

How we discovered national referendums and where it got us

(Comparative analysis of national referendums in Croatia, Macedonia and Slovenia)

Petar Bacic

1. Introduction. Numerous recent researches and related statistic data witness that, in global context, more and more people get the opportunity to participate directly in deciding on major political issues, either through referendum, popular (citizen) initiative, recall procedures, or via some other form of direct democracy.¹ During last two decades more than hundred countries around the globe have introduced some mechanism of direct decision making as an addition to the institutions of representative democracy. In the same time, countries that were already familiar with direct democracy procedures for a period longer than hundred years accepted new forms, new modalities of citizen's participation in governance, either at local, regional or national level.²

Furthermore, the issue of citizen's participation in governance does not end at national level - thanks to the recent developments in the European Union, direct democracy is not limited in state framework anymore. With the instrument called European Citizen's Initiative, as a new form of public participation in the European Union policy shaping introduced by the Lisbon Treaty, it goes beyond and above national boundaries. Albeit limited and for the time being vague regarding scope and procedure, this is the first ever direct democracy instrument at supranational level.³ Constitutionalization of the European Citizen's Initiative represents another EU's response to the challenge of its 'democratic deficit' as a complex phenomena that alienates voters and decreases political participation, as well as an attempt to enhance the

¹ There are various instruments of direct democracy and sometimes different terms are used for what are essentially the same procedures, as it is pointed out in the DIRECT DEMOCRACY, The International IDEA Handbook. That Handbook, for example, "examines four separate applications of direct democracy: referendums, citizens' initiatives, agenda initiatives and recall". The terminology differs between jurisdictions, the meaning of terms is changing over times and is subject to linguistic variations, etc. As it regards referendum, the term is used according to the following pattern: "Referendums are procedures which give the electorate a direct vote on a specific political, constitutional or legislative issue... take place when a governing body or similar authority decides to call for a vote on a particular issue, or when such a vote is required by law... In some cases, procedures also exist which allow citizens or a minority in a legislature to demand a referendum...". DIRECT DEMOCRACY – The International IDEA Handbook, Stockholm, 2008., p. 9-10.

² See, for example, Kaufmann B. et al., GUIDEBOOK TO DIRECT DEMOCRACY – IN SWITZERLAND AND BEYOND, Initiative and Referendum Institute (IRI) Europe, electronic edition, 2010., str. 204-246.; Altman D., DIRECT DEMOCRACY WORLDWIDE, Cambridge University Press, Cambridge - New York, 2011.; Norris P., DEMOCRATIC DEFICIT: CRITICAL CITIZENS REVISITED, Cambridge University Press, Cambridge - New York, 2011. See also related data: Initiative and Referendum Institute - <http://www.iandrinstitute.org/>; Initiative and Referendum Institute – Europe, <http://www.iri-europe.org/>; Initiative and Referendum Institute – Asia, <http://www.iri-asia.net/>.

³ Basic information available at: <http://ec.europa.eu/citizens-initiative/public/welcome>. For proposed reforms of the instrument see: Regulation of the European Parliament and of the Council on the European Citizens' Initiative; https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:PE_92_2018_REV_1&from=EN

European citizenship as an essential part in the process of building up the European demos and creating a common identity of EU citizens.

The importance of referendum in constitutional democracies, as the main instrument of direct involvement of citizens in the political decision making process, has undoubtedly significantly increased in recent period. The institute of referendum as procedure that gives the electorate a direct vote on a specific political, constitutional or legislative issue⁴ - used here to refer to different obligatory and facultative forms of popular votes, regardless of who the initiator is (i.e. whether it is initiated by the political branches of government or by the people) as well as of who is the author of proposal (either the parliament or the people) - is well established in most European countries.⁵ It should be noted though, that the institute of referendums initiated directly by citizens is much more popular in new democracies of Eastern Europe (envisaged in at least ten states) than in the older West European countries (as it is adopted only in Switzerland, Italy and Lichtenstein).⁶

Among those European countries that relatively recently began to discover full potentials of direct democracy and its positive and negative sides, stand three ex-Yugoslav republics - Croatia, Macedonia and Slovenia. Though different direct democracy procedures were envisaged already in the constitutional order of socialist Yugoslavia, but were in the same time practiced only at a very limited scale at local levels and of little political significance, Croatian, Macedonian and Slovenian citizens were introduced to nationwide referendums during the transition process. The main aim of this paper is to present their common constitutional and legal background as well to offer an overview of referendums initiated at national levels in these countries with comparable statistical data and facts, complemented with a brief comparison of their constitutional and legislative design of referendums and citizen's initiatives and an assessment of their advantages and shortcomings. Such comparison should in the same time enable critical analysis of referendum experience in Croatia, Macedonia and Slovenia and give a notion of their impact on the political systems and society polarization in these countries.

⁴ See DIRECT DEMOCRACY..., p. 10.

⁵ There are basically three main forms or procedures – obligatory referendum, facultative referendum and citizen's initiative.

⁶ See Podolnjak R., Constitutional Reform of Citizen-Initiated Referendum – Causes of Different Outcomes in Slovenia and Croatia, *Revus*, 26/2015. p. 131-133. According to data presented by Podolnjak, the institute of citizen initiated referendum exists in ten European new democracies – Latvia, Lithuania, Slovakia, Ukraine, Hungary, Slovenia, Croatia, Albania, Macedonia, Serbia.

