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COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)

STUDY ON REFERENDUMS

REPLIES TO THE QUESTIONNAIRE

ETUDE SUR LES REFERENDUMS

REPONSES AU QUESTIONNAIRE

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QUESTIONNAIRE ON REFERENDUMS

Referendum is understood as direct consultation of the people

PART I **GENERAL QUESTIONS**

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?
2. When was a national referendum introduced in your country, and in which context? (for the details see below)?
3. Is there any recent experience in your country (from 2004 on)?

B. Regional referendums

1. Do regional referendums exist in your country?
2. When were regional referendums introduced in your country, and in which context?
3. Have they been organised often or with a certain regularity?

C. Local referendums

1. Do local referendums exist in your country?
2. When were local referendums introduced in your country, and in which context?
3. Have they been organised often or with a certain regularity?

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions
2. Referendum on a specific piece of legislation
3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue
4. Referendum on an international issue (including on an international treaty)
5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

PART II **QUESTIONS ON SPECIFIC REFERENDUMS**

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) ([Code of Good Practice on Referendums](#), III.1).
2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?
2. How long in advance was the referendum called?
3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]
4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?
 - Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?
 - Held at the request of a section of the electorate (including following a popular initiative)?
2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?
2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?
3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?
4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

2. In the affirmative, did this lead to early elections?

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. Was this intervention obligatory or did it take place on appeal?
2. Did it intervene before or after the vote?
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?
2. What was the turnout?

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?
2. In the affirmative, what was the form of their intervention?

K. What lessons might be learned from this referendum?

Draft - restricted

QUESTIONNAIRE SUR LES REFERENDUMS

Le référendum est compris comme le recours direct au peuple

PARTIE I QUESTIONS GENERALES

I. Questions préliminaires

A. Référendums nationaux

1. Est-ce que le référendum national existe dans votre pays ? Est-il décisionnel ou consultatif ?
2. Quand est-ce que le référendum national a été introduit dans votre pays, et dans quel contexte (pour les détails, voir ci-dessous) ?
3. Y a-t-il une expérience récente dans votre pays (depuis 2004) ?

B. Référendums régionaux

1. Est-ce que des référendums régionaux existent dans votre pays ?
2. Quand est-ce que les référendums régionaux ont été introduits dans votre pays, et dans quel contexte ?
3. Ont-ils été organisés souvent, ou avec une certaine régularité ?

C. Référendums locaux

1. Est-ce que des référendums locaux existent dans votre pays ?
2. Quand est-ce que les référendums locaux ont été introduits dans votre pays, et dans quel contexte ?
3. Ont-ils été organisés souvent, ou avec une certaine régularité ?

II. Questions préliminaires

Donnez un exemple récent (postérieur à 1989) de chacune des catégories suivantes, si possible :

1. Référendum sur une constitution entière, ou sur une ou plusieurs dispositions constitutionnelles
2. Référendum sur un texte législatif spécifique
3. Référendums sur une question de principe ou une proposition non formulée, n'amendant pas directement la constitution ou la législation, et relative à une question sociétale ou sociale
4. Référendum sur une question internationale (y compris un traité international)
5. Référendum sur une question territoriale (indépendance, sécession, création d'une entité infra-nationale ou transfert d'un territoire d'une entité infra-nationale à une autre)
- 6.

PARTIE II QUESTIONS SUR DES REFERENDUMS SPECIFIQUES

[Vous êtes priés de répondre à cette partie du questionnaire en rapport avec un ou plusieurs référendums spécifiques relevant des catégories ci-dessus (Partie I, II), qui ont eu lieu dans votre pays]

A. Brève description (date, contexte, contenu, but, résultats)

Veillez donner la date et décrire brièvement le contexte social et politique du référendum ; quelle était l'essence de la question ; le référendum était-il consultatif ou décisionnel ? les intentions derrière le référendum ; le résultat en terme de voix ; les conséquences et effets juridiques du référendum (adoption ou abrogation d'une législation ; nouvelles négociations, etc.) ; les conséquences socio-politiques (changements dans le domaine politique ; désordre, mécontentement social, etc.)

B. Prééminence du droit et stabilité du droit

1. Est-ce que la Constitution ou une loi conforme à la Constitution prévoit le référendum ? (En particulier, des référendums ne peuvent avoir lieu lorsque le texte soumis au référendum relève de la compétence exclusive du Parlement) ([Code de bonne conduite en matière référendaire](#) (Code), III.1).
2. Est-ce que les règles du jeu étaient prévues à l'avance (dans la Constitution ou un texte législatif) ou ont-elles été rédigées à l'occasion du référendum en question (Code, II.2.b et III.1) ?

C. Question(s) soumise(s) au référendum

1. Est-ce que le vote portait sur l'adoption ou l'abrogation d'un texte constitutionnel ou législatif spécifique ? Dans l'affirmative, sur quel texte en particulier ? Ou est-ce que le vote portait sur une question de principe/une proposition non formulée ?
2. Combien de temps à l'avance le référendum a-t-il été convoqué ?
3. Donnez s'il vous plaît le texte exact ou les éléments essentiels du référendum. Quel était l'enjeu ? (Veillez utiliser des termes très simples. Par exemple : élection directe du Président de la République par le peuple).
4. Est-ce que le principe de l'unité de la matière a été respecté ? (Code, III.2)

S'il vous plaît répondez par oui ou non, et expliquez brièvement. Alternativement, si la question a été soumise à la Cour constitutionnelle, veuillez résumer la décision de la Cour.

5. Est-ce que la formulation de la question était claire, en ce sens qu'elle n'induisait pas en erreur (Code, I.3.1.c et par. 15) ?

S'il vous plaît donnez une note de 1 – qui induit en erreur - à 10 – clair et expliquez brièvement. Alternativement, si la formulation de la question a été soumise à la Cour constitutionnelle, veuillez résumer la décision de la Cour.

6. Est-ce que les autorités ont agi de manière neutre et fourni une information objective ; est-ce qu'il a été soutenu ou établi que des abus de ressources administratives ont eu lieu (Code, I.3.1.b et 12-14) ?

S'il vous plaît donnez une note de 1 – ni neutre ni objectif - à 10 – neutre et objectif - et expliquez brièvement.

7. Est-ce que les électeurs étaient dûment informés des effets du référendum ? En particulier, ont-ils été informés de son caractère décisionnel ou consultatif et sur le fait qu'il entraînait ou non la modification d'un texte juridique ?

S'il vous plaît donnez une note de 1 – pas dûment à 10 – dûment et expliquez brièvement.

8. Est-ce que les électeurs ont pu répondre à la question posée par oui, par non ou par un vote blanc ?

S'il vous plaît répondez par oui ou par non, et expliquez brièvement.

D. Initiative du référendum et avis du Parlement

1. Est-ce que le référendum était :
 - Obligatoire (la Constitution ou une loi prévoit que le texte doit être soumis au référendum)
 - Organisé à la demande d'une autorité (le Président, le Gouvernement, le Parlement, une minorité de parlementaires, des entités locales ou régionales)
 - Tenu à la demande d'une fraction du corps électoral (y compris suite à une initiative populaire) ?
2. Si le texte a été soumis au vote à la demande d'une autorité autre que le Parlement ou d'une fraction du corps électoral, est-ce que le Parlement a pu donner un avis de caractère consultatif ? (Code, III.6)

Cette question vise à déterminer si l'exécutif a utilisé le référendum (le cas échéant à travers une demande d'une fraction du corps électoral) pour contourner le Parlement.

- #### **E. Quel a été le résultat du référendum** (si possible en pourcentage (a) des votants et (b) des personnes ayant le droit de vote)

F. Effets du référendum (Code, III.8)

I. Effets juridiques

1. Est-ce que le référendum était décisionnel ou consultatif ?
2. Si le référendum portait sur une question de principe ou était rédigé en termes généraux, quelles ont été les étapes suivantes en cas d'approbation ?
3. Si le référendum portait sur un projet rédigé de réforme de la Constitution, est-ce qu'un texte législatif a été adopté pour le mettre en œuvre, et quel était son contenu ?
4. Si le référendum portait sur une loi sur un projet de loi rédigé, quel a été son effet ? L'adoption, l'abrogation d'une loi ?

II. Effets politiques

1. Est-ce que le sort des autorités était en jeu ?

S'il vous plaît donnez une note de 1 – elles n'étaient pas affectées à 10 – elles étaient affectées et expliquez brièvement.

Dans l'affirmative, est-ce que cela a conduit à des élections anticipées ?

G. Rôle du pouvoir judiciaire

Est-ce que le pouvoir judiciaire a été impliqué dans la procédure référendaire et, dans l'affirmative, dans quel sens ?

En particulier :

1. Est-ce que cette intervention était obligatoire ou est-ce qu'elle a eu lieu sur recours ?
2. Est-ce qu'elle a eu lieu avant ou après le vote ?
3. Est-ce qu'elle concernait la formulation de la question et/ou le contenu du texte soumis au vote populaire ?
4. Est-ce que la Cour constitutionnelle a exercé un contrôle de la constitutionnalité de la question soumise au référendum ?

H. Rôle de l'administration électorale

Est-ce qu'il a été demandé à une autre autorité, par exemple la Commission électorale centrale, de se prononcer sur la formulation de la question ? Si oui, quelle a été la nature de son avis ?

I. Quorum et participation (cf. Code, III.7)

1. Y avait-il un quorum de participation ou un quorum d'approbation ?
2. Quel a été le taux de participation ?

J. Rôle des acteurs internationaux

1. Est-ce que des acteurs internationaux (y compris l'Union européenne) ont pris position sur la question soumise au référendum ?
2. Dans l'affirmative, quelle a été la forme de leur intervention ?

K. Quelles leçons peuvent être tirées de ce référendum ?

1. ALBANIA

A.

1. The national referendum is foreseen by the constitution of Albania (1998). The constitution does not explicitly state that the national referendum is binding, but by interpreting its provisions, we conclude that the referendum is binding, based on its legal effects.
2. The referendum is foreseen since 1991 in the Law "On principle constitutional provisions", which was approved by the assembly immediately after the fall of the communist regime. These provisions consider the referenda as a tool for the people to exercise direct democracy. However, the referendum was regulated in detail with the law "On the referendum" of 1994, just before the people were called to approve the constitution of 1994. (The last one rejected by this referendum).
3. There is no recent experience in Albania. The last referendum was held in 1998, called by the parliament in order to approve the new Constitution of 1998.

B. NO

C.

1. The local referendum is foreseen by the constitution of Albania (1998).
2. It was introduced in 1992 by the law "On the organization and functioning of the local government in Republic of Albania". The referendum was introduced as a tool to take decisions, in case of important issues of the local government (art.4 of the law). Regarding all the details, this law referred to the law on referendums.
3. The local referendum has never been organized or called in Albania. There were some initiatives from the citizens, which were rejected from the Central Elections Commission, or Electoral College.

II.

1. There have been a total of two referendums on the Constitution.

1994. The referendum that rejected the draft constitution.

1998. The referendum that approved the Constitution, which is still in force.

2. No
3. 1997. The referendum on the form of Government: Republic or Monarchy
4. No
5. No

Part II.

- A. A constitutional referendum was held in Albania on 22nd of November 1998. It was initiated from the Parliament to approve the new Constitution, which was approved on the 21st of October 1998. The new Constitution was approved only from the government's political parties and some small parties of the opposition in the Assembly. The opposition opposed the project and invited the people to boycott the referendum. The referendum was binding and by its decision depended the new Constitution after the fall of the communist regime. The intention of the government was to largely legitimate the new Constitution, due to the lack of consent from biggest political parties of the opposition. The results in terms of voting: It was approved by 93.5% of voters with a participation of 50.6%, and came into force on 28th November. The legal result of this referendum was the approval of the new Constitution, which was the first whole Constitution after the fall of the communist regime.

B.

1. The Constitution of Albania provides the possibility for a referendum. The Constitution foresees different categories of it, along with several procedures. It also foresees the cases where an issue or a text can be submitted to the referendum. Thus, we think it is clear in the Constitution that a referendum cannot be held, in case the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction.
2. The rules for the referendum were provided by the law "On the referendum", 1994. This law was amended by the law no. 8416, date 12.10.1998, 40 days before the referendum was held on 22.11.1998.

C. Question put to referendum

1. The vote in this referendum was regarding the adoption of the Constitution of Albania, 1998. Voters were asked whether they approved of the constitution. They had two choices: Yes or No.
2. The referendum was called one month in advance. The Parliament decided on 21st October and the Referendum was held in 22nd November 1998.
3. The approval of the Constitution of Albania in 1998.
4. YES. The formulation was clear. The case was not submitted to the Constitutional Court.
5. In general, the authorities acted in a neutral way and the whole process was monitored from international organizations. Rating: 7.
6. The electors were informed about the procedures and the effects of the referendum. It was a campaign for information and the CSO and International organizations were very active in it, organizing meetings, round tables and info through media. Rating: 9.
7. Yes! There were only two alternatives Yes or No.

D. Initiator of the referendum and the opinion of the Parliament

1. The referendum was held at the request of the Parliament.
2. The decision was taken by the Parliament with the majority of votes. The opposition opposed both the draft and the referendum.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote). The referendum was voted by the 50.57% of the total number of registered voters.

F. Effects of the referendum**I. Legal Effects**

I.1. the referendum was legally binding.

3. The effect was the approval of the Constitution, which after the results of referendum, was proclaimed by the President of the Republic and entered into force.

II. Political effects

1. Theoretically, the position of the authorities was at stake. The political situation was very delicate after the very much conflictual events of 1997 in Albania. But, on the other side, when the referendum rejected the draft constitution in 1994, the authorities continued to work. Even in this case they didn't show any relation between the results of the referendum and political costs. There wasn't a culture of resignation for politicians in Albania at that time. For the above reasons, the rating might be 4.
2. The referendum didn't affect the elections' time.

G. The judiciary wasn't involved in that case.

H. The Central Election Commission didn't address any formulation of the question.

- I. It was only an approval quorum. It was not a turnout quorum, which was abolished from the law on referendum, with amendments of 1998. The approval quorum was more than 50% of the voters.
- 1. The international actors were very active and their role was very important for the progress of the referendum.
- 2. Their role was limited and focused on the referendum campaign and informing the voters. However, because of referendum's type, they took a position pro the referendum, but it was also an orientation pro the Constitution.
- J. Lessons learned.

The role of International organizations is very important, in the transition's societies. The procedural rules should be improved by law periodically, in order not to be changed before the referendum.

The role of CSO during the referendum campaign is very important.

The turnout quorum should be decided taking in consideration the high number of emigration from Albania.

2. ANDORRA

QUESTIONNAIRE ON REFERENDUMS

(My Answer followings Letters and Numbers)

Part I:

I:

- A. 1 Yes, one consultative (Art 76 Andorra Constitution, AC), one binding (Art 106 AC)
- 2. March 1993 with the approval of the Constitution.

3.-No

B.- No regional Referendum

C.- No local Referendum

Part I.

II .-

- 1. 1993, Referendum to approve the Constitution, 14th March 1993.

Part II:

A. The above mentioned Referendum was made to approve the Constitution of Andorra, a country with a 7 centuries long tradition based on customary law plus different kind of tradition but this 1993 Constitution is the first written modern Constitution. The Referendum was binding. The Consell General (Parliament) approved it my unanimous vote.

Choice Votes %

For 4,903 74.19

Against 1,706 25.81

Invalid/blank votes 301 -

Total 6,910 100

Registered voters/turnout 9,123 75.74

B.- 1 and 2. The draft of the Constitution was negotiated by the two co-princes (The President of France and the Bishop of Urgell) and the Parliament, under an ad-hoc "trilateral committee" which started to work in January 1991 and ended up the agreement in December 1992.

C. 1,2,3,4 and 5: The referendum was called two months and a half in advance. The question was clear and simple: Do you approve the project of Constitution? The unity of Content: yes. The Constitutional Court did not exist yet (in march 1993).

6.- Authorities behavior: 10 as neutral and objective.

7.- Very well informed as binding. Voters were very well aware of the meaning of the vote.

D.- Already answered, this question looks redundant. It was called by a decision of the two co-princes and the Parliament.

E and F: Already answered.
G.- Judiciary not involved.

H.- The equivalent of a Central Electoral Commission did not exist yet. The Government was in charge of announcing the National Result, the management of the voting day involved (as for Polling Stations, staff, etc) the “Comuns”, this is the local Government of each of the Seven Administrative districts of Andorra.

I.- see above, no quorum required.

J.- No international formal position. Informally and off the record the States of France and Spain were in favour.

K.- Lessons learned, the classic ones: a clear question, to be answered by yes , no or blank vote, and also, in a small country the logistics are simpler than in a big one.

3. ARMENIA

Nota bene: *In accordance with the Article 103, paragraph 2 of the Constitution of the Republic of Armenia with the 2015 amendments “[...] the Law on Referendum.... shall be constitutional law and be adopted by at least three fifths of votes of the total number of Deputies”. As of January 31, 2018, the RA Draft Constitutional Law on Referendum is submitted to the Parliament but it is not adopted yet*

PART I

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

National referendum exists in Armenia. The national referendum is of binding nature.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

National referendum introduced in Armenia on April 2, 1991, when the RA Law on the Referendum was adopted to prepare the necessary legislative background for the Referendum on Independence of Armenia held on September 21, 1991.

3. Is there any recent experience in your country (from 2004 on)?

The referendum on Constitutional Amendments held on November 27, 2005.

The referendum on Constitutional Amendments held on December 6, 2015.

B. Regional referendums

1. Do regional referendums exist in your country?

There is no institute of regional referendum in Armenia.

2. When were regional referendums introduced in your country, and in which context?

There is no institute of regional referendum in Armenia.

3. Have they been organized often or with a certain regularity?

There is no institute of regional referendum in Armenia.

C. Local referendums

1. Do local referendums exist in your country?

Local Referendums exists in Armenia.

2. When were local referendums introduced in your country, and in which context?

Local referendums were introduced in Armenia on February 6, 2002, when the RA Law on Local Referendum was adopted.

3. Have they been organised often or with a certain regularity?

Only three local referendums held simultaneously on the issue of the unification of certain communities in Syunik, Lori and Tavush of the Republic of Armenia, accordingly, on May 17, 2015.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

The Referendum of the Adoption of the Constitution of the Republic of Armenia held on July 5, 1995. Three, posterior referendums on the Constitutional Amendments held in Armenia on May 25, 2003, November 27, 2005 and December 6, 2015 accordingly.

2. Referendum on a specific piece of legislation

There is no experience on the issue yet. Nevertheless, this possibility is provided by the Armenian Legislation on the Referendum (Article 4 of the RA Law on Referendum of September 12, 2001).

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

There is no experience on the issue yet. Nevertheless, this possibility is provided by the Armenian Legislation on the Referendum (Article 4 of the RA Law on Referendum of September 12, 2001).

4. Referendum on an international issue (including on an international treaty)

There is no experience on the issue yet. Nevertheless, this possibility is implicitly provided by the Armenian Legislation on the Referendum. In particular, Article 4 of the RA Law on Referendum of September 12, 2001 stipulates that “[t]he issues of adopting or amending the Constitution, adopting the laws as well as issues of revealing public opinion on key issues of state life can be submitted to referendum.”

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

The Referendum on Independence held in Armenia on September 21, 1991

PART II QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

The Referendum on the amendments of the Constitution of the Republic of Armenia held on December 6, 2015. The necessity of the referendum was interconnected with the transition from semi-presidential to parliamentary form of government, promotion of parliamentarism in Armenia, strengthening of the role of political parties in political life as well as increasing the

constitutional guarantees for the establishment of the constitutional democracy in the country. Referendum was binding, since in accordance with Article 111 of the Constitution of the Republic of Armenia with 2005 amendments: “[t]he Constitution shall be adopted and amendments thereto shall be made through referendum, at the initiative of the President of the Republic or the National Assembly”. 1.302.613 persons participated in referendum 825.521 persons voted in favour of Constitutional Amendments.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament’s exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

Article 111 of the Constitution of the Republic of Armenia, with 2005 amendments stipulated that “[t]he Constitution shall be adopted and amendments thereto shall be made through referendum, at the initiative of the President of the Republic or the National Assembly.

The referendum shall be called by the President of the Republic upon the proposal or consent of the National Assembly. The National Assembly shall adopt the relevant decision by a majority of votes of the total number of deputies.....

Where the majority of the total number of deputies of the National Assembly vote in favour of the draft, the latter shall be deemed adopted, and the President of the Republic shall put it to referendum within a period defined by him or her”.

2. Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The rules of game were provided in advance in Article 111 of the Constitution of the Republic of Armenia with 2005 amendments and the RA Law on Referendum of September 12, 2001 (See, Answers to Paragraph B1) (in particular Articles 4 and 7 thereto).

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

The vote was on the adoption of a specific constitutional text (New edition of the 1995 Constitution of Armenia, with amendments)

2. How long in advance was the referendum called?

On October 5, 2015 the National Assembly of the Republic of Armenia adopted “the Decision on the consent to call a referendum on the draft constitutional amendments”. On October 8, 2015 the President of the Republic of Armenia signed “the Decree on the calling of referendum on the constitutional amendments.” In accordance with the Operative Paragraph 1 of the Presidential Decree, the referendum was appointed on December 6, 2015. Thus the date was appointed about two months before the referendum held.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Transition to the parliamentary form of government;

Promotion of parliamentarism;

Strengthening of the role of political parties in political life;

Increasing the constitutional guarantees for the establishment of the constitutional democracy in the country;

Increasing of powers of Constitutional Court;

*Strengthening of Judiciary;
Improvement of local self-governance.*

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

Yes, the principle of unity was respected since the proposed text of constitutional amendments was rather a new edition of the text of 1995 Constitution with 2005 amendments.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

10 (clear). The formulation of question was quite clear. The wording was the following one: "Do you agree with the Draft amendments to the Constitution of the Republic of Armenia", with two alternative answer options "YES" and "NO", accordingly.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-

14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.
10 (neutral and objective). No serious violation or abuse of administrative resources was observed.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

10 (duly). All the referendums on the constitutional amendments are binding in Armenia. The 2015 referendum on constitutional amendments was the third referendum on the relevant issue since 2003.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote? Please answer with a yes or a no and explain briefly.

Yes they were able to answer. It was clearly mentioned in ballot-paper.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

The referendum was mandatory, since it was stipulated in Article 111 of the Constitution of the Republic of Armenia (with 2005 amendments) that "[t]he Constitution shall be adopted and amendments thereto shall be made through referendum, at the initiative of the President of the Republic or the National Assembly".

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

The referendum held at the request of the President of the Republic of Armenia.

- Held at the request of a section of the electorate (including following a popular initiative)?

No.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

The opinion of Parliament was mandatory under Article 111 of the Constitution of the Republic of Armenia with 2005 amendments, as well as under Article 7, paragraph 2 of the RA Law on Referendum of September 12, 2001, which stipulated that: “[a]fter approving... the draft of the constitutional amendments by the procedure defined by the Law of Republic of Armenia “National Assembly Rules of Procedure”, the National Assembly sends the draft to the President of Republic of Armenia in order to submit it to referendum”.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

The referendum succeeded and the Constitutional amendments were approved. In accordance with the Decision No. 99-A on the Summarizing the Results of Referendum on Constitutional Amendments held on December 6, 2015, adopted on December 13, 2015 by the Central Electoral Commission of the Republic of Armenia, 2.566.998 persons had the right to vote and 1.302.613 persons participated in voting (50.74%). 825.521 (63.37%) persons voted in favour of Constitutional amendments and 421,568 (36.63%) persons voted against them.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

The referendum was legally binding.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

The next step of referendum was the amendment of Constitution.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

The referendum was on the new edition of Constitution. After its adoption the National Legislation was amended to meet the requirements of the Constitution (the process is still ongoing).

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

No.

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

1 - Non-affected. There was a general consensus among the political parties on the constitutional amendments.

2. In the affirmative, did this lead to early elections?

The Referendum did not lead to early elections.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense? In particular:

1. Was this intervention obligatory or did it take place on appeal?

No.

2. Did it intervene before or after the vote?

No.

3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

No.

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

The Constitutional Court had no constitutional authorities to exercise a control of constitutionality of the questions submitted to referendum. Under Article 100 of the Constitution of the Republic of Armenia with 2005 amendments: "[t]he Constitutional Court shall, as prescribed by law.... (3) settle the disputes concerning the results of referenda."

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

No

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

In accordance with Article 113 of the Constitution of the Republic of Armenia with 2005 amendments: "[t]he draft put to referendum shall be deemed adopted in case more than half of the participants of the voting, but not less than one fourth of citizens enrolled in electoral lists, have voted in favour. 32.15% of citizens enrolled in the electoral list voted in favour of the constitutional amendments.

2. What was the turnout?

In accordance with the Decision No. 99-A on the Summarizing the Results of Referendum on Constitutional Amendments held on December 6, 2015, adopted by the Central Electoral Commission of the Republic of Armenia on December 13, 2015, 2.566.998 persons had the right to vote and 1.302.613 persons participated in voting (50.74%). 825.521 (63.37%) persons voted in favour of constitutional amendments and 421,568 (36.63) persons voted against them.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

The Venice Commission of the Council of Europe endorsed the opinions on Armenia's constitutional amendments.

2. In the affirmative, what was the form of their intervention?

Delegations of CIS, Inter-Parliamentary Assembly of CIS, PACE, OSCE/ODIHR, foreign Central Electoral Commissions as well as representatives of diplomatic missions accredited to the Republic of Armenia observed the Referendum.

K. What lessons might be learned from this referendum?

The referendum was an important step for the promotion of democracy in Armenia. It created a legal fundament for further constitutional developments, in particular, for transition from semi-presidential to parliamentary form of government, promotion of parliamentarism

in Armenia, strengthening of the role of political parties in political life as well as increasing the constitutional guarantees for the establishment of the constitutional democracy in the country.

4. AUSTRIA

Part I

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

According to the Austrian Constitution (Bundes-Verfassungsgesetz) there are three types of referenda on national level. These types are: Volksbegehren (petition), Volksentscheid (referendum), Volksbefragung (public opinion vote). The "Volksbegehren" and the "Volksentscheid" have a binding nature, while the "Volksbefragung" has a consultative character. The "Volksbegehren" (petition) is aimed to produce a specific law. It is produced by a quota of the persons eligible to vote; the respective legal initiative has to be dealt with in Parliament (Nationalversammlung).

The "Volksentscheidung" (referendum) is the voting of the persons eligible to vote on a specific law already developed and decided on in Parliament. If the necessary quota is achieved, the law will enter into force. Otherwise, the law making process ends. Two types of referenda have to be remarked: an obligatory referendum and a facultative referendum. According to the Constitution, a law amending the Constitution in a fundamental manner and by this changing the legal framework of the state has to be approved per referendum. Any other law (constitutional or not) can be subject to a referendum. It is up to the Parliament to decide on this.

Parliament may decide that a matter of fundamental concern for the entire Austria ("Angelegenheit von grundlegender und gesamtösterreichischer Bedeutung") is subject to a public opinion vote ("Volksbefragung"). A respective question in a "Yes/No-format" is presented to the persons eligible to vote in order for them to give their opinion. The outcome of the public opinion vote is not legally binding but has a strong political impact.

2. When was a national referendum introduced in your country, and in which context?

In 1920, the Bundes-Verfassungsgesetz entered into force, building up a democratic order for the Republic of Austria after World War I. This Constitution, of course with a number of more or less important amendments, is still in force. The Constitution forms a concept of a representative democracy in Austria, complimented with some elements (instruments) of a direct democracy, namely the petition and the referendum. Both instruments have been established in 1920. They had been subject to changes in detail, e.g. regarding the necessary quota, but not in general. The public opinion vote has been introduced in 1988 in order to strengthen the elements of a more direct democracy in Austria.

3. Is there any recent experience in your country (from 2004 on)?

All three types of referenda are used very rarely. In 1994, an obligatory referendum was held with respect to the accession of Austria to the European Union. Since then, no (obligatory or facultative) referendum has been taken place. Since 2004, no petition was successful in the sense that it led to a law. In 2013, the first and so far only public opinion vote took place on the issue of the mandatory military service. As the majority of voters agreed on keeping the mandatory military service, the respective dispute in the government was solved according to the outcome of the public opinion vote.

Since 2004, some political debates occurred which aimed at strengthening the elements of direct democracy in Austria. Some proposed the introduction of new instruments; others suggested facilitating the use of the existing instruments. Until now, no major amendments entered into force though the issue is still on the political agenda.

B. Regional Referendums

1. Do regional referendums exist in your country?

In Austria, the Länder form the regional level in the government structure. In all 9 “Länder”, there exists referenda and petition as instruments of a direct democracy following the types of referenda on national level (see above). The public opinion vote (see above) exists in 8 “Länder” but not in Vienna (forming the 9th Land).

2. When were regional referendums introduced in your country, and in which context?

According to the federal structure of Austria, the development of the referendums on national and regional level is not identical but similar.

3. Have they been organised often or with a certain regularity?

Also on regional level, referenda are organised rarely.

C. Local referendums

1. Do local referendums exist in your country?

According to the respective law of the Länder, referenda exist on local level. As the local level is not competent to decide on laws, the types of referenda on local level differ from those on national and on regional level. They are intended to lead to specific decisions which can be taken on local level. There is a variety of different referenda, some of them of binding nature, some of them of consultative nature.

2. When were local referendums introduced in your country, and in which context?

As the local referendums are regulated by laws of the Länder, there is not a single development of the local referenda in Austria. Generally speaking, the existence of local referenda is not a new development. It can be established that sometimes on local level the development of the legal framework for referenda is more advancing.

3. Have they been organised often or with a certain regularity?

Referenda on local level are organised more often, but still rarely.

Part II – Questions on specific referendums

A. Short description

On 20 January 2013 a public opinion vote was held on the future of the mandatory military service. It was the first nationwide public opinion vote ever held; since then, no public opinion vote was organised.

Background: At the relevant time, the Austrian Government was formed by a two-party coalition, consisting of SPÖ (Sozialdemokratische Partei Österreichs) and ÖVP (Österreichische Volkspartei), under the leadership of Chancellor Faymann (ÖVP). The issue of the mandatory military service was disputed between the two parties forming the coalition. The plan to disestablish the mandatory military service and to transform the army into a professional army was developed in the SPÖ from 2010. It was linked to the idea of not deciding on this issue in Parliament but by a “referendum”. On the future of the mandatory military service (which is linked with the alternative civilian service) no decision could be found within the Government. In a political deal between the two parties forming the coalition it was agreed on organising a public opinion vote on the mandatory military service. This agreement took place in August 2012. Though this type of referendum is not legally binding, the parties agreed on following the outcome of the public opinion vote. In fact, the public opinion vote became a politically binding effect.

The realisation of the public opinion vote had been discussed in Parliament and in the general public since the Government’s agreement in August 2012. The discussion focussed on two major issues. The first one was the discussion of pro and contra regarding the two models with respect to the military and the civilian service developed and presented by the two parties forming the coalition. The second issue of the discussion was the legal framework of the public opinion vote as it was the first vote of this kind organised ever. In the latter regard, the discussion emphasized the importance of the exact language of the question which has to be voted on by the people eligible to vote.

The exact language of the relevant question was fixed in September 2012. It was not in a “yes/no”-format but presented the two models regarding the military service in order for the people

to decide. ("Are you in favour of the building of a professional army and a paid voluntary civilian service of one year? OR Are you in favour of keeping the mandatory military service and the civilian service?"; in German: "Sind Sie für die Einführung eines Berufsheeres und eines bezahlten freiwilligen Sozialjahres? ODER: Sind Sie für die Beibehaltung der allgemeinen Wehrpflicht und des Zivildienstes?").

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum?

2. Where the "rules of the game" provided in advance or were they drafted on the occasion of the specific referendum?

The Constitution provides for the most important elements of the "rule of the game". A respective law provides for the details (Volksbefragungsgesetz 1989, BGBl. Nr. 356/1989). The law entered into force together with the respective constitutional norms in advance.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? [...]

The vote was not on a specific constitutional/legislative text but on two proposals with respect to the compulsory military service (see above).

2. How long in advance was the referendum called?

4 months in advance

3. Please give the precise wording or the essential elements of the referendum?

"Are you in favour of the building of a professional army and a paid voluntary civilian service of one year? OR Are you in favour of keeping the mandatory military service and the civilian service?"; in German: "Sind Sie für die Einführung eines Berufsheeres und eines bezahlten freiwilligen Sozialjahres? ODER: Sind Sie für die Beibehaltung der allgemeinen Wehrpflicht und des Zivildienstes?"

4. Was the principle of unity of content respected?

5. Was the formulation of the question clear, in the sense that it was not misleading?

Rate: 8. The question was rather clear, but it was necessary to be informed on the political debate which took place before the vote to fully understand the alternative proposals.

6. Did authorities act in a neutral way [...]

Rate 10. There have not been any indications for any not neutral acting of the authorities.

7. Were electors duly informed about the effects of the referendum? [...]

Rate 8. There had been a broad discussion before the vote on the nature of the public opinion vote as it was the first time this type of referendum was organised. Voters were informed that the public opinion vote is legally not binding. But at the same time, the Government "promised" the voters that the Government would act according the outcome of the vote. Accordingly, the vote had been given a binding effect.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Voters were able to mark one of the proposals with a cross or to cast a blank vote.

D. Initiator of the referendum an opinion of Parliament

1. The referendum

- was not mandatory

- was held on a request by Parliament (in fact, the Government agreed to organise the referendum but the formal decision was taken by Parliament).

E. Outcome

Participation at the public opinion vote: 48,99 %

Outcome: 40,23 % (1.225.457 votes) in favour of the building of a professional army and a paid voluntary civilian service of one year; 59,77 % (1.821.005 votes) in favour of keeping the mandatory military service and the civilian service

F. Effects of the referendum

- I. Legal effects
 - 1. The referendum was consultative.
 - 2. The Government decided according to the outcome of the public opinion vote to keep the compulsory military service.
 - 3. --
 - 4. ---
- II. Political effects

See above. The vote did not lead to early elections.
- G. Role of the judiciary

The judiciary was not involved in the referendum procedure.
- H. Role of the electoral management body

The formulation of the question was only discussed in Parliament.
- I. Quorum and turnout

See E. above.
- J. Role of international actors

Sorry, I do not have the information.
- K. Lessons learned

5. AZERBAIDJAN

PART I GENERAL QUESTIONS I. Preliminary questions A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?	Yes, it exists and provided by Article 3 of 1995 Constitution ¹ . It is only binding ² .
2. When was a national referendum introduced in your country, and in which context?	A national referendum was introduced in Azerbaijan in March 1991 with the adoption of the Law on Nation-Wide Voting (Referendum of Republic of Azerbaijan) ³ . The first referendum held in Azerbaijan was an independence referendum of 29 December 1991.
3. Is there any recent experience in your country (from 2004 on)?	Two referendums were held in Azerbaijan since 2004: <ul style="list-style-type: none"> 1) Constitutional referendum of 18 March 2009;

¹ Article 3 of the Constitution provides:

I. The people of Azerbaijan may resolve any issue related to their rights and interests by means of a referendum.

II. The following issues may be resolved only by referendum:

1) the adoption of the Constitution of the Republic of Azerbaijan and introduction of changes thereto;

2) the alteration of state borders of the Republic of Azerbaijan.

III. No referendum may be held with respect to the following issues:

1) taxation and state budget;

2) amnesty and pardon;

3) election, appointment or approval of the officials, whose election, appointment or approval is assigned to the competence of the legislative and (or) executive bodies.

² Under Article 142 of the Election Code of the Republic of Azerbaijan, any act adopted by means of a referendum shall be final; it shall have a compulsory legal force in the whole territory of of Azerbaijan and may be cancelled or changed only by means of a referendum.

³ Hereafter - 1991 Law on Referendum.

2) Constitutional referendum of 26 September 2016.

B. Regional referendums.

1. Do regional referendums exist in your country?	Regional referendums do not exist in Azerbaijan.
2. When were regional referendums introduced in your country, and in which context?	Regional referendums were never introduced in Azerbaijan.
3. Have they been organised often or with a certain regularity?	

C. Local referendums.

1. Do local referendums exist in your country?	Local referendum exists in Azerbaijan in the form of local opinion survey.
2. When were local referendums introduced in your country, and in which context?	Local opinion survey was introduced in Azerbaijan in 1999, when Law on Local Opinion Survey was adopted.
3. Have they been organised often or with a certain regularity?	

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions	Referendum on a whole constitution was held on November 12, 1995. Referendums on several constitutional provisions were held on August 24, 2002, on March 18, 2009, and on September 26, 2016.
2. Referendum on a specific piece of legislation	Referendum on a specific piece of legislation has not yet been held in Azerbaijan.
3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue	A national vote of confidence in President Abulfaz Elchibey was held in Azerbaijan on August 29, 1993.
4. Referendum on an international issue (including on an international treaty)	Referendum on an international issue (including on an international treaty) has not yet been held in Azerbaijan.
5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)	Referendum on independence was held on December 29, 1991.

PART II QUESTIONS ON SPECIFIC REFERENDUMS

A. Short description (date, background, content, aim, outcomes)

On November 12, 1995 a **Constitutional referendum** was held in Azerbaijan.

The collapse of the USSR and gaining the state independence by Azerbaijan caused serious political, socio-economic, and cultural changes in the country.

The adoption of the Constitutional Act on State Independence of the Republic of Azerbaijan on October 18, 1991 envisaged the establishment of an independent state structure, political and economic structures of the Republic. In the referendum, held on December 29, 1991 more than 95% of the population of the Republic supported the Constitutional Act.

Changes in the socio-political and legal life since the restoration of the country's independence, as well as the provisions of the Constitutional Act, required the adoption of the new Constitution. Moreover, although many amendments and additions with regard to the determination of powers of various authorities were introduced in the text of the 1978 (so-called Soviet) Constitution in the 1991-1993 period, chapter VII, which defines the status of Azerbaijan as a part of the USSR, had not been abolished. Formally, this chapter was considered void due to Article 4 of the Constitutional Act of 18 October 1991. Under this Article the provisions of Constitution of 1978 remain in force so long as they do not contradict the Constitutional Act.

Although certain attempts were made to prepare the draft of the new Constitution before 1995, all of them were unsuccessful. For example, on February 9, 1991 by the decision of the Supreme Council of the Republic of Azerbaijan, a Constitutional Commission consisting of 74 members was set up, but for two years the Commission was inactive and did not develop any draft. Another Commission consisting of 14 members and created by the Decision of the Milli Majlis on December 6, 1993, also did not come up with any tangible result.

