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### The Role of Local Referenda

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# 1. Introduction

The basis of democracy, or in other words, the rule of the people is involvement of the citizens in political life of the country. Their involvement in political life may take different forms. The most common way is of course their participation in the elections. Apart from the elections there are a number of other institutional tools by means of which citizens may influence political decision-making process or to bring about a particular change. Citizens may express their opinion by means of referenda initiated by the citizens, by petitions, letters, and by formal participation in administrative and decision-making procedures (e.g. EIA and SEA processes).

Even though individual forms of direct democracy are presently still somewhat overshadowed by representative democracy, this expression of the will of the people belonging to a particular group should not be underestimated. There is a pan-European trend of growing importance of tools of direct democracy and their application in the processes of political decision-making, especially at the local level. This contributes to the significance of the local referendum, be it embedded at the level of constitution, laws or subordinate legislation.

As far as the law of the European Community / European Union is concerned, it does not regulate the issue of local referenda, which is fully within the competence of individual EC/EU member states. This is why legislative regulations and requirements concerning the institution of local referendum considerably differ in individual European countries as well as in EU member countries.

This does not only concern whether and to what extent the citizens actively use the tools of direct democracy (such as for instance the institution of local referendum) and whether they are politically active, but also what effect these tools have on politicians, representatives of local self-government and policy formation at both local and state level as such. If public involvement is to work, it needs to be a two-way process. Not only do citizens need to let their voice be heard at various forms of consideration (deliberation) and discussions or through referenda and other citizens' initiatives, but also political representatives (people in power) have to take those views in some way into consideration in their decision-making.

More consistent application of the principle of subsidiarity embedded in the primary law of the European Communities/ European Union would facilitate the development of

direct democracy, at least in European context. This principle stipulates that regulations should be adopted at the level closest to the citizens, i.e. at the lowest level of public administration where these are implemented.

## **2. Legislative framework of local referenda in European countries**

Generally speaking, a referendum may be defined as universal direct voting on crucial social, political or international issues, in which, depending on the formulation of the question, the voters vote for or against the submitted proposal. The expression “referendum” is derived from Latin “referendus” which means a matter about which a report should be made. In its original form a referendum referred to voting in municipalities the results of which were transferred in the acts of higher units. This procedure (ad audiendum et referendum) probably gave this institution its name.

### **2.1. EU Legislation**

None of the most significant international treaties uses the institution of local referendum and on the general level all of them guarantee a direct or mediated political participation. For instance in the International Covenant on Civil and Political Rights, the right of citizens is embedded to participate in the conduct of public affairs, directly or through freely chosen representatives (Article 25, letter A).

The institution of local referendum is not integrated in the European Union law either. Thus it is at the discretion of respective member states to deal with the issue of implementation of the local referendum into their own legislative framework.

The European Charter of Local Self-Government originated in the Council of Europe contains a provision in its Preamble stating that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member states of the Council of Europe. In Article 3, paragraph 2 the principle of local self-government is embedded; however, this principle, as explicitly mentioned here, shall in no way affect recourse to assemblies of citizens, referenda or any other form of direct citizen participation where it is permitted by the law. This provision thus supposes the existence of an act regulating the issue of the local referendum. In the event that an EU country does not have such an act, it does not contradict the European Charter of Local Self-Government.

As far as the soft law documents are concerned, e.g. in the recommendation of the Committee of Ministers of the Council of Europe on the participation of citizens in local public life it is written that the right of citizens to have their say in major decisions entailing long-term commitments or choices which are difficult to reverse and concern a majority of

citizens is one of the democratic principles common to all member states of the Council of Europe. Other texts of the Council of Europe are resolutions of competent ministers concerning local administration issues, particularly the resolution on local referenda, which was adopted at the tenth conference of European ministers responsible for local administration held in Hague (15 – 16 September 1993).

## **2.2. Incorporation of local referendum into constitutions of European countries**

The institution of local referendum is not incorporated in constitutional regulations in most of European countries. Most countries thus integrate the local referendum on the level of simple law either through general laws on local or territorial administration or special laws on the local referendum. Certain countries leave large space in issues related to the application of the local referendum institution to legislative activity of municipalities. For instance in the Netherlands and Estonia, the local referendum entirely depends on legal regulations of respective administrations.

There are certain, quite numerous exceptions. These exceptions include many countries, which have their experience with non-democratic (totalitarian) regimes, such as Poland, whose constitution defines the institution of local referendum in Article 170. Constitutional regulations of the Slovak Republic (Article 67, paragraph 1), Hungary (Article 44, paragraph 1) or Bulgaria (Article 136, paragraph 1) take the local referendum into account. Local referendum is also embedded in the constitution of Croatia (Article 132, paragraph 3).

Also in other countries outside of the former “Eastern block” the institution of local referendum is integrated directly in constitutional regulations. These countries include e.g. France, where the constitution was reviewed in 2003, which enabled to incorporate the referendum into Article 72-1. Direct vote on local issues was also incorporated into Article 41 of the Constitution of the Kingdom of Belgium (in 1999). Another European country which has the local referendum embedded in the constitutional regulations is Portugal (Article 240 of the constitution). In Austria and Germany the local referendum is incorporated into respective constitutions of federal states.

