9. Slovenia

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1. INTRODUCTION

All of the most common instruments of direct democracy, that is, the referendum, the citizens' agenda initiative and the town meeting, are established in the Republic of Slovenia (Slovenia). Citizens can directly participate in the process of forming and deciding on different legal acts as well as regarding other important decisions on both the national and local levels. Judged by the number and diversity of these instruments, Slovenia ranks among the states with the most developed systems of direct democracy in Europe. This holds true also in terms of the practical application of direct-democratic instruments, particularly referendums.¹

Slovene legal doctrine distinguishes between formal and substantive legal limits of direct democracy. The substantive limits may be explicit or implicit.² Explicit limits are provided in legislation and in the constitution, whereas the implicit limits of direct democracy derive from the principle of constitutional democracy. The idea of this principle is that values of constitutional importance prevail over the democratically taken decisions of the majority. The principle of constitutional democracy thus prevents unnecessary direct decision-making by voters in situations where it is already clear that the outcome of such decision-making would be unconstitutional.³

A reasonable number of legal limits are imposed on direct-democratic instruments in Slovenia. Explicit substantive legal limits are determined only for the referendum, while implicit legal limits are inherent to all instruments

¹ Ciril Ribičič and Igor Kaučič, 'Constitutional Limits of Legislative Referendum: The Case of Slovenia' (2014) 12 *Lex Localis – Journal of Local Self-Government* 900. See also Bruna Žuber, 'The Concept of Constitutional Democracy in Referendum Decision-Making' in Manuel Carrasco Durán and Blanca Rodríguez-Ruiz (eds), *La participación ciudadana como pilar del estado democrático: posibilidades y límites en el marco de la democracia representativa* (Thomson Reuters Aranzadi 2019) 212.

² See Ribičič and Kaučič (n 1) 916.

³ See Žuber (n 1) 206–212.

of direct democracy. The objective of this contribution is to analyse the legal limits of direct democracy in Slovenia and to open a discussion on their need, dimensions, scope and content. The chapter also offers an overview of the mechanisms for the legal protection of voters with regard to restrictions of direct-democratic rights.

2. INSTRUMENTS OF DIRECT DEMOCRACY IN SLOVENIA

The Constitution of the Republic of Slovenia⁴ (Constitution) and relevant legislation provide the following instruments of direct democracy at the national and local levels:

- the referendum;
- the citizens' agenda initiative;
- the town meeting;
- the right to file a petition.

The Constitution regulates only those instruments of direct democracy that are within the competence of the National Assembly (the general legislative body of Slovenia),⁵ namely the referendum on joining international organizations, the legislative referendum, the constitutional referendum, the referendum on the establishment of a municipality, the constitutional initiative, the legislative initiative and the right to file a petition, which is defined as a human right.⁶ Furthermore, the Constitution only regulates the fundamental characteristics of these direct-democratic instruments, whereas detailed regulation is provided in the Referendum and Popular Initiative Act (RPIA).⁷ All other instruments of direct democracy are regulated in the RPIA, in the Law on Local Self-Government (LSGA)⁸ and in the Self-Imposed Contributions Act.⁹ Some

⁴ Official Gazette RS No. 33/91-I, 42/97, 66/00, 24/03, 69/04, 69/04, 69/04, 68/06, 47/13, 47/13, 75/16, <https://www.us-rs.si/en/about-the-court/legal-basis/constitution/>, accessed 2 June 2020.

⁵ In addition to the National Assembly, the Slovene Parliament also comprises the National Council, which represents diverse local and other (especially professional) interests.

⁶ According to Art. 45 of the Constitution, every citizen has the right to file petitions and to pursue other initiatives of general significance.

⁷ Official Gazette RS No. 15/94 as amended <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>, accessed 2 June 2020.

⁸ Official Gazette RS No. 72/93 as amended <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>, accessed 2 June 2020.

⁹ Official Gazette RS No. 87/01.

procedural rules for applying different instruments of direct democracy are provided in the Rules of Procedure of the National Assembly.¹⁰

2.1 Referendum

The Slovene legal system regulates, at the national and local level, the following types of referendums:

- constitutional referendums;
- legislative referendums;
- referendums on joining international organizations;
- consultative referendums;
- local referendums.¹¹

2.1.1 Constitutional referendum

Article 170 of the Constitution¹² provides that:

1. The National Assembly must submit a proposed constitutional amendment to voters for adoption in a referendum if so required by at least 30 deputies.
2. A constitutional amendment is adopted in a referendum if a majority of those voting voted in favour of the same, provided that a majority of all voters participated in the referendum.

A constitutional referendum is a facultative phase in the procedure for amending the Constitution and is characterized by the voters' ratification of the constitutional amendment. A constitutional referendum is also referred to as a minority or oppositional referendum, its key purpose being to prevent the entry into force of the constitutional amendment until the voters' decision in the referendum.

A constitutional referendum is a subsequent and suspensive legislature-initiated referendum: it takes place after the constitutional amendment has been adopted by the National Assembly¹³ and before its promulgation and entry into force if the conditions determined by the Constitution and the RPIA are met. It is called if at least 30 deputies of the National Assembly so

¹⁰ Official Gazette RS No. 35/02 as amended.