This was mainly explained by the facts, that the country was involved in conflict with Armenia over Nagorno-Karabakh and ceasefire agreement with the Republic of Armenia was the signed only in May, 1994. The coup attempts of October 1994 and March 1995 should also be mentioned in this regard.

On May 2, 1995, the Milli Mejlis of the Republic of Azerbaijan adopted a Decision, that approved the composition of the Commission, which was entrusted with the task to prepare a draft of the new Constitution of the Republic of Azerbaijan. The Commission was composed of the representatives of the legislature, the executive and the judiciary, experts representing legal academia of the country.

The Constitutional referendum of 1995 was binding.

Results of the referendum:

- the total number of voters in voter lists - 4 132,600
- number of voters participating in voting - 3 556 227 (86%)
- the number of citizens who answered "yes" - 3 267 538 (91.9%)

The new Constitution created a system of government based on separation of powers and rule of law. The adoption of the Constitution was an important step towards Azerbaijan's accession to the Council of Europe.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction)

The referendum was held in accordance with Article 15 of the Constitutional Act on State Independence of the Republic of Azerbaijan.

The Article provides that the Constitution of the Azerbaijan Republic shall be adopted by means of referendum, held by a decision of the Parliament among the entire population of Azerbaijan.

	<p>For the implementation of this provision, the Parliament by a Decision of May 2, 1995 established the Constitutional Commission.</p> <p>On October 3, 1995 the Parliament adopted a Decision, which stipulated holding of the Constitutional referendum on November 12, 1995.</p>
<p>2. Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum?</p>	<p>Holding of 1995 Constitutional referendum was based on Article 15 of the Constitutional Act on State Independence of the Republic of Azerbaijan.</p> <p>The organization and holding of the referendum was carried out in accordance with the provisions of Law on Referendum, adopted on March 7, 1991.</p>
<p>C. Question(s) put to referendum</p>	
<p>1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?</p>	<p>The vote was on the adoption of the text drafted by the Constitutional Commission.</p>
<p>2. How long in advance was the referendum called?</p>	<p>On October 3, 1995 the Milli Majlis adopted a decision on holding of the Constitutional referendum on November 12, 1995, i.e. the referendum was called in advance of 40 days.</p>
<p>3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]</p>	<p>Adoption of the text of the new Constitution drafted by the Constitutional Commission was at stake on this referendum.</p>
<p>4. Was the principle of unity of content respected? (Code, III.2).</p> <p>Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarize the Constitutional Court’s decision.</p>	<p>Requirement for unity of content does not apply to cases of total revision/adoption of a new constitution.</p> <p>Under 1995 Constitution, the Constitutional Court shall be requested in advance to give its opinion with respect to the changes to the text of the Constitution (Article 153).</p>
<p>5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)? Please rate from 1 - misleading to 10 - clear cut and explain briefly.</p>	<p>The formulation of the question was clear.</p> <p>The question on the ballot paper asked whether a voter agree to approve the draft of the first national Constitution presented by the Constitutional Commission.</p>

<p>Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.</p>	<p>The Constitutional Court in Azerbaijan was created after adoption of 1995 Constitution.</p>
<p>6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?</p>	<p>The authorities acted in a neutral way and provided objective information.</p>
<p>7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?</p>	<p>Voters were well informed that the referendum is binding. Moreover, the legislation (1991 Law on Referendum) stipulated that results of all referendums are binding. Holding of consultative referendums was not provided in the legislation. By 1995 in Azerbaijan two referendums with binding effect had been already held.</p>
<p>8. Were electors able to answer the question asked by yes, no or to cast a blank vote? Please answer with a yes or a no and explain briefly.</p>	<p>Yes, they were. A voter was asked to choose the answer options "yes" or "no". A voter also may have left the ballot blank. But that led to invalidation of the casted vote.</p> <p>According to Article 22 of 1991 Law on Referendum the statement of every issue put to referendum and the possible responses of voters, (e.g. "for" and "against", "yes" and "no," "I agree" and "I disagree", etc) shall be written on the ballot paper. Under Article 23 of the Law, the blank vote shall be considered invalid.</p>

D. Initiator of the referendum and opinion of Parliament

<p>1. Was the referendum:</p> <ul style="list-style-type: none"> - Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)? - Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)? - Held at the request of a section of the electorate (including following a popular initiative)? 	<p>The Constitutional referendum of November 12, 1995 was mandatory and held by a decision of the Parliament in accordance with the requirements of Article 15 of the Constitutional Act on State Independence of the Republic of Azerbaijan.</p>
<p>2. If the text was put to the vote at the request of an authority other than</p>	

<p>Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion?</p>	
<p>E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)</p>	<p>The outcome of the referendum:</p> <ul style="list-style-type: none"> • the total number of voters in voter lists - 4 132,600 • number of voters participating in voting - 3 556 227 (86%) • the number of citizens who answered "yes" - 3 267 538 (91.9%)
<p>F. Effects of the referendum (Code, III.8)</p>	
<p>I. Legal effects</p>	
<p>1. Was the referendum legally binding or consultative?</p>	<p>1995 Constitutional referendum was legally binding. Article 29 of 1991 Law on Referendum provides that a decision adopted by means of a referendum shall be final; it shall have a compulsory legal force in the whole territory of the Republic of Azerbaijan and may be cancelled or changed only by means of a referendum.</p>
<p>2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?</p>	
<p>3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?</p>	
<p>4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?</p>	
<p>II. Political effects</p>	
<p>1. Was the position of the authorities at stake?</p>	<p>The Constitutional Commission was formed in such a way that all branches of state power (legislative, executive and judicial), as well as members of political parties, legal academia and public institutions were represented. Each member of the Commission, irrespective of the occupied position, had the same rights. In particular, everyone had the right to participate in discussions on the draft, ask questions, answer them, express their point of view.</p>
<p>2. In the affirmative, did this lead to early elections?</p>	<p>The adoption of the new Constitution did not lead to early elections. By 1995 the last Presidential elections were held in 1993. Under 1978 Constitution, the President shall be elected for a period of five years.</p>

The first multi-party parliamentary elections in Azerbaijan took place on 30 September and 14 October 1990 for the members of the Supreme Soviet of the Azerbaijan SSR - people's deputies of Azerbaijan SSR.

After the declaration of independence in 1991, the Supreme Council formed from its members a permanent legislative body, the Parliament or the Milli Majlis of Azerbaijan Republic. The relevant amendments were also introduced into 1978 Constitution.

Milli Majlis adopted the new electoral law on 12 August 1995. The Law established a 125 seat, unicameral Parliament (Milli Majlis) to serve five-year term. Parliamentary elections in accordance with this law were held also on November 12, 1995.

In accordance with the Transitional Provisions of 1995 Constitution:

- The President of the Azerbaijan Republic elected prior to the entering in force of 1995 Constitution shall carry out powers assigned to the President of the Azerbaijan Republic by 1995 Constitution;
- Powers of people's deputies of the Milli Majlis established by the Supreme Council of the Azerbaijan Republic shall expire on a day of the first meeting of the newly elected Milli Majlis of the Republic of Azerbaijan. The first meeting of the newly elected Milli Majlis of the Republic of Azerbaijan shall be held one week after election of at least 83 deputies of Milli Majlis of the Azerbaijan Republic have been elected. The first session of Milli Majlis of the Republic of Azerbaijan will last till 31 May, 1996.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

The judiciary had an authority to consider complaints alleging violations of the legislation on referendum.

In particular:

As to the Constitutional Court, this body was created after adoption of 1995 Constitution.

1. Was this intervention obligatory or did it take place on appeal?

1995 Constitution provides for obligatory involvement of the Constitutional Court in the referendum procedure. The Court, according to Article 153 of 1995 Constitution shall be requested in advance to give its opinion with respect to the changes to the text of the Constitution.

2. Did it intervene before or after the vote?	Under 1995 Constitution the Constitutional Court shall give its opinion on proposed constitutional changes in advance, before calling of a referendum. The Court's negative opinion means that the draft must not be put on a referendum or it shall be redrafted in accordance with the Court's opinion.
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?	In 1995 no judicial body had an authority to address the formulation of the question and/or the content of the text submitted to the people's vote.
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?	<p>During the organization and holding of the Constitutional referendum of November 12, 1995, the Constitutional Court had not yet been established.</p> <p>Legislation in force, however, requires a control of constitutionality, exercised by the Constitutional Court. In this regard, provisions of Article 153 of the Constitution, mentioned above, as well as that of Article 61 of Law on Constitutional Court need to be observed⁴.</p>
H. Role of the electoral management body	
Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?	Under 1991 Law on Referendum or any other piece of legislation no authority, including the Central Election (Referendum) Commission, had power to address the formulation of the question.
I. Quorum and turnout (cf. Code, III.7)	
1. Was there a turnout quorum or an approval quorum?	Both turnout (participation in voting of more than half of the citizens included in the voter lists) and approval quorum (more than half of the citizens participated in the referendum voted in favor of issue put on referendum) applied as required by Article 24 of 1991 Referendum Law.
2. What was the turnout?	<p>During 1995 Constitutional referendum:</p> <ul style="list-style-type: none"> • the total number of voters in voter lists - 4 132,600 • the number of voters participated in voting - 3 556 227 (86%) • the number of citizens who answered "yes" - 3 267 538 (91.9%)
J. Role of international actors	
1. Did international actors (including the European Union) take a position on the issue submitted to referendum?	Yes, they did.

⁴ Under Article 61.4 of Law on Constitutional Court, Constitutional Court shall adopt a grounded opinion as to conformity of the proposed constitutional changes to the requirements of Article 155 of the Constitution of the Republic of Azerbaijan.

2. In the affirmative, what was the form of their intervention?

Representatives of international actors – the UN, the OSCE, the CIS Inter-Parliamentary Assembly regarded 1995 Constitutional referendum as a important step towards building an independent, democratic state, based on rule of law.

6. BOSNIA AND HERZEGOVINA

PART I

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

The Constitution of Bosnia and Herzegovina does not contain explicit provisions governing the referendum issue as a form of direct expression of the will of citizens. Also, there is no law governing the referendum issue, so it can be concluded that there is no possibility of calling and holding a referendum at the level of the state of Bosnia and Herzegovina.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

3. Is there any recent experience in your country (from 2004 on)?

B. Regional referendums

1. Do regional referendums exist in your country?

2. When were regional referendums introduced in your country, and in which context?

3. Have they been organised often or with a certain regularity?

The organisation of Bosnia and Herzegovina is specific. Bosnia and Herzegovina is a state consisting of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, and the Brčko District. In addition, the Federation of Bosnia and Herzegovina consists of 10 cantons. Therefore, as to Bosnia and Herzegovina, a regional referendum could be discussed in terms of the division of the country into the entities and the Brčko District.

As to the Federation of Bosnia and Herzegovina, the Constitution of the Federation of BiH as well as the constitutions of the cantons do not contain explicit provisions regulating the referendum issue, nor there are any laws regulating this issue at the level of the Federation of BiH and the level of the cantons. In view of the above, it can be concluded that there is no legally established possibility for calling and holding a referendum at the level of the Federation of BiH and its cantons.

On the other hand, the Constitution of the Republika Srpska contains provisions stipulating the possibility of calling a referendum at the level of this entity (the republic referendum): "The National Assembly may decide to make a decision on certain issues falling within its competence after a referendum of citizens has been held" (Article 77 of the Constitution of the Republika Srpska). This provision is further specified and elaborated in the Law on Referendum and Civic Initiative in the Republika Srpska. The National Assembly of Republika Srpska may call a referendum on any issue within its jurisdiction. At the level of the Republic of Srpska, one referendum has been called so far and, in a way, it related to one of the provisions of the Law on the Holidays of the Republika Srpska.

The referendum in the Brčko District of Bosnia and Herzegovina is regulated by the 2007 Supervisory Order, which stipulates the following: *While Supervision remains in force, any referendum held in the territory of the District shall require the prior consent in writing of the*

Supervisor; and where that consent is given, a referendum shall be held only subject to such terms and conditions as the Supervisor may approve.

C. Local referendums

1. Do local referendums exist in your country?
2. When were local referendums introduced in your country, and in which context?
3. Have they been organised often or with a certain regularity?

In the Federation of Bosnia and Herzegovina, a referendum, as a form of direct participation of citizens, exists within the units of local self-government. The referendum is regulated by the local self-government laws of the cantons. According to these laws, a referendum may be called for decision-making on a proposal of amendments to the statute of the municipality or city, a proposal for a regulation or other issues within the competence of the municipal or city council and on other issues determined by the law or statute. For example, the Law on Local Self-Government of the Sarajevo Canton, which provides direct participation of citizens in decision-making, was passed in 1997.

In the Republika Srpska, in addition to a republic referendum at the level of the Republika Srpska, there is also a municipal referendum for local self-government units. The 2010 Law on Referendum and Civic Initiative in the Republika Srpska stipulates that a referendum in the municipality or city may be called in order to allow citizens previously to express their view on matters within the competence of the municipality or city, which are determined by the law and the statute of the municipality or city.

As to municipal referendums in the Federation of Bosnia and Herzegovina and Republika Srpska, they have been organized primarily with the aim of recalling local leaders (mayors of municipalities).

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions
2. Referendum on a specific piece of legislation
3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue
4. Referendum on an international issue (including on an international treaty)
5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

As mentioned above, in Bosnia and Herzegovina, at the state level, there are no regulation governing a referendum, nor have such a referendum ever been organized after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina and the entry into force of the Constitution of Bosnia and Herzegovina.

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

**[You are kindly requested to answer this part of the questionnaire
in relation to one or more specific referendums of the above categories (Part I, II)
held in your country]**

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

There were not many referendums at the higher levels of government in Bosnia and Herzegovina. Excluding local referendums, only one referendum was called at the higher level of government, e.g. at the entity level, and it was held in the Republika Srpska (republic referendum).

The sequence of events regarding the mentioned referendum can be described as follows:

In its Decision of 26 November 2015, the Constitutional Court of Bosnia and Herzegovina established that Article 3 (b) of the Law on Holidays of the Republika Srpska, stipulating that one of the republic holidays was the Day of the Republic marked on 9 January, was in contravention of the Constitution of Bosnia and Herzegovina and the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, the Constitutional Court of Bosnia and Herzegovina ordered the National Assembly of the Republika Srpska to harmonise the challenged Article with the Constitution of Bosnia and Herzegovina within a certain time limit⁵.

At its session held on 15 July 2016, the National Assembly of the Republika Srpska made a Decision to call a republic referendum.⁶ The referendum question was as follows: "Do you support that January 9th is observed and celebrated as the Day of the Republic?" Furthermore, the referendum was scheduled for 25 September 2016. On 17 September 2016, the Constitutional Court passed an interim measure to suspend the application of the Decision on the Republic Referendum⁷.

Based on the Decision of the National Assembly of July 2016, the Referendum was held on 25 September 2016. The referendum question: "Do you support that January 9th is observed and celebrated as the Day of the Republic?" was answered so that 677,771 voters answered "YES", i.e. 99.81% of the total number of the citizens who voted in the referendum, and 1,298 voters answered "NO", or 0.19% of the total number of those who voted.

At the session held on 25 October 2016, the National Assembly passed the Law on the Day of the Republika Srpska according to which "Based on the confirmed will of the citizens of Republika Srpska, January 9 is established as the Day of the Republic".

In its Decision of 1 December 2016, the Constitutional Court established that the Decision to Call a Republic Referendum of 15 July 2016 was inconsistent with the Constitution of Bosnia and Herzegovina and it annulled the results of the referendum held on 25 September 2016 for the referendum had been held based on the Decision to Call a Republic Referendum dated 15 July 2016 in respect of which it had been established that it had been inconsistent with the Constitution of Bosnia and Herzegovina and in contravention of the order given by the Constitutional Court in its Ruling on interim measure of 17 September 2016.⁸

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

The Decision to Call a Referendum was passed based on the Law on Referendum and Civic Initiative in the Republika Srpska, which actually represents the elaboration of the provision of Article 77 of the Constitution of the Republika Srpska, which reads: *The National Assembly may decide to make a decision on some issues falling within its competence after a referendum of citizens has been held* and in accordance with the procedures provided therein. Therefore, the Decision was made based on the law and the Constitution of the Republika Srpska.

⁵ Decision of the Constitutional Court of BiH, U 3/13

⁶ Official Gazette of the Republika Srpska, 68/16

⁷ Constitutional Court of BiH, Ruling on Interim measure, U 10/16

⁸ Constitutional Court of BiH, Decision on Admissibility and Merits, U 10/16

The mentioned Decision was inconsistent with the decisions of the Constitutional Court of Bosnia and Herzegovina, which were final and binding (see answers under the letter A).

2. Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The Law on Referendum and Civic Initiative in the Republika Srpska stipulates clear rules for holding a referendum. Therefore, the Decision to Call a Referendum was not made *ad hoc*.

Irrespective of the referendum mentioned above, it should be noted that the statutes of the local self-government units contain the provisions on the referendum and some of them are expressed in detail, and determine the procedure for calling a referendum in the local self-government unit.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

As to the referendum discussed in this text, it could be said that it related to the legal text, as the citizens of the Republika Srpska were to answer the question that had already been regulated by a legal provision, which was declared unconstitutional by the Constitutional Court of Bosnia and Herzegovina.

2. How long in advance was the referendum called?

At its session held on 15 July 2016, the National Assembly passed the Decision to Call a Republic Referendum. The referendum was held on 25 September 2016.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

In accordance with the Decision to Call a Referendum, the referendum question to be answered by the citizens of the Republika Srpska was: “Do you support that January 9th is observed and celebrated as the Day of Republika Srpska?”

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court’s decision.

It seems that the referendum question met the criteria relating to the unity of content, given that there was only one question that the voters could accept or reject as a whole, without being subject to any other question.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

It could be said that the referendum question was clearly stated, since it was not deceptive and did not suggest an answer, and the voters could answer with "YES" or "NO".

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly. The referendum which was held in Republika Srpska was not a referendum related to an issue of social nature but rather a referendum related to an issue of political nature with considerably unbalanced approach to the public address.

But, there was no abuse of administrative resources.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

As noted above, this was a political referendum causing contradictory discussions and different opinions so that one could say with regards to the mandatory or advisory nature of the referendum that there were different and unclear answers.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

Citizens of the Republika Srpska could answer the referendum question with "YES" or "NO".

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

Neither the Constitution of the Republika Srpska nor the Law on Referendum and Civic Initiative in the Republika Srpska stipulate that a referendum is mandatory. The Constitution of the Republika Srpska in Article 77 foresees the possibility of calling a referendum, as follows: *The National Assembly may decide to make a decision on certain issues falling within its competence after a referendum of citizens has been held.*

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

The proposal of the Decision to Call a Republic Referendum was submitted by the National Assembly deputies, coming from different parliamentary parties in the Republika Srpska.

- Held at the request of a section of the electorate (including following a popular initiative)?

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote?)

According to the data in the Decision determining the results of the republic referendum, in accordance with Article 4 of the Law on Referendum and Civic Initiative in the Republika Srpska, out of 1,219,399 citizens of the Republika Srpska, who have active and passive voting rights, 680,175 voters, *i.e.* 55.78% of the total number of voters voted so that 677,771 voters answered "YES", *i.e.* 99.81% of the total number of citizens who voted in the referendum, and 1,298 voters answered "NO", or 0.19% of the total number of those who voted.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?
2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?
3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?
4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

Article 36 of the Law on Referendum and Civic Initiative in the Republika Srpska stipulates that if citizens have previously expressed their opinion on a certain issue through a referendum, the competent authority will pass an appropriate act within six months from the date of the referendum.

At the session held on 25 October 2016, the National Assembly passed the Law on the Day of the Republika Srpska according to which "Based on the confirmed will of the citizens of Republika Srpska, January 9 is established as the Day of the Republic".

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

It could be sad that there was no impact of the referendum on the position of the authorities, as the ruling majority was not put at risk by the results of the referendum.

2. In the affirmative, did this lead to early elections?

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. Was this intervention obligatory or did it take place on appeal?
2. Did it intervene before or after the vote?
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

In addition to the Constitutional Court of Bosnia and Herzegovina, whose role in this matter has already been mentioned in the introduction under the letter A, the Constitutional Court of the Republika Srpska was involved in this issue as the delegates of the Bosniac People Caucus filed a request in which they demanded that the Constitutional Court of the Republika establish that the Decision to Call a Republic Referendum was in violation of the vital national interest of the Bosniac People. As to the mentioned request, the Council for the Protection of Vital National Interest of the Constitutional Court of the Republika Srpska, at a session held on 11 August 2016 (that is, prior to the referendum), passed a decision establishing that the Decision to Call the Republic Referendum was not in violation of the vital national interest of the Bosniac People.⁹

No question related to the formulation of the referendum question was raised before the courts in the Republika Srpska.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

No, it was not.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

The Law on Referendum and Civic Initiative in the Republika Srpska stipulates that a referendum is valid only if a majority of the total number of citizens, who have the right to vote and are registered on the voter list, voted in the referendum, and a referendum question is supported only if a majority of those voting in the referendum voted in favour thereof (Article 35 of the mentioned Law).

2. What was the turnout?

⁹ Decision of the Constitutional Court of Republika Srpska , UV-7/16

In the relevant case, there was a majority of those voting in the referendum.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

The case described above caused a serious political crisis in Bosnia and Herzegovina, and many international officials reacted to it.

2. In the affirmative, what was the form of their intervention?

The Supervisor of the Brčko District of Bosnia and Herzegovina did not give his consent to the holding of the Republika Srpska referendum in the territory of the Brčko District of BiH for the citizens of the Brčko District who have the citizenship of the Republika Srpska.

Other types of interventions mainly related to press releases and statements.

K. What lessons might be learned from this referendum?

7. BULGARIA

QUESTIONNAIRE ON REFERENDUMS

Referendum is understood as direct consultation of the people

PART I

GENERAL QUESTIONS

I. Preliminary questions

A. National referendum

1. *Does a national referendum exist in your country? Is it binding or consultative?*

The Constitution of 1991 provides that people exercise their sovereign power directly or through the institutions established by this Constitution (art.1 p.(2) of the Constitution) and that all elections, national and local referenda are held on the basis of universal, equal and direct suffrage by secret ballot (art.10 of the Constitution).

National referenda are **binding** if a) as many or more citizens as in the last general election have taken part in the vote and b) more than half of the participants have answered "yes".

In case that only the "b" requirement was met, but more than 20% of the voters in the country have participated the Parliament (National Assembly) has to debate and decide on the matter.(art 23 p.(3) of the Act on Direct Participation of Nationals in the State Authority and the Local self-Government - ADPNSALS). This in fact resembles a **consultative** referendum.

2. *When was a national referendum introduced in your country, and in which context? (for the details see below)?*

Before 1991 referenda were provided for by the Communist law system. Examples are: The Abolition of Monarchy Referendum of 1946 and The Referendum for Approval of the New Constitution of 1971.

3. *Is there any recent experience in your country (from 2004 on)?*

The last three Referenda in Bulgaria were:

- a) On 27.01.2013 on the question: "Should the energy sector in Bulgaria be developed by building a new nuclear power station?", initiated by an Initiative Committee with a subscription of 500 000 voters (200 000 signatures needed according to art.10 p.(1) p.5 of ADPNSALS)

- b) On 25.09.2015 on the question: "Do you support the introduction of distant digital voting in elections and referenda?", initiated by the President
- c) On 06.11.2016 on the questions: 1. Do you support MPs to be elected in a majoritarian system (from one seat constituencies) by absolute majority vote in two rounds? 2. Do you support the introduction of mandatory voting in elections and referenda? 3. Do you support the annual state subsidy for political parties and coalitions to be 1 lev (0.5 EURO) for each valid vote at the last parliamentary election?", initiated by an Initiative Committee with a subscription of 400 000 voters.

In all the three cases as more than 20% of the voters but less than the participants in the last national election participated.

B. Regional referendums

- 1. Do regional referendums exist in your country?NO
- 2. When were regional referendums introduced in your country, and in which context?
- 3. Have they been organised often or with a certain regularity?

C. Local referendums

- 1. Do local referendums exist in your country?YES
- 2. When were local referendums introduced in your country, and in which context?
With the Constitution of 1991.
- 3. Have they been organised often or with a certain regularity?
No regularity. Three local referenda were organized in different places in 2017.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

- 1. Referendum on a whole constitution, or on one or several constitutional provisions
..... None
- 2. Referendum on a specific piece of legislation..... See answer to I. A.3. b.
- 3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue.
.....See answer to I A.3.a. and c.
- 4. Referendum on an international issue (including on an international treaty)..... None
- 5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)
..... None

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

On 06.11.2016 a national referendum was held on the questions: 1. Do you support MPs to be elected in a majoritarian system (from one seat constituencies) by absolute majority vote in two rounds? 2. Do you support the introduction of mandatory voting in elections and referenda? 3. Do

you support the annual state subsidy for political parties and coalitions to be 1 lev (0.5 EURO) for each valid vote at the last parliamentary election?”

The referendum was initiated by an Initiative Committee with a subscription of 400 000 voters for six questions. Three of them were rejected by the Constitutional court. as unconstitutional. These were: Do you support a reduction of the number of MPs to 120? (which needs a Grand National Assembly decision – art.158 p.3 of the Constitution); Do you support the introduction of distant digital voting in elections and referenda? (which was object to a previous referendum before less than 2 years - art.23 p.(2) of ADPNSALS) and Do you support appointing the regional directors of the Ministry of the Interior to be directly elected by the people by absolute majority vote in two rounds?” (which needs a Grand National Assembly decision – art.158 p.3 of the Constitution).

B. Rule of law and stability of the law

1. *Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III. 1).*

The subject of national referenda is defined by ADPNSALS as follows:

Art. 9. (1) (amend. - SG 56/15, in force from 24.07.2015) National referendum shall be conducted for direct resolving by the nationals issues of national importance of the competence of the National Assembly.

(2) Through national referendum shall not be resolved issues:

1. of the competence of the Great National Assembly;
2. under Art. 84, p. 4, 6, 7, 8, 10, 12, 16 and 17, Art. 91, 91a, Art. 103, Para. 2, Art. 130, Para. 3, Art. 132a and Art. 147, Para. 1 of the Constitution;
3. about the size of taxes, charges and labour and insurance payments and contributions;
4. of the state budget;
5. of the rules of internal organization and activity of the National assembly.

(3) Codes and acts, providing for completely the matter in a certain area shall not be subject to a referendum in their thoroughness.

(4) Referendum on issues, provided for in signed by the Republic of Bulgaria international agreements may be conducted before their ratification.

(5) While conducting a referendum, one or several questions may be voted.

The subject of local referenda is defined by ADPNSALS as follows:

Art. 26. (1) Local referendum shall be conducted in a Municipality, region or City Hall for direct solving of questions of local significance, which the act has provided to the competence of the bodies of the local self-government or the bodies of the region of the City Hall.

(2) Through local referendum shall not be solved questions:

1. of the Municipal budget;
2. on the amount of the local taxes and charges;
3. of the rules of the internal organization and activity of the Municipal council.

(3) During the conducting of the local referendum, on one or on several questions may be voted.

(4) The decision, adopted by a local referendum shall not be subject to further approval of the Municipal council. It shall adopt an instrument, where this is needed for its implementation.

2. *Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III. 1).*

AS mentioned above the rules are provided by the Act on Direct Participation of Nationals in the State Authority and the Local self-Government (ADPNSALS).

C. Question(s) put to referendum

1. *Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular?*

Or was the vote on a question of principle/a generally-worded proposal?

It was a more generally formulated proposal with a bearing on the Constitutional provisions.

2. *How long in advance was the referendum called?*

The decision of the Parliament was voted 6 months in advance.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Three questions were subjected to the vote: MPs to be elected in a majoritarian system (from one seat constituencies) by absolute majority vote in two rounds; introduction of mandatory voting in elections and referenda; The annual state subsidy for political parties and coalitions to be 1 lev (0.5 EURO) for each valid vote at the last parliamentary election?”, and three were rejected by the Constitutional court: Reduction of the number of MPs to 120; Introduction of distant digital voting in elections and referenda; Appointing the regional directors of the Ministry of the Interior to be directly elected by the people by absolute majority vote in two rounds

4. Was the principle of unity of content respected? (Code, III.2).

Yes, they cover internally connected issues.

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Yes, the meaning was clear.

9

Three questions were rejected on grounds of substance (not clarity) by the Constitutional Court. (See answer II.C.3)

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

9

There were no allegations for breach of neutrality or misuse of administrative resources.

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly. CDL(2017)022rev2 - 4 -

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Yes, following the prescribed procedures (art.16 of ADPNSALS) and because there was a TV campaign and because referenda were also practiced recently.

Please rate from 1 - unduly to 10 - duly and explain briefly. 9

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

YES they could choose any of these.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

See answer I.A.1

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)? NO

- Held at the request of a section of the electorate (including following a popular initiative)? YES

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The Parliament has to pass a decision for calling a referendum and the President has to name the date. The parliament can reject [some of] the questions if they contradict the above quoted art.9 p.(2) of ADPNSALS and edit without changing the substance if the text is unclear. This decision can be reviewed for Constitutionality under the general rules. Apart from this the Parliament cannot express an institutional opinion on the substance.

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

50.82% of the voters participated, which is more than 15 % less than the number of participants in the last national election (See answer I.A.1)

“Yes” to the questions were respectively: 71.95%; 61.89% and 72.16%

F. Effects of the referendum (Code, III.8)

I. Legal effects

Obligation for the Parliament to discuss the issue

1. *Was the referendum legally binding or consultative?*

See answer to I.A.1.

2. *If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?*

Art.9 of ADPNSALS provides:

(6) A decision, adopted by a national referendum shall not be subject to following approval by the National Assembly. The National Assembly shall adopt an act, where this is needed for implementation of the decision.

(7) If within the term of up to 3 months after announcing the result of the referendum, the National Assembly fails to bring its act in compliance with the will, expressed by the voters, this act shall not apply in the part, which contradicts to the decision of the referendum.

3. *If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?*

Irrelevant

4. *If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?*

Irrelevant

II. Political effects

1. *Was the position of the authorities at stake?* **3**

Please rate from 1 - non-affected to 10 - affected and explain briefly. CDL(2017)022rev2 - 5 -

A bill on the electoral system was introduced in the parliament but to no effect.

The Prime Minister resigned, but explained this decision by the loss of the Presidential election which were held together with the referendum.

2. *In the affirmative, did this lead to early elections?*

The new election was not explained by the referendum

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. *Was this intervention obligatory or did it take place on appeal?*

NO

2. *Did it intervene before or after the vote?*

Irrelevant

3. *Did it address the formulation of the question and/or the content of the text submitted to the people's vote?*

Irrelevant

4. *Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?*

Yes, and rejected three of the questions

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

NO

I. Quorum and turnout (cf. Code, III.7)

1. *Was there a turnout quorum or an approval quorum?*

See answer I.A.1

2. What was the turnout?

50.82%

J. Role of international actors

1. *Did international actors (including the European Union) take a position on the issue submitted to referendum?*

NO

2. *In the affirmative, what was the form of their intervention?*

Irrelevant

K. What lessons might be learned from this referendum

Nothing new under the sun. Referenda can be used for both reasonable and populist purposes. People still have their common sense.

8. CHILE

QUESTIONNAIRE ON REFERENDUMS

Referendum is understood as direct consultation of the people

PART I GENERAL QUESTIONS

Preliminary questions

A. National referendum

1. **Does a national referendum exist in your country? Is it binding or consultative?**

The Constitution declares that referendums are a means to exercise the national sovereignty (art.5°, in point 1°)

The Constitution, however, provides the possibility of national referendum only in case that the National Congress passes a constitutional reform and the President of the Republic disagrees with the reform. The President may call to a referendum in order that the citizens vote on whether to support the reform or to decline it.

The referendum is binding.

The call for a referendum in this case is a faculty reserved only to the President (art. 128)

2. **When was a national referendum introduced in your country, and in which context? (for the details see below)?**

National referendum was first introduced in the the previous updated Constitution of 1925. The referendum is limited to resolve disagreements between the Congress and the President about constitutional reforms. The goal of such referendum was to give citizens the voice to resolve such disagreement.

This mechanism of referendum was also introduced, in a similar form, in the Constitution of 1980, which is the text in force.

3. **is there any recent experience in your country (from 2004 on)?**

At a national level there have not been any referendums from that year on.

B. Regional referendums

1. **Do regional referendums exist in your country?**

There are only at the communal level.

2. **When were regional referendums introduced in your country, and in which context?**

3. **Have they been organised often or with a certain regularity?**

C. Local referendums

1. **Do local referendums exist in your country?**

Article 118.5 of the Constitution provides the possibility that the local government calls to a not binding citizen consult or for a binding referendum.

The consultation and the referendum may be called by 2/3 of the members of the municipal council or by the mayor.

The issues that can be put on referendum are related to local administration, such as specific interventions on local development, approval to changes on the local development planning, or other issues of communal interest.

The institution has been developed in the current Organic Constitutional Law of Municipalities, of 2007,

2. When were local referendums introduced in your country, and in which context?

The local referendum was introduced to the Constitution by the constitutional reform of 1989.

3. Have they been organized often or with a certain regularity?

Most of the cases in a local level have been not binding consultations. There have however some binding referendums.

According to the data, about a 60% of the municipalities have called for not binding consultations in the last three years.

PRINCIPAL SUBJECTS.

Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

The last referendum at a national level was in 1989. This referendum was on reforming several constitutional provisions. AGREGAR ALGO SOBRE REFERENDUM DE 1988, OBJETO Y RESULTADOS.

2. Referendum on a specific piece of legislation

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

4. Referendum on an international issue (including on an international treaty)

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

The referendum of July 30th of 1989 was on the reformation of several constitutional provisions of the Constitution of 1980 (54 in total).

At the time Pinochet was the head of a dictatorial regime, that a year before was ended by referendum (October 5th of 1988). Since that referendum, and according to the Constitution, at the end of year 1989 (December), shall be democratic elections celebrated for a new regime. However, several amendments to the Constitution were proposed by the Pinochet's regime. Previous to the referendum, these reforms were agreed with the democratic coalition in several negotiations.

The result was 91.25% of the votes in favor of the constitutional reforms, with a participation of 93.7%.

The main effect was that the Constitution was amended in order to access a democratic regime.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

The referendum of 1989 was called by an executive decree that was grounded on the transitional constitutional provision number 18 (in force in that period). This provision declared that the Junta has the constituent power, and the exercise of that power has to be submitted to referendum.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, I.2.b and III.1).

The rules on referendum were previously provided in the law on elections. It has to be noted that this law was approved during the dictatorship and there was no Congress on functions.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

The vote was about 54 amendments to the Constitution. Those included some issues of principle, such as recognition of international human rights treaties as part of the internal order, the recognition of a pluralistic democracy, among others.

2. How long in advance was the referendum called?

The referendum was called on June 15th and celebrated at July 30th of the same year (1989)

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Recognition of international human rights treaties as part of the internal order; the recognition of a pluralistic democracy; deepen separation of powers of the state.

4. Was the principle of unity of content respected? (Code, III.2).

Yes. The question was on whether to approve the amendments or to refuse them.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarize the Constitutional Court's decision.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12- 14)?

(1). At the time of the referendum there were no democratic regime.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- **Mandatory:** According to the Constitution in force of that period, any exercise of the constituent power of the Junta must be consulted by referendum.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

There was no Congress at that time.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

The result was 91.25% of the votes in favor of the constitutional reforms, with a participation of 93.7%.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. *It was binding.*

II. Political effects

1. Was the position of the authorities at stake?

(10). This was the last constitutional reform of the dictatorial regime. The amendments were agreed with the opposition and the parties supporters of the regime.

2. In the affirmative, did this lead to early elections?

The democratic elections were scheduled to be celebrated at the end of that year. BREVE REFERENCIA A ELECCIÓN PRESIDENCIAL DE 1989

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense? In particular:

No.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

I. Quorum and turnout (cf. Code, III.7)

1. **Was there a turnout quorum or an approval quorum?**

2. **What was the turnout?**

J. Role of international actors

1. **Did international actors (including the European Union) take a position on the issue submitted to referendum?**

2. **In the affirmative, what was the form of their intervention?**

K. What lessons might be learned from this referendum?

9. COSTA RICA

Part I

A.- National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

Yes. Article 105 of the Political Constitution of the Republic of Costa Rica establishes the referendum at national scale, as amended by law 8492 (Regulatory Law of Referendum). It is a consultative instrument that has mandatory results within the national legislation.

“Article 105. The power to legislate resides in the People, who delegate this power, by means of suffrage, to the Legislative Assembly. Such a power may not be waived or limited by any agreement or contract, either directly or indirectly, except in the case of treaties, according to the principles of International Law (as amended by Law No. 7128, August 18, 1989).

The People may also exercise this power through a referendum to approve or repeal laws and partial amendments to the Constitution, when convoked by at least five percent (5%) of the citizens registered in the electoral roll; also the Legislative Assembly, through the approval of two-thirds of all its members, or the Executive Branch together with an absolute majority of all the members of the Legislative Assembly.

A referendum shall not be admissible for Bills related to budgetary, tax, fiscal or monetary matters, credit, pensions, security, approval of public loans and contracts or acts of an administrative nature.

This institute shall be regulated by two-thirds of all the members of the Legislative Assembly (As amended by Article 1 of Law No. 8281, May 28, 2002)".

The two-thirds of all members accounts to 38 members (out of 57 deputies of the Legislative Assembly).

2. When was a national referendum introduced in your country, and in which context? (for the details see below)

The national referendum was first introduced after a constitutional amendment to article 105, by Article 1 of Law No. 8281, May 28, 2002.

After a previous failed attempt of the legislative body to approve a constitutional amendment, a second successful draft was introduced and finally approved. The constitutional amendment provided a three year period to legislate and regulate this instrument of direct democracy. Nevertheless, such law would not be approved until February 2006. According to a national Think Tank (Estado de la Nación) there are no clear reasons to explain the delay in the implementation. The Constitutional Chamber was called to review the matter in an action of unconstitutionality. Through decision No. 2005-5649 the Constitutional Chamber declared an unconstitutional omission of the legislative body to promulgate the missing legislation, all in accordance to the transitory provision attached to the constitutional amendment. Such mandate had already expired. The Constitutional Chamber deemed the omission unconstitutional and provide for a six month period for the Legislative Assembly to regulate on the matter.

Through Law No. 8492 the legislative body established the implementing legislation mandated by the constitutional reform.

3.- Is there any recent experience in your country (from 2004 on)?

The country has one national referendum to report, it occurred on October 7, 2007.