Whether the institution of local referendum enjoys enactment in the constitution, law or subordinate legislation, it is apparent that the trend is Pan-European. Local referendum is used as one of the main means of direct democracy.

Table No. 1: - lists overview of European countries in relation to incorporation of the local referendum into constitutional law.

**Table 1:** Incorporation of the institution of local referendum into constitutional law of selected European countries.

Country	Implementation	Constitution Article No.	Country	Implementation	Constitution Article No.
Austria	Yes	Constitutions of federal units	Latvia	No	
Belgium	Yes	41	Lithuania	No	
Bulgaria	Yes	136-1	Luxemburg	No	
Cyprus	No		Malta	No	
The Czech Republic	No		The Netherlands	No	
Denmark	No		Poland	Yes	170
Estonia	No		Portugal	Yes	240
Finland	No		Romania	No	
France	Yes	72-1	Slovakia	Yes	67-1
Germany	Yes	Constitutions of federal units	Slovenia	No	
Greece			Spain	No	
Hungary	Yes	44	Sweden	No	
Ireland	No		The United Kingdom	No	
Italy	No		Croatia	Yes	132-3

### 2.3. Subject of local referendum

The subject of the local referendum, in other words topics that may be decided on in the local referendum can be determined both by positive and by negative manner.

- Positive manner – simply sets a range of issues, which may form the subject of the local referendum, either by listing them or by a general provision; the second manner is more frequent. This is usually a provision stating that local referenda may be held on matters being within competence of municipal administration. From this point of view local referenda can be classified as ratifying, where the municipality within its independent competence decides with final validity, and consultative whose result is an opinion of the municipality regarding a certain manner, which the municipality may express as one of affected entities, but is not entitled to decide on its own.
- Negative manner – determines the range of problems and issues that may not be the subject of the local referendum (e.g. financial matters of administration are usually prohibited to be decided on in the local referendum).

Most commonly the subjects of the local referenda are issues related to the environment and its protection, investment expenses of municipalities, treatment of community property or transport.

#### **2.4. Manners of initiation of local referendum**

In general, there are two ways to initiate a local referendum. The referendum is either initiated by citizens themselves, or by decision of political representation, mostly municipal council.

The referendum initiated by citizens is in most cases declared following a petition. Number of persons necessary to initiate a local referendum substantially differs in European countries. For instance in Belgium at least 20% signatures of the population of a municipality (not legitimate voters) must be collected, in Finland it is 5% of local electorate, in Estonia only 1%, in England 5% and in Wales 10%. In a number of countries these numbers depend on the size of the municipality, i.e. on its population. This is the case of the Czech Republic, where for municipalities with less than 3,000 inhabitants, signatures of 30% people has to be gathered and for larger municipalities over 200,000 people it is only 6%. The situation is similar in Slovakia or in Poland.

Besides citizens' initiative the local referendum may also be proposed by a group of people maintaining a certain position. In Hungary the range of persons who may propose organization of a local referendum to a mayor, is relatively broadly defined. It includes at least a quarter of municipal representatives or a representative committee. In Bulgaria the right to initiate the local referendum pertains to at least a quarter of the municipal council, the mayor or district administrator, besides the electorate.

In France, Luxembourg, Finland, Spain, the Czech Republic, Sweden, Estonia, Slovakia, Portugal and elsewhere-local referenda can be organized both from below and from above.

#### **2.5. Issues pertaining to process of voting**

The process of voting consists in more than voting itself. Voting forms its core, but does not represent everything. Due preparation must precede the voting in order that the entire referendum runs smoothly and in accordance with statutory regulations. It is necessary to define electorate wards and to inform legitimate persons in these wards, procure printing of ballots and their distribution to properly set-up election rooms.



The first question to ask is, who may participate in the local referendum. The usual prerequisite is citizenship, reaching a certain age (usually 18 years; in Belgium however it is 16 years of age) and permanent residence in the municipality. In modern democracies it is a matter of fact that the right to vote in elections and referenda is general.

Time and duration of the referendum is regulated in different ways in different countries. For instance in Hungary, the Czech Republic or Croatia the voting lasts one day. Only in case the local referendum takes place concurrently with general election, the duration of the referendum corresponds to the period of the election. In France, the local referendum may not be held simultaneously with any other type of election and during the election campaign. Also in Finland the local referendum cannot take place together with the election. In Poland the local referendum is always held outside of business days and in Romania it is held on Sundays. The case is similar with Belgium, where the local referendum may not take place concurrently with the election and in the preference period before the election and must be held on a Sunday. In Hungary, local referenda may not be held on national holidays, the day before and the day after.

Voting itself is usually carried out by attendance, i.e. by direct vote. However, in various countries different procedures are allowed, e.g. voting by correspondence (distance form of voting). This is possible e.g. at local referenda in Switzerland or in Bavaria. The future probably belongs to electronic ballot (e-vote). This manner of voting is nowadays used in Estonia during the election.

In case of classic voting, as a rule it is carried out directly (without a proxy) and by secret ballot.