¹¹ Ciril Ribičič and Igor Kaučič, *Referendum and the Constitutional Court of Slovenia* (Universitätsverlag Regensburg 2016) 13–16.

¹² Detailed regulation of the constitutional referendum is provided in Art. 4–8 RPIA and in Art. 108, 182 and 184–186 Rules of Procedure of the National Assembly.

¹³ The National Assembly adopts acts amending the Constitution by a two-thirds majority vote of all deputies (60 out of 90 deputies have to vote in the affirmative).

require. Voters cannot initiate it. The fact that exclusively deputies can initiate a constitutional referendum is the main reason why one has never been held, despite the fact that ten constitutional amendments have been adopted thus far.

For a constitutional amendment to be adopted in a referendum, a dual majority is required: majority participation of all voters (a turnout quorum) and a majority of the participating voters voting in the affirmative.¹⁴

2.1.2 Legislative referendum

Article 90 of the Constitution¹⁵ provides that:

1. The National Assembly shall call a referendum on the entry into force of a law that it has adopted if so required by at least 40,000 voters.
2. A referendum may not be called:
 - on laws on urgent measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters;
 - on laws on taxes, customs duties, and other compulsory charges, and on the law adopted for the implementation of the state budget;
 - on laws on the ratification of treaties;
 - on laws eliminating an unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality.
3. The right to vote in a referendum is held by all citizens who are eligible to vote in elections.
4. A law is rejected in a referendum if a majority of voters who have cast valid votes vote against the law, provided at least one fifth of all qualified voters have voted against the law.
5. Referendums are regulated by a law passed in the National Assembly by a two-thirds majority vote of deputies present.

The Slovene legislative referendum is a rejective citizen-initiated referendum. The constitutional regulation of the legislative referendum completely changed in 2013.¹⁶ A legislative referendum is subsequent to the adoption of the law and suspensive. The subject of a legislative referendum is the question of the entry into force of a law. The voters cannot decide on a particular issue regulated by a specific law but only on the law as a whole. A request for the calling of a legislative referendum defers the entry into force of the law until

¹⁴ Art. 170 Constitution. See also: Ribičič and Kaučič (n 11) 16–18.

¹⁵ Detailed regulation of the legislative referendum is provided in Art. 9-25 RPIA and in Art. 108, 184–186 and 222 Rules of Procedure of the National Assembly.

¹⁶ From 1994 until today there have been twenty legislative referendums held in Slovenia, out of which the voters initiated ten. For details, see the official website of the National Electoral Commission: <https://www.dvk-rs.si/index.php/si/arhiv-referendumi>, accessed 8 July 2020.

a decision has been made in the referendum.¹⁷ The new regulation emphasizes the role of the referendum as an instrument of control by the people over the work of parliament, while at the same time it limits the possibility of using it to resolve internal parliamentary conflicts.

Voters have the exclusive competence to call a legislative referendum. According to Article 90(1) of the Constitution, a legislative referendum can be initiated by at least 40,000 voters, representing approximately 2.4 per cent of the entire electorate, which is less than in comparable European states. The procedure for collecting voters' signatures is regulated by the RPIA (see Section 4.1.1).¹⁸

A law is rejected in a referendum if the majority of voters who cast valid votes voted against it, provided that at least one-fifth of all voters vote against the law.¹⁹

2.1.3 Referendum on joining international organizations

Article 3.a of the Constitution²⁰ provides that:

1. Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organizations (...) and may enter into a defensive alliance with states (...).
2. Before ratifying a treaty referred to in the preceding paragraph, the National Assembly may call a referendum. A proposal is passed in the referendum if a majority of voters who have cast valid votes vote in favour of the same. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.

Article 3.a(2) of the Constitution provides a special form of legislature or executive-initiated referendum that enables voters to decide on Slovenia joining the European Union, or possibly joining any other international organization to which Slovenia wishes to transfer the execution of its sovereign rights, and joining defence organizations (such as NATO). The subject

¹⁷ Since its purpose is to prevent the entry into force of a law, it is also called a 'popular veto'.

¹⁸ Art. 16.a and 16.b RPIA. See also Igor Kaučič, 'Referendumska iniciativa' in Igor Kaučič (ed.), *Zakonodajni referendum – pravna ureditev in praksa v Sloveniji* (Inštitut za primerjalno pravo, GV Založba 2010) 83–93.

¹⁹ Art. 90(4) Constitution.

²⁰ Detailed regulation of the referendum on joining international organizations is provided in Art. 25.a–25.g RPIA and in Art. 108 and 184–186 Rules of Procedure of the National Assembly.

of this referendum is neither the treaty in question itself nor the law on its ratification, but an individual question that is of key significance in the treaty. A referendum on joining international organizations is optional. The National Assembly may call it by its own decision on the proposal of the government, at least ten deputies or a deputy group. A proposal for calling a referendum may be made before or after the signing of the treaty, but must be made before the adoption of the law on the ratification of the treaty by the National Assembly.²¹ Referendums on joining international organizations have been held only twice so far, both times in 2003, regarding joining the European Union and NATO.²²

2.1.4 Consultative referendum

The consultative referendum is regulated in Articles 26–29 of the RPIA. The National Assembly may call a consultative referendum on questions within its competence that are of wider significance to citizens. The National Assembly may hold a consultative referendum in the whole country or in a specific area in cases where the referendum question concerns only part of the electorate. The consultative referendum is optional and preliminary. The National Assembly is not bound by the result of a consultative referendum. A consultative referendum was held nationally only once, in 2008, concerning the establishment of regions in Slovenia.

