Referendum as a Tool of Democracy

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Abstract
Democracy is generally considered as a universal value in the history of modern states. At this point, it should be emphasized that this is perceived above all in the context of the consistent application of the principles undoubtedly related to democracy. One of them is the citizen’s right to manage public affairs, through a referendum. The referendum is called an instrument of direct democracy. In the conditions of the Slovak Republic it is used at national and municipal level. At national level, it is most often used as a tool to promote partial party goals - the most common topic of national referendums so far has been the issue of shortening the opposition’s existing government term. The topic of the paper is a more detailed view on the topic of local referendums - whether they are used to solve the immediate problems of citizens at the level of municipalities and towns or as the pattern which national referendum confirms - playing political games. Unfortunately, it appears that even municipal level is not immune to classical political games.

Introduction
If we want to address the issue of referendum (in our case mainly a local referendum), it is important to realize that it is a relatively non-standard instrument. The Slovak Republic is based primarily on the principle of representative democracy. Its basic principle is that citizens as holders of the power in the state vote their representatives, who subsequently exercise their mandates under the oath of a member of the parliament in the spirit of independence and their best conviction, in regular democratic elections fulfilling conditions of universality, equality, secrecy and directness, for a predefined term of office [1]. This basic democratic principle of governance - a system of representative democracy based on freedom, human dignity, equality in rights - is without a doubt the most common way of governance on any level of power
Looking at the principle of democracy itself, two limit values of definition emerge. These definitions are also the two fundamental principles of using the direct democracy elements within the constitutional system - a minimalist and a maximalist principle [3]. The minimalist concept of democracy, as presented by Joseph Schumpeter, is based on an axiom that citizens should participate in the elections in the highest possible number. In the election they are supposed to choose, from the selection in a fair competition, the most suitable candidates that would promote their attitudes during an exactly specified electoral term. Hereby, a consistency with the opposite, maximalist concept can be found. The essential difference, however, is that during the electoral term the citizens are supposed to leave the entrusted power to their representatives; they should not interfere with performance of their function and should fully conform to the governance of the elected representatives, as they are not sufficiently equipped with knowledge, information and possibilities to be able to actively participate in solving problems, tasks and challenges. However, their right or an obligation in the following election to choose, whether to keep the power in the hands of the current elite or change it, remains untouchable [4]. On the contrary, the maximalist concept, presented by e.g. Robert Dahl, entrusts the power to decide to the citizens not only during the actual elections, but it enables them to participate on the decision-making process by various mechanisms throughout the electoral term. This provides them with the possibility to actively join and influence the decision-making on essential issues. One of the most common instruments to reach this state is an institute of the direct democracy - referendum [5].

**Institute of referendum in the conditions of the Slovak Republic**

The makers of political and constitutional system of the Slovak Republic, as in other democratic countries, have clearly been inspired mostly by ideas of the maximalist theory of democracy. Therefore, an institute of referendum and later also an institute of plebiscite on the recall of the president of the Slovak Republic have become a part of the law. While the issue of the possibility of recalling the head of state is legally almost completely underpinned and realized, it is not the case for the institute of referendum, although, considering the frequency of their application, it should be the opposite. The institute of referendum is anchored in the Title five of the Constitution of the Slovak Republic - Legislative Power. Besides enumerating reasons for a referendum to be held obligatorily - confirmation of joining/secession from a union with other states - it also enumerates other possibilities of holding a referendum with a strict prohibition in areas of fundamental rights and freedoms, taxes, duties and state budget.

It defines an eligible voter as a citizen of the Slovak Republic eligible to vote in the elections to the National Council of the Slovak Republic. A referendum is declared by the president of the Slovak Republic on the basis of a parliament resolution or a petition of at least 350 000 citizens, which is approximately 8 percent of all voters. The head of state can request an assessment of constitutionality of the proposed subject of the referendum from the Constitutional Court of the Slovak Republic. A referendum can be held on the day of the parliamentary election, but not in the period of 90 days before this date. A referendum is valid when an absolute majority of all eligible voters (50% plus one vote) participates, a positive result is valid if an absolute majority of participants on that particular valid referendum votes for it (therefore, under certain circumstances, 25% of eligible voters plus one vote suffice for a positive referendum). The referendum procedure is administered by the State Commission for Elections and Control of Financing of Political Parties.*

