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The referendum as an institution in the Black Sea Region: Does it signal the rise or collapse of democracy?

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The referendum as an institution in the Black Sea Region: Does it signal the rise or collapse of democracy?

Abstract: Views on the institution of direct democracy have changed during the period of democratic transition. The various advantages and positive effects of direct democracy have been confirmed by the practice of some democratic countries. Its educational and political activation value for society was also noted, without which civil society cannot form. The referendum is especially treated as the purest form of correlation between the views of society and the decisions of its representatives. In a situation where two representative bodies are present – the parliament and the president – a referendum is considered a means of resolving disputes between them in important state affairs. The referendum is nowadays becoming more than just a binding or consultative opinion on a legislative act, especially a constitution. First and foremost, it is important to see the extension of the type and scope of issues that are subject to direct voting. Apart from the traditional, i.e., constitutional changes, polarising issues that raise considerable emotion have become the subject of referenda. Problems of this type include, in particular, moral issues, membership in international organisations, and so-called 'New Policy'. This article presents the role and importance of the referendum as an institution shaping the democratic systems of the Black Sea Region.

Keywords: democracy, direct democracy, referendum, Black Sea Region, democratisation

1. Introduction

1. The referendum has become a very popular tool in decision-making in Central and Eastern Europe (CEE) in recent years. It should be noted that in most countries, it was relatively rarely used in the years of the communist systems. This was mainly due to the lack of appropriate constitutional and legal solutions, as well as the specificity of those systems.

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The 'new democracies' of the CEE have become an interesting topic of research in political science¹. One of the methodological reasons for that is that the political systems in these countries had to start over with the process of democratisation all at the same time. The process of building democratic institutions and a market economy began simultaneously as well. CEE countries became the subject of comparative studies, including those focused on referendums. As one of the most popular tools of direct democracy, referendums give citizens the opportunity to uniquely participate in the decision-making process². The 20th century was a time of direct democracy and therefore institutionalised the referendum.

The CEE is an area where even today referendums are frequently held. Anneli Albi argues that it can be called a direct democracy area. The frequency of referendums can be partly attributed to the states' totalitarian past and newly regained independence, which entails the need to grant decisions a higher mandate or to elevate the nation's sovereignty³. The first referendums in Europe were held after the Second World War, mainly in Western European countries, and concerned various issues that the voters decided. Another 'wave' of referendums took place during the period of political transition in the countries of the CEE. Voters decided on the independence of the state, privatisation, adoption of the constitution, or accession to the European Union⁴.

There are decisions made by referendum that, for various reasons, are of particular importance to a state. In this respect, it is assumed that the subject matter of such a vote is highly specific, a case that does not directly lead to the establishment of law, but provides the basis for the authorities empowered to make decisions or take some other action to do so appropriately⁵.

- 1 B. Puchalska, *Limits to Democratic Constitutionalism in Central and Eastern Europe*, Farnham 2011, p. 15.
- 2 For more, see M. Marczewska-Rytko, *Demokracja bezpośrednia w teorii i praktyce politycznej*, Lublin 2002.
- 3 A. Albi, *Referenda w sprawach członkostwa w UE w krajach Europy Środkowej i Wschodniej; konsekwencje dla unijnej procedury zmian traktatowych*, „Zeszyty Natolińskie” 2004, no. 1, <http://www.natolin.edu.pl/index.html> [07.10.2018].
- 4 M. Musiał-Karg, *Referenda w państwach europejskich*, Toruń 2008, p. 205.
- 5 M. Jabłoński, *Referendum de lege lata i de lege ferenda*, „Przegląd Prawa i Administracji” 1997, vol. XXXIX, pp. 15-16.

The main thesis of this article is the view that the referendum as an institution has played a significant role in the emergence of states and the formation of their political systems. It is used in decision-making processes related to the internal affairs of a state, such as the establishment of the presidency, the functioning of parliament, privatisation, the construction of a nuclear power plant, etc.

The motives for holding a referendum are very different. They depend on the past experience and the situation of a given state, its transformation stage, as well as the functioning of its constitutional organs. Here we distinguish four distinctive motives:

- deciding one's own nation's fate;
- legitimisation of political power;
- systemic constitutionalisation;
- deciding systemic disputes⁶.

The constitutions of the countries in the Black Sea Region include the referendum institution. Different orders have been defined in the decision-making process of the state, the referendum, including types, requirements, validity, etc. However, changes in the basic constitutional principles of a state have been subject to mandatory referendums, set by law and not at the initiative of a representative body or other authority⁷. To this end, the following countries were analysed: Bulgaria, Georgia, Romania, Russia, Turkey, and Ukraine.

2. The essence of a referendum

The etymology of the word 'referendum' comes from Latin (*referendum*—something to be conveyed, referred to; *refero* to present something for evaluation, to an opinion, to inform officially, to answer verbally or in writing). In practice, a referendum means turning to the citizenry as a sovereign for a decision (expression of will) about a specific matter⁸. Taking into account that, for example, a nation is a col-

6 E. Zieliński, *Referendum w państwach Europy Środkowej i Wschodniej*, [in:] M.T. Staszewski (ed.), *Referendum konstytucyjne w Polsce*, Warszawa 1997, p. 203.