2. Common background. Yugoslav federation was formed in the aftermath of the World War II as a federation of six republics (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia), with two autonomous provinces (Kosovo and Vojvodina).⁷

The development of Yugoslavian federalism went through different stages, marked primarily by adoption of four federal Constitutions: 1) 1946 – Federative People's Republic of Yugoslavia was defined as "a federal people's state, republican in form, a community of peoples equal in rights who, on the basis of the right to self-determination, including the right of separation, have expressed their will to live together in a federative state" (Art. 1) and made up of six republics out of which Serbia included the Autonomous Province of Vojvodina and Autonomous Region of Kosovo and Metohija (Art. 2); 2) 1953 – though this constitutional reform brought significant changes of political and social system, instead of adopting new Constitution it was carried out by adopting the Constitutional Law that abolished and amended significant portion of 1946 Constitution; 3) 1963 – implementing new model of self-management and renaming the state to Socialist Federative Republic of Yugoslavia defined as a "federal state of voluntarily united and equal peoples and socialist democratic union based on the authority of the working people and self-management", 1963 Constitution also changed the position of Kosovo and Metohija that became the autonomous province (same as Vojvodina, instead of autonomous region); 4) 1974 – Constitution continued the process of political decentralization and considerably enlarged the jurisdiction of federal units, guaranteeing the right of republics to self-determination and secession: "The nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession..." (I, Basic Principles).⁸ Although the interpretation of this constitutional stipulation was always (i.e. since the adoption of Constitution in 1946) a matter of dispute in Yugoslav doctrine and later in political practice,⁹ among Croatian and Slovenian constitutional scholars there's a consensus that it guaranteed republics a right to self-determination and secession. Consequently, in latter search for constitutional basis for proclamation of independence, Croatia and Slovenia referred to the aforementioned right to secede from the Federation repeatedly guaranteed by federal Constitutions.

⁷ The constitutional status of autonomous provinces Kosovo and Vojvodina changed through times; according to the last Yugoslav Constitution of 1974, the Socialist Federative Republic of Yugoslavia was defined as a state community of voluntarily united nations and their socialist republics, as well as two autonomous provinces as constituent parts of the Socialist Republic of Serbia.

⁸ <http://www.worldstatesmen.org/Yugoslavia-Constitution1974.pdf>

⁹ See Bagwell B., Yugoslav Constitutional Questions: Self-Determination and Secession of Member Republics, *Ga. J. Int'l. and Comp. Law*, Vol. 21:489, 1991, p. 508 et passim. See also Iglar F.R., *The Constitutional Crisis in Yugoslavia and International Law of Self-Determination: Slovenia's and Croatia's Right to Secede*, *Boston College International and Comparative Law Review*, Vol. 15, Issue 1, 1992.

When discussing the constitutional design of referendums in Yugoslavia, one should firstly take into account that one of the characteristics of the Yugoslavian federalism was its rather complex legal system. It was characterized by the predominance of federal constitution over constitutions of republics, thus ensuring high degree of uniformity between different legal systems that existed in the federation. Namely, each of the republics (and provinces) consequently adopted their own constitutions that closely followed basic principles layed down in federal constitutions, which served as the master guideline, providing that legal systems in republics had essentially the same characteristics as the legal system of the Federation. The 1974 Constitution of the Socialist Federative Republic of Yugoslavia stipulated that "republican constitutions may not be contrary to the federal constitution" (Art. 206). In other words, according to 1974 constitutional provisions, the republic and provincial constitutions, statutes and regulations cannot be in direct conflict with the federal constitution or a statute. As a consequence of such constitutional design, only minor differences between different legal systems of republics existed in practice.¹⁰

As it regards direct democracy within a constitutional framework, different forms were envisaged including constitutional and legislative referendums, as well as right to petition. In practice however, in the Socialist Federative Republic of Yugoslavia referendums existed only at local levels and at the level of working organisations. Furthermore, referendums were used only for deciding on public infrastructure projects or regarding working conditions. Since no referendum was used for deciding on political questions nor any at all was organised at the state level, one might rightfully conclude that independence referendums that followed in 1990s were complete novelty for citizens of Yugoslav republics. For them, these referendums were about to represent a chance for genuine expression of political freedom that they could not have experience before.

3. Independence Referendums. All three countries of our interest were born in referendums, emerging as independent states in the process of the breakup of Yugoslavia. Following referendum decisions, Slovenia and Croatia declared independence on the same day - 25 June 1991, while Macedonia did the same three months later i.e. in September 1991.

Slovenia was the first among Yugoslav republics to organise the independence referendum. Referendum on sovereignty and independence in Slovenia took place on 23 December 1990. Prior to that, the Plebiscite Law for the Independence and Sovereignty of the

¹⁰ See Bagwell., op. cit.; Sokol S. & Smerdel B., Organizacija vlasti, Narodne novine, Zagreb, 1998.; Bačić A., Principi podjele i jedinstva vlasti u Jugoslaviji, Književni krug, Split, 1990.

