

TYPES OF REFERENCES REGULATED IN THE MEMBER STATES

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Abstract: *The referendum designates the procedure by which all citizens with the right to vote are called upon to give their own judgment (the participants have to answer a specific question by choosing one of the answers that accompany the question) on a real (not personal), deliberative (the result of the vote having immediate legal effects) or in an advisory capacity (the result of voting being only an element of appreciation for the governors for the adoption or not of certain decisions / measures). The term and the legal institution of the referendum have their origins in Roman law, where the reference word designates the procedure by which the electoral body (made up of citizens with the right to vote) was consulted directly on a precise topic, in order to confer legitimacy on a decision. At present, the referendum is considered to be, by excellence, an instrument of direct democracy through which voters express their opinion and make a decision (usually normative) directly. The referendum is not an alternative to parliamentary democracy, and its abusive use can lead to the mitigation of the legitimacy and role of parliament as a representative body of the people.*

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JEL Classification: *KOO.*

The word "referendum" means the practice of subjecting to popular approval by direct vote a legislative measure initiated by the legitimate authorities of a state or region within a free and fairly organized democratic process. The question to the citizens, which is the subject of the vote at the referendum, is made by the authorities; receding is a popular and top-down popular vote.

In some jurisdictions with an Anglo-Saxon law system, the word "plebiscite" is used to designate popular consultations on changing the form of government (radical changes), and the word "referendum" refers to direct popular consultations on other national issues.

The referendum is classified according to several criteria as follows:

a) depending on the content of the text submitted to the vote, it may be:

- constitutional referendum;
- Legislative referendum;
- conventional referendum.

1. The constitutional referendum may be:

- organization of the referendum for the adoption of the first Constitution of a state;
- the referendum on the constitutional review (organized to amend some provisions of the Constitution in force);
- a sovereignty referendum (organized for territorial change issues, self-determination of a decentralized collectivity, or adherence of a state to a supranational organization such as NATO or the EU).

The constitutional referendum is based on the principle according to which the fundamental act of a state - the Constitution - can not be abrogated, replaced or modified without the consent of the citizens.

In some states, the constitutional referendum is binding and can be organized for all constitutional provisions / constitutional provisions of particular importance.

- In Ireland, Romania and Denmark, any constitutional review is subject to a mandatory referendum.

- In Austria and Spain, only the total constitutional revisions are subject to the mandatory referendum.

- Mandatory referendum on revision of certain constitutional provisions: Estonia - constitutional provisions on the revision of the Constitution;

- Latvia - the provisions on the democratic and sovereign character of the State, territory, official language and flag, elected by universal suffrage, equal, direct, secret and proportionate;

- Lithuania - Constitutional provisions on the state and the revision of the Constitution, as well as the non-alignment of Lithuania with the post-Soviet alliances;

- Denmark - in the case of the delegation of constitutional powers of the Kingdom authorities to international authorities if Parliament does not adopt this text by a 5/6 majority of the total number of members and the provisions on changing the voting age;

- Portugal - constitutional provisions on regionalization.

States that did not regulate the constitutional referendum, instead regulated the optional constitutional referendum, organized at the request of a state authority or a faction of the electoral body.

Thus, in France, the final adoption of constitutional amendments contained in a draft Government bill or in a legislative proposal adopted by the two Legislative Chambers is subject to the referendum convened by the President of the Republic.

The constitutional referendum can be organized on the initiative of the Parliament in Estonia, Lithuania and Malta (in the first two states, except where the referendum is mandatory), and in Austria at the request of one-third of the members of one of the Legislative Chambers.

The optional constitutional referendum, organized at the request of a faction of the electoral body, is regulated in Italy (500,000 signatures), Lithuania (300,000 signatures) and Hungary (100,000 signatures).

In Bulgaria, Greece, Luxembourg, the Netherlands and Portugal, the revision of constitutional provisions is not subject to a referendum.

