

**CONSTITUTIONALIZATION OF THE CITIZENS' INITIATIVE
REFERENDUM IN CROATIA: ONE STEP FORWARD, MANY STEPS
BACK**

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Abstract

A citizens' initiative referendum was constitutionalized in Croatia with the second Revision of the Constitution of the Republic of Croatia, which took place at the end of 2000. In principle, it was an extraordinary democratic step forward in the context of Article 1(3) of the Constitution, according to which the people exercise the power through the election of representatives and direct decision-making. However, the acceptance of this instrument of direct democracy in such a broad form that is practically unknown to developed democracies was not taken into account with due caution. All scholarly warnings about the possible misuse and the need for comparative analyses have been ignored. Also, with another Revision of the Constitution, which took place in 2010, the original procedural limit (i.e., the turnout of 50% of the electorate) was removed, and from then on, any decision on the referendum is legally binding if voted by a majority of those who voted. In the same year, the first popular initiative was instituted. Although the only successful popular initiative was introduced in 2013 (and it resulted in the Revision of the Constitution), the fact is that the current referendum regulation in Croatia generally does not fulfill its purpose. Besides, the history of the citizens' initiatives in Croatia shows that inadequate regulation of a referendum can lead the country to the verge of a political and constitutional crisis. In this context, this paper aims to identify numerous problems in Croatian law on the referendum and propose solutions for its improvement.

Keywords: citizens' initiative referendum, Constitution, Croatia

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I. INTRODUCTION

Since the famous Article 6 of the French Declaration of the Rights of Man and of the Citizen of 1789,¹ which clearly states that “law is an expression of the will of the people” and that “every citizen has a right to participate personally, or through his representative, in its foundation”, up to the present provisions of all democratic constitutions, the basic principle of political representation has been additionally supplemented by the possibility of direct voter decision-making. In doing so, the fundamental and most applicable form of direct democracy is voter decision-making in the referendum.

Similarly to the provisions of other modern democratic constitutions, the Constitution of the Republic of Croatia² (hereinafter: the Constitution) distinguishes between two basic ways of exercising national sovereignty. Article 1 of the Constitution sets out the principle of national sovereignty and how it is exercised. Pursuant to paragraph 2 of the said article, “power in the Republic of Croatia derives from the people and belongs to the people as a community of free and equal citizens”, while pursuant to paragraph 3, “the people shall exercise this power through the election of representatives and direct decision-making”.

Although the original Constitution of the Republic of Croatia adopted in the 1990³ (the so-called “Christmas Constitution”⁴) envisaged only the optional referendums on constitutional or legislative matters, in the past 29 years, there were some significant changes in the normative framework for referendums in Croatia. In this paper, the emphasis is put on the citizens’ initiative referendum, a form of direct democracy that became part of the Croatian Constitution 19 years ago. Namely, the citizens’ initiative referendum was constitutionalized in Croatia with the second Revision of the Constitution of the Republic of Croatia,⁵ which took place at the end of 2000. In principle, it was an extraordinary democratic step forward in the context of Article 1(3) of the Constitution, according to which the people exercise the power through the election of representatives and through direct decision-making. However, the acceptance of this instrument of direct democracy in such a broad form that is practically unknown to developed democracies was not taken into account with due caution. All scholarly warnings about the possible misuse and the need for comparative analyses have been ignored. In addition, with another Revision of the Constitution, which took place in 2010,⁶ the original procedural limit (the turnout of 50% of the electorate) was removed and from then on, any decision on the referendum is legally binding if voted by a majority of those who voted. The first popular initiative was instituted in the same year. Although the only successful popular initiative was introduced in 2013 (and it resulted in the Revision of the Constitution), the fact is that the current

¹ Déclaration des Droits de l'Homme et du Citoyen de 1789, available at: <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>

² Constitution of the Republic of Croatia, Official Gazette nos. 6/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001, 41/2001 (consolidated text), 55/2001, 76/2010, 85/2010 (consolidated text), 5/2014 (Decision of the Constitutional Court of the Republic of Croatia no. SuP-O-1/2014 of 14 January 2014 regarding the completion of the procedure for reviewing the constitutionality and legality of the national referendum held on 1 December 2013).

³ Constitution of the Republic of Croatia, Official Gazette no. 56/90.

⁴ Constitution of the Republic of Croatia is colloquially referred to as “The Christmas Constitution”, given that it was passed on 22 December 1990. It has been amended and revised five times so far (in 1997, 2000, 2001, 2010, and 2013).

⁵ Revision of the Constitution of the Republic of Croatia, Official Gazette no. 103/00.

⁶ Revision of the Constitution of the Republic of Croatia, Official Gazette no. 76/10.

referendum regulation in Croatia generally does not fulfill its purpose. Additionally, the history of citizens' initiatives in Croatia shows that inadequate regulation of referendums can lead the country to the verge of a political and constitutional crisis. In this context, this paper aims to identify numerous problems in Croatian law on referendums in general and on citizens' initiatives in particular and propose solutions for its improvement.

The paper consists of four main parts. Following the introduction and an initial overview of the normative framework related to direct democracy in Croatia, the next part of the paper analyzes the citizens' initiative in the Croatian constitutional system. As will be shown after an overview of legal regulation, in the last 19 years of the Croatian experience with citizens' initiatives, the Croatian Constitutional Court made a significant body of case law, and the impact of this practice on the development of the citizens' initiative referendum will be evaluated in this paper. Finally, the concluding part sums up the most important steps forward and steps back in the constitutionalization of the citizens' initiative referendum in Croatia.

II. ON A REFERENDUM

In contemporary democratic constitutional theory, as in the provisions of all democratic constitutions, indirect (representative) and direct decision-making are distinguished as two fundamental ways of exercising national sovereignty.⁷ While some authors believe that direct democracy stands in contrast to indirect democracy,⁸ others think that the role of direct democracy is to correct and supplement representative democracy.⁹

In scientific and professional literature, there are numerous definitions and classifications of different forms of direct democracy, which are mostly based on the distinction between a referendum and a citizens' initiative.¹⁰ According to Sokol, a referendum is a form of direct decision-making by which citizens directly vote by secret ballot on a question raised such that it can be answered by either "yes" or "no", or "for" or "against", and, as a rule, the subject of a referendum is the decision to accept or reject a proposal for a general regulation or a political decision.¹¹ In doing so, a representative sample of participants in a referendum sufficient to represent the people may confirm or reject a certain initiative of state authority.¹² Kostadinov stated that most states have adopted one of the three constitutional concepts of the referendum whose criterion of distinction is the adopted constitutional system of the initiative to initiate a referendum. In this way, we distinguish between a referendum as an instrument of political parties, a referendum as an instrument of the head of state and a referendum as an instrument of citizens. The goal of the concept of a referendum as an instrument of citizens is to ensure direct participation of the people in shaping state policy and against the will formed in the

⁷ Smerdel, B., Sokol, S., *Ustavno pravo*, Narodne novine, Zagreb, 2009, p. 213.

⁸ Marxer, W., *Wir sind das Volk: Direkte Demokratie – Verfahren, Verbreitung, Wirkung*, Schriftliche Fassung des Vortrages am Liechtenstein-Institut vom 2. November 2004 in der Vorlesungsreihe "Herausforderung Demokratie" Beiträge Nr. 24/2004, p. 2.

⁹ Schiller, T., *Direkte Demokratie – eine Einführung*, Campus Studium, Frankfurt/Main, 2002, p. 11.

¹⁰ There have been numerous comparative studies of referendums, a few of which are: Butler, D., Ranney, A. (Eds.), *Referendums around the World: The Growing Use of Direct Democracy*, AEI Press, Washington D.C., 1994; Qvortrup, M., *A Comparative Study of Referendums. Government by the People*, Manchester University Press, Manchester, New York, 2002; Galagher, M., Uleri, P.V. (Eds.), *The Referendum Experience in Europe*, Macmillan Press, Houndmills, 1996.

¹¹ Smerdel, B., Sokol, S., op. cit. (note 7), p. 219.