2.1.5 Local referendums

There are various types of local referendums: referendums on general legal acts of a municipality, referendums on the establishment and territorial reorganization of a municipality, consultative referendums of a municipality, referendums on statutory issues and referendums on self-imposed contributions. The Self-Imposed Contributions Act governs the latter, while other local referendums and other forms of direct democracy at the local level are governed by the LSGA.

A referendum on a general legal act of a municipality is a fundamental form of direct decision-making by voters residing in the municipality.²³ It is subsequent and either optional (held on the proposal of the mayor or a member of the municipal council at the request of at least 5 per cent of the municipality's voters) or compulsory (if required by law or the municipal charter). A referendum proposal is approved if a majority of participating voters vote in favour of

²¹ See Ribičič and Kaučič (n 11) 21–23.

²² The referendum questions were 'Do you agree for the Republic of Slovenia to become a member of the North Atlantic Treaty Organization (NATO)?' and 'Do you agree for the Republic of Slovenia to become a member of the European Union (EU)?'

²³ Art. 46 LSGA.

the proposal, making this decision binding on the municipal council until the end of its term.²⁴

2.2 Citizens' Agenda Initiative

The citizens' agenda initiative (in Slovenian law: the popular initiative) allows voters to place an issue on the agenda of the state authorities but does not lead to a referendum. The authorities are obliged to consider the voters' proposal and carry out the prescribed procedure; however, if they decide not to implement the proposal, they are not obliged to call a referendum on it.²⁵

There are three types of agenda initiatives in Slovenia, namely the constitutional initiative, the legislative initiative and the local initiative.

The constitutional initiative is provided in Article 168 of the Constitution.²⁶ A proposal for a constitutional amendment may be requested by at least 30,000 voters (representing less than 2 per cent of the electorate). Along with the required signatures, the proposal must also provide a draft of the constitutional amendment. The National Assembly first decides whether to accept the proposal by a two-thirds majority vote of the deputies present. For the actual adoption of the constitutional amendment, a two-thirds majority vote of all deputies is required. If the proposal is not adopted, the procedure for amending the Constitution is terminated. The same proposal cannot be resubmitted during the same term of office.²⁷

The legislative initiative is regulated in Article 88 of the Constitution.²⁸ The legislative proposal may be submitted by at least 5,000 voters (representing approximately 0.3 per cent of the electorate). The National Assembly decides on the adoption of a legislative proposal by a majority of the votes of the deputies present if a greater majority is not prescribed.²⁹ If the National Assembly decides that the legislative proposal is suitable for the further procedure, the legislative procedure continues, otherwise it ends.³⁰

The citizens' agenda initiative is regulated in a similar way at the local level. Article 48 of the LSGA provides that at least 5 per cent of the voters in

²⁴ Ribičič and Kaučič (n 11) 24–25.

²⁵ Ibid. 28.

²⁶ Detailed regulation of the constitutional initiative is provided in Art. 57 and 59 RPIA and Art. 173 and 177 Rules of Procedure of the National Assembly.

²⁷ Art. 177 Rules of Procedure of the National Assembly.

²⁸ Detailed regulation of the legislative initiative is provided in Art. 58 and 59 RPIA and in Art. 114, 115.a and 122 Rules of Procedure of the National Assembly.

²⁹ Art. 84 Rules of Procedure of the National Assembly.

³⁰ Art. 122 Rules of Procedure of the National Assembly.

a municipality may request the abrogation of a general legal act or any other decision of the municipal council or other municipal authorities.

As the citizens' agenda initiative in Slovenia does not directly lead to a referendum, citizens do not pay much attention to it. So far, there have been only a few legislative initiatives and only one constitutional initiative. In contrast, the agenda initiative is more common on the local level.³¹

2.3 Town Meeting

The LSGA provides that at a town meeting the members of a municipality are entitled to discuss individual issues, form standpoints, submit proposals, initiatives and opinions as well as make decisions. A meeting can be convened for the entire municipality or just a particular part thereof. The LSGA provides two ways of calling a town meeting, namely an obligatory and a facultative way. A town meeting is obligatory if so determined by either a law or the charter of the municipality or if so required by at least 5 per cent of the voters of the municipality (or the respective particular part of it). A facultative town meeting can be initiated by the mayor, the municipal council or the council of a narrower part of the municipality. The municipal charter of each municipality determines the course and process of decision-making at town meetings.³²

3. LEGAL LIMITS ON DIRECT DEMOCRACY

3.1 Limits on Referendums

3.1.1 Substantive limits

Substantive limits on referendums are provided only for the legislative referendum and the referendum on a general legal act of a municipality.

Before its amendment in 2013, the Constitution did not determine any limits for the legislative referendum. In principle, a legislative referendum was permissible with regard to any law adopted by the National Assembly. Nevertheless, in order to avoid referendums that might cause unconstitutional consequences, Article 21 of the RPIA prescribed proceedings for a review of the constitutional admissibility of legislative referendums. The Constitutional Court of the Republic of Slovenia (Constitutional Court) was authorized to assess whether suspending the entry into force of a law due to a referendum procedure or rejection of a law in a referendum might result in unconstitutional consequences. The Constitutional Court only carried out such a constitutional

³¹ See Ribičič and Kaučič (n 11) 28–29.