Republic of Slovenia was adopted by the Assembly of the Republic of Slovenia, with a threshold for the validity of the plebiscite set at 50 percent and one of all electors (i.e. the absolute majority of all those eligible to vote). In accordance with the Plebiscite Law, the question asked was: "Should the Republic of Slovenia become an independent and sovereign state?". Plebiscite results were officially announced on 26 December. Turnout for the plebiscite was 93.3 percent of those eligible to vote and 88.5 percent (around 95 percent of those who voted) said "yes" to an independent and sovereign Slovenia.

Thus one might rightfully conclude that Slovenia's independence "was clear from the points of view of both the clarity of the question asked and the majority in its support".¹¹ According to I. Lukšič, the whole process can be seen as "evidence that a referendum democracy... in certain cases can be a very beneficial supplement to representative democracy" at least as it concerns 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)".¹²

Croatia soon followed Slovenia's path. The referendum of the independence of Croatia was held on 19 May 1991. Two questions were posed to citizens: 1) "Do you believe that the Republic of Croatia, as a sovereign and independent state, which guarantees cultural autonomy and all civil rights to Serbs and members of other nationalities in Croatia, should enter into an alliance of sovereign states with other republics (according to the proposal by the Republic of Croatia and the Republic of Slovenia for the resolution of the Yugoslav state crisis)?"; 2) "Do you believe that the Republic of Croatia should remain part of Yugoslavia as a united federal state (according to the proposal by the Republic of Serbia and the Socialist Republic of Montenegro for the resolution of the Yugoslav state crisis)?" The turnout was 83.6 percent. On the first question, for Croatia to become a sovereign and independent state 94 per cent voted "for". As it regards the second question, only 4 percent of voters voted for Croatia to remain part of Yugoslavia. According to the Croatian Constitution (1990), followed by the Decree on the Call for Referendum on Independence, for a decision on a referendum to be taken the majority of voters who cast votes was needed, under the condition that majority of the eligible to vote cast their votes.

In comparison with simple, straightforward question posed to citizens of Slovenia, Croatian referendum question was complex and somewhat ambiguous. Furthermore, influenced

¹¹ Vidmar J., *Declaring Statehood in International Law - The Emergence of New States in Post-Cold War Practice*, Hart Publishing, Oxford and Portland, Oregon, 2013., p. 177.

¹² Luksic I., *Direct Democracy in Slovenia*, C2D Working Paper Series 10/2000, <http://www.c2d.ch>, p. 3.

by Serbia's and Serb-dominated federal government's hostile attitude towards Croatia's independence, the Serb population of Croatia in large number boycotted the referendum. Nevertheless, it is very important to emphasize two facts: first, that the ambiguously worded questions have to be connected with the political situation and to the common Slovenian and Croatian proposal of December 1990 for creation of a loose association of Yugoslav republics;¹³ and second, as noted by J. Vidmar, that there was "no doubt among the population of Croatia that they were deciding on independence".¹⁴

Macedonia was the last of three countries that held a referendum for independence. On 8 September 1991 Macedonians got the opportunity to answer the following question: "Are you for a sovereign and independent state of Macedonia, with a right to enter into any alliance with sovereign states of Yugoslavia?". Macedonian citizens overwhelmingly voted for the independence of the Republic Macedonia with 95.5 percent yes votes, while around 3.5 percent voted against. The turnout of voters was 75.8 percent.

The process of establishment of the newly-independent country was completed with the adoption of the new constitution in November 1991. Macedonia was the only Yugoslav republic that in the dissolution process escaped the war scenario. However, already at this early stage of its existence as independent state, Macedonia's further development was heavily burdened with two problematic issues – one concerning the status of Albanian population, and the other one concerning the name issue dispute with Greece. Both of those issues are worth mentioning here, as the latter emerged in 1991 and led to referendum on country's name in 2018, while the former manifested already during the independence referendum. Namely, the country's Albanian population boycotted the referendum, mainly out of two reasons: first was the question put forth in the national referendum that mentioned the option of re-entering into arrangement with Yugoslavia i.e. Serbia in the future, which they found to be unacceptable; the other one was discontentment with their proposed legal status as national minority in an independent Macedonian state - Albanian members of the parliament wanted the country's Albanian community to be recognised as a constituent people of the republic, equal in status

¹³ Common confederal arrangement was proposed on 2 October 1990 by Slovenia and Croatia. As D. Jović points out: "if it had been accepted, the proposed Yugoslav federation (or the union of Yugoslav States that the proposal suggested as an alternative), would have turned Yugoslavia into a loose association of independent states, each of which would be recognized as a sovereign state – both by other members of the confederation and in the sense of interantional law". See more in Jović D., *The Slovenian-Croatian Confederal Proposal: A Tactical Move or an Ultimate Solution*, full text available at: <https://pdfs.semanticscholar.org/9f94/ac9b0f00cde60aba6ba767cfd22a7f4e4d9c.pdf>

¹⁴ Vidmar J., *Declaring Statehood in International Law - The Emergence of New States in Post-Cold War Practice*, Hart Publishing, Oxford and Portland, Oregon, 2013., p. 93-96.

to the ethnic Macedonians.¹⁵ Mainly out of these reasons Albanian political leaders instead organized their own unofficial vote for territorial autonomy within Macedonia.¹⁶

4. Constitutional Frameworks and Referendums in Practice. In each of three countries referendums are primarily regulated by respective Constitutions that contain fundamental rules regarding direct decision-making and are further elaborated in different instruments on legislative level. Only constitutional framework will be presented here in more details. As it regards referendum practice, the focus will be on the referendums that were actually held, though an overview of 'failed' attempts will be provided as well.