¹² Ljubić, D., *Promjena Ustava i narodna inicijativa*, *Hrvatska pravna revija*, 13 (2013), 11, p. 5.

representative or executive bodies.¹³ In addition to a referendum, in several countries, a citizens' initiative also functions as a significant complement to representative democracy. A citizens' initiative gives the electorate the right to vote on a political, constitutional or legislative matter proposed by a certain number of citizens, and not by a government, a legislative body, or any other state authority. In a citizens' initiative, petitioners must gather enough signatures needed by the constitution or law to be able to vote on that initiative.¹⁴

One of the classifications of direct democracy was made by the International Institute for Democracy and Electoral Assistance, which distinguishes the following four applications of direct democracy: (1) a referendum, i.e., a procedure that gives the electorate a direct voice in deciding on a specific political, constitutional or legislative matter; (2) a citizens' initiative, which gives the electorate the right to vote on a specific political, constitutional or legislative matter proposed by a number of citizens; (3) an agenda-setting initiative, i.e., a procedure through which citizens can organize themselves and put a particular issue on the agenda of a parliament or other representative body, whereby a specific number of signatures must be gathered as a prerequisite prescribed by the constitution or law; and (4) revocation, i.e., a procedure enabling the electorate to vote on a recall of the elected official, provided that a sufficient number of signatures has been collected for that purpose.¹⁵

Given the different criteria applied, there are several types of referendums. Referendums are first classified according to the width of the political community whose members decide directly in a referendum. Given this criterion, we distinguish between a referendum at the national level, which involves direct decision-making of all voters within a particular state, and a referendum at the level of some local political and territorial unit or a so-called local referendum.¹⁶ At this point, we can state that Article 2 of the Act on the Referendum and Other Forms of Personal Participation in the Exercise of State Power and Local and Regional Self-Government¹⁷ defines a national referendum as a form of direct decision-making by voters in the exercise of state power in relation to issues determined by the Constitution, whereas a local referendum refers to issues falling within the scope of local and regional self-government units determined by the law and the statute.

Concerning the subject matter of decision-making, i.e., whether the referendum decides on the adoption of or amendment to a constitution or law, or some other general act, we distinguish between a constitutional and a legislative referendum, a referendum on the issue of entering into an alliance (or withdrawal therefrom) and a referendum on "other issues".¹⁸

¹³ Kostadinov, B., Referendum građanske inicijative, in: Podolnjak R., Smerdel, B. (Eds.), *Referendum narodne inicijative u Hrvatskoj i Sloveniji - Ustavnopravno uređenje, iskustva i perspektive*, Hrvatska udruga za ustavno pravo, Zagreb, 2014, p. 122.

¹⁴ Podolnjak, R., Hrvatski ustav i neposredna demokracija, in: Bačić, A. (Ed.), *Dvadeseta obljetnica Ustava Republike Hrvatske*, Hrvatska akademija znanosti i umjetnosti, Zagreb, 2011, p. 266.

¹⁵ *Direct Democracy*, The International IDEA Handbook, International Institute for Democracy and Electoral Assistance, Stockholm, 2008, pp. 9-10.

¹⁶ Smerdel, B., Sokol, S., op. cit. (note 7), p. 220.

¹⁷ Act on the Referendum and Other Forms of Personal Participation in the Exercise of State Power and Local and Regional Self-Government, Official Gazette nos. 33/96, 92/01, 44/06 (Art. 27(4) of the Act on the State Electoral Commission of the Republic of Croatia), 58/06 (Decision of the Constitutional Court of the Republic of Croatia no. U-I-177/2002 of 20 April 2006), 69/07 (Decision of the Constitutional Court of the Republic of Croatia no. U-I-2051/2007 of 5 June 2007), 38/09, 100/16 (Decision of the Constitutional Court of the Republic of Croatia no. U-I-1962/2008 of 27 September 2016), 73/17.

¹⁸ Smerdel, B., *Ustavno uređenje europske Hrvatske*, Narodne novine, Zagreb, 2013, p. 165.

Furthermore, as to whether the referendum must or may be called and whether it refers to each or only a specific partial amendment to the constitution, we distinguish between an absolutely mandatory, a relatively mandatory, and an optional constitutional referendum.¹⁹

Following the most common constitutional practice, the Constitution of the Republic of Croatia also provides for an optional constitutional referendum whose calling depends on the will of the bodies designated by the Constitution. In other words, the referendum need not be applied in any case, but it can be applied in every case of the revision of the constitution.²⁰

Furthermore, a referendum may be optional or mandatory, given the obligation to respect the referendum result. A mandatory referendum obliges the authorities to act in a certain way, while the goal of an optional referendum is primarily to clarify the will of the people through the power of the electorate in the next election cycle.²¹

Finally, with respect to the question of who submits an initiative, we distinguish between a referendum at the discretion of state bodies (*top-down*) and a citizens' initiative referendum (*bottom-up*).²²

Although the first modern referendum dates back to France and 1793, the fact is that the practice of holding a referendum was very rare until the 20th century, i.e., until the 1970s.²³ Changes in the frequency of holding a referendum in certain periods are certainly (also) a reflection of changes that have taken place in the socio-political realities, so e.g., a sharp increase in referendums is related to the 1990s, i.e., the collapse of the Soviet Union, a constitutional revolution in states of Central and Eastern Europe, and declarations of independence of several countries. But, a rise in the number of referendums in recent decades is certainly a reflection of changes in citizens' expectations of democracy in general and opportunities for civic engagement in democracy.

III. LEGAL FRAMEWORK FOR REFERENDUMS IN THE REPUBLIC OF CROATIA

As already mentioned, direct decision-making in the Republic of Croatia is guaranteed first by the Constitution of the Republic of Croatia. Furthermore, Title IX of the Constitutional Act on the Constitutional Court of the Republic of Croatia²⁴ regulates control over the constitutionality and legality of a national referendum, while the Act on the Referendum and Other Forms of Personal Participation in the Exercise of State Power and Local and Regional Self-Government (hereinafter: the Referendum Act) regulates the calling and implementation of referendums and other forms of personal participation of Croatian citizens with the right to vote in the exercise of state power and local and regional self-government. Concerning the regulation of local

¹⁹ Smerdel, B., Sokol, S., op. cit. (note 7), p. 221.

²⁰ Ibid.

²¹ Ljubić, D., op. cit. (note 9), p. 5.

²² Smerdel, B., op. cit. (note 19), p. 165.

²³ Report of the Independent Commission on Referendums, University College London, The Constitution Unit, 2018, available at: https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/182_-_independent_commission_on_referendums.pdf

²⁴ Constitutional Act on the Constitutional Court of the Republic of Croatia, Official Gazette nos. 99/99, 29/02, 49/02 (consolidated text).

referendums, it should be emphasized that this field is also partially governed by the provisions of the Act on Local and Regional Self-Government.²⁵

Article 1 of the Constitution determines the principle of national sovereignty and the method of its application. Article 2(1) of the Constitution stipulates that power in the Republic of Croatia derives from the people and belongs to the people as a community of free and equal citizens, while pursuant to Article 3, the people shall exercise this power through the election of representatives and through direct decision-making. Article 2(4) of the Constitution stipulates that the Croatian Parliament or the people shall directly, independently and in accordance with the Constitution and law, decide on the regulation of economic, legal and political relations, on the preservation of natural and cultural wealth and its utilization, and on entering into an alliance with other states. For these reasons, prescribing the constitutional and legislative framework for conducting a referendum, how a referendum is held and the preconditions for its validity is of great political and constitutional importance.²⁶

Although the original Constitution of the Republic of Croatia adopted in 1990 envisaged only optional referendums on constitutional or legislative matters, in the past 29 years, there were some significant changes in the normative framework of referendums in Croatia. At constitutional level, these changes include the constitutionalization of the citizens' initiative referendum in 2000 and the change in an approval quorum for the 2010 referendum.

The aforementioned changes resulted in today's constitutional provisions on a referendum based upon which a referendum can be called on a proposal for an amendment to the Constitution, on an act, or on any other issue under the competence of the Croatian Parliament (Article 87(1) of the Constitution), and on any other issue which the President of the Republic of Croatia considers to be important for the independence, integrity and existence of the Republic of Croatia (Article 87(2) of the Constitution). Furthermore, a constitutional and legislative referendum may be called by the Croatian Parliament, by its decision (made by majority vote, provided that a majority of the members of the Parliament were present at the session²⁷), or when so demanded by ten percent of the total electorate in the Republic of Croatia, and by the President of the Republic of Croatia, at the proposal of the Government and with the counter-signature of the Prime Minister. In a referendum, the decision shall be made by a majority of voters taking part therein (Article 87(4) of the Constitution), and the decision made by the referendum shall be binding (Article 87(5) of the Constitution). Pursuant to Article 87(6) of the Constitution, an act on the referendum shall be passed, and the conditions for the holding of an advisory referendum may also be laid down in the act.