7 J.M. de Waele, *From membership referendums to European elections*, [in:] J.M. de Waele (ed.), *European Union accession referendums*, Brussels 2005, pp. 9-11.

8 E. Olejniczak-Szałowska, *Referendum lokalne w świetle ustawodawstwa polskiego*, Warszawa 2002, p. 15.

lective entity, this decision is made by voting⁹. The Latin expression *ad referendum* signifies that some decisions taken by representatives must be ratified by the parties to be fully valid¹⁰.

In the initial period of the formation of representative referendum systems, it was part of the ordinary legislative process, without which a resolution adopted by the assembly would not apply. As the role of the representative system grew and expanded, the approval procedure was limited to instances when a resolution by the assembly aroused strong opposition from the public. This procedure was usually initiated at the request of the citizens themselves. The transition of this initiative from the citizens to state organs is the moment when the sun set on the referendum as a regular democratic institution¹¹.

The actual designs for the contemporary construction of the referendum were provided by:

1. The Swiss practice of the assembly of the inhabitants of a municipality, which in subsequent stages of the transformation finally took the form of a vote, in which all eligible citizens expressed their will in a particular case¹².

2. On the doctrinal level, the views of Jean Jacques Rousseau, which justified the need and ability to implement the attributes of power directly by a collective sovereign¹³:

It is not enough for the people once assembled to establish a state system, sanctioning a set of statutes. It is not enough to organise a perpetual government or to make an election of officials once and for all. In addition to the extraordinary assemblies that unforeseen events may require, there should be permanent, periodic meetings that cannot be abolished or postponed so that on the appointed day, the people will be called without the need of any other formal convocation¹⁴.

9 Z. Czeszejko-Sochacki, *Prawo parlamentarne w Polsce*, Warszawa 1997, pp. 262-263.

10 M. Bouissou, *La pratique référendaire en France*, „Revue Internationale de Droit Comparé” 1976, no. 2, p. 267.

11 B. Zawadzka, *Konsultacje społeczne i referendum w systemie politycznym PRL*, „Studia Prawnicze” 1989, vol. 2/3, p. 333.

12 J. Steiner, *Demokracje europejskie*, Rzeszów 1993, p. 240; S. Reilly, *Design, Meaning and Choice in Direct Democracy. The Influences of Petitioners and Voters*, Farnham – Burlington 2010, p. 3.

13 M. Jabłoński, *Referendum ogólnokrajowe w polskim prawie konstytucyjnym*, Wrocław 2001, pp. 15-16.

14 J.J. Rousseau, *Umowa społeczna*, A. Peretiatkovicz (tr.), Kęty 2002, p. 72.

By national referendum, we mean macro-democracy, which could theoretically replace direct democracy. Although there are no known governing systems based solely and even largely on referendums, it cannot be denied that from a technical point of view, this kind of governance would be possible today. Any citizen entitled to vote could do so by computer and by pressing the appropriate key (for 'yes', 'no', 'abstain') they would be able to send their votes on any issue to the central office of the relevant institution. There is, obviously, a significant problem to solve: who will formulate the questions? Securing the rights of minorities could cause similar difficulties in applying the referendum as a way of governance¹⁵.

John Naisbitt noted that in today's world of information, people want to personally decide important matters. More people want to take part in referendums where they can speak directly to disputes, than vote for governors. There is not enough trust in democratically elected representatives, and they view it as better to speak for themselves, in person¹⁶.

Referendums are most often run when the traditional mechanisms of representative democracy fail or are ineffective for specific political or social reasons. As an institution, they are supposed to be a means of establishing a social agreement, contributing to the easing of political conflicts. They also play an important role in empowering society and shaping political culture.

The referendum becomes more than just a binding or consultative opinion on a legislative act, especially a constitution. First and foremost, it is important to see the extension of the type and scope of issues that are subject to direct voting.

3. Independence referendum

This term is used to describe a type of referendum in which citizens express themselves on matters concerning the freedom and sovereignty of the state.

¹⁵ T. Kowalak, *Eseje o demokracji*, Białystok 2004, p. 142.

¹⁶ J. Naisbitt, *Megatrends. Ten New Directions Transforming Our Lives*, London 1984, p. 159.

The referendum became an instrument of expression of the will of the citizens or a nation and support for independence. This form of a referral to the citizens turned out to be effective in the case of a community (nation) with a significant sense of national consciousness that was also convinced about the necessity for the rebirth of a state in the context of sovereign states. In all Baltic and Balkan countries, as well as in Ukraine, the results of referendums confirmed the will to form an independent nation-state¹⁷.

The nations that formed the Russian Federation obtained formal, limited statehood in the form of union republics within a sovereign federation. Nationalities and ethnic groups had declared national autonomy with the right to create autonomous republics and other autonomous units in the structure of the federal state. In the legal and constitutional sphere, these institutions formed the constitutional mechanisms that granted nations and nationalities some limited powers and limited independence¹⁸.

The first independence referenda took place in 1991 in Lithuania, Latvia, and Estonia (Lithuania on 9 February 1991 and Latvia and Estonia on 3 March). The citizens of these countries voted in favour of independence.

The Transcaucasian republics of Armenia and Georgia acted in a similar way¹⁹. Armenia set forth the question of its independence, for which 99 percent of the population opted. Georgia voted to restore independence. In the vote, 99 percent of the citizens voted for independence. The results of the referenda lent legitimacy to proclaiming the independence of the republics.

