The uneasy balance between participation and representation: local direct democracy in the Czech Republic

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History and overview of direct democracy legislation in the Czech Republic

All democracies, especially new ones, face the fundamental question of how much and what kinds of citizen participation to allow in politics, such as through local referendums. While too little participation could lead to an apathetic citizenry unable to act against the abuses of government, too much participation by an "interested and overbearing majority" (Hamilton, Madison and Jay 2003: 46), in the absence of legal protections, could lead to the suppression of minority voices. In the example of the United States, the federalist solution to the question of balancing citizens’ voice was to advocate representative government with a system of checks and balances and only limited opportunities for citizen participation. Understanding that the power of government also needs its own checks, the Progressive movement, the civil rights movement, and contemporary proponents of direct democracy have also sought to expand, with some success, the opportunities for citizen participation in local and statewide politics.

Of course, political context shapes the way such debates unfold in different democracies. Given the heritage of communist rule, based on the principle of the vanguard of the working class, many post-communist constitutions echoed the Madisonian concern to "unequivocally take precautions against any kind of privileged access of any group, class or party to power" (Elster, Offe and Preuss 1998: 93). In the Czech Republic, this meant upholding the constitutional principle of parliamentary sovereignty – with no provisions for direct democracy at the national level – and the belief that the Parliament represents the interests of a homogeneous and unified 'Czech nation.' The communist heritage of forced political participation, as well as the importance placed on technocratic expertise, has also created very difficult conditions for civil society and grassroots political participation to develop (Greskovits 1998; Howard 2003).

This tension between parliamentary sovereignty and direct democracy in the Czech lands can be observed in the constitutional crisis of the post-1989 Czech and Slovak Federal Republic. On December 10, 1990, President Václav Havel presented two bills to the Federal Assembly that he believed would resolve the question of the relationship between the Czech and Slovak Republics. His solution emphasized the use of democratic mechanisms for deciding the issue, which he hoped would lead to an outcome in favor of an "authentic federation" (Žák 1995). The first bill related to the establishment of the Constitutional

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1 This chapter was made possible by the generous support of the Czech Science Foundation via grant no. 403/07/ 1608, entitled „Politika místních referend ve střední Evropě (The Politics of Local Referendums in Central Europe).“
Court, whereas the second was a "constitutional bill on the referendum as an institution that would be capable of realizing the true will of citizens in the case of unsolvable disagreements between different political organs. That will, expressed by means of a referendum, should have the greatest decision-making and unconditionally binding legal authority for everyone" (Havel 1990).

After a number of amendments to Havel’s referendum bill, the Constitutional Law 327/1991 on the Referendum went into effect on July 18, 1991. The brief one-and-a-half page law stated that if either the Czech or Slovak Republic wanted to secede from Czechoslovakia, it could do so only by referendum. The law involved all of the major political institutions: the President could call a referendum if the Federal Assembly proposed it, which it could do as long as the Czech and Slovak National Councils (i.e. the two national parliaments of the federal state) were in favor of such a referendum. Not too long after the law was passed, various political parties and civic movements sought to propose referendum questions on the future of the country, such as the civic petition Initiative for a Common State, which contained over a million signatures demanding a referendum on the question of federation (Lástič 2005). But since each political party had its own stance on the issue, no agreement was ever reached between all of the relevant political actors. Ironically, the Law on the Referendum was never used to solve the constitutional crisis. Since the leading Czech and Slovak parliamentary parties, represented by Václav Klaus and Vladimír Mečiar, reached a political agreement between the republics to split the country – as opposed to one side desiring to secede, which, according to the above law, would require a referendum – the politicians succeeded in ‘solving’ the constitutional crisis without involving citizen participation at all. The political agreement can easily be interpreted as Mečiar’s and Klaus’ attempt to avoid a referendum, as they knew very well public opinion was in favor of a continued federal state. For obvious reasons, that law is now obsolete.

Unlike some other post-communist countries, the Czech Republic has never had a general law on national referendums. The only national referendum to have taken place – the referendum on EU membership, which took place in mid-June 2003 – was made possible by a special law solely for that purpose. While there have been a number of legislative bills on the subject, the right-wing Civic Democratic Party (ODS) has seen direct democracy as a threat to parliamentary sovereignty. For example, in 1996, a bill on national referendums submitted by communist MPs was easily struck down by the ODS-led governing coalition. In 1999, Social Democrats proposed a bill that would have enabled legislative referendums on such issues as NATO and EU membership, but the bill was also dismissed by political parties wanting either stronger or weaker legislation. The same year, the Christian Democrats proposed their own bill, which would have enabled civic initiatives at the national level, but the bill failed by six votes due mainly to opposition by the Civic Democrats. In fact, that same bill failed to reach a constitutional majority (three-fifths of the lower house of Parliament) in twelve different parliamentary votes. Since political parties with the exact same ideas on national referendums have never held a constitutional majority in parliament, the prospects for such a law are small.

Nonetheless, Czech legislation does enable local referendums that are binding on local government. The legislation was passed during the Civic Forum period when the political desire for more local autonomy and democratization was quite large and when political parties were still relatively undeveloped, particularly at the local level. Similar to a bill passed by the Slovak National Council, in 1990 the Czech National Council passed the Law