The most controversial moment in the constitutional definition of the institute of referendum in conditions
of the Slovak Republic is its legally binding force. The results of a referendum are valid if an absolute majority of eligible voters has participated on it and if a decision has been made by an absolute majority of the votes in the referendum. The Constitution further states that the proposals adopted by a referendum shall be promulgated by the National Council of the Slovak Republic “as a law”.**

Hereby, it is visible how the Constitution unequivocally obliges the legislator of the state to promulgate the result of a referendum by publishing it in the Collection of Laws. This Article of the Constitution, however, minimally contradicts another Article of the same Constitution, specifically the Article 73 of the Constitution of the Slovak Republic which states the following: “The Members of the Parliament are representatives of the citizens. They shall exercise their mandates individually and according to their best conscience and convictions. No orders bind them.”***

Thus, it is clearly defined that in the conditions of the Slovak Republic a rule prohibiting an imperative mandate applies.

Based on the article of the Constitution formulated in such way we can objectively assume that no force within the horizontal separation of powers in the constitutional and political system exists that could directly influence a decision of the legislator of the state.

For illustration purposes we will look at the topics of nation-wide referendums held thus far in Slovakia, since becoming an independent state in 1993 until present.

1.1994 - turnout 19.96% (invalid)
Question: Do you agree with adoption of the law on proving the origin of the money used in auctions and privatisation?

2.1997 - thwarted within the decision of the Constitutional Court
Questions:
1) Are you in favour of accession of the Slovak Republic to the NATO?
2) Are you for placing nuclear weapons on the territory of the Slovak Republic?
3) Are you for locating foreign military bases on the territory of the Slovak Republic?
4) Do you agree with the president of the Slovak Republic being elected directly by the citizens of the Slovak Republic according to the enclosed proposal for a constitutional law?

3.1998 - turnout 44.25% (invalid)
Question: Do you agree with the National Council of the Slovak Republic adopting a constitutional law banning the privatisation of strategic companies?

4.2000 - turnout 20.03% (invalid)
Question: Do you agree with the National Council of the Slovak Republic adopting the constitutional law: The election term of the National Council of the Slovak Republic elected in 1998 ends on a day of election to the National Council of the Slovak Republic that will be held within 150 days from announcing results of the referendum?

5.2003 - turnout 52.15% (valid)
Question: Do you agree with the Slovak Republic becoming a member of the European Union?
6.2004 - turnout 35.86% (invalid)
Question: Do you agree with the members of the National Council of the Slovak Republic adopting a constitutional law on reducing the 3rd electoral term of the National Council of the Slovak Republic, so that the election to the National Council of the Slovak Republic is held in 2004?

7.2010 - turnout 22.84% (invalid)
Questions:
1) Do you agree with the parliament abolishing by law the obligation to pay a charge for licensing fees for public service media?
2) Do you agree with decreasing the number of members of the parliament from 150 to 100?
3) Do you agree with the National Council of the Slovak Republic providing the possibility to vote for members of the National Council of the Slovak Republic and members of the European Parliament via the internet?

4) 2015 - turnout 21.41% (invalid)
Question: Do you agree that no other cohabitation of persons then a bond between one man and one woman can be called marriage?

Problems of local referendum
The institute of referendum on a local and regional level (municipalities/cities, or higher territorial units) is described in much less detail. In the Constitution of the Slovak Republic it is mentioned minimally, only in one article together with an institute of inhabitants’ assemblies:
“Municipality inhabitants’ assemblies shall realize a territorial self-administration 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 law.”****

Further specifications can be found in the Act No. 369/1990 Coll. on Municipal Establishment, as amended. Under this law, a referendum must be held in case of a) an amalgamation, division or abolition of a municipality; a municipality name change, b) recalling the mayor for reasons stated by law (gross neglect, absence for 6 months or a petition of 30% of inhabitants), or c) if requested by a petition of a group of inhabitants in the amount of at least 30%.

