

## Summary

The main topic of the presented dissertation is the direct democracy and its legal institutions incorporated in the legal order of the Czech Republic.

The first part of the dissertation is dedicated to the democracy as a government form and to the historical breakthroughs in its development. The key historical milestones on the way from despotism, through the Athen democracy, followed by long period of democratic deficit, up to the renaissance of democracy during bloody revolutions are mentioned as well. Further attention is paid to the representative and direct democracy, their mutual compatibility and definition of basic elements within both conceptions.

The second part is referred to the direct democracy legal institutions in the legal order of the Czech Republic. Historical commentary is followed by general interpretation *de lege lata*. The direct democracy legal institutions are pursued from the year 1918 to the present. Merely commentary on the petition law goes deeper into history.

Within recent legislation it is being proceeded from larger to smaller (*a maiori ad minus*). Our attention is in the first instance focused on the direct democracy legal institutions in the constitutional order of the Czech republic. Subsequently, their implementation in so called „common legislation“ is described, i.e. in norms of sub-constitutional legal power. The legal institution is analysed as a whole, including right to judicial protection or other legal protection. The direct democracy institutions are elaborated both on national as well as local level.

In the following comprehensive chapter our attention is focused on unsuccessful attempts at introduction of direct democracy institutions in the legislation of the Czech Republic dated from 1989 and to their political background. Attention is given to few successful realisations as well.

The direct democracy institutions are looked at *de lege ferenda* in the last chapter. The direct democracy is confronted here with judicial, executive and legislative power. Not only purely practical themes are introduced (i.e. financial implications of direct people participation in the state authority), but also more general themes (i.e. direct democracy and its influence on *legitimacy*), and considerably controversial themes (i.e. direct democracy and judiciary, or direct democracy and possibility of abuse) are established.

None of the dissertation chapters is engaged in the question of appropriateness nor in usefulness of the introduction of direct democracy institutions into legislation of the Czech Republic, because this is a political question. The dissertation is aimed at describing the theme strictly from the legal point of view and avoids any judgement.

Despite the fact that there is no state in the world where the direct democracy would be the exclusive form of government, one can see it is applied as a complementary institute. The dissertation tries humbly to disclose the reasoning already in the beginning defining the democracy. The analysis is based on fundamental philosophical works of Confucius, Platon (Socrates), Aristoteles, Campanella, Rosseau, Montesquie, Hamilton, Jay, Madison, Dahl, Sartori, Fukuyama and notable Czech authors – Pavlíček, Přibáň, Filip, Knapp and others. The chapter about the petition, the referendum, the public initiative, the plebiscite and the recall will clarify the forms of the direct democracy. As opposed to the contemporary Czech jurisprudence, the dissertation views the direct democracy as a term of wide comprehension (including petition).

From the dissertation point of view the embrative word „referendum“ is perceived as a set of concepts. Therefore, the chapter defining the referendum is further structured as following: the consultative and compulsory referendum, the legislative (constitutive) and substantive referendum, a priori and a posteriori referendum, the local and statewide referendum, the facultative and obligatory referendum and last but not least the active and passive referendum.

As mentioned before, the focal point of the dissertation represent the direct democracy legal institutions in the Czech republic, their history, their anchorage in the legal order *de lege lata* and possible considerations *de lege ferenda*. The Czech republic does not dispose of the direct democracy legal institutions on the statewide level. The elected public representatives traditionally do not trust these legal institutions. It is then legitimate to contemplate not only in the historical connection why the direct democracy in the Czech republic has not been introduced so far despite strong endeavour and many attempts.

The unsuccessful proposals for introduction of the direct democracy legal institutions from 1989 until now are treated in entirely new and comprehensive way. Such a discourse is missing in the contemporary literature. The dissertation plots 13 legislative attempts at general referendum and one attempt at *ad hoc* referendum (a referendum about placement of missile defense devices of the United States of America in the Czech republic).

A referendum has been political evergreen already for twenty years, without any change in supporters' or opponents' arguments. The political representation was able to find a consensus about the need for one-off referendum about the admission of the Czech republic to the European Union, but not about the the need for general and statewide referendum.

Besides, it was only a political faction, which allowed in 2010 for incorporation of law on district referendum. Despite considerable quality differencies, the described proposals advert to an interesting fact. Except for some individual cases, the political representatives imagine

the direct democracy as a *referendum* exclusively. The public initiative was represented in the proposals minimally, apart from the *recall*.

Should the direct democracy be primarily a discussion tool, it is necessary to ask questions without any ambition to get an answer. It is the case in the last chapters.

Regardless of the direct democracy development in the Czech republic in the future, it is essential to find a consensus and start all-society discussions. It is important to pay attention to fundamental questions, which have to be clarified before the direct democracy will be part of the state order on the statewide level. The dissertation is focussed on the most frequent *pro* and *contra* arguments regarding the direct democracy and its relation to legislative, executive and judicial power. Might the direct democracy be exploited more than the representative democracy? Should the public be limited as a direct power executor? Is the public well informed? Is not the direct democracy unnecessarily expensive?

Further considerations are based on the fact, that public is the universal state power holder. It divides and transfers this sovereign state power to the legislative, executive and judicial power tripartity system. None of the public representatives is then an universal state power holder, like the public, but always its part in the individual state power pier. In case the public like to replace its representatives in the decision-making process, it would always realise its power towards one of these state power piers. The state power pier diversity determines directly the application of the legal institutions. While the direct democracy can be applied towards legislation, in case of judiciary it might not be the case. The dissertation is searching for ways how to apply the direct democracy in the tripartity power system, in case it can not be put into practice by the constituent power.

Last but not least, the dissertation pays attention to the quorum and its applicability in the practice.