## **2.6. Validity and binding effect of local referendum**

The most serious consequences of the local referendum are its validity and binding effect. From the point of binding effect, local referenda are either mandatory (binding, decisive) or consultative (advisory).

For instance in the Czech Republic the local referendum is considered valid in case at least 35% of legitimate persons participate, and the result of the local referendum is binding if the majority of legitimate persons participating in the referendum voted for the result, and at least 25% of persons entitled to vote voted for the result. Valid and binding decision obtained through the local referendum can be changed or cancelled only by initiation and organization of a new local referendum. However, this is possible only after the elapsing of 24 months after the previous referendum.

In France, such local referendum is valid, in which at least 50% of legitimate persons participates; such referendum result is then binding. The situation is similar in Slovakia, Portugal and in Croatia.

In Poland the limit for the validity of the local referendum is 30% of legitimate persons and this referendum is also binding. In Germany the regulation of the validity of the local referendum depends on individual federal states. In most federal states it is about 20 to 30%. The binding effect of the referendum is limited from one to three years, and during this period the referendum result can be changed only by a new referendum.

In Hungary on the other hand it holds true that a new local referendum on the same issue may not be initiated within one year of the previous referendum. In Great Britain local administrative bodies are not allowed to initiate and organize the local referendum within five years after the previous referendum on the same issue. The local referendum result is binding in Great Britain.

The institution of binding referendum is not common in Sweden, Finland, Estonia, Luxembourg, Italy and Ireland. The local referendum is not binding in Denmark, and is not regulated by the law either. In spite of that local referenda are held in Denmark and they have primarily a political influence.

### **Austria**

In Austria the institution of local referendum or the possibility of citizens' initiative does not exist, due to the fact that municipalities do not have any legislative powers. However, all federal states have the right to initiate consultative referenda concerning issues of local politics. Such referendum can be declared pursuant to a decision of the municipal council or initiative of a small part of population. The result of the consultative referendum is mostly non-binding (the result is binding only in case municipalities join each other).

### **Belgium**

Local referenda may be initiated on the basis of a decision of the local council or initiative of citizens themselves. In the 1990s the number of local referenda began to increase. In several such referenda also people who did not have Belgium citizenship were allowed to vote. Despite the relatively large number of local referenda in Belgium, the problem is low turnout of the electorate; low level of "success", and this is mainly due to low interest by citizens in participation.

## **Denmark**

Denmark is a country with high degree of decentralization. The Danish legal system does not prescribe any formal rules regarding local referenda or initiatives. Nevertheless, a large number of local referenda have been held here (more than 160 in 1970-2000 in approximately 80 municipalities). They largely concerned the shutdown of local public schools, various building projects, closures of roads or regulation of boundaries between municipalities. Results of local referenda have only consultative nature and they are not binding. However, the results usually have substantial influence on the political decision-making process.

## **Finland**

The Finnish legal system has three ways of initiation of the local referendum embedded:

- Municipal council may decide on the initiation of a non-binding referendum on local issues;
- Citizens' initiative – the consent of at least 5% legitimate voters has to be obtained for the initiation of a non-binding referendum, regarding an issue related to the municipality;
- Individual citizens and groups of citizens may propose the initiation of a local referendum concerning matters within the jurisdiction of the municipality. If such petition is signed by more than 2% of entitled voters, the municipal authority is obliged to resolve the issue within two months.

Finnish studies show that the institution of the local referendum is relatively little used in comparison with other European countries, although the trend is slightly increasing. More than 50 local referenda were held in Finland between the years 1991 and 2007.

## **France**

The bill of Prime Minister Raffarin on the local referendum was passed by both houses of the parliament in summer 2003. However, the institution of the local referendum is only rarely used in France. Local referenda in France have only consultative nature. Despite, 194 local referenda were held in France during 1995 to 2003 (i.e. 20 annually). In one of the public opinion polls issued by the daily Le Figaro on 25 September 2000, 67% of respondents were for the increase of the number of referenda, however only for cases of serious political issues such as taxes or the pension reform.

## **Ireland**

There is no regulation allowing a regional or local referendum or a citizens' initiative.

## **Italy**

In Italy, the local referendum of consultative nature can be organized thanks to the so-called "Bassanini's" act No. 142 of 1990, which deals with issues of local administration. Municipalities and provinces are not obliged to include the institution of the local referendum into local legislation. Results of such referenda are never binding. Requirements for the initiation of the local referendum differ in various municipalities and provinces. In most municipalities the referendum may be declared by the mayor or the qualified or simple majority of the municipal council. In many municipalities and provinces local consultative referenda may be initiated by citizens themselves. The necessary number of signatures for the initiation differs in respective municipalities. The institution of the local referendum is only rarely used in Italy.

## **Slovakia**

Both binding (mandatory) and non-binding (consultative) referendum may be initiated on the local level concerning issues that fall within the jurisdiction of local authorities.

## **Spain**

Only consultative (non-binding) local referenda may be organized in Spain under the following conditions:

- referenda may only be initiated concerning the issues within jurisdiction of municipalities and relating to local issues important for residents of the municipality;
- referenda may not be initiated on financial matters;
- the initiative to organize a referendum must be confirmed by the majority of the municipal council. The mayor may declare a referendum only after the central government grants its approval.

