UDC:

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**Сonstitutional review of the legislative referendum**

All contemporary democracies are based on the principle of popular sovereignty. Within a democratic state, popular sovereignty can be exercised directly or indirectly. Among the various forms of direct democracy provided by the Slovenian Constitution, the referendum certainly has the highest legal and political weight as it allows the voters to decide on the most important social issues, thereby limiting the power of the parliament.

By means of a legislative referendum, voters give final decision on an act adopted by the legislature. Due to its importance and complexity, the institute of the legislative referendum is associated with as many as three rights protected at the constitutional level, namely the right of initiative of the voters to call a referendum, the right to demand the calling of a referendum and the right to vote in a referendum. Effective protection of referendum rights is a prerequisite for a fair conduct of the referendum process and a legitimate referendum decision. In order to ensure the effective protection of individual referendum rights, the constitutional review of the legislative referendum is a necessary element of any referendum arrangement.

The constitutional review of the legislative referendum is a collective denomination for all forms of legal review carried out by the constitutional or other courts or bodies which are competent in each country for the review of the constitutionality of regulations, procedures and decisions in connection with the institute of the legislative referendum. In terms of the content of the review, the constitutional review of the legislative referendum is abstract and concrete. The abstract constitutional review of the legislative referendum comprises the assessment of the constitutionality and legality of all the regulations governing the legislative referendum and in practice constitute the basis for the implementation of a concrete referendum. The concrete review of the legislative referendum is the review of the constitutionality and legality of the acts, referendum process, actions and decisions of the competent authorities, issued in connection with a particular legislative referendum on a particular act. Everything that applies to the process of assessing the constitutionality and legality of the regulations in constitutional courts applies also to the abstract constitutional review, with the exception that the subject matter of the assessment is the regulation governing the legislative referendum. Due to the large number of forms of constitutional review of the legislative referendum and the various effects of this review, the concrete constitutional review of the legislative referendum is far more complex than abstract review. The interface of all forms of constitutional review of the legislative referendum is the fundamental principles which need to be taken into account both in the normative regulation and in the implementation of the constitutional review of the legislative referendum in practice. The fundamental principles of constitutional review of the legislative referendum thus include the general and procedural principles of the constitutional review of the legislative referendum and the material principle of constitutional democracy.

In the broadest sense, all forms of constitutional review of the legislative referendum have a common goal, namely to strengthen the confidence of voters in the fair conduct of the referendum. In the narrower sense, there are several objectives of the constitutional review of the legislative referendum, namely to ensure the effective exercise of referendum rights, to prevent the referendum from being called if all the conditions have not been met, to ensure compliance with the rules of the referendum process and to ensure the credibility and fairness of the referendum outcome.

The constitutional review of the legislative referendum in Slovenia, in consideration of the implementation periods, is carried out as preliminary review, as review of the process during the implementation of the referendum and as a follow-up review. Within the framework of the preliminary review, the right of initiative of the of the voters to call for a referendum and the right to demand the calling of a referendum are protected; within the context of review during the referendum, in particular, the right to vote in a referendum is protected. Within the framework of the protection of the right to demand the calling of a legislative referendum, we also include the assessment of the admissibility of referendum decision-making. The reason for this inclusion is that the right to demand the calling of a referendum is already very limited at the outset due to the constitutionally established prohibitions and restrictions of referendum decision-making. With the amendment of article 90 of the Slovenian Constitution in 2013 Slovenia, following the model of comparable European states, introduced restrictions and prohibitions on the legislative referendum. Referendum restrictions and prohibitions are determined in those systems where the voters can demand the referendum. In systems where the the parliamentary majority can call a referendum, the need for express prohibitions is considerably smaller, since the parliament independently decides on the appropriateness of a referendum decision-making on such laws. In Slovenia, s legislative referendum cannot be called for laws pertaining to emergency measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters; financial and budgetary laws as well as the law adopted for the implementation of the state budget; laws ratifying international treaties; and laws eliminating unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality. Delaying the adoption of such laws, and their rejection in a referendum in particular, would represent a serious hindrance for the functioning of the state and the execution of its fundamental function.

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