The Republic of Croatia. The Constitution of the Republic of Croatia is based on republican principles of freedom, equality and **popular sovereignty**. According to the Article 1 of the Croatian Constitution, power "derives from the people and belongs to the people" defined as a "community of free and equal citizens" who "exercise this power through the election of representatives and through **direct decision-making**".¹⁷

According to the Constitution, the Croatian Parliament may call a **referendum** on a proposal for the amendment of the Constitution, on a bill, or any other issue within its competence (Art. 87 par. 1). Furthermore, the President of the Republic may also call a referendum, though only at the proposal of the Government and with the counter-signature of the Prime-Minister, on a proposal for the amendment of the Constitution or any other issue which he considers to be of importance for independence, unity and existence of the Republic of Croatia (Art. 87 par. 2). Consequently, a referendum on a proposal for the amendment of the Constitution (i.e. referendum on constitutional changes, complete or partial) may be called by the Croatian Parliament or by the President of the Republic.

Nevertheless, constitutional (as well as legislative) referendum may also be initiated through the institute of **citizen's initiative** – in accordance with the Art. 87 par. 3 of the Constitution, the Croatian Parliament shall call a referendum on all issues that may be put to a referendum by the Parliament or the President of the Republic "when so demanded by ten

¹⁵ Claiming that the Constitution gives a lower status to the Albanian population, Albanian politicians particularly objected to the wording of the constitution's preamble that stated the following: "Macedonia is constituted as the national state of the Macedonian people, in which the integral civil equality and enduring coexistence of the Macedonian people with Albanians, Turks, Vlachs, and Roma and other nationalities inhabiting the Republic of Macedonia are protected".

¹⁶ See more in The Albanian Question in Macedonia, ICG, 11 August 1998; available at: <https://www.refworld.org/docid/3ae6a6d04.html>

¹⁷ Constitution of the Republic of Croatia, Official Gazette 'Narodne Novine' No. 85/2010, 05/2014. Besides being primarily regulated by the Constitution, referendums and other instruments of direct democracy are also regulated by the Law on Referendum, as well as by the Constitutional Law on the Constitutional Court of the Republic of Croatia, The Law on the Registry of Voters and the Law on Local and Regional Self-Government.

percent of all voters in the Republic of Croatia". The citizen's initiative in Croatia wasn't part of the original 1990 Constitution, but was introduced later with constitutional changes in 2000 (stipulating that the Parliament shall call a referendum when so demanded by ten percent of all voters in the Republic of Croatia).

Furthermore, Croatian Constitution regulates process of **association and dissociation** and stipulates that any such question shall first be decided by the Croatian Parliament (by a two-thirds majority of all Members), while the final decision "shall be made in a referendum by a majority of voters voting in the referendum" (Art. 142).¹⁸

The decision on referendum is thus made by a simple majority of the votes cast i.e. by the majority of voters who have turned out. It should be noted here, however, that until constitutional revision of 2010 the conditions for reaching decisions in referendum were significantly stricter. Namely, before 2010 the constitutional requirement was that the decision is made by a majority of all voters (the acceptance quorum), providing that a majority of all voters took part in the referendum (the participation quorum). The aforementioned change, that thus preceded not only a 2012 referendum on the EU accession of the Republic of Croatia but also a citizen's initiative that led to a successful referendum on constitutional change in 2013, therefore significantly alleviated the conditions for the decision-making in referendum.¹⁹

As a mandatory referendum according to the Art. 142 of the Constitution (association & dissociation), referendum on joining the European Union was called by the Croatian Parliament in December of 2011, just after signing the Treaty of Accession. Held on 22 January 2012, accession referendum delivered an overwhelming 'yes' vote. The referendum question this time was straight and simple: "Are You in favour of the membership of the Republic of Croatia in the EU?". Almost two million Croatian citizens voted in the referendum, meaning that the turnout of voters was 43.5 percent. The EU accession referendum passed with 66.2 percent votes cast in support, while 33.1 percent voted against joining the EU.

Though the original intention that led constitution makers to removal of quorums related to referendum was "only to facilitate the decision on the future EU membership", as R.

¹⁸ Art. 142 also prohibits any procedure for the association of the Republic of Croatia into alliances with other states "if such association leads, or may lead, to a renewal of a South Slavic state union or to any form of consolidated Balkan state".

¹⁹ See Smerdel B., Republic of Croatia, in: Constitutional Law of the 28 Member States, https://www.pravo.unizg.hr/_download/repository/Constitutional_law_of_the_28_EU_Member_States_-_Croatia.pdf, p. 199-200.

Podolnjak noted, "the consequences have been much larger".²⁰ Since the Croatian constitutional framework allows the referendum on constitutional issues to be called, in 2013 Citizen's Initiative called "In the Name of the Family", openly backed by the Catholic Church as well as by other religious communities and basically reacting against the then Government's initiative to legalize same-sex marriage, managed to collect sufficient number of signatures which led to Parliament's decision to call a referendum. The referendum was held on 1 December 2013 and the question that was put to the voters was: "Are You in favour of the Constitution of the Republic of Croatia being amended with a provision stating that marriage is a life union between a woman and a man?". The turnout was 37.9 percent of voters, out of which 65.8 voted 'yes' and 33.7 voted against. As a result, the Constitutional Charter of Rights and Freedoms was amended by incorporating the definition of marriage into Art. 62 of the Constitution: "Marriage is a life union between a man and a woman" (Part III, Art. 62, par. 2).