Further details and requirements of the local referendum are within the jurisdiction of respective autonomous regions.

## **Sweden**

A non-binding consultative referendum may be initiated on the local level by a simple majority of municipal council. Such referendum is not limited by the date or topics. The local

authority decides on who is eligible to vote. Another possible manner of initiating a local referendum is the citizens' initiative. If 5% of legitimate voters ask in writing for a referendum on certain issues concerning the municipality, the authority shall decide on organizing the referendum. If the municipal authority decides on the referendum, it also decides on the formulation of questions and answers.

Since 1977 more than 85 local referenda were held in Sweden and most of them were initiated by politicians. More than 90% of proposals for a referendum were declined, mostly with the reasoning that the proposed issue had been resolved or that the issue was too complex etc. About 80 proposals for local referenda initiated by citizens have been submitted so far and although many were supported by almost 10% of legitimate voters, only five of these initiatives resulted into referendums. Most citizens' initiatives concerned the same issues as consultative referenda initiated by the municipal authority.

### **Switzerland**

Direct democracy in Switzerland originated first on the local and regional (cantonal) level. For this reason many varied forms of local and direct democracy are applied. At present a large number of municipalities (ca 2,350) have their own assemblies, where citizens have the opportunity to publicly decide on the matters related to their municipality. In large cities (ca 500 cities), which do not have their own assembly, the institution is supplemented by the city parliament and the institution of referendum. In all municipalities both consultative local referenda and mandatory (binding) ones are officially permitted. The same holds true also in case of individual cantons (26); both consultative local referenda and binding ones are allowed. Referenda may be initiated by local authorities' representatives or pursuant to citizens' initiative. Many cantons use the institutions of local referendum (consultative but also mandatory) also for issues related to budgets.

A detailed summary of legislative requirements concerning local initiatives and referenda in selected European countries is listed Table 2.

**Table 2:** Legislation on local initiatives and referenda in selected European countries

Country	Who suggest? (% required signatures)	Results statute	Quorum participation	Taxation/Finance	Necessary for dividing? <sup>2</sup>	Right of appeal <sup>3</sup>	Few or many cases <sup>4</sup>
Austria	No law on local referenda						
Belgium	Citizens (20%)	Consultative	40 %	No	No	No	Few (at least 15 cases in the history)
Denmark	Council	Consultative	Any quorum	No	No	No	More then 160 (1970 - 2000)
Finland	Citizens (5%) Council	Consultative	Any quorum	No	No	No	More then 50 cases (1991 - 2007)
France	Citizens Council	Consultative	Any quorum	Not available	Not available	No	About 194 cases (1995-2003)
Germany	Citizens Council	Binding	Different	Different	Yes	No	Many (2846+ cases)
Greece	No law on local referenda						
Ireland	No law on local referenda						
Italy	Council Citizens	Consultative	Any quorum	Not available	No	No	Few
Luxembourg	Citizens (20%) Council	Consultative	Any quorum	Not available	No	No	Few (about 5 cases)
Netherlands	Council	Consultative	Any quorum	Not available	No	No	Few (100+ cases)
Norway	Council	Consultative	Any quorum	No	No	No	Many (514 cases 1970 - 2002)
Portugal	Council	Consultative	Any quorum	No	Yes	No	Few
Spain	Citizens (5%) Council	Consultative	Not available	No	No	No	Few

**Table 2:** Legislation on local initiatives and referenda in selected European countries (continuation)

Country	Who suggest? (% required signatures)	Results statute	Quorum participation	Taxation/Finance <sup>1</sup>	Necessary for dividing? <sup>2</sup>	Right of appeal <sup>3</sup>	Few or many cases <sup>4</sup>
Sweden	Citizens (5%) Council	Consultative	Not available	No	No	No	Few (85+ since 1977)
Switzerland	Citizens Council	Consultative or binding	Different	No	Not available	Not available	Many cases
UK	Citizens (10 voters) Council	Consultative	Not available	Not available	No	No	Few
Bulgaria	Citizens (25%) Council Mayor	Binding	50 %	No	Yes	No	Not available (but many about borders)
Croatia	Citizens (20%) Council	Binding	not available	No	Not available	No	Not available
Czech Republic	Citizens (6 - 30%) Council	Binding and consultative	50 %	No	Yes	No	Many (100+ cases since 2000)
Estonia	No law on local referenda						
Hungary	Citizens (10 - 25%) Council	Binding	50 %	No	Yes	No	Many (138+ since 1999)
Latvia	No law on local referenda						
Lithuania	No law on local referenda						
Poland	Citizens (10%) Council	Binding	30 %	Yes	Yes	Yes	Many (600+ since 1992)
Romania	Council	Consultative	50 %	Yes	No	No	Few
Slovakia	Citizens (30%) Council	Binding and consultative	50 %	No	Yes	Yes	Many (only since 2004)