In Georgia's case, the referendum was sanctioned by the Georgian Supreme Council, which was elected in the first multi-party elections held in the Soviet republic in October 1990. Having mostly boycotted the all-Union referendum on the continued federation and the negotiations on a new union treaty on 17 March, Georgia became the fourth

17 E. Zieliński, *Referendum w państwach Europy Środkowej...*, p. 214.

18 E. Zieliński, *Proces odrodzenia narodowego i państwowego republik*, [in:] E. Zieliński (ed.), *Przeobrażenia ustrojowe w państwach byłego ZSRR*, Warszawa 1992, p. 12.

19 E. Kuźelewska, A.R. Bartnicki, *Referendum in Poland and Russia. Comparative analysis attempt*, „The International Affairs Review” 2008, no. 1/2, p. 84.

Soviet republic, after the three Baltic states to hold a referendum on the issue of independence.

The only question the referendum asked was: 'Do you support the restoration of the independence of Georgia in accordance with the Act of Declaration of Independence of Georgia of May 26, 1918?' The official results showed over 99 percent in favour with 90.6 percent voter turnout.

A referendum constituting the question of the independence of the republic was also held in Ukraine. In the 1991 vote, more than 90 percent of the population voted for independence. This result confirmed the long-term aspirations of Ukraine for independence. The referendum has become an instrument for expressing the will of the people and for advocating for independence. This form of appeal to the nation proved to be effective in the case of a community with a strong sense of national consciousness and a belief in the need to revive statehood within sovereign states. In all the Baltic States as well as in Ukraine, the results of the referendum confirmed the will to live in a nation-state.

The whole of Ukraine supported the struggle for independence. The voting in question corresponded to the principles of democratic choice, and the large support for independence legitimised the Ukrainian state and created an opportunity to shape the political nation²⁰. Therefore, it can be said that this was the very day that the Ukrainian nation was born as a political entity. And although in subsequent years support for independence dwindled, it has never fallen below 50 percent²¹.

Thus, we may adopt the thesis that Ukraine's independence is both the result of the collapse of the USSR and one of the most important causes for its disintegration²². If the central authority of the USSR was not degraded, the possibility of pursuing the aspirations of Ukrainians to create a fully independent state would be very limited. In turn, if it were not for the Ukrainian authorities taking steps to break the existing ties linking Ukraine with other Soviet republics, the total disintegration of the USSR would not necessarily have occurred.

20 W. Baluk, *Demokracja bezpośrednia na Ukrainie w okresie transformacji*, [in:] M. Marczevska-Rytko (ed.), *Stan i perspektywy demokracji bezpośredniej we współczesnym świecie*, Lublin 2011, p. 295.

21 T.A. Olszański, *Trud niepodległości. Ukraina na przełomie tysiącleci*, Kraków 2003, p. 37.

22 H.E. Bradley, C.S. Kaplan, *Eastern Europe and Former Soviet Union*, [in:] D. Butler, A. Ranney (eds), *Referendums around the World. Growing Use of Direct Democracy*, Washington 1994, p. 202.

On the other side, in 2014, a controversial referendum on the status of Crimea was held. On 16 March, a referendum deemed internationally to be illegal took place on the territory of the Autonomous Republic of Crimea and in the city-region of Sevastopol. The results of the vote showed 96.8 percent of voters, with a turnout of 83.1 percent, had voted to join the Russian Federation as subjects²³. The legal basis for this referendum was the decision of February 27, 2014, issued by the Verkhovna Rada of the Autonomous Republic of Crimea²⁴.

The loss of Crimea, apart from its geopolitical and military significance, and the influence exercised in the internal Ukrainian political scene, has meant economic consequences for Ukraine, linked with the loss of state property located on the peninsula, including parts of its electricity and mining industry and port infrastructure, which was essential for Ukrainian exporters.

For the Russian authorities, the occupation of Crimea has been a propaganda success for internal use in Russia; however, it has had significant political costs on the international scene (increasing its image as a dangerous and unpredictable state), as well as financial costs (preliminary estimates valued the annexation has cost at least USD 82 billion)²⁵.

The authorities of Ukraine declared the referendum illegal and inconsistent with the Ukrainian legal order while in the UN forum, the General Assembly adopted a non-binding resolution stating that the referendum was invalid²⁶.

23 A. Macias, *A detailed look at how Russia annexed Crimea*, Business Insider, 24.03.2015, <https://www.businessinsider.com/how-russia-took-crimea-2015-3?IR=T> [15.10.2018].

24 *Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum in Ukraine's Crimea Region*, Security Council, 15.03.2014, <https://www.un.org/press/en/2014/sc11319.doc.htm> [15.10.2018].

25 T.A. Olszański, A. Sarna, A. Wierzbowska-Miazga, *Konsekwencje aneksji Krymu*, Analizy OSW, 19.03.2014, <https://www.osw.waw.pl/pl/publikacje/analizy/2014-03-19/konsekwencje-aneksji-krymu> [27.10.2018].

26 *Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum...*

4. Legitimation of political power

● In terms of the legitimacy of a referendum, as an example we can offer the 1993 referendum in what was to become the Russian Federation (April).