³² Art. 45 LSGA.

review at the request of the National Assembly, not *ex officio*. The National Assembly would request a constitutional review only if it deemed that suspending the entry into force of a law or its rejection might result in unconstitutional consequences. If the Constitutional Court decided that this is the case, it would prohibit the referendum. 'Unconstitutional consequences' was an undefined legal term and it was up to the Constitutional Court to define it, taking into consideration Article 21 of the RPIA. At first, the Constitutional Court built up its case law regarding such matters; however, in 2011 it changed its doctrine and thereby narrowed its interpretation of Article 21 of the RPIA arguing that the existing legal basis is not appropriate and sufficient for carrying out the review of the constitutional admissibility of legislative referendums. From then until the new constitutional regulation of the legislative referendum in 2013 only one legislative referendum was prohibited.³³

The constitutional regulation in force lists, in Article 90(2), four types of laws that are excluded from the scope of the legislative referendum.

First, the inadmissibility of referendums on laws on urgent measures to ensure the defence of the state, security or the elimination of the consequences of natural disasters arises from the need for rapid and effective action. The Constitution does not exclude any laws in these areas, but only those pertaining to urgent measures, from the scope of the referendum.³⁴

Second, referendums on laws on taxes, customs duties and other compulsory charges and on laws adopted for the implementation of the state budget are prohibited because of the need to ensure the financial basis of the state. This referendum prohibition does not apply to all laws that affect public expenditure, public guarantees and so on. Such a broad exclusion of all laws that may, even if only indirectly, affect government expenditure would amount

³³ On the basis of the previous regulation that is no longer in force, the Constitutional Court prohibited legislative referendums in four out of eight cases. The Constitutional Court decided that due to the suspension of the entry into force of the law or by its rejection in a referendum, unconstitutional consequences could occur in the following cases: U-II-1/09 of 5 May 2009 (prohibition of referendum on the Act Amending the Attorneys Act), U-II-2/09 of 9 November 2009 (prohibition of referendum on the Act Amending and Supplementing the Public Sector Salary System Act and the Act Amending and Supplementing the Judicial Service Act), U-II-1/10 of 10 June 2020 (prohibition of referendum on the Act Amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia), and U-II-1/12, U-II-2/12 of 17 December 2012 (prohibition of referendum on the Act Regulating Measures of the Republic of Slovenia to Strengthen the Stability of Banks and the Slovenian Sovereign Holding Act). On this see also Bruna Žuber, *Ustavnosodni nadzor zakonodajnega referenduma* (GV Založba, Lexpera, 2018) 122–150.

³⁴ Ribičič and Kaučič (n 1) 917.

to an almost complete prohibition of referendums, since most laws also touch upon fiscal issues and, at least indirectly, influence the state budget.³⁵

Third, laws on the ratification of treaties are exempt from the referendum due to the particularity of the Slovenian system whereby the National Assembly ratifies treaties by a law and not by a decree or similar act. Any concerns about the content or constitutionality of a treaty should be resolved prior to ratification.³⁶ Accordingly, Article 160(2) of the Constitution provides for a preventive review of the constitutionality of treaties, which may be triggered by the President of the Republic, the Government or a third of the deputies of the National Assembly. The Constitutional Court's opinion on the conformity of a treaty with the Constitution is binding on the National Assembly. This limit does not, however, apply to the treaties referred to in Article 3a(2) of the Constitution. These treaties can be subject to a referendum on joining international organizations or a legislative referendum.³⁷

Fourth, a legislative referendum may not be called on laws eliminating an unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality. This prohibition is designed to protect other constitutional values: it ensures that violations of constitutional values, including human rights and fundamental freedoms, or unconstitutional legislation may be eliminated. As constitutional democracy is established in Slovenia, inclusion of such provision in the Constitution can be seen as underlining the importance of the protection of constitutional rights and freedoms.³⁸

The Constitution thus makes a distinction between laws whose adoption is in the exclusive competence of the National Assembly and those where the legislative power is divided between the National Assembly and the voters who can reject the law in a referendum. This constitutional regulation introduced in 2013 is more appropriate than the previous one as it explicitly lists the laws that are excluded from the referendum. Nevertheless, the limits can never be fully defined in advance and thus remain interpretatively open.³⁹

Since 2013 the Constitutional Court has ruled on the admissibility of legislative referendums in two instances.

In one instance, Decision No. U-II-2/15 of 3 December 2015, the Constitutional Court decided that the Order of the National Assembly rejecting

³⁵ Ibid.

³⁶ Ibid. 917, 918.

³⁷ However, it should be noted that if referendum on joining international organizations has been held, a legislative referendum regarding the law on the ratification of the treaty concerned may not be called (Art. 3(2) Constitution).

³⁸ Ribičič and Kaučič (n 1) 918.

