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Slovenia:

Country Report

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ABSTRACT

The referendum as a means of decision-making was present in various forms in the Slovene constitutional order even when Slovenia was still a part of communist Yugoslavia, yet neither a constitutional nor a legislative referendum were ever carried out in practice (referendums were held only at the local level and in "working" and other organisations). Given this total absence of referendum practice in the legislative field and the negative experience of referendums from the past, it is clear that a referendum democracy has yet to establish itself in Slovenia.

CONTENT

Direct Democracy: country-report on Slovenia

Igor Luksic

1. Historical Review

The first Slovene experience with referendum goes back to the year 1919. After the end of the First World War Slovenes joined the kingdom of Serbs, Croats and Slovenes. It meant final liberation from German hegemony and from Austro-Hungarian State. And in this process the new borders between new south slave state and the Austria had to be establish. The biggest problem in that context was to establish the state border in the areas that were ethnically mixed between Austrians and Slovenes. Under the provisions of the peace conference in Paris borders were to be established by the referendum. At the referendum it was decided that the questionable territory is going to belong to Austria. So, the very first referendum experience that lies in the Slovene political memory was traumatic.

The basic forms of direct democracy were already present under the previous constitutional order of Slovenia (within the framework of the former Yugoslavia). The constitutional referendum was first regulated in Slovenia in the 1963 Constitution of the Socialist Republic of Slovenia. The legislative referendum was first explicitly regulated with a constitutional law from 1953, although in an indirect manner it had also been made possible by the 1947 Constitution of the People's Republic of Slovenia. The popular initiative was introduced to the Slovene constitutional system in 1989 with amendment LXXVI to the Constitution of the Republic of Slovenia. All the Slovene constitutions have in some form or another contained provisions on the right to petition, although before the adoption of the new constitution (1991) only the 1947 Constitution of the People's Republic of Slovenia had explicitly defined this right as such — later constitutions did not separately (independently) set out this right but the sense of it was encompassed in other provisions (see Kaučič 1992, 122-127, 128-131).

The referendum as a means of decision-making was present in various forms in the Slovene constitutional order even when Slovenia was still a part of communist Yugoslavia, yet neither a constitutional nor a legislative referendum were ever carried out in practice (referendums were held only at the local level and in "working" and other organisations). Given this total absence of referendum practice in the legislative field and the negative experience of referendums from the past, it is clear that a referendum democracy has yet to establish itself in Slovenia (Kaučič 1992, 122).

Among the development phases of the constitutional regulation of referendums in the former political system (within a Yugoslav framework), we should mention first the 1947 Constitution of the People's

Republic of Slovenia, which referred to the possibility of a referendum that would be called by the presidium, pursuant to a decision by the Assembly or at the proposal of the government, on matters within the jurisdiction of the Slovene republic (Article 72).

The constitutional law from 1953, in a separate provision contained in Article 25, stipulated that a law could be proposed to the electorate for them to decide on it. This legislative referendum could be *ante legem* or *post legem*, but in both cases it was only facultative (it could be proposed by one-fifth of the members of one of the chambers of the Assembly or by the Executive Council). The decision of the voters was binding and for two years following the referendum it was not possible to adopt a law or any other act that would be contrary to the decision taken at the referendum. Pursuant to the constitutional law, more detailed regulations on referendums were supposed to be set out in a separate law but this was never adopted.

In addition to general provisions on the possibility of exercising self-government by means of a referendum (Article 50), the 1963 Constitution of the Socialist Republic of Slovenia also laid down specific provisions on the legislative referendum (as well as on referendums on other issues and, for the first time, a constitutional referendum). The legislative referendum was envisaged as being facultative (the Assembly decided whether to call it) and could be *ante legem* or *post legem*. A further continuation from the previous arrangement lay in the fact that the decision of the voters was binding on the republic's Assembly and that for two years following the holding of the referendum the Assembly was not able to pass a law or other act which could be contrary to the result of the referendum.