The forming of the Russian Federation did not trigger any significant changes in the structure and principles of the functioning of the supreme state organs. From the beginning of the existence of Russia as a sovereign state, conflicts arose around the methods of exercising power, in particular the division of competences between individual state organs²⁷. These differences were mostly personal in origin and associated with the ambitions of individual politicians.

The idea to refer the matter to the whole of society appeared as early as in May 1992 when B. Yeltsin considered the idea of dissolving parliament. He was supported by politicians from the Democratic Russia group, who started collecting signatures for a referendum.

The conflict over the competences and scope of power intensified significantly at the beginning of 1993. The Supreme Council and the Congress of People's Deputies were clearly dominated by opponents of the president. The reason for the accumulation of conflicts were disputes regarding the decision-making powers of individual authorities and the attitude about the direction and pace of state reforms. As a consequence of the sharpening of the conflict between the parliament and Yeltsin, the latter ordered a nationwide referendum to determine the mandate for the president's policy²⁸.

Voters were asked questions about their confidence in President Yeltsin, support for the government's socio-economic policies, and whether to call early elections for both the presidency and parliament.

The referendum was initiated by the Congress of People's Deputies, which stipulated that Yeltsin would need to obtain 50 percent of the electorate, rather than 50 percent of valid votes. However, the Constitutional Court then ruled that the president required only a simple majority on two issues – confidence in him, and on his economic and

27 See A. Czajowski, *Demokratyzacja Rosji w latach 1987-1999*, Wrocław 2001, pp. 78-91; E. Zieliński, *System konstytucyjny Federacji Rosyjskiej*, [in:] J. Adamowski, A. Skrzypek (eds), *Federacja Rosyjska 1991-2001*, Warszawa 2002, pp. 85-126.

28 A. Stelmach, *Wybory parlamentarne w Rosji (12 grudnia 1993)*, [in:] S. Zyborowicz (ed.), *Polska i państwa sąsiedzkie. Wybory parlamentarne i prezydenckie 1993-1995*, Poznań 1997, p. 76.

social policies – although he would still need the support of more than half the electorate to call new parliamentary and presidential elections.

The results of the referendum demonstrated that the voters supported President Yeltsin and his policy of economic reforms, despite the severity of everyday life and the varied benefits each social group derived from these undertakings. This support constituted the legitimisation of the president's power and gave him the basis for taking more decisive action on political and economic matters²⁹. The referendum revealed that the Supreme Council represented the views of Russian voters only to a limited extent, and moreover, that it had actually become a kind of political party representing the interests of selected social groups³⁰.

In turn, the undemocratic recourse to a referendum is a tool for furthering individual leaders' decisions, though it can also be a plebiscite on the popularity of the politician.

5. Adoption and amendment of the constitution

The constitutions of the CEE states were established in the 1990s, and they sanction systemic and political changes and introduce many new institutional devices typical of a democratic state. Compared to the past, this is both a change in political system and way of governance, with reference to educated, democratic forms of exercising power. The decision to take into account public opinion obliges us to use this form of direct democracy³¹. The referendum successfully suits the constitutionalisation of the political system, creating both the foundations of the new constitutional order and the modern rules of the state, and delimits interference by the public authority with respect to individual affairs³².

29 E. Zieliński, *Referendum w Rosji*, [in:] E. Zieliński, I. Bokszczyński, J. Zieliński, *Referendum w państwach Europy*, Warszawa 2003, p. 263; W. Marciniak, *Rozgrabione imperium. Upadek Związku Sowieckiego i powstanie Federacji Rosyjskiej*, Kraków 2004, pp. 163-169.

30 W. Marciniak, op. cit., p. 444.

31 See M. Podolak, *Instytucja referendum w wybranych państwach Europy Środkowej i Wschodniej (1989-2012)*, Lublin 2014, pp. 295-327.

32 E. Zieliński, *Referendum w państwach Europy Środkowej...*, p. 216; W. Sokolewicz, *Nowa rola konstytucji w postsocjalistycznych państwach Europy*, „Państwo i Prawo” 2000, no. 10, pp. 20-22.

There is no doubt, however, that due to the importance of the decision taken by citizens in voting on the constitution, this special kind of referendum should be considered one of the most important instruments of direct democracy. The role of society in this case rises to that of an important advisor in the field of Basic Law. Hence, the voters and creators of the new constitution have a fairly high responsibility. One must also realise how important the constitution is for every democratic country. It is indispensable for the proper functioning of a modern state and for shaping civic society³³.

The constitutions of the Black Sea region were created as copies of Western values and institutions, and thus, when we compare them with the constitutionalism of established democracies, they will seem far from original and characterised by references to foreign patterns, with only slight modifications. If we consider the novelty in the region's constitutions, we must refer to the earlier socialist constitutions, which were created in opposition to democratic ones, in fact, forming outright denial³⁴.

The adoption of a constitution by referendum, i.e., with the participation of citizens, stimulates their identification with the state, while the constitution serves to increase their interest in political life³⁵. Referendums regarding the adoption or amendment of a constitution took place in four of the analysed countries: Romania, Turkey, Russia, and Ukraine.

In two of them, the citizens decided whether to accept a new constitution – in 1991 in Romania and in 1993 in the Russian Federation.

