

Referendum a legal instrument of democracy

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Abstract

The referendum is and will always be a constitutional procedure which accepts the initiative of the people of a democratic state to form their own political decisions on important political issues.

The democracy is founded on the free will of people to say yes or no to the opportunity to participate directly in the exercise of the state power.

The consequence of this democracy is precisely the citizen's decision who often accepts without realizing that it is not only a tool but he is the direct message who makes the state policy

Keywords: constitutional system, public policy, democracy

1. Introduction

The term democracy imposes its presence through the definition of the Greek philosophy, the word "democracy" comes from the Greek *demos* meaning "people" and *kratos* meaning "government" so we find that democracy is reflected in common language as "government of the people".

Much later, the concept is reviewed in Abraham Lincoln's famous speech in Pennsylvania on November 19, 1863, speech ended with the phrase "this government, of the people, by the people, for the people, shall not perish from the earth". As a consequence of the phrase above, we outline the idea that in fact democracy is a government of the people for the people, so making decisions is not important but the essential must be reflected in the final result, result designed to encourage people.

The government by the people means delegating the power to an institutional apparatus to exercise the

political power. The idea of "government by the people" refers to people's involvement in the decision-making process.

Nowadays, this concept is based on the idea of representation, except direct democracy where citizens make political decisions without the need for intermediaries as in the case of referenda.

As stated by Diego Varela (2008) democracy in this sense involves a "representative government" and the more there will be a better affinity between citizens and their political representatives, more functional will be the democracy.

Ultimately, the guarantee of this affinity is the ability of citizens to vote during the regular elections between rival political candidates and programs.

In a state, the exclusive meaning of the people's democracy can only be the delegation of the political power from the people to the institutional bodies to exercise the power through the three characteristic features of the classic state namely legislative, executive and judiciary. Of course, the economic progress requires the implementation of new functions such as the economic, religious, social functions, but they play only a minimal role in satisfying the political power in the contemporary society.

But returning to the original idea of democracy that people's freedom to make their own decisions or "the government of the people," we must consider the general theory of the referendum, electoral procedure that really let people, who allowed to vote, to exercise the political power.

The study will synthesize the two forms of circumvention of democracy, namely, the people delegate their power through representatives or people exercise power directly through referendum, situations allowed in Romania by the Constitution.

2. The referendum - the legal instrument of the will of the people

The institution of referendum has its origins in ancient Rome being defined as the procedure by which the entire electorate (different from plebe) respond to a specific issue and the decision acquires legitimacy. The term "referendum" receives in time a number of meanings depending on the constitutional systems of application and yet there is an excessive development and experimentation in democracies like Switzerland, USA, Italy.

The most glorious moment of the referendum procedure was in 1848 in Switzerland's constitutional order. Also in the North American states, the deliberative popular consultations from the eighteenth century and early nineteenth century that dealt the approval of the constitutions of federal states may be consecrations or examples of the first constitutional referendum. Europe needs more time to develop the institution of referendum F Marasciulo-Petrovic (1998). World War I, through the Treaty of Versailles 1919 sets out a series of referenda to determine who should belong to a particular territory Laviniu Florin Uşvat (2012)

In Romania's history, the institution of the referendum begins on 2-8 April 1866, when there was a direct consultation of the people for the fundamental change in the form of government that is electing as sovereign Prince Carol of Hohenzollern.

Designed as a demographic consultation of the people and initiated by the population itself referendum is a procedure by which citizens are invited to individually decide, according to the law, on issues with real character with consultative or deliberative effect F Hamon (1995).

In other doctrinal concept, the referendum is seen as a tool that allows people to decide on an act adopted by an authority, and can be constitutional, legislative, conventional or administrative. Andreas Auer (1996).

As a tool for semi-direct democracy, the referendum is the process by which the politic body exercises its sovereignty through direct expression of the political options. Thus, referendum considered on another configuration can be considered an exercise of sovereignty through an institutionalized form.