Although the referendum regarding the definition of marriage was in fact the only fully successful example of citizen-initiated referendum in Croatia, it's important to point out that another thirteen initiatives were launched starting from their constitutionalization in 2000, out of which eight were initiated after constitutional reform in 2010 that removed quorum requirement. Seven initiatives were unsuccessful in collecting the necessary number of signatures, while on three occasions (changes of the Constitutional Law on the Rights of National Minorities, prohibition of 'outsourcing', prohibition of giving highways under concession) the Constitutional Court, acting upon request of the Parliament in accordance with the Constitutional Act on the Constitutional Court, declared the referendum questions contrary to the Constitution.²¹ In case concerning prevention of the proposal for amending Labour Law, an initiative launched by trade unions actually managed to collect enough signatures. Nevertheless, the Government swiftly reacted and withdrew the contested act (it

²⁰ Podolnjak R., op. cit., p. 134

²¹ The Constitution of the Republic of Croatia in Art. 129 stipulates that the Constitutional Court controls the constitutionality and legality of the national referendum, while the Constitutional Act on the Constitutional Court in Art. 95 prescribes that in case of popular referendum initiative the Croatian Parliament may request a judicial review of the proposed referendum question: "(1) At the request of the Croatian Parliament, the Constitutional Court shall, in the case when ten percent of the total number of voters in the Republic of Croatia request calling a referendum, establish whether the question of the referendum is in accordance with the Constitution and whether the requirements in Article 86, paragraphs 1-3, of the Constitution of the Republic of Croatia for calling a referendum have been met. (2) The Constitutional Court shall pass the decision in paragraph 1 of this Article within a term of 30 days after it filed the request".

was in fact Draft of the Act on Amendments to the Labour Law) from the parliamentary procedure.²²

National referendums held in Croatia

	Date	Subject	Turnout	Result
1.	19.5. 1991.	Independence	83,56%	Accepted (93,24%)
2.	22.1. 2012.	Accession to the European Union	43,51%	Accepted (66,27%)
3.	12.5. 2013.	Constitutional definition of marriage	37,9%	Accepted (65,87%)

National initiatives in Croatia

	Date	Subject	Number of signatures	Turnout	Result	Outcome
*	April 2000.	Legal treatment of soldiers of "Homeland War"	400.000	/	/	Referendum was not called
1	30.9. 2007.	Termination of cooperation with the Hague Tribunal	296.000	/	/	Insufficient number of signatures
2	29.3. 2008.	Accession to NATO	126.392	/	/	Insufficient number of signatures
3	15.11. 2009.	Arbitration of the Croatian - Slovenian border delimitation	200.000	/	/	Insufficient number of signatures
4	9.6. 2010.	Amendments to the Labour Law	717.149	/	/	Government abandoned the amendments
5	13.2. 2013.	Four different questions	~120.000 per question	/	/	Insufficient number of signatures
6	12.5. 2013.	<i>Constitutional definition of marriage</i>	749.316	37,9%	<i>Accepted (65,87%)</i>	<i>Successful</i>
7	17.11. 2013.	Changing the constitutional law on the rights of national	632.165	/	/	Unconstitutional question

²² See more, especially on respective Croatian Constitutional Court's decisions on referendums, in Gardašević Đ., Constitutional Interpretations of Direct Democracy in Croatia, available at: https://www.researchgate.net/publication/324106383_Constitutional_Interpretations_of_Direct_Democracy_In_Croatia; Gardašević Đ., Croatia's Constitutional Dilemma: Popular initiatives versus minority rights, available at: <http://constitutionnet.org/news/croatias-constitutional-dilemma-popular-initiatives-versus-minority-rights>

		minorities				
8	6.6. 2014.	Ban of outsourcing	563.815	/	/	Unconstitutional question
9	21.09. 2014.	Electoral system	386.649	/	/	Insufficient number of signatures
10	11.10. 2014.	Against monetisation of highways	498.545	/	/	Unconstitutional question
11	30.05. 2015.	Referendum on referendum	~340.000 per question	/	/	Insufficient number of signatures
12		For 'fairer' Electoral System	367.169	/	/	Insufficient number of signatures
13	20.6. 2018.	Repealing the Istanbul Convention	345.942	/	/	Insufficient number of signatures

The Republic of North Macedonia. The Constitution of the Republic of (North) Macedonia lays down basic referendum framework. According to the Art. 2 of the Constitution "the citizens of the Republic of Macedonia exercise their authority through **democratically elected Representatives**, through **referendum** and through **other forms of direct expression**".²³

Consequently, different elements of direct democracy are contained in the Macedonian Constitution. First, at least 10,000 citizens have the right to nominate a candidate for the President of the Republic (Art. 81). Second, Macedonian citizens have the right of legislative initiative - a group of at least ten thousand voters have the right to propose adoption of a law (Art. 71). Besides having legislative initiative, voters also can initiate a referendum - "the Assembly is obliged to issue notice of a referendum if one is proposed by at least 150,000 voters." The decision made in referendum is binding, on condition that more than half of the total number of voters voted. Referendum can be initiated by the Parliament as well, concerning specific matters within its sphere of competence, by a majority vote of the total number of Representatives (Art. 73).