The constitutional referendum in the Russian Federation was ordered by President Boris Yeltsin on December 12. The constitution was adopted by a majority – 58.4 percent of the votes – with a turnout of 54 percent.

33 A. Malinowski, *Spoleczne uwarunkowania referendum*, [in:] M.T. Staszewski, D. Waniek (eds), *Referendum w Polsce i w Europie Wschodniej*, Warszawa 1996, p. 148.

34 B. Dziemidok-Olszewska, *Instytucja Prezydenta w państwach Europy Środkowo-Wschodniej*, Lublin 2003, p. 13.

35 B. Banaszak, *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*, Kraków 2004, p. 73.

These percentages indicate that Russia's draft constitution, as submitted to a referendum, was accepted by the public³⁶. Considering the situation and circumstances in which the referendum and parliamentary elections were held, i.e., after the dissolution of parliament and the use of the military to deal with the opposition, the result demonstrated support for this policy direction as well as for undertakings leading to the normalisation of public life in the state. The turnout was sufficient for the constitution to be passed, but it did not increase the recognition of the importance of civic activity in Russia, i.e., the participation and support of citizens for creating a new, democratic order³⁷.

Despite the less-than-satisfactory results, the passing of the constitution of the Russian Federation was an important event leading to the normalisation of public life in the country and the adoption of the democratic direction for the development of the state³⁸. Commentators who said that people voted for 'democracy', desiring a strong state, order, and security, were not wrong. It can be assumed that the reasons for the relatively low turnout include disapproval with the direction of change, a poverty of political consciousness among voters, the lack of discernment concerning Russia's political realm, the lack of acceptance of Yeltsin's dissolution of representative bodies, or even the attachment of a large part of the society to the former socio-political system³⁹.

The passing of the constitution of a reborn Russian state by direct vote of the nation terminated the temporary stage of systemic solutions and enabled the introduction of stable state institutions, serving the legitimisation of state power and setting in motion the democratisation of the Russian state. The new Basic Law came into force on 25 December 1993⁴⁰.

In Romania, a constitutional referendum was held on 8 December 1991. The new constitution was approved by 79.1 percent of vot-

36 See M. Hartwig, *Die Legitimation des Staates durch Verfassungsrezeption in Mittel- und Osteuropa*, „Zeitschrift für ausländisches öffentliches Recht und Völkerrecht“ 1999, vol. 59, p. 921.

37 E. Zieliński, *Referendum w Rosji...*, p. 164.

38 M. Musiał-Karg, op. cit., p. 224.

39 J. Karwulski, *Wybory parlamentarne i prezydenckie u wschodnich sąsiadów w latach 1992-1995 (Litwa, Rosja, Ukraina, Białoruś)*, Poznań 1995, p. 58.

40 J.S. Kowalski, *Konstytucja Federacji Rosyjskiej a rosyjska i europejska tradycja konstytucyjna*, Warszawa – Poznań 2009, p. 101.

ers. This was one of the most debated issues during the discussions on the provisions of the constitution. The high abstention – 34 percent – when compared to the turnout for the 1990 elections (86.2 percent), was the result more or less of an implicitly recommended political tactic in which some political parties were against the formulation of the constitution⁴¹.

In 2003, Romania revised its constitution for the first time since its adoption in relation to EU accession so that the parliament could decide to join the Union by a two-thirds majority. In 2018, a referendum was called to ask voters whether they approve a change to the definition of ‘family’ as provided in Article 48 of the constitution to prohibit same-sex marriage. The referendum failed, as the turnout was only 21.1 percent, below the required minimum voter turnout of 30 percent.

In Turkey, referendums were held on constitutional changes. The first one took place in 2010 on a package of changes covering 26 areas, including the army, equality, privacy, work, parliamentary activities, the Constitutional Tribunal, and the judiciary.

Voters endorsed the modifications to Turkey’s current constitution, making the military more accountable to civilian courts and giving parliament – the Grand National Assembly – more power to appoint judges.

The amendments also relax restrictions on strikes, grant civil servants the right to conclude collective agreements, and lift immunity from prosecution for the leaders of the bloody 1980 military takeover. The reforms were expected to finally dissociate Turkey, which was seeking to join the EU, from the remnants of autocratic rule⁴².

The other referendum was held on 16 April 2017 and concerned constitutional reform that would transform the political system into a presidential one. The majority of voters, 51.4 percent, were in favour of changing the system, on a turnout of 85 percent. The planned reform of the Constitution of the Republic of Turkey assumes the adoption of 18 amendments. As a result, the president is to become the head of the government, and hence obtain executive powers (with the right

41 I. Culic, *Romania*, [in:] A. Auer, A. Bützer (eds), *Direct democracy: The Eastern and Central Experience*, Sydney 2001, p. 145.

42 Q&A, *Turkey’s constitutional referendum*, BBC, 12.09.2010, <https://www.bbc.com/news/world-europe-11228955> [30.10.2018].

to issue decrees with the effect of an act in matters not regulated by the existing law). The office of the prime minister will be abolished, and the parliamentary and presidential elections will take place on the same day (the parliament's term of office will be extended from the current four to five years). The reduction of the number of members of the Supreme Council of Judges and Prosecutors (the main body managing the Turkish judicial system) from 22 to 13 members, four of whom are to be appointed the head of state, and two by the Ministry of Justice subordinate to the president and the remaining ones by the parliament, also forms an important change. In practice, it gives the president control over the judiciary.