A local referendum can also be held if declared by a local board of representatives on an issue important to the municipality. A local referendum is valid and adopted if an absolute majority of eligible voters participates and majority of participating voters votes positively.*****

On a regional level, the institute of referendum is specified in the Act No.302/2001 Coll. on Higher Territorial Unit Self-Government (Self-Governing Regions Act), as amended, which does not significantly differ from the legislation on local referendum.******
There are two factors being the main problem. The first one is a failure to address the issue of whether a result of a referendum is legally binding for the authorities of a municipality and a higher territorial unit (except for recalling a mayor or a regional chairperson). The other factor is the turnout in the elections. If securing a turnout in the elections to the higher territorial units higher than one third of all eligible voters had so far been impossible, assuming a higher turnout in case of a referendum is very improbable. This is also connected to the potential question in a referendum.

It is very hard to imagine formulation of a referendum question that would, for example in the Trnava self-governing region, interest voters from Holí? to Šamorín, or in the Prešov self-governing region, voters in Prešov and, say, in Medzilaborce. However, this is not a problem of conditions for holding a referendum, but mainly of the area in which it is (not) held [6].

The main methodological problem of addressing the topic of local referendum has proved to be a database of such referendums. In the conditions of the Slovak Republic, there is no institution that would have a database recording all referendums declared on a local level since 1990. Such a database can only be found regarding nation-wide referendums, where the particular results can be found on the websites of the Statistical Office of the Slovak Republic or the Ministry of Interior of the Slovak Republic. In case of a local referendum, neither of the aforementioned institutions keeps a record of the results, nor can a full database be found in the records of the Association of Cities and Municipalities of the Slovak Republic. For our article’s needs we have, therefore, referred to data published at the website of the Association of Cities and Municipalities of the Slovak Republic in the form of a press release from 26th February 2016 called In Ten Years, 7% of Self-Governments Have Organized a Local Referendum. According to this information of the most prestigious local self-government authority, a local referendum had been organized in only 7% of self-government units in Slovakia from 2005 till 2015. It was successful in 60% of them. This means that 93% of municipalities and cities have never used this institute, although, in several cases, other forms of citizens’ participation in decision-making mechanism on the level of a municipality have took place – e.g. assemblies of municipality inhabitants, public meetings or negotiations of an issue on a level of a local committee. From the referendums executed, approximately 42% were about recalling a mayor, 30% were related to an investment intent planned in the municipality and approximately 28% were solving some other important question.

The possibility to recall a mayor of a municipality or a city via local referendum is also worth considering. In the period of time between municipal elections, which is a period of 4 years, a mandate of the highest authority of a municipality can be lost only for reasons of relinquishing the mandate or final conviction for intentional crime; setting medical reasons aside for now. Is it desirable for the stability of local administration that the citizens are able to touch the mandate of a mayor in the period between elections? This discussion is all the more important considering the fact that in the Slovak Republic citizens vote for a mayor and members of the local board of representatives separately. Therefore, a situation of disagreements in opinions between them could occur. Is it supposed to be easier to get rid of the post of a mayor or a member of the board of representatives? Is the local referendum about recalling the mayor not more a consequence of animosity of the candidates and an effort to grasp power as soon as possible than an actual dissatisfaction of the citizens with the results of the mayor in office? In any case, this shows that our democratic rules are not perfect, but we cannot find any better.

Therefore, it would be interesting if Slovakia adopted a Czech concept of appointing the posts in local self-administration where the top authority is elected not by the citizens but by the representatives elected by them. Hereby, however, mainly the independent candidates would be in a more difficult position, so the
Czech concept shows that this system is also not ideal. Let’s take a closer look at some referendums. The first example is a local referendum in Gabčíkovo held on 2nd August 2015. It was a reaction to the effort of the state to temporarily place the refugees from the migration crisis from Austria to the premises of the Slovak University of Technology in this municipality. The question of the referendum was: “Are you against an establishment of a refugee camp in the building of the Slovak University of Technology in Gabčíkovo?” From the turnout of 2063 citizens (election turnout more than 58%) 2051 citizens, which is more than 97% of the participants, were against the refugee camp. Despite this, the camp has been built, gradually in operation and now it is without clients again. This case is a demonstration of no legal power or a binding effect of a local referendum result on decisions of state administration authorities led by the government; they have no obligation to respect it and it has been proven without a doubt that organizing it was pointless.