B. Regional referendums

1. Do regional referendums exist in your country?

Article 168 of the Political Constitution of the Republic of Costa Rica establishes the plebiscite as the legal mechanism to create new provinces in the country.

"Article 168.- For the purposes of Public Administration, the national territory is divided into provinces. These in turn are divided into cantons and the cantons into districts. The law may establish special circumscriptions.

The Legislative Assembly may decree the creation of new provinces, observing the procedures required for a partial amendment of the Constitution, provided that the appropriate proposal has been previously approved by a plebiscite, which the Assembly shall order to be held in the province or provinces that are to be divided.

The creation of new cantons must be approved by the Legislative Assembly, by a vote of no less than two-thirds of its members”.

2. When were regional referendums introduced in your country, and in which context?

The plebiscite was first introduced in the 1949 Constitution, after the 1948 civil war.

3. Have there been organized often or with a certain regularity?

No not at this point in time.

C. Local Referendums

1. Do local referendums exist in your country?

Yes. Article 12.p of the Electoral Code establishes the different types of referendums and plebiscites. There are also other forms as the cabildo (for local or town government) and the removal of the mandate from elected officials, as regulated in the Municipal Code.

2. When were local referendums introduced in your country, and in which context?

Local referendums were first introduced in the 1949 Constitution, after the civil war. Such mechanisms were reinforced by the 1953 Electoral Code, furthermore by the 2009 Electoral Code and the Municipal Code.

3. Have they been organized often or with a certain regularity?

There have been some cases, but not as many. The following table shows the moments where these forms of direct democracy have been used from its inception to date:

Place	Type of popular consult	Date	Description
La Tigra and La Fortuna communities	Plebiscite	July 30, 1950	Territorial distribution moving a canton from one another (San Ramón to San Carlos).
San Pedro district, Buenos Aires	Plebiscite	May 27, 1951	Moving the San Pedro district to Perez Zeledón district

San Pedro, San Andrés, Llano Bonito, San Isidro, Santa Cruz all pertaining to the Tarrazú district	Plebiscite	February 4, 1962	Creating a new Canton from Tarrazú, giving birth to the León Cortes Canton
At national level	Plebiscite	July 26, 1953	Constitutional Amendment to article 132, limiting presidents to run for reelection from 8 to 4 years.
Sarapiquí	Plebiscite	May 23, 1973	Deciding over the border limits of the Sarapiquí canton
Puntarenas canton and province (Cobano, Lepanto and Paquera)	Plebiscite	November 7, 1999	To keep pertaining to Puntarenas and to become a canton
Sarapiquí	Plebiscite	September 24, 2000	Petition to declare the Sarapiquí Basin as a National Historic Monument
Guácimo	Plebiscite	October 28, 2001	Opening an Electrical Plant in the Guácimo Aquifer Protected Zone
San Ramón (Piedades Sur District)	Plebiscite	February 16, 2003	To augment poultry farm permits
San Ramón (Los Angeles District)	Plebiscite	February 15, 2004	To augment poultry farm permits
Turrialba	Plebiscite	August 28, 2005	The construction of a hydro-electric plant in the Pacuare basin
Jiménez de Cartago	Plebiscite	June 22, 2008	Creation of the municipal district council of Pejibaye
Pérez Zeledón	Plebiscite for the removal of a popular mandate	December 18, 2011	Destitution of the mayor.

Examples of national referendums

1. Referendum on a whole constitution, or on one or several constitutional provisions
None

2. Referendum on a specific piece of legislation

None

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

None

4. Referendum on an international issue (including on an international treaty)

Yes, on October 7, 2007 a referendum was held on the US, Dominican Republic and Central American Free Trade Agreement

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)
None

Part II

A. Short description (date, background, content, aim, outcomes)

The National Referendum held on October 7, 2007

Background: It occurred during the second administration of Oscar Arias Sanchez. The political moment to pass the CAFTA agreement was in peril. There were four major parliamentary groups that distributed 53 of the 57 seats, the other 4 remained with 4 smaller parties. The CAFTA agreement faced strong opposition from social and progressive groups, seeking to stop the approval of the CAFTA agreement. Since the Legislative Assembly could not pull together the necessary votes, and to avoid the treaty deadline, the Executive branch used the referendum and have the citizens decide on the approval of the Treaty.

The economic indicators during the time showed the country having 6.8% PIB, 13.9% of external debt, and unemployment rate of 4.6% and a poverty index of 16.7%.

In essence the country was divided in two distinct fractions: those in favor and against the approval of the Treaty. The arguments of each side rested on the worsening economic and social conditions of the country, if not passing or because of the execution of the agreement.

The referendum was binding.

The intentions behind the referendum was to pass the treaty and for Costa Rica to keep the same commercial benefits as the rest of the Central American countries and the Dominican Republic. Some countries had already approved CAFTA.

The results of the vote follow:

Answers:

Option No: 756.814

Option Yes: 805.658

Valid casted votes: 1.562.472

Blank votes: 1063

Null votes: 8609

Electoral register: 2.654.629

Abstentions: 1.081.943 (40.8%).

As a consequence the Central American-Dominican Republic Free Trade Agreement was approved and ratified by Costa Rica.

Legal effects: Binding legal effects over conflicting laws with the treaty, opening monopolistic public institutions, establishing and furnishing new ones. For example: To create the Superintendence of Telecommunications (SUTEL) new legislation was promulgated to open and regulate the public owned telecommunications market.

Political and social consequences: A package of legislation was necessary to meet the international obligations that derived from the treaty, therefore political and social discussions did not rest with the voting of the referendum. Much of CAFTA's detractors continued voicing their arguments in the Legislative Assembly.

In the political organization of some of its institutions, Costa Rica opened its markets on telecommunications and insurance services to private investors, modifying the monopolistic State owned services.

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

The Constitution directly declares which areas are forbidden to vote through referendums: Bills related to budgetary, tax, fiscal or monetary matters, credit, pensions, security, approval of public loans and contracts or acts of an administrative nature. The Constitutional Chamber also interpreted another limit to the referendum by saying that

minority rights cannot be subjected to a referendum process where majorities rule (decision 2010-13313).

2. Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The rules that guide the referendum have been previously regulated in the Constitution and the referendum law.

C. Questions (s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

The vote was related to the approval of the CAFTA

2. How long in advance was the referendum called?

The referendum was called approximately three months in advance, from July 12, 2007 and voted on October 7, 2007.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Approval of the Free Trade Agreement with the USA

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court’s decision.

Yes, the nature of the question was clearly drafted for a YES or NO answers. This was not appealed to the Constitutional Chamber.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court’s decision.

The given question was drafted in a way that it was unambiguous nor vague, it was not deceptive, on the contrary it was very clear. The question was not brought to the attention of the Constitutional Chamber.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12- 14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.

Yes, most authorities acted in a neutral and objective way, and there were no significant abuses to the public resources. It is important to recall that the Supreme Electoral Tribunal oversees the process, and guarantees its cleanness and fairness.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 -unduly to 10- duly and explain briefly

Grade 10. The electors were informed of the binding nature of the referendum. The information concluded that if approved a number of legal texts were required to be amended. This was informed by the Supreme Electoral Tribunal, the groups in favor and against the Free Trade Agreement in well publicized debates, many campaign spots and open discussions held nationwide by the Universities.

The Supreme Electoral Tribunal published a complete version of the CAFTA agreement in two newspapers for the citizens' consideration.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

Yes. Electors were able to express an affirmative and negative answer, in accordance to their preferences. They also were able to annul the vote by marking both questions or by leaving them in blank.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)? No.

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)? The process relating to the referendum of CAFTA was requested by the Executive branch of government to the Legislative Assembly.

- Held at the request of a section of the electorate (including following a popular initiative)? Yes. The Executive called for the referendum, when at the same time a group of citizens were previously collecting signatures to request this process.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

The Constitution provides that a referendum can be convoked by the Legislative Assembly, through the approval of two-thirds of all its members, or the Executive Branch together with an absolute majority of all the members of the Legislative Assembly (art. 105).

Once the motion passes, the question was later drafted by the Supreme Electoral Tribunal.

The Executive moved the question from the Legislative Assembly, as there were political parties blocking its progress.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

The results of the vote follow:

Answers:

Option No: 756.814

Option Yes: 805.658

Valid casted votes: 1.562.472

Blank votes: 1063

Null votes: 8609

Electoral register: 2.654.629

Abstentionism: 1.081.943 (40.8%).

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?
Yes. It was binding.
2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?
The question decided by the referendum was to pass a free trade agreement in the Costa Rican legal order.
3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?
It was not a drafted amendment to the Constitution.
4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?
The question decided by the referendum was to incorporate a free trade agreement in the Costa Rican legal order.

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

Rated 1. The discussion did not involve the amendment or remaking of the fundamental provisions of the State held in the Constitution.

2. In the affirmative, did this lead to early elections?

No. There are no early elections in the Legislative Assembly nor in the Executive Branch of Government.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense? In particular:

Article 10 of the Constitution provides for a consultation to the Constitutional Chamber of the Supreme Court before the approval of a constitutional amendment, a treaty and other legislation as provided by law. This *a priori* form of constitutional control was requested and given by the Constitutional Chamber before its final approval.

1. Was this intervention obligatory or did it take place on appeal?
It is a mandatory intervention of the Constitutional Chamber.
2. Did it intervene before or after the vote?
It must be requested before the bill's final approval.
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
Only the contents of the treaty.
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?
Absolutely, the Costa Rican constitutional control system requires a constitutional review of treaties, constitutional reforms and other draft legislation as determined by the law.

The Constitutional Chamber decided the matter in its decision number 2007-9469 of July 3, 2007.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice? I. Quorum and turnout (cf. Code, III.7)

The Supreme Electoral Tribunal is central to the handling of the referendum, it decides important questions independently while organizing the process. It freely decides on how to structure the question for the electorate.

1. Was there a turnout quorum or an approval quorum?
Both on participation and on approval quorum.

Article 102.9 of the Constitution establishes that the results shall be binding for the State if a least thirty percent (30%) of the citizens registered in the electoral roll participate, in

the case of ordinary legislation, and at least forty percent (40%) in the case of partial amendments to the Constitution and matters requiring legislative approval by a qualified majority.

2. What was the turnout?

On October 7, 2007 a total of 1.572.684 Costa Rican voted the referendum. This means a total of 59.2% of the electoral register. The option that won had 51.6%.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

No.

2. In the affirmative, what was the form of their intervention?
None

K. What lessons might be learned from this referendum?

The referendum is a very important instrument that can be used to move forward stalled legislation at the Legislative Assembly, and a way to approve bills directly by the people instead of its representatives.

10. CZECH REPUBLIC

PART I **GENERAL QUESTIONS**

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

Constitution of the Czech Republic, Article 2:

- (1) *All state authority emanates from the people; they exercise it through legislative, executive and judicial bodies.*
- (2) *A constitutional act may designate the conditions under which the people may exercise state authority directly.*

Article 2 of the Constitution states that all state authority emanates from the people. It also names an option for a **direct exercise** of state authority which has to be foreseen by a constitutional act with concrete conditions for this exercise.

The Czech Republic has not adopted a constitutional act which would allow for a general referendum. The only time when a referendum was held in the past, it had to be established by a specific (*ad hoc*) constitutional act.¹⁰

As for the binding vs. consultative nature of referendum, opinions differ.¹¹ It can be said that the institute of national referendum is not established as a commonly used instrument of direct democracy, however it is recognized in the Czech legal system and it can be used for the exercise of direct democracy.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

The very first time the term “referendum” was used in the Czech legal system was during the existence of Czech Slovak Federative Republic, after the Velvet revolution. Based on an amendment of the Constitution, the *Constitutional Act No. 327/1991 Coll. on Referendum* established the instrument of referendum at the federal level. It was approved at the beginning of a crisis of the federative system. The referendum was supposed to be used in case of separation of the two republics or in order to determine the question of the future form of state organization. However, it was never used since the separation of the Czech and Slovak Federative Republic was made on the basis of a governmental decision.¹²

3. Is there any recent experience in your country (from 2004 on)?

The only time the institute of a national referendum has been used was a referendum on the accession of the Czech Republic to the European Union. Article 10a of the Constitution gives an option to the Parliament, when ratifying an international treaty, to order a national referendum in order to empower the legitimacy of such a decision. Based on *Constitutional Act No. 515/2002 Coll., on the referendum on the Czech Republic's accession to the European Union*, a national referendum took place prior to 2004, namely on 13-14 June 2003. The result exceeded the predictions and with 77.33% the people agreed to the Czech Republic joining the EU.

B. Regional referendums

1. Do regional referendums exist in your country?

Yes, they do. However, a regional referendum has never been organised in practice.

2. When were regional referendums introduced in your country, and in which context?

¹⁰ Constitutional Act No. 515/2002 Coll., on the referendum on the Czech Republic's accession to the European Union.

¹¹ For example, Pavel Pechanec prefers the binding nature of referendum (see *Přímá demokracie v České republice*, p. 41), Petr Mlsna argues in favour of its consultative nature (see MLSNA, Petr. *Úvaha nad přímou demokracií v ČR*. p.11)

¹² PECHANEC, Pavel. *Přímá demokracie v České republice*. ISBN 978-80-7357-700-1. p. 41

It might be surprising that the regional referendum was not introduced along with or prior to the local referendum. In fact, *Act No. 22/2004 on Local Referendum* inspired the act on regional referendums.

The institute of regional referendum was introduced in the Czech Republic in 2011 by *Act No. 118/2010 Coll. on the Regional Referendum*.

3. Have they been organised often or with a certain regularity?

Regional referendum has never been organised since its introduction into the Czech legal system. The reason might be that with the principle of subsidiarity, most of the self-governed issues are solved on the local level.

C. Local referendums

1. Do local referendums exist in your country?

Yes, they do. Based on *Act No. 22/2004 on local referendum*, this type of referendum serves as a representation of the right to autonomy of the local self-governing units. As it is apparent, only questions which fall into the scope of such a unit can be raised in this type of referendum.

2. When were local referendums introduced in your country, and in which context?

The first time local referendums were introduced was after the Velvet revolution, in 1990, in order to re-establish the democratic system along with other provisions. Since the autonomy of territorial units used to be suppressed during the previous regime and decision-making on all administration levels was state-governed, the institute of referendums was one of the crucial instruments to present in order to restore the functioning of this autonomy. With few amendments which were connected to the dissolution of the Czech and Slovak Federative Republic, local referendum kept its place in Czech law as a realisation of the right to self-government which is guaranteed by the European Charter of Local Self-Government as well as by the Charter of Fundamental Rights and Freedoms of the Czech Republic.

3. Have they been organised often or with a certain regularity?

The local referendum is undoubtedly the most used type of referendum in the Czech Republic. Based on the information published by the Ministry of Interior, 282 local referendums have been held since 2006. In 2018, there were 19 referendums. It is not unusual that the referendum is held together with elections; an example can be the Presidential Election which took place on 12–13 January 2018, when 7 referendums were organised at the same time in various Czech municipalities.¹³

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

¹³ See data from the Ministry of Interior of the Czech Republic <https://www.mvcr.cz/clanek/obcanske-aktivita-118893.aspx?q=Y2hudW09MQ%3d%3d>.

Only one national referendum has been held in the Czech Republic so far (see above); it would fall under type 4, i.e. referendum on an international issue.

1. Referendum on a whole constitution, or on one or several constitutional provisions
2. Referendum on a specific piece of legislation
3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue
4. Referendum on an international issue (including on an international treaty)
5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

PART II **QUESTIONS ON SPECIFIC REFERENDUMS**

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

Answered in relation to the referendum on the accession of the Czech Republic to the European Union

A. Short description (date, background, content, aim, outcomes)

The referendum was held on 13-14 June 2003. It was the first time a national referendum was organised in the Czech political system and it was preceded with a significant political debate. The Parliament wanted to ensure the legitimacy of their decision on joining the EU and they believed the national referendum is the best way to do so. An unusual campaign forewent the voting. Especially the government tried to persuade the voters about the advantages of being part of the EU. Also, the government tried to address as many voters as possible, not focusing on any particular group.¹⁴ Based on the *Constitutional Act No. 515/2002 Coll. on the referendum on the Czech Republic's accession to the European Union*, the accession could not proceed without the referendum and the result of the referendum was to be binding.¹⁵ The referendum question was worded as follows: "Do you agree with the Czech Republic becoming a Member State of the European Union, pursuant to the Treaty of Accession of the Czech Republic to the European Union?" The final result was supportive of the joining of the EU when 77,33 % citizens voted in favour.¹⁶ The consequences of the referendum were crucial for the change of the political system of the country.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a

¹⁴ Fiala, Petr; PITROVÁ Markéta. *Evropská referenda*. ISBN 80-7325-051-9. p. 155-170

¹⁵ See Art. 1 para. 1 of the *Constitutional Act No. 515/2002 Coll.*, available online at: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Pravni_uprava/AJ/515_2002_EN.pdf

¹⁶ Results published by the Czech Statistical Office https://www.czso.cz/csu/czso/13-8103-03-konane_13_14_6_2003-uvod

referendum is a matter for Parliament's exclusive jurisdiction) ([Code of Good Practice on Referendums](#), III.1).

Yes, it did. The Treaty of Accession was a treaty pursuant to Article 10a of the Constitution, meaning that with its ratification, some of the competences belonging to the state institutions were transferred to the EU authorities.

Article 10a

(1) Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution.

(2) The ratification of a treaty under paragraph 1 requires the consent of Parliament, unless a constitutional act provides that such ratification requires the approval obtained in a referendum.

The Parliament decided to leave the final binding decision up to the citizens; the rules for doing so were established in *Constitutional Act No. 515/2002 Coll. on the referendum on the Czech Republic's accession to the European Union*.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The Constitution as such does not provide any rules for the referendum and it leaves the determination of the conditions up to the legislator. The rules for this specific referendum were therefore presented in *Constitutional Act No. 515/2002 Coll. on the referendum on the Czech Republic's accession to the European Union*. The procedural rules were given in *Act No. 114/2003 Coll.*¹⁷

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

Yes, it was. The question asked whether the people agreed with the ratification of the Treaty of Accession of the Czech Republic to the European Union and therefore with the Czech Republic joining the EU.

2. How long in advance was the referendum called?

The referendum was called by the decision of the President on 25th April 2003. Since the referendum took place on 13-14 June 2003, it was called approximately 7 weeks in advance.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

¹⁷ PAVLÍČEK, Václav. *Ústavní právo a státověda II. díl*. ISBN 978-80-7502-084-0. p. 467

The ratification of a treaty on the accession of the Czech Republic to the European Union.

4. Was the principle of unity of content respected? (Code, III.2). Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarize the Constitutional Court's decision.

Yes, it was. Since the question only asked for an agreement or a disagreement with the accession, there was no possibility of creating a situation, where the voter would have to decide what part of the answer he/she has to subordinated to the other.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)? Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarize the Constitutional Court's decision.

The question: *"Do you agree with the Czech Republic becoming a Member State of the European Union, pursuant to the Treaty of Accession of the Czech Republic to the European Union?"*

Yes, the question was stated clearly and the wording easily deserves a "10" since it does not suggest any answers or opinions, it also informs the voters about the means of implementing the result of the referendum (pursuant to the Treaty of Accession) and the only possible answers are "yes" or "no".

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 1214)? Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly. CDL(2017)022rev2

Neutrality and objectiveness could be evaluated with a "5". There was no finding of abuse of administrative resources; yet, the campaign was directed in a rather one-sided fashion. The most noticeable campaign was led by the government which reached to all the social groups of voters. Also, the Delegation of the European Commission had operated in the Czech Republic since 1992. This Delegation supported the government's campaign alongside with non-governmental organizations. Since the stance of the most political parties to the European Union has been positive for many years, even the opposition parties did not try to confront the government. Only the communist party (KSČM) was against the accession; yet, their "anti-campaign" was not given much importance.¹⁸

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text? Please rate from 1 - unduly to 10 - duly and explain briefly.

The awareness of the elector could be evaluated with a "7". Since the discussion on joining the EU had been one of the main political themes since the 1990's, voters had a chance to understand the meaning of the referendum. Also, since it was the first time a national referendum was used within the meaning of Article 10a of the Constitution, the interest in the question was high. However, the governmental campaign was mostly

¹⁸ Fiala, Petr; PITROVÁ Markéta. *Evropská referenda*. ISBN 80-7325-051-9. p. 163-164

persuasive, rather than objectively informative, meaning that voters were not necessarily aware of the effect of their votes.¹⁹

8. Were electors able to answer the question asked by yes, no or to cast a blank vote? Please answer with a yes or a no and explain briefly.

Yes, they were. According to *Act No. 114/2003 Coll*, which stated the procedural rules, the two possible answers were “YES” and “NO”.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?
- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?
- Held at the request of a section of the electorate (including following a popular initiative)?

The referendum was not mandatory. It was held at the request of the Parliament, when it passed the Constitutional Act. It was approved by a majority of the Parliament, with 180 votes in the Chamber of deputies and 67 votes in the Senate. The Parliament was convinced that such a decision needed an approval of the people in order to be able to gain its legitimacy.²⁰

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

- E. What was the outcome of the referendum** (if possible in percentages (a) of those voting and (b) of those having the right to vote)

- (a) 77.33% of the voters voted YES and 22.67% voted “NO”²¹
(b) 41,73% of all eligible voters voted “YES” and 12.23% voted “NO”

- F. Effects of the referendum** (Code, III.8)

I. Legal effects

¹⁹ FIALA, Petr; PITROVÁ Markéta. *Evropská referenda*. ISBN 80-7325-051-9. p. 162

²⁰ PAVLÍČEK, Václav. *Ústavní právo a státověda II. díl*. ISBN 978-80-7502-084-0. p. 466

²¹ Data from Czech Statistics Office <https://volby.cz/pls/ref2003/re13?xjazyk=EN>

1. Was the referendum legally binding or consultative?

Constitutional Act No. 515/2002 Coll., Article 5:

(2) The announcement of the results of a referendum in which the Czech Republic's accession to the European Union is approved shall substitute for the Parliament's assent.

The result of the referendum was legally binding and it substituted for the decision which would be otherwise made in a legislative process by the Parliament.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

N/A.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

N/A.

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

The question was on an international treaty, which did not specifically amend the Constitution, it did not become part of the Czech constitutional order. The provisions of the Treaty of Accession were enacted and became part of the legal order.

II. Political effects

1. Was the position of the authorities at stake? Please rate from 1 - non-affected to 10 - affected and explain briefly.

Since position of the authorities was not distinctly endangered, I would rate it with a 3. As has been explained above, the government and the majority in the Parliament did not have many opposing parties. Even the civic democratic party (ODS), who was the biggest rival of the government, supported the accession. The only "anti-EU" party was the communist party (KSČM), who was not sufficiently convincing for the voters.²²

2. In the affirmative, did this lead to early elections?

N/A

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

On the paper, there was a role for the judiciary, but in practice, no intervention took place. The Constitution was amended in order to confer the power of judicial review to the Constitutional Court. The Constitutional Court gained a new decision-making power in the matter of appeal

²² FIALA, Petr; PITROVÁ Markéta. *Evropská referenda*. ISBN 80-7325-051-9. p. 164-165

against the decision of the President not to call a repeated referendum (initiated by members of the Parliament) and in the matter of procedural compliance of the referendum with Constitutional Act No. 515/2002 Coll. (initiated by any person with the right to vote in the referendum). The procedural rules were regulated in *Act No. 182/1993 Coll., the Constitutional Court Act*.²³

In particular:

(N/A, since there was no challenge to the referendum.)

1. Was this intervention obligatory or did it take place on appeal?
2. Did it intervene before or after the vote?
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

No, it was not. The wording of the question was decided by the government, which submitted the proposal of the constitutional act, and by the Parliament when passing the constitutional act.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

Constitutional Act No. 515/2002 Coll., Article 5:

(1) The Czech Republic's accession to the European Union shall be approved in the referendum if an absolute majority of those voting answer the referendum question in the affirmative.

Therefore, there was an approval quorum of at least 50% of the registered voters.

2. What was the turnout?

The turnout was 55.21%.²⁴

J. Role of international actors

²³ The Constitutional Court Act can be accessed at the webpage of the Czech Constitutional Court: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Constitutional_court_act_182_1993.pdf

²⁴ Data from Czech Statistics Office <https://volby.cz/pls/ref2003/re13?xjazyk=EN>

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

Yes, the international actors, and especially the European Union, supported the Czech Republic in joining the EU. (Since 1992 there was the Delegation of the European Commission in Prague which main goal was to ensure the presence of EU in the potential Member State.)

2. In the affirmative, what was the form of their intervention?

The Delegation supported the referendum and joining the EU in public. It also organizes visits of some representatives of the EU institutions, such as Pat Cox, former President of the European Parliament. It also published many brochures and leaflet to support the positive campaign.²⁵

K. What lessons might be learned from this referendum?

Among other things, this referendum showed that the political parties (who usually do not agree on matters concerning the governance of the state) can come along in such a topic as international relations. In general, it is rather surprising that the Czech legislator has not yet created a general legal framework for a national referendum; yet, this can be explained by a general disagreement on the features of this mechanism.

11. ESTONIA

PART I - General part

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

Estonian Constitution²⁶, Articles 56, 105 and 162, 163, 164, 168, as well as Referendum Act²⁷, provide for a binding referendum.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

First Estonian Constitution (1920) between World Wars provided for a referendum (in practice, first used in 1923). It was re-established in the end of the Soviet era (used in practice in March 1991 on the question about re-independence of Estonia). Referendum was stated again in the 1992 Constitution.

3. Is there any recent experience in your country (from 2004 on)?

The last referendum took place in September 2003 on the amending of the constitution and accession to the EU.

²⁵ Fiala, Petr; PITROVÁ Markéta. *Evropská referenda*. ISBN 80-7325-051-9. p. 161

²⁶ English version available <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

²⁷ English version available <https://www.riigiteataja.ee/en/eli/502012019006/consolide>.

B. Regional referendums**1. Do regional referendums exist on your country?**

No, as there is no regional government in Estonia.

2. When were regional referendums introduced in your country, and in which context?

N/a

3. Have they been organised often or with a certain regularity?

N/a

C. Local referendums**1. Do local referendums exist in your country?**

Yes, based on a very general provision on non-binding referendums (opinion polls) in Local Government Organisation Act, article 2(2).²⁸

2. When were local referendums introduced in your country, and in which context?

In 1993, when establishing local governments after re-independence.

3. Have they been organised often or with a certain regularity?

Local referendums are rare and in last 25 years, in many local governments there have been none. Due to their non-binding nature, the local governments usually prefer some other means to find out the public opinion. There have been four local referendums in Tallinn since their introduction.

II. Examples of National referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

In June 1992, the Constitution and its implementation act²⁹ were adopted by a national referendum. In September 2003, the Constitution of the Republic of Estonia Amendment Act³⁰ on the possibility to access to the EU was adopted.

In June 1992, together with the referendum on the adoption of the constitution, a question was put to the referendum „Do you agree that the implementation act of the constitution be added a provision „To allow the persons applying Estonian citizenship before June 5, 1992 to take part in the First elections of the *Riigikogu* (parliament) and the president after the entering into force of the constitution.“?“ This question was separate of the vote on the adoption of the constitution and its implementation law.

²⁸ English version available <https://www.riigiteataja.ee/en/eli/511022019003/consolide>.

²⁹ <https://www.riigiteataja.ee/en/eli/530102013012/consolide>.

³⁰ <https://www.riigiteataja.ee/en/eli/530102013005/consolide>.

2. Referendum on a specific piece of legislation

Only in 1923.

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

See next.

4. Referendum on an international issue (including on an international treaty)

In September 2003, a referendum was held with one question including the issue of amending the constitution and accession to the EU.

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

In March 1991, a referendum was held on the question „Do you want to restore the independence of the Republic of Estonia?“

PART II: Questions on specific referendums

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

In September 14, 2003, a binding referendum was held on the issue of amending the constitution and accession to the EU. The constitution in force was partially in contradiction with the EU law. There was a public dispute on whether the principle of sovereignty would contradict the EU law and how detailed should the amendments in the constitution be, the government majority of the parliament decided to present a draft amendment to the constitution for a referendum. There was a lot of hesitation in the accession especially in rural areas and among a large group of people who considered the EU to be too bureaucratic. Thus, the referendum was considered as a good mechanism to adopt an additional text to the constitution stipulating the possibility to be a member of EU and use the referendum as a format to allow the parliament to ratify the EU accession treaty without the parliament being accused of committing a crime against national interests. It was the second last in 10 countries which joined the EU in May 2004 as the support level was the smallest in all those countries. The previous results in other countries were considered as raising the support to the accession.

The sole question had two parts (adoption of the constitutional amendments plus decision on the accession to the EU) and was supported by 66.8% of the voters. 64% of the registered voters participated in the referendum. The outcome was expected earlier on as the president and at least the majority of the largest opposition party, even with some hesitation, decided to support the accession. No changes in political field followed. Only in 2015, a political party opposing to the EU was elected to the parliament.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

Yes, Article 105 and 163ff of the Constitution, and Referendum Act.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

Referendum Act was adopted in February 2002 and was based in general on the similar act from 1994 with many technical amendments or amendments in the procedure of the voting and election administration. The substance was amended partly. The law was drafted after earlier, not after the decision to hold the referendum. The procedure for the decision-making in the parliament is regulated by *Riigikogu* Rules of Procedure and Internal Rules Act, adopted in February 2003.³¹ The previous law in force by the time of the decision-making in the parliament was adopted in 1994. The Constitutional provisions were laid intact and were adopted already in 1992.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

The question included both the adoption of Constitutional text in four articles establishing the possibility to be a member of the EU³² as well as a question of principle. The wording of the question was: „Are you in favour of the accession to the EU and adoption of the Constitution of the Republic of Estonia Amendment Act?“

Previous referendums in 1923, 1932, 1933, 1936, 1991 and 1992 had simple questions on the adoption of legislation or a question of principle (in 1992, two different questions were asked with different answers; the majority voted as "yes" for the adoption of the constitution and "no" for the other question, see above).

Some well-known constitutional lawyers criticized that the Constitutional amendments do not provide clear understanding of the content of the constitution after adoption of the amendments.

2. How long in advance was the referendum called?

Nine months. The decision of the parliament was adopted in December 18, 2002, and referendum was held September 14, 2003.

3. Please give the precise wording or the essential elements of the referendum. What was at stake?

Accession to the EU and therefore amendment of the constitution.

³¹ English version available <https://www.riigiteataja.ee/en/eli/521032019014/consolide>.

³² The text adopted is available <https://www.riigiteataja.ee/en/eli/530102013005/consolide>

4. Was the principle of unity of content respected? (Code, III.2).

Yes, as the accession to the EU would not have been possible without amendment of the Constitution. The constitutional amendments do not oblige, but allow Estonia to be a member of the EU. There was no unity of content control mechanism present.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Yes, it was clear (10), as far as there can be an understanding of the effects of the accession to the EU. Estonian president commented in media during the campaign in 2003 that it would be advisable to have a referendum after 10 years in the EU, not before the accession, as the voters do not understand all the impacts.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

Yes, mostly (I rate 9). There were no political parties in the parliament which were in favour of „no“-vote. Even though there were some politicians reluctant to spell out their preference, the only campaigning against the „yes“-vote came from minor Political parties not represented in the parliament. The government was eager to explain the effects of the accession to the EU and provide information the consequences of the accession, as well as on the content of EU law. The information provided was objective and correct, but most politicians tried as MPs or ministers to call the voters to say „yes“.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

10 on the formal aspects (binding effect and constitutional amendment). Due to the complexity of the issue of joining the EU, surely not about all consequences in matter. Altogether: 7.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Yes, the sign had to be made to a box next to the answer „yes“ or „no“; blank votes (around 0.5% of the total votes) were considered as invalid.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

Yes, due to the interpretation that the principle of sovereignty does not allow accession to the EU. Principles stated in Part I of the constitution may be amended only by a referendum.

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

The referendum was called by the parliament.

- Held at the request of a section of the electorate (including following a popular initiative)?

No.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

n/a

E. What was the outcome of the referendum?

66.8% voted in favour, 64% participated in the referendum.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

Binding.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

As the result of the referendum was a positive answer to the question whether the voters prefer to join the EU, the government signed the accession treaty and it was ratified.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

The legislation required for the accession to the EU was adopted both before and after the referendum, whereas its entry into force was linked with the accession.

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

N/a

II. Political effects

1. Was the position of the authorities at stake?

(Please rate from 1 - non-affected to 10 - affected and explain briefly.)

10: in case a draft law put on referendum is not adopted, early elections are foreseen by Article 105 of the Constitution. In case of early elections, the government has to resign. As the result was affirmative, it didn't happen.

2. In the affirmative, did this lead to early elections?

It didn't.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. Was this intervention obligatory or did it take place on appeal?

Neither. The Supreme Court may invalidate the decision of the parliament to hold a referendum based on a request by the Legal Chancellor in case the draft law or other question

put to a referendum is unconstitutional or the procedure in the parliament was significantly violated.³³ This was not the case, as Legal Chancellor did not find such violation.

2. Did it intervene before or after the vote?

No.

1. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

No.

2. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

No.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

The CEC does not have any role in the wording of the question of constitutionality review. Legal chancellor has the right to part in the sessions of parliament and *a posteriori* the right to request the Supreme Court to invalidate the decision to hold a referendum. Legal chancellor was consulted and he did not criticize the question submitted to the referendum.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

No, there is no turnout quorum requirement.

2. What was the turnout?

64% of registered voters.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

No.

2. In the affirmative, what was the form of their intervention?

N/a.

K. What lessons might be learned from this referendum?

The procedure of the referendum was not criticized. There were many lawyers criticizing the wording of the constitutional amendment and the decision to have a question on two matters: amendment of the constitution and decision to join the EU. The legislation on the referendums was not problematic, but the situation might be different now especially concerning the campaign and campaign financing issues.

³³ Constitutional Review Procedure Act, Article 6(1)5, available <https://www.riigiteataja.ee/en/eli/508042019015/consolide>.

The government in office from April 2019 is eager to provide for more referendums and amend the constitution to foresee a possibility to have referendums without the possibility to have early parliamentary election due to the result of the referendum, as well as to provide a possibility to call a referendum by peoples' initiative without a decision by the parliament (to override the decisions by the parliament and to amend legislation adopted by the parliament). The government has not announced a more specific plan, yet, but promised to do it soon.

12. FRANCE

PARTIE I

I. Questions préliminaires

A. Référendums nationaux

1. Est-ce que le référendum national existe dans votre pays ? Est-il décisionnel ou consultatif ?

Il existe. Il est décisionnel

2. Quand est-ce que le référendum national a été introduit dans votre pays, et dans quel contexte (pour les détails, voir ci-dessous) ?

Il a été introduit en 1946 dans les deux Constitutions dites de la VIème et de la Vème République

3. Y a-t-il une expérience récente dans votre pays (depuis 2004) ?

En 2005 pour le traité établissant une Constitution pour l'Europe.

B. Référendums régionaux

« régional » s'entend ici des seules collectivités territoriales d'outre mer, quel que soit leur statut, soit

1. Est-ce que des référendums régionaux existent dans votre pays ?

Oui pour les Outre-Mer.

2. Quand les référendums régionaux ont-ils été introduits dans votre pays, et dans quel contexte ?

Dans la Constitution de 1958.

3. Ont-ils été organisés souvent, ou avec une certaine régularité ?

Ils ont été régulièrement utilisés pour les évolutions institutionnelles des collectivités territoriales et départements d'outre-Mer (18 référendums).

C. Référendums locaux

« local » s'entend ici de toutes les collectivités territoriales, quel que soit leur statut

1. Est-ce que des référendums locaux existent dans votre pays ?

Oui, dans la Constitution (article 72-1)

2. Quand les référendums locaux ont-ils été introduits dans votre pays, et dans quel contexte ?

Lors de la révision de 2003.

3. Ont-ils été organisés souvent, ou avec une certaine régularité ?

Trois référendums depuis 2004.

II. Questions préliminaires

Donnez un exemple récent (postérieur à 1989) de chacune des catégories suivantes, si possible :

1. Référendum sur une constitution entière, ou sur une ou plusieurs dispositions constitutionnelles

2. Référendum sur un texte législatif spécifique

3. Référendums sur une question de principe ou une proposition non formulée, n'amendant pas directement la constitution ou la législation, et relative à une question sociétale ou sociale

4. Référendum sur une question internationale (y compris un traité international)

Cf ci-dessus

5. Référendum sur une question territoriale (indépendance, sécession, création d'une entité infra-nationale ou transfert d'un territoire d'une entité infra-nationale à une autre)

Hormis les référendums Outre-Mer, une question portant sur l'organisation institutionnelle de la Corse (fusion des collectivités territoriales départementales et régionale) et une autre portant sur la région Alsace.

Le dernier référendum (2018) est né d'une loi de 2016 permettant à l'État de consulter les électeurs d'une aire territoriale déterminée sur un projet d'infrastructure ou d'équipement susceptible d'avoir une incidence sur l'environnement. Il a porté sur la création d'un aéroport impliquant deux départements.

PARTIE II

QUESTIONS SUR DES REFERENDUMS SPECIFIQUES

[Vous êtes priés de répondre à cette partie du questionnaire en rapport avec un ou plusieurs référendums spécifiques relevant des catégories ci-dessus (Partie I, II), qui ont eu lieu dans votre pays]

A. Brève description (date, contexte, contenu, but, résultats)

Hormis les référendums sur les évolutions institutionnelles, le seul exemple pertinent est celui (unique) du référendum sur l'aéroport Notre-Dame des Landes dont la construction a été l'objet de très nombreux contentieux et de graves troubles à l'ordre public (2018). Le rejet du projet a mis fin à celui-ci.

B. Prééminence du droit et stabilité du droit

1. Est-ce que la Constitution ou une loi conforme à la Constitution prévoit le référendum ?

Cf ci-dessus.

2. Est-ce que les règles du jeu étaient prévues à l'avance (dans la Constitution ou un texte législatif) ou ont-elles été rédigées à l'occasion du référendum en question (Code, II.2.b et III.1) ?

C. Question(s) soumise(s) au référendum

1. Est-ce que le vote portait sur l'adoption ou l'abrogation d'un texte constitutionnel ou législatif spécifique ? Dans l'affirmative, sur quel texte en particulier ? Ou est-ce que le vote portait sur une question de principe/une proposition non formulée ?

2. Combien de temps à l'avance le référendum a-t-il été convoqué ?

3. Donnez s'il vous plaît le texte exact ou les éléments essentiels du référendum. Quel était l'enjeu ? (Veuillez utiliser des termes très simples. Par exemple : élection directe du Président de la République par le peuple).

