is a historical-political science analysis. However, today, the present political situation is needed to define it, then it is only possible to find explanations. And the author treats the analysis of both times. The study of the historical part is somewhat more pronounced than the present. Understandably, because the scientific discourse of the book leads back to Friedrich Nietzsche. The research is divided into three parts by the author. He examines the already mentioned historical timeline as part of the History of Science, the recent timeline as part of the History of Period, and the elaboration of the hypothesis after the account of the two dimensions of time, in the section of History of Platform, History of Politics and Political Development.

The first part of the *History of Science* section lies in getting to know the debate in the field of science about the benefits or damages of history and to provide a basis for understanding the established situation. The section consists of two large chapters. First, the author explores the work of four philosophers (Friedrich Nietzsche, Benedetto Croce, Johan Huizinga, Thomas Kuhn) focusing on the importance of time dimension (history or present). It determines two types of alternate economy in this topic, on the one hand the presence of "history-oriented" or "signal-centric", on the other hand, so-called political science paradigms.[1] This is the guiding principle of the various paradigms as ideologies (1: 1960s political development; 2: Transition from democratization in 1980; 3: 2000 to the new historicalism trend), which are the alternating paradigms of the past 50 years. Subsequently, the second part of the History of Science deals with historical political science. The author interprets foreign and domestic situations. He argues that, contrary to the foreign "trend", domestic investigations are not about meditating on the current paradigm or about renewing the current situation. He will then present his own research activity in the history of political science. In detail, there is a relationship between history and present. It does this in a unique way in Hungarian science, because the Hungarian profession is locked in from historical explanations. In essence, this section of the book bases the description of the second part.

The *History of Period* part is the most meaningful part of the reader, because it is the Hungarian past (past 25 years) and the present that we have been part of. In this signencentric topic, the author describes the literature and opinions (Ágh Attila: Hungary's Political Yearbook, several works by András Körösényi) we have available, and then outlines two main dimensions. Each of them is the author's own alternative interpretation. In one it analyzes Hungary's foreign policy and the other in its internal political dimension. It is common for us to have a process of great change in both dimensions. Ervin Csizmadia's most interesting example is the model-patterning and sample-forming theory of the foreign policy aspect. The writer has both Europe's attitudes to discover in the Hungarian system. He claims that the pattern of pattern formation is typical of the country until the reform era, and then its aim is to catch up with the West, and then there is a kind of convergence attempt, that is, adaptation and pattern follow-up. The period between 1990 and 2010 is considered to be a transitional period, and from 2010, history will return, and pattern formation again becomes dominant in Hungarian policy-making. Instead of the West, Central and Eastern Europe is given a prominent role. The author also sees serious changes in the domestic

1 Scientific results which, for some time, served as a model for the scientific medium.

dimension, but the subject of the investigation is the post-transition political structure. In this context, he describes three areas: the party system, the perception of democracies, and the political social background. According to his views, today, the multiparty political structure is essentially simplified to one party system; the new democratic system that emerged in 1990 becomes liberal and becomes illiberal; the desired and expected social base of democratic development was established and not present in Hungary (instead of "people" and "civil society").

Following the findings and factualities of the book, Csizmadia's hypotheses follows. Here, the reader answers a number of questions. This essential part of the work was titled *History of Platform, History of Politics and Political Development*. It uses the definitions used in the previous sections for analysis, thus examining the dimensions of sample-pattern-forming presented in the political present in historical political science. For research and understanding, Hungarian philosopher of history, philosopher of culture and other famous and noted philosopher use the first great unit of the chapter. It is from these that the authors appreciate positively the pattern-forming period before the Hungarian reform era, and then the following follow-up path is regarded as the era of degradation. However, there was an approach at the time, which in the end was a follow-up to a "progress". For this reason, Csizmadia thinks that Hungarian adaptation is a reflection of features and a characteristic of Hungarian political development. It can be explained by the fact that the domestic political elite and society can not or does not want to follow patterns, at least not in the way that pattern-makers do it. Csizmadia considers the period after the change of regime that the two categories are characterized by pattern shaping, which, in his view, is not identical to the pre-post-pre-reform dimension. As for pattern formation, he notes that he can not be denied in history, we know less about him than in the present situation, but he is an integral part of Hungarian history. Then in the second unit of the chapter it is presented the longer trends in Hungarian history and asked the question whether it can be called a dead end or normal. In connection with which the author's emphasized stance is that there is clearly an abnormality of all kinds. In the third unit, he returns to reveal Hungarian pattern-keeping in relation to capitalism, democracy and parliamentarism. Units within this chapter are sequentially chronologically. In my opinion, the last part can not be taken away, but I would have read it in the logical relation of the book to this in the first unit of the chapter, in the motifs of the pattern follow-up.

The next topic in the third part underlines the fact that from the transition to the present, finds historical history, and shows the points of attachment. In this area, a major topic emerges in the author's research: the development of party formation. The author places the emphasis on finding the cause of the emergence of a dominant party system characteristic of the Hungarian party system and of the absence of the two-party system in the West. He argues that there is also a logic in the evolution of the Hungarian party system, which returns during political development. After the change of regime, for 16 years (1990–2006), the government's alternating economy (governing party – opposition party) is back in line with the 1875 two-party system. From 2006 until now, however, the dominance of the dominant party system is repeated as in the history of Hungary over the years and government cycles after 1875. The model of the big government and the many small opposition parties today can also be found in Hungarian political history.

The last chapter, which is also the title: The logic of Hungarian political development, the

shortest in its scope. I firmly state that only the processing of this chapter can not be deduced from the conclusions drawn, the hypothesis. It is necessary to study the whole book as a whole in support of the context and the conclusion.
The author has already stated that the events of 1990–2017 are not a case-by-case basis, and at this point he asks the basic question: is there any logic and connection to this development? For this, a new theoretical explanation is described by the author, the elite transformation. In short, this means that the development of a political organization depends on the elite arrangement. To understand this, he presents an "external" comparison framework, a classical Anglo-Saxon developmental model, and an internal comparative system between periods of Hungarian political development. In the last part of this chapter, the ruling party, in the author's terms, examines the "orbanism" as a result of the logic of political development. According to Csizmadia, the return of the Fidesz party in 2010[2] is not a change of government, but a "change of regime" as it breaks with the failures of the left-liberal governments between 2002 and 2010. Furthermore, he argues that the party is related to the historical right-wing parties in the judgment of the changing and in crisis Europe. Thus the Hungarian Fidesz party can not understand without a historical formation and the exploration of history.
Csizmadia closes the end of the book with a conclusion, which further helps the reader to understand. He expresses his position clearly with the specific Hungarian pattern of development, which is different from the West and resembles historically related countries. Furthermore, he also openly assumes that his research aimed at overthrowing a long-standing view that the development of Hungarian politics is not decaying. In that respect, I share the opinion of the author that, even when it comes to sample-keeping, the adaptive country has its own tradition, which affects "perfect copy".
My starting quotation is written by Csizmadia as a council, as a message (for my understanding) for experts and researchers. Reading between the lines, the essence of this: find our uniqueness because we have and show it as an example for science, the world.
All in all, the book provides a sufficient explanation not only in the reasoning but in all its elements, after all the theories have been defined. I believe that the work is not only a curiosity of a narrow specialist layer, but an interested layman is able to absorb the sentiments. Indeed, it is worthwhile to find out about a foreign researcher who is closely related to the field of research for the Hungarian historical events or the political understanding of the present. Personally, I was in the process of processing that the writer would hold the reader's hand and explore the research that he has already called philosophies in the form of historical novel and understandable science.

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2 In 2000, there was still a trend of its governance.

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