**Table 2:** Legislation on local initiatives and referenda in selected European countries (continuation)

Country	Who suggest? (% required signatures)	Results statute	Quorum participation	Taxation/Finance <sup>1</sup>	Necessary for dividing? <sup>2</sup>	Right of appeal <sup>3</sup>	Few or many cases <sup>4</sup>
Slovenia	Citizens (5%) Council	Binding	50 %	Yes	Yes	No	Not available
Serbia and Montenegro	Citizens (20%) Council	Binding	50 %	Yes	Yes	No	Not available

Notes:

- 1) Taxation/Finance - whether the legislation allows a referendum on issues related to taxation and local finance.
- 2) Necessary for dividing? - Whether a referendum is required in the event that the community wants to separate from the village, when the municipalities want to merge, or when the community wants to separate from one village and join the other
- 3) Right of appeal - Whether the legislation include the right to appeal the mayor, local council or other local authorities through a referenda initiated by either the appellant or the local council.
- 4) Few or many cases – It is very subjective evaluation. The country is included in the category of "many cases" in the event of a local referenda in this country takes place at least 10 times a year over the period of validity of the legislation on direct democracy. These figures represent estimates of the total number of the local referenda held in the country.



## **Local referenda in the Czech Republic**

One of democratic opportunities to express an opinion of citizens concerning the location of a deep geological repository for radioactive waste (and of course any other constructions) in the territory of the municipality is a local referendum. Advantages of such local referendum are that its result binds the municipal authorities, i.e. the mayor and council to enforce the opinion or attitude expressed by the citizens through the referendum, and this concerns the post-election future as well. The result of the referendum is binding until a potential next referendum provides another view of citizens.

This chapter deals with basic information concerning legislative regulations on the local referendum applicable in the Czech Republic.

Results of local referenda held in the Czech Republic regarding the location of a deep repository for radioactive waste and spent nuclear fuel are summarized here. These referenda were held in the respective municipalities situated in areas contemplated for the location of a deep repository.

### **2.7. Local referendum in the Czech legislative framework**

Proclamation and the process of the local referendum is administrated by a new Act No.22/2004 Coll., on local referendum, coming into force on the February 1, 2004. In 2008 Act No.22/2004 Coll. was modified by Amendment No. 169/2008 Coll.

The new Act on Referendum of 2004 introduced a number of important changes compared with the original Act No. 298/1992 Coll. These changes are listed in the following Table No. 3, where the key differences between the old and the new act are compared.

**Table 3:** Comparison of key differences between old and new act on local referenda

<b>Act No. 298/1992 Coll. (old act)</b>	<b>Act No. 22/2004 Coll. as amended (new act)</b>
At least 25% of <b>registered voters</b> must participate in the referendum in order for the result to be valid	At least 35% of <b>registered voters</b> must participate in the referendum in order for the result to be valid
It was not clear whether local referenda may be held concurrently with election (to local councils)	The Act clearly determines that local referenda may be held concurrently with election (to local councils) and may last up to <b>two days</b>
The referendum may only be declared on the basis of sufficient number of signatures gathered	The referendum may be declared on the basis of local council's initiative
<b>Problematic legal guarantees:</b> Each citizen may submit a legal complaint to the Regional Court on the breach of law during the referendum, which may have influenced the result or declaration of the referendum. (This led to a number of difficult, protracted and demanding legal battles).	<b>Broader legal guarantees:</b> Preparatory committee (petitioner and his proxies) can file a legal complaint in two cases: 1) if it seems that local council refused to declare the referendum in case it should have been declared 2) if the manner of referendum voting can be considered invalid.
Proposals for a referendum must contain the estimate of costs on the implementation of the contemplated result	Proposals for a referendum must contain the estimate of costs on the <b>organization of the referendum and on the implementation of the contemplated result</b>
A person who signs the referendum petition list more than once may be imposed a fine of CZK 1,000	A person who signs the referendum petition list more than once may be imposed a fine of CZK 3,000
Who wants to sign the referendum petition list, must enter his identity card number	Who wants to sign the referendum petition list, must enter his <b>date of birth</b>
Signatures may not be collected in public administration premises	Signatures may not be collected in public administration premises and in the building of the municipal authority
The law does not specify whether several referenda may be held concurrently	The law enables holding several referenda concurrently

### 2.7.1. Siting

The Act No.22/2004 Coll. sets the possibility of the referendum proclaiming and performance on the territory of municipality, town, and section of a town or of a town district. This Act is concerned neither with regional nor nationwide referendum.

### **2.7.2. Authorised persons**

Subjects having the right to vote are the citizens of the Czech Republic, reaching age of 18 years and having permanent residence on the municipal territory, and also the citizens of other EU member countries having the right of the residence. The right of voting applies only for citizens, not violating the act defined in the Article 4.

### **2.7.3. Duration of referendum**

Act No. 22/2004 Coll. supposes that the referendum shall be held within a day. In case a local referendum is held concurrently with the election to municipal councils, regional parliaments or to a house of the Parliament of the Czech Republic or the European Parliament, it shall be held at the same time as the election.

### **2.7.4. What problems are to be decided in the local referendum**

The question shall consist of one part only and shall be in the form, which requires a simple yes/no answer.