The legislative referendum as regulated by the Constitution of the Socialist Republic of Slovenia from 1974 did not differ substantially from the previous arrangement. Here again the legislative referendum was regulated within the framework of common provisions on referendums. It was defined as facultative, *ante legem* or *post legem*, and the referendum result was binding on the Assembly of the republic. Again, a two-year ban was prescribed on the passing of a law or other act which would be contrary to the result of the referendum (Article 337).

In 1989 a cluster of constitutional amendments included amendment LXXI to the Slovene constitution of 1974, which augmented the institution of referendums in general, and the legislative referendum in particular. Among other things, the amendment stipulated that a legislative referendum could be carried out on the basis of a decision by the Assembly of the republic, and must be carried out if demanded by a certain number of voters to be determined by law (the constitutional provisions on the outcome of the referendum being binding and on the two-year ban on the passing of a law or other act that would be contrary to the result of the referendum remained in force).

In order to provide a more complete understanding of the (constitutional) development of the referendum in Slovenia, it should be explained that the two former Yugoslavias (i.e. the Kingdom of Yugoslavia and the post-war communist Yugoslavia), of which Slovenia was a part, were among a number of east European countries that in this century did not hold a single referendum at the state level. According to the doctrine that workers should decide by them selves on the conditions of work. Mechanisms of direct democracy were much more extended on the level of local communities and working organisations.

2. Contemporary Slovenia

The contemporary Slovenia was born out of referendum. Slovene referendum (plebiscite) on sovereignty and independence took place on 23 December 1990. The plebiscite for an independent Slovenia, which gave to the Slovene parliament and other state organs the authority to legally and politically declare independence, undoubtedly reflected the genuine will of the majority of the Slovene population. The plebiscite was the evidence that a referendum democracy in Slovenia is not only possible but is something that, in certain cases, can be a very beneficial supplement to representative democracy. This applies primarily to questions relating to Slovenia's vital national interests and which are suitable for putting to a referendum (e.g. decisions on incorporation in European and other international integration).

3. Institutions of direct Democracy in the Slovene constitutional order

Article 3 of the Slovene constitution confers power to the people (the principle of popular sovereignty), stipulating that citizens shall exercise that power in two ways: directly, and at elections in accordance with the principle of the separation of powers into legislative, executive and judicial. In addition, the constitution explicitly provides for certain typical or most important institutions of direct democracy: referendums, popular initiative and the right to petition.

Pursuant to Article 170 of the constitution and in accordance with the provisions of the LRPI (Law on Referendum and Popular Initiative), the National Assembly must call a referendum on a constitutional amendment (**constitutional referendum**) if such is demanded by no less than thirty deputies (facultative referendum). A demand for a referendum may be submitted by deputies after the adoption of a constitutional amendment but before its proclamation in the National Assembly. The National Assembly calls a referendum no later than seven days after the submission of a demand. An amendment to the constitution is confirmed at the referendum if a majority of the voters who cast their ballots voted in favour, on the condition that a majority of all voters took part in the voting. The National Assembly is bound by the result of the referendum and for two years after the referendum was carried out it may not adopt a constitutional amendment which would be contrary to that result.

Article 139 of the constitution stipulates that the municipality, which is the basic unit of local government in Slovenia, is established in accordance with a referendum held to ascertain the will of the people in a given area. This **referendum on the establishing of municipalities**, which is prescribed as obligatory, is not legally binding on the National Assembly, which, after the referendum has been held, establishes the municipality and determines its boundaries with a law. This type of referendum, which therefore serves merely as a guideline (in other words it is a consultative referendum), is set out in detail in the Law on Referendums for the Establishing of Municipalities.

The next important form of direct democracy provided for by the new constitution is the **popular legislative initiative**. A group of not less than five thousand voters may propose the enactment of a law to the National Assembly (Article 88 of the Constitution), and a group of not less than thirty thousand voters may propose the initiation of the procedure to amend the constitution (**popular constitutional initiative** — Article 168 of the constitution). Pursuant to Article 59 of the LRPI, any voter, political party or other association of citizens may present an initiative to the electorate for submitting a proposal to begin the procedure to amend the constitution or enact a law. The signatures from voters in support of the proposal must be collected within 60 days.