2. Legislative referendum. In general, this type of referendum is more rarely regulated, and the conditions of application are more restrictive, as the law may undergo more changes than the Constitution, and the organization of legislative referenda could lead to a restriction of Parliament's competence and diminishing its prestige.

The constitutions devoted to the legislative referendum contain express provisions regarding its material scope.

In France, Article 11 (1) of the Constitution limits the material scope of the legislative referendum: the organization of public powers, the economic or social policy reforms of the nation, and treaties which, without contravening the Constitution, may have a certain influence on the functioning of the state institutions .

In general, the areas where national laws exclude the referendum are financial, fiscal and fiscal (Denmark, Estonia, Greece, Hungary, Italy, Malta, Poland, Portugal). They are also excluded from the material scope of the referendum: state of emergency (Estonia, Hungary); amnesty and pardon (Italy, Poland, Hungary); elections and issues falling within the jurisdiction of the judicial or administrative bodies (expressly excluded by Austria and implicitly by other states); the powers of Parliament, the judiciary and the Constitutional Court (Bulgaria); normative texts on public office, naturalization and expropriations (Denmark).

The implementation of international treaties can not be put to referendum voting in Denmark, Hungary, Malta and the Netherlands.

According to the initiator's criterion, the legislative referendum may be extraordinary or ordinary. The extraordinary referendum differs from the ordinary one by the fact that the popular vote on a determined act is organized at the request of a state body - the head of state, the parliament, a certain number of deputies or decentralized collectives (not a faction of the electoral body).

The extraordinary legislative referendum is organized on the initiative of the President of the Republic (France), Parliament (Austria, Lithuania, Luxembourg), a certain number of parliamentarians (Denmark, Greece) and the parliamentary majority of both Houses (Ireland). In Portugal, the President decides on the Parliament / Government's proposal to organize the extraordinary legislative referendum.

The ordinary legislative referendum is regulated in Hungary and Lithuania. In these countries, the referendum is suspensive. The suspensive legislative referendum (veto referendum) is being organized to challenge a law recently passed by the parliament, which has not yet been promulgated.

The Swiss Minister of Finance has today called on the population to allow the federal government to levy taxes for another 15 years when it will be deciding by a referendum on a new tax law.

The referendum took place on 4 March 2018. Under the direct democracy system operating in Switzerland, voters will be able to comment on the federal government's right to levy taxes such as income tax and value added tax.

3. Conventional referendum. It is being organized to approve or reject international agreements / treaties. It is a particular case of a legislative referendum, as authorization of ratification of a treaty is usually the responsibility of the parliament. This is mandatory when joining international organizations involving transfer of competencies (Lithuania and, under certain conditions, Denmark).

A conventional referendum on EU membership was held in Latvia. b) depending on the nature of the referendum it may be:

1. Mandatory referendum. In general, the mandatory referendum is organized for constitutional reviews. The mandatory referendum is organized for texts that can not be adopted / enter into force without the explicit consent of the people; its vote and its positive result is a condition for the validity of the legal norm. The result of a mandatory referendum is accepted by parliament and government, and they will take appropriate measures according to the outcome of the referendum. In Romania, the Referendum Law and the Constitution establish a binding legal power in the case of two referendums. The first is the referendum on the dismissal of the president, the other is the referendum on the amendment of the Constitution. As we saw in the case of the referendum initiated by the President, it did not have legal consequences. If a referendum does not have a binding legal power, then it is basically not a referendum, it is a poll conducted on a broad sample. Parliament, if it deems it necessary, applies the result of the referendum, if not ignore it. This situation, legal regulation, seems to me abnormal, because the law then is law if it has binding force. The law must be clear, unequivocal.

2 optional referendum, its result has no binding value, the last word belonging to parliament or government. It is regulated in Austria, Greece, Portugal and Hungary.

3. Referendum organized at the request of a state authority (extraordinary referendum). - In France, at the proposal of the Government or on the joint proposal of the two Legislative Chambers (published in the Official Journal), the President may submit to the referendum any draft law on the organization of public powers, reforms to the nation's economic and social policy and related public services , or authorizing the ratification of a treaty that, although not in contradiction with the Constitution, could influence the functioning of state institutions. If the referendum is organized at the proposal of the

Government, it has the obligation to make within each Legislative Chamber a statement that is followed by debates. - in Portugal, the agreement between the President and the Parliament or between the President and the Government is necessary to hold a referendum.