The second example is a local referendum in the town of Modra from 12th September 2015. It was aimed at solving a relatively significant issue directed inside the local self-government. The municipality was in dispute with an entrepreneur about a liability of almost 300 000 Eur. The actual question was: “Do you agree with the town of Modra ending the lawsuit against Ing. Andrej Vacho by an out-of-court or a court settlement and paying him the sum of maximally 293 575.78 EUR?” If the town had not paid the sum, it would have been increasing daily due to interest and legal costs up to an amount nobody dared to estimate but which could have been multiples of this sum. On the other hand, there was a possibility that the town could win this dispute and would not have to pay anything. It was a purely expert question that could have, mainly in case of a negative result, considerably paralysed financial ability of the town of Modra to perform several statutory tasks. In the end, this referendum was not successful, as only 141 inhabitants of the overall amount of 7675 eligible voters (turnout of only 1.8%) came to the ballot boxes. It is worth noting that 19 voters answered positively and 118 citizens answered negatively (from the valid votes). This referendum is an example of the fact that citizens prefer the competent authorities to decide on highly expert subjects and not to place responsibility on the shoulders of ordinary citizens.

Both cases are an expression of political reality in practice. It appears that the main problem is the participation of the public (voters) in the governance. Despite the fact that the problems of local politics should be closer to all citizens because they affect their every-day lives, in reality, they are more interested in matters on a nationwide level. The reality of the whole republic, transmitted by the media, is much more attractive and interesting than daily concerns. This further proves that the transformation of the political system is nowhere near finished.

**Conclusions**

If we asked ourselves a question about the meaning of a referendum in the conditions of the Slovak Republic, we must be equally sceptical on both nationwide and local levels. The main issues of its realization are mainly the turnout and an associated meaningfulness of a question asked in a referendum. This point is proven by the fact that although we have had eight referendums on a nationwide level in Slovakia (in 1994, 1997, 1998, 2000, 2003, 2004, 2010 and 2015), the only valid was the one in 2003 about accession to the European Union. If we remind ourselves of a thwarted referendum in 1997 about the possible direct election of a president (here, the probability of a sufficient turnout was also high), other referendums served more to promote their authors (mostly political parties) than their purpose [7]. The fundamental problem is also a legally binding effect of these referendums from local, through regional, to nationwide level. It becomes apparent that except for specific topics (e.g. recalling a mayor or a
president of the republic) it would be difficult to force the authorities from the local self-government to the National Council of the Slovak Republic to realize the results of a referendum through further legal provisions up to an actual law.

Despite the constitutional and political system of the Slovak Republic being formulated by its authors under the maximalist theory of democracy, practical execution from 1993 until the present day is, by the exercise of authority, closer to the minimalist concept. It is of little consolation that it is not only us having problems with a better usage of institutes of direct democracy, but also other countries not only within the European Union.

On a theoretical level, we can therefore conclude that the institute of referendum brings both positive and negative features. The control of the state power by its citizens could be included in the strongly positive ones. At the same time, better conditions for a development and deepening of ideas of the civil society are created because its members actively participate in the governance. Finally, they have a possibility to express their opinion directly, without intervention of their representatives, expressing it sufficiently accurately and without possible distortion. On the other hand, and now we are voicing opinions of opponents of the direct democracy ideas, the ability of the citizens to make decisions, especially about more complex issues, is questionable. There is always an option of manipulation from the politicians, media or other parties involved. The answers in the form of yes or no do not offer space to express possible reservations. Furthermore, nobody takes even a political responsibility for the concrete result of a referendum. However, setting the minimum threshold for the required election turnout remains the most common subject of debates and alternative opinions.

* Constitution of Slovak Republic, Art 93-100
** Constitution of Slovak Republic, Art 98.
*** Constitution of Slovak Republic, Art 73.
**** Constitution of Slovak Republic, Art 67.
***** Act No. 369/1990.

References
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