This constitutional arrangement of the popular legislative initiative is clearly inadequate (the same applies to the constitutional initiative) since the National Assembly (the legislator) can reject a bill proposed by the voters without any legal sanction. And it can do this as early as the first reading. To a certain extent this shortcoming is compensated for by the provisions on the legislative referendum in Article 90 of the constitution, where it is stipulated that such referendum is obligatory in the case of a **referendum on a popular (legislative) initiative** (second paragraph of Article 90). But the situation under Article 90 is not essentially linked with the provision contained in Article 88 of the constitution because in accordance with Article 90 a demand must be made by 40,000 voters for the obligatory calling of a legislative referendum and, pursuant to the LRPI, an additional condition is that in this case the bill to which the demand relates must be submitted before the collection of voters' signatures in support of the demand for the calling of a legislative referendum begins. Therefore whenever the National Assembly intends to reject their legislative initiative under Article 88 of the constitution, five thousand voters can, pursuant to Article 90 of the constitution and the provisions of the LRPI, announce the collection of 40,000 signatures in support of the lodging of a demand for a referendum, thereby keeping the proposed law in the legislative procedure (provided, of course, that the collection of signatures is successful).

The constitution also sets out the **right to petition**. Each citizen has the right to present petitions and other initiatives of a general nature (Article 45 of the constitution). Citizens may therefore address various

complaints, proposals, demands, initiatives, requests, etc, to parliament and other organs of power, although the constitution does not stipulate that such state organs are obliged to reply to them.

It is also worth mentioning that through the principle of the autonomy of local government (Article 9) or the framework regulation of local government (Articles 138-144), the constitution also enables various forms of **direct democracy at the local level**. Article 44 of the Law on Local Government sets out three ways in which citizens participate directly in decision-making in the municipality: citizens' assembly, referendum and popular initiative. A **citizens' assembly** may be called for the entire municipality or for a particular part of it. It is called by the mayor at his or her own initiative, at the initiative of the municipal council or at the demand of five per cent of the voters in the municipality or in a part of the municipality as determined by its statute (Article 45 of the law). The municipal council may call a **referendum** at its own initiative on any of its acts or other decision, and must call a referendum if such is demanded by not less than 10 per cent of the voters in the municipality. All citizens who are entitled to vote for members of the municipal council have the right to vote at a referendum. A decision is passed at a referendum if more than half the people who voted cast their ballots in favour (Article 46). In addition to this type of referendum, the municipal council or the mayor may call a consultative referendum on specific issues of general importance within the competence of the municipality, but the municipal authorities are not bound by the result of such a referendum (Article 47). The provisions on the **popular initiative** are set out in Article 48 of the law, which determines that not less than five per cent of the voters in a municipality may demand the passing or abrogation of a general act or other decision within the competence of the municipal council or other municipal bodies. The body to which the demand is addressed must decide on it within a time limit set by the statute of the municipality, which may not be longer than three months.

Articles 26 to 29 of the LRPI contain special provisions on the **consultative referendum**, which the constitution does not explicitly prescribe but which it does not prevent either. This type of referendum may only be called by the National Assembly, and it may do so on issues within its competence which are of general public importance. The National Assembly may call a consultative referendum for the entire territory of the state or for a specific, narrower area for matters concerning only the inhabitants of such narrower area. The National Assembly may call a consultative referendum before making its final decision on a specific issue but is not bound by the result.

4. The legislative referendum

The constitution regulates the legislative referendum in Article 90, which stipulates that the National Assembly may call a referendum on any issue which is the subject of regulation by law and that the National Assembly is bound by the result of such a referendum. The National Assembly may call a legislative referendum at its own initiative but must call such a referendum if it is demanded by no less than one-third

(i.e. a minimum of thirty) of all elected deputies, by the National Council (which can only adopt such a demand by majority vote of all members — Article 99 of the constitution)[24] or by forty thousand voters. The constitution therefore sets out a facultative referendum. All citizens who are eligible to vote generally have the right to vote at a referendum. Any proposal put to a referendum is deemed to have been accepted if a simple majority of voters voting at the referendum vote in favour of it.