Articles 6 and 7 designate the questions, which can form the part of the referendum. In the course of the local referendum only the problems of the *individual public agency* can form the subject of voting. In the case the municipality has not the power to take decisions in the given problem, as e.g. in the problem of deep disposal installation siting, it is advisable to formulate the question in the following form: “Do you agree that *the council of the municipality* will prevent from the building of the installation by (*the use of*) all means.....?” Such formulation of the question fulfils the requirements of the referendum rules.

In case, the question is formulated in the direct way, e.g.: „Do you agree with the building of a nuclear waste repository on the urban area?“ then in such a case the question is incorrect and exceeding the jurisdiction of the municipality. Such an incorrect question has been used in the case of all referenda during the 2003 and 2004 years. Only the fact that the mentioned referenda had a support of the council no pursuit had been evoked. It is obvious that such a process would lead to a detriment of such a question.

The mentioned law regulates the referendum binding and consultative (non-binding). The binding referendum refers to problems, which are exclusively in the jurisdiction of the municipality and the decision of citizens is in such a case binding. Consultative (non-binding) referenda may be realised in cases where there is a possibility of getting a meaning of the

public but where the municipality is not allowed to render a decision. This is exact the case of referendum regarding the nuclear waste disposal.

### **2.7.5. Legitimacy of referendum**

Act No. 22/2004 Coll., on local referendum sets a 35 percents participation as obligatory quorum for a referendum to be valid.

### **2.7.6. Declaration of referendum**

Initiation of the referendum may exhibit the preparatory committee or the council itself. The number of citizens, which must undersign the proposal of the preparatory committee, is shown in the table 4.

**Table 4:** The number of citizens, which must undersign the proposal of the preparatory committee

<b>Population</b>	<b>Electorship</b>
< 3 000	30%
< 20 000	20%
< 200 000	10%
> 200 000	6%

### **2.7.7. Wardship**

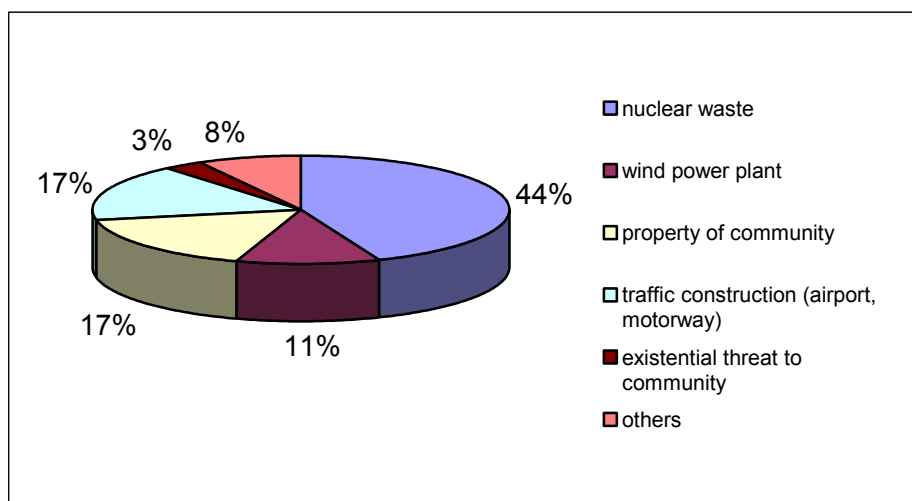
Act on local referendum designates several possibilities of a wardship in case of disputative questions:

1. Art. 49 of the act sets down the municipality board duty to respect the referendum results.
2. Art. 57 of the act protects the referendum applicant in case the applicant does not agree with the claim to delete an objection or when the council had not decided about the proposal of the preparatory committee. The court may on the basis of its resolution force the council to proclaim referendum or a new referendum.
3. Art. 58 of the act enables to an individual or to the preparatory committee challenge the course of local referendum dealing, if the subject feels that the referendum did not proceeded correctly.

## 2.8. Local referenda concerning NWM in the Czech Republic

In the period of 2000 to 2005 years, in the Czech Republic have been realised about 36 local referenda, covering several topics. As you can see in figure1 almost half of them, in the given period, covered the topic of nuclear waste disposal.

**Figure 1:** Parting of the referenda according to themes (2000 – 2005)



The mentioned referenda passed in villages, which are situated in localities suitable for the siting a deep geological repository.

Several specific topics of the above referenda:

1. All referenda were proclaimed by the municipality council – this reflects the effort of lobbying, of making the problem public and thus stand out against the effort of the government.
2. In all such cases the non-governmental organisation - HNUTÍ DUHA has been very active. It should be mentioned that such a NGO is for already a long time very active opponent of the nuclear energy in general and with the village or town mayors *formed* often a purpose-built coalition.
3. All those referenda were accepted as valid and in all of them the citizens protested against the proposed (intended) nuclear waste disposal. It is an evidence of the very attractive subject for the citizens, who feel distressed by the potential existence of the disposal site in their vicinity, are afraid of something unknown and are concerned about the enhanced radioactivity. The results of the mentioned referenda, which took place in the period 2003 and 2008 years, are given in the table 5.