4. Est-ce que le principe de l'unité de la matière a été respecté ?

5. Est-ce que la formulation de la question était claire, en ce sens qu'elle n'induisait pas en erreur

6. Est-ce que les autorités ont agi de manière neutre et fourni une information objective ; est-ce qu'il a été soutenu ou établi que des abus de ressources administratives ont eu lieu ?

7. Est-ce que les électeurs étaient dûment informés des effets du référendum ? En particulier, ont-ils été informés de son caractère décisionnel ou consultatif et sur le fait qu'il entraînait ou non la modification d'un texte juridique ?

8. Est-ce que les électeurs ont pu répondre à la question posée par oui ou non ou par un vote blanc ?

D. Initiative du référendum et avis du Parlement

1. Est-ce que le référendum était :

- Obligatoire (la Constitution ou une loi prévoit que le texte doit être soumis au référendum) NON

- Organisé à la demande d'une autorité (le Président, le Gouvernement, le Parlement, une minorité de parlementaires, des entités locales ou régionales)

TOUJOURS

- Tenu à la demande d'une fraction du corps électoral (y compris suite à une initiative populaire)

? *POSSIBLE MAIS N'EST PAS ADVENU*

2. Si le texte a été soumis au vote à la demande d'une autorité autre que le Parlement ou d'une fraction du corps électoral, est-ce que le Parlement a pu donner un avis de caractère consultatif ?

E. Quel a été le résultat du référendum (si possible en pourcentage (a) des votants et (b) des personnes ayant le droit de vote)

F. Effets du référendum (Code, III.8)

I. Effets juridiques

1. Est-ce que le référendum était décisionnel ou consultatif ?

2. Si le référendum portait sur une question de principe ou était rédigé en termes généraux, quelles ont été les étapes suivantes en cas d'approbation ?

3. Si le référendum portait sur un projet rédigé de réforme de la Constitution, est-ce qu'un texte législatif a été adopté pour le mettre en œuvre, et quel était son contenu ?

4. Si le référendum portait sur une loi sur un projet de loi rédigé, quel a été son effet ? L'adoption, l'abrogation d'une loi ?

II. Effets politiques

1. Est-ce que le sort des autorités était en jeu ?

G. Rôle du pouvoir judiciaire

Est-ce que le pouvoir judiciaire a été impliqué dans la procédure référendaire et, dans l'affirmative, dans quel sens ?

NON

4. Est-ce que la Cour constitutionnelle a exercé un contrôle de la constitutionnalité de la question soumise au référendum ?

Vaste question de principe, sur laquelle il y a une jurisprudence abondante du Conseil d'Etat et du Conseil constitutionnel.

H. Rôle de l'administration électorale

Est-ce qu'il a été demandé à une autre autorité, par exemple la Commission électorale centrale, de se prononcer sur la formulation de la question ? Si oui, quelle a été la nature de son avis ?

I. Quorum et participation (cf. Code, III.7)

1. Y avait-il un quorum de participation ou un quorum d'approbation ?

Pour les référendums locaux, il faut que la moitié des électeurs inscrits aient participé au vote et que la moitié des votants aient approuvé le projet.

2. Quel a été le taux de participation ?

Inférieur au seuil.

J. Rôle des acteurs internationaux

1. Est-ce que des acteurs internationaux (y compris l'Union européenne) ont pris position sur la question soumise au référendum ?

2. Dans l'affirmative, quelle a été la forme de leur intervention ?

K. Quelles leçons peuvent être tirées de ce référendum ?

13. GERMANY

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

STUDY ON REFERENDUMS

Answers by Wolfgang Hoffmann-Riem

Part I: General Questions

I. Preliminary questions

A. National referendum

1. No, there does not exist a national referendum in Germany.

2. –

3. –

B. Regional referendums

1. Yes, in all federal states.

2. Federal state: year

Baden Wuerttemberg: 1974

Bavaria: 1946

Berlin: 1949-1975, since 1995

Brandenburg: 1992

Bremen: 1947

Hamburg: 1996

Hesse: 1946

Mecklenburg-Western Pomerania: 1994

Lower Saxony: 1993

North Rhine-Westphalia: 1950

Rhineland-Palatinate: 1947

Saarland: 1979

Saxony: 1992

Saxony-Anhalt: 1992

Schleswig-Holstein: 1990

Thuringia: 1994

3. It depends on each federal state and the year in which the possibility of holding a referendum was amended.

C. Local referendums

1. Yes.

2. Federal state: year

Baden Wuerttemberg: 1956
Bavaria: 1995 (introduced by a referendum)
Berlin: 2005
Brandenburg: 1993
Bremen: 1994
Hamburg: 1998
Hesse: 1993
Mecklenburg-Western Pomerania: 1993
Lower Saxony: 1996
North Rhine-Westphalia: 1994
Rhineland-Palatinate: 1994
Saarland: 1997
Saxony: 1990
Saxony-Anhalt: 1990
Schleswig-Holstein: 1990
Thuringia: 1993

3. It depends on the federal state and the year in which the possibility of holding a referendum was codified. In some countries, like Bavaria and Baden Wuerttemberg, there were many referendums in the last decades. In other federal states, there were only few, like in Bremen.

II. Examples of national referendums

1. – supra A.
2. – supra A.
3. – supra A.
4. – supra A.
5. – supra A.

Part II: Questions on Specific Referendums

A. Short description (date, background, content, aim, outcomes)

On 29 November 2015, a binding referendum was held in Hamburg to decide whether Hamburg should apply to host the 2024 Summer Olympics. 1.300.418 people were entitled to vote, among whom 653.227 people actually voted (invalid votes: 1.528). 315.181 people (48,4 %) voted for, 336.518 people (51,6 %) voted against the proposal. Thus, the proposal was rejected. The public reactions were quite different because the whole idea of hosting the 2024 Summer Olympics was intensely debated.

B. Rule of law and stability of the law

1. The constitution of Hamburg was amended to make the referendum possible (Art. 50 paragraph 4b).

2. The “rules of the game” were provided in advance by the constitution of Hamburg.

C. Question(s) put to the referendum

1. The referendum concerned the question whether Hamburg should apply to host the 2024 Summer Olympics.

2. At the end of May 2015, the Constitution of Hamburg was amended to make the referendum possible. On 16 June 2015, the Bürgerschaft (Parliament) of Hamburg determined the exact wording of the question for the referendum. On 29 November 2015, the referendum took place.

3. The German Olympic Sports Confederation and the Free and Hanseatic City of Hamburg shall apply to host the 2024 Summer Olympics. Possible answers: Yes or no.

4. Yes, the referendum did not contain different questions.

5. Yes, 10.

6. 8. The First Mayor of Hamburg, Olaf Scholz, publicly promoted for the 2024 Summer Olympics. Overall, it can be said that the political campaign was not excessive one-sided in the sense of “Code, I.3.1.b and d”. As far as can be seen, there were no allegations or findings of abuse of administrative resources.

7.

8. Electors could vote with yes or no; see question 3.

D. Initiator of the referendum and opinion of Parliament

1.

- No, the referendum was not mandatory according to the Constitution of Hamburg.
- Yes, it was held at the request of the Bürgerschaft (Parliament) of Hamburg.

2. The Bürgerschaft of Hamburg is the Parliament of Hamburg.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

1.300.418 people were entitled to vote, among whom 653.227 people actually voted (invalid votes: 1.528). 315.181 people (48,4 %) voted for, 336.518 people (51,6 %) voted against the proposal

F. Effects of the referendum

I. Legal effects

1. The referendum was legally binding.

2. In case of a positive vote, Hamburg would have applied to host the 2024 Summer Olympics.

3. –

4. –

II. Political effects

1. –

2. –

G. Role of the judiciary

No, the judiciary was not involved in the referendum procedure.

H. Role of the electoral management body

N.N.

I. Quorum and turnout

1. Both: Turnout quorum: 259.883 of 1.300.418 people had to vote with “yes”; approval quorum: Over 50 %

2. Turnout altogether: 50,2 %.

J. Role of international actors

1. No.

2. –

K. What lessons might be learned from this referendum?**14. IRELAND****Venice Commission Study on Referendums Questionnaire as adopted in December
2017 – Replies from Ireland****QUESTIONNAIRE ON REFERENDUMS**

Referendum is understood as direct consultation of the people

PART I**GENERAL QUESTIONS****I. Preliminary questions****A. National referendum**

1. Does a national referendum exist in your country? Is it binding or consultative?

Answer: The Constitution of Ireland from 1937 contemplates two kinds of national referendum. The first is a vote of the people on a proposal to amend the constitution. That is binding and indeed self-executing as the vote on the amending proposal has the effect of enacting the amendment if passed. The second constitutional provision for national referendum is a special power in limited circumstances for a vote of the people to veto legislation which has been the subject of a deadlock between the two houses of Parliament. This is known as an ordinary referendum. It has never been used.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

Answer: The first national referendum in Ireland was the plebiscite to enact the current Constitution in 1937. All national referendums since then have been to enact specific textual amendments to the constitution itself.

3. Is there any recent experience in your country (from 2004 on)?

Answer: Since 2004 the following national referendums to amend the constitution have been held in Ireland:

- Twenty-Seventh Amendment of the Constitution. This successful referendum amended the Constitution to provide that children born in Ireland would not have a Constitutional right to be Irish citizens unless one of the child's parents was an Irish citizen or would be entitled to be one. It took place on 11 June 2004.
- Twenty-Eighth Amendment of the Constitution. This unsuccessful referendum sought to amend the Constitution to allow Ireland to ratify the Lisbon Treaty. It took place on 12 June 2008.
- Twenty-Eighth Amendment of the Constitution. This successful referendum allowed the State to ratify the Lisbon Treaty. It took place on 2 October 2009.
- Twenty-Ninth Amendment of the Constitution. This successful referendum allowed the pay of judges to be reduced in line with other high ranking public servants. It took place on 27 October 2011.
- Thirtieth Amendment of the Constitution. This unsuccessful referendum sought to grant a power in the Constitution to the Oireachtas (the national legislature) to conduct inquiries into matters of general public importance and make findings of fact against people. It took place on 27 October 2011.
- Thirtieth Amendment of the Constitution. This successful referendum allowed Ireland to ratify the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. It took place on 31 May 2012.
- Thirty-First Amendment of the Constitution. This successful referendum inserted a new provision in the Constitution to expressly recognise the rights of children. It also allowed legislation to be passed to grant the State a power to step in where parents had failed in their duty towards their children, and to expressly allow for the adoption of children. It took place on 10 November 2012.
- Thirty-Second Amendment of the Constitution. This unsuccessful referendum proposed to abolish Seanad Éireann (the lower house of the legislature). It took place on 4 October 2013.
- Thirty-Third Amendment of the Constitution. This successful referendum created a new Court of Appeal to receive appeals from the High Court, meaning that only matters of general public importance can now be heard by the Supreme Court. It took place on 4 October 2013.
- Thirty-Fourth Amendment of the Constitution. This successful referendum amended the Constitution to allow for legislation to be passed to regulate marriage between same-sex people. It took place on 22 May 2015.
- Thirty-Fifth Amendment of the Constitution. This unsuccessful referendum sought to reduce the age at which a President can be elected from 35 years to 21 years. It took place on 22 May 2015.
- Thirty-Sixth Amendment of the Constitution. This successful referendum removed the Constitutional right to life of the unborn and inserted a new provision allowing legislation to be passed to allow for the provision of termination of pregnancies (note that this referendum has not yet been officially certified as court proceedings challenging the result are ongoing). It took place on 25 May 2018.

B. Regional referendums

1. Do regional referendums exist in your country?

Answer: There is no provision for regional referendums.

2. When were regional referendums introduced in your country, and in which context?

Answer: Not applicable

3. Have they been organised often or with a certain regularity?

Answer: Not applicable

C. Local referendums

1. Do local referendums exist in your country?

Answer: Under local government legislation there is provision for local referendums or plebiscites to be held on issues such as place names. There is also provision for a local referendum to be held on a proposal about directly elected mayors.

2. When were local referendums introduced in your country, and in which context?

Answer: They have been in use since the early 20th century.

3. Have they been organised often or with a certain regularity?

Answer: They have not been organised often.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

Answer: In 2013 a referendum took place on whether or not to abolish Seanad Éireann. The Seanad is the upper legislative House in our bicameral system. Therefore there are many references to the Seanad in the Constitution, in particular the sections detailing membership and elections to the Seanad and the provisions outlining the legislative process. The people were asked whether or not they approved of the amendment proposal contained in the Thirty-Second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013, which set out all of the amendments to the Constitution that would be required in order to abolish the Seanad.

This unsuccessful referendum proposed to insert a new Article 19A into the Constitution which would have proclaimed the abolition of Seanad Éireann. Furthermore, a new Article 50A would have been inserted, which would have set out the transitional arrangements and supplementary provisions to abolition, such as the status of Bills going through the legislative process on the date of abolition. In addition to this, all references to Seanad Éireann in the Constitution had to be removed. This comprised of a total of 40 amendments to and removal of Articles of the Constitution. This referendum was defeated by 51.7% against and 48.3% in favour.

2. Referendum on a specific piece of legislation

Answer: Although there is provision in the Constitution to hold a referendum on a piece of legislation that does not amend the Constitution (an 'ordinary referendum'), it has never occurred. Many referendums amend the Constitution to grant the legislature power to pass legislation on a particular issue. For example the Thirty-First Amendment of the Constitution relating to the rights of the child expressly granted the legislature power to pass laws regulating adoption.

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

Answer: Not applicable

4. Referendum on an international issue (including on an international treaty)

Answer: In 1972, a referendum took place on whether Ireland should join the European Communities, which was successful. In later years, several referendums took place allowing Ireland to ratify other EU Treaties. In 1986, a referendum to ratify the Single European Act was successful, as was a referendum in 1992 to approve the Maastricht Treaty and in 1998 for the Amsterdam Treaty. A referendum on the Nice Treaty was rejected initially in 2001 but was approved of in a subsequent referendum in 2002. A similar occurrence happened when ratifying the Lisbon Treaty, which was rejected in a referendum in 2008 but was approved of the year later in 2009. In 2012 a referendum to approve the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union was successful.

Aside from referendums relating to the European Union, in 2001 a referendum approving ratification of the Rome Statute of the International Criminal Court was successful.

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

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Answer: In 1998 a successful referendum approved of a constitutional amendment implementing the Belfast Agreement, known colloquially as the Good Friday Agreement. This agreement was the culmination of the peace process in Northern Ireland and set out the parameters of the relationships between Northern Ireland, the Republic of Ireland and Britain. It included a formal recognition that Northern Ireland forms part of the United Kingdom, and that a majority of people must be in favour before a united Ireland could be established.

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

Answer: In November 1995, the people voted in favour of removing the Constitutional prohibition on divorce. A new provision was inserted allowing for dissolution of marriage in limited circumstances, including the requirement that the couple be separated for at least four years in the preceding five. A mere nine years previously in 1986 a referendum to remove the

ban was defeated by 73.5% against. It has been said that in that intervening period signs of economic recovery were beginning to show, and that scandals regarding abuse in the Catholic Church were coming to the surface, meaning that the influence of the church was beginning to wane. Many of the fears perpetrated by the No campaign did not come to fruition; for example, in 1997 following the legislative introduction of divorce only 97 applications were made to the court, in stark contrast to the figure of 80,000 to 85,000 estimated by the No campaign.

In October 2011, the people were asked whether or not they approved of an amendment to the Constitution relating to judges' pay. This successful referendum approved of the insertion of a new Article 35.5, which allows for judges' pay to be reduced by taxes, levies and charges in a similar way to other high ranking public servants, and also allows their pay to be reduced when the pay of other public servants of a similar class are being reduced and it is in the public interest to proportionately reduce the pay of judges. Much of the debate against this proposal centred on the need to preserve the independence of the judiciary as being of a higher importance than saving money. At the time, Ireland was struggling with a recession and thus this was a likely significant factor in the success of this referendum.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

Answer: Article 46 of the Constitution requires that all amendments to the Constitution must be approved of by the people by way of referendum.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

Answer: The Referendum Act 1994 is the principal piece of legislation which regulates how referendums are to be conducted. It contains provisions regulating polling, counting of the votes and petitions challenging the result of the vote before the High Court.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text?

Answer: Yes

In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

Answer: In both referendums, the people were asked whether they approved of the proposal to amend the Constitution as contained within the relevant Bill.

In the divorce referendum, the text of Article 41.3.2 originally stated that "*No law shall be enacted providing for the grant of a dissolution of marriage*". The referendum approved of repeal and replacement of Article 41.3.2 as follows:

"A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that—

- i. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,*
- ii. there is no reasonable prospect of a reconciliation between the spouses,*

iii. such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and

iv. any further conditions prescribed by law are complied with".

In the judges' remuneration referendum, the text of Article 35.5 originally stated that "*the remuneration of a judge shall not be reduced during his continuance in office*". The referendum approved of the following repeal and replacement of Article 35.5:

1° The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

3° Where, before or after the enactment of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges".

2. How long in advance was the referendum called?

Answer: The Bill relating to the divorce referendum was passed by both Houses on 18 October 1995. The referendum took place on 24 November 1995.

For the judges' remuneration referendum, the Bill was passed by both Houses on 21 September 2011. The Minister for the Environment, Community and Local Government called the referendum on 26 September, and the date on which it took place was 27 October 2011. The Referendum Commission, whose function it is to circulate impartial information about an upcoming referendum, described this short five week period as "grossly inadequate" for it to carry out its functions.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Answer: The legalisation of divorce in Ireland
The ability to reduce the pay of judges

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

Answer: Yes. Both questions related to discrete self-contained issues.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

Answer: For divorce, the question was clear, and so a rating of 10 applies. For the judges' remuneration referendum, although the question was clear, the implications were more complex, and so a rating of 8 applies. The report of the Referendum Commission found that only 27% of people understood it very well, and 24% of people understood it quite well.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12- 14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.
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Answer: As detailed in Section G, the Supreme Court found that the Government in the divorce referendum had breached the Constitutional guarantees of equality and freedom of expression by spending public money advocating a Yes vote only. This seminal case set down a requirement for financial impartiality by the Government in a referendum campaign and led to the setting up of the Referendum Commission, whose task it is to spend public funds to inform the public of the necessary information on a referendum in a neutral manner. A rating of 7 therefore applies.

As regards the judges' remuneration referendum, the Referendum Commission had responsibility to circulate independent information about both sides of the campaign. There were no allegations of bias in the information provided. A rating of 9 thus applies.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

Answer: Yes, a rating of 10 applies. The electorate were informed that the referendum would result in a change to the Constitution.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?
Please answer with a yes or a no and explain briefly.

Answer: Yes or No. No provision for a blank vote but in fact voters can leave ballot paper blank or spoil it.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

- Held at the request of a section of the electorate (including following a popular initiative)?

Answer: The referendums were mandatory in the sense that any amendment to the Constitution can only take place in accordance with the will of the people. However there is no specific Constitutional provision which requires a referendum to be held. A referendum therefore can be said to take place at the request of Parliament, which in Ireland is made up of two Houses (the Dáil and the Seanad). Article 26 of the Constitution states that any proposal to amend the Constitution must be introduced as a Bill by the Dáil. Once passed by the Dáil and the Seanad, a referendum can then take place. If the referendum is successful, the President will then sign the Bill, it will become law and the Constitution will be amended. However if the proposal is unsuccessful then the Bill is defeated.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

Answer. Not applicable.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

Answer. The judges' remuneration referendum was passed with a large majority in favour, with 79.9% voting for and 20.3% voting against.
The divorce referendum won by a slight majority, with 50.28% voting in favour and 49.72% against.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

Answer. Legally binding

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

Answer. Not applicable

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

Answer. Following the divorce referendum, the legislature passed the Family Law (Divorce) Act 1996, which came into force in February 1997. It covers matters including the formalities involved in obtaining a decree for divorce, custody of children, and division of assets. Following the judges' remuneration referendum, the Financial Measures in the Public Interest (Amendment) Act 2011 and the Financial Measures in the Public Interest Act 2015 set out a regime for the reduction of remuneration of judges. This included both a salary cut and reduction by way of pension contributions.

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

Answer. Not applicable

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly. CDL(2017)022rev2 - 5 -

Answer. In both referendums, the Government supported the proposal.

2. In the affirmative, did this lead to early elections?

Answer. In both referendums, an election did not immediately follow.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense? In particular:

1. Was this intervention obligatory or did it take place on appeal?

Answer. A court can only intervene in a referendum if proceedings are brought by a litigant, either by way of an injunction seeking to prevent the referendum from taking place or by way of a petition after the vote. It is not obliged to intervene.

2. Did it intervene before or after the vote?

Answer: In the divorce referendum, judicial intervention occurred both before and after the vote. Before the vote, a politician named Patricia McKenna brought a challenge seeking to prevent the referendum from occurring. McKenna argued the Government had breached the Constitution by spending public money on a campaign advocating for a Yes vote. The Court agreed that this was unconstitutional, however despite this the referendum still went ahead. After the vote, another politician named Hanafin brought a challenge arguing that the result of the referendum was invalid given the Government's funding of the Yes campaign, however this challenge failed as Hanafin could not prove that the result was materially affected by this unconstitutional spending.

No court challenges were brought against the result of the judges' remuneration referendum and so the judiciary did not have the opportunity to intervene.

3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

Answer: No

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

Answer: No

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

Answer: No.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

Answer: There is no turnout quorum for a referendum. The approval quorum is a simple majority, i.e. 50% or more (Article 47.1 of the Constitution).

2. What was the turnout?

Answer: For the judges' remuneration referendum, turnout was 55.96%. For the divorce referendum, turnout was 68.2%.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

Answer: No

2. In the affirmative, what was the form of their intervention?

Answer: Not applicable

K. What lessons might be learned from this referendum?

Answer: The main lesson learned from the divorce referendum was the principle that all publicly funded information about a referendum must be balanced and devote sufficient attention to both sides of the debate.

15. ISRAEL

Only recently, in Mach 2014, the Knesset enacted a Basic Law on Referendum. It is a basic law, which can be repealed with a simple absolute majority of the Knesset (61 out of the 120 members of the Knesset).

In fact, although it is of a constitutional nature (basic law) and demands a referendum on a specific issue, it can be repealed with a simple absolute majority, in which case a referendum will not be held at all.

This law demands that a referendum be held in the case of an Israeli decision (by agreement or otherwise) that the Israeli law, jurisdiction and administration will cease to apply to any territory where they currently apply. This territory is Israel in the pre-1967 armistice lines ("the green line") including "East Jerusalem" in which Israeli law, jurisdiction and administration was applied in 1967 and the Golan Heights in which these were applied in 1981.

The referendum is required in that case unless the Knesset approves this decision by a two thirds majority.

It sounds strange, because if there is an absolute majority (61 out of 120) for this decision - e.g. in the context of an agreement with Syria regarding the Golan heights or in the context of an agreement with the Palestinians - this majority can pass this decision in the Knesset and concurrently abolish this very basic law. Then a referendum will not be required at all... but this basic law is a product of the politics involved when it was enacted...

To sum up - there has never been a referendum in Israel. There is no requirement or procedure for a referendum in our legislation (basic or regular), except for this one possible future eventuality, regarding giving up the application of Israeli law, jurisdiction and administration, in any place they now apply. Note: It does not relate to the territory of the "West Bank" (except Jerusalem) which was never "annexed" to Israel.

16. KOREA, REPUBLIC

Study on Referendums (Republic of Korea)

PART I

I. Preliminary questions

A. National referendum

[Constitution]

Article 72: The President may submit important policies relating to diplomacy, national defense, the unification of two Koreas and other matters relating to the national destiny to a national referendum if he/she deems it necessary.

Article 130 (1) The National Assembly shall decide upon the proposed amendments within sixty days of the public announcement, and passage by the National Assembly shall require the concurrent vote two thirds or more of the total member of the National Assembly.

(2) The proposed amendments to the Constitution shall be submitted to a national referendum not later than thirty days after passage by the National Assembly, and shall be determined by more than one half of all votes cast by more than one half of voters eligible to vote in elections for members of the National Assembly.

[National Referendum Act]

Article 10 (National Referendum Unit) A national referendum shall be held on a nationwide unit.

Article 49 (Public Announcement of National Referendum Date) The President shall announce publicly at the same time the date and a proposal of national referendum at the latest 18 days before the national referendum is held.

[Decisions of the Constitutional Court on a national referendum]

- A national referendum is a means to realize direct democracy. Its object or subject matter is the 'decision on issues,' that is, specific policies or legislative bills. Therefore, by the own nature of the national referendum, the 'confidence the public has in its representative' cannot be a subject matter for a national referendum. The decision of and the confidence in the representative under our Constitution may be performed and manifested solely through elections. The President's suggestion to hold a national referendum on whether he should remain in office is an unconstitutional exercise of the President's authority to institute a national referendum delegated by Article 72 of the Constitution. Thus it is in violation of the constitutional obligation not to abuse the mechanism of the national referendum as a political tool to fortify his political position. Although the President merely suggested an unconstitutional national referendum on the people's confidence and did not actually institute such referendum, the suggestion toward the public of a national confidence referendum, which is not permitted under the Constitution, is itself in violation of Article 72 of the Constitution and not in conformity with the President's obligation to realize and protect the Constitution. [2004 Hun-Na 1, May 14, 2004]
- Article 72 of the Constitution explicitly grants the President discretion which important matters will be submitted to a national referendum. The Constitutional Court has confirmed that the Constitution exclusively granted the President discretionary power to conduct a national referendum – the power to decide whether and when to conduct a national referendum, what exactly to refer to the referendum, and the contents of the queries submitted to the referendum. Therefore, even if a majority of the people wishes to submit certain national policies to a national referendum, the President does not violate the Constitution by failing to heed such wish. People are not entitled to the right to submit national policies to a national referendum. [2005 Hun-Ma 579 etc., November 24, 2005]

[Answers to the questionnaire]

1. The President may submit important policies to a national referendum according to Article 72 of the Constitution. The majority of scholars of constitution argues that a national referendum is binding and a consultative referendum is not allowed.

2. A national referendum was introduced in 1954. The Constitution was amended on November 29, 1954. According to Article 7-2 of this Constitution, legislation concerning important matters pertaining to a national crisis which might limit the sovereignty of the Republic of Korea or cause a change in its territory shall after passage by the National Assembly be referred to a national referendum for confirmation. Such confirmation shall require the valid affirmative votes of two-thirds or more of the voters in a referendum participated in by two-thirds or more of the voters eligible to vote for the election of Members of the House of Representatives.

According to the written opinion on proposal of amendment, a national referendum was introduced to give the final decision power to the people on very important matters which decide a fate of the nation. The real reason for introducing a national referendum is not clear.

3. The last national referendum was held in 1987. It was for the amendment of the Constitution. The current Constitution was adopted through this referendum.

B. Regional & local referendum

[Local Autonomy Act]

Article 14 (Residents' voting) (1) The head of local governments may put to residents' voting major matters to be decided by the local governments which impose an excessive burden or have a significant effect on the residents.

(2) Matters concerning the objects, proposers, requirements for proposal, procedures, etc. of the residents' voting shall be prescribed separately by other Acts.

[Residents' Voting Act]

Article 7 (Objects of Residents' Voting) (1) Major decisions of a local government which may excessively burden or significantly influence residents, which are prescribed by municipal ordinance of the local government, may be put to the residents' voting.

Article 8 (Residents' Voting on National Policies) (1) When the head of a central administrative agency deems it necessary to hear opinions of residents on the formulation of national policies, such as discontinuance, division and amalgamation of a local government, or district change, installation of major facilities thereof, he/she may demarcate a district where residents' voting is to be conducted and request the head of the relevant local government to conduct the residents' voting. In such cases, the head of the central administrative agency shall consult with the Minister of Interior in advance.

Article 15 (Form of Residents' Voting) Residents' voting shall be conducted in the form of a declaration of intention of ayes or noes on a specific matter or of selecting one of two matters.

Article 24 (Decision of Result of Residents' Voting) (1) Matters referred to the Residents' voting shall be decided by vote of not less than 1/3 of the total number of resident voters and by obtaining votes of a majority of the number of valid votes.

[Answers to the questionnaire]

1. Residents' voting may be used as a local or regional referendum.

2. Korea used to be a highly centralized state. After the end of the military dictatorship, Korean people demanded local autonomy. Residents' voting was introduced in the Local Autonomy Act of 1994. However, the Residents' Voting Act was enacted in 2004.

3. The residents' voting has been carried out 4 times.

(1) In July 2005 the residents' voting on the administrative hierarchical system of Jeju Island was implemented. It was for the establishment of Jeju special self-governing province. Although it had special meaning as the first resident' voting after the legislation, it left some issues in terms of that it was considered as a polling by government circles and that it had lack of the mature autonomy sense of citizen and the proper procedures.

(2) The residents' voting enacted in September 2005 on the integration of administrative districts of Cheongju-si and Cheonwon-gun was rejected by more dissenting votes. Even though it was first residents' voting to integrate the autonomous regions, it revealed some limitations that voter turnout was low and that it was carried out by the central government like in Jeju as well.

(3) There was a residents' voting on the selecting of a site for a radioactive waste disposal facility in November 2005. With unprecedented incentives from the government, 4 local autonomous entities were chosen as a result of their positive activities to attract the facilities.

(4) The last residents' voting was carried out in Seoul in August 2011. It was for the adoption of the proposal to offer free school meals in all primary and secondary school. The vote was rejected due to the lower voters' turnout of 25.7%, significantly lower than the required turnout of 33.3%. The low voting rate contributed to the resignation of the Seoul Mayor.

II. Examples of national referendums

[Answers to the questionnaire]

1. Referendum on a whole constitution was held in 1987.

2. According to Article 40 of the Constitution the legislative power shall be vested in the National Assembly. Therefore referendum on a specific piece of legislation is not allowed.

3-5. Referendum on a question of principle, an international issues, or a territorial issue has never been held in Korea.

PART II

A. Short descriptions

The national referendum has been carried out 6 times.

	Date of the notice on proposal	Date of referendum	Number of voters	Turnout rate	Approval rate	Agenda
1	Nov. 5, 1962	Dec. 17, 1962	12,412,798	85.3%	78.8%	Amendment of the Constitution
2	Aug. 9, 1969	Oct. 17, 1969	15,048,925	77.1%	65.1%	Amendment of the Constitution
3	Oct. 27, 1972	Nov. 21, 1972	15,676,395	91.9%	91.5%	Amendment of the Constitution
4	Jan. 22, 1975	Feb. 12, 1975	16,788,839	79.8%	73.1%	Maintenance of the Constitution
5	Sep. 29, 1980	Oct. 22, 1980	20,373,869	95.9%	91.6%	Amendment of the Constitution
6	Sep. 21, 1987	Oct. 27, 1987	25,619,648	78.2%	93.1%	Amendment of the Constitution

B. Rule of law and stability of law

1. The Constitution and the National Referendum Act provided for the referendums. It has been widely accepted by lawyers and jurists that referendum on a matter for Parliament's exclusive jurisdiction is not allowed.
2. The National Referendum Act provided the rules of the game in advance.

C. Questions put to referendum

1. In 1987 the Constitution was amended completely.
2. The civil demonstration forced the ruling government to institute democratic reform in June of 1987. On June 29, the government promised to amend the Constitution. On October 12 the constitutional bill was passed in the National Assembly. The national referendum was held on October 28 and the constitutional amendment was approved.

3. Since 1972 South Korean Presidents were elected indirectly by an electoral college which was generally handpicked by the regime itself. In 1987 the major demand of the people was the restoration of democracy and direct election of the President.

4-7. From June to October of 1987 the constitutional amendment was a hot issue in Korea. The constitutional bill was passed with the agreement between the ruling and opposition party in the National Assembly. The issues in the amendment was well known to the electors. The authorities acted in a neutral way and provided objective information.

D. Initiator of the referendum and opinion of Parliament

A referendum may be initiated only by the President. A referendum may not be used as a tool to circumvent the National Assembly.

G. Role of the judiciary

[National Referendum Act]

Article 92 (Action for Invalidity of National Referendum) Any voter, who has an objection to the validity of the national referendum, may bring an action to the Supreme Court against the chairperson of the Central Election Management Commission with the support of the hundred thousand or more voters within 20 days from the voting day.

Article 93 (Judgment of Invalidity of National Referendum) Even though there is a fact violating this Act or an order issued under this Act with respect to the national referendum, in an action under Article 92, the Supreme Court shall decide on the whole or partial invalidity of the national referendum, only when it is deemed to have influenced the results of the national referendum.

H. Role of the electoral management body

[National Referendum Act]

Article 6 (Management of National Referendum) Except as otherwise provided for this Act, the Central Management Commission may exercise general control over and manage national referendum affairs.

Article 22 (Notice on Proposal of National Referendum) (1) In order to make the announced proposal of a national referendum generally known to eligible voters, the Central Election Management Commission shall put up a notice.

(3) The text of the notice on the proposal of the national referendum shall include only the proposal of the national referendum.

(4) The standard and form of the text of the notice on the proposal of a national referendum and other necessary matters shall be determined by the Central Election Management Commission.

I. Quorum and turnout

Article 72 of the Constitution does not provide a turnout quorum or an approval quorum of a national referendum. However, it is widely accepted among jurists and lawyers that the paragraph 2 of Article 130 of the Constitution shall be applied *mutatis mutandis* to a national referendum which may be held under Article 72 of the Constitution.

K. What lessons might be learned from this referendum

The Korean Constitution was amended 9 times. All important amendments were made through a national referendum. However, only the last amendment, which was prepared through negotiations and collaboration between all political parties, found to be successful. It is critical to achieve a national consensus on the substance of the national referendum.

17. KOSOVO

PART I

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

Answer: Yes, the Constitution of Kosovo (2008) envisages the option of referendum as one of the mechanisms for the exercise of State sovereignty. Article 2, para. 4, of the Constitution stipulates that the "sovereignty of the Republic of Kosovo stems from the people, belongs to the people and is exercised in compliance with the Constitution through elected representatives, referendum and other forms in compliance with the provisions of this Constitution" (emphasis added). The Constitution is silent about the legal character of referenda. However, it empowers the legislature to regulate the question of referenda by law and, as it contains no express provisions about the legal nature of referenda, it essentially leaves it up to the Assembly to decide on this question. In the absence of any constitutional instructions or limitations, one could advance the proposition that the Law could provide for both binding and consultative referenda.

2. When was a national referendum introduced in your country, and in which context?

Answer: The notion of national referendum is introduced for the first time in 2008 with the adoption of the present Constitution of the Republic of Kosovo. It was thus introduced in the context of Kosovo's declaration of independence. It might be noted that the preceding document, the Constitutional Framework for Self-Government in Kosovo, promulgated by the United Nations' Special Representative of the Secretary-General (SRSG), contained no provisions, or otherwise made no references, relating to the referendum.

3. Is there any recent experience in your country (from 2004 on)?

Answer: No referendum is organized in Kosovo from 2004 on. Recently, there is an initiative for the adoption by the Assembly of a law on Referendum.

B. Regional Referendums

1. Do regional referendums exist in your country?

Answer: Regional referendums do not exist.

2. When were regional referendums introduced in your country, and in which context?

Answer: Not applicable

3. Have they been organised often or with a certain regularity?

Answer: Not applicable

C. Local referendums

1. Do local referendums exist in your country?

Answer: Yes, local referendums do exist. The local referendum is foreseen by the Law on Local Self-Government (Law Nr. 03/L-040).

2. When were local referendums introduced in your country, and in which context?

Answer: Local referendums were introduced in 2008 with the adoption of the Law on Local Self-Government. The local referendum was introduced as a tool to consult citizens on regulations adopted by Municipal Assemblies. Art. 71(1) of this Law provides that "The citizens of a municipality may request that a regulation of the Municipal Assembly adopted by the Municipal Assembly, be submitted to a referendum by the citizens." The request ought to be submitted to the Chairperson of the Municipal Assembly within thirty (30) days from the date of adoption of the regulation. The request must be signed by 10 percent (%) of the registered voters. The Municipal Assembly then considers and acts upon the validly submitted request within thirty (30) days after its receipt.

A local referendum is also foreseen as a legal mode of action in the distinct context of the removal of a municipal mayor. The same Law prescribes the possibility for citizens of a certain municipality to take the initiative of removing a mayor from office. Article 72(2) stipulates that "A request to this effect shall be signed by twenty (20) percent of the registered voters and shall be submitted to the Chairperson of Municipal Assembly who shall refer the matter to the appropriate institution for the administration of voting." If the majority of the registered voters cast their votes in favor of the Mayor's removal, then new mayoral elections ought to take place in accordance with the law on elections.

3. Have they been organised often or with a certain regularity?

Answer: No local referenda have been organized to this date.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

Answer: Not applicable

2. Referendum on a specific piece of legislation

Answer: Not applicable

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

Answer: Not applicable

Answer:

4. Referendum on an international issue (including on an international treaty)

Answer: Not applicable

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

Answer: 1991 (26-30 September): Referendum on the independence of Kosovo from the former Yugoslavia (for more on this, please see the response under II.A.).

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Answer: No popular referendum has been held in Kosovo since its declaration of independence on 17 February 2008. Prior to this date, Kosovo was under interim administration of the United Nations pursuant to Security Council resolution 1244 adopted on 10 June 1999 under Chapter VII of the UN Charter. During this period of almost a decade, no referendum has likewise been held. There is at least a single instance of a referendum organized under very special circumstances and at a somewhat distant past, between 26 and 30 September 1991, on the independence of Kosovo from the former Yugoslavia. With a turnout of 87.01 % (1,051,357 registered voters), 99.98 % (913,705) voted in favor of an independent and sovereign state of Kosovo. This notwithstanding, it was not recognized as such at the time by the international community. The only UN member state that reacted positively, thus recognizing the Kosovo as an independent and sovereign state after this referendum, was Albania. The referendum was boycotted by the Serb community living in Kosovo. Parallel institutions were subsequently organized by Kosovo Albanians and a government in exile was constituted. Kosovo's autonomous status in the former Yugoslavia had already been revoked by the Milosevic regime. The only first serious attempt at a peaceful solution—internationally mediated—was the Rambouillet Conference held in the Château de Rambouillet in France, in February 1999. The Accord was signed by Kosovo representatives, but rejected by the Serb/Yugoslav delegation. This failed opportunity, coupled with large scale human rights abuses and prevailing state of war, provoked a 78-day air campaign by NATO against the Federal Republic of Yugoslavia, which began in March 1999 and ended up with the adoption by the UN Security Council of resolution 1244 in June 1999. It established a temporary, exceptional legal régime, which superseded the Serbian legal order. No other such referendum has ever taken place in Kosovo.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction)

Answer: The Constitution of Kosovo of 2008 provides for the possibility of referendum as an expression of state sovereignty. However, it contains no express guidance as to the substance and form of referendum, other than leaving it up to the Assembly to adopt a law on referendum, disallowing the possibility for the laws of vital interest as conceived in the Constitution to be submitted to a referendum, and authorizing the Constitutional Court to assess the compatibility of any proposed referendum with the Constitution. This latter authorization would quintessentially mean compliance assessment with the constitutional provision relating to the legislation of vital interest and the broader spirit of the Constitution, which could conceivably include such basic values as human rights and fundamental freedoms. Article 113(3)(2) of the Constitution also specifies the authorized bodies to put forward the compatibility request to the Constitutional Court, which are the Assembly of Kosovo, the President of the Republic and the Government.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum?