The fifth paragraph of Article 90 of the constitution stipulates separately that the procedures for holding referendums shall be regulated by a law passed by a two-thirds majority of those deputies present and voting. The Law on Referendum and Popular Initiative was passed by the two-third majority of votes by Slovene Parliament in 1994. The LRPI regulates the Referendum on constitutional changes, legislative referendum and consultative referendum on the questions under the jurisdiction of the National Assembly as well as the popular initiative. Legislative referendum, defined by the LRPI, is either preliminary or subsequent. On the referendum the voters either express their will about the questions that are yet to be regulated by the law, either they decide about the confirmation of the law that was already passed by the National Assembly.

A referendum may be called on each and every **issue** which is the subject of regulation by law (in other words the constitution does not stipulate that a referendum be called on a law as a whole). It should be said that in modern legal systems the rights and obligations of subjects are generally regulated by **law**. Furthermore, nowadays almost every social issue in a given circumstance can be cause for such a level of potential or actual conflict that it can be considered a statutory matter (except for those relations or rights and obligations which, because of their nature, are entirely removed from regulation by law or which are explicitly reserved for constitutional regulation).

The special problem is the estimation of the legal and statutory adequacy in the case of a preliminary legislative referendum. Here the statutory matter is initially defined by the qualified proposers of the referendum, and this is a process in which the voters are either directly or indirectly involved. If, for instance, judging that an issue does not involve a statutory matter, the National Assembly does not call a referendum which has been proposed by the voters, the National Council or thirty deputies, it would cause tensions and complications. Here the Constitutional Court can prevent potential abuse of legal (statutory) form by ruling, in accordance with its constitutional and legal competences, that a law or the content of a demand for a law to be adopted or amended at a referendum are not in accordance with the constitution. Yet even the Constitutional Court is operating in something of a void here because the constitution does not contain precise instructions or criteria for defining a statutory matter as such.

5. Practice of referendum in decision making in contemporary Slovenia

First we should mention that the procedure (decision on whether a referendum proposal involve a statutory matter) that concerns the voter's request proved to be very crucial in Slovene referendum practice. According to the LRPI initiator addresses the request of the voters to the President of the National Assembly. Request has to be based on two hundred valid signatures of the voters. The President of the National Assembly defines the time limits in which initiator has to collect forty thousand signatures. National Assembly has also right to estimate the adequacy of the request. It has two mechanisms to prevent the abuse of referendum or to «obstruct» the initiative. It can decide that the request is not adequately formulate, so the initiator has to change or elucidate the referendum question. Or, National Assembly might asses that the initiative is not in accordance with the Constitution. In that case it demands from the Constitutional Court to review the formulated referendum question.

Slovene experience knows some cases in which initiatives were blockaded by mechanisms mentioned above. There are three significant examples of referendum initiatives that were prevented in such a manner. The first was the referendum initiative on the question of citizenship. It was an initiative of two right-wing representatives (Štefan Matuš, Marjan Poljšak) who wanted the referendum on suppression of citizenship to all those who obtained it in accordance with the article forty of the Law on Citizenship. The initiative aimed at citizens that are ethnically non-Slovenes (of other ex-Yugoslavia's ethnic origin). On the initiative of the National Assembly, Constitutional Court ruled out (U-I-266/95) that the content of the request is non-constitutional. Such a decision was of course justified because democracy, democratic rights and citizenship are universal and not ethnic concepts.