The new system will come into force in 2019, with the current term of President Recep Tayyip Erdoğan expiring⁴³.

Both referendums had very high voter turnout – 2010–77 percent, 2017–85 percent. This is due to the compulsory voting system in Turkey.

Another example of an attempt to reform the political system is the 2000 referendum in Ukraine. The initiator was the then-president Leonid Kuchma. Through this referendum, the president attempted to introduce far-reaching changes to the Constitution of Ukraine. The anticipated changes in the political system, on the one hand, held the potential to improve the activities of the legislative authority and, on the other, would increase the superiority of the executive in the state, or more precisely the president⁴⁴.

The referendum was perceived by the public as an attempt to inhibit the growing popularity of Viktor Yanukovich, who at the time had real chances of winning the presidential election⁴⁵. The opposition decried the president, referring to the situation as a 'constitutional coup d'état' and the 'Lukashenko-isation' of the state. The president decided to initiate the referendum even after the Supreme Council is-

43 M. Chudziak, *Referendum w sprawie zmiany konstytucji w Turcji*, Analizy OSW, 18.04.2017, <https://www.osw.waw.pl/pl/publikacje/analizy/2017-04-18/referendum-w-sprawie-zmiany-konstytucji-w-turcji> [12.10.2018].

44 *Referendum konstytucyjne na Ukrainie*, „Tydzień na Wschodzie” 2000, no. 16-17 (180-181), p. 17.

45 See W. Baluk, *Rywalizacja wyborcza w państwach Europy Wschodniej. Zarys problemu*, [in:] A. Stępień-Kuczyńska, M. Słowikowski (eds), *Na gruzach imperium... W stronę nowego ładu międzynarodowego i społeczno-politycznego w regionie Europy Środkowo-Wschodniej*, Łódź 2012, pp. 221-231.

sued a resolution introducing a ban on referendums in Ukraine. The president vetoed the resolution and the Supreme Council failed to appeal. The president's veto has a fairly strong basis: parliament cannot prohibit him from carrying out his constitutional duties, i.e., initiation of a referendum on a 'popular initiative', supported by the appropriate number of signatures. The fact that the referendum was actually a presidential initiative is irrelevant from the formal point of view⁴⁶.

According to polls, the president's key postulate enabling early termination of the parliament was supported by 63 percent and strongly opposed by 19 percent. The proposal to limit the immunity of deputies was much more popular (83 percent to 12 percent, respectively) as was limiting the number of deputies (92 percent to 3 percent, respectively). However, the introduction of bicameralism (23 percent to 25 percent, respectively) was seemingly incomprehensible to the voters, rather than unpopular.

6. Settling disputes for political reasons

Changes were made to the electoral systems in Romania in 2007 and in Bulgaria in its electronic elections system in 2015 and its electoral system in 2016.

On October 23, 2007, President Traian Băsescu signed a decree announcing a referendum on electoral regulations for the parliamentary elections. The voters were asked: 'Do you agree that, in the next election, deputies and senators should be elected in single-member constituencies on two separate electoral cards?' The referendum was held along with the elections to the European Parliament on November 25, 2007.

Although 81 percent of voters were in favour of the proposal, the low turnout of 26 percent invalidated the result.

In Bulgaria, two votes were held regarding the reform of the electoral system. The first one was initiated by President Rosen Plevneliev in 2013, but his proposal was stymied by the ruling majority in the National Assembly. After the parliamentary elections of October 2014, Plevneliev resumed his campaign, calling for a referendum on

⁴⁶ Prezydent Kuczma rozpisał referendum, „Tydzień na Wschodzie” 2000, no. 3 (107), p. 12.

three questions – the introduction of a majoritarian element in the election of MPs, the introduction of compulsory voting, and electronic voting⁴⁷. The National Assembly reduced the questions to only one about internet voting. The referendum on that issue was held on October 25, 2015.

Although the referendum result was approved by a wide margin (72.7 percent), turnout was far below the required threshold to make its result binding (40.05 percent). Despite this, the legislature was obliged to consider the issue. As a result, the National Assembly adopted amendments to the Electoral Code and introduced experimental internet voting starting with the 2018 parliamentary elections⁴⁸.

In 2016, the citizens were asked to answer six questions concerning the change of electoral law from proportional to majority, a reduction in the number of deputies from 240 to 120, the introduction of compulsory elections, electronic voting, and the direct election of regional heads of security forces. One of the questions concerned a change in financing political parties.

Six questions were proposed but the National Assembly reduced them to only three. This referendum took place on November 6, 2016. It was the most successful popular initiative in the contemporary history of Bulgaria. Although it did not produce a legally binding result, it produced a politically legitimate demand for electoral reform⁴⁹.

In 2009, Romania held a referendum on instituting a unicameral parliament and reducing the number of deputies. Specifically, the proposal initiated by the president was to alter the size and structure of parliament from a bicameral one with 137 senators and 334 deputies to a unicameral one with a maximum of 300 seats. After the referendum, the number of parliamentarians kept growing from 471 due to the lack of any legal limit. In July 2015, almost six years after the referendum was held, the number of parliamentarians was 588.