Answer: There are so far no special legal rules on referendum. There is a draft Law on Referendum, currently under consideration by the Assembly. At the moment of writing the responses to these answers, the draft Law has been adopted by the Government, passed the first reading in the Assembly and is being reviewed by the Assembly's Legislative Committee before its final adoption.

The draft Law as it currently stands would provide for three specific types of referendums: (1) repealing referendum (i.e., referendum where citizens could vote to repeal in full or in part any laws adopted by the Assembly, including laws adopted prior to the entry into force of the Law on Referendum); (2) consultative referendum (legally non-binding on any important issues to the people of Kosovo, which could be initiated by the Assembly or the President upon approval by the Assembly); and (3) constitutional referendum (which is binding and pertains to any changes being introduced to the Constitution of the Republic of Kosovo).

C. Question(s) put to referendum

Answer: As there has been no referendum held or organized in Kosovo after its independence in 2008 or previous to it, during the UN administration, this specific context would render the following questions inapplicable.

1. Not applicable
2. Not applicable
3. Not applicable
4. Not applicable
5. Not applicable
6. Not applicable
7. Not applicable
8. Not applicable

- D. Not applicable
- E. Not applicable
- F. Not applicable
- G. Not applicable
- H. Not applicable
- I. Not applicable
- J. Not applicable
- K. Not applicable

18. LIECHTENSTEIN

QUESTIONNAIRE ON REFERENDUMS

Referendum is understood as direct consultation of the people

PART I

GENERAL QUESTIONS

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

Yes, it does exist, and it is binding to the parliament. There exists also a consultative referendum, triggered by the parliament.

In Liechtenstein, different direct democratic instruments exist, similar to Switzerland. The people are entitled to trigger a popular initiative (*Volksinitiative*) which aims at amending a law or the constitution or proposes a new law. A popular initiative usually ends up with a popular vote (*Volksabstimmung*). In addition, the electorate is entitled to trigger a "referendum" (*Referendum*) against a decision, taken by the parliament, regarding the constitution, a law, an international treaty, or a finance decision of the parliament. Finally, the parliament can bring its own decisions before the people and let the people have the final decision by a popular vote.

Important to add that, finally, the Prince has the right to sanction (approve) or to reject (veto) a proposal which has been approved by the parliament or by the electorate in a ballot.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

1921, with the Constitution of the Principality of Liechtenstein of 5 October 1921 (LGBl. 1921.015).

In 1992, the referendum on international treaties was introduced (LGBl. 1992.027).

In 2003, several additional direct democratic rights were introduced in the Constitution, although not yet used in practice (LGBl. 2003.186).

3. Is there any recent experience in your country (from 2004 on)?

Yes.

Since 2004, there were popular votes at national level on 7 proposals, started by popular initiatives (*Volksinitiative*), 10 popular votes due to a referendum against a parliament decision

(*Referendum*), and 1 popular vote after an administrative referendum, i.e. the parliament decided to let people vote about a draft admitted by the parliament (*Landtagsbegehren*).

B. Regional referendums

1. Do regional referendums exist in your country?

Regional level does not exist in Liechtenstein.

2. When were regional referendums introduced in your country, and in which context?

Not applicable.

3. Have they been organised often or with a certain regularity?

Not applicable.

C. Local referendums

1. Do local referendums exist in your country?

Yes. Local referendums exist at the municipal level. There are 11 municipalities (*Gemeinden*) in Liechtenstein.

2. When were local referendums introduced in your country, and in which context?

1960, with a new Municipality Law (Art. 29 *Gemeindegesezt*, LGBI. 1960.002). Before decisions could be taken by the local people in community assemblies instead of ballot votes.

3. Have they been organised often or with a certain regularity?

The frequency of popular votes is depending on controversial issues which are open for a referendum – and also whether citizens are willing to collect signatures. In 2018, several referendums were triggered in different municipalities.

Some issues at municipal level have to be decided by a ballot on a mandatory basis.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

2003: Popular vote of 14/16 March 2003 on two different popular initiatives regarding amendments of the constitution (one of them started by the Princely House).

2012: Popular vote of 29 June/1 July 2012 on an initiative to limiting the power of the Prince.

2. Referendum on a specific piece of legislation

2011: Referendum against a new law of 16 March 2011 on registered partnership of same-sex couples. Popular vote on 17/19 June 2011.

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

None.

4. Referendum on an international issue (including on an international treaty)

1992/1995: Popular votes on the international treaty on the accession to the European Economic Area (EEA-Agreement) on 11/13 December 1992 and 7/9 April 1995.

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

2018: Popular vote at local level in two municipalities regarding a land swap between the two municipalities.

PART II QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.). On 1 October 2015, Parliament passed a law amending the Health Insurance Act (KVG). The aim was to limit cost growth, create greater transparency in the health care system and make service providers responsible. In contrast, Committee fL21 held the referendum and submitted 2636 valid signatures on 5 November 2015. The bill was criticized as a social dismantling and the de-solidarization of the health care system. The main focus was on increasing cost sharing. In addition to the referendum committee, the Senior Citizens' Association also spoke out against the KVG revision, as did the medical profession. The government, the three parliamentary parties FBP, VU and DU, the Health Insurance Association and the Chamber of Commerce voted for the bill. The referendum on 13 December 2015 ended with a 53.2 percent majority of Yes and therefore the amendment to the act could enter into force (LGBl. 2016.002).

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

Yes. The constitution provides for the right to trigger a referendum against a decision of the parliament regarding a law or a constitutional amendment – also on financial decisions and decisions about international treaties passed by the parliament.

2. Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The rules are clearly laid down in the Constitution (*Verfassung*; LGBl. 1921.015) and the People's Rights Act (*Volksrechtengesetz*; LGBl. 1973.050).

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

The vote was on specific amendments to the Health Insurance Act, not on a generally worded proposal.

2. How long in advance was the referendum called?

The referendum was initiated by the people, i.e. by collecting signatures to have a popular vote on the parliamentary decision. The timetable is laid down by law as follows: The parliamentary decision is announced in the newspapers (official publication) and from then on open for a referendum. The necessary number of signatures must be collected within 4 weeks. The popular vote then takes place within 3 months.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Amendment of the Health Insurance Act.

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

Yes. The issue at stake was very clear. There was no complaint before the Constitutional Court.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Yes. The formulation of the question was clear. There was no complaint before the Constitutional Court.

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

Yes.

10 = Clear.

No submission to the Constitutional Court.

The People's Rights Act clearly states how the question must be formulated: "Do you want to approve the law ... passed by Parliament?"

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.

Yes.

10 = Neutral.

According to a former constitutional court decision, the government must present information and recommendations in the government information bulletin (*Regierungsinformation*) which contains both Pro and Con arguments. Initiators of a referendum or a popular initiative are invited to present their arguments in the bulletin.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

10 = duly.

People are aware of the fact that the law cannot enter into force if they reject it in the ballot – and that it enters into force if they approve.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

Yes. The ballot paper allows to cross "Yes" or "No" – or to leave it and thus cast a blank vote. However, blank votes are not taken into account when calculating the majority. Only "Yes" and "No" votes are relevant).

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

No.

The referendum was facultative.

A popular vote on a parliamentary decision can take place if the parliament decides to arrange a popular vote, or if the necessary number of signatures for a popular vote is collected (which was the case in the ballot in question).

On the other hand, the parliament can decide that an issue is urgent (*dringlich*) and thus prevent that a referendum can be triggered. In practice, this is an exception.

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

No.

- Held at the request of a section of the electorate (including following a popular initiative)?

Yes.

The referendum was triggered by the people. 1.000 signatures of persons entitled to vote are necessary to trigger a referendum against a law (which applies in the present case), 1.500 signatures are needed in case of a referendum regarding a constitutional amendment or an international treaty.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

The referendum was against a parliamentary decision. Therefore it was clear that the majority of the parliament had voted for the amendment of the Health Insurance Act. This was also stated in the government information bulletin to the ballot.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

Turnout: 66.5%

Yes: 53.2% (6.764 votes)

No: 46.8% (5.946 votes)

6.764 "Yes" voters represent 34.4% of the electorate (Total: 19.649 persons entitled to vote)

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

Binding.

A majority of "Yes" means that the decision of the parliament regarding the amendment of the Health Insurance Act was approved by the people. As a final step, it had also to be approved by the Prince (right to sanction) which was the case.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

Not applicable.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

Not applicable.

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

Adoption of the amendment to a law which had passed the parliament before, and which was approved by the Prince after the popular vote. The amendment to the Health Insurance Act was published on 14 January 2016 (LGBl. 2016.002) and entered into force on 1 January 2017.

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

1 – non affected.

2. In the affirmative, did this lead to early elections?

No. Not applicable.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. Was this intervention obligatory or did it take place on appeal?

Judiciary was not involved. There were no complaints before the constitutional court.

2. Did it intervene before or after the vote?

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Not applicable.

3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

Not applicable.

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

Not applicable.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

The formulation of the question is laid down by law.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

No. Neither a turnout quorum nor an approval quorum exists. The simple majority of the valid votes (Yes or No) is decisive.

2. What was the turnout?

66.5%

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

No.

2. In the affirmative, what was the form of their intervention?

Not applicable.

K. What lessons might be learned from this referendum?

It is quite normal and frequent to have popular votes in Liechtenstein at national and local level, and there is much routine in these procedures. The rules are clearly laid down in the Constitution and in the People's Rights Act, and the existing direct-democratic instruments are designed in such a way that the electorate has a direct influence on politics in Liechtenstein.

19. LITHUANIA

PART I **GENERAL QUESTIONS**

Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

National referendum exists in Lithuania. According to the Law on Referendums, both – binding and consultative referendums may be organised.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

The Constitution of the Republic of Lithuania, which was adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992, established that the most significant issues concerning the life of the State and the Nation are to be decided by referendum.

[The Article 9 of the Constitution of the Republic of Lithuania states:

“The most significant issues concerning the life of the State and the Nation shall be decided by referendum.

In cases established by law, the Seimas shall call a referendum.

A referendum shall also be called if not less than 300,000 citizens with the electoral right so request.

The procedure for calling and conducting referendums shall be established by law.”]

Accordingly, the procedure for calling and conducting referendums is regulated by the Law on Referendums (currently in force is the version of the law adopted on 4 June 2002; this procedure was also regulated by the previous version of the Law on Referendums, which was adopted on 3 November 1989).

3. Is there any recent experience in your country (from 2004 on)?

The most recent referendum, which was organised on 29 June 2014, was Referendum on the Amendment of Articles 9, 47 and 147 of the Constitution of the Republic of Lithuania. The referendum failed (“did not take place”) and the question was not accepted (“no decision was made”) due to insufficient voter participation³⁴.

B. Regional referendums

1. Do regional referendums exist in your country?

The Constitution of the Republic of Lithuania, as well as the Law on Referendums, does not *expressis verbis* refer to the type of referendum that may be organised. However, it is established that only the most significant issues concerning the life of the State and the Nation can be decided by referendum. The Constitutional Court in its ruling of 11 July 2014³⁵ interpreted this requirement, as well as other constitutional provisions on referendums and established *inter alia* that:

³⁴ All available information in English concerning referendums in Lithuania may be found here: <http://www.vrk.lt/en/ankstesni>

³⁵ The full text of this ruling may be found here: <http://www.lrkt.lt/en/court-acts/search/170/ta859/content>

– under the Constitution, a referendum is a form of the direct execution of the supreme sovereign power of the nation; thus, decisions on the most significant issues concerning the life of the state and the nation, once they are adopted by referendum, are mandatory (the provision of Paragraph 1 of Article 9 of the Constitution does not preclude the possibility of holding an advisory referendum where namely such a referendum is initiated);

– the most significant issues concerning the life of the state and the nation are:

(i) the issues of altering the provisions of the Constitution, which, under the Constitution, may be decided only by referendum;

(ii) in addition to those established in the Constitution, the law may provide for other most significant issues concerning the life of the state and the nation that must be decided by referendum; when establishing such list the legislature is bound by the imperative, stemming from Paragraph 1 of Article 9 of the Constitution, that, under the Constitution, not all issues, but only the most significant issues concerning the life of the state and the nation, must be decided by referendum, and that issues generally not concerning the life of the state and the nation may not be decided by referendum;

(iii) in addition to those established in the Constitution or the law, there may be other most significant issues concerning the life of the state and the nation that must be decided by referendum: **(a)** under the Constitution, the significance of a particular issue may also be determined by the fact that, as provided for by law, not less than 300,000 citizens with the electoral right request that it be decided by referendum: the most significant issues concerning the life of the state and the nation, which must be decided by referendum, should also include such an issue that would be requested to be decided by referendum by not less than 300,000 citizens with the electoral right, although neither the Constitution nor any other law would indicate that this issue must be decided by referendum; **(b)** under the Constitution, the significance of a certain issue may also be determined by the fact that it is being put to a referendum by the Seimas, as the representation of the nation: the most significant issues concerning the life of the state and the nation, which must be decided by referendum, should also include such an issue that would be put to a referendum by the Seimas, as the representation of the nation, although neither the Constitution nor any other law would indicate that this issue must be decided by referendum.

– under the Constitution, inter alia, issues that are important for the life of only some municipalities or some territorial or other communities of citizens may not be decided by referendum.

Thus, this position generally preconditions calling of national referendums. Consequently, no regional referendums have been organised.

2. When were regional referendums introduced in your country, and in which context?

See above.

3. Have they been organised often or with a certain regularity?

See above.

C. Local referendums

1. Do local referendums exist in your country?

See above.

2. When were local referendums introduced in your country, and in which context?

See above.

3. Have they been organised often or with a certain regularity?

See above.

Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

The Referendum on the Amendment of Articles 9, 47 and 147 of the Constitution of the Republic of Lithuania, the most recent referendum, was held on 29 June 2014. The referendum failed ("did not take place") and the question was not accepted ("no decision was made") due to insufficient voter participation.

The Constitution of the Republic of Lithuania was adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992 (56,76 per cent of the voters voted for the Constitution).

2. Referendum on a specific piece of legislation

The Referendum on the enactment of Law on „Illegal privatization, devalued deposits and stocks and compromised law enforcement" was held on 27 August 1994. The referendum failed ("did not take place") and the question was not accepted ("no decision was made") due to insufficient voter participation.

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

The consultative referendum concerning the construction of a new nuclear power plant in the Republic of Lithuania was held on 14 October 2012. The referendum question was: "I support the construction of a new nuclear power plant in the Republic of Lithuania". The referendum did take place, i.e. the voters participation in the referendum was sufficient (52,58 per cent of the voters participated in the referendum), the decision was against the construction of new nuclear power plant in Lithuania (more than 62 per cent of the participating voters were against the construction).

The Referendum on the membership of the Republic of Lithuania in the European Union was held on 10-11 May 2003. The referendum question was: "I am for Lithuania's membership of the European Union³⁶". The decision for Lithuania's membership in the European Union has been made (turnout of over 63 per cent, out of which over 91 per cent of voters approved the membership).

4. Referendum on an international issue (including on an international treaty)

Except the referendum on Lithuania's membership in the European Union, other at least partially relevant example could not be provided.

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

The general poll (plebiscite) was held on 9 February 1991. The voters were asked if they were in favour of "the state of Lithuania being an independent democratic republic". The most of the voters were in favour of Lithuania being an independent democratic republic (2 028 339 out of overall number of voters – 2 652 738 were in favour of the referred statement, i.e. 76,46 per cent).

³⁶ For more you may also see: <https://www.urm.lt/default/en/foreign-policy/lithuania-in-the-region-and-the-world/lithuania-member-of-the-european-union/country-profile>

It should be noted that having taken into account the fact that, during the general poll (plebiscite) more than three-quarters of the population of Lithuania with the active electoral right voted by secret ballot that “the State of Lithuania would be an independent democratic republic”, the Constitutional Law of the Republic of Lithuania on the State of Lithuania was adopted. It is now a constituent part of the Constitution of the Republic of Lithuania. This law establishes that the statement “The State of Lithuania shall be an independent democratic republic” is a constitutional norm of the Republic of Lithuania and a fundamental principle of the State (Article 1); this constitutional norm and the fundamental principle of the State may be altered only by a general poll (plebiscite) of the Nation of Lithuania provided that not less than three-quarters of the citizens of Lithuania with the active electoral right vote in favour thereof (Article 2).

PART II **QUESTIONS ON SPECIFIC REFERENDUMS**

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

The Referendum on the Amendment of Articles 9, 47 and 147 of the Constitution of the Republic of Lithuania was held on 29 June 2014. This Referendum was binding. It was initiated upon the demand of more than 300 000 citizens. Although this Referendum was popularly linked only to forbidding the land sale to foreigners, it was intended to amend the Constitution to a greater extent.

The provisions that were proposed to be amended were these:

- the provisions of the **Article 9** concerning the referendum: by inserting the requirement that decisions adopted in the referendum could be altered solely by referendum (suchlike provision is not embodied in the Constitution); as well as by reducing the required number of citizens who can demand a referendum from 300 000 to 100 000;
- the provisions of **Article 47** on the ownership of the land and other relevant objects: by inserting the requirement that the land, internal waters, forests, parks could belong by right of ownership solely to the citizens of the Republic of Lithuania and the state; by setting requirement that issues of the extraction and use of natural resources of state and communal significance could be solved only by referendum;
- the provisions of **Article 147** concerning the initiative of the alteration of the Constitution: by reducing the required number of citizens that may submit the motion to alter or supplement the Constitution from 300 000 to 100 000.

As mentioned, throughout the procedure of its organization the Referendum has been shortly referred to as “the Referendum on land sale *[to foreigners]*” since one of the proposed amendments (i.e. to the Article 47 of the Constitution) was aimed at forbidding to sell the land to foreigners in Lithuania. It is worth mentioning that before joining the European Union the land sale to foreigners was forbidden in Lithuania, however, when the Republic of Lithuania joined it in 2004, it agreed to waive this provision. Accordingly, Lithuania was given a transitional period (ultimately prolonged until May 2014) in this respect. The authorization of land sale to foreigners has always (since joining the European Union) experienced certain resistance in Lithuania, which has notably grown before the end of transitional period. Consequently, the initiative to amend by

referendum the Constitution in the way it would forbid selling the land to foreigners has been raised.

The initiative was criticized as seeking to amend constitutional provisions in the way they would not be compatible with Lithuania's obligations arising from its membership in the European Union and, thus, was highly supported by euro-sceptics. In addition, as the Referendum was mainly referred to as "the Referendum on land sale to foreigners", it was criticized as aimed at intentionally concealing the importance of other proposed amendments – all proposed amendments were presented in a single-package, thus, focusing mainly on the proposition to amend the provisions concerning the ownership of the land and other objects.

The Referendum failed ("did not take place") and the question was not accepted ("no decision was made") due to insufficient voter participation: the referendum was invalidated by a turnout of just 14.98 per cent.

Following the end of the transitional period and, accordingly, after the Referendum, the land sale to foreigners has been permitted, as well as relevant changes to legal regulation concerning the sale of agricultural land (the type of land which attracted the biggest concern in this respect) *inter alia* to foreigners have been adopted.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

Under the Constitution (as well as according to the Law on Referendums), the referendum on amendment of the provisions of the Constitution could have been initiated by no less than 300 000 citizens. The constitutional provisions that were at the stake could have been amended by referendum. In addition, Articles 9 (First Chapter of the Constitution) and 147 (Fourteenth Chapter of the Constitution) can be amended solely by referendum (according to the Paragraph 2 of the Article 148 of the Constitution "the provisions of the First Chapter "The State of Lithuania" and the Fourteenth Chapter "The Alteration of the Constitution" may be altered only by referendum").

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The Law on Referendums is the main legal act providing for the procedure for calling and conducting referendums (under Paragraph 4 of the Article 9 of the Constitution). Therefore, the "rules of the game" are generally known in advance and are not specifically adapted to particular situation.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

The vote was on the adoption of a specific constitutional text.

The question put to referendum was formulated as follows: "Do you support the adoption of this law: [text]?". As mentioned, the proposed amendments of constitutional provisions (the Articles

9, 47, 147) were put to referendum as a single package, i.e. as one text, and the voters, if they were in favour of it or a part of it, had to vote, accordingly, for the whole text.

It should be noted that the Constitutional Court adopted the ruling (not directly in relation with organising this Referendum) on organising and calling referendums 11 July 2014 (i.e. after the Referendum)³⁷ by which certain provisions of the Law on Referendums were found to be not in conformity with the Constitution. It was recognised that the Article 6 of the Law on Referendums, insofar as it did not establish the requirement that several issues unrelated by their content and nature, or several unrelated amendments to the Constitution of the Republic of Lithuania, or several unrelated provisions of laws may not be submitted as a single issue in a decision proposed to be put to a referendum, was in conflict with Paragraphs 1 and 3 of Article 9 of the Constitution.

2. How long in advance was the referendum called?

The resolution of the Seimas (Parliament) on calling the referendum was adopted on 10 April 2014.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

As mentioned, essentially these amendments were proposed:

- to the Article 9 concerning the referendum: the insertion of the requirement that decisions adopted in the referendum could be altered solely by referendum; the reduction of the required number of citizens who can demand a referendum from 300 000 to 100 000;
- the Article 47 on the ownership of the land and other relevant objects: the insertion of the requirement that the land, internal waters, forests, parks could belong by right of ownership solely to the citizens of the Republic of Lithuania and the state, as well as requirement that issues of the extraction and use of natural resources of state and communal significance could be solved only by referendum;
- the Article 147 concerning the initiative of the alteration of the Constitution: the reduction of the required number of citizens that may submit the motion to alter or supplement the Constitution from 300 000 to 100 000.

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

The issue was not submitted to the Constitutional Court, therefore there is no binding decision on this matter.

³⁷ This ruling was adopted in the constitutional justice case started upon the petition by the Supreme administrative court of Lithuania, which was deciding on the lawfulness of the decision of Central Electoral Commission to refuse to register the initiative group of mandatory referendum. This refusal was based on the Central Electoral Commission's finding that the draft law proposed for the referendum was not in line with the requirements of the Constitution and Law on the Fundamentals of Lawmaking. The Supreme administrative court addressed the Constitutional Court in order to find out if the Law on Referendums was in conformity with the Constitution. According to the petitioner, this law did not allow, though should have allowed, the Central Electoral Commission to refuse to register the initiative group if the proposed decision was not in conformity with the Constitution. In this case the Constitutional Court was also addressed by the Seimas, which stated that the Law on Referendums did not allow, though should have allowed, the Seimas not to call referendum if the proposed decision was not in conformity with the Constitution.

The Constitutional Court recognised the Law on Referendums not in conformity with the requirements of the Constitution regarding both mentioned aspects.

However, as mentioned, all three amendments of the different Articles of the Constitution were put to the Referendum as a single package. Thus, the doubts could be raised as to whether the principle of unity of content was properly respected.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

The issue was not submitted to the Constitutional Court, therefore there is no binding decision on this matter.

The formulation was generally clear, however one text included all proposed amendments, thus, the doubts could be raised as to whether the requirements of clarity were properly respected.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 1214)?

Please rate from 1 - not neutral nor objective to 10 - neutral and objective - and explain briefly. Certain dissatisfaction in respect of the actions of authorities (including related to the lack of attention to referendum) was observed from the part of initiators of the Referendum. However, in general it is to suggest that the procedure of calling and organising referendums was followed and, accordingly, more or less neutral actions were performed.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

Generally, the electors were well informed about the binding nature of the referendum, they were also informed of the proposed changes to the constitutional text.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

The electors were able to answer the question by yes or no.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

It was mandatory.

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

No.

- Held at the request of a section of the electorate (including following a popular initiative)?

Yes. It was held at the demand of more than 300 000 citizens.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code,

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

The Seimas, essentially, is able to give an opinion: the group of experts formed by the Seimas gives a conclusion on the text of decision provided with the demand of citizens to call referendum; if the group finds that the text of the decision may be not in conformity with the Constitution, such conclusion is made public by the Seimas, however, it may not constitute a ground for not calling a referendum.

The Constitutional Court in its ruling of 11 July 2014 recognised that Article 14 of the Law on Referendums, insofar as it provides that the Seimas is obliged to adopt a resolution on calling a referendum where the decision proposed to be put to the referendum may not be in line with the requirements stemming from the Constitution, is in conflict with Paragraph 1 of Article 6 and Paragraph 1 of Article 7 of the Constitution and the constitutional principle of a state under the rule of law.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

The referendum was attended by 380 178 (14,98 per cent); 2 538 430 voters were included in voters list.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

It was legally binding.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

It was not.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

It was on a specifically-worded draft amendment of the Constitution, however, the proposed decision was not voted in favour at the referendum.

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

It was not.

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

Generally, there were preconditions to assume that the question referred to a referendum, inasmuch as it was aimed at forbidding the land sale for foreigners, could have been not compatible with the obligations assumed by the state as the member of the European Union. Therefore, the position of the authorities was, in a sense, at stake.

2. In the affirmative, did this lead to early elections?

No, it did not.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

Generally, it was not directly involved in the referendum.

In particular:

1. Was this intervention obligatory or did it take place on appeal?
2. Did it intervene before or after the vote?
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

Central Electoral Commission is always addressed in order to register the initiative group for a referendum. However, prior to the ruling of 11 July 2014 of the Constitutional Court, Central Electoral Commission generally was not expressly required to address the formulation of the question when deciding on registering the initiative group for a referendum.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

There was a requirement of turnout quorum, i.e. more than 50 per cent of all voters must have participated in order the referendum to take place.

There was also a requirement of an approval of no less than 50 per cent of the voters in order the proposed amendments of the Article 9 and 147 to be adopted.

It should be noted that the Article 9 is in the first Chapter of the Constitution and the Article 147 in the Fourteenth Chapter – Chapters that, according to the Paragraph 2 of the Article 148 of the Constitution, may be altered only by a referendum and that, therefore, under the law, require a greater extent of approval in a referendum by the citizens in order to be amended, i.e. 50 per cent of all voters must be in favour of the proposed amendments³⁸.

In order to separately amend the Article 47 (in this case it was, as mentioned, a single package proposal for all amendments), the requirement of the approval of no less than 1/3 of all voters (if no less than 50 per cent participate) is applied.

2. What was the turnout?

Only 14,98 per cent of the voters have participated (out of required 50 per cent), therefore, it was declared that the referendum did not take place.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

³⁸ Whereas according to the Paragraph 1 of the Article 148 of the Constitution the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitution may be altered only by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof.

The position of the European Union was clear in respect of the question of land acquisition by foreigners³⁹: the state must fulfil its obligations as of a Member of the European Union and adopt necessary legislative amendments in order to allow it. No position in respect of other proposed amendments was expressed.

2. In the affirmative, what was the form of their intervention?

Generally, no direct intervention was made, except of the public discussions related to the issue.

K. What lessons might be learned from this referendum?

There may be possible lessons as to formulating the question for a referendum (i.e. ensuring that several constitutional amendments as a single-package would not be provided), as well as in respect of the powers of authorities in the process of calling and organising referendums (especially in respect of the formulation of the text in the light of constitutional requirements).

20. MONACO

La procédure référendaire n'existe pas à Monaco.

En effet, aucun des trois champs d'utilisation de la procédure référendaire n'est pertinent s'agissant de Monaco.

S'agissant de la révision de la Constitution

L'article 94 de la constitution monégasque prévoit que « *La révision totale ou partielle de la présente Constitution est subordonnée au commun accord du Prince et du Conseil national* »
Il n'est donc pas prévu d'intervention directe des Monégasques par la voie référendaire.

S'agissant de l'adoption de la loi

L'article 66 de la Constitution monégasque prévoit que « *La loi implique l'accord des volontés du Prince et du Conseil national* »
Il n'est donc pas plus prévu d'intervention directe des Monégasques par la voie référendaire.

Le référendum régional est sans objet à Monaco.

La Principauté de Monaco ne comporte pas de régions. L'article 78 de la Constitution monégasque prévoit que « *Le territoire de la Principauté forme une seule commune* » celle-ci étant « *dotée de la personnalité juridique* » et s'administrant « *librement, par un Conseil élu, dans les conditions fixées par la Constitution et par la loi* », aux termes de l'article 1^{er} de la loi n°1.316 du 29 juin 2006.

Aucune disposition constitutionnelle ne prévoit la faculté d'organiser un référendum consultatif ou décisionnel sur des questions intéressant la Principauté de Monaco.

³⁹ For example see: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-002560&language=LV>

21. NORTH MACEDONIA

PART I GENERAL QUESTIONS

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

-Yes, national/state level referendum exists in North Macedonia.

The Law on Referendum and other forms of direct expression of the citizens ("Official Gazette of North Macedonia", no 81, 2005) makes legal difference between the national/state and local level referendum.

In this context, the Law defines the referendum as a form of direct expression of citizens' will in the decision making on certain aspects that are under the competence of the Assembly of North Macedonia, aspects that are under the competence of the municipalities, the City of Skopje and the municipalities within the City of Skopje, as well as, on other issues of local importance.

The Assembly of North Macedonia schedules national/state level referendum.

Article 68, paragraph 1, item 10 of the Macedonian Constitution says that: "the Assembly of North Macedonia schedules a referendum", and Article 73 of the Constitution says: "The Assembly decides on scheduling a referendum on certain issues of its competence with majority of votes from the total number of MP's. The decision at the referendum is adopted if it is supported by the majority of voters who voted, if more than one-half of the total number of voters registered in the Single Voters' List voted at the referendum. The Assembly is obliged to schedule a referendum when the proposal for referendum comes from at least 150,000 voters. The decision passed at a referendum is obligatory."

Article 74 of the Constitution also says that: "The Assembly passes a decision for changing the border of the Republic with 2/3 majority of votes by the total number of MPs. The decision for changing the border of North Macedonia is adopted at a referendum, if it was supported by the majority of the total number of voters."

The Macedonian Constitution and the Law on referendum and other forms of direct expression of the citizens says that the national referendum is mandatory announced for an Assembly decision on changing the national border and for a decision for joining or leaving an alliance or community with other states. The Assembly is obliged to schedule a referendum when the proposal for referendum comes from at least 150,000 voters. The decision passed at a referendum is obligatory.

National referendum is compulsory for an Assembly decision on changing the national border and for a decision for joining or leaving an alliance or community with other states.

The Law foresees a possibility for early and additional referendum. Early referendum can be scheduled on matters that need to be regulated with a law, for defining certain issue that is not regulated with a law, for ratification of international treaties and for matters that are under the competence of the Assembly, while additional referendum can be scheduled on decisions adopted by the Assembly, for re-evaluation of an already adopted law, or for expressing the citizens' will on other affairs on which the Assembly has decided upon. The Law also foresees early consultation with the citizens on issues that are of wider importance for North Macedonia and on which additional referendum is required.

Referendum at national level cannot be open for issues concerning the following:

- The Budget of North Macedonia and the budget final balance;
- The public expenditures;
- The reserves of North Macedonia;

- Election regulations;
- Appointments and dismissals;
- Amnesty;
- Defense;
- Military or extraordinary condition;
- Legal regulations adopted in a time of military or extraordinary condition;
- Issues on which the Assembly decides with majority of votes from the present MPs, with a requirement of majority of votes from the MPs who come from the non-majority communities in North Macedonia.

Decision for changing the national border and decision for joining or leaving an alliance or community with other countries are passed at a referendum if the majority of the voters registered in the Single Voter's List supported these decisions. This decision is compulsory.

The decisions passed at a national referendum are considered final if they were supported by the majority of the citizens who voted, and if one-half of the voters registered in the Single Voter's List have voted, except in the cases differently regulated with the Constitution and with this law.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

-The First national referendum in North Macedonia was held on 8th of September, 1991. On that referendum Macedonian people directly expressed their will for independent and sovereign state. On this day, over 95.5% of the citizens voted for independence of the Republic Macedonia. The people's will for an independent state was confirmed with the Declaration of the referendum on September 18, 1991 at the Macedonian Parliament. Finally on 25th September, 1991 the Declaration was adopted at the first multi-party Macedonian Parliament

3. Is there any recent experience in your country (from 2004 on)?

-Since it gained independence and until the present date, there have been two national referendums in North Macedonia. The first referendum took place on 8 September 1991 at a request of the Assembly of North Macedonia, and the second one took place in 2004 at a request of at least 150,000 citizens.

- On 30th of September, 2018 Macedonia organized new national referendum with the following question "Are you in favour/Do you support European Union and NATO-membership by accepting the Agreement between North Macedonia and the Republic of Greece?." The proposal ultimately failed because the turnout of eligible voters was not over 50% according to the State Election Commission. The total registered voters in the Electoral List are 1.806.336 and the final turnout was 36.91%. From 666.734 voters who voted 609.813 says "Yes", and 37.700 "Against". Valid votes were 647.513 and invalid or blank votes 19.221. The State Election Commission proclaimed the referendum unsuccessful.

B. Regional referendums

1. Do regional referendums exist in your country?

-No, Macedonia has only national/state level and local (municipality) level referendum.

2. When were regional referendums introduced in your country, and in which context?

/

3. Have they been organised often or with a certain regularity?

/

C. Local referendums

1. Do local referendums exist in your country?

-YES, local referendums exist in North Macedonia. Referendum at local level is scheduled by the Municipal Council, the Council of the City of Skopje and the Councils of the municipalities within the city of Skopje, following its own initiative or at an initiative from 20 percent of the citizens living in the municipality, the city of Skopje and the municipalities within the City of Skopje. The Council can schedule a referendum on issues from its own competence for which it is authorized to decide with a law.

Referendum at local level can be scheduled for passing a regulation, on issues that ought to be regulated by the municipality, the City of Skopje or the municipalities within the City of Skopje (early referendum), or for re-assessment of previously adopted regulation (additional referendum). Early referendum at local level can be scheduled for:

- Certain affairs that should be regulated with a regulation, and
- For regulating certain issues that are not regulated with a regulation.

Additional referendum can be scheduled for re-assessment of a previously adopted regulation. Referendum at local level can be scheduled on issues that concern the municipal budget and the closing account of the municipality, the City of Skopje and the municipalities within the City of Skopje and for the organization of the municipal administration.

Referendum at local level cannot be scheduled on issues on which the Council decides with majority of votes from the municipal councilors, with a requirement for majority of votes from the councilors who come from the non-majority communities in the municipality, the city of Skopje and the municipalities within the City of Skopje.

The decisions adopted at a local are considered adopted if they were supported by the majority of the total number of citizens who voted, if more than one-half of the voters registered in the Single Voter's List for that municipality, the city of Skopje or the municipalities within the City of Skopje have voted. The municipal Council is obliged to regulate the matter on which the referendum was scheduled within 60 days after the referendum results have been announced.

2. When were local referendums introduced in your country, and in which context?

- The local referendum after North Macedonia gained independence in 1991 was regulated with the Law on the general provisions for a referendum and other forms of decision-making with personal expression (of opinion) ("Official Gazette of SRM", No 19/79), the Law on the procedure for collection of signatures of voters for proposal and passing of a law, for scheduling a referendum and for submission of a motion for amendments to the Constitution of North Macedonia ("Official Gazette of North Macedonia", No 16/96) and the Law on referendum and civic initiative ("Official Gazette of North Macedonia", 24.98). The current Law on referendum and other forms of direct public expression of opinion by the citizens ("Official Gazette of North Macedonia", No 81) was adopted on 27 September 2005.

Until now, several local referendums have taken place; in 2004 in several municipalities (Labunista, Dzepestice and others), and with regard to the then new territorial division of the country, in 2006 in the municipality of Radovis, in 2007 in the municipality of Strumica, in 2015 in the municipality of Centar (part of the capital Skopje), in 2017 in the municipalities Gevgelija, Bogdanci, Dojran, Valandovo and Novo Selo. The referendum questions were of different nature, varying from question whether the citizens accept the new territorial division and changes of the municipal boundaries, to question of architectural nature and questions whether the citizens agree with opening of mines in their municipalities.

3. Have they been organised often or with a certain regularity?

- In Macedonia there is a tendency of holding several local referendums in one specific year. Such a case was present in 2004 when local referendums were organised in a number of municipalities, as well as in 2017 when five local referendums were organised related with the opening of mines in those municipalities.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions
/
2. Referendum on a specific piece of legislation

-The second referendum at national level was organized on 7 September 2004 so that the citizens can speak their mind on the newly adopted Law on Territorial Division of North Macedonia.

In accordance with the Constitution and the 1998 Law on Referendum and Civil Initiative, and at a request of 180,545 citizens with the right to vote, the Assembly scheduled a referendum for the newly adopted territorial organization of North Macedonia. At the referendum, the electors were asked to answer on the following referendum question: "Are you for the territorial organization of the local self-government (the municipalities and City of Skopje) as determined by the Law on Territorial Division of North Macedonia and Determination of the Areas of the Local Self-Government Units (Official Gazette of North Macedonia no. 49/1996) and the Law on the City of Skopje (Official Gazette of North Macedonia no. 49/1996), with meaning are you "for" or "against" the old territorial organization of the country regulated with the previous laws adopted in 1996.

In the referendum the majority of the citizens voted against the new territorial division, supporting the previous laws and old model of territorial organization of the country. However the referendum was declared failed because the minimum of 50%+1 outcome from the total number of voters registered in the Single Voter's List was not achieved. Regardless the failure of the referendum, we can say that the new territorial organization caused series of controversies and divisions in the public, mainly because of its ethnic and demographic implications.

Namely, most of the Macedonians, and to some extent also the Albanian population, believed that the new territorial organization will disturb the ethnic balance in the country. Several opposition parties were identified as main adversaries to the new territorial division, as well as some intellectuals (including myself), because we believed that the entire process of preparation of the new territorial organization was done in a non-transparent manner, contrary to the European Charter for Local Self-Government, against the citizens' will expressed at the local referendum, and that the territorial organization was done in a way to lead to further ethnic divisions between the Macedonian and Albanian "territories" in the country.

