

# **The institution of the national referendum in the constitutional system of the Czech Republic**

## **Abstract**

There have been more than 40 constitutional bills attempting to implement some form of a national referendum in the Czech Republic. These bills, however, provide little to no explanation for the specific legal conditions proposed and seldom reflect on the possible consequences such an institution might bring. This thesis is attempting to give a structured overview of both the constitutional rules and principles arising from the constitutional order of the Czech Republic which we should be guided by when designing the institution of a general national referendum, as well as the specific legal conditions that regulate the referendum process, i.e. the subject matter of the referenda, binarity or multieity of options, the initiation process, referendum campaign, quorum, the electoral system, (non)binding effect and the (non)repeatability of referendum and various other related conditions. In doing so, I identify a series of inadequacies of the previous referenda bills and give alternative solutions to those presented by the legislators so far.

I argue that referendum – if it is to be embedded in the constitution – should give a real choice to the people and that it should have a direct legal effect (of enacting a law). Alas, most of the previous drafts attempt to limit the substantive choice and the procedural deliberation and often even attempt to make the outcome of the referenda dependent on additional actions of the political representation. Such a concept would be fitting for an authoritarian regime and not for a liberal democracy. And while liberal democracy does not necessarily *need* constitutional provisions regarding referenda, if we are to meet the existing public demand for direct political participation, such constitutional provisions must reflect the parliamentary nature of the regime and account for the necessary checks and balances to the exercise of the political power of the sovereign people.

In an effort to further advance the public discussion on the subject, I present the general outline of my own conception of the referendum regulation: one based on a multiple-choice preferential voting and intrinsically linked to the relevant parliamentary minorities which are to hold both the political responsibility for the nominated legislation put to the vote as well as the legal responsibility for the associated political campaigning. While this conception is rather novel and even goes against the international recommendations in some ways, I argue it is more aligned with the constitutional values and the political traditions of the Czech Republic.

**Klíčová slova: Democracy, political participation, (multiple-choice) referenda**