47 *Bulgaria's electronic voting referendum falls short*, The Sofia Globe, 25.10.2015, <https://sofiaglobe.com/2015/10/25/bulgarias-electronic-voting-referendum-falls-short/> [21.11.2018].

48 S.P. Stoychev, *The 2015 referendum in Bulgaria*, ResearchGate, 01.12.2015, https://www.researchgate.net/publication/304806749_The_2015_Referendum_in_Bulgaria [15.10.2018].

49 S.P. Stoychev, *The 2016 referendum in Bulgaria*, CEU, 2017, <https://politicalscience.ceu.edu/sites/politicalscience.ceu.hu/files/attachment/basicpage/1096/stoychostoychev.pdf> [15.10.2018].

There were five attempts in Romania to impeach President Băsescu and remove him from office by means of a referendum.

As a result of the impeachment vote by parliament, Băsescu was suspended from his function as president on April 19, 2007, and a national referendum was held on May 19, 2007, to decide by popular vote whether to dismiss the president. According to the electoral law, an absolute majority of all Romanians eligible to vote choosing to dismiss the president is required for his/her removal, which means that almost 9 million people would have had to vote against the president⁵⁰. Among the main reasons given in the impeachments of Băsescu were:

1. Infringing upon and 'substituting the authority' of the government, the judicial system and the parliament;
2. Committing acts of 'political partisanship' with direct reference to the Democratic Party, abuse of power and acting more like a 'judge of the other public authorities than a 'collaborator', thus 'abandoning his role of impartial mediator as required by the Romanian constitution';
3. Manipulating and 'instigating public opinion against other state institutions' such as parliament and the government.

Băsescu and his supporters denied the accusations, stating that his actions and statements were ways of fighting corruption in the political and judicial systems and against 'circles of business interests' with unlawful purposes⁵¹.

Over 75 percent of voters chose 'No' to ousting Băsescu.

The second referendum on impeaching the president was held on July 29, 2012. Parliament voted to impeach Băsescu on 6 July, and by law, the referendum had to take place within a month⁵². The parliament of Romania, in the impeachment charges against the president, called on the nation to dismiss him on a variety of charges, to which Băsescu responded, dismissing the whole thing as a 'putsch' and asked the public to boycott it. The polls showed almost 87 percent of Romanians favoured the impeachment of the president, and the vote was

50 *Romania. Country Study Guide, V. 1 Strategic Information and Developments*, Washington 2013, p. 80.

51 *Romanian president faces impeachment poll*, Euractiv, 25.04.2007, <https://www.euractiv.com/section/enlargement/news/romanian-president-faces-impeachment-poll/798698/> [22.10.2018].

52 S. Cage, L. Ilie, *Romania president accuses government of power grab*, Reuters, 05.07.2012, <https://uk.reuters.com/article/uk-romania-politics/romania-president-accuses-government-of-power-grab-idUKBRE86413W20120705> [12.10.2018].

a majority, but the turnout was estimated to be only around 46 percent, thus rendering the referendum invalid⁵³.

In Georgia in 2008, a double referendum asked voters to decide whether Georgia should join NATO and, separately, if there should be a change in the date of parliamentary elections. It was held at the same time as early presidential elections. The citizens decided the date of the next parliamentary elections should be spring 2008 and approved joining the North Atlantic Treaty Organization. Both proposals were approved with more than 75 percent of the votes.

A referendum in Bulgaria in 2013 asked voters to decide whether to build a new nuclear power plant. Bulgaria has been heavily reliant on nuclear energy since the 1970s when the Soviet-built Kozloduy Nuclear Power Plant became operational. Under pressure from the EU during accession negotiations, the country agreed to close down four of the plant's six units, with EU technical and financial assistance. Before the last units were shut down, Kozloduy produced 44 percent of the country's electricity, 20 percent of which was exported. This had given Bulgaria a strategic position in the region, which it then lost⁵⁴.

The referendum was initiated by the opposition Socialist Party (BSP), which gathered 800,000 signatures in favour of holding a referendum on building a new nuclear power plant at Belene⁵⁵. Under the constitution, 500,000 valid signatures are needed to call a referendum. The plebiscite on Belene was the first nationwide referendum in the country's modern history. The vote polarised opinion in the country because nuclear energy had been a sensitive political topic ever since the closure of the Kozloduy plant.

Bulgaria held the referendum on January 27, 2013. Voters were asked: 'Should nuclear energy be developed in Bulgaria through the construction of a new nuclear power plant?' The vote found that Bulgarians favoured the development of nuclear energy in their country,

53 *Traian Basescu: Romanian impeachment vote ruled invalid*, BBC, 21.08.2012, <https://www.bbc.com/news/world-europe-19332259> [15.10.2018].

54 *In historic vote, Bulgarian voters back new nuclear plant*, Euractiv, 28.01.2013, <https://www.euractiv.com/section/elections/news/in-historic-vote-bulgarian-voters-back-new-nuclear-plant/> Accessed [12.10.2018].

55 *Q&A, Bulgaria's nuclear energy referendum*, BBC, 25.01.2013, <https://www.bbc.com/news/world-europe-21202176> [22.10.2018].

with 61.49 percent of those voting in favour. However, the low turnout (20.22 percent) meant that the result was invalidated.