2004 Referendum for territorial organization of North Macedonia

Date 7 November 2004

Outcome		
YES or NO	Votes	Share
✓ YES	427.112	95,06%
✗ NO	22.212	4,94%
Valid ballots	449.324	98,89%
Invalid ballots	5.023	1,11%

Total of votes	454.347	100.00%
Outcome		26,58%
Voter's body		1.709.536

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

/

4. Referendum on an international issue (including on an international treaty)

- The national referendum was held on 30th of September, 2018 regarding to the Final agreement for the settlement of the differences as described in the UN Security Council Resolutions 817 (1993), the termination of the Interim Accord of 1995, and the establishment of a strategic partnership between the parties, signed on 17 of June, 2018 between the Ministers of Foreign Affairs of North Macedonia and the Republic of Greece.

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity).

-The first national referendum was referendum for independence of the state. It took place on 8 September 1991 at a request of the Assembly of North Macedonia, and the second one took place in 2004 at a request of at least 150,000 citizens.

The 1991 referendum for independence resulted with the country's declaration of independence from the former Socialist Federative Republic of Yugoslavia. The referendum question was: *Are you for sovereign and independent state Macedonia, with a right to join a future alliance of sovereign countries of Yugoslavia? YES-NO.*"

Referendum for independence of North Macedonia

Date 8 September 1991

Outcome		
YES or NO	Votes	Share
✓ YES	1.079.308	96,46%
✗ NO	39.639	3,54%
Valid ballots	1.118.947	98,79%
Invalid ballots	13.648	1,21%
Total of votes	1.132.595	100.00%
Outcome		75,72%
Voter's body		1.495.807

PART II QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

Referendum for independence of North Macedonia

Date 8 September 1991

Outcome		
YES or NO	Votes	Share
✓ YES	1.079.308	96,46%
✗ NO	39.639	3,54%
Valid ballots	1.118.947	98,79%
Invalid ballots	13.648	1,21%
Total of votes	1.132.595	100.00%
Outcome		75,72%
Voter's body		1.495.807

The Macedonian referendum for independence took place on 8 September 1991 and resulted with declaring of independence of North Macedonia from the Socialist Federative Republic of Yugoslavia. The referendum question was:

1. Are you for a sovereign and independent state of Macedonia, with the right to join a future alliance of sovereign states of Yugoslavia?

“FOR” --- “AGAINST”

According to the official data out of 1,495,807 voters, 1,132,981 or 71,85% have been voted. Of them, 95,26% voted “FOR” (i.e. 72,16% of the total number of citizens with the right to vote). The results speak by themselves about the success of this referendum.

The official report of the Commission for organizing of the referendum says that no objections or complaints have been filed for irregularities or violations of the law on state referendum.

The Commission concluded the large number of citizens with the right to vote who voted FOR independent and sovereign Macedonia.

The 2004 referendum was set for the citizens to speak their mind regarding the Law on territorial division of North Macedonia and took place on 7 November 2004. In accordance with the Constitution of North Macedonia and the Law on referendum and civil initiative from 1998, and following the appeal from 180,454 citizens with the right to vote, the Assembly of North Macedonia on 3 September 2004 scheduled the referendum for the new territorial organisation of North Macedonia.

On this referendum, the majority of citizens voted against the new territorial division, and in favour of the previous, old model of territorial organization of the country, but the referendum was not successful because the turnout was 26,58%, i.e. the legal census of 50 %+1 from the total number of voters was not reached.

The new territorial organisation of North Macedonia caused many controversies and divisions in the Macedonian public, mainly because of its ethnic and demographic implications for the state. Many of the Macedonians and in a smaller number the Albanians believed that the new territorial division disrupts the ethnic balance in the country. Many opposition parties stood against the territorial division, including number of intellectuals who believed that the entire process of preparation of the territorial division was done in a non-transparent manner, contrary to the will of the citizens and with an aim to cause ethnic division among the Macedonian and Albanian "territories".

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

-Article 68, paragraph 1, item 10 says that: "the Assembly of North Macedonia schedules a referendum", and Article 73 says: "the Assembly decides on scheduling a referendum on certain issues of its competence with majority of votes from the total number of MPs. The decision at the referendum is adopted if it is supported by the majority of voters who voted, if more than one-half of the total number of voters registered in the Single Voters' List voted at the referendum. The Assembly is obliged to schedule a referendum when the proposal for referendum comes from at least 150,000 voters. The decision passed at a referendum is obligatory."

Article 74 of the Constitution also says that: "The Assembly passes a decision for changing the border of the Republic with 2/3 majority of votes by the total number of MPs. The decision for changing the border of North Macedonia is adopted at a referendum, if it was supported by the majority of the total number of voters."

Amendment 17 of the Constitution stipulates that: "in the local self-government units the citizens participate in the decision-making on local issues directly and through elected representatives, especially in areas concerning the communal services, urbanism and the rural planning, environmental protection, the local economic development, local financing, communal activities, culture, sports, social and child protection, education, health protection and other areas determined with the law. In the city of Skopje, the citizens participate directly through their elected representatives in the decision-making on matters important for the city, particularly in the areas of the utility services, urbanism and the rural planning, the environmental protection, the local economic development, local financing, communal activities, culture, sports, social and child protection, education, healthcare and other areas determined with the law."

In general, one may conclude that the Constitution of North Macedonia sufficiently provides the basic frame in which the citizens can articulate and realize their rights and freedoms related with their free expression of positions and thoughts. Of course, the practical implementation of the constitutionally guaranteed rights in practice depends on multiple factors, including: the motivation of the initiators, the level of urgency of the given issue, simplicity of the procedure, the level of political culture of all players in the country, the democratic capacity and the transparency in the work of the public institutions, the set-up of the mechanisms for this kind of activity etc.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

-See the point above.

Unlike the general character of the constitutional provisions, the Law on Referendum and other forms of direct expression of citizens ("Official Gazette of North Macedonia", no 81, 2005)

foresees a pretty complex and difficult procedure for the implementation of the three forms of direct expression of citizens' will: the referendum, the civil initiative and the citizens' assembly.

In this context, the Law defines the referendum as a form of direct expression of citizens' will in the decision making on certain aspects that are under the competence of the Assembly of North Macedonia, aspects that are under the competence of the municipalities, the City of Skopje and the municipalities within the City of Skopje, as well as, on other issues of local importance. The expression of opinion at a referendum is direct and secret, and right to vote have citizens with voter's right registered in the Single Voters' List. No citizen can be held accountable for voting, i.e. for not voting at a referendum.

A referendum can be scheduled for passing a decision or for consulting the citizens. If passing a decision is at hand, the decision passed by the citizens is compulsory, and if it is consultative, it is not. The Law further elaborates in details the referendum procedure, determines the body that opens the referendum, the territory it is opened for, the title of the regulation, i.e. the question on which the citizens decide at a referendum and so on. The authorized proposer of the referendum is entitled to public propaganda in favor of the referendum at his own expense, and this campaign must end 48 hours before the referendum at latest.

The Assembly of North Macedonia schedules a referendum at a national level following its own initiative, or at a proposal supported by at least 150,000 citizens. National referendum is compulsory for an Assembly decision on changing the national border and for a decision for joining or leaving an alliance or community with other states.

The Law foresees a possibility for early and additional referendum. Early referendum can be scheduled on matters that need to be regulated with a law, for defining certain issue that is not regulated with a law, for ratification of international treaties and for matters that are under the competence of the Assembly, while additional referendum can be scheduled on decisions adopted by the Assembly, for re-evaluation of an already adopted law, or for expressing the citizens' will on other affairs on which the Assembly has decided upon. The Law also foresees early consultation with the citizens on issues that are of wider importance for North Macedonia and on which additional referendum is required.

Referendum at national level cannot be open for issues concerning the following:

- The budget of North Macedonia and the budget final balance;
- The public expenditures;
- The reserves of North Macedonia;
- Election regulations;
- Appointments and dismissals;
- Amnesty;
- Defense;
- Military or extraordinary condition;
- Legal regulations adopted in a time of military or extraordinary condition;
- Issues on which the Assembly decides with majority of votes from the present MPs, with

a requirement of majority of votes from the MPs who come from the non-majority communities in North Macedonia.

Decision for changing the national border and decision for joining or leaving an alliance or community with other countries are passed at a referendum if the majority of the voters registered in the Single Voter's List supported these decisions. This decision is compulsory.

The decisions passed at a national referendum are considered final if they were supported by the majority of the citizens who voted, and if one-half of the voters registered in the Single Voter's List have voted, except in the cases differently regulated with the Constitution and with this law.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text?

-Yes, at the national referendum held in 2004 the Law on Territorial Division of North Macedonia and Determination of the Areas of the Local Self-Government Units ("Official Gazette of North Macedonia" no. 49/1996) and the Law on the City of Skopje ("Official Gazette of North Macedonia" no. 49/1996) were in the referendum question.

The referendum question:

"Do you favour local self-government territorial organisation (municipalities and the City of Skopje) as defined in the Law on territorial organisation of North Macedonia issued in 1996 and the Law on the City of Skopje issued the same year?" "YES" or "AGAINST"

Voters were asked whether they are "for" or "against" the previous, the older laws for local self-government territorial organization of North Macedonia of overturning the municipal redistricting plans that gave greater autonomy to the municipalities and reducing the number of municipalities from 123 to 84.

In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

-See the point above.

2. How long in advance was the referendum called?

- When the process of dissolution of Yugoslavia appeared to be inevitable, the newly-constituted Assembly in January 1991 adopted the Declaration on the sovereignty of the Socialist North Macedonia. The declaration is both political and constitutional act.

In its preamble, as one of the its legal basis the Article 1 of the International Covenant on Political and Civil Rights of 1966, which guarantees the right of all nations to self-determination i.e. the right to determine freely its political status and its social, cultural and economic development, was directed as one of the legal bases for the Declaration. In such a way, the political decision of the Assembly of North Macedonia was provided with an international legitimacy.

On the basis of the Declaration on the sovereignty, **the Assembly in august 1991 decided to issue a notice of a referendum on the future position of the Macedonian state.** On the basis of the inalienable and inviolable right to self-determination, including the right to separation from the federation as a common state, the citizens of North Macedonia, in the referendum of September 8th, 1991, freely manifested their will to live in a sovereign and independent state. About 76% of citizens with the right to vote voted in the referendum. Among them 95% (or 72% of the total number of citizens with the right to vote) voted for constituting North Macedonia as a sovereign and independent state.

Due to the fact that the referendum has a consultative and not a compulsory character, on September 17th, 1991 the Assembly passed the Declaration on affirmation of the results of the referendum. Actually it was the decision that, on the basis of affirmation of the will of a great majority of citizens North Macedonia expressed in the referendum, formally constituted North Macedonia as a sovereign and independent state.

The Declaration also proclaimed the basic principles of the policy of the Macedonian state in international relations, and especially towards neighboring countries. Among them the most important are the following: first, the respect for the generally accepted principles on international relations; second, the development of good relations and cooperation with all neighboring countries, as well as cooperation with all European and other countries in the world; incorporation in the processes of European integration and in the other form of regional cooperation; third, the respect for the principle of inviolability of the borders and non-having territorial aspirations against any neighboring country; and fourth, the policy founded on international norms on the recognition

and respect for the fundamental human rights and freedoms, including rights and freedoms of Macedonians living as national minorities in the neighboring countries.

Two months later, on November 17th, 1991, the Assembly adopted the first Constitution of North Macedonia as a sovereign and independent state. By adopting the new constitution, the process of getting a status of independent state has been brought to its end.

-The Assembly decision for schedule the second national referendum in 2004 was brought 3th of September, 2004 and the referendum was held 7th of November, 2004.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

1. National independence referendum in 1991

2. National referendum for or against the previous **local self-government territorial organization (municipalities and the City of Skopje) as defined in the Law on territorial organization of North Macedonia issued in 1996 and the Law on the City of Skopje issued the same year.**

3. Preparatory stage for new national referendum regarding the signed bilateral Final Agreement between North Macedonia and Republic of Greece on 17th of June, 2018

4. Was the principle of unity of content respected? (Code, III.2). Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarize the Constitutional Court's decision.

- **NO. In 1991 the national referendum question contained two questions.** The question to which the citizens answered was: *Are you for sovereign and independent state Macedonia, while the second question was: with a right to join a future alliance of sovereign countries of Yugoslavia? YES-NO.*, which are in fact two questions into one.

The first question referred to the sovereignty and the independence of the country Macedonia, i.e. are you in favour of sovereign and independent country Macedonia, while the second question was related with the right of the state to enter in alliance with the sovereign states of Yugoslavia.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)? Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

-The independence referendum question in 1991 **was partly clear and ambiguous.** On a scale from 1-misleading to 10-clear cut it should be ranked on 3.

The question for the independence of the country was at the same time put with the right of the country to enter in future alliance with the other sovereign countries that came from the former Yugoslavia. With this referendum the citizens practically made two decisions. The first decision was "for" independent and sovereign Macedonia, and the second was "for" possible alliance with the sovereign states from the former Yugoslavia.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12- 14)?

-NO. The rate from 1-10 is 2.

On the 2004 referendum, the then government publically called for boycott by the citizens. By putting itself on the side of a boycott of the referendum, the government undermined the objectivity of the referendum and the possibility for the citizens to vote "in favour" or "against" the referendum question **in an unbiased manner, without fear, pressures and threats for their jobs. The entire public administration was used by the government in direction of boycott of the referendum!**

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text? Please rate from 1 - unduly to 10 - duly and explain briefly.

-First national referendum for independence of the country 1991 on a rate scale from 1 to 10 could be rate with 5. The citizens were informed that the referendum will have a consultative character. Due to the fact that the referendum has a consultative and not a compulsory character, on September 17th, 1991 the Assembly passed the Declaration on affirmation of the results of the referendum. Actually it was the decision that, on the basis of affirmation of the will of a great majority of citizens North Macedonia expressed in the referendum, formally constituted North Macedonia as a sovereign and independent state.

-Second national referendum in 2004 was binding by the Constitution and on a rate scale from 1 to 10 could be rate with 9.

Article 73 of the Constitution says: "The Assembly decides on scheduling a referendum on certain issues of its competence with majority of votes from the total number of MP's. The decision at the referendum is adopted if it is supported by the majority of voters who voted, if more than one-half of the total number of voters registered in the Single Voters' List voted at the referendum. **The Assembly is obliged to schedule a referendum when the proposal for referendum comes from at least 150,000 voters. The decision passed at a referendum is obligatory."**

8. Were electors able to answer the question asked by yes, no or to cast a blank vote? Please answer with a yes or a no and explain briefly.

-YES, the electors were asked to answer the questions with "Yes" or "Against".

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum: - Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)? - Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)? - Held at the request of a section of the electorate (including following a popular initiative)?

-On the first national referendum the citizens were informed that the referendum will have a consultative character. Due to the fact that the referendum has a consultative and not a compulsory character, on September 17th, 1991 the Assembly passed the Declaration on affirmation of the results of the referendum. Actually it was the decision that, on the basis of affirmation of the will of a great majority of citizens North Macedonia expressed in the referendum, formally constituted North Macedonia as a sovereign and independent state. The first referendum was announced by a decision of the Assembly, as the second one, but the second one was initiated with the citizen's request of at least 150.000 electors.

-Second national referendum in 2004 was binding by the Constitution.

Article 73 of the Constitution says: "The Assembly decides on scheduling a referendum on certain issues of its competence with majority of votes from the total number of MP's. The decision at the referendum is adopted if it is supported by the majority of voters who voted, if more than one-half of the total number of voters registered in the Single Voters' List voted at the referendum. **The Assembly is obliged to schedule a referendum when the proposal for**

referendum comes from at least 150,000 voters. The decision passed at a referendum is obligatory."

-The third national referendum in 2018 was consultative by its character, although the consultative character was not mentioned in the Assembly Decision for announcing the referendum. According to the Article 9 of the Law on Referendum "Referendum is announced with decision containing: - body which announced the referendum; - the territory for which the referendum is announced; - the title of the regulation or the question/s on which the citizens will decide on referendum; - explanation of the regulation, or question/s for which the referendum is announced; - the referendum question or questions, or one or more proposals for regulations for which citizens will decide; - date of maintaining the referendum; - type of referendum. The Assembly Decision did not contain 4 of the 7 legal requirements specified. After being submitted to the Constitutional Court, the decision was judged as constitutional and legal by the judges in the Court.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6) The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

-NO

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

Macedonian independence referendum, 1991		
Are you for a sovereign and independent state of Macedonia, with a right to enter into any alliance with sovereign states of Yugoslavia?		
Date	September 8, 1991	
Results		
	Votes	%
✓ Yes	1,079,308	96.46%
✗ No	39,639	3.54%
Valid votes	1,118,947	98.79%
Invalid or blank votes	13,648	1.21%
Total votes	1,132,595	100.00%
Registered voters/turnout	1,495,807	75

Second national referendum, 2004

Referendum question: Are you for the territorial organization of the local self-government (the municipalities and City of Skopje) as determined by the Law on Territorial Division of North Macedonia and Determination of the Areas of the Local Self-Government Units (Official Gazette of North Macedonia no. 49/1996) and the Law on the City of Skopje (Official Gazette of North Macedonia no. 49/1996)?

Choice	Votes	%
For	427,112	95.06
Against	22,212	4.94
Invalid/blank votes	5,023	–
Total	454,347	100
Registered voters/turnout	1,709,536	26.58
Source: <u>IFES</u>		

Third National referendum held on 30th of September, 2018

Macedonian referendum, 2018		
Are you in favour of European Union and NATO membership by accepting the agreement between North Macedonia and the Republic of Greece?		
Results		
	Votes	%
✓ Yes	609,813	94.18%
✗ No	37,700	5.82%
Valid votes	647,513	97.12%
Invalid or blank votes	19,221	2.88%
Total votes	666,734	100.00%
Registered voters/turnout	1,806,336	36.91%

F. Effects of the referendum (Code, III.8) I. Legal effects

1. Was the referendum legally binding or consultative?

-See the answers as in D.1.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

-According to the Article 30, para. 2 of the Law on Referendum and other forms of direct expression of the citizens ("Official Gazette of North Macedonia", no 81, 2005), the Assembly is obliged to regulate the issue, i.e. the law that was decided in the referendum in accordance with the results of the referendum within 60 days after the announcement of the results of the referendum.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

-After the first national referendum the decision of the citizens was enacted and Macedonia became an independent and sovereign country. After the second national referendum in 2004, the Law on Territorial Division of North Macedonia and Determination of the Areas of the Local Self-Government Units (Official Gazette of North Macedonia no. 49/1996) and the Law on the City of Skopje (Official Gazette of North Macedonia no. 49/1996) were enacted.

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

-/

II. Political effects

1. Was the position of the authorities at stake? Please rate from 1 - non-affected to 10 - affected and explain briefly.

- In the two national referendums the position of the authorities in terms of the referendum success or failure was very influential. In the rate scale this governmental influence could be ranked with 10.

2. In the affirmative, did this lead to early elections?

-NO

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense? In particular:

-NO

1. Was this intervention obligatory or did it take place on appeal?

-The judiciary intervention was only in the part of the protection of the right to vote under the law.

2. Did it intervene before or after the vote?

-The judiciary intervention was only in the part of the protection of the right to vote under the law.

3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

-NO

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

-NO

-In the latest referendum held on 30th of September, 2018, the decision to call a referendum was a subject before a Constitutional court in order to evaluate its constitutionality and legality.

H. Role of the electoral management body.

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice? I. Quorum and turnout (cf. Code, III.7) 1. Was there a turnout quorum or an approval quorum? 2. What was the turnout? J. Role of international actors 1. Did international actors (including the European Union) take a position on the issue submitted to referendum? 2. In the affirmative, what was the form of their intervention?

-NO. The referendum questions in the two national referendums were confirmed with the Assembly decisions, and in the second referendum in 2004 the referendum question was formulated as a draft-version by the citizens on whose proposal the referendum was scheduled.

K. What lessons might be learned from this referendum?

1. North Macedonia does not have a vast experience in organizing of national and local referendums. It can be noted that the constitutional and legal regulations incompletely and insufficiently regulate the matters that are important for the referendum process in order for the citizens to get clear insight in what they vote for, what is the character of the referendum, what is the character of the referendum decision and what consequences it will produce in practice. There is also a serious disrespect of the principles determined in the Code of Good Practice on Referendums. All governments thus far, either central or local, and who were in a position to organise referendum campaigns, acted in an entirely biased manner, led by the narrow partisan perception on whether the referendum should be successful or not. There is also a direct influence by the authorities on the final outcome of the referendum vote.

2. It is worthwhile mentioning that on the first national referendum on independence was boycotted by most of the Albanian parties in Macedonia who publicly called the Albanian voters to boycott the referendum, while during the second referendum in 2004, the then government publicly expressed its partisan position that the citizens should boycott the referendum, by which the government directly violated the freedom of voters to form an opinion and free suffrage.

Or, as it is said in the Venice Commission Code of Good Practice on Referendums, point 3, 3.1., b. "However, the public authorities (national, regional and local) must not influence the outcome of the vote by excessive, one-side campaigning. The use of public funds by the authorities for campaigning purposes must be prohibited.

The one-sided campaign led by the national and local authorities in the country harms the obligation of the authorities to secure objective information about the referendum question. None of the referendums organized in Macedonia so far offered to the voters an explanatory report for the referendum question nor balanced campaign material from the proposal's supporters and opponents.

3. Also, in the referendums organised in Macedonia so far there are elements of violation of the obligation contained in the Code of the Venice Commission, for the referendum questions to be clear, must not be misleading, must not suggest an answer, electors must be informed of the effects of the referendum, voters must be able to answer the questions asked solely by yes, no or a blank vote. The practice of having referendums with ambiguous or questions offering multiple answers continues.

4. The Constitutional Court of North Macedonia and the regular courts are pretty passive when it comes to the referendum procedure. The regular courts are involved only in the procedure for protection of the voters' rights. The Constitutional Court has not spoken with regard to the constitutionality of the referendum question, which is a handicap for the constitutional order in the country and represents disrespect for the good European practice. There is lack of coordination between the Macedonian legislation with the obligation from Item 3 of the Code of good practice on referendums, where it is stipulated that "Texts submitted to a referendum must comply with all superior law (principle of the hierarchy of norms). They must not be contrary to international law or to the Council of Europe's statutory principles (democracy, human rights and the rule of

law). Texts that contradict the requirements mentioned under III.2. and III.3 may not be put to the popular vote.

22. PERU

QUESTIONNAIRE ON REFERENDUMS - PERU

PART I

GENERAL QUESTIONS

I. Preliminary questions

I.A. National referendum

I.A.1. Yes, it does, and it is binding.

I.A.2. It was introduced by the 1993 Peruvian Constitution, currently in force, in the context of economic crisis, terrorism, and severe criticism towards representative democracy by then President Alberto Fujimori.

I.A.3. Yes. Back in 2010, Peru held a national referendum on a legislative proposal concerning the devolution of a contribution for housing paid by Peruvian workers between 1979 and 1999.

I.B. Regional referendums

I.B.1. Yes, they do, and they are binding.

I.B.2. They were also introduced by the 1993 Peruvian Constitution.

I.B.3. No, they are quite unusual.

I.C. Local referendums

I.C.1. Yes, they do.

I.C.2. They were also introduced by the 1993 Peruvian Constitution.

I.C.3. No, they are quite unusual.

II. Examples of national referendums

1. In 1993, a referendum was held for the approval of the Peruvian Constitution currently in force.

2. In 2010, a referendum was held for the approval of the legislative proposal concerning the devolution of a contribution for housing paid by Peruvian workers between 1979 and 1999.

3. This has not happened in Peru.

4. This has not happened in Peru.

5. In 2005, a referendum was held for the creation of sub-national regions combining the territory of existing departments. This was rejected.

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

A. The previously mentioned referendum for the creation of sub-national regions, in 2005, was highly controversial. This proposition involved combining the territory of existing departments in Peru into larger macro regions. For the result to be binding, it was required that a yes vote be successful in all departments of a macro region yet-to-be-created. Peruvians rejected this proposal in all departments, with the exception of Arequipa. Because of this, no macro regions were created, and the status quo ante continued. The problem, however, is that three years before the referendum, temporary regional governments were established in departments. They keep existing. So, now Peru has regional governments, but no regions!

B.

1. Article 190 of the Peruvian 1993 Constitution permitted referendum for the creation of regions. A 2002 law, however, made this referendum mandatory. This law was the basis for the failed 2005 referendum.

2. In this case, the rules of the game were drafted, specifically for the occasion, by the 2002 law.

C.

1. Neither. The vote was to approve the creation of larger sub national entities by combining existing departments.

2. The referendum was called three years and four months in advance.
3. Creation of regions on the basis of existing departments.
4. This does not apply to this referendum.
5. Yes, the question was formulated clearly. Voters knew in advance which departments would be combined to form new regions, if the referendum was successful in two or more of these departments. In a scale of clarity from 1 to 10, the score of the question was 10.
6. Electoral authorities acted in a neutral way, and there were no relevant allegations of irregularities. However, the national government campaigned in favor of a yes vote. Perhaps this explained why a no vote won. In a scale of neutrality from 1 to 10, the score was 6.
7. Yes, the electors were aware of the nature and possible consequences of the referendum. In a scale of awareness from 1 to 10, the score was 8.
8. Yes, the electors could cast a vote in favor or against the proposal. Alternatively, they could choose to cast a blank or null vote.

D.

1. Yes, the referendum was mandatory under the 2002 statute mentioned above. It was held at the request of the Parliament.
2. No, this does not apply.

E. The outcome differed in the territory of each of the proposed macro regions: 1. North Region (Yes, 20%; No, 74%; Others, 6%); 2. Ica-Ayacucho-Huancavelica Region (Yes, 20%; No, 72%; Others, 8%); 3. Center Region (Yes, 14%; No, 78%; Others, 7%); 4. Arequipa-Tacna-Puno Region (Yes, 28%; No, 63%; Others, 9%); and, 5. Cusco-Apurimac Region (Yes, 33%; No, 57%; Others, 11%).

F.

1. The referendum was legally binding, but it failed. Therefore, it produced no effect
2. N/A.
3. N/A.
4. N/A.
5. No, the position of the authorities was directly at stake.

G.

1. No, the judiciary was not involved. In Peru, the judiciary has no role in electoral processes. The administration of electoral justice is in charge of a specialized court, independent from the judiciary.
2. No, it did not.
3. No.
4. No, this did not happen.

H. Yes, the question was drafted by the National Office of Electoral Processes (ONPE), an independent institution in charge of organizing elections. This institution also carried out the referendum.

I.

1. The vote was mandatory. All those that did not vote had to paid a fine. However, there were no specific requirements in quorum and turnout.
2. The turnout was approximately 86.6% of registered voters.

J.

1. No.
2. N/A

K. People interpreted the process in a completely different way than intended. Their negative vote expressed, mainly, a disapproval of the performance of the Peruvian National Government. Additionally, the creation of sub-national was not interpreted as an adequate mechanism for the devolution of power. Finally, it also showed that people's identification with their departments — created back in the XIX Century— was very strong.

23. PORTUGAL

PREMIÈRE PARTIE QUESTIONS GÉNÉRALES

I. Questions préliminaires

A. Référendums nationaux

1. Non seulement le référendum national existe au Portugal comme sur le plan normatif il est prévu dans la Constitution de la République et dans la loi ordinaire.

Le référendum a une finalité exclusivement contraignante, en vertu de ce qui est établi par la Constitution dont la norme est transcrite ci-après :

“1. Les citoyens électeurs recensés sur le territoire national peuvent être appelés à se prononcer directement par référendum, qui aura force contraignante, sur décision du président de la République, sur proposition de l'Assemblée de la République ou du gouvernement, sur des matières de leurs compétences respectives, dans les cas et dans les termes prévus par la Constitution et par la loi.

2. Le référendum peut également procéder de l'initiative populaire, sous la forme d'une proposition adressée à l'Assemblée de la République, et qui sera déposée et appréciée dans les termes et les délais fixés par la loi.

3. Le référendum ne peut avoir pour objet que des questions d'intérêt national majeures devant être décidées par l'Assemblée de la République ou par le gouvernement à travers l'approbation d'une convention internationale ou l'adoption d'un acte législatif.

4. Les matières suivantes sont exclues du champ du référendum :

a) les amendements à la Constitution ;

b) les questions et les actes ayant un contenu budgétaire, fiscal ou financier ;

c) les matières prévues à l'article 161 de la Constitution, sans préjuger des dispositions du paragraphe suivant ;

d) les matières prévues à l'article 164 de la Constitution, exception faite des dispositions de l'alinéa i).

5. Les dispositions du paragraphe précédent n'excluent pas du champ du référendum les questions d'intérêt national majeures devant faire l'objet d'une convention internationale, conformément à l'alinéa i) de l'article 161 de la Constitution, exception faite des questions relatives à la paix et à la rectification des frontières.

6. Chaque référendum portera sur une seule matière et les questions devront être formulées avec objectivité, clarté et précision et de telle sorte que la réponse se manifeste par un “oui” ou un “non”. Le nombre maximum de questions sera défini par la loi qui déterminera également les autres conditions de la rédaction des questions et de la tenue des référendums.

7. Sont exclues la convocation des citoyens à un référendum et sa tenue entre les dates de convocation et de tenue d'élections générales concernant les organes de souveraineté, le gouvernement des régions autonomes ou le pouvoir local, ainsi que les députés au Parlement européen.

8. Le président de la République soumet à un contrôle de constitutionnalité et de légalité préalable et obligatoire les propositions de référendum qui lui auront été remises par l'Assemblée de la République ou par le gouvernement.

9. Les dispositions des paragraphes 1, 2, 3, 4, et 7 de l'article 113 sont applicables au référendum, avec les adaptations nécessaires.

10. Les propositions de référendum déboutées par le président de la République ou ayant fait l'objet d'une réponse négative de l'électorat ne peuvent être renouvelées pendant la même session législative, sauf en cas de nouvelle élection de l'Assemblée de la République ou jusqu'à la démission du gouvernement.

11. Le référendum n'acquiert force contraignante que si le nombre des votants est supérieur à la moitié des électeurs inscrits.

12. Les citoyens résidant à l'étranger, recensés de façon régulière conformément au paragraphe 2 de l'article 121 sont appelés à participer aux référendums lorsqu'ils portent sur des matières les concernant spécifiquement.

13. Les référendums peuvent avoir une portée régionale, selon les termes prévus au point 2 de l'article 232."

2. La Constitution de 1911 a prévu d'entériner le référendum, bien que limité à une portée locale, en renvoyant à la loi ordinaire pour ce qui est des termes dans lesquels de tels référendums pourraient se tenir (article 66, point 4).

À son tour, la Constitution de 1933 a maintenu ce régime et employé indûment l'expression "référendum" pour donner publicité au texte constitutionnel (article 126).

Mais c'est la Constitution démocratique de 1976 qui consacre le référendum avec un degré de sûreté et de démocratie suffisant comme nous allons le voir.

3. L'histoire récente du référendum au Portugal suppose de reculer jusqu'en 1998.

Cette année-là (le 28 juin 1998), était convoqué le premier référendum sur l'interruption volontaire de grossesse (IVG) qui a eu un double sens.

D'abord, ce fut le premier référendum qui s'est tenu depuis que la Constitution de la République de 1976 est entrée en application (suite à la chute de la dictature fasciste) et ce fut le premier référendum portant sur ce sujet de l'avortement.

La question posée a été ainsi formulée : « Êtes-vous d'accord que l'interruption volontaire de grossesse soit dépénalisée, si elle est pratiquée, par option de la femme, au cours des dix premières semaines, dans un établissement de santé légalement agréé ? »⁴⁰

Moins de 50 % des électeurs recensés ont voté, ce qui en soi l'amènerait à ne plus avoir de force contraignante.

En effet, 50,91 % ont voté "non" tandis que 49,09 % ont voté "oui".

Toutefois, en 2007, face aux changements de pouvoir politique, le référendum sur ce même sujet est repassé.

⁴⁰ *Concorda com a despenalização da interrupção voluntária da gravidez, se realizada, por opção da mulher, nas dez primeiras semanas, em estabelecimento de saúde legalmente autorizado?*

Cette fois encore la majorité de l'électorat n'a pas comparu (seulement 43,57 %), ce qui lui a retiré le contenu de force contraignante. Contrairement au résultat du premier référendum, la majorité a penché vers le "oui" (59,25 %), le "non" n'ayant obtenu que 40,75 %.

Quoique ce résultat n'ait pas été contraignant, il a servi d'occasion pour modifier la loi ordinaire, menant de cette façon à admettre l'IVG selon les termes préconisés par le "oui" dans le référendum national.

Aussi convient-il d'indiquer qu'en 1998 un référendum sur la "régionalisation" a été convoqué, deux questions y étant formulées.

Dans ce référendum le "non" a obtenu un score clairement majoritaire en dépit du fait que la "régionalisation politique" soit expressément prévue dans la Constitution de la République.

Néanmoins, aucun modèle de régionalisation n'a été admis par voie de référendum, si bien qu'à ce jour l'initiative visant à régionaliser le pays n'a pas été reprise, y demeurant une culture centraliste, malgré l'existence des deux régions autonomes, celle de Madère et celle des Açores, qui jouissent d'une autonomie politique et possèdent leurs propres Parlements et gouvernements.

B - Référendums régionaux

1. Le référendum régional existe au Portugal. D'emblée il est normativement prévu dans la Constitution de la République (article 240). Cette norme s'inscrit dans le cadre de l'organisation du « Pouvoir local » ou des collectivités locales, le distinguant systématiquement de ce qui est fixé pour le référendum national.

Ainsi, de par la Constitution : " 1. Les collectivités locales peuvent consulter les citoyens électeurs et soumettre au référendum des matières qui relèvent de la compétence de leurs organes, dans les cas, les conditions et avec la portée que la loi établira.

2. La loi peut attribuer aux citoyens électeurs l'initiative du référendum".
3. Les référendums régionaux (dits "locaux" dans les textes juridiques) ont été formellement introduits par la révision constitutionnelle de 1982.

Des débats parlementaires qui ont justifié cette innovation ressort le souci de garantir l'approfondissement de la démocratie participative et le renforcement des pouvoirs des collectivités locales.

C - Référendums régionaux

1. Affirmatif, comme indiqué ci-dessus ;
2. Tel qu'indiqué, lors de la révision constitutionnelle de 1982 ;
3. Une seule fois.

II - Questions préliminaires

1. La Constitution de la République portugaise (CRP) exclut du cadre du référendum tous les amendements relatifs à la Constitution (article 115, point 4, alinéa a).
2. A l'instar, les matières relatives aux actes ayant un contenu budgétaire ne peuvent être soumises à référendum (article 115, point 44, alinéa b).
3. Aucune matières relevant de la compétence de l'Assemblée de la République ne peut être soumise à référendum (article 115, point 4, alinéa c), articles 161 et 164 de la CRP).

4. Les questions d'intérêt national majeur qui font l'objet d'une convention internationale peuvent être soumises à référendum (article 115, point 5 de la CRP)
5. Comme indiqué, la CRP envisage le "référendum local", circonscrit aux matières incluses dans les compétences des organes des collectivités locales (article 240) et prévoit encore l'obligation de référendum portant création de "Régions administratives" (article 256 de la CRP).

2^{ème} PARTIE

QUESTIONS SPÉCIFIQUES SUR LE RÉFÉRENDUM

- A. Le référendum national a été adopté à trois reprises au Portugal. Deux fois comme évoqué ci-dessus en ce qui concerne l'IVG. Le troisième référendum a porté sur la "régionalisation" du pays.

Rappelons que la CRP ne prévoit pas de référendum consultatif, dans la mesure où doit avoir une fonction contraignante.

Lors des deux référendums sur l'IVG, il a été constaté que :

1^{er} Référendum

- tenu le 28 juin 1998 ;
- 31,9 % des électeurs ont voté ;
- le "non" l'a emporté avec 50,9 % des voix.

Même si le "non" a gagné, ce référendum n'aurait jamais de force contraignante puisque la CRP exige que le quorum délibératif soit "supérieur à la moitié des électeurs inscrits".

2^{ème} Référendum

La composition du pouvoir politique ayant entretemps changé, un second référendum sur le même sujet s'est tenu en février 2007.

- 43,57 % des électeurs inscrits ont voté ;
- le "oui" l'a emporté avec 59,25 % des voix.

Comme nous pouvons le constater, malgré le "oui" gagnant, là encore le résultat du référendum n'a eu force contraignante, car le nombre de votants est resté en deçà de la moitié requise des électeurs inscrits.

3^{ème} Référendum, celui sur la régionalisation du pays

Le Portugal est un des pays les plus centralistes de l'Europe, raison pour laquelle le sujet de la régionalisation administrative et politique (en particulier la première) est un thème éternellement polémique et insoluble.

En fait, à cet égard le clivage entre la gauche et la droite est très accentué.

Tandis que la droite refuse la régionalisation (le PSD et le CDS sont contre), la gauche (le PCP et le PS) est favorable à la régionalisation.

Lors du référendum sur la régionalisation, qui s'est tenu le 8 novembre 1998, deux questions ont été formulées :

1^{ère} Question :

« Êtes-vous d'accord avec l'institution en concret de régions administratives ? »⁴¹

2^{ème} Question :

« Êtes-vous d'accord avec l'institution en concret de la région administrative de votre zone de recensement électoral ? »⁴²

Or le débat électoral a pris une tournure très agressive, à tel point que le CDS (parti situé le plus à droite) a présenté en guise de campagne un drapeau national cassé et détruit.

Lors de ce référendum le triomphe du "non" a été très substantiel obtenant 60,67 % des voix, alors que le "oui" s'en est tenu à 34,96 %.

Cependant, même la victoire du "non" n'a pas eu force contraignante puisque l'abstention des électeurs a atteint les 51,71 %.

L'actuel Premier ministre a assuré qu'il reprendrait ce sujet s'il revenait au gouvernement.

Il ne nous reste qu'à attendre.

Conclusion :

Les trois référendums nationaux ont montré clairement le clivage entre la gauche et la droite, d'une part, et l'évolution sociale et politique des portugais, par ailleurs.

À ce propos, notons l'écart des résultats entre le 1^{er} et le 2nd référendum sur l'IVG, d'où il est facile de conclure que l'échec du "non" au premier référendum et le triomphe du "oui" au second comprennent une signification sociologique très importante.

Dans le référendum sur la régionalisation administrative les facteurs et la motivation ne se sont pas épuisés dans la séparation entre la droite et la gauche.

L'époque à laquelle il s'est tenu était caractérisée par une croissance économique marquée et il était facile de convaincre l'électorat de l'inutilité de régionaliser.