In addition to an optional referendum, the Constitution explicitly provides for a mandatory referendum to be held when deciding on the Republic of Croatia's entering into alliances with other states (or withdrawal therefrom).²⁸

²⁵ Act on Local and Regional Self-Government, Official Gazette nos. 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 150/11, 144/12, 19/13, 137/15, 123/17.

²⁶ Ceranić, V., *Neposredno ostvarivanje državne vlasti prema Ustavu Republike Hrvatske: odluka Ustavnog suda br. U-VIIR 4696/2010*, *Pravnik*, Vol. 44, No. 89, 2010, p. 161.

²⁷ Although in the Constitution we do not find an explicit provision in respect of the majority required to decide to call a referendum, by analogy with Article 82(1) of the Constitution, pursuant to which "unless otherwise specified by the Constitution, the Croatian Parliament shall make decisions by a majority vote, provided that a majority of its members are present at the session", we may reach a conclusion on the required majority.

²⁸ Article 142 of the Constitution specifies the process of entering into associations and withdrawal therefrom. Namely, a procedure entailing the association of the Republic of Croatia into alliances with other states may be initiated by at least one-third of the members of the Croatian Parliament, the President of the Republic and the

As for the protection of the referendum, it is important to emphasize that, pursuant to Article 129 of the Constitution, the Constitutional Court of the Republic of Croatia, *inter alia*, monitors the implementation of the constitutionality and legality and, accordingly, notifies the Croatian Parliament of instances of unconstitutionality and illegality observed, monitors the constitutionality and legality of elections and the national referendum, and resolves electoral disputes that are not within the purview of the courts. Supervision of the constitutionality and legality of elections and national referendums is regulated in Title IX of the Constitutional Act on the Constitutional Court of the Republic of Croatia and in Title VII of the Referendum Act. Pursuant to Article 50 of the Referendum Act, a complaint concerning irregularities in the conduct of a referendum shall be submitted to the State Electoral Commission within 48 hours after the end of voting, and the State Electoral Commission shall make a decision thereon within a 48-hour period of time. In this case, if the State Electoral Commission determines that in the conduct of the referendum there were such irregularities that significantly affected or could affect the referendum result, it shall have the power to dissolve lower ranking referendum committees or order the competent commission to dissolve the polling committee at a particular polling station and appoint a new one.²⁹ Furthermore, if the committee is dissolved or infringements are such that the referendum results at a specified polling station cannot be determined, the State Electoral Commission shall nullify the voting at that polling station and decree repeat elections.³⁰ An appeal against the order of the State Electoral Commission may be submitted to the Constitutional Court within 48 hours of receipt of the contested order, and again within 48 hours of receipt of the appeal, the Constitutional Court is obliged to decide the appeal in question.³¹ On the other hand, authorized entities are entitled, during the referendum or no later than 30 days after proclamation of referendum results, to request the Constitutional Court to take appropriate measures in exercising control over the constitutionality and legality of the referendum if these activities are conducted contrary to the Constitution or law,³² and if the Constitutional Court confirms that participants in the referendum procedure act contrary to the Constitution or law, it can inform the public about that through the media, or, if necessary, inform the competent bodies, but in the event of infringement that affected or could affect the referendum results, the Constitutional Court may annul all or some of the actions and decisions preceding such infringement.³³

As noted above, a decision taken in a referendum is mandatory, but the Referendum Act prescribes two important safeguards: first, before the expiration of one year from the date of holding the referendum, the competent authority may not adopt a legal act or take a decision that is substantially contrary to the decision taken in the referendum, and second, a referendum cannot be re-called before the expiration of a period of six months from the date of holding the

Government of the Republic of the Croatia. Any procedure aimed at the association of the Republic of Croatia, i.e. an alliance, 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, is expressly prohibited. Any association of the Republic of Croatia shall first be decided by the Croatian Parliament by a two-thirds majority of all members and any decision concerning the association shall be made in a referendum by a majority of all voters voting in the referendum. The referendum shall be held within 30 days following the date on which the decision was passed by the Croatian Parliament. The provisions concerning the process of entering into associations shall also pertain to the procedure of withdrawal of the Republic of Croatia from such associations.

²⁹ Referendum Act, Art. 53.

³⁰ Referendum Act, Art. 55.

³¹ Referendum Act, Art. 56.

³² Constitutional Act on the Constitutional Court, Art. 88.

³³ Constitutional Act on the Constitutional Court, Art. 89.

referendum. However, it is important to emphasize that the first condition does not apply to the case of the mandatory referendum when deciding on an association (or withdrawal therefrom), and to the case of a citizens' initiative referendum.³⁴

IV. CONSTITUTIONALIZATION OF THE CITIZENS' INITIATIVE REFERENDUM

In principle, the introduction of the citizens' initiative into the Constitution of the Republic of Croatia in 2000 represented a remarkable democratic step forward in the context of consistent application of Article 1(3) of the Constitution, pursuant to which the people exercise their power by electing their representatives and by direct decision. However, the adoption of this form of direct democracy in the form of a solution that is broad in scope and unknown to developed democracies in terms of application has shown that an instrument like this, which can and should have a positive impact on the development of democracy and a democratic political culture, can simultaneously undermine the foundations of modern democracy.

Although a referendum has been present in many European countries as a tool for citizen participation in direct decision-making, it is worth noting that the only Western European countries that have citizen-initiated referendums are Switzerland, Italy, Lichtenstein and San Marino,³⁵ while the situation is almost diametrically opposite in Eastern European countries. Namely, the constitutions of almost all Eastern European countries have enthusiastically embraced the citizens' initiative, so that it is part of the constitutional order of Albania, Latvia, Lithuania, Hungary, Macedonia, Slovakia, Slovenia, Serbia,³⁶ and, of course, Croatia. Podolnjak and Smerdel state that due to the breadth and openness of referendum decision-making, citizens' initiative referendums have caused many political and/or economic problems in some countries, and in some cases they have even brought a country to the brink of a constitutional and political crisis, which is precisely what happened in Croatia.³⁷

Kostadinov was one of the first constitutional experts in Croatia to warn of a quick and reckless adoption of a citizens' initiative. She emphasized that a lack of comparative experience as to the implementation of the citizens' initiative "led to the adoption of a solution which is, in terms of both the breadth of the area and the application, not known by any constitution of any developed democracy."³⁸ Unfortunately, neither timely nor subsequent systematic and perennial warnings from the experts have borne fruit. The shortcomings pointed out by constitutional law experts, which were not taken into account in the creation of the instrument, have been a matter of dispute between the initiators of citizens' initiatives and the ruling class since the introduction of the instrument.

Namely, a citizens' initiative referendum is mentioned once in the Constitution, i.e., only in one short sentence, stating that the Croatian Parliament will call a referendum on any issue on which the Croatian Parliament or the President of the Republic of Croatia can call a referendum, when

³⁴ Referendum Act, Art. 8.

³⁵ Serdult, U., Welp, Y., Direct Democracy Upside Down, *Taiwan Journal of Democracy*, Volume 8, No. 1, 2012, p. 76.

³⁶ Ibid.

³⁷ Podolnjak, R., Smerdel, B., Uvod: O referendumu narodne inicijative u Hrvatskoj i Sloveniji, u: *Referendum narodne inicijative u Hrvatskoj i Sloveniji. Ustavnopravno uređenje, iskustva i perspektive*, Hrvatska udruga za ustavno pravo, Zagreb, 2014, p. 3.