²³ Besides being regulated by the Constitution, referendums and other instruments of direct democracy in Macedonia are primarily regulated by the Law on Referendum and Citizen Initiatives (2005) and the Electoral Code (2006, last amended in 2018).

As it concerns constitutional change and its implementation, the Constitution can be changed or supplemented by constitutional amendments (Art. 129). Besides stipulating that a proposal to initiate a change in the Constitution may be made by the President of the Republic, by the Government or by at least 30 Representatives, according to Art. 130 it can also be made by 150,000 citizens. According to Article 131, the decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives. The draft amendment first has to be confirmed by the Assembly (by a majority vote of the total number of Representatives) and then submitted to a public debate. Final decision concerning the change of the Constitution is made by the Assembly (by a two-thirds majority vote of the total number of Representatives). The change in the Constitution is declared by the Assembly (Art. 131).

In between the independence referendum of 1991 and the 2018 referendum on changing the country's name that we'll discuss later, only one referendum was organized in Macedonia. It was held on 7 November 2004 regarding the topic of new municipal borders introduced by the Law on Territorial Division and the Law on the City of Skopje. The referendum was basically a consequence of political situation in Macedonia and longstanding tensed relations between the two largest ethnic groups in the country – the Macedonians and the Albanians, that culminated with the war conflict in 2001. Armed conflict between the Macedonian security forces and the ethnic Albanians organised in the National Liberation Army was brought to an end by signing the Ohrid Framework Agreement that, strongly pushed forward by the international community, brought together main Macedonian and Albanian political parties. The peace agreement envisaged strenghtening of local government, equitable representation of all ethnic groups in state administration, wider use of the Albanian language and state funding of Albanian universities, etc. Besides on the constitutional revision that was enacted already by the end of 2001, the realisation of peace agreement crucially depended on adoption of set of new laws.²⁴ However, the issue of decentralization and new territorial division proved to be highly problematic in practice as it provoked a petition to collect signatures against changes of municipal borders that in the end united a diaspora organization called the World Macedonia Congress as initiator and the main oposition party

²⁴ Hal A. van, Back to the Future: the referendum of November 7th in Macedonia, 16 Helsinki Monitor 36, 2005., p. 40 et passim

VMRO-DPMNE. With enough signatures collected in due time (min. 150.000 within six months), successful petition led to referendum.²⁵

The coalition government, that included the Albanian political party DUI, campaigned against the referendum by calling the voters to abstain, arguing that decentralisation as a key part of the Ohrid Agreement simply means fulfilling its obligations and that boycott represents commitment for the integration of Macedonia in the EU. Though predicted voter turnout was around 50 percent, only 26.2 percent of citizens casted their vote. Since the threshold was set at 50 percent, the referendum failed. The referendum result in the end strengthened the position of the ruling coalition, as well as degree of acceptance of decentralization among citizens of Macedonia and should therefore, as suggested by J. Marko, be seen "as a 'success' story in terms of state building".²⁶

Third and last referendum in Macedonia was held after the Parliament called for a consultative referendum on approval of bilateral international agreement with Greece (Prespa Agreement), signed on 17 June 2018 by the foreign ministers of both countries aiming to resolve their long-standing dispute regarding the name of Macedonian state. Namely, the dispute over the name opened in 1990s and ever since Macedonia gained independence Greece vetoed its EU and NATO membership. The Prespa Agreement envisaged changes of Macedonian constitution that would include changing the name of the country to the Republic of North Macedonia, while Greece would no longer object to Macedonia's Euro-Atlantic integration, including a promise of both countries to respect existing borders. Since the implementation of the agreement was considered as a precondition for Macedonia's accession to EU and NATO (which was also confirmed by both organisations), the Parliament decided to hold a consultative referendum on approval of the Prespa Agreement. The question put to voters on the ballot was: "Are You in favour of EU and NATO membership by accepting the agreement between the Republic of Macedonia and the Republic of Greece?".

The turnout was just under 37 percent, out of which overwhelming majority of 91.5 percent of voters voted in favour of the agreement. Since "more than half of the registered citizens in the voters list did not vote" as stated in the official report on final results issued by the State Election Commission, the required referendum threshold of 50 percent wasn't met.

²⁵ The referendum question was posed as follows: "Are You for the territorial organization of the local self-government (the municipalities and City of Skopje) as determined by the Law on Territorial Division of the Republic of Macedonia and Determination of the Law on Local Self-Government Units (Official Gazette of the Republic of Macedonia No. 49/1996) and the Law on the City of Skopje(Official Gazette of the Republic of Macedonia No. 49/1996)?"

²⁶ Marko J., The Referendum on Decentralization in Macedonia in 2004: A Lithmus Test for Macedonia's Interethnic Relations, European Yearbook of Minority Issues, Vol. 4, 2004/05, p. 717.