³⁹ Ibid. 916. See also Igor Kaučič, 'Ustavnosodna presoja zakonodajnega referenduma po novem' [2015] Podjetje in delo 1345–1357.

a request to call a legislative referendum on the Act Amending the Defence Act is in conformity with the Constitution. In this case the Constitutional Court had to decide whether the Act Amending the Defence Act is a law concerning the field of security and a law on urgent measures to ensure security. The Constitutional Court stated that ‘the statutory regulation which entails the basis for the implementation of urgent measures for ensuring security that could not be carried out without a law corresponds to the notion of a law on urgent measures referred to in the first indent of Art. 90(2) of the Constitution.’ It further explained that ‘the authority competent to assess the urgency of measures to ensure security due to which a law has to be adopted is the National Assembly. The Constitutional Court may only assess whether the National Assembly demonstrated reasonable grounds for the assessment that it adopted.’⁴⁰

In contrast, by Decision No. U-II-1/15 of 28 September 2015,⁴¹ the Constitutional Court abrogated the Order of the National Assembly rejecting a request to call a legislative referendum on the Act Amending the Marriage and Family Relations Act (AAMFRA) and thus allowed the referendum to go ahead. The AAMFRA modified the definition of a marriage by stipulating that a marriage is a regulated community of two people, introducing same-sex marriage in place of same-sex civil partnership and equating same-sex non-marital partnerships with heterosexual non-marital partnerships. The AAMFRA eliminated unconstitutionality established by the Constitutional Court in its Decision No. U-I-425/06 of 2 July 2009⁴² and, in addition, also comprehensively regulated and equated same-sex and heterosexual couples in all rights and obligations at general and systemic levels.⁴³ The National Assembly declared the referendum inadmissible, stating that the AAMFRA was a law eliminating an unconstitutionality and, thus, the referendum fell under the prohibition of the fourth indent of Article 90(2) of the Constitution. The proposers of the referendum initiated proceedings for a review of the constitutional admissibility of a legislative referendum before the Constitutional Court. The Constitutional Court abrogated the order of the National Assembly, arguing that the AAMFRA did not simply eliminate unconstitutionality but also regulated further questions. It held that:

the wording of the fourth indent of the second paragraph of Art. 90 of the Constitution, which refers to the elimination of an unconstitutionality, is to be

⁴⁰ Decision of the Constitutional Court of the Republic of Slovenia No. U-II-2/15 of 28 September 2015, § 15.

⁴¹ Official Gazette RS No. 80/15.

⁴² Official Gazette RS No. 55/09.

⁴³ Bruna Žuber, Igor Kaučič, ‘Referendum Challenges in the Republic of Slovenia’ [2019] *Białostockie Studia Prawnicze* 145.

understood in a manner such that it is not admissible to call a referendum only with regard to laws that eliminate an unconstitutionality that the Constitutional Court has already established by a decision and also with regard to laws eliminating a violation of human rights established by a judgment of the European Court of Human Rights. The fourth indent of the second paragraph of Art. 90 of the Constitution cannot be interpreted in such a manner that it is not admissible to call a referendum in cases where the legislature adopts a statutory regulation by which it indirectly, by means of the effects that such statutory regulation produces in other legal fields, eliminates an unconstitutionality that the Constitutional Court or the European Court of Human Rights has already established.⁴⁴

The decision was severely criticized by legal scholars who argued that it interprets Article 90(2) of the Constitution too narrowly, making this interpretation inadmissible in a constitutional democracy.⁴⁵

The Constitutional Court has repeatedly emphasized that decisions causing unconstitutional consequences cannot be adopted in a referendum. This would suggest that Article 90(2) of the Constitution, which explicitly excludes some types of laws from the referendum, does not prevent the Constitutional Court from rejecting a legislative referendum in certain other cases.⁴⁶ The Constitutional Court has not yet explicitly ruled whether the constitutional list of limits on the legislative referendum is exhaustive or not. However, in its decision on the AAMFRA it stated in an *obiter dictum* that it is.⁴⁷ This position can be problematic as in some cases it would be necessary to prohibit a referendum on a law that is not listed in Article 90(2) of the Constitution to protect another important constitutional value. In this regard, it seems Slovenia might follow the practice of the Italian Constitutional Court, which is particularly interesting. Initially the Italian Constitutional Court treated the constitutionally determined limits as exhaustive and interpreted them narrowly, but later began to interpret them more broadly.⁴⁸

The legal arrangement of referendums on general legal acts of a municipality equally imposes certain legal limits. According to Article 46(1) of

⁴⁴ See Section B-I. of Decision of the Constitutional Court of the Republic of Slovenia No. U-II-3/11 of 28 September 2015.

⁴⁵ Žuber and Kaučič (n 43) 147. See also Žuber (n 33) 193–199; Bruna Žuber, 'Presoja dopustnosti izključevanja referenduma o nekaterih zakonih' [2018] Podjetje in delo 1241–1253.

⁴⁶ See Ribičič and Kaučič (n 1) 899–928.

⁴⁷ § 44 of the Decision of the Constitutional Court of the Republic of Slovenia No. U-II-1/15 of 21 October 2015.

⁴⁸ For more on the case law of the Italian Constitutional Court, see Massimo Luciani, *La formazione delle leggi: Il referendum abrogativo* (Zanichelli editore, Soc. ed. del foro italiano 2005) 322–524; Luigi Arcidiacono et al, *Diritto Costituzionale* (Cedam 2013) 190–197.

the LSGA, referendums on the budget and the annual financial statement of a municipality as well as on general legal acts that determine municipal taxes and other charges provided by a law are prohibited.