³⁸ Kostadinov, B., Referendum građanske inicijative, *Zbornik PFZ*, 51, No. 6, 2001, p. 1392.

so requested by ten percent of the total electorate of the Republic of Croatia.³⁹ Combined with the provision incorporated in the Constitution as part of the 2010 Constitution, pursuant to which a decision in the referendum shall be made by a majority of voters taking part therein,⁴⁰ we come to a solution that may be the subject of a political game, that is, subject to a number of abuse types. Smerdel rightly emphasizes that the institutions of direct democracy, especially the citizens' initiative referendum, best reflect the degree of development of a civil, legal and political culture of one country and one population,⁴¹ and concludes that the implementation of the citizens' initiative referendum in Croatia has displayed a low level of social awareness of the necessity of respect, i.e., the ruling "elite" political culture.⁴²

Title II of the Referendum Act lays down the rules pursuant to which voters substantiate the need to request calling a referendum. If voters believe that there is a need to call a referendum on issues deemed constitutionally and legally permissible, the first procedural step that is necessary entails the establishment of an organizing committee, which decides to vote on the need to request a referendum. This decision, which must be published in daily newspapers and other media, should contain a clearly worded question on which the referendum is to be called and a deadline for collecting voter signatures, which shall not exceed fifteen days. Gathering signatures of voters can be organized in any convenient place, in accordance with the decision of the representative body of a local self-government unit (municipality or city).⁴³ The places where voter signatures are collected must be marked and visible, and their marking shall not contain national characteristics. Each voter may only sign at one location where the signatures are collected. It is the responsibility of the organizing committee to verify that voters cast their ballots in accordance with law. If the organizing committee determines that the required ten percent of voter signatures out of the total number of voters in Croatia have been collected,⁴⁴ it will send a request to the President of the Croatian Parliament, requiring a referendum, which should be accompanied by all lists proving the required number of voter signatures. The next step is calling a referendum, which is regulated by Title III of the Referendum Act. The decision of the Croatian Parliament to call a referendum should include the name of the body calling the referendum, the area for which the referendum is called, the name of the act to be decided in the referendum or an indication of the issue to be decided in the referendum, the explanation of that act or question, and the referendum question(s), and the day of the referendum. This decision shall be published in the Official Gazette, daily newspapers and other media. No less than 20 and more than 40 days may elapse from the decision notification date to the referendum date. The referendum results are confirmed by the State Election Commission, which is obliged to submit a report and the referendum results to the authority that called the referendum, and have the

³⁹ Constitution of the Republic of Croatia, Art. 87(3).

⁴⁰ Constitution of the Republic of Croatia, Art. 87(4).

⁴¹ Smerdel, B., Pregled (tužne) povijesti referenduma građanske inicijative u Hrvatskoj, in: *Referendum narodne inicijative u Hrvatskoj i Sloveniji. Ustavnopravno uređenje, iskustva i perspektive*, op.cit. (note 37), p. 15.

⁴² Ibid., p. 16.

⁴³ Pursuant to Art. 8c(2) of the Referendum Act, the organizing committee is obliged to report the voter signature collection locations to the police authority in whose territory signatures are collected at least five days before the signature collection begins.

⁴⁴ Pursuant to the Decision of the Constitutional Court of 2014, the total number of voters in the Republic of Croatia is the total number of Croatian nationals aged 18 and over residing in the Republic of Croatia who were entered in the electoral roll as part of the electoral register, on the day designated as the first day of collecting signatures for calling a referendum, as of that day at 00:00. Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-7346/2014 of 10 December 2014, Official Gazette no. 156/14.

decision taken in the referendum published in the Official Gazette and daily newspapers, and broadcast on the Croatian Radio and Television.

Even a cursory analysis of the constitutional and legal provisions on the citizens' initiative referendum points to several important problematic organizational aspects of this instrument. On the one hand, it has already been mentioned that the area that can be the subject of referendum decision-making is extremely broad, while on the other hand, the basic conditions regarding the collection of an extremely large number of required voter signatures in a very short period of time are very strictly regulated. Furthermore, legal provisions related to procedural steps are defective in certain important parts, so it is not prescribed within what time limit the organizing committee is obliged to submit the signature list to the Croatian Parliament, nor is it stipulated in what period of time a referendum must be called, which makes space for the possibility of referendum procrastination. The act does not contain any provisions governing issues regulating pre-referendum activities, and the legislator also "forgot" to regulate the procedure of verifying the number and credibility of voter signatures, i.e., no institution responsible for verification and no deadline by which verification shall be done have been specified, which can result in various time and other manipulations.

However, it is important to emphasize that the issue on which a referendum cannot and shall not be called is laid down in Article 95 of the Constitutional Act on the Constitutional Court, pursuant to which, if ten percent of the total number of the electorate in Croatia request a referendum, the Croatian Parliament *may* require the Constitutional Court to determine whether the content of the referendum question is in compliance with the Constitution and whether the constitutional preconditions for holding a referendum are fulfilled. In this case, the Constitutional Court is obliged to render a decision within 30 days of receipt of the request. Although the solution that the Constitutional Court determines in each particular case the constitutional reservations excluded from referendum decision-making is good, we believe that one important problem remains, and it is related to deciding on the admissibility of the referendum question only *after* hundreds of thousands of voter signatures have been collected, which, of course, implies cost, but also creates fertile ground for various political confrontations.

Unfortunately, the warning Kostadinov gave back in 2001 that "confronting Croatia, burdened with the problems of building a legal system and lacking a tradition of interpreting the Constitution, with an insufficiently developed citizens' initiative referendum is a politically and professionally risky decision,"⁴⁵ still holds today. Although there have been certain constitutional initiatives aimed at changing the existing legal framework for a referendum,⁴⁶ due to ambivalent

⁴⁵ Kostadinov, B., Referendum građanske inicijative u Europi: Švicarska, Italija i Hrvatska, in: *Izgradnja demokratskih ustavnopravnih institucija Republike Hrvatske u razvojnoj perspektivi* (Smerdel, B., Gardašević, Đ., Eds.), Sveučilišna tiskara d.o.o., Zagreb, 2011, p. 257.

⁴⁶ Podolnjak states that there have been three attempts to reform constitutional design of the citizens' initiative referendum. The first and the second attempt (in 2010 and 2012) were initiated by opposition parties and aimed at reducing the required number of voter signatures to initiate a referendum to a fixed number of 200,000 signatures, and excluding certain areas from the possibility of deciding in a referendum, such as human rights, the tax system and national security issues. Although initiated by the leading party, the third attempt of 2013 failed because, at the last minute, one of the ruling coalition parties demanded a delay in the vote on changes. The final Draft Proposal for Constitutional Amendments provided for changes in the number of required signatures (200,000) in areas that cannot be decided in a referendum (issues relating to the limitation or reduction of human rights, issues referring to Croatia's international obligations, the adoption and implementation of the state budget and the tax system, defense and national security issues, and appointments within the scope of the Croatian Parliament), as well as the introduction of a participation quorum for a revision of the Constitution (more than 50 % of all eligible voters), then

access to the instrument of the referendum in general, and the instrument of the citizens' initiative referendum in particular, the provisions on the citizens' initiative have not been changed since 2002 in either the Constitution or the Constitutional Act on the Constitutional Court of the Republic of Croatia or the Referendum Act. As a result, the first citizens' initiatives have already vividly pointed out all shortcomings of the constitutional and legal regulations of the citizens' initiative.

V. THE CITIZENS' INITIATIVE REFERENDUM PRACTICE

Since the citizens' initiative referendum was introduced 18 (and a half) years ago, a total of fourteen citizens' initiatives have labeled the Croatian constitutional order, which can be grouped into several categories depending on whether the referendums were held or not, and if not, why they were not held, and depending on the context, either international or national, of the proposed referendum questions. Only one of those 14 citizens' initiatives was successful, and subsequently, it resulted in a referendum which was held on 1 December 2013, based upon which the Constitution was supplemented by the definition of marriage. All other initiatives were unsuccessful, either for procedural reasons (the required number of voter signatures was not collected) or for material reasons (the proposed question is unconstitutional). However, it is important to note that two initiatives were actually successful, although no referendum was held, due to the fact that the Government of the Republic of Croatia dropped the announced legislative proposals against which citizens' initiatives were organized.

A brief overview of unsuccessful initiatives starts with the first initiative, which was organized shortly after the introduction of the citizens' initiative referendum into the Croatian constitutional order. The initiative was organized in April 2001 by the Central Headquarters for the Defense of the Dignity of the Croatian War of Independence, and it aimed at calling a referendum on the Constitutional Act on Cooperation with the International Criminal Tribunal for the former Yugoslavia. However, although the required number of voter signatures was collected for the initiative, the referendum did not take place because the constitutional provision for the citizens' initiative was not accompanied by appropriate amendments to the existing Referendum Act. Unfortunately, we cannot disagree with Smerdel, who stated that "this marked the beginning of a long sad history of great promises and great disappointment at the possibilities and limits of immediate democracy, mainly caused by the underestimation of warnings given by experts."⁴⁷

Two citizens' initiatives of 2008 and 2009 aimed at seeking a referendum on Croatia's accession to NATO and on the regulation of state borders between Croatia and Slovenia, respectively, failed due to an insufficient number of signatures collected.