À cet égard, rappelons que le Portugal possède deux régions autonomes dotées, chacune d'elles, de leur propre gouvernement et Parlement ; la Région autonome de Madère et la Région autonome des Açores.

B - Au Portugal est en vigueur la loi organique du régime du référendum, dont le texte de loi a été adopté en 1998 (Loi 15-A/98, du 3 avril) mais qui a profité de 6 amendements en 2005, 2010, 2011, 2015, 2016 et, enfin, la loi 3/2017, du 18 juillet, qui a apporté sa rédaction finale à la loi sur le référendum.

Loi qui régleme, naturellement, le texte constitutionnel.

En somme, au Portugal, sont en vigueur les normes de la Constitution sur le référendum ainsi qu'une loi-cadre qui régleme le texte constitutionnel.

C - QUESTIONS SOUMISES À RÉFÉRENDUM

⁴¹ *Concorda com a instituição em concreto das regiões administrativas?*

⁴² *Concorda com a instituição em concreto da região administrativa da sua área de recenseamento eleitoral?*

1. a) Au Portugal, les amendements au texte constitutionnel sont exclus du cadre du référendum ;
b) Aucun référendum n'a été convoqué pour délibérer sur les modifications aux textes juridiques ;
c) Non.
2. La convocation du référendum est soumise à un processus complexe, selon l'entité qui le convoque. Toutefois, l'acte final de la convocation est formalisé par le président de la République, une fois accomplies les étapes procédurales qui précèdent l'intervention du président de la République. Le président de la République émet alors un décret et doit fixer une date comprises entre le 40^{ème} et le 180^{ème} jour à compter de la publication du décret convoquant le référendum.
3. La loi impose que :
 - a) Chaque référendum n'ait pour objet qu'une seule matière ;
 - b) Ne soit pas formulées plus de 3 questions ;
 - c) Les questions soient objectives, claires, précises et permettent des réponses sous forme de "oui" ou de "non" ;
 - d) Les questions ne doivent pas suggérer de réponses ;
 - e) Ne sont pas admis de "considérants" ni préambules ou notes explicatives.
4. Oui. Cela a toujours été respecté. La Cour constitutionnelle doit intervenir préalablement à la convocation du référendum. Et pour mieux comprendre le régime juridique quelques précisions s'imposent :
 - a) L'Assemblée de la République, le Gouvernement et les citoyens peuvent demander la convocation d'un référendum ;
 - b) Le président de la République est l'entité tenue de le convoquer en tant que tel ;
 - c) Avant de le faire, le président de la République soumet obligatoirement à la Cour constitutionnelle à des fins de contrôle préventif quant à la constitutionnalité et à la légalité des questions suscitées par l'Assemblée de la République ou par le gouvernement ;
 - d) Les citoyens (en nombre minimum non inférieur à soixante mille) peuvent demander à l'Assemblée de la République qu'elle convoque le référendum ;
 - e) La Cour constitutionnelle se prononce sur la légalité et la constitutionnalité des référendums et des questions formulées.

Cependant, ses décisions n'ont pas été unanimes.
Par exemple, dans le référendum sur l'avortement, certains magistrats ont estimé que la simple recevabilité de l'IVG était inconstitutionnelle.
5. Les questions formulées ont toujours été claires et, il est bon de ne pas oublier, qu'elles sont passées par l'examen préalable et obligatoire de la Cour constitutionnelle.
6. Les autorités se sont montrées neutres.
Le vote serait de 10 (neutre et objectif).
Encore faut-il dire que le référendum dépend exclusivement de l'activité des partis politiques et des instances de la société civile.
Au Portugal, les autorités administratives n'ont pas la moindre influence en la matière.

7. Oui. Les citoyens électeurs ont été clairement renseignés sur les effets du référendum.

Les autorités ayant des responsabilités électorales ont ventilé de successives informations (à travers les médias) sur tout ce qui concerne le référendum, notamment sur les conditions juridiques inhérentes, la nature contraignante, les conséquences juridiques, etc.

En outre, les partis politiques bénéficient d'un droit à l'antenne (chaîne publique) leur permettant d'exprimer leurs options sur le référendum et beaucoup de débats sont organisés à la radio ainsi que sur les chaînes de télévision.

8. Les électeurs doivent répondre uniquement par "oui" ou par "non".
Toutes les autres alternatives entraînent soit un vote blanc, si aucune option ne figure sur le bulletin, soit un vote nul, s'il contient un signe non admis quel qu'il soit (article 115, point 6 de la CRP).

A) Réponse déjà apportée.

B) Réponse déjà apportée.

C) Réponse déjà apportée.

D) Aucune matière ne dépend du référendum.

Cependant, la formalisation des régions administratives est approuvée par une loi émanant du Parlement, mais après consultation populaire, c'est-à-dire par voie de référendum (article 256 de la CRP).

Il s'agit de la seule matière exigeant d'un référendum préalable.

E) Réponse déjà apportée.

F) Réponse déjà apportée.

1. Le référendum est, exclusivement, contraignant.

Le référendum de valeur consultative n'est pas admis.

2. Cette situation ne peut pas se poser compte tenu de la vérification préalable et obligatoire de la constitutionnalité et de la légalité des questions formulées.

3. Il n'est pas possible de soumettre à référendum les textes constitutionnels (article 115, point 4 de la CRP)

4. Les délibérations émergeant d'un référendum se transforment en "recommandations" pour les organes de souveraineté qui ont des compétences législatives.

II - EFFETS POLITIQUES

1. a) Au jour d'aujourd'hui, au Portugal aucun référendum n'a eu d'efficacité contraignante, car aucun n'a atteint une participation de 50 % de l'électorat.

Néanmoins, lors du second référendum sobre l'IVG, face au succès dudit résultat le Parlement a amendé la loi en abondant dans le sens du résultat du référendum.

Donc le résultat ne peut qu'être de "10".

b) Le résultat d'un référendum n'a jamais entraîné d'élections anticipées.

G – RÔLE DU POUVOIR JUDICIAIRE

1 et 2) L'intervention du pouvoir judiciaire survient à deux moments.

L'intervention préalable de la Cour constitutionnelle est obligatoire afin de déterminer la constitutionnalité et la légalité du référendum et des questions suscitées dans ce cadre. À l'issue du référendum, les tribunaux communs peuvent être appelés à intervenir, étant compétents pour apprécier les recours de citoyens, de groupes organisés de citoyens ou de partis politiques, sur d'éventuelles vicissitudes au cours du processus.

2. Comme indiqué, sur la façon de formuler la question et sur le contenu de la décision soumise à un scrutin populaire.

Dans ce cadre, la supervision judiciaire est préalable et obligatoire et relève de la Cour constitutionnelle qui en a la compétence.

4. Oui, comme indiqué.

H - La Commission nationale des élections (CNE - *Comissão Nacional de Eleições*) a exclusivement une fonction technique, pédagogique et contrôle la légalité du processus électoral.

1. Quorum de Participation : 50 % des électeurs inscrits sur les listes électorales.
Quorum de délibération : majorité simple.

2. Le taux de participation est d'environ 40 %.

J - 1. Non. Il n'y a eu aucune intervention de la part d'organisations internationales, *a fortiori* de l'Union européenne.

K – La tradition référendaire au Portugal n'est pas suffisante permettant d'extraire de conséquences ni de leçons ayant trait à la sécurité.

Le faible taux de participation (nous n'avons jamais atteint les 50 % nécessaires) abonde dans ce sens.

Tel qu'indiqué, lors des trois référendums convoqués, deux d'entre eux ont abouti à des solutions antagoniques.

Ainsi, lors du premier référendum sur l'interruption volontaire de grossesse le "non" l'a emporté, et lors du second, c'est le "oui" qui a pris le dessus.

Dans le cas du référendum sur la "régionalisation administrative", malgré le fait que le Portugal soit parmi les pays les plus centralistes de l'Europe – ce qui est censuré par tout le monde – c'est le refus de créer des régions administratives, dotées d'une ample autonomie financière et, y compris, politique qui a triomphé.

Comme cela a été indiqué, le seul élément commun à tous les référendums qui se sont tenus concerne la faible adhésion du peuple portugais.

Du point de vue sociologique, ceci semble être encore une conséquence culturelle du régime fasciste qui nous a été imposé pendant un demi-siècle, pendant lequel la non participation des citoyens à l'activité politique était privilégiée.

24. SAN MARINO

QUESTIONNAIRE ON REFERENDUMS: SAN MARINO

Referendum is understood as direct consultation of the people

PART I GENERAL QUESTIONS

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

National referenda exist in three forms: to repeal laws or parts thereof (*referendum abrogativo*), to place on the authorities an obligation to act, e.g. legislate, in a given sense (*referendum propositivo o di indirizzo*), or to confirm entry into force of acts/legislation which concern the fundamental structure of the State or for which Parliament sets this condition (*referendum confermativo*). See *Legge qualificata 29 maggio 2013, n. 1*.

All of these referenda have binding legal effects.

2. When was a national referendum introduced in your country, and in which context?

In their current form, referenda have been introduced with a statute dating back to 1981 (*Legge 29 ottobre 1981, n. 82*). The San Marino Parliament has however started life as a body exercising authority delegated from the *Arengo*, the meeting of all the heads of family – itself a form of direct democracy (\approx the *Landsgemeinde* of the Swiss tradition). The last *Arengo* has been held in 1906, but the institution itself has never been abolished and has arguably been in force until 1981 and thereafter.

3. Is there any recent experience in your country (from 2004 on)?

There have been 17 referenda since 2004. See: https://it.wikipedia.org/wiki/Referendum_a_San_Marino#Consultazioni_referendarie

B. Regional referendums

1. Do regional referendums exist in your country?
2. When were regional referendums introduced in your country, and in which context?
3. Have they been organised often or with a certain regularity?

C. Local referendums

1. Do local referendums exist in your country?
2. When were local referendums introduced in your country, and in which context?
3. Have they been organised often or with a certain regularity?

Questions B and C are inapplicable to San Marino due to its limited territorial size.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

San Marino does not have a single-document, formal, written constitution. That said, *referenda* on constitutional matters are possible. In 2016, there was a referendum for changing the law on referenda itself (abolition of the 25% quorum).

2. Referendum on a specific piece of legislation

May 2016 referendum on the repeal of a recent law modifying the General Land-Use Plan (*Piano regolatore generale*)

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue.

May 2016 referendum *propositivo* for the introduction of a maximum yearly retribution for civil servants.

4. Referendum on an international issue (including on an international treaty)

October 2013 referendum on whether San Marino should start accession negotiations with the EU.

Nota bene: the qualified statute of 2013 introduces limits to the possible object of referenda. For instance, international treaties cannot be repealed by referendum

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

Not applicable in San Marino.

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

In May 2016, four referenda were voted upon. Some have been mentioned above. Three were *propositivi*: introducing changes to the electoral law; introducing a maximum for civil servants' yearly salaries; modifying the laws on referenda so as to abolish *quora*. One was *abrogativo*: repealing a recent law changing the General Land-Use Plan. The government recommended the rejection of all four. The three *propositivi* were accepted, while the *abrogativo* was rejected. This did not have direct consequences for the government. As for 'social consequences': in San Marino, *referenda* are common and they tend not to cause social unrest.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

The referenda were in conformity with the 2013 law, which regulates in detail what kind of referenda can be called, on what object, and according to what procedural rules.

2. Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

See previous answer.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

See answer to II.A.

2. How long in advance was the referendum called?

Signatures were submitted on Nov. 5, 2015. The Constitutional Court declared the referenda admissible on Nov 24. The decree calling formally for the referendum was issued on March 3, 2016. The referendum was held on May 16, 2016.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Please refer to answer to II.A.

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court’s decision.

Yes: the four distinct referenda had each a well-defined object, and could be voted on separately. The Constitutional Court has declared them admissible also under this standpoint.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

The wording was clear (see https://it.wikipedia.org/wiki/Referendum_del_2016_a_San_Marino). The admissibility decision of the Constitutional Court dealt also with this aspect.

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court’s decision.

I don’t think it is proper to “rate” the clarity of the questions. They were clear.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.

I was not personally present, but I am not aware of any problems, and the press reports none. Again, I do not believe that “rating” is possible or desirable in this context.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

See answer to question II.C.6.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Please answer with a yes or a no and explain briefly.

Yes. For more details on the formulation of the questions submitted to voters, see above, answer to question II.C.5.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

Yes

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

No

- Held at the request of a section of the electorate (including following a popular initiative)?

Yes

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

Parliament does not intervene as a body before the vote. It is called upon to implement referenda *propositivi*. It can prevent a referendum *propositivo* from being held, if it adopts an act that satisfies in substance the popular proposal. The fulfilment of this condition is controlled by the Constitutional Court.

Of course, the parties represented in Parliament are free to take positions, make recommendations to voters and campaign.

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

In San Marino, the government cannot ask for a referendum. *De facto*, as noted above, in our case the government recommended rejecting all four referenda (and was not followed up on three of them).

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

See above II.A. For detailed data on the results, see: <http://www.elezioni.sm/online/home/referendum/referendum-15-maggio-2016.html> (click on the links to the left)

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

Binding

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

Government must draft a project within 6 months. The Constitutional Court then checks conformity and suggested, if needed, changes to be made in order to respect fully the referendum result. Government adopts a final draft within 30 days more, and the proposal is then placed before Parliament at the first sitting. The result of the referendum is, *nota bene*, binding on the Parliament, who must therefore respect it.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

N.A.

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

The legislation requested in the three *propositivi* has been implemented.

II. Political effects

1. Was the position of the authorities at stake?

Not directly.

Please rate from 1 - non-affected to 10 - affected and explain briefly.

2. In the affirmative, did this lead to early elections?

No

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. Was this intervention obligatory or did it take place on appeal?
2. Did it intervene before or after the vote?
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

The Constitutional Court decides on whether the referenda are admissible (formally and in substance). It intervenes before the referendum is called, mandatorily, and it addresses the points mentioned under 3 and 4 as well as the regularity of the process.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

The competent body to carry out this kind of control is the Constitutional Court.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

Yes there was a 25% turnout quorum, since abolished.

2. What was the turnout?

See <http://www.elezioni.sm/on-line/home/referendum/referendum-15-maggio-2016.html> (links to the left)

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

No

2. In the affirmative, what was the form of their intervention?

N.A.

K. What lessons might be learned from this referendum?

San Marino has a well-established tradition of direct democracy in the framework of the rule of law. The May 2016 referenda were no different from many that have taken place before, and there were no special 'lessons' to draw from it.

If anything, the experience in San Marino suggests that *referenda*, if based on a well-designed law, can contribute greatly to the democratic life without entailing drawbacks for the rule of law.

25. SERBIA

QUESTIONNAIRE ON REFERENDUMS

Referendum is understood as direct consultation of the people

PART I

GENERAL QUESTIONS

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

National referendum does exist in the Republic of Serbia and it is binding.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

A national referendum is mentioned for the first time in the Constitution of Federal People's Republic of Yugoslavia (Serbia was one of the republics) from 1946.

3. Is there any recent experience in your country (from 2004 on)?

The most recent national referendum was held on 28th and 29th October 2006 for the purpose of endorsing the new Constitution of the Republic of Serbia.

B. Regional referendums

1. Do regional referendums exist in your country?

Yes, they exist.

Article 182 of the Constitution of the Republic of Serbia prescribes: "Territory of autonomous provinces may not be altered without the consent of its citizens given in a referendum, in accordance with the Law".

Article 42 of the Statute of the Autonomous Province of Vojvodina provides for a provincial referendum: "The Assembly may decide that certain issues within the scope of its competence may be decided on by the AP Vojvodina citizens in the provincial referendum. The Assembly shall be obliged to schedule the provincial referendum if

the request for its scheduling has been submitted by at least 30,000 voters. The decision made in the referendum shall be promulgated by the Assembly.”

2. When were regional referendums introduced in your country, and in which context?

Regional referendums are introduced by the 1974 Yugoslav (Socialist Federal Republic of Yugoslavia) Constitution.

3. Have they been organised often or with a certain regularity?

Regional referendums are organized rarely in the Republic of Serbia.

C. Local referendums

1. Do local referendums exist in your country?

Yes, they exist.

Article 188 of the Constitution of the Republic of Serbia prescribes: “Establishment, revocation or alteration of the territory of a local self-government unit shall be preceded by a referendum on the territory of that local self-government unit.”

***The Law on Local Self-Government** envisages a referendum as one of the form of direct participation of citizens in achieving local self-government.*

2. When were local referendums introduced in your country, and in which context?

Local referendums are introduced by the 1974 Yugoslav (Socialist Federal Republic of Yugoslavia) Constitution and by Law on Local Communities from 1982.

3. Have they been organised often or with a certain regularity?

*Local referendums have been organized often (especially on the topic of voluntary tax by the citizens in **the unit of local self-government**).*

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

Referendum on a whole new constitution was held in 2006.

2. Referendum on a specific piece of legislation

No example.

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue.

A referendum regarding national symbols (national anthem, national flag and national emblem) was held in 1992.

4. Referendum on an international issue (including on an international treaty)

No example.

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

No example.

PART II

QUESTIONS ON SPECIFIC REFERENDUMS

A. Short description (date, background, content, aim, outcomes)

After the fall of the Milosevic's regime on 5th October 2000, the issue of changing the 1990 Constitution raised very quickly. However, due to the various reasons, this aim has not been realized until 2006. On September 30, 2006, the Parliament of Serbia adopted the draft of the new Constitution, with 242 (out of 250) MPs voting in favour. The adoption of the new Constitution of the Republic of Serbia was followed by the mandatory national referendum that was held on 28th and 29th October 2006 for the purpose of endorsing the new document. The referendum was successful and the new democratic Constitution was approved by the citizens. The new Constitution was officially proclaimed by the Parliament of Serbia, after the positive results of the referendum, on the 8th November 2006.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

Yes, the 1990 Constitution of the Republic of Serbia envisaged the mandatory referendum in order to amend the Constitution.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

Yes, a referendum was organized and held on basis of the rules provided in advance according to the Code of Good Practice on Referendums.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

The vote was on the approval of a new Constitution (after its adoption in the Parliament).

2. How long in advance was the referendum called?

The referendum was called 30 days in advance. Therefore, it has been called in accordance with the Law on Referendum and People's Initiative that prescribed that from the date of the announcement to the date of the referendum, it can not be less than 30 days or more than 90 days.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Approval of a new Constitution by the people.

4. Was the principle of unity of content respected? (Code, III.2).

The abovementioned principle of unity is not applicable in the case of referendum from 2006 having in mind that referendum dealt with total revision of the Constitution.

The Code, III.2:

*“Unity of content: **except in the case of total revision of a text (Constitution, law)**, there must be an intrinsic connection between the various parts of each question put to the vote, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse as a whole provisions without an intrinsic link; the revision of several chapters of a text at the same time is equivalent to a total revision;”*

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

The formulation of the question was clear (10).

Citizens voted on the question: “Do you approve of endorsing a new Constitution of the Republic of Serbia?”

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.

Through the media the authorities were intervening by inviting the citizens to take part in the referendum and to vote for the new Constitution. The campaign was on the edge to be excessive. (6)

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Yes, the electors were well informed (10) about the nature and the effects of the referendum.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Yes, they were able to answer the question asked by yes and no but also to cast a blank vote.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

The Constitution of the Republic of Serbia from 1990 envisaged the mandatory referendum in order to amend the Constitution.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

97,31% of those voting *answered YES*.
53.04% of the total electorate *answered YES*.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

The referendum was legally binding.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

After the proclamation of the new Constitution by the National Assembly, the Constitutional Law for its implementation was enacted.

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

No, the position of the authorities was not at stake. Nevertheless, the positive result of the referendum and the adoption of the new Constitution strengthen its position. (7)

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. Was this intervention obligatory or did it take place on appeal?

The intervention of the judiciary was not obligatory, only in the case of appeal.

2. Did it intervene before or after the vote?

After the vote.

3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

No.

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

No.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

The Republic Electoral Commission was in charge of holding of the referendum but it has not be requested to address the formulation of the question.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

Both of them.

2. What was the turnout?

The turnout was 54.91%. (53.04% of the total electorate answered YES).

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

Yes.

2. In the affirmative, what was the form of their intervention?

They supported the campaign of the public authorities and the adoption of new Constitution.

K. What lessons might be learned from this referendum

The previous Constitution of 1990, the so-called "inflexible" constitution, was hard to amend and provisions of that Constitution envisaged very complicated and demanding procedure for its change. In the concrete case, in order to confirm the new constitution after it was voted in Parliament, it was necessary for more than a half of the total number of eligible voters in Serbia to vote in a referendum and also a half of that number to vote "yes" to the question "Do you approve of endorsing a new Constitution of the Republic of Serbia?".

In order to facilitate the change of the constitution, since 2006, the success of the referendum (in the matter of amending the constitution) depends only on support more than half of the voters who voted in the referendum and the demand for which is obligatory that the voter turnout surpass 50% census was revoked.

26. SPAIN

PART I GENERAL QUESTIONS Preliminary questions

National referendum

A. (NATO membership in 1986 and European Constitution in 2005)

Does a national referendum exist in your country? Is it binding or consultative?

According to the Spanish Constitution the ordinary referendums are only consultative in nature (Article 92 SC). There are also the constitutional amendment referendums (Articles 167 and 168 SC).

When was a national referendum introduced in your country, and in which context? (for the details see below)?

The national referendum was introduced by the Constitution adopted in 1978. The institutional framework of the national referendums was outlined in the Organic Law on referendums from 1980 (Ley Orgánica 2/1980, de 18 de enero, sobre regulación de las distintas modalidades de referendum)

Is there any recent experience in your country (from 2004 on)?

Since its return to democracy, Spain has had national referendum concerning the membership in NATO (apart from the referendums adopting the constitution in 1978 and democratization of the country in 1976). A national referendum was held on February 20, 2005 regarding the treaty establishing a Constitution for Europe . Both are consultative referendums (Article 92 SC).

B. Regional referendums - Statute of Andalusia 2007 and Statute of Catalonia 2006

Do regional referendums exist in your country?

Only in the context of the approval and amendment of the Statutes of autonomy of some Autonomous Communities. Referendum is constitutionally mandatory for the approval and amendment of the Statutes of Autonomy of Basque Country, Catalonia, Galicia and Andalusia (Articles 151.2 and 152.2 SC). Other Statutes of Autonomy of other Autonomous Communities after last amendments (2006-2011) introduced an optional referendum for the future amendments of the Statutes of Autonomy under some circumstances (Valencia, Aragón, Extremadura)

When were regional referendums introduced in your country, and in which context?

Catalonia in 2006 and Andalusia in 2007 submitted the amendments of their statutes of autonomy to a referendum.

In the context of the secessionist crisis, Basque Country and Catalonia intended unsuccessfully to call for “popular consultations” on the “right to decide” in both regions: Basque Country in 2008 and Catalonia in 2014. In Catalonia in 2017 the regional Parliament passed a law on the self determination referendum (19/2017). The Constitutional Court revoked all these proposals (rulings 103/2008, 31 and 32/2014 and 114/2017). According to SC popular consultations are equivalent to a referendum. The referendum at regional and local level requires an authorization by the Spanish Government (Article 149.1.32: exclusive power of the State) and it is for ordinary powers of the regions, not for a change in the constitutional status as it is a referendum on secession. In such a case, an amendment of the SC is required.

In general terms, only the Parliament of Catalonia passed a law (4/2010) establishing the consultative referendum, but the Constitutional Tribunal invalidated the law because it requires to be regulated by a previous National Law and by the Statute of Autonomy (ruling 51/2017).

Have they been organised often or with a certain regularity? No

C. Local referendums

Do local referendums exist in your country?

According to Article 149.1.32 SC the local and regional referendums need an authorization of the State. At local level, the Law 7/1985, establishing the principles of local government, included such a popular consultation (Article 71). Some Autonomous Communities have regulated by regional law such a popular consultation.

When were local referendums introduced in your country, and in which context?

Have they been organised often or with a certain regularity?

NO. To avoid the formalities of such a regulation, municipalities call for informal consultations, without the authorization of National government.

II. Examples of national referendums

Please give one recent example (**posterior to 1989 (after 1989)**) of each of the following categories, if possible:

1.Referendum on a whole constitution, or on one or several constitutional provisions.

The 1992 and 2011 Constitutional Amendments (Article 167 procedure) didn't require a referendum because 1/10 of MP didn't call for it in both cases.

2.Referendum on a specific piece of legislation

-

3.Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

-

4.Referendum on an international issue (including on an international treaty)

A referendum on the treaty establishing a Constitution for Europe on February 20, 2005 (The turnout rate in the referendum was of 42.32%, 76.73% of Spanish voters voted in favour of the ECT, whilst 17.24% of voters expressed their opposition to the ECT)

5.Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

- Amendment of the Statutes of Catalonia and Andalusia.

PART II QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum **consultative** or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

According to the Spanish Constitution, national referendums bear only consultative character except the Constitutional Amendment referendums.

Referendum on ratification of the European Constitution 2005

On 29 October 2004 in Rome, Heads of State and Governments from the 25 Member States of the European Union signed a Treaty establishing a Constitution for the Union. For the countries

that make up the Union, the process of ratifying the text would begin from that moment. Nine countries have decided on direct consultation rather than ratifying the European Constitution via the parliamentary route. On 20 February 2005, the Spanish became the first Europeans to go to the polls for a referendum on the Constitution's text. With 76.72% voting 'Yes' in a 42.32% voter turnout, the Treaty establishing a European Constitution obtained the approval of the Spanish people in a consultative referendum. Such referendum was proposed by the President of the Government (socialist Rodriguez Zapatero) and the approval of the Congress of Deputies by overall majority. Main political parties voted yes. In Spain referendum is not required for EU Treaties according to the constitutional procedure of Article 93 SC. However, despite the consequent beginning of ratification process initiative by the Parliament, the Treaty failed due to the failure of referendums in France and Netherlands.

Reform of the Statute of Autonomy of Catalonia 18 June 2006

In the beginning of 2000s certain regions sought amendment to their statutes.

In Catalonia calls for a reformed statute occurred in 2003 under the initiative of the new regional government (coalition of left wing parties). The referendum on this issue took place in 2006, and the new statute was passed with a high approval rate 73.24%, 20.57% no, and with a turn out of 48.85% of population, and consequently ratified by regional and national parliaments with the agreement of nationalist parties and socialists who voted for, and PP voted against. The new statute introduced new criteria for the distribution of powers and a special status for Catalonia. PP, the Ombudsman and some Autonomous Communities presented direct appeals to the Constitutional Court, who revoked some articles and reinterpreted others. In Catalonia this judgment (31/2010) was criticized by nationalists and socialists.

Reform of the Statute of Autonomy of Andalusia 18 February 2007

In Andalusia calls for a reformed statute occurred in 2003 by the Socialist cabinet with the publication of a document "bases para la reforma del Estatuto de Autnomia para Andalusia" (foundation for the reform of the statute of autonomy for Andalusia). The referendum on this issue took place on 18 February 2007, and the new statute was passed with a high approval rate 87.5% but with a turn out of 36.3% of population, and consequently ratified by regional and national parliaments with the agreement of main political parties (PSOE and PP). The new statute speaks of Andalusia as a "historic nationality" (Spanish: nacionalidad histórica). Article 1 of the earlier 1981 Statute of Autonomy defined it simply as a "nationality" (nacionalidad). The Statute of Autonomy follows the criteria for the distribution of powers of the Catalan Statute of 2006. The new Statute of Autonomy was promulgated March 19, 2007.

B. Rule of law and stability of the law

3. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

According to the Organic Law 1980, the consultative referendum requires the prior authorization of the Congress of Deputies (lower house of the Spanish Parliament) by absolute majority, at the request of the President of the Government. The object are "decisions of special relevance", excluding those of constitutional nature. The same organic Law rules the approval and amendment of the Statutes by referendum.

4. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The “rules of the game” are outlined in the Spanish Constitution and Organic Law on referendums from 1980 (Ley Orgánica 2/1980, de 18 de enero, sobre regulación de las distintas modalidades de referendum). Each referendum is held according to a specific Royal Decree.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

Referendum on ratification of the European Constitution 2005 - Do you approve the Treaty establishing a Constitution for Europe? The vote was on the adoption of the European Constitution. This referendum is a vote on a question of principle.

Reform of the Statute of Autonomy of Catalonia and Andalusia: ¿Aprueba el Proyecto de Estatuto de Autonomía para Cataluña/Andalucía? Do you Approve the Statute of Autonomy Project for Catalonia/Andalusia. They are referendums on the adoption of legislative texts.

2. How long in advance was the referendum called?

According to the Organic Law, 30 to 120 days from the Decree until the day of celebration is required for consultative referendum. Referendum on ratification of the European Constitution 2005 - The official campaign for the referendum started on 13th January 2005 after permission to call the referendum was given by Parliament.

Statutes referendums are called 6 months maximum in advance.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

Referendum on the ratification of the European constitution in Spain

Reform of the Statute of Autonomy of Catalonia and Andalusia

4. Was the principle of unity of content respected? (Code, III.2).

The European Constitution and the Statutes of Autonomy had different contents but they are part of the same Treaty or Statute.

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

The European Constitution and the Catalan Statute of 2006 were submitted to the Constitutional Court. The Opinion 1/2004 of the Constitutional Court regarding European Constitution established the conformity with the Constitution. The Catalan Statute was declared partially unconstitutional by the ruling 31/2010.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

The questions were clear, as it has been before.

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

The questions weren't SUBMITTED in neither cases

Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.

In every case the information was neutral 1.

4. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

Referendum on ratification of the European Constitution 2005

In the aftermath of the referendum there were some complaints which referred to the campaign as being short and wrongly focused. In particular, it refers to the content of the Constitutional text which wasn't properly explained to the Spanish public.

Catalonia and Andalusia Statute referendums – 10

5. Were electors able to answer the question asked by yes, no or to cast a blank vote? Please answer with a yes or a no and explain briefly.

Referendum on ratification of the European Constitution 2005 – Yes/no and blank vote

Reform of the Statute of Autonomy of Catalonia and Andalusia referendums - Yes/no and blank vote

According to article 16 (Ley Orgánica 2/1980, sobre regulación de las distintas modalidades de referéndum): "The voter's decision can only be "yes" or "no" or left blank; The ballots that do not conform to the official model will be considered null, those that offer doubts about the decision of the voter and those that contain deletions, scratches, amendments, interlinear signs or words that are foreign to the query".

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?

For amendments to certain special parts of the Spanish Constitution, a referendum is mandatory (Article 168). For the rest of the Constitution, Parliament can decide to call a referendum in the event of a reform proposal if 1/10 of MP or senators signed a petition (Article 167). Finally, the Prime Minister can call a non-binding referendum if approved by the Congress of Deputies. In case of European Constitution referendum in 2005 it was representative of consultative referendums. In case of Catalan and Andalusian referendums, they were mandatory as well.

According to the Article 6 of the Ley Orgánica 2/1980, sobre regulación de las distintas modalidades de referéndum: "The consultative referendum provided for in art. 92 of the Constitution will require the prior authorization of the Congress of Deputies by absolute majority, request of the President of the Government. This request must contain the exact terms in which the query is to be formulated".

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

Referendum on ratification of the European Constitution 2005 – announced by the Spanish government in summer 2004. Called by the Prime Minister Zapatero with the further approval of Parliament (after the final draft was accepted by the Council of Ministers of the EU).

Reform of the Statutes of Autonomy of Catalonia and Andalusia referendums are mandatory.

- Held at the request of a section of the electorate (including following a popular initiative)?

NO (would contradict Spanish Constitution and Organic Law on referendums 1980)

4. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

The approval of the Chamber of Deputies is required for consultative referendum.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

Referendum on ratification of the European Constitution 2005 - has been called as lowest turnout in the history of national referendums in democratic Spain with 42.32%. 76.73% votes "YES" and 17.24% voted "NO".

Catalonia Statute referendum 2006:

2,594,167 of total voters with a turnout 48.85%. "YES"- 73.24%, "NO" – 20.57%, blank – 5.29%

Andalusia Statute referendum 2007:

2,193,497 of total voters with a turnout 36.28%. "YES"- 87.45%, "NO" – 9.48%, blank 3.07%

F. Effects of the referendum (Code, III.8)

Legal effects

Was the referendum legally binding or consultative?

In Spain national ordinary referendums have only consultative effect. The others are bindings.

If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

Referendum on ratification of the European Constitution 2005 – *Ratification of the European Constitution in Spain*

If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

Catalonia and Andalusia Statutes referendum - Adoption of the new Statute of Autonomy (extension of powers of the regional government). In the case of Catalonia several appeals before the Constitutional Tribunal. The Tribunal declared the unconstitutionality of 13 Articles or parts of Articles.

II. Political effects

1. Was the position of the authorities at stake?

NO in none of the referendums

Please rate from

1 - non-affected to 10 - affected and explain briefly.

2. In the affirmative, did this lead to early elections?

Referendum on ratification of the European Constitution 2005 – NO

Catalonia and Andalusia Statute referendums - NO

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense? In particular:

1. Was this intervention obligatory or did it **take place on appeal**?

In case of European Constitution referendum in 2005 there was an appeal to the Supreme Court by the group Otra Democracia Es Posible and the foundation Centro de Estudios Jurídicos Tomás Moro in regard to the campaign.

2. Did it intervene before or after the vote?

---- not in case of Catalonia and Andalusian referendums

3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote? NO

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum? NO

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

NO

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

Referendum on ratification of the European Constitution 2005 – Spanish Law does not set any special requirements as to minimum quorums or turnout to validate a referendum

Catalonia and Andalusia Statutes referendums – no quorum

2. What was the turnout?

Referendum on ratification of the European Constitution 2005 – 42.32% (*national referendum*)

Catalonia Statute referendum 2006 – 48.85%

Andalusia Statute referendum - 36.28%

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

Referendum on ratification of the European Constitution 2005 – there were several international interventions both before and during the campaign. As well as the messages of support for the YES vote coming from European Institutions and their representatives (such as Mr. Durao Barroso, the president of the European Commission), several European heads of state actively participated in the campaign. This was the case with Mr. Chirac and Mr. Schroeder, who visited Spain during the campaign and took part in several events in support of the YES campaign.

Catalonia and Andalusia Statute referendums - NO

3. In the affirmative, what was the form of their intervention?

K. What lessons might be learned from these referendums?

In Spain referendums are exceptional at every tier of government: national, regional and local. Spanish democracy is a representative. Regarding the consultative referendum the initiative is very restricted: the President of Government. But it requires the approval of the Congress of Deputies. This approval limits the plebiscitarian nature of such a referendum.

Other referendums are linked to the ratification of the Constitutional Amendments. It is mandatory when is related with the most relevant parts (principles, fundamental rights and the Crown, other than a total reform) or under request of a minority of parliamentarians if is an ordinary amendment.

Every amendment to the Statutes of Autonomy of the Special regimes' Autonomous Communities (Basque Country, Catalonia, Galizia and Andalusia) requires a referendum.

At regional and local level popular consultations are exceptional because they need an authorization of Spanish government and the lack of regulation at regional level. At this level, last decade in Basque Country and Catalonia, regional authorities tried to pass laws on secession

referendum or popular consultation on the right to decide, but Constitutional Court declared unconstitutional those proposals.

27. SWEDEN

PART I

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

As a general rule the Swedish Constitution prescribes in its introductory chapter that democracy in Sweden shall be realised through a representative and parliamentary polity. Referendums are exceptions to this representative form of government and they can be held only in two cases:

1. as binding on a matter of constitutional change under Chapter 8 section 16 of the Instrument of Government (the Swedish Constitution), and
2. as consultative on any question put to the people.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)? As consultative in 1922, as binding on a matter of constitutional change in 1980, as part of a package of constitutional reforms designed to strengthen rights protection.

3. Is there any recent experience in your country (from 2004 on)? No.

B. Regional referendums

1. Do regional referendums exist in your country? Yes.
2. When were regional referendums introduced in your country, and in which context? In 1977.
3. Have they been organised often or with a certain regularity? No

C. Local referendums

1. Do local referendums exist in your country? Yes.
2. When were local referendums introduced in your country, and in which context? 1977
3. Have they been organised often or with a certain regularity? 119 local referenda were carried out between 1980 and 2014, of which 82 were after 2000. A change in the law in 1994 strengthening the local population's right of initiative has contributed to the increase in local referenda.

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions None
2. Referendum on a specific piece of legislation None.
3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue There was a referendum in 2003 on whether Sweden should join the Eurozone.
4. Referendum on an international issue (including on an international treaty) There was a referendum in 1994 on whether Sweden should become a member of the (then) European Communities
5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity). There have been several *local* referendums on whether an area within one local authority should secede, either

to form a new local authority, or to join another, existing local authority. No national referendums have been held on a territorial issue.

PART II

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

A suitable example is the most important referendum held, namely the referendum on whether or not to accede to the EC/EU. The intention was to identify whether the majority of the electorate was agreed with the pro-membership views of the leadership of all but one of the political parties represented in the parliament (the exception being the Left, formerly Communist, party). The votes for and against were relatively evenly balanced, however, the vast majority of the population accepted the result. The proportion of the Swedish population which is positive to the EU has risen since 1994 and leaving the EU is not supported by any significant section of public opinion.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? Yes.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1). Chapter 8, section 15 provides that necessary provisions concerning the holding of a consultative referendum throughout the whole of the Realm and the procedure for holding a referendum on a matter of fundamental law shall be laid down in a statute. This act, the Act on Referendums, was adopted in 1979, and it covers both binding and consultative referendums. It provides (among other things) that before each referendum the specific question or questions put to the people shall be stated in a special statute passed by parliament.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? No. In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal? Yes. See above.

2. How long in advance was the referendum called? Agreement was reached among the political parties during 1993 to hold a consultative referendum. The bill providing for the referendum was laid before parliament 21 April 1994 and the referendum was held on 13 November 1994.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? The question was: "Do you think that Sweden shall become member of the EU according to the treaty between Sweden and the Member States of the EU?" Sweden was already a member of the European Economic Area (1992), however, membership of the EC/EU was a very significant step for Sweden, and one which required amendment of the constitution. The referendum thus could, legally speaking, have been in the form of a binding referendum, on amendment of the constitution.