- in Ireland, the President of the Republic may convene a legislative referendum on the joint proposal of the two Chambers (in the Senate, the proposal must be adopted by a majority of votes, and at least 1/3 of the Deputies in the Chamber of Deputies).

- In Poland, the referendum may be convened by the Chamber of Deputies or, with the consent of the Senate, by the President of the Republic.

- in Estonia, Finland, Lithuania, Luxembourg, Malta, Sweden, Parliament is the only authority that has the competence to convene a referendum.

- In Belgium, the referendum - which is not constitutionally / legally constituted - can be organized on the basis of a specific decision / laws passed by Parliament.

- In Austria, the National Council decides on the legislative referendum and the consultative referendum on issues of national importance; 1/3 of the members of Parliament may decide to hold a referendum on the partial revision of the Constitution. - In Bulgaria, Parliament decides on the convening of the referendum. The proposal may be made by 1/4 of the deputies, the Council of Ministers or the President of the Republic.

- In Hungary, at the proposal of the President of the Republic, the Government, one third of the number of MPs or 100,000 voters, Parliament decides on the organization of the optional referendum. (It is also the Parliament that decides on the decision-making or advisory nature of the optional referendum.) The mandatory referendum is organized at the request of more than 200,000 citizens with the right to vote.

- In Spain, the consultative referendum on a matter of particular importance is convened by the King, at the proposal of the Prime Minister, approved by the Congress of Deputies.

- in Greece, the President makes formal use of the referendum, the decision to hold a referendum is taken by Parliament (by majority vote), on the proposal of the Government (for "crucial" national issues) or 3/5 of the MPs (for laws on important social issues).

- In Italy, the referendum can be convened at the request of five regions.

- In only a few states, the Legislature may convene a referendum on the dismissal of the Government, or the Executive for the Dissolution of the Legislature. In Austria, the National Council may convene a referendum (by a 2/3 majority) to dismiss the President of the Republic; in Latvia, the President may convene a referendum on the dissolution of Parliament. 4. Referendum organized at the request of a certain number of citizens with the right to vote The referendum organized at the request of a certain number of voters can be classified into two categories: ordinary voluntary referendum and popular initiative (in a narrow sense). The ordinary facultative referendum is organized to challenge a text already approved by a state organ, while the popular initiative allows a faction of the electoral body to propose a text that has not been approved by a state authority. In Lithuania, 300,000 signatures are required to hold a referendum; in Latvia, 10% of the total number of voters may request the holding of a referendum if, at the request of a third of the parliamentarians, the President suspends the promulgation of a law, and within 10 days of its adoption, Parliament does not revoke the law, and not adopt by a majority of 3/4.

In Italy, the optional constitutional referendum and the abrogative legislative referendum can be organized at the initiative of a faction of the electoral body (500,000 signatures). Parliament has the possibility to avoid holding a referendum, reviewing the basic principles and the content of the normative text in question. In Hungary, 100,000 signatures (but not more than 200,000) are required to organize an ordinary voluntary

referendum. Some states have regulated a form of limited popular initiative, which consists in submitting to a state organ, by a certain number of voters, a proposal to hold a referendum. It is a form of extraordinary referendum organized at the request of a faction in the electoral body. In Poland, 500,000 voters may request the Chamber of Deputies to convene a referendum; In Portugal, such a request can be submitted to the Parliament by 750,000 citizens with the right to vote. In Malta, according to the Law on referendums, if Parliament repeals the law challenged by a faction of the electoral body, the referendum requested for this purpose is no longer organized. c) Depending on the text to be put to the vote: - a referendum on a draft law (France, Denmark, Ireland) or on a concrete proposal not in the form of a draft law (Portugal). - Referendum organized to repeal a text in force (Italy). - organized referendum on a matter of principle.