The second was the case of referendum initiative on the denationalisation. United List of Social Democrats tried to formulate a referendum initiative that would change the course of denationalisation process. The question of denationalisation in contemporary Slovenia is the prime conceptual question defines the Slovene social organisation. United List tried to prevent the land, forests and other property that have the feudal or church origin to be given back to old owners (feudal barons and Catholic Church). The referendum question also contained the notion of property maximum that can be given back in the process of denationalisation. United List gathered more than 43000 signatures. In the mean time one third of deputies in the National Assembly passed the request to evaluate the accordance of the referendum initiative with the Slovene Constitution. The Constitutional Court pre-formulated the referendum question by the constitutional judgement (U-I-121/97) that the Church is exempted from the category of feudal property. Because of that fact United List backed from the initiative. This case shows that the issue of referendum can go far beyond obligations and rights of subjects. It might also be included in the process of conceptual definition of the social organisation. Referendum after all has eminent political role.

The third case was the initiative of the movement of 23-th of December. With their initiative they tried to blockade the adoption of Associational agreement in the Slovene National Assembly. The initiative was efficiently blockaded with the «tactic of delay» and administrative obstacles in the National Assembly. This case shows that the initiatives that are to the contrary with the broad national consensus are destined to failure.

In all three cases the Slovene Constitutional Court established itself as the crucial instance in the evaluation of the legal and statutory matters of proposed preliminary referendum. If we regard it politically, the Slovene cases of referendum (successful or not) reveals that Slovene Constitutional Court established itself not just as legal but also as an important political subject. In the way that it actively intervenes in the political reality, it takes side and by this actively participate in the process of defining the alternatives of organisation of life, production and reproduction. In short it has all features of the political subject.

6. Successful cases of legislative referendum in Slovenia

Slovene practice of direct democracy has so far only three «successful» cases. Also because of above mentioned mechanisms that filter initiatives there were only three cases of realised referendums on the national level.

a) The Referendum on the voting system

The most exposed and ambivalent case of Slovene referendum practice was the referendum on the voting system. This case really flurried the political scene in Slovenia. In all its complexity it is the prototype of referendum practice and as such it exposes the referendum as the relation between different political subjects and consequently it enables us to determine the Slovene political subject as it was established after the democratisation and establishment of the new sovereign State.

This case was marked by a real referendum race. On 12 April 1996 the Social Democratic Party of Slovenia lodged an initiative to voters to gain support for their demand for the calling of a preliminary legislative referendum on certain questions which should be regulated by a proposed Law on Amendments and Supplements to the Law on Elections to the National Assembly. At the referendum it was proposed that voters would decide on replacing the current proportional system with a two-round majority voting system. A few days later, on 17 April, a group of thirty-five deputies submitted a demand for the calling of a preliminary legislative referendum in respect of the same law, but with a quite different referendum question. They would have the electorate deciding merely on certain changes (minor "corrections") to the current proportional electoral system which would not make significant amendments to the voting system

itself. On that same day, about an hour later, the National Council also lodged a demand for a preliminary legislative referendum, proposing that the electorate adopt some sort of intermediate solution, i.e. the introduction of a combined proportional-majority electoral system. The case was and still is completely invested with the political interests and conflicts that give shape to the Slovene political space in last ten years. Subjects that proposed referendum initiative were Social Democratic Party of Slovenia, National Assembly deputies and National Council. Behind the initiative of the Social Democratic Party of Slovenia was the calculation of public mobilisation for the party politics, the aspiration to the hegemonic position in the right-wing bloc (so called «spring» bloc) and the count that the majority voting system would change the political equilibrium in favour of the spring bloc in which Social Democratic Party of Slovenia seek to have the hegemonic position.

Other two protagonist, thirty-five National Assembly deputies and National Council tried to prevent radical changes of the voting system. The establishment of the majority voting system would mean the polarisation of the political space into two blocs. While the right-wing bloc (Catholic) already exists, at the symbolic level (anti communism, attachment to the Catholic Church) but also at the level of the concrete political cooperation and commitment to return to the power, they had after the first democratic elections, there is no such thing as the homogenous left-wing bloc. Even potentially, there is no moral and political force that would keep this bloc together (as the Catholic Church for the right-wing bloc) except the defence of a laic state. Shortly, given political situation, relation and equilibrium of power between major political forces in Slovenia, prescribed the respective positions in the case of Referendum on the voting system.