4. Was the principle of unity of content respected? (Code, III.2). Yes.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)? Yes. 10/10 clear cut. Admittedly, most people were not experts on the exact terms of the treaty of accession, and the question asked implicitly asked whether the membership terms reached in the negotiations were acceptable. Nonetheless, the essential issue: membership or not, was clear.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)? Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly 9/10 All but one of the political parties represented in the Riksdag were in favour of EU membership. The exception was the Left (formerly, Communist) party. The employers association was also in favour, whereas the Trade Union Congress was split. While the media coverage showed a preponderance of support for membership, there seems to be no grounds for holding that state administrative resources had been abused in the campaign.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text? Please rate from 1 - unduly to 10 - duly and explain briefly. 7/10 The referendum was non-binding. However, all the political parties had, in advance, undertaken to respect the result of the referendum. Thus, it was “politically binding” (see answer to K. below)

8. Were electors able to answer the question asked by yes, no or to cast a blank vote? Please answer with a yes or a no and explain briefly. Yes. See C.3 above.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)? No.

- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?

Referendums can be called by Parliament only. On motions of its members to hold consultative referendums Parliament decides in ordinary procedure by majority vote. A referendum on a proposal concerning fundamental law has to be held on a motion to this effect by at least on tenth of the members of Parliament, provided that at least one third of members concur in approving the motion.

- Held at the request of a section of the electorate (including following a popular initiative)? A request of part of the electorate cannot as such trigger a national referendum, but may lead to private member initiatives in Parliament to hold a referendum. Since 1994, local referenda can be triggered by electoral initiatives.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code,

III.6) Not applicable.

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

52,3 percent voted for membership, 46,8 percent voted against and 0,9 percent voted blank.

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

The outcome of a *consultative* referendum is neither suspensive, nor resolutive, nor abrogative. Results have to be evaluated and interpreted politically. In the case of this consultative referendum, the political parties declared in advance that they would abide by the results of the voting whatever the turnout of voters and whatever the outcome of the vote.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

The consequences were in 1994 that preparations for the accession continued, and the Treaty of Accession was ratified later that year.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

NA

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

NA

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly. 8/10 As noted in C.6, the party of government, and all but one of the other parties represented in the parliament were in favour of EU membership. However, the fact that Sweden was already a member of the European Economic Area (EEA) meant that, economically, at least in the short term, the difference between a yes and a no was not perceived to be so great.

2. In the affirmative, did this lead to early elections?

NA

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?
No.

In particular:

1. Was this intervention obligatory or did it take place on appeal?
2. Did it intervene before or after the vote?
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

As with any other bill laid before Parliament, there is a requirement that it is well prepared (see Instrument of Government Chapter 7, section 2). However, there is no requirement in the Instrument of Government or the 1979 Law that any given administrative authority is consulted on the formulation of the question. The question is proposed in the bill submitted to Parliament by the Government (i.e. on the proposed referendum) and after extensive negotiations with the political parties represented in Parliament.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

Rules on turnout and approval quorums for binding referendums, on changes of the constitution (which have never yet been held) are set out in the instrument of government. For the result of a "binding" referendum to be binding, the specified (in the special statute passed) turnout quorum must be achieved, and a majority of those voting must vote no to the question posed in the referendum. A blank vote is counted as a yes vote. All of this means a high threshold is set for the parliament to be legally bound.

Turnout and approval quorum rules for consultative referendums are set out in the special statute which the parliament passes in each case.

2. What was the turnout?

83,3 percent of those eligible to vote (6 510 055) participated in the referendum.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

No.

2. In the affirmative, what was the form of their intervention?

K. What lessons might be learned from this referendum?

The fact that the political parties agreed that the result of this referendum, and the later referendum in 2003 on whether to join the euro zone, would be treated as “politically binding” has blurred the distinction made in the Constitution between binding and non-binding referendums. As noted, the Constitution provides clear turnout and approval quorum rules for binding referendums.

As regards the formulation of the question, lessons have been drawn from the experience from the non-binding, consultative, referendum in 1980 on the future development (or not) of nuclear energy. In this referendum, the voters were asked to choose out of three alternatives and the results were accordingly difficult to interpret. The referendum is generally interpreted as being in favour of letting existing nuclear power stations continue production, but not to build any new ones, and to decommission the existing nuclear power stations when this is economically defensible. However, climate change was not an issue in 1980, and increased knowledge of this has led some to argue for a re-appraisal of the results of the consultative referendum.

In any event, referendums are still a “rare bird” in Swedish national politics, and there is no indication that this is likely to change in the near future.

28. SWITZERLAND

PART I GENERAL QUESTIONS

I. Preliminary remarks

In Switzerland, “referendum” is a legal term used for a particular means of direct democratic participation, enabling voters to express themselves on acts of parliament, whereas “popular vote” is the general term used for the procedure by which the electorate is voting on political issues. Therefore, the broader term “popular vote” is used here.

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

The Swiss Confederation provides different forms of popular votes on the national level. The results are always binding. A consultative popular vote (“plebiscite”) is neither provided by the constitution nor has one ever taken place on the federal level.

2. When was a national referendum introduced in your country, and in which context? (for the details see below)?

There are different forms of national referendums in Switzerland, and they were introduced in the course of time:

1848: Constitutional (mandatory) referendum

1874: Legislative (optional) referendum (referendum only when asked by voters)

1891: Popular initiative (amendment of the constitution initiated by voters)

1921: Referendum on international treaties

1949: Referendum on federal emergency acts

1977: Extension of the referendum on international treaties

3. Is there any recent experience in your country (from 2004 on)?

Since 2004, over 100 popular votes have taken place on the national level. In addition, numerous popular votes were held on the other levels of the Confederation (i.e. cantonal and communal).

B. Regional referendums

1. Do regional referendums exist in your country?

Yes, referendums/popular votes exist in all (26) Swiss cantons.

2. When were regional referendums introduced in your country, and in which context?

Regional (cantonal) referendums were introduced in the 19th century and have developed ever since. It should be noted that the referendum on amendments to cantonal constitutions is required by federal constitutional law (Article 51 of the Federal Constitution).

3. Have they been organised often or with a certain regularity?

Popular votes on the cantonal level are organized on a regular basis.

C. Local referendums

1. Do local referendums exist in your country?

Yes, they exist in many (larger) municipalities; in smaller ones fundamental political decisions are taken in community meetings (communal assemblies).

2. When were local referendums introduced in your country, and in which context?

These institutions were not introduced at a specific date, which means that the answer depends on community / municipality at stake.

3. Have they been organised often or with a certain regularity?

Popular votes on the communal level are organized on a regular basis.

II. Examples of national referendums

Federal authorities maintain a database where all popular votes at the federal level since the foundation of the Swiss confederation are listed (see: https://www.bk.admin.ch/ch/d/pore/va/vab_2_2_4_1.html)

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

Popular vote on 18 April 1999, concerning the new federal constitution (full revision)

Popular vote on 24 September 2017: Federal Decree of 17 March 2017 on Additional Funding for AHV (Old-Age and Survivors Insurance) by increasing Value Added Tax (partial revision)

2. Referendum on a specific piece of legislation

Popular vote on 21 May 2017: Energy Act of 30 September 2016

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

There is no such example, as all referendums refer to the constitution or to acts of parliament, and they are always binding.

The last popular vote on a generally-worded proposal for a constitutional amendment was on 21 March 1976 on the popular initiative 'More equal taxes' (www.bk.admin.ch/ch/d/pore/rf/cr/1975/19750165.html).

4. Referendum on an international issue (including on an international treaty)

Popular vote on 8 February 2009: Federal Decree approving the continuation of the Agreement on the Free Movement of Persons between Switzerland and the European Community and its Member States and the approval and implementation of the Protocol on the extension of the Agreement on the Free Movement of Persons to Bulgaria and Romania

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

Popular vote on 10 March 1996: Federal Decree of 21 December 1995 on the commune of Vellerat's change of canton (from Bern to Jura)

PART II QUESTIONS ON SPECIFIC REFERENDUMS

[You are kindly requested to answer this part of the questionnaire in relation to one or more specific referendums of the above categories (Part I, II) held in your country]

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

On 21 May 2017, the vote on the federal Energy Act of 30 September 2016 took place. The existing Energy Act was fully revised in order to implement the first "package" of the Swiss Energy Strategy 2050. The main aims of the new legislation were a ban on nuclear energy, the introduction of additional measures for the reduction of energy consumption, for the improvement of energy efficiency, and for the promotion of renewable energies.

The Energy Act was adopted by parliament on 30 September 2016. On 19 January 2017, 68'390 voters asked for a legislative referendum (threshold at 50'000 voters, signatures to be collected within 100 days, formalized procedure). On 11 January 2017, the federal government had announced that the popular vote on the Energy Act would take place on 21 May 2017 in case the legislative referendum would pass the threshold of 50'000 signatures. The outcome of the referendum was positive and the Energy Act entered into force on 1 January 2018 (for the procedure see: www.bk.admin.ch/ch/d/pore/rf/cr/2012/20121295.html).

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) (Code of Good Practice on Referendums, III.1).

Yes. Every legislative act of parliament may be challenged by a referendum if either 50'000 voters or 8 cantons request to do so. As mentioned above, all popular votes are provided for by the constitution.

There are only two examples of popular votes which lacked an explicit constitutional basis (1920, 1972; see: https://www.bk.admin.ch/ch/d/pore/vr/vor_2_2_6_6_01.html).

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

The general provisions on popular votes are anchored in the constitution (Articles 138–142), whereas the details are set out in the Federal Act on Political rights (<https://www.admin.ch/opc/en/classified-compilation/19760323/index.html>) and in the Federal Ordinance on Political rights.

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question of principle/a generally-worded proposal?

Yes. The object of the vote was the (revised) Energy Act. The voters were asked the following question: "Do you want to accept the Energy Act of 30 September 2016?"

2. How long in advance was the referendum called?

The Federal Council made a formal announcement four months in advance, according to the rules set out in the Federal Act on Political rights.

The ordinance on Political rights sets out rules for the determination of the regular polling days (in general four Sundays a year). Hence, the prospective dates for popular votes are always known well in advance.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

The vote was about the revised Energy Act of 30 September 2016 (see: <https://www.admin.ch/opc/fr/federal-gazette/2016/7469.pdf>)

4. Was the principle of unity of content respected? (Code, III.2).

The federal constitution explicitly requires compliance with the unity of content principle for every partial revision of the constitution (Articles 139 and 194). Furthermore, unity of content is a general principle under Swiss law; it is also enshrined in the right to vote (Article 34 of the Constitution).

The revised Energy Act of 30 September 2016 is a comprehensive legal document covering various issues relating to energy; the unity of content principle was met.

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Yes, see answer to question II/C/1. The formulation may be rated as clear (10).

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12-14)?

Authorities are obliged by law to inform the voters according to the principles of completeness, objectivity, transparency and proportionality. These principles have been respected in the case of the popular vote on the revised Energy Act. Two voters nevertheless claimed that the information provided by the authorities was inappropriate and unbalanced; the appeals were rejected by the competent court.

The authorities acted in a neutral way and provided objective information to the voters (10).

Please rate from 1 – not neutral nor objective to 10 – neutral and objective - and explain briefly.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

Yes, the procedure was clear to the voters. As usual, the voters received an explanatory brochure explaining the scope of the new legislation and its effects (see: [explications](#)).

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

Yes, voters always have these three options.

Please answer with a yes or a no and explain briefly.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

The referendum was held at the request of the electorate (68'390 voters).

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

On the Federal level, a popular vote is either mandatory or has to be requested by a specific number of voters. The authorities can't request a popular vote themselves. The Energy Act was adopted by parliament; after the referendum had gained the necessary number of signatures, Parliament and Federal Council recommended the voters to accept the revised Energy Act.

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

The turnout was at 42.89%.

Electorate: 5'356'538

Yes: 1'322'263 = 58.2% of those voting

No: 949'053 = 41.8% of those voting

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

The popular vote was legally binding.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

The effect of the referendum was the adoption of the revised Energy Act, which entered into force on 1 January 2018.

II. Political effects

1. Was the position of the authorities at stake?

No (10). The authorities recommended adoption of the revised Energy Act, and it was adopted by the voters. In principle, voting results do not question the government (this is partly due to the fact that the main political parties are all represented in the federal government).

Please rate from 1 - non-affected to 10 - affected and explain briefly.

2. In the affirmative, did this lead to early elections?

No.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?

In particular:

1. Was this intervention obligatory or did it take place on appeal?

The judiciary intervenes only in case of appeals. Regarding the referendum on the Energy Act, two appeals have been filed, but were rejected by the competent court.

2. Did it intervene before or after the vote?

According to the Federal Act on Political rights an appeal must be filed within three days after the grounds for appeal being ascertained, and at the latest on the third day following publication of the voting results in the official gazette. In case of the popular vote on the Energy Act appeals have been filed before the voting day.

3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?

Yes, one plaintiff questioned the constitutionality of the law. However, in Switzerland judicial authorities are not competent to constitutional review if an act of parliament is concerned.

4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

No, the federal Supreme court is not entitled to control the constitutionality of the question at stake (see above II/G/3).

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

No. There is a constant practice on the formulation of the question, leaving the authorities no margin of appreciation.

I. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

No.

2. What was the turnout?

The turnout was 42.89%.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

No.

2. In the affirmative, what was the form of their intervention?

K. What lessons might be learned from this referendum?

There are no specific lessons to be learned. All procedures are standardized and well accepted among the voters and the political authorities.

29. TURKEY

PART I**I. Preliminary questions****A. National referendum**

Does a national referendum exist in your country? Is it binding or consultative?

In our country; referendum is made under the Constitution of the Republic of Turkey numbered 2709 and the Law No. 3376 on the Submission of the Constitutional Amendments to Referendum and is binding.

1. When was a national referendum introduced in your country, and in which context? (for the details see below)?

The national referendum in our country was first implemented during the adoption of the 1961 Constitution.

2. Is there any recent experience in your country (from 2004 on)?

The recent referendum in Turkey is made on the adoption of the Law No. 6771 on the Amendment of the Constitution of the Republic of Turkey on April 16, 2017.

B. Regional referendums

1. Do regional referendums exist in your country?

No regional referendum is held in our country.

2. When were regional referendums introduced in your country, and in which context?
3. Have they been organised often or with a certain regularity?

C. Local referendums

1. Do local referendums exist in your country?
2. When were local referendums introduced in your country, and in which context?
3. Have they been organised often or with a certain regularity?

- Pursuant to Article 4 of the Municipal Law No. 5393, which entered into force after being published in the Official Gazette dated 13.07.2005 and numbered 25874; where it is decided by the board of aldermen of one or more villages consisting of conditions for establishing a municipality; or an application is made in writing to the governor by at least one half of the electors plus one, or where it is deemed necessary by the governor, and

- Pursuant to the second paragraph of Article 8 of the Municipal Law No. 5393, in case a residential area of a county or village, or their parts are incorporated into a residential area of a neighbouring county, or in case the distance between these places decreases

below 5.000 meters and more than one of the half of the electors residing in these places apply for joining another county,

Upon the notification of the governor, it is envisaged to make a referendum by the presidency of the district election board.

It is stated in our legislation that the referendum at the local level can be made as

II. Examples of national referendums

Please give one recent example (posterior to 1989) of each of the following categories, if possible:

1. Referendum on a whole constitution, or on one or several constitutional provisions

In our country, after 1989, referendums were made in relation to the amendments to some articles of the Constitution. The relevant referendums were carried out on the constitutional amendments made by the following laws:

- The constitutional amendment made by Law No. 5678 on the Amendment of Certain Articles of the Constitution of the Republic of Turkey and Law No. 5697 on the Amendment on the Law on the Amendment of Certain Articles of the Constitution of the Republic of Turkey was submitted to a referendum on 21/10/2007 and adopted. The decision of the Supreme Election Council dated 30/10/2007 and numbered 873 was published in the Official Gazette dated 31/10/2007 and numbered 26686.

- Constitutional amendments made by Law No. 5982 dated 7/5/2010 was submitted to a referendum on 12/9/2010 and adopted. The decision of the Supreme Election Council dated 22/9/2010 and numbered 846 was published in the Official Gazette dated 23/9/2010 and numbered 27708.

- Constitutional amendments made by Law No. 6771 dated 21/1/2017 was submitted to a referendum on 16/4/2017 and adopted. The decision of the Supreme Election Council dated

2. Referendum on a specific piece of legislation

As mentioned above, referendum in our country is made about the laws regarding the constitutional amendments.

3. Referendum on a question of principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal or a social issue

There is no referendum on this issue.

4. Referendum on an international issue (including on an international treaty)

There is no referendum on this issue.

5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)

There is no referendum on this issue.

PART II

A. Short description (date, background, content, aim, outcomes)

Please give the date and a short description of the social and political background of the referendum; what the essence of the issue at stake; was the referendum consultative or binding; the intentions behind the referendum; the result in terms of votes; the ensuing legal consequences/effects of the referendum (legislation or abrogation; renegotiations etc.); the socio-political consequences (changes in the political field; social unrest/dissatisfaction etc.).

Referendum has a significant function in democratic States. The referendum, which allows people to participate in decision-making processes, is one of the factors that make the principle of participation, which is one of the requirements of democracy, to be implemented. The purpose of the referendum is to ensure the democratic legitimacy, as well as to take the public's vote and opinion on the constitutional arrangements on issues affecting the public's law.

The latest referendum held on April 16, 2017 is binding and was held regarding the law on the amendment of some articles of our Constitution.

Considering the provisions of the constitutional amendment which is the subject of the referendum, it is seen that the amendment includes the following issues:

- the introduction of the presidential government system,
- opening all the operations of the President to judicial review,
- abolishment of military jurisdiction,
- increasing the number of MPs from 550 to 600,
- lowering the age of election of MPs from 25 to 18,
- presidential election and parliamentary general elections to be held on the same day every 5 years,
- duties and powers of the Turkish Grand National Assembly,
- candidacy, election, duties and powers, criminal liability of the President of the Republic,
- Deputies of the President of the Republic, Acting for the President of the Republic and the Ministers,
- renewal of Election of the Grand National Assembly of Turkey and the Presidential Election
- the structure of the Council of Judges and Prosecutors.

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum? (In particular, referendums cannot be held where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction) ([Code of Good Practice on Referendums](#), III.1).

One of the basic requirements of the principle of rule of law is to establish the laws with democratic legitimacy and the participation of public in decision-making processes.

The referendums in our country are carried out in the cases specified in Article 175 of the Constitution. This article regulates the amendment of the Constitution, participation in elections and referendum. According to Article 175 of our Constitution;

The President of the Republic may send back the laws on the amendments to the Constitution to the Grand National Assembly of Turkey for reconsideration. If the Assembly readopts, by a two-thirds majority of the total number of members, the law sent back by the President of the Republic without any amendment, the President of the Republic may submit the law to referendum.

If a law on the amendment to the Constitution is adopted by a three-fifths or less than two-thirds majority of the total number of members of the Assembly and is not sent back by the President of the Republic to the Assembly for reconsideration, it shall be published in the Official Gazette and be submitted to referendum.

A law on the Constitutional amendment adopted by a two thirds majority of the total number of members of the Grand National Assembly of Turkey directly or upon the sending back of the law by the President of the Republic or its articles deemed necessary may be submitted to a referendum by the President of the Republic. A law on the amendment to the Constitution or the related articles that are not submitted to referendum shall be published in the Official Gazette.

Entry into force of the laws on the amendment to the Constitution submitted to referendum shall require the affirmative vote of more than half of the valid votes cast.

These provisions in our Constitution are the rules governing the conditions in which the referendum is to be held and according to which legal regime, and the terms, effects and consequences of the referendum.

2. Were the "rules of the game" provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendum? (Code, II.2.b and III.1).

C. Question(s) put to referendum

1. Was the vote on the adoption/abrogation of a specific constitutional/legislative text? In the affirmative, on which text in particular? Or was the vote on a question

of principle/a generally-worded proposal?

In accordance with Article 175 of the Constitution and the Law No. 3376 on the Submission of the Constitutional Amendments to Referendum, the relevant referendum was held with respect to the Law No. 6771 on the Amendment of the Constitution of the Republic of Turkey adopted on 21/01/2017 by the Turkish Grand National Assembly.

2. How long in advance was the referendum called?

According to the fourth paragraph of Article 175 of the Constitution of the Republic of Turkey numbered 2709, *"If a law on the amendment to the Constitution is adopted by a three-fifths or less than two-thirds majority of the total number of members of the Assembly and is not sent back by the President of the Republic to the Assembly for reconsideration, it shall be published in the Official Gazette and be submitted to referendum."*

The Law No. 6771 on the Amendment of the Constitution of the Republic of Turkey which was adopted on 21/01/2017 by the Turkish Grand National Assembly was published in the Official Gazette dated 11/2/2017 and numbered 29976.

According to Article 2 of the Law No. 3376 on the Submission of the Constitutional Amendments to Referendum, *"the referendum on the amendment of the Constitution is made on the first Sunday after the sixtieth day following the publication of the Law on the Amendment of the Constitution in the Official Gazette."*

Within the framework of these provisions, it was decided to hold the referendum on the Constitutional Amendments on April 16, 2017 with the decision of the Supreme Election Council dated 11 February 2017 and numbered 74.

3. Please give the precise wording or the essential elements of the referendum. What was at stake? [Please use very simple terms. For instance: Direct election of the President of the Republic by the people]

The referendum held in 2017 was carried out in relation to the following issues (examples):

- the introduction of the presidential government system,
- all the operations of the President are opened to judicial review,
- military jurisdiction is being abolished,
- increasing the number of MPs from 550 to 600,
- lowering the age of election of deputy from 25 to 18,
- presidential election and parliamentary general elections to be held on the same day every 5 years,
- duties and powers of the Turkish Grand National Assembly,
- candidacy, election, duties and powers, criminal liability of the President of the Republic,
- Deputies of the President of the Republic, Acting for the President of the Republic and Ministers,
- renewal of Election of the Grand National Assembly of Turkey and the Presidential Election

4. Was the principle of unity of content respected? (Code, III.2).

Please answer with a yes or no and explain briefly. Alternatively, if this issue was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

5. Was the formulation of the question clear, in the sense that it was not misleading (Code, I.3.1.c and par. 15)?

Please rate from 1 - misleading to 10 - clear cut and explain briefly. Alternatively, if the formulation of the question was submitted to the Constitutional Court, please summarise the Constitutional Court's decision.

6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources (Code, I.3.1.b + d and 12- 14)?

Pursuant to Article 67 of the Constitution, entitled "*Right to vote, to be elected and to engage in political activity*":

In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, to engage in political activities independently or in a political party, and to take part in a referendum.

(As amended on July 23, 1995; Act No. 4121) Elections and referenda shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, direct, universal suffrage, and public counting of the votes. (...)

(As amended on May 17, 1987; Act No. 3361, and on July 23, 1995; Act No. 4121) All Turkish citizens over eighteen years of age shall have the right to vote in elections and to take part in referenda.

The exercise of these rights shall be regulated by law.

Pursuant to Article 79 of the Constitution, entitled "General administration and supervision of elections":

Elections shall be held under the general administration and supervision of the judicial organs.

(As amended on October 21, 2007; Act No. 5678) The Supreme Board of Election shall execute all the functions to ensure the fair and orderly conduct of elections from the beginning to the end, carry out investigations and take final decisions, during and after the elections, on all irregularities, complaints and objections concerning the electoral matters, and receive the electoral records of the members of the Grand National Assembly of Turkey and presidential election.

The functions and powers of the Supreme Board of Election and other electoral boards shall be determined by law.

The Supreme Board of Election shall be composed of seven regular members and four substitutes. Six of the members shall be elected by the General Board of High Court of Appeals, and five of the members shall be elected by the General Board of Council of State from amongst their own members, by the vote of the absolute majority of the total number of members through secret ballot. These members shall elect a chairperson and a vice-chairperson from amongst themselves, by absolute majority and secret ballot.

Amongst the members elected to the Supreme Board of Election by the High Court of Appeals and by the Council of State, two members from each group shall be designated by lot as substitute members. The Chairperson and Vice-Chairperson of the Supreme Board of Election shall not take part in this procedure.

(As amended on October 21, 2007; Act No. 5678) The general conduct and supervision of a referendum on laws amending the Constitution and of election of the President of the Republic by people shall be subject to the same provisions relating to the election of deputies.

According to Article 3 of the Law No. 3376 on the Submission of the Constitutional Amendments to Referendum, "The proceedings regarding the submission to the referendum are carried out by the election boards under the administration and supervision of the Supreme Election Council.

The Supreme Election Council shall take all measures and make preparations for the constitutional amendments to be submitted to the referendum. The Council is authorized to take the necessary resolutions in order to ensure that the referendum takes place in a healthy and orderly manner."

When the members of the Supreme Election Council are examined, it is seen that all of the members are judges of high judiciary. The referendum process is carried out under the administration and supervision of the Supreme Election Council, a constitutional body composed of impartial and independent judges with high legal knowledge. As a result, the referendum process is managed in an independent, impartial and objective manner.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?

Please rate from 1 - unduly to 10 - duly and explain briefly.

The duties and powers of the Supreme Election Council are stipulated in the Law No. 298 on Fundamental Provisions of Elections and Voter Registers and the Law No. 7062 on the Organization and Duties of the Supreme Election Council. In this context, with respect to the referendum process, the Supreme Election Council acted in accordance with the duties, powers and responsibilities assigned by law.

8. Were electors able to answer the question asked by yes, no or to cast a blank vote?

In the referendum held on 16 April 2017;

“Yes”, Number of Voters: 24.325.633; Ratio: 51,18%;

Please answer with a yes or a no and explain briefly.

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:

- Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?
- Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?
- Held at the request of a section of the electorate (including following a popular initiative)?

Pursuant to Article 175 Paragraph 4 of the Constitution, the referendum was held as a mandatory referendum in respect of the total number of members accepted the relevant Law in the Turkish Grand National Assembly. The referendum was held in accordance with Article 175 of the Constitution and the Law No. 3376 on the Submission of the Constitutional Amendments to Referendum.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion? (Code, III.6)

Pursuant to Article 175 of the Constitution, laws on constitutional amendments can be submitted to the referendum by the President.

The referendum in our country is related to the constitutional amendment and is a legislative referendum. In this respect, it is not possible for the President to submit a law to a referendum if that law is not accepted by the legislature. The constitutional

The background of this question is whether the executive used the referendum (possibly through a request of a section of the electorate) to circumvent Parliament.

E. What was the outcome of the referendum (if possible in percentages (a) of those voting and (b) of those having the right to vote)

In the referendum held on 16 April 2017;

“Yes”, Number of Voters: 24.325.633; Ratio: 51,18%;

F. Effects of the referendum (Code, III.8)

I. Legal effects

1. Was the referendum legally binding or consultative?

The referendum was legally binding.

2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?

The referendum was regarding the law on constitutional amendments.

3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?

The referendum was regarding the law on constitutional amendments. It is not possible to enact a secondary implementing legislation before the constitutional amendment is approved.

4. If the referendum was on a specific (draft) law, what was its effect?
Adoption, abrogation of a law?

The referendum was regarding the law on constitutional amendments.

II. Political effects

1. Was the position of the authorities at stake?

Please rate from 1 - non-affected to 10 - affected and explain briefly.

No, the position of the authorities was not at stake.

2. In the affirmative, did this lead to early elections?

No, this did not lead to early elections.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense? In particular:

1. Was this intervention obligatory or did it take place on appeal?

Acting as a constitutional judicial authority, the Supreme Election Council examined and resolved the appeals made in this process.

2. Did it intervene before or after the vote?
3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?

Pursuant to Article 67 of the Constitution, referendums shall be held under the direction and supervision of the judiciary.

Pursuant to Article 79 of the Constitution, elections shall be held under the general administration and supervision of the judicial organs. The Supreme Board of Election shall execute all the functions to ensure the fair and orderly conduct of elections from the beginning to the end, carry out investigations and take final decisions, during and after the elections, on all irregularities, complaints and objections concerning the electoral matters, and receive the electoral records of the members of the Grand National Assembly of Turkey and presidential election. The general conduct and supervision of a referendum on laws amending the Constitution and of election of the President of the Republic by people shall be subject to the same provisions relating to the election of deputies.

According to Article 3 of the Law No. 3376, the proceedings regarding the submission to the referendum are carried out by the election boards under the administration and supervision of the Supreme Election Council. The Supreme Election Council shall take all measures and make preparations for the constitutional amendments to be submitted to the referendum. The Council is authorized to take the necessary resolutions in order to ensure that the referendum takes place in a healthy and orderly manner.

When the members of the Supreme Election Council are examined, it is seen that all of the members are judges of high judiciary. The referendum process is carried out under the administration and supervision of the Supreme Election Council, a constitutional body composed of impartial and independent judges with high legal knowledge. As a result, the referendum process is managed in an independent, impartial and objective manner.

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

As mentioned above, the referendum process is carried out under the administration and supervision of the Supreme Election Council.

The Supreme Election Council shall execute all the functions to ensure the fair and orderly conduct of referendum from the beginning to the end, carry out investigations and take final decisions, during and after the referendum, on all irregularities,

i. Quorum and turnout (cf. Code, III.7)

1. Was there a turnout quorum or an approval quorum?

Pursuant to paragraph 6 of Article 175 of the Constitution; *“Entry into force of the laws on the amendment to the Constitution submitted to referendum shall require the affirmative vote of more than half of the valid votes cast.”*

2. What was the turnout?

In the decision of the Supreme Board of Elections dated 27/04/2017 and numbered 2017-663 on the announcement of the final results of the referendum, it was stated that 49,798,855 of the 58,291,898 registered voters voted, and the rate of participation in the referendum was 85.43% across the country.

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?

As stated in detail above, the issues submitted to the referendum are those that exist and are applied in democratic states based on the rule of law, and are consistent with the basic principles, rules and values adopted and implemented by international organizations, the European Council and the European Union.

The topics mentioned are the regulations that strengthen the principle of rule of law and separation of powers, emphasize the impartiality of the judiciary and empower

2. In the affirmative, what was the form of their intervention?

K. What lessons might be learned from this referendum?

This referendum on the amendment of some articles of the Constitution on significant issues has been an important experience that strengthens the principle of participation in democracies through the participation of the public in decision/law-making processes.

The voting of the regulations by citizens has strengthened democratic legitimacy.

The approval of the rules and laws by public has strengthened the consciousness of law and justice, and has increased the effectiveness of the rules.

30. UKRAINE

PART I GENERAL QUESTIONS

I. Preliminary questions

A. National referendum

1. Does a national referendum exist in your country? Is it binding or consultative?

- A national referendum ("All-Ukrainian referendum" which could be designated by the *Verkhovna Rada* (Parliament) or by the President, or called on popular initiative) is proscribed by the provisions Article 72 of the Constitution of Ukraine. According to Article 156 of the Constitution a draft law on amending the Constitution (that could be submitted only by the President or not less than 2/3 of MPs) as regards Chapter I (General Principles), Chapter III (Elections. Referendum), Chapter XIII (Amendments to the Constitution), after its adoption by the Parliament, is to be approved by an "All-Ukrainian referendum". In this case a national referendum is binding. The Constitution itself is silent on the legal nature of the decisions taken on referendum called on popular initiative. However, the Constitutional Court of Ukraine (CCU) by its Judgment 6-рп/2008 decided that a legislative referendum called on popular initiative is admitted and it is binding ("a decision of All-Ukrainian referendum on adoption of the laws is final and does not require any approval, including the approval by the *Verkhovna Rada* of Ukraine").

2. When was a national referendum introduced in your country, and in which context?

- A national referendum was introduced while adopting the Constitution of independent Ukraine in 1996.

3. Is there any recent experience in your country (from 2004 on)?

- From 2004 and on there was no national referendum in Ukraine.

B. Regional referendums**1. Do regional referendums exist in your country?**

- Neither the Constitution of Ukraine nor an ordinary legislation provide for a legal basis for regional referendums. The only act of parliament in force – The Law of Ukraine "On All-Ukrainian Referendum" (No. 5475-VI as dated from 06 November 2012) – provides exclusively for a national referendum.

2. When were regional referendums introduced in your country, and in which context?

- NA

3. Have they been organized often or with a certain regularity?

- On 16 March 2014 the referendum in the Autonomous Republic of Crimea and the city of Sebastopol was held for the purpose of alteration of the status of Autonomous Republic of Crimea and the city of Sevastopol and using it as a "legal basis" for annexation of the whole Crimea by Russia.
-

C. Local referendums**1. Do local referendums exist in your country?**

- No.

2. When were referendums introduced in your country, and in which context?

- NA.

3. Have they been organized often or with certain regularity?

- NA.

II. Examples of national referendums

Please, give one example (posterior to 1989) of each of the following categories, if possible:

- 1. Referendum on a whole constitution, or on one or several constitutional provisions**

- On 15 January 2000 the President of Ukraine adopted a decree on announcement of an All-Ukrainian referendum on people's initiative with six questions aiming at amendments to the Constitution.
 2. Referendum on a specific piece of legislation
- NA
 3. Referendum on a question in principle or a generally-worded proposal, not amending as such the constitution or legislation, and relating to a societal issue
- NA
 4. Referendum on an international issue (including on an international treaty)
- NA
 5. Referendum on a territorial issue (independence, secession, creation of a sub-national entity or transfer of a territory from one to another sub-national entity)
- On 16 March 2014 the *Verkhovna Rada* of Autonomous Republic of Crimea as a representative body in the region has announced a referendum on the status of the Crimea.

PART II **QUESTIONS ON SPECIFIC REFERENDUMS**

A. Short description (date, background, content, aim, outcomes)

- The referendum which was announced by the President's Decree No. 65/2000 on 15 January 2000 "on people's initiative" and for which about four million signatures have been collected was held on 16 April 2000 (Article 72.2 of the Constitution provides for a referendum on popular initiative on the request of no less than three million citizens).

While announcing the referendum "on people's initiative, the President argued that the aims of it are, in particular: "to overcome the long lasting fighting and confrontation between different political forces as well as between the legislature and the executive", "to consult the opinion of the citizens of Ukraine on a range of important issues that could influence the future of the country", and "to introduce the corresponding changes to the Constitution".

Six questions were put to the people at this referendum.

By announcing the referendum the head of State has launched a strategy on strengthening the president's powers by means of introducing some particular amendments to the Constitution at first stage and finally to replace the 1996 Constitution with a new one bypassing the constitutional procedure prescribed by the 1996 Constitution. At that time, Ukraine was the only among the four CIS countries (the other three – Russia, Belarus and Kazakhstan) where the 1996 Constitution was adopted not through a referendum but through the Parliament and according to the constitutional procedure. The relatively democratic 1996 Constitution of Ukraine (under which the

President was not so strong, e.g. not so autocratic, as it was in Russia, Belarus and Kazakhstan where their constitutions were drafted and put to referendums by presidents and approved through them) appeared to be a serious obstacle on the way to realize a plan of Kremlin to create a new Union (after the collapse of the Soviet Union) with the center in Moscow. The plan was that the four CIS countries – Russia, Belarus, Kazakhstan and Ukraine – would be the founders of a new Union which would remain open for joining it by the rest of CIS countries. As far as under the 1966 Constitution the role of the *Verkhovna Rada* was quite strong vis-à-vis CIS process, the President did not have “free hands” in it. And so far as a new Union was supposed to be created by the presidents of the four CIS countries, the same constitutional model of autocratic presidential republic (which already existed in Russia, Belarus and Kazakhstan) had to be introduced in Ukraine as well. The only way to achieve such a goal was to bypass the Parliament in changing the constitutional system.

The developments in Ukraine leading to the referendum as well as its legal nature were examined by the Venice Commission which in its Opinion CDL-INF(200)11⁴³ has stated in particular the following:

- *“The Parliament has been perceived by many as not being able or willing to adopt the legislation necessary to implement reforms in the country. It has [...] split into two parts, a majority broadly favorable to the President and the government and a minority headed by the previously elected speaker. Both parts of the parliament have even held separate sessions and the question whether the election of a new speaker by the new majority is valid or not is contested between both sides”* (para.11);
- *“With respect to the referendum on popular initiative, the Ukrainian Constitution [...] is silent as to its legal nature [...]”* (para.12);
- *“The present referendum relates to the Constitution and not to legislation. It is less clear whether it is binding or not. [...] the president of Ukraine indicated to the rapporteurs of the Parliamentary Assembly that the results of the referendum would be directly binding”* (para.13);
- *“The text of the presidential decree is not absolutely clear in this respect. In the introductory paragraph mention is made both of ‘consulting the opinion of Ukrainian citizens on a range of important questions that could influence the future of the country’ and of ‘introducing the corresponding changes to the Constitution of Ukraine’. With respect to the various questions, it is clear that question 5 [...] cannot be directly binding [...]. By contrast, other questions [...] could theoretically be considered as binding”* (para.14);
- *“Having regard to the fact that it would seem highly unusual to combine directly binding and purely consultative questions in the same referendum without a clear distinction between both types of questions, it would seem more appropriate to assume that the referendum is conceived as having a consultative character. Nevertheless, the fact that even for (admittedly foreign) constitutional scholars it is not very obvious which legal consequences the referendum is supposed to*

⁴³ CDL-INF (2000) 11. Constitutional Referendum in Ukraine. Opinion adopted by the Commission at its 42nd Plenary Session. Venice, 31 March 2000. On the basis of comments by: Mr S. Bartole (Member, Italy), Mr G. Batliner (Member, Liechtenstein), Mr G. Malinverni (Member, Switzerland), Mr H. Steinberger (Member, Germany), Mr C. Svoboda (Member, Czech Republic).

have is worrying and one wonders whether the citizens of Ukraine will know exactly what they are voting on” (para.15);

- *“[...] Article 72.2 [of the Constitution] does not clarify the legal nature of referendums on popular initiative. Read in isolation, it might therefore be interpreted as providing basis also for a referendum directly amending the constitution (para.16);*
- *“Nevertheless, other provisions of the Constitution clearly show that Article 72.2 cannot be used as the basis for a constitutional referendum” (para.17);*
- *“Under the Constitution of Ukraine, it is [...] not possible to give the present referendum a legally binding character. The referendum does not have, and may not have, the character of a binding constitutional referendum” (para.20);*
- *“[...] only the possibility of a consultative referendum remains in the present case. Nevertheless, even this possibility is not certain. A consultative referendum is not legally relevant” (para.21);*
- *“The Commission would therefore tend to stick to its previous interpretation, that Article 72.2 refers to the legislative referendum” (para.23);*
- *“[...] the Commission is of the opinion that **the present referendum does not, and may not have, the effect of directly introducing amendments to the Ukrainian Constitution and that it appears highly questionable whether the referendum is admissible as a consultative referendum**” (para.25).*

In general, the Venice Commission has summarized: *“The analysis of the questions one by one has shown that there is a large number of ambiguities and incoherences. Even for constitutional lawyers it is extremely difficult to grasp the content of some of the questions and one wonders whether the Ukrainian voters will be able to make an informed judgment. The flaws are certainly due to the fact that