The national law of the Member States defines in various ways "the issues of principle". In Greece, these concern "crucial" national issues and important social issues. The President of the Republic has the power to convene (by decree) a referendum on national issues of special, crucial importance. It is worth noting that the role of the head of state in referendum matters can not be exercised discretionary or exclusive. Article 44, paragraph 2 of the Constitution provides for a complex procedure in which three public authorities interfere and condition each other: the Government, the Parliament and the President of the Republic. This interweaving of duties is aimed at guaranteeing the democratic character of the political regime and preventing Parliament from subordinating the Executive. The constitutional text stipulates that after the decision passed by the Parliament by an absolute majority, at the proposal of the Government, the President of the Republic convenes a consultative referendum on a matter of national interest of crucial importance.

In Spain, a national consultative referendum is organized for political decisions of particular importance. d) according to the effects it produces: - decision making; - Advisory. Referendum decision: It can be normative confirmatory, when it is aimed at adopting a normative act, or abrogated, when it aims to repeal a law. The results of the referendum are legally required by the authorities and the population. In the case of the advisory referendum, the authorities have no obligation to follow suit. Some states (Ireland, France, Italy) have only regulated the decision-making referendum. In Denmark, the decision-making referendum is the rule, but the consultative referendum is not excluded either. In Hungary, a referendum on a law or convocation at the request of 200,000 citizens with voting rights is always decision-making; in the event of a voluntary referendum, it is Parliament that decides whether it will be decision-making or consultative. In Spain, the national consultative referendum organizes political decisions of particular importance. In Romania, it should be underlined that, according to the Constitution and Law no. 3/2000, national sovereignty belongs to the Romanian people, exercising it through its representative bodies and by referendum¹.

¹Law no.3 / 2000 on the organization and conduct of the referendum, published in the Official Gazette no.84 / 24.02.2000, modified by GEO no.92 / 2003 published in the Official Gazette no.716 / 14.10.2003, by the Law no.51 / 2003 published in the Official Gazette no.922 / 22.12.2003, by GEO no. 99/2005 published in the Official Gazette no. 643 / 20.07.2005, by GEO no.27 / 2007 published in M .Of.nr.278 / 25.04.2007, by Law no.129 / 2007 published in the Official Gazette no.300 / 05.05.2007, by GEO no.34 / 2007 published in the Official Gazette no.317 / 11.05 .2007, GEO no.103 / 2009, Law no.62 / 2012, GEO no.41 / 2012, Law no.131 / 2012, Law no.153 / 2012, Law no.76 / 2012, 2012, Law no. 411/2013.

Art.152 of the Romanian Constitution

(1) The provisions of this Constitution regarding the national, independent, unitary and indivisible character of the Romanian state, the republican form of government, the integrity of the territory, the independence of the judiciary, the political pluralism and the official language can not be the object of the revision.

The law limits to the maximum the possibility of organizing constitutional referendums, although art.2 of the law stipulates that the national referendum is the form and the means of direct consultation and expression of the sovereign will of the Romanian people regarding:

- a) revision of the Constitution;
- b) the dismissal of the President of Romania;
- c) problems of national interest.

Problems that, according to art. 152 of the Constitution, can not be subject to review can not be the object of the referendum.

The referendum is valid if at least 30% of the number of people on permanent voter lists participate in it.

The result of the referendum is validated if the validly expressed options represent at least 25% of those on the permanent electoral lists.

DEX - Explanatory Dictionary of Romanian Language, 3rd edition, revised and added, Univers Enciclopedic Publishing House, Bucharest, 2009.

Plebiscite - Prior consultation of citizens, which is to decide "yes" or "no" on a bill or state act of particular importance. (in Roman antiquity) Law adopted at a plebean assembly. Form of consultation by vote of the will of the people in a matter of general importance.