The Referendum on the voting system took place in December 1996. Three referendum questions were formulated. The question of National Council (combination of proportional and majority voting system), the question of Social Democratic Party of Slovenia (two round majority system) and the question of the thirty-five National Assembly deputies (pure proportional system modelled on the Israel experience). At the referendum no proposition obtained more than fifty percents of all votes. According to the Act on the Manner of Voting and on the Establishment of Voting Results at the Referendum on the Electoral System that was passed by the National Assembly, no referendum proposition was accepted. Than entered in the scene the new subject, the Constitutional Court to which Social Democratic Party of Slovenia addressed a constitutional complaint. Constitutional Court accepted very controversial rule. In its judgement (U-I-12/97) it ordered to the National Assembly to pass the law on the voting system that would be in accordance with the referendum decision, which, according to the Constitutional Court decided in favour of the majority voting system (the proposal of Social Democratic Party of Slovenia).

Paragraph 90 of Slovene Constitution says that the proposition on the referendum is adopted if majority of those who voted were in favour of the proposition. The problem was that there were three proposals and

none of them obtained the majority of voters. The Constitutional Court that the correct interpretation of the above mentioned Act is that in the case of more proposals (votes are split) the majority of voters concern every proposal individually. The proposal of Social Democratic Party of Slovenia obtained 44.5% of all votes, but taking individually and separately in the percent portion the same proposal obtained 65% votes in favour and 35% against. According to many, by such acrobatic mathematical operation the Constitutional Court made, once already death proposal, resuscitated. (Krivic, separate opinion)

Such a decision of the Constitutional Court was really controversial. The mobilisation of voters by the principal political subjects was conditioned by the constitutional stipulation that proposal is adopted only when the majority of all voters is in favour of one of propositions. That is why the referendum turnout was poor (about 35%) and there was no significant mobilisation of the electorate in favour of proportional (existing) voting system.

The case of Referendum on the voting system shows us that referendum in Slovene political practice has not so much the role of mechanism that allows to articulate and express the peoples will, but is more or less the instrument that is subjected to different manipulations in the power dynamics between different subjects, that are not the subjects of direct democracy. More precisely it is used as a weapon in the struggle for power in the process of (re)equilibration of the power relations in the social and political sphere.

b) The Referendum on the question of financing the construction of the power plant in Zasavje.

The last example of the populist and anti-popular (mis)use of referendum is the case of referendum on the question of financing (the proposed financial construction by the government) the thermoelectric power station in Trbovlje. It was more farce than the real expression of the peoples will. The voting turnout was low, around 28 percent of voters and almost 80 percent voted against the proposed financial construction. The question that is raised bay this case is either it is appropriate to decide on such a issue by the referendum. It is highly professional question in the first place. Then, the decision really touched only the population of concerned region (the region of Zasavje has huge economic and social problems) and that population was in majority for the proposed construction. Legally, the question of financing the construction of power plant can be subjected to the examination of people’s will by referendum. The draft of the law on financial construction was already in the procedure, it has already passed the second reading. So legally the question is not disputable. But looking at the case politically, it was more a luxurious episode of the power struggle between position and opposition, even the personal war between leading figures in Slovene politics. Whole story happened on the premises of governments politics of clientelism and the opposition politics of populist mobilisation. Latter (opposition parties from the right-wing bloc Christian democrats and Social democrats and People’s part, which is in the governing opposition) tried to show through the referendum

process, that the left-wing bloc (liberal-democrats and United List) are reactionary in the question of development. Really far away from the process of articulation and expression of the alternatives of live, production and reproduction, the process of articulation and expression of the peoples will. On the Referendum the government's plans failed, but in reality it was the Referendum it self that failed.

c) The Investigative Referendums on the Municipalities

The whole Reform of local self-government in Slovenia was subjected to the division of the influence between political parties and political blocs. Under the ideology of adapting to the European standard the process of «feudalisation» took place. The formula was more or less «one parish, one municipality». The ideological control was prior to municipality's functioning and their autonomy.