3.1.2 Formal limits

The legislation in force does not establish formal requirements as to unity of substance or unity of form. However, in previous years, a legislative referendum could also be held before the adoption of a given law (the so-called preliminary legislative referendum). In this case, the Constitutional Court could review the admissibility of the referendum question, which had to be clear, precise and in conformity with the Constitution.⁴⁹

The referendum question is now defined by law. Article 16.c of the RPIA determines:

A request to call a referendum, an initiative to the voters and an initiative to the National Assembly shall contain the referendum question, which shall read: 'Are you in favour of the entry into force of the Act (indicate the title of the Act) adopted by the National Assembly at its session of...?'

If the referendum question is not formulated in accordance with this provision, the President of the National Assembly has to correct it with the consent of the proposer of the initiative or (if no consent is obtained) call on the proposer of the legislative referendum to supplement or to correct it as appropriate within a period that may not be less than three days. If the proposer fails to supplement or correct the referendum question, the referendum request is deemed to have been withdrawn.⁵⁰

The RPIA also defines the wording of the questions for constitutional referendums and determines the procedure for correcting them and the legal consequences in case of non-compliance.⁵¹ Article 25.b of the RPIA similarly determines that a proposal to call a referendum on joining international organizations must clearly specify the question that is to be the subject of the referendum and establishes the procedure for correcting questions as well as the legal consequences in the event the proposer fails to do.

⁴⁹ Art. 15 and 16 RPIA (1996). The Constitutional Court considered unclear and imprecise referendum questions as contrary to the principle of the rule of law (Art. 2 Constitution) as well as to the very essence of a referendum. It stated that voters must be precisely informed of the contents of the question on which they are voting and that a referendum question must form a whole. See Decision of the Constitutional Court of the Republic of Slovenia No. U-I-121/97 of 23 May 1997, § 39.

⁵⁰ Art. 20 RPIA.

⁵¹ Art. 5.c and 5.č RPIA.

3.1.3 Temporal limits

There are certain temporary bans on holding a referendum on the same issue. For the constitutional referendum, Article 8 of the RPIA determines that for a period of two years after promulgation of the referendum decision, the National Assembly may not adopt a constitutional amendment whose content is contrary to the decision of the voters. Similarly, the National Assembly may not adopt a law whose content is contrary to the decision of the voters in a legislative referendum for a period of one year after the referendum.⁵² The decision of voters in a local referendum on a general act of a municipality is binding on the municipal council until the expiry of its term of office.⁵³ Finally, Article 3.a(2) of the Constitution states that if a referendum on joining an international organization has been held, a legislative referendum regarding the law on the ratification of the treaty concerned may not be called.

3.2 Limits on Citizens' Agenda Initiatives and Town Meetings

There are no explicit substantive limits on citizens' agenda initiatives and town meetings. The only implicit substantive limit on these two forms of direct democracy is the principle of constitutional democracy, meaning that citizens' proposals and decisions should not conflict with values of constitutional importance. If the proposal of a citizens' agenda initiative is not in accordance with constitutional values or with higher-ranking norms, the National Assembly will reject it.⁵⁴ Similarly, the proposals, opinions, petitions and decisions adopted at a town meeting that conflict with the most important legal values will not be implemented and will therefore remain without legal effect.

The formal requirements of the citizens' agenda initiative are provided by the RPIA. Its Article 57 provides that a proposal to initiate the procedure for amending the Constitution has to state the subject and manner of amending the Constitution as well as the reasons therefor. In addition, it must be accompanied by the signatures of at least 30,000 voters. Similarly, a legislative proposal must comprise all the elements laid down in the Rules of Procedure of the National Assembly of Slovenia and must be accompanied by the signatures of at least 5,000 voters.⁵⁵ While the RPIA does not determine any legal consequences in the event of non-compliance with the formal requirements, the Rules of Procedure of the National Assembly do so. Compliance with the

⁵² Art. 25 RPIA.

⁵³ Art. 46(4) LSGA.

⁵⁴ See Art. 122 Rules of Procedure of the National Assembly.

⁵⁵ Art. 58 RPIA.

formal requirements is reviewed by the President of the National Assembly.⁵⁶ There is no legal remedy provided against the decision of the President of the National Assembly on the formal inadmissibility of an initiative.

4. PROCEDURE FOR THE REVIEW OF REFERENDUMS

4.1 Legislative Referendums

Contrary to some other European states (such as Italy, France and Austria), in Slovenia the Constitution does not contain any rules on the constitutional and judicial review of legislative referendums. Basic rules are, however, provided by the RPIA. In addition, some further requirements have been established by the relevant case law.⁵⁷ The Administrative Court of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia are competent to provide judicial protection of the right to vote in a legislative referendum.⁵⁸ The Constitutional Court conducts a constitutional review of legislative referendums. Legal reviews of legislative referendums must take into account the principles of the separation of powers, constitutional democracy and the protection of human rights and fundamental freedoms. The reviews must be effective, efficient and fair.⁵⁹

The legal review of a legislative referendum is carried out as a preliminary review, as a review of the process for implementing the referendum and as a subsequent review.