Regardless of its legal effects, the referendum as procedure designates people's freedom of expression, the democratic concept of the idea of government. The citizen's elective participation towards the measure proposed or formulated by the government justifies the fact that the legitimate holder of the sovereignty is the people.

In statistical terms, since the sixteenth century, in the democratic states, approximately eight hundred referenda were organized, and as predominant member that used this system of consultation of the people, among the first to represent it, was Switzerland with a number of four hundred. According to A Ranney the actual society demonstrates a significant increase in the cases of resort to the procedure of referendum and through these cases there are also countries lead by dictatorships A Renney (1996).

Referendum is not just a source of democracy but it is a report between the state power and the political power. The state power is a specialized power and delegated by the people as the holder of the political power, to certain public bodies or public powers namely the legislative, the executive or the judicial power I Muraru (1995). The political power is an abstract collective capacity inherent to the social life that is politically organized and non-customized, belonging to all human community resident in a certain territory consisting in the force of imposing the general respect of certain social commands C. Ionescu (2008). In this sense, we can conclude that the state power is a derived power and conditioned by the political power held the people.

3. The sovereignty, the democracy and the expression of the general will through referendum

According to the national constitution "the national sovereignty belongs to the Romanian people, who exercise it through its representative bodies, resulting in free, periodical and fair elections and also referendum" article 2 paragraph (1) of the Constitution. This constitutional text with value of principle exhaustively enumerates without instituting a hierarchy, the tools of achieving the people's power as a state power: representation and direct participation. Laviniu Florin Uşvat (2012). Therefore, the people can express itself in a democratic environment both directly, by election, by the delegation of the power to representatives and indirectly, the referendum through consultative decisions inducing to representative bodies such as President, mayors, etc. It appears that only the people decide elements of exercising power, because only the people is limited only by the character of sovereignty of a state. Sovereignty is that feature of the state to organize and to exercise, to establish and solve the internal and the external problems freely according to the people's will without any interference, respecting the sovereignty of other states and the rules permitted by the international law. In this sense, we can conclude that sovereignty consists of two attributes essential to its existence, namely the independence and the supremacy. Supremacy derives from the notion that there isn't another forum or another power like an authority or a body to govern a state but only the will of the sovereign people and the characteristic of independence is expressed in that every people has the ability to self govern, namely to individually lead their destiny, without pressure or other influences. In addition to these two main features we must keep in mind their derivatives namely the uniqueness and the indivisibility because two sovereign powers can't act simultaneously or in parallel in a single state, respectively sovereignty can not be fragmented.

The legal basis with reference to the concept of sovereignty is different depending on the various types and forms of state power that appeared through history.

The modern doctrine considers sovereignty as a building consisting of all existing powers in a state organization and we recall in this regard the postulate that any legal institution is subjected to changes influenced by the age that crosses Giannini, Sovrana.

However The Declaration of the Rights of Man and Citizen of 1789 brought new features to the sovereignty, essential features, namely imprescriptibility, the inalienability, the indivisibility. Taken individually these features are way ahead the sovereignty's authority as a defining element of the state but implicitly of the people too.

The inalienability means that sovereignty can not be alienated to other influential persons or groups, or even international organizations. In this sense we can conclude the sovereignty each state keeps even if it's part of the European Union. Sovereignty is imprescriptible, it can not be lost, it continues to exist in its specific form as long as its holder exists, that is the people, the state. Sovereignty is indivisible

because people is its unique and absolutely holder even though its exercise may be delegated to bodies or institutions.

Essentially, sovereignty is born and is legitimate through the people's will who hold it naturally and internationally it gives each state the independence and the supremacy it needs to exist as a state.