The 2010 initiative of trade union organizations to collect signatures for holding a referendum in response to the Government's proposal for amendments to the Labor Act collected a sufficient number of signatures, but also raised a series of doubts about constitutional conditions for holding a referendum. Namely, nearly 720,000 signatures were collected, and after that, the Government withdrew the bill from the parliamentary procedure, tacitly accepting in this way the requests submitted by referendum petitioners, and consequently, it was not necessary to call a

organic laws (at least 35 % of all voters), and ordinary laws (more than 25 % of the electorate). For more details, see: Podolnjak, R., Constitutional Reforms of Citizen-Initiated Referendum, *Revus*, 26, 2015, pp. 129-149.

⁴⁷ Smerdel, B., Neposredno odlučivanje i njegove ustavne granice, *Hrvatska pravna revija*, No. 5907, 2010, p. 2.

referendum. In its decision,⁴⁸ the Constitutional Court itself stated that by withdrawing the bill from the legislative procedure, the preconditions for calling a referendum ceased to exist, but also added that the Government should not refer the same bill to the procedure before the expiration of the period of one year, save that a referendum on the said bill is called and held on the basis of valid signatures already collected under the initiative.⁴⁹

In February 2013, the citizens' initiative called the "Referendum uprising" started with the collection of signatures, and it called for a referendum on the following four issues: a repeat referendum on Croatia's EU accession, a ban on the placing on the market and the sale of genetically modified organisms, the annulment of previous privatization and a ban on the sale of real estate, resources and property of the Republic of Croatia. The initiative failed because a sufficient number of signatures were not collected.

The first initiative with enough signatures collected, which called for a referendum to supplement the Constitution by defining marriage, and at the same time the only successful initiative that indeed resulted in the amendment to the Constitution, pointed again and even more pronounced to the deficiencies as regards constitutional and legal regulation of the citizens' initiative. More detailed information about this initiative, which deeply divided the Croatian public in terms of its content and caused a number of disputes and different constitutional interpretations of different political and scientific actors, will be given later in the paper.

In December 2013, another initiative managed to collect enough signatures. It was the initiative called the "Headquarters for the defense of Croatian Vukovar", which called for a referendum on amending the Constitutional Act on the Rights of National Minorities by prescribing equality in the official use of a minority language and script that shall be exercised in the territory of a local self-government unit, state administration and judiciary, where the members of a particular national minority compose a minimum of half (instead of the prescribed one-third) of the population in such unit. However, the Constitutional Court ruled that the proposed issue was not in conformity with the Constitution.⁵⁰ As the "Referendum on minority rights" deserves special attention, it will also be discussed in detail later in the paper.

The next two citizens' initiatives, launched in June and October 2014, aimed at calling a referendum on a ban of public sector outsourcing of technical services to private firms and a referendum against the Government's plan to lease motorways in order to monetize their state-owned operator debt, were also declared unconstitutional by the Constitutional Court.

The third initiative (September 2014) aimed at a change in the electoral system ("Let's elect MPs by their first and last name") was declared inadmissible by the Constitutional Court due to the lack of the required number of signatures.⁵¹ An insufficient number of signatures collected was also a characteristic of the May 2015 "Pro Referendum" citizens' initiative, which proposed calling a referendum on reducing the number of signatures required to call a referendum to 200,000.

⁴⁸ Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-4696/2010 of 20 October 2010, Official Gazette no. 119/10.

⁴⁹ However, it should be noted that with this interpretation, the Constitutional Court assumed a rather activist role when it comes to interpreting the Referendum Act. Namely, the Act does not provide for either this kind of suspension of the number of signatures collected or their possible activation within a period of one year.

⁵⁰ Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-4640/2014 of 12 August 2014, Official Gazette no. 104/14.

⁵¹ Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-7346/2014 of 10 December 2014, Official Gazette no. 156/14.

Two May 2018 initiatives reopened the Pandora's box of problems related to referendum regulation and caused a number of disputes and differing interpretations in the Croatian public as well as among experts. The first initiative called for a referendum on changes in the electoral system, while the second one called for a referendum on revoking the so-called Istanbul Convention. None of the initiatives collected enough signatures. Since the initiative gathering signatures for a referendum on changes in the electoral system (also) proposed changes with regard to national minorities, we will (also) deal therewith later in the paper. Finally, the last citizens' initiative "67 is too much", which was led by three trade union headquarters, collected enough signatures in late April and early May 2019 to call a referendum on lowering the retirement age from 67 to 65 and on reducing early retirement penalties. However, the referendum was not held because the Government adopted all initiative proposals.

1. The "marriage" referendum

As noted above, the "sad history" of citizens' initiative referendums dated back before 1 December 2013. The initiative, which garnered nearly 700,000 signatures,⁵² i.e., much above the required 10% of the total number of voters, resulted in a referendum by means of which the definition of marriage as a union between a woman and a man was introduced into the Constitution. At the same time, this initiative revealed a number of shortcomings in the constitutional and legal regulation of the referendum, and caused a number of disputes and different interpretations of certain actors in and outside the Croatian Parliament, whose roots are primarily related to an "instrumental understanding of the Constitution", i.e., marginalization and the deconstruction of the Constitution.⁵³

It should be noted that this initiative has become the subject of intense months-long public, political and professional debate. Numerous contentious issues caused by inadequate regulation of elements in the referendum process or a lack thereof, which were fueled by the Croatian Parliament's delay in making a decision on calling a referendum in accordance with the legal procedure for launching the requested referendum, as evidenced in a joint statement issued by constitutional law professors from all four Croatian faculties of law,⁵⁴ culminated when the Constitutional Court passed two acts that occupy an important place in the consideration of referendum law.

The first act was passed by the Constitutional Court on 28 October 2013. It is a warning⁵⁵ issued by the Constitutional Court about the Proposal of the Decision to Call a National Referendum, formulated four days before by the Parliamentary Committee on the Constitution, Standing Order and Political System. Namely, the aforementioned proposal for a decision contained

⁵² The national referendum was requested by 683,948 voters. Source: Constitutional Court of the Republic of Croatia, Communication on the Constitutional Referendum on the Definition of Marriage, 14 November 2013.

⁵³ Horvat Vuković, A., Referendum narodne inicijative 2013. – ustavni identitet kao osnova ustavnosudskog aktivizma, in: Referendum narodne inicijative u Hrvatskoj i Sloveniji, op. cit. (note 37), p. 151.

⁵⁴ In their joint press release of 10 June 2013, constitutional law professors warned that refusal of the Croatian Parliament to call a referendum in the situation when all formal and legal prerequisites for calling a referendum were met would be a denial of the very essence of a citizens' initiative referendum and could have unprecedented consequences for the constitutional stability of the country. Statement by Croatian constitutional law experts on the citizens' initiative referendum "In the name of the family", available at: <http://www.huzup.hr/?id=3&pg=2&ak=21>, accessed: 20 January 2020.

⁵⁵ Warning about the Proposal of the Decision to Call a National Referendum of the Committee on the Constitution, Standing Order and Political System of the Croatian Parliament of 24 October 2013, 28 October 2013, Official Gazette no. 131/13.

certain formulations from which it emerged that, after a referendum, in which voters would make a decision to amend the Constitution, the Croatian Parliament would decide on the referendum question itself, from which it follows that the final decision on whether the Constitution would be amended or not would be passed by the Croatian Parliament. The Constitutional Court warned that such a formulation refers to an “instrumental understanding of the constitutional text, which is why individual constitutional norms are interpreted mechanically, narrowly and partially, without considering the constitutional text as a whole and without taking into account the features that shape the identity of the Croatian constitutional state” (point 5.1). The Constitutional Court emphasizes, as previously pointed out by Croatian constitutional experts in their joint statement, that voters always decide on the merits of the matter, i.e., on the referendum question itself, in a national constitutional referendum called on the basis of a citizens’ initiative, which means that the people themselves make a direct decision to amend the Constitution. Accordingly, after this warning issued by the Constitutional Court, the controversial formulations were omitted in the final decision on calling the referendum.⁵⁶

Another important act is the Communication on the Constitutional Referendum on the Definition of Marriage of 14 November 2013.⁵⁷ We can agree with Gardašević, who emphasizes that this Communication of the Constitutional Court is “by now undoubtedly the most far-reaching statement that it had ever made”.⁵⁸ Namely, two important points that justify this conclusion are as follows: first, the determination of jurisdiction of the Constitutional Court over control of the material constitutionality of the referendum question, even when the Croatian Parliament did not act in accordance with Article 95(1) of the Constitutional Act on the Constitutional Court, and second, the determination of jurisdiction of the Constitutional Court over the protection of the “structural features of the Croatian constitutional state”. Respecting the constitutional role of the Croatian Parliament, the Constitutional Court emphasized that the general supervisory powers can be exercised only exceptionally in such situation, i.e., “when it finds such formal and/or material unconstitutionality of a referendum question or such grave procedural error threatening to disrupt the structural features of the Croatian state, i.e., its constitutional identity, including the highest values of the constitutional order of the Republic of Croatia” (point 5.3).