**Table 5:** The results of the referenda on the siting a deep repository (2003 – 2008)

Municipality	Lokalita	Date	Number of eligible voters	Participation [%]	Yes [%]	No [%]	invalid votes [%]
Oslavicka	Budisov	13.9.2003	80	80,0	1,5	98,5	0
Nadejkov	Bozejovice-Vlksice	15.11.2003	584	67,5	2,8	95,7	1,5
Prestenice	Bozejovice-Vlksice	15.11.2003	221	76,4	0,6	99,4	0
Bozetice	Bozejovice-Vlksice	15.11.2003	300	73	2,8	97,2	0
Hodov	Budisov	6.1.2004	230	72,5	4,0	96,0	0
Rudikov	Budisov	24.1.2004	517	71,9	4,0	95,7	0,3
Budisov	Budisov	31.1.2004	903	59,1	12,1	81,8	6,1
Naramec	Budisov	31.1.2004	297	71,7	5,2	93,4	1,4
Lodherov	Lodherov	31.1.2004	470	84	0,6	99,4	0
Destna	Lodherov	31.1.2004	525	63,4	1,8	93,1	5,1
Zhor	Bozejovice-Vlksice	7.2.2004	217	69,1	0	99,3	0,7
Jistebnice	Bozejovice-Vlksice	17.4.2004	1 606	51,25	1,8	97,3	0,7
Pacejov	Pacejov	24.4.2004	630	80,8	1,75	95,5	2,75
Manovice	Pacejov	24.4.2004	38	89,5	0	97,1	2,9
Olsany	Pacejov	24.4.2004		95,1	0	99,4	0,6
Rohy	Budisov	12.6.2004	112	65,2	9,6	89	1,4
Hojkov	Rohozna	28.4.2007	131	92,4	0	98,3	5,9
Nový Rychnov	Rohozna	29.9.2007	809	47,2 % - invalid!	5,2	94,8	0
Opatov	Rohozna	10.11.2007	160	67,5	2,8	95,4	1,8
Dusejov	Rohozna	24.11.2007	329	65,3	3,7	95,8	0,5
Jedlov	Rohozna	24.11.2007	150	68,7	1,9	98,1	0
Milicov	Rohozna	8.12.2007	103	86,4	1,1	95,5	3,4
Dvorce	Rohozna	15.12.2007	150	73,3	4,5	95,5	0
Hubenov	Rohozna	15.12.2007	115	82,6	1,1	98,9	0
Cejle	Rohozna	22.3.2008	347	72,6	15,1	79,4	5,5

Results so far made local referenda on the issue:

“Do you agree with the building a deep repository of spent nuclear fuel and high-level waste on the urban area?”

The Rohozna locality question was:

"Do you agree that the community (*the council of the municipality*) use all its legal powers to prevent the building a deep repository of spent nuclear fuel and high-level waste in the Rohozna locality?"

In all cases of local referenda on locating a deep geological repository, 80-99% of inhabitants voted against the storage of radioactive waste in the given location, and the participation was between 51 and 95%. The participation of citizens in the referenda on a deep geological repository was above average compared to typical turnout in referenda on different issues; total average turnout in local referenda in the Czech Republic is 58%.

From results of local referenda and from results of public opinion poll it follows that citizens of the Czech Republic including citizens living in suggested areas suitable for the location of a deep geological repository are aware of the necessity of resolving the situation in storage of radioactive waste “here and now“. On the other hand they strictly object to the location of the repository in their cadastral district and in this context they strongly oppose to steps leading to the planning of such construction. The so-called NIMBY effect manifests itself here as well as in any other similar matter, from the establishment of a refugee camp to a garbage disposal plant to nuclear facilities. Thus it is not surprising that it appears in this instance, too.

According to representatives of non-governmental organizations and residents themselves, another important reason why overwhelming majority of citizens shall always vote against the deep repository is that the affected municipalities do not have the veto. Inhabitants of the affected areas thus fear that in case they agreed, they would not have an opportunity to influence the process of location of the deep geological repository later in the future, or that they would not be able to withdraw from the process and refuse the repository. The level of provided information does not play such an important role in this case.

These local referenda have only manifestation nature in the Czech Republic, due to the fact that municipalities are in the position where they cannot decide themselves on the issue of the location of a deep repository. Referendum results could be somewhat different should municipalities maintain a stronger position in the area, as international experience proves. In other European countries the selection of the location for situating a deep repository is also accompanied with apprehension; however, examples show that the right of municipalities to participate in the decision-making can, maybe paradoxically, make the search for a suitable site easier and quicker. The consent of the affected municipality with the construction of a deep repository is required by laws regulating the use of nuclear energy. For instance in Sweden the survey work on the site in Oskarshamn began directly upon the successful local referendum on the issue concerned. In Finland the necessary approval of Eurajoki

municipality was obtained. Similar procedures apply also in France, Switzerland and Belgium.

### **3. Conclusion**

The referendum is understood, as has been mentioned in the introduction, as one of the forms of direct democracy. From the perspective of application of direct democracy, individual European countries may be classified according to whether local referenda are binding (mandatory, ratification) or non-binding (consultative). If the referenda are only consultative, their results are not binding on local self-government and their potential for political change at the given lowest level is therefore lower. The benefit of the process of a consultative referendum for its proposer is thus considerably lower. This is also one of the reasons why this instrument of local direct democracy is put to so little use in a number of countries where it has consultative status.