The difference between the plebiscite and the referendum is barely perceptible, if a referendum concerns the adoption or rejection of a text, the plebiscite refers to a man. In the Roman law the plebiscite expressed the people's vote at the end of the Roman republic, the plebiscite had become a formula by which the power of some leaders such as Cesar was granted. Later the plebiscite became, with the Empire, a mere formality by which the Emperor was invested.

1. In Romania the plebiscite was used by Alexandru Ioan Cuza, who, on the French model of Napoleon III, resorted to the plebiscite for the development status of the Paris Convention in May 1864. The Senate was introduced into the Romanian legislation in 1866 when the Weighted Body was called the Senate and which was introduced by the plebiscite of May 10-14, 1864, when the Developmental Statute of Paris was approved at the proposal of the prince Alexandru Ioan Cuza (1859-1866). The Paris Convention was held between 7-19 August 1858, and Prince Alexandru Ioan Cuza approved the Development Statute on 3-15 July 1864. By the Statute of the Developer, the attributions of the Lord have been defined, and the simultaneous transition from the unicameral system provided by the Organic Regulation of 1831 to the bicameral system, in which the legislative power is exercised collectively by the Lord, the Elective Assembly (also called the Lower Chamber) Senate (which was then called the Weighted Body).

2. The plebiscite was used on April 2-8, 1866, approving the coming of the throne of Carol I as a ruler, having the role of legitimizing an authoritarian policy. Against the background of Ioan Cuza's abdication, in February 1866 a domineering lieutenant was formed, consisting of General Nicolae Golescu, Lascăr Catargiu and Colonel N. Haralambie. The three are initially proposed to the throne by Filip de Flandra, but as the offer is declined, lieutenant proposes Carol-Ludovic de Hohenzollern and calls on the nation to express its adhesion through the plebiscite.

3. On February 24, 1938, Carol II subjected to plebiscit the Constitution of Romania, also called the "Carolian Constitution", adopted at the initiative of King Carol II.

(2) No revision may also be made if it results in the suppression of citizens' fundamental rights and freedoms or of their safeguards.

(3) The Constitution can not be revised during the siege or emergency state or in wartime.

Thus, the Constitution of 1923 was repealed and the "royal dictatorship" was established. According to official figures, only 0.13% of the plebiscite participants opposed the royal project. The new Constitution was promulgated on February 27 and published on February 28, 1938.

4. On March 2-5, 1941, the plebiscite on the approval of General Ion Antonescu's policy came as a result of the legionary rebellion of January 21-23, 1941. The theme of the plebiscite, organized by Ion Antonescu, was Romania's internal policy, with 90% voting for the policy of the Antonescu government and against the legionnaires.

5. The plebiscite of 9-16 November 1941 for the approval of Marshal Ion Antonescu's policy.

6. On November 23, 1986, President Ceausescu held the Peace Referendum – approving the 5 per cent reduction of armaments, troops and military spending by RSR.

7. The 1989 referendum initiated by President Ceausescu for amending the Constitution of Romania on the introduction of an article banning foreign loans.

8. On December 8, 1991, the Constitution of Romania was adopted by the referendum. The new Constitution was approved with a percentage of 77.3% of the participants. Upon the entry into force of the new constitution, the Constitution of 21 August 1965 was entirely abrogated (Article 149 of the Constitution).

9. The referendum of November 18-19, 2003, approved the revision of the Romanian Constitution, it was the first time the referendum had problems in the sense that it was running with the mobile urn through village resorts so that the referendum was valid because the voters did not want to come to vote. The most important news brought to the Fundamental Law was the harmonization of the Romanian legislation with the European Union and the North Atlantic Treaty Organization, for the joint exercise of competences with the two international bodies. In this respect, two articles included in the title "Euro-Atlantic Integration" (Articles 148 and 149). Amendments to the Constitution of 1991 include the appointment of the President of the country to five years to four years (Article 83, paragraph 1) and the insertion of a new paragraph stating that the President can not revoke the Prime Minister Article 107, paragraph 2).