By such an activist approach, that is, a systematic and teleological interpretation of the Constitution’s text, the Constitutional Court has redefined its role in the referendum process and, at a given moment, it made its contribution to at least a small reduction in the poor and defective regulation of the referendum. At the same time, it reiterated that it is up to the legislature to provide as soon as possible a stable normative framework for a referendum process that meets the standards of a democratic society.

Consequently, the first citizens’ initiative referendum was held on 1 December 2013, and with a relatively modest voter turnout of 37.9%, 65.87% of the votes cast (i.e., 946,433 voters) voted for the proposal to amend the Constitution to define marriage.⁵⁹

⁵⁶ Decision to Call a National Referendum, Official Gazette no. 134/13.

⁵⁷ Communication on the Constitutional Referendum on the Definition of Marriage, 14 November 2013, Official Gazette no. 138/13.

⁵⁸ Gardašević, Đ., Constitutional Interpretations of Direct Democracy in Croatia, *Iustinianus Primus Law Review*, 7 (2015), 12, p. 13.

⁵⁹ State Election Commission of the Republic of Croatia, Report on the National Referendum held on 1 December 2013, available at: https://www.izbori.hr/arhiva-izbora/data/referendum/2013/izabrani/i_81_000_0000.pdf, accessed: 20 January 2020.

1.2. The referendum(s) on minority rights

National minority rights have been the subject of two citizens' initiatives (2013 and 2018). The first initiative failed because the Constitutional Court considered the proposed referendum question contrary to the Constitution, whereas the second failed due to an insufficient number of signatures collected.

The 2013 "Headquarters for the defense of Croatian Vukovar" initiative was the first initiative for which Article 95 of the Constitutional Act on the Constitutional Court was activated. Specifically, the proposed referendum question "Are you in favor of amending Article 12(1) of the Constitutional Act on the Rights of National Minorities (Official Gazette 155/02, 47/10, 80/10, 93/11) such that it reads: "The equal official use of language and script used by members of a national minority shall be exercised in local self-government units, state administration and judiciary, but only when members of a particular national minority comprise at least half of the population of a given unit" (instead of one-third of the population) was forwarded by the Croatian Parliament to the Constitutional Court with a request to examine its constitutionality. In short, the referendum question assumed a stricter obligation to ensure equal use of the language and script of a national minority in the municipality or a city. The immediate cause of the referendum request was the placement of the signs written in both the Latin and the Cyrillic scripts on the buildings of several state administration bodies in Vukovar, which resulted in protests and damage to panels.⁶⁰ Constitutional arguments on the grounds of which the referendum on the proposed referendum question is not allowed to be called can be reduced to the following several important statements of the Constitutional Court: 1) as a basic act, the Constitution is not value-neutral, but it is a document defining the Republic of Croatia as a democratic state where the highest constitutional values referred to in Article 3, including national equality, respect for human rights and the rule of law, must be exercised without discrimination (point 10.1 of the Decision of 12 August 2014)⁶¹; 2) democracy is based on the rule of law and the protection of human rights is the only political model that the Constitution takes into account and the only one to which it agrees (point 10.1); 3) pluralism, tolerance and free will are key features of a democratic society, and the expression of ethnic minority identity or the promotion of minority consciousness are also important in any properly functioning democracy (point 10.2); 4) the language and script of national minorities should be understood as enduring universal values that determine the identity of the Croatian constitutional state (point 13.1); and 5) an increase in a threshold for the official use of a language and a script must be reasonably justified solely by reasons that are said to originate from a democratic society based on the rule of law and the protection of human rights (point 13.2). Therefore, the Constitutional Court concluded that there are no relevant and sufficient reasons for a general increase in the threshold referring to the number of signatures proposed in the referendum question, which would arise from a recognized and well-defined immediate social need arising from a democratic society based on the rule of law and the protection of human rights. Hence, according to the Constitutional Court, the proposed amendment does not have a rational basis, and due to a lack of a legitimate aim, it must also be qualified as objectively unjustified (point 14.1). There is nothing to be criticized in relation to constitutional argument by the Constitutional Court. It is also important to note that in point 18 of the Decision, the Constitutional Court responded to a

⁶⁰ "Novi incident: Skinute i razbijene sve dvojezične ploče u Vukovaru", [dnevnik.hr, https://dnevnik.hr/vijesti/hrvatska/skinute-i-razbijene-gotovo-sve-dvojezicne-ploce-u-vukovaru---353389.html](https://dnevnik.hr/vijesti/hrvatska/skinute-i-razbijene-gotovo-sve-dvojezicne-ploce-u-vukovaru---353389.html), accessed: 20 January 2020.

⁶¹ Op. cit. (note 50).

legal loophole in the existing legislation which does not contain specific rules in terms of the obligation of the organizing committee to explain the facts and circumstances that gave rise to the proposed referendum question. Thus the Constitutional Court determined that any future request for calling a referendum must contain a detailed account of the facts and circumstances that gave rise to the referendum question, as well as sufficient and relevant justification for calling the referendum.⁶² Bearing in mind the legislative framework for the conduct of a referendum and previous warnings of the Constitutional Court regarding the need to improve this framework, we can agree with Gardašević who notes that “the Court’s interpretative activism in this particular aspect must therefore be appreciated”.⁶³

Of course, the aforementioned decision on the “Referendum on Cyrillic script” raises the question of the use of referendums in relation to the rights of national minorities (and human rights in general), especially given that four years later another initiative, *inter alia*, (also) dealt with the rights of national minorities. In May 2018, the “People Decide” citizens’ initiative collected signatures to call a referendum “for a fairer electoral system”. Although the said initiative did not collect the required number of signatures, it deserves due attention because among the two⁶⁴ referendum questions it included the following one: “Are you in favor of adding Article 72a after Article 72 of the Constitution of the Republic of Croatia that reads: “Representatives of national minorities decide on all matters within the competence of the Croatian Parliament, with the exception of matters pertaining to giving confidence to the Government and to the adoption of the state budget.”⁶⁵ The proposed referendum question therefore aimed at changing the constitutional rules on the parliamentary mandate of members of national minorities. Under current legislation, national minorities elect a total number of eight MPs in a special electoral unit through the first-past-the-post system. In doing so, members of national minorities can choose whether to use this model or whether to vote in their respective constituencies, just like other citizens. It is also important to note that there is another special constituency in which the diaspora elects their three MPs according to a proportional representation system, while the remaining 140 MPs are elected according to a proportional representation system in ten constituencies.⁶⁶ The “People Decide” initiative explained its request for “equality of minority MPs with other MPs” by the following two basic claims: 1) the current electoral system is unfair to non-minority MPs in the Parliament because minority MPs have much smaller legitimacy (i.e., the required number of votes to enter the Croatian Parliament), and 2) minority representatives shall represent the interests of minorities, and their mandate should be restricted due to “the frequent practice of undisclosed political trade” in such a way that they do not decide on matters pertaining to giving confidence to the Government and to the adoption of the state budget.⁶⁷ As already noted, the initiative did not collect the required

⁶² According to the Constitutional Court, the rationale behind the request to call a referendum is relevant to the decision of the Croatian Parliament whether to act pursuant to Art. 95 of the Constitutional Act on the Constitutional Court, as well as to the decision of the Constitutional Court under Art. 95 of the Constitutional Act (point 18 of the Decision).