However, following the announcement of results and stressing both the convincing majority for and the fact that the referendum was consultative, the Government called on the Parliament to begin the process of amending the Constitution (according to its Art. 131) as envisaged by the Prespa Agreement. On 19 January 2019 constitutional amendments were adopted with two-thirds majority. In order for the Prespa Agreement to come into force, the Greek Parliament also had to ratify it – the ratification process was finally completed on 25 January 2019, and the Agreement went into force on 12 February 2019.

National referendums in Macedonia

Date	Subject	Number of signatures	Turnout	Result	Outcome
8.9. 1991.	Independence	/	75.8%	/	Accepted (95.5%)
7.11. 2004.	Decentralization – new municipal borders	180.454	26.2%	/	Insufficient turnout / invalid
30.9. 2018.	Approval of Int'l Agreem./ Name of the State	/	36.89%	/	Consultative referendum (Yes - 94.18%)

The Republic of Slovenia. According to its Constitution, the Republic of Slovenia is a state of all its citizens, founded on the "permanent and inalienable right of the Slovene nation to self-determination" (Art. 1). The Constitution vests power in hands of the people who "exercise this power directly and through elections" (Art. 3).²⁷ Furthermore, every citizen has the right, in accordance with the law, to directly participate in the management of public affairs (Art. 44).

A proposal to initiate the procedure for **constitutional amendment** may be made by the National Assembly (min. twenty deputies), the Government or "at least thirty thousand voters". The National Assembly decides upon such proposal by a two-thirds majority vote of the deputies present (Art. 168 of the Constitution). Furthermore, if at least thirty deputies require so, the National Assembly must submit a proposed constitutional amendment to voters for adoption in a referendum. An amendment is adopted in a **constitutional referendum** by an absolute majority i.e. "if a majority of those voting voted in favour of the same, provided that a majority of all voters participated in the referendum" (Art. 170).

²⁷ Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. ., see: Unofficial Consolidated Text at the official internet site of the National Assembly of the Republic of Slovenia: <https://www.dz-rs.si/>

The Slovenian Constitution also stipulates that voters have the right to require a **legislative referendum** – if at least forty thousand voters require so, the National Assembly shall call a referendum on the entry into force of a law that it has adopted. A law will be rejected in a referendum if a majority of voters who have cast valid votes vote against the law, provided at least one fifth of all qualified voters have voted against the law (Art. 90).²⁸ Besides constitutional, the voters also have the legislative initiative (at least five thousand voters; Art. 88).

Third form of referendum on the state level stipulated by the Constitution is the one that concerns the transfer of the exercise of part of Slovenia's sovereign rights to international organisations (which are based on respect for human rights and fundamental freedoms, democracy, and the principles of the rule of law) and entering defensive alliances which are based on respect for the aforementioned values. A **referendum on international associations** may be called by the National Assembly before ratifying such treaty and a proposal is passed in the referendum if a majority of voters who have cast valid votes vote in favour of the same. The National Assembly is bound by the result of referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called (Art. 3 a).

Finally, the National Assembly may call a **consultative referendum** – it is envisaged by the Referendum and Popular Initiative Act and may be called by the National Assembly in order to gain feedback on the matters within its competence that are important for citizens. Though its outcome is not binding, the Slovenian government has so far respected the results.²⁹

When it comes to number of referendums held, Slovenia is not only by far the most experienced country among those of our interest, but it is also among leading European countries. That is so primarily because of the original constitutional arrangement of legislative referendum, which was "exceedingly permissive", as M. Kambič pointed out: without explicit restrictions concerning the subject matter of the referendum; with extensive number of five authorised proposers (including parliamentary minority and forty thousand voters), without

²⁸ The same constitutional provision further stipulates that a referendum "may not be called: - on laws on urgent measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters; - on laws on taxes, customs duties, and other compulsory charges, and on the law adopted for the implementation of the state budget; - on laws on the ratification of treaties; - on laws eliminating an unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality".

²⁹ See Kambič M., *Constitutional Democracy in Slovenia Between the Scylla and Charybdis of the Legislative Referendum*, *Pro Publico Bono – Magyar Kozigazgatas*, 2/2016, p. 105-106.

threshold or participation quorum set; and with a simple relative majority set in order for a decision to pass. Any issue that was subject of regulation by law could have been the subject of a legislative referendum.³⁰

Starting from the adoption of Constitution in 1991 until its revision in 2013 that reformed the institute of legislative referendum, sixteen legislative referendums were carried out in Slovenia: eight of them were called at the request of one third of representatives of the National Assembly, seven at the request of voters and one at the request of the National Council. According to M. Kambič, in a period from 1991 until 2013 altogether sixty different initiatives and proposals for legislative referendum were made.³¹ R. Podolnjak rightfully identified the institute of legislative referendum required by a parliamentary minority as "a weapon of choice... by the defeated parliamentary opposition against the government" that enabled continuation of "legislative battle on the referendum field".³² It was often used for pursuing particular interests of political parties and resolving inter-party conflicts. In the same time, citizen initiated referendums were harshly criticised as well, primarily because they were conceived as instruments that are being abused by well-organised civic groups in order to achieve their narrow interests. Being highly controversial issue for years, as C. Ribičič and I. Kaučič point out, the legislative referendum "was publicly devalued" and it lost the confidence of voters.³³ As criticism of such referendum practice and regulation grew, it became evident that constitutional framework has to be reformed. Proposals for new regulations of referendum finally got support after several important decisions of Slovenian Constitutional Court, that prevented legislative referendums to take place on the ground that they could have unconstitutional consequences (referring to the values of constitutional democracy, protection of human rights and minorities' rights), as well as significantly limited the right to call referendums on important economic and social legislation.³⁴