4.1.1 Preliminary review

The purpose of a preliminary review is to ensure that voters' right to file an initiative to request the calling of a referendum and the right to require the calling of a referendum are exercised in conformity with the Constitution and the relevant legislation. In addition, a preliminary review also focuses on preventing

⁵⁶ See Art. 115.a and 172(5) Rules of Procedure of the National Assembly. It should be noted that the applicable laws do not explicitly determine who checks the signatures. From the Rules of Procedure of the National Assembly and the RPIA it can be inferred that the President of the National Assembly checks them. However, only the number of signatures is checked systematically.

⁵⁷ See for instance the Decision of the Constitutional Court of the Republic of Slovenia No. U-I-191/17 of 25 January 2018.

⁵⁸ Art. 53 and 53.a RPIA.

⁵⁹ Bruna Žuber, 'Judicial Review of the Legislative Referendum' [2019] *Revista General de Derecho Constitucional* 19. See also Bruna Žuber, 'Ustavnosodni nadzor zakonodajnega referenduma z vidika nekaterih temeljnih ustavnih načel' [2017] *Pravnik*, 623–652.

abuse of the legislative referendum (that is, attempting to carry out a legislative referendum in order to achieve goals that have no connection to the subject of the referendum) and on preventing abuse of legislative competences (for example, if the National Assembly includes in a law that is excluded from referendum decision-making issues that are not excluded from referendum decision-making with the only intent to prevent referendum decision-making on these questions).⁶⁰

The National Assembly shall call a legislative referendum if so required by 40,000 voters. A request to call a referendum may be submitted by at least 40,000 voters, provided that within seven days of the adoption of the law the initiator of the request notifies the President of the National Assembly of his or her request.⁶¹ The initiative must include a defined request and must be supported by the signatures of at least 2,500 voters.⁶²

If an initiative is submitted in accordance with the provisions of the RPIA, the President of the National Assembly determines the period during which the signatures of 40,000 voters are to be collected in support of the request to call a referendum.⁶³ However, the President of the National Assembly can also reject the referendum initiative if the formal requirements determined by the RPIA are not met.⁶⁴ Consequently, the period during which voters' signatures are to be collected in support of the request to call a referendum is not determined and the law enters into force. The referendum initiator or other persons with a legal interest may initiate a review of the constitutionality of the law that has entered into force to prove that the rejection of the referendum initiative was unlawful. If the Constitutional Court finds that there were infringements in the referendum procedure and that the referendum initiative should not have been rejected, it abrogates the law.⁶⁵ It can be concluded that the formal admissibility review (compliance with the procedural requirements) is carried out by the President of the National Assembly, whereas the Constitutional

⁶⁰ Žuber (n 59) 19. For more on a preliminary review in this regard, see: Žuber (n 33) 71–103. See also Decision of the Constitutional Court of the Republic of Slovenia No. U-I-85/16, Up-398/16, dated 14 July 2016, Official Gazette RS No. 52/16.

⁶¹ Art. 12.a RPIA.

⁶² Art. 16 RPIA.

⁶³ Art. 16.a RPIA.

⁶⁴ It has to be noted that formal requirements are not equal to formal limits. Formal requirements require that the referendum initiative is lodged in time, that it refers to the correct subject, that it is clear and that it contains a question formulated in accordance with the RPIA. If the referendum question is not formulated in accordance with the RPIA, the President of the National Assembly has to either correct it with the consent of the proposer of the initiative or call on the proposer to correct it. If the proposer fails to do so, the referendum request is deemed to have been withdrawn (Art. 20 RPIA).

⁶⁵ See Žuber (n 33) 83–93.

Court is authorized to review the constitutionality and legality of the formal admissibility review.

Within the preliminary review, assessment of the admissibility of the legislative referendum (compliance with the substantive limits) is carried out. In accordance with Article 21 of the RPIA, the National Assembly has to decide on the constitutional admissibility of a legislative referendum within 14 days of the lodging of the referendum initiative. The National Assembly acts as the legislative body and not as a court in this procedure. It decides the matter on the basis of the Constitution, the RPIA and the Rules of Procedure of the National Assembly. If the National Assembly decides that the proposed referendum is not in conformity with the Constitution, it declares it inadmissible by an order, which has to state the reasons for doing so. The proposer of the referendum can challenge the order before the Constitutional Court within 15 days. The Constitutional Court has to adopt a decision on the admissibility of the referendum within 30 days.⁶⁶ If it finds that the order of the National Assembly is not in conformity with the Constitution, the referendum procedure is continued. If it confirms the order, the referendum procedure terminates and the law is sent for promulgation and publication.⁶⁷

The Constitutional Court performs a preventive control whereby the admissibility of a referendum is resolved before it is held. This approach is in accordance with the provisions of Section III.3 of the Code of Good Practice on Referendums adopted by the Venice Commission. However, a preventive control is inappropriate in the case of urgent laws as it delays the entry into force of a law by at least a month or two. Therefore, the only exception where control over the admissibility of a legislative referendum is conducted subsequently concerns laws on urgent measures to ensure the defence of the state, security or the elimination of the consequences of natural disasters.