⁶³ Gardašević, Đ., *op.cit.* (note 58), p. 14.

⁶⁴ The first referendum question concerned the introduction in the Constitution of five measures related to the electoral system: a reduction in the number of MPs in the Parliament, three preference votes without any threshold, the introduction of electronic and postal voting, a fairer distribution of constituencies and a decrease in the threshold for election to 4%. Source: <https://narododlucuje.hr/>, accessed: 20 January 2020.

⁶⁵ *Ibid.*

⁶⁶ Act on the Election of MPs to the Croatian Parliament, Official Gazette nos. 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15, and 98/19.

⁶⁷ Source: <https://narododlucuje.hr/>, accessed: 20 January 2020.

number of voter signatures, but if that had been the case, we believe that the Croatian Parliament would have activated Article 95 of the Constitutional Act on the Constitutional Court, and addressed the Constitutional Court with a request to evaluate the constitutionality of the proposed questions. In its case law, the Constitutional Court has repeatedly addressed the issue of the parliamentary mandate, and, e.g. in its Order of 2000,⁶⁸ it clearly explained that “the elected representative of the people is considered to be the representative of all citizens of the Republic of Croatia, not just the voters who elected him/her”. In addition, it is important to note that it is stated clearly in the Preamble to the Constitution that persons belonging to national minorities are “guaranteed equality with citizens of Croatian nationality and the exercise of national rights in accordance with democratic norms of the United Nations and the free world countries”, while Article 3 of the Constitution also puts national equality and respect for human rights on the list of the highest values of the constitutional order and the basis for interpreting the Constitution. Furthermore, Article 14 of the Constitution guarantees that all persons in the Republic of Croatia enjoy rights and freedoms, regardless of any feature, including national origin, while Article 15 of the Constitution explicitly provides for equal rights for the members of all national minorities in the Republic of Croatia. Given the constitutional framework and practice of the Constitutional Court, we believe that the proposed referendum question would fail the constitutionality test.

VI. CONCLUSION

In this paper, we have tried to present a constitutional framework for referendums in the Republic of Croatia, with emphasis placed on the constitutionalization of a citizens’ initiative referendum and the analysis of the “sad history” of this form of direct democracy. It should be recalled that more than two decades ago, Smiljko Sokol wrote that in Croatian constitutional law, the consideration of the referendum as one of the most important forms of direct democracy was completely neglected.⁶⁹ Unfortunately, this statement is almost as equally relevant today as it was twenty years ago.

Although in principle the introduction of the citizens’ initiative into the Constitution of the Republic of Croatia in 2000 represented a remarkable democratic step forward in the context of consistent application of Article 1(3) of the Constitution, pursuant to which the people exercise their power by electing their representatives and by direct decision, according to which the people exercise their power through the election of their representatives, but also through direct decision-making, the adoption of this form of direct democracy in the form of a solution which, by the breadth of the area and by the terms of application unknown to developed democracies, showed that an instrument which can and should have a positive impact on the development of democracy and a democratic political culture can simultaneously undermine the foundations of modern democracy. Namely, a citizens’ initiative referendum is mentioned once in the Constitution, i.e., in only one short sentence, stating that the Croatian Parliament will call a referendum on any issue on which the Croatian Parliament or the President of the Republic of Croatia can call a referendum, when so requested by ten percent of the total electorate of the Republic of Croatia. Combined with the provision incorporated into the Constitution as part of

⁶⁸ Order of the Constitutional Court of the Republic of Croatia no. U-I-1203/1999 of 3 February 2000, Official Gazette no. 20/00.

⁶⁹ Sokol, S., Referendum i mogućnosti njegove primjene u Hrvatskoj, *Vladavina prava*, I., No. 1, 1997, p. 1.

the 2010 Constitution, pursuant to which a decision in the referendum shall be made by a majority of voters taking part therein, we come to a solution that may be the subject of a political game, that is, subject to a number of abuse types. The provision pursuant to which a referendum can be called, *inter alia*, “on other issues” falling within the competence of the Parliament is considered to be the most problematic aspect of referendum regulation. Although the Constitutional Court has interpreted in its case law that certain issues cannot be decided in a referendum (which is decided on a case-by-case basis), and even the Constitution itself contains some “inherent” restrictions (entering into alliances with other states or withdrawal therefrom), it is quite certain that any future initiative will reopen discussions aimed at regulating matters that could not be decided by way of a referendum.

In addition, the analysis of the constitutional framework for referendums in the Republic of Croatia points to numerous other uncertainties, inconsistencies, extremely restrictive elements for launching a citizens’ initiative referendum, a lack of regulation of many issues, and the possibility of circumvention thereof by executive bodies. Even a cursory analysis of the constitutional and legal provisions on the citizens’ initiative referendum points to several important problematic organizational aspects of this instrument. On the one hand, it has already been mentioned that the area that can be the subject of referendum decision-making is extremely broad, while on the other hand, the basic conditions regarding the collection of an extremely large number of required voter signatures in a very short period of time are very strictly regulated. Furthermore, legal provisions related to procedural steps are defective in certain important parts, so it is not prescribed within what time limit the organizing committee is obliged to submit the signature list to the Croatian Parliament, nor is it stipulated in what period of time a referendum must be called, which makes space for the possibility of referendum procrastination. The act does not contain any provisions governing issues regulating pre-referendum activities either, and the legislator also “forgot” to regulate the procedure of verifying the number and credibility of voter signatures, i.e., no institution responsible for verification and no deadline by which verification shall be done have been specified, which can result in various time and other manipulations.

In order to fill the numerous legal loopholes, ensure greater legal certainty, avoid confusion and possible misuse, we believe that it is necessary to change the existing legal framework for referendums as soon as possible and to comply with the legal standards of the Venice Commission contained in the Code of Good Practice on Referendums, what has been requested on several occasions by the Constitutional Court itself. In this context, we believe that, apart from prescribing subject matter on which a referendum can and cannot be called, especially in order to prevent threat to fundamental human rights, the need to reduce the number of voters whose signature must be collected for calling a referendum and extend the deadline for their collection are of great importance. In order for the referendum to gain legitimacy, it is necessary to increase voter turnout in such a way as to enable e-voting or postal voting, as a high rate of electoral abstention may result in a referendum result that does not reflect a realistic image of the will of voters. It is necessary to regulate in more detail the rules regarding the collection of signatures and verification of their authenticity, and prevent the authorities from repealing the will of citizens expressed in the conducted referendum by adopting the act, which can be done as early as one year following the decision made by the referendum.

Finally, as regards the possible future development of the referendum in Croatia, it is difficult to predict when a new referendum act will see the light of day and what solutions it will

offer. Although, according to media reports, a new act was drafted in May last year,⁷⁰ a political consensus on its content has not been reached yet. Bearing in mind that Croatia is awaiting parliamentary elections this fall, we fear that it is certain that the new referendum act will be “only” the subject of academic debate for some time.