The Case of Investigative Referendums on the Municipalities was subjected to the regulations by the special law. Referendum was called by the National Assembly in the cases were the desires of local population was not in accordance with the newly defined municipalities. So this case was not a nation wide. Nevertheless it is important for our analysis of referendum practice in Slovenia, because it clearly exposes the main political subjects, actors and more theoretically speaking, it helps us to determine through the analysis of relation of power between those subjects and actors, the type and main contours of political subject in contemporary Slovenia.

In the referendum process, it was the case of municipality Koper, that was the most controversial case and as such the most instructive one. There was a referendum about the integrity (against division) of respective municipality. The two-third majority of electorate was in favour of integral municipality. In that process Danijel Starman addressed the initiative to Slovene Constitutional Court to review the accordance of the existing integral municipality of Koper with the Slovene constitutional order. Constitutional Court judged (U-I-301/98) on the basis of its two earlier judgements (U-I-90/94 and U-I-183/94), which established that the existing municipality of Koper is territorially too big, has too much inhabitants settlements and is therefor too heterogeneous and as such is not in accordance with the constitutional order. After this, the municipality of Koper called its own referendum on which the members of community again expressed their majority will to live in existing municipality. But Constitutional Court stayed determined. The whole story around municipality of Koper is not over yet.

What is extremely important in the case of municipality of Koper is the fact that the will of skilful lawyer is more important then the will that is expressed by the majority of voters at the referendum. Theoretically it means that legal subject and the subject of direct democracy can be antagonistic and that modern democracies favours the legal subject.

7. Brief assessment of political aspects of the Slovene referendum practice

Aftermath the king's head was chopped of in political theory (Foucault 1991), the only possible political analysis is the analysis of the nature and acts of specific subject, instead of their deduction in a general theory of subject (Rancière 1998, 13). If we would like to politically analyse the referendum experience, we have to proceed by the analysis of the specific political subjects. The specific political subject that is the carrier of the practice of direct democracy is the subject of direct democracy, historically defined and active.

If we assess the practice and subject of direct democracy through instrument of Referendum in Slovene democracy in last 10 years, we can assume that:

Direct democracy, its practice, is subordinate to indirect democracy. Referendum and referendum initiatives are to often manipulated by the subjects of indirect democracy (political parties)

Constitutive power of the people that has its expression in referendum and popular initiative is secondary to the once established institutions and norms of democratic regime.

The subject of direct democracy and the legal subject are antagonistic. In current democracies the subject of direct democracy (articulation and expression of popular will) is inferior to the legal subject

In present days democracies, and it is evident in the case of Slovenia, subject of direct democracy is very weak. In modern democracies homogenous role is played by the legal subject and subject of indirect democracy.

Above listed findings is not something particularly unusual or surprising. Direct democracy has its modern conceptualisation in the thought of Rousseau. Modern democracies (developed in the West after the Second World War and then expanded to the Eastern Europe) are founded in the strong liberal consensus (Hobbes and successors). The relation between private and public, who is decisive in the determination of political subject, is conceptualised in a complete different manner. For illustration let us see the following quotation from Rousseau's Social Contract: »As soon as public service cease to be the main business of citizens, and they prefer to serve with their purses rather than with their persons, the state is already on the brink of ruin. Is it necessary to go forth to war? They hire troops and remain at home. Is it necessary to take counsel? They appoint deputies and remain at home. By dint of laziness and money, they end by having mercenaries to enslave their country, and representative to sell it.« (Rousseau 1953, 102)

Obviously, in liberal democratic regimes the institutions of direct democracy have a secondary role.

This does not mean that the institutions of direct democracy, namely of referendum, are politically insignificant. In the Slovene case it is obvious that referendum has meaning that goes beyond the simple mechanism of manipulation and ideological legitimisation. In its role in the power struggle it can assume the constitutive status, that is, it has a potential to change irreversibly the content of socio-political relations. The contemporary Slovene State was founded in an act of expression of popular will.

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