10. The referendum on 19 May 2007 concerned the dismissal of the President of Romania. Citizens entitled to vote are asked whether they agree or not with the dismissal of Traian Basescu, the country's suspended president. The steps to suspend the president began on January 18, 2007, when the PSD claimed Traian Basescu's violations of the Constitution. In the April 17 opinion, the Constitutional Court voiced its objection to the suspension, arguing that the alleged crimes did not violate the Constitution. However, in the joint sitting of 19 April 2007, Parliament voted to suspend Traian Basescu by 322 votes in favor, 108 against and 10 abstentions. Suspension became effective on April 20, 2007, after the Constitutional Court took note of the decision of the Romanian Parliament. 44.45% of the eligible citizens voted, with 74.48% of them voting against the dismissal of Traian Basescu.

11. The referendum of 25 November 2007 concerned the introduction of the uninominal vote. The referendum was held on October 25, 2007, after President Traian Basescu signed the decree on the organization of the referendum on the introduction of the uninominal vote, along with the elections for the European Parliament two days before. Thus, Romanians with the right to vote have been called upon to answer "yes" or "no" to the question: "You agree that, starting with the first elections to be organized for the Parliament of Romania, all deputies and senators will be elected in constituencies uninominal, based on a majority vote in two rounds? ". Traian Basescu said that at the referendum he will go on the simplest option, ie the uninominal vote in two rounds, as at

the election of the mayors. According to Traian Basescu, one of the objectives of organizing the referendum for the uninominal vote was the reform of the Romanian political class. Voting across the country was 26.51%. Out of voters, 81.36% voted YES, 16.17% voted NO, and 2.46% voted null.

The centralization of the final results revealed that 4,851,470 voters participated in the referendum. On November 29, 2007, the Constitutional Court found that "of the total number of 18,296,459 persons registered in the referendum list, 4,851,470 people participated in the vote, insufficient for the referendum to be declared valid, in accordance with the provisions of Article 5 paragraph (2) of Law no.3 / 2000 on the organization and conduct of the referendum, as subsequently amended and supplemented ". In order for the referendum to be validated, it would have been necessary to have a half vote plus one of the total number of voters.

12. Referendum of 22 November 2009 on the unicameral parliament and reduction of the number of parliamentarians initiated by the President of Romania.

On November 22, 2009, the 5th National Referendum since 1989 for the transition from the bicameral parliament (137 senators and 334 deputies) to a unicameral parliament (up to 300 MPs) was organized. At the referendum held in parallel with the legislative elections, 9,320,240 of the total number of 18,293,277 citizens with voting rights, ie 50.95%, were presented. According to the BEC, 77.78% of the voters responded with YES to move to a unicameral Parliament and 22.22% with NO. At the same time, 88.84% of Romanians responded with YES to reduce the number of MPs to a maximum of 300 and 11.16% to NU. Thus, the referendum was validated.

13. The next referendum (the sixth after 1989) took place on July 29, 2012 and aimed at the dismissal of President Traian Basescu. Asked to answer the question 'Do you agree with the dismissal of the President of Romania, Mr. Traian Băseșcu?', 87.52% of the citizens voted for dismissal, while 11.15% against the dismissal. As the 50% + 1 quorum did not meet, only 46.24% of the citizens enrolled in the electoral rolls were present at the referendum, the referendum was invalidated by the Constitutional Court on 21 August 2012.

The Council of Europe's Recommendation No. 1112/1997 recommended in Article 9 that the referendum "presents the risk of becoming plebiscite when used by the executive to strengthen its own power" And art.10 "this risk exists in time-strengthened democracies, especially in countries with an important demographic weight, and consequently more difficult to govern than small countries. It is even greater in new democracies and, therefore, more fragile than previous ones. " By Recommendation 1704/2005, the Council of Europe in Article 5 states that "the recourse to the referendum as a means of firmly anchoring the democratic legitimacy of political processes" "The referendums will not become an alternative to parliamentary democracy and not be abused to mitigate the legitimacy and primacy of parliaments as legislative bodies"

References:

1. Grădinaru, N., 2011. *Constitutional Law*. Pitești: Economic Independence Publishing House.