Bibliography

1. Ceranić, V., Neposredno ostvarivanje državne vlasti prema Ustavu Republike Hrvatske: odluka Ustavnog suda br. U-VIIR 4696/2010, *Pravnik*, Vol. 44, No. 89, 2010.
2. *Direct Democracy*, The International IDEA Handbook, International Institute for Democracy and Electoral Assistance, Stockholm, 2008.
3. Gardašević, Đ., Constitutional Interpretations of Direct Democracy in Croatia, *Iustinianus Primus Law Review*, 7 (2015), 12.
4. Horvat Vuković, A., Referendum narodne inicijative 2013. – ustavni identitet kao osnova ustavnosudskog aktivizma, u: *Referendum narodne inicijative u Hrvatskoj i Sloveniji. Ustavnopravno uređenje, iskustva i perspektive*, Hrvatska udruga za ustavno pravo, Zagreb, 2014.
5. Kostadinov, B., Referendum građanske inicijative, in: Podolnjak R., Smerdel, B. (Eds.), *Referendum narodne inicijative u Hrvatskoj i Sloveniji - Ustavnopravno uređenje, iskustva i perspektive*, Hrvatska udruga za ustavno pravo, Zagreb, 2014.
6. Kostadinov, B., Referendum građanske inicijative, *Zbornik PFZ*, 51, br. 6, 2001.
7. Kostadinov, B., Referendum građanske inicijative u Europi: Švicarska, Italija i Hrvatska, u: *Izgradnja demokratskih ustavnopravnih institucija Republike Hrvatske u razvojnoj perspektivi* (Smerdel, B., Gardašević, Đ., Eds.), Sveučilišna tiskara d.o.o., Zagreb, 2011.
8. Ljubić, D., Promjena Ustava i narodna inicijativa, *Hrvatska pravna revija*, 13 (2013), 11.
9. Marxer, W., Wir sind das Volk: Direkte Demokratie – Verfahren, Verbreitung, Wirkung, Schriftliche Fassung des Vortrages am Liechtenstein-Institut vom 2. November 2004 in der Vorlesungsreihe „Herausforderung Demokratie“ Beiträge Nr. 24/2004.
10. Podolnjak, R., Hrvatski ustav i neposredna demokracija, in: *Dvadeseta obljetnica Ustava Republike Hrvatske* (Bačić, A. – Ed.), Hrvatska akademija znanosti i umjetnosti, Zagreb, 2011.
11. Podolnjak, R., Smerdel, B., Uvod: O referendumu narodne inicijative u Hrvatskoj i Sloveniji, in: *Referendum narodne inicijative u Hrvatskoj i Sloveniji. Ustavnopravno uređenje, iskustva i perspektive*, Hrvatska udruga za ustavno pravo, Zagreb, 2014.
12. Podolnjak, R., Constitutional Reforms of Citizen-Initiated Referendum, *Revus*, 26, 2015.
13. Report of the Independent Commission on Referendums, University College London, The Constitution Unit, 2018, retrieved from https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/182_-_independent_commission_on_referendums.pdf
14. Schiller, T., *Direkte Demokratie – eine Einführung*, Campus Studium, Frankfurt/Main, 2002.
15. Serdult, U., Welp, Y., Direct Democracy Upside Down, *Taiwan Journal of Democracy*, Volume 8, No. 1, 2012.
16. Smerdel, B., Sokol, S., *Ustavno pravo*, Narodne novine, Zagreb, 2009.
17. Smerdel, B., *Ustavno uređenje europske Hrvatske*, Narodne novine, Zagreb, 2013.
18. Smerdel, B., Pregled (tužne) povijesti referenduma građanske inicijative u Hrvatskoj, u: *Referendum narodne inicijative u Hrvatskoj i Sloveniji. Ustavnopravno uređenje, iskustva i perspektive*, Hrvatska udruga za ustavno pravo, Zagreb, 2014.
19. Smerdel, B., Neposredno odlučivanje i njegove ustavne granice, *Hrvatska pravna revija*, br. 5907, 2010.
20. Sokol, S., Referendum i mogućnosti njegove primjene u Hrvatskoj, *Vladavina prava*, I., br. 1, 1997.
21. Constitution of the Republic of Croatia, Official Gazette nos. 6/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001, 41/2001 (consolidated text), 55/2001, 76/2010, 85/2010 (consolidated text), 5/2014 (Decision of the Constitutional Court of the Republic of Croatia no. SuP-O-1/2014 of 14 January 2014 regarding the completion of the procedure for reviewing the constitutionality and legality of the national referendum held on 1 December 2013) - Ustav Republike Hrvatske, Narodne

⁷⁰ “Hrvati bi glasali na referendumu kao Švicarci; evo što donosi novi prijedlog zakona koji je pisala Jasna Omejec”, tportal, available at: <https://www.tportal.hr/vijesti/clanak/hrvati-bi-glasali-na-referendumu-kao-svicarci-evo-sto-donosi-novi-prijedlog-zakona-kojeg-je-pisala-jasna-omejec-20190702>, accessed: 21 January 2020.

- novine, br. 6/1990., 135/1997., 8/1998. (pročišćeni tekst), 113/2000., 124/2000. (pročišćeni tekst), 28/2001., 41/2001. (pročišćeni tekst), 55/2001., 76/2010., 85/2010. (pročišćeni tekst), 5/2014. (Odluka Ustavnog suda Republike Hrvatske broj SuP-O-1/2014. od 14. siječnja 2014. u povodu okončanja postupka nadzora nad ustavnošću i zakonitošću provođenja državnog referenduma održanog 1. prosinca 2013.)
22. Déclaration des Droits de l'Homme et du Citoyen de 1789, retrieved from <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>
 23. Constitutional Act on the Constitutional Court of the Republic of Croatia, Official Gazette nos. 99/99, 29/02, 49/02 (consolidated text) - Ustavni zakon o Ustavnom sudu Republike Hrvatske, „Narodne novine“, br. 99/99., 29/02., 49/02. (pročišćeni tekst)
 24. Act on the Referendum and Other Forms of Personal Participation in the Exercise of State Power and Local and Regional Self-Government, Official Gazette, nos. 33/96, 92/01, 44/06 (Art. 27(4) of the Act on the State Electoral Commission of the Republic of Croatia), 58/06 (Decision of the Constitutional Court of the Republic of Croatia no. U-I-177/2002 of 20 April 2006), 69/07 (Decision of the Constitutional Court of the Republic of Croatia no. U-I-2051/2007 of 5 June 2007), 38/09, 100/16 (Decision of the Constitutional Court of the Republic of Croatia no. U-I-1962/2008 of 27 September 2016), 73/17 - Zakon o referendumu i drugim oblicima osobnog sudjelovanja u obavljanju državne vlasti i lokalne i područne (regionalne) samouprave, „Narodne novine“, br. 33/96., 92/01., 44/06. (čl. 27. st. 4. Zakona o Državnom izbornom povjerenstvu Republike Hrvatske), 58/06. (Odluka Ustavnog suda Republike Hrvatske br. U-I-177/2002 od 20. travnja 2006. godine), 69/07. (Odluka Ustavnog suda Republike Hrvatske br. U-I-2051/2007 od 5. lipnja 2007. godine), 38/09., 100/16. (Odluka Ustavnog suda Republike Hrvatske br. U-I-1962/2008 od 27. rujna 2016. godine), 73/17.
 25. Act on Local and Regional Self-Government, Official Gazette nos. 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 150/11, 144/12, 19/13, 137/15, 123/17 - Zakon o lokalnoj i područnoj (regionalnoj) samoupravi, „Narodne novine“, br. 33/01., 60/01., 129/05., 109/07., 125/08., 36/09., 150/11., 144/12., 19/13., 137/15., 123/17.
 26. Act on the Election of Representatives to the Croatian Parliament, Official Gazette nos. 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15, 98/19 - Zakon o izboru zastupnika u Hrvatski sabor, Narodne novine, br. 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15, 98/19.
 27. Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-7346/2014 of 10 December 2014, Official Gazette no. 156/14 - Odluka Ustavnog suda Republike Hrvatske, broj: U-VIIR-7346/2014 od 10. prosinca 2014., Narodne novine, br. 156/14.
 28. Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-4696/2010 of 20 October 2010, Official Gazette no. 119/10 - Odluka Ustavnog suda Republike Hrvatske, broj: U-VIIR-4696/2010 od 20. listopada 2010., Narodne novine, br. 119/10.
 29. Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-4640/2014 of 12 August 2014, Official Gazette no. 104/14 - Odluka Ustavnog suda Republike Hrvatske, broj: U-VIIR-4640/2014 od 12. kolovoza 2014., Narodne novine, br. 104/14.
 30. Order of the Constitutional Court of the Republic of Croatia no. U-I-1203/1999 of 3 February 2000, Official Gazette no. 20/00 - Rješenje Ustavnog suda Republike Hrvatske, broj U-I-1203/1999 od 3. veljače 2000., Narodne novine, br. 20/00.
 31. Constitutional Court of the Republic of Croatia, Communication on the Constitutional Referendum on the Definition of Marriage, 14 November 2013 - Ustavni sud Republike Hrvatske, Priopćenje o narodnom ustavotvornom referendumu o definiciji braka, 14. studeni 2013.
 32. Warning about the Proposal of the Decision to Call a National Referendum of the Committee on the Constitution, Standing Order and Political System of the Croatian Parliament of 24 October 2013, 28 October 2013, Official Gazette no. 131/13 - Upozorenje u povodu Prijedloga Odluke o raspisivanju državnog referenduma Odbora za Ustav, Poslovník i politički sustav Hrvatskog sabora od 24. listopada 2013., 28. listopada 2013., Narodne novine, br. 131/13.