In Western Europe local referenda are consultative for instance in Belgium, Denmark, Finland, Italy, the Netherlands, Spain, Sweden and other countries. Whereas in Germany, inspired by Switzerland, local referenda are binding. In other countries such as Austria, Greece and Ireland, there are no legislative regulations on local direct democracy.

In Central and Eastern European countries, such as the Czech Republic, Slovak Republic, Poland, Hungary or Bulgaria, local referenda are by law generally decisive, i.e. binding for local self-governments.

In a majority of the countries, it is necessary that at least half of the electorate vote in the referendum, should the results of the referendum be binding.

As mentioned above, political use of this instrument in practically all countries with consultative referenda is rather insignificant. However, even the existence of legislative regulations providing for binding referenda is not a guarantee of a high degree of use of this instrument as the rate of its use varies also among countries with such legislation.

Participation in local referenda depends on a number of factors – apart from the legislative regulation of local referendum – it is also the date and time of the vote that plays a significant role. Attractiveness of the issue about which they should vote has also great significance for legitimate voters. Other factors having an impact on participation are weather, social and demographic structure in the given municipality, atmosphere in the society, political situation and also the way local referendum has been announced, whether on initiative of the local municipal council, mayors of municipalities or citizens themselves



(through civic initiatives). Empirical findings nonetheless show that the single most important factor influencing participation in local referenda is the size of the particular municipality in terms of its population. Generally speaking, it can be said that the bigger the municipality, the more difficult it is to find a topic that would really concern all the people living in that place. The bigger the municipality, the lower weight of individual votes, which is one of the demotivating factors having influence on the decision of an individual to take part in the vote. Higher degree of formalization of relations between neighbors and people in the municipality in larger units also plays its role.

The following two paragraphs provide a summary of the most frequently mentioned advantages and disadvantages of using local referenda as one of instruments of direct democracy.

Advantages:

- Citizens are better informed thanks to the referendum.
- Unlike in the elections, it is the reason rather than emotions that wins in a referendum, as it is concerned with a particular problem and not about empty slogans.
- Thanks to the referendum, municipality representatives are more sensitive to the requirements of the citizens. Citizens feel that their opinion is listened to.
- Referendum provokes public debate and may displace perpetual opinion polls.
- Referendum gives minorities a chance to stir public debate about a topic, which does not mean anything to some people, but is the question of life and death for others.
- Strengthens respect for the rule of law.
- Citizens are, contrary to municipal representatives, not corruptible and they are not under the pressure of lobby groups.
- Referendum is an example of decision making with full responsibility as the citizens bear the consequences of their decisions, which creates a stronger sense of responsibility.
- Referendum is a real picture of public opinion, as citizens express their opinion on a particular matter, in contrast to the elections when they vote for the party politically closest to them, even though this party may have a different opinion on the particular issue.

Disadvantages:

- The general public is not so well-informed that they could make an informed decision on a particular problem, and thus it is often the emotions and not the reason and bare facts that decide.

- Local referenda represent decision making without responsibility; the citizens cannot be removed for making a wrong decision.
- The outcome of a referendum may be significantly influenced by the formulation of the question and it is not possible to reduce any issue to the question, which may be answered with a simple YES, or NO; in many cases, the only solution to a problem remains an open discussion on the basis of which all stakeholders reach a compromise.
- Local referenda may be easily manipulated and certain interest groups may "abuse" them
- The outcome of a referendum is a picture of public opinion at a specific moment, but the moods and opinions of the public are likely to change, whereas the result of the referendum remains.
- Representatives of local self-government or other organizations responsible for solution of the particular issue would be disturbed in their work; the citizens would unreasonably prolong the decision-making process.

Naturally, it is not only important whether the citizens are politically active through the use of the institute of local referendum or other instrument of direct democracy, but also what impact these instruments have on politicians, local representatives and formation of policy at the local and state level as such. If public involvement is to work, it needs to be a two-way process. Not only do citizens need to let their voice be heard at various forms of consideration (deliberation) and discussions or through referenda and other citizens' initiatives, but also political representatives (people in power) have to take those views in some way into consideration in their decision-making.

More consistent application of the principle of subsidiarity embedded in the primary law of the European Communities/ European Union would facilitate the development of direct democracy, at least in European context. This principle stipulates that regulations should be adopted at the level closest to the citizens, i.e. at the lowest level of public administration where these are implemented. Unfortunately, the EC/EU itself faces considerable problems with application of this principle since the desire of non-elected European officials to influence the life of citizens in the EU is more than obvious. An illustrative example is the effort to harmonize tax legislation in the EU countries. Yet there exists tax competition within individual Swiss cantons without any sign of harm to the confederation.

It is obvious that citizens who are directly concerned with the local public affairs have a greater motivation to resolve them than the political representation, or rather the officials dealing with these problems without knowledge of local environment, sufficient motivation and feedback from the entities concerned with such decisions.

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