In summary, we can see that most of the referendums have been held in Romania, only two were carried out in Georgia, and most of the votes were held at the initiative of the head of state.

It seems that in most cases, the most appropriate, reliable form of referendum is one that contains alternative presentations of several competently prepared variants of the solution. They should concern a clearly formulated and specific issue. This allows voters not only to express a relationship with a specific proposal but also can reveal what the other possibilities are. To some extent, this also helps decision-makers understand the electorate's motives by their choices.

7 Conclusion

● The practice of using referendums in the analysed countries leads us to some reflections.

First of all, in most of the countries, the institution of the referendum has successfully made it into political practice, effectively supplementing the representative governments. Politicians increasingly resort to the possibilities offered by their constitutions in the field of direct democracy. The referendum is enjoying increased interest, especially of late, of both voters and political parties.

Second, referendums and representative bodies enable the shaping of social consensus and mitigate social conflict. The issues on the path of systemic reconstruction can hardly be solved in a way that would satisfy different social groups. The vote of the majority on a given solution is a factor that integrates people with their respective social values. This supports the activities of representative bodies and creates an atmosphere of social acceptance of them⁵⁶. Therefore, the referendum is complemented by representative governments, and the coexistence of both democratic forms creates the conditions for verifying the degree of compliance of representatives' actions with the opin-

56 E. Zieliński, *Referendum w państwach Europy Środkowej...*, p. 204.

ions of those who elected them. This feature enables the referendum to correct and change government policy⁵⁷.

Third, a referendum can be used in an instrumental way by those in power, to transfer responsibility for unpopular decisions or decisions with unknown costs. They may be held on obvious matters in order to increase the legitimisation of power, or re-legitimisation during conflicts with other institutions (e.g., parliament with the president, parliament with the government). By its very nature, a referendum is a thoroughly conservative institution, leading to a negative social consensus. It favours the consolidation of solutions that are not always considered satisfactory but are already known⁵⁸. The institution of the referendum is essentially not conducive to building consensus, it does not resolve conflict, and it does not lead to the alleviation of differences in values. On the contrary, it may even weaken negotiations conducted with the participation of individual political parties and interest groups. It allows only for expressing views in the public forum. A referendum can be seen as an element of the political struggle used by political parties to build their own legitimacy or to implement their own policies. It is used, as demonstrated by the practice of individual countries, both by supporters and opponents⁵⁹.

Fourth, the countries of the Black Sea region do not differ, in their referendum practices, from the other regions of Central and Eastern Europe. Referendums are often organised on the initiative of state authorities and do not always gain the approval of citizens. There is a noticeable decrease in the number of citizens participating in referendum voting, which translates into invalidation of the result. The low involvement of citizens from CEE countries is the result of a lack of tradition of participating in democratic votes. Low election and referendum turnouts may also be the result of the dissatisfaction of citizens with the activities of politicians.

57 M. Musiał-Karg, *op. cit.*, p. 359.

58 J. Zieliński, *Referendum i demokracja reprezentacyjna na Łotwie*, [in:] J. Dobkowski (ed.), *Problemy współczesnego ustrojoznawstwa. Księga jubileuszowa prof. B. Jastrzębskiego*, Olsztyn 2007, p. 202.

59 I. Bokszczanin, *Instytucja referendum ratyfikacyjnego w procesie integracji w Europie*, [in:] T. Mołdawa, K.A. Wojtaszczyk, A. Szymański (eds), *Wymiar społeczny członkostwa Polski w Unii Europejskiej*, Warszawa 2003, p. 370.

Fifth, moderate use of the referendum is also connected with technical conditions, and not only about their financial cost. The problem also lies in the fact that the form of the approach to the problem posed to citizens in seeking their guidance must consider intellectual differentiation and, consequently, an unequal understanding of the matters being resolved by the vote. The degree of complexity of matters referred to citizens usually conflicts with the necessity of presenting it in an accessible manner to the majority of those involved in the decision-making process. In the case of a referendum, an additional argument for the careful use of it is freedom to make decisions on the part of the governing body regarding the subject of the vote. As pointed out in the literature, the subject matter of a referendum often comprises issues that, when adopted by the relevant body, could prove highly unpopular. In such a situation, a referendum becomes a convenient way of transferring the burden of the decision directly to the sovereign (the citizens/nation). The importance of a referendum is also significantly influenced by its political context. As a result of its influence, the referendum becomes a kind of plebiscite, treated as the possibility of expressing a view more on current political matters than in relation to the subject of the referendum itself⁶⁰.

Sixth, the referendum as an institution may not be the future of democracy, but the democracy of the future will increasingly refer to various forms of direct democracy, including the referendum. This tendency is now becoming crystallised due to two beliefs pertaining to the essence of democracy. The former shows that the institutions of direct democracy offer protection against the over-centralisation of the state and party politics, a product of indirect democracy that leads to the narrowing of areas of freedom and the questioning of the democratic ideal. The latter is that democracy means the equality of citizens, both in legal and political terms, for whom new forms of implementation still need to be sought.

60 A. Kulig, B. Naleziński, *Referendum w systemie ustrojowym Polski*, „Przegląd Sejmowy” 1996, no. 5, p. 24.

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