The connection between sovereignty and referendum is eloquent, the referendum is in this case a plausible tool to value sovereignty. Analysis of art. 2 of Romania's Constitution shows that unlike the representative, elected or established authorities of the state acting only within their assigned competences given by the constituent power that they must wholly fulfill and in accordance with their rules, the people the dominant authority doesn't have such censorship, it also knows he has the right to decide in expressly determined cases. People is an issue of law whose will can't be formally limited in the sense that it doesn't have a default competence neither materially as it doesn't have a default decision content I. Muraru, S.E. Tanasescu (2008).

Consequently, the relation sovereignty-referendum exists, it is visible in the internal organization of the society as a connection whose functional role is to create a framework in which sovereignty is expressed by its owner, the people, through referendum. The current constitutional order proclaims a partition of the resort to this mechanism of political decision between the two partners of sovereignty, the political body and the governmental institutions Laviniu Florin Uşvat (2012)

4. About contemporary democracy

The notion of democracy is the subject of many polemics, the different meanings given by the literature lead to common points that converge to the idea of popular sovereignty, political equality, popular consultation and majority's rule. It is the synthesis by which the political power is sized both in organizing and running in the detriment of citizens. From this point of view as ideal way of reference, democracy will always be an utopia to which societies will tend.

And yet the continued development of democracy is now a current phenomenon, in this regard we emphasize the existence of some advanced democracy formula, implemented in society along the technological IT revolution, the internet, thus we discuss about the electronic democracy - through which electronic voting tends to realise. Using the Internet as a political marketing tool in election campaigns as a tool for mobilization or political activity of certain groups, as a means of information imposes the perspective of the existence of electronic voting. It must provide guarantees namely : to ensure the voter's authenticity, the integrity and inviolability of the vote during transmission, privacy, mobility of a citizen to vote in any location, flexibility namely the voting area to be variable etc.. The advantage of the electronic voting right is that it can prevent and dispute in the same time the absenteeism and thus it implicitly create a procedure that can simplify and reduce costs. (A. Santini (2001).

The main features of democracy are: people exercising sovereignty in its own interest, citizens

participation in political problems through representatives or through direct consultation, the stipulation and guarantee of the citizens' constitutional rights, the principle of majority, the ideological pluralism, the institutional pluralism that refers to the institutionalization of the authorities, sharing competences of the public authorities, collaboration and mutual control between these authorities.

It was found that the European Union is perpetually, constantly campaigning for strengthening democracy, all EU central institutions (Parliament, Commission, Council) are involved in this campaign being based on the Recommendation. 1629 (2003) of the Parliamentary Assembly named "The future of democracy - strengthening the democratic institutions".

One of the main goals of the Council of Europe was primarily promoting pluralist democracy, respecting the state of law and the fundamental human rights and freedoms.

5. Conclusions

Democracy through referendum has a great feature, it gives the citizens who exercise it actively other powers than the elective one. From this discussion we believe that the referendum is an organic one when its result is legally imposed to all democratic actors and it is consultative when the popular opinion does not generate direct obligations for it.

When the referendum is a legal instrument used frequently and regularly, and especially when its triggering depends on the popular initiative and influences the representative system it can be claimed that under these conditions the referendum interacts with the representative democracy that will be shaped by it.

The purpose of the referendum in a democratic society is that of instrument of government. The distinguishing feature of the referendum as a democratic means is that it is a consultation where each electoral member is invited to participate, allowing everyone to vote for their representatives not to choose but to decide on a specific matter or to compete to the exposed decision. The referendum is democratic, it follows the saying that defines pure democracy as a form of government of the people by the people.

The referendum involves citizens in decision making but it does not imply taking that decision by himself.

In conclusion, we emphasize that the referendum is an adjutant of the political life by involving people in a form of undoubted guarantee of national sovereignty of the states that joined international organizations.

In the equation of referendum we should not overlook that the referendum is an appeal to the masses, which can be characterized as dangerous. Although an instrument of pure democracy it must be handled with care and that ever since its regulation and integration into the political system of a democracy. So that it does not distort the fragile democratic game from the democracy it requires political transparency and balance in using it.

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