³⁰ See Kambič M., op. cit., p. 106-108. Constitution of Slovenia (1990), Art. 90: "(1) The National Assembly may call a referendum on any issue which is the subject of regulation by law. The National Assembly is bound by the result of such referendum. (2) The National Assembly may call a referendum from the proceeding paragraph on its own initiative, however, it must call such referendum if so required by at least one third of the deputies, by the national Council, or by forty thousand voters. (3) The right to vote in a referendum is held by all citizens who are eligible to vote in elections. (4) A proposal is passed in a referendum if a majority of those voting have cast votes in favour of the same. (5) Referendums are regulated by a law passed in the National Assembly by a two-thirds majority vote of deputies present."

³¹ Ibid. Kambič also mentions that one referendum was held upon simultaneous request of different proposers. See also Podolnjak R., op. cit., p. 30.

³² Podolnjak R., op. cit., p. 135

³³ See Ribičič C. & Kaučič I., Constitutional Limits of Legislative Referendum: The Case of Slovenia, *Lex Localis*, Vol. 12, No. 4, 2014., p. 901.

³⁴ See Podolnjak R., op. cit., p. 136-137; Kambič M., op. cit., p. 108-109. For constitutional review of the referendum see especially Ribičič C. & Kaučič I., op. cit., p. 902 – 914.

Amendments of the Constitution regarding legislative referendums were adopted in 2013, significantly narrowing their accessibility and their scope specifying legislation on which a referendum may not be called, reducing authorised proposers by enabling that right only to the voters, including a rejection quorum, etc. In accordance with new normative framework, legislative referendum is now a rejective instrument that prevents the enactment of a statute (i.e. voters decide on rejecting a statute instead of approving it as it was done according to the previous confirmatory model). Since constitutional changes were enacted, only four legislative referendums were held.

Finally, besides already mentioned independence plebiscite, Slovenia also held a referendum on accession to the European Union. The referendum was held on 23 March 2003 and question on the ballot read: "Do You agree that Slovenia should become a member of the European union?". The turnout was 60 percent and almost 90 percent of votes cast were in favour of the accession. Simultaneously, on the same day, the referendum on joining the NATO was held as well (unlike in Croatia where such decision was reached through ratification process in the Parliament). Voters were asked to give answer on the following question: "Do You agree that Slovenia should become a member of the North Atlantic Treaty Organization (NATO)?" While 66 percent of those who cast their votes voted for, almost 34 percent voted against joining NATO.

National referendums in Slovenia

	Date	Subject	Turnout	Result
1.	23.12.1990	Independence	93,31%	Accepted (95,71%)
2.	8.12.1996	Electoral system	37,94%	All proposals were not accepted
3.	10.1.1999	Financing of thermal power plant	27,31%	Not accepted (20,20%)
4.	17.6.2001	Treatment of infertility	35,66%	Not accepted (26,69%)
5.	19.1.2003	Restitution of the overpaid telecom. investments	31,14%	Accepted (77,59%)
6.	19.1.2003	No subdivision of the Slovenian Railways	31,14%	Not accepted (51,86%)
7.	23.3.2003	Accession to NATO	60,44%	Accepted (66,04%)
8.	23.3.2003	Accession to European Union	60,44%	Accepted (89,64%)
9.	21.9.2003	Shopping on Sundays	27,54%	Accepted (57,99%)
10.	4.4.2004	Law on the so-called 'erased citizens'	31,4%	Not accepted (96,1%)
11.	25.9.2005	Law on national television and radio	30,6%	Accepted (50,02%)
12.	11.11.2007	Further privatization of the Triglav insurance	57,9%	Not accepted (71,1%)
13.	6.6.2010	Arbitration Agreement between Croatia and Slovenia	42,6%	Accepted (51,2%)

14.	12.12.2010	Law on national television and radio 2	14,8%	Not accepted (27,6%)
15.	10.4.2011	Law on 'malo delo' - part time work	34,00%	Not accepted (80,1)
16.	5.6.2011.	Prevention of Undeclared work and employment act	40,44%	24,59% 75,41% against – Not accepted
17.	5.6.2011.	Pension and disability insurance act	40,46%	27,95% 72,05% against– Not accepted
18.	5.6.2011.	Protection of documentary and archival materials and institutions act	40,42%	29,12% 70,88% against – Not accepted
19.	25.3.2012.	Marriage and family relations act	31,31%	45,45% 54,55% against – Not accepted
20.	8.6.2014.	Protection of docum. & and archiv. materials and institutions act 2	11,74%	32,63% 67,37% against Insufficient turnout
21.	20.12.2015.	Marriage and family relations act 2	36,38	36,49% 63,51% against – Not accepted
22.	24.9.2017.	Railway 1	20,55	53,47% 46,53% against / annuled
23.	13.5.2018.	Railway 2	15,01	Insufficient turnout / invalid

5. Concluding remarks.

To be presented at the ASN Convention.