The procedure for legislative referendums relating to these laws is provided in Article 21.a of the RPIA, which was adopted in April 2020 in order to speed up the entry into force of laws designed to alleviate the consequences of the Covid-19 pandemic. In accordance with Article 21.a of the RPIA, at the request of the Government, the National Assembly adopts an order declaring the inadmissibility of a legislative referendum concerning laws on urgent measures to ensure the defence of the state, security or the elimination of the consequences of natural disasters irrespective of whether a referendum initi-

⁶⁶ In this procedure, the rules of the Constitutional Court Act apply. In most cases, the National Assembly and the petitioner are parties to the procedure and there is no public hearing, although Art. 29 of the Constitutional Court Act contains a legal basis for conducting public hearings. The decision of the Constitutional Court is therefore in most cases adopted on the basis of the written procedure.

⁶⁷ Art. 21 RPIA.

ative has been lodged or not. The National Assembly adopts this order seven days after the adoption of the urgent law or even earlier if the National Council decides not to require the National Assembly to decide again on such law.⁶⁸ If the National Council requires the National Assembly to decide again on such law, the National Assembly adopts an order declaring the inadmissibility of a legislative referendum as soon as the law is passed again. The order has to state the reasons for limiting referendum decision-making. After the National Assembly has adopted an order declaring the inadmissibility of a legislative referendum, the law is sent for promulgation and publication. In the event a referendum initiative is lodged, it is deemed to not have been lodged. In this case, the legal protection of voters' referendum rights is provided subsequently, after the law has entered into force. Each voter may submit a request to the Constitutional Court to initiate the procedure for a review of the constitutionality of the law by alleging a violation of Article 90(2) of the Constitution within 15 days of the entry into force of the law. The Constitutional Court has to decide thereon within 30 days. If the Constitutional Court finds that Article 90(2) of the Constitution was violated, it only abrogates the law and does not decide whether the referendum should go forward.⁶⁹

4.1.2 Review of the process for implementing a legislative referendum

The review of the process for implementing a referendum focuses on the constitutional review of the legal act that represents the legal basis for holding the legislative referendum (the so-called ordinance on calling a referendum adopted by the National Assembly), control over the referendum campaign and protection of the right to vote in a legislative referendum.⁷⁰

4.1.3 Subsequent review of a legislative referendum

In two instances, a specific subsequent review applies. First, there is the subsequent review over the admissibility of legislative referendums on laws on urgent measures to ensure the defence of the state, security or the elimination of the consequences of natural disasters in accordance with Article 21.1 of the RPIA (see Section 4.1.1 above). Second, it is possible to control whether, after

⁶⁸ In line with Art. 91 of the Constitution, the National Council may within seven days of the passing of a law and prior to its promulgation require the National Assembly to decide again on such law (suspensive veto). In deciding again, a majority of all deputies must vote for such law to be passed unless the Constitution envisages a higher majority for the passing of the law under consideration. The new decision by the National Assembly is final.

⁶⁹ As Art. 21.a of the RPIA was adopted in April 2020, there is no case law relating to this procedure yet.

⁷⁰ Žuber (n 59) 20.

the rejection of a law in a referendum, the National Assembly has adopted a new law that is contrary to the referendum decision of the voters (see Section 3.3.3 above). Furthermore, all laws passed in a legislative referendum can be subject to the procedure for a review of constitutionality.

4.2 Referendums on General Legal Acts of a Municipality

If the municipal council is of the opinion that the content of the submitted request to call a referendum is not in conformity with the Constitution or a law, it may request that the Constitutional Court review the admissibility of the referendum. The municipal council may initiate proceedings before the Constitutional Court from the day of the submission of the request until the closing date for calling a referendum. The Constitutional Court must decide on the municipal council's request within 15 days.⁷¹ The Constitutional Court prohibits referendums on general legal acts of a municipality that are explicitly excluded from referendum decision-making in accordance with Article 46(1) of the LSGA or are not in conformity with another law or the Constitution.⁷²

5. CONCLUSION

Slovenia is a relatively well-developed country with regard to direct-democratic instruments and their legal review. Slovenia is also a relatively young democracy, and it will take some time to settle the application of limits of direct democracy in practice.

The new constitutional regulation of the legislative referendum, which explicitly imposes limits on the legislative referendum, was accepted with a high degree of approval among constitutional experts. As anticipated, in the general public the imposition of limits on the legislative referendum was controversial. The criticism focused especially on the prohibition of referendums on taxes, customs and other obligatory charges and on the law adopted for the implementation of the state budget. The existing case law shows that fears that the new constitutional regulation would render any referendum decision-making practically impossible were unfounded.⁷³ Nevertheless, as in other cases, here too we will have to wait for the case law to provide answers to some questions that remain open.

⁷¹ Art. 47.a(2) LSGA.

⁷² See Igor Kaučič, 'Pravna ureditev lokalnega referenduma', in Kukovič Simona, Haček Miro, Ferfila Bogomil and Brezovnik Boštjan (eds): *Petindvajset let lokalne samouprave v Republiki Sloveniji* (University of Ljubljana, Faculty of Social Sciences 2019) 47.

⁷³ Ribičič and Kaučič (n 1) 916, 921.

Other instruments of direct democracy existing at the national level are rarely used in practice. Therefore, the legal limits on these instruments, as well as the procedures for reviewing compliance with these limits, do not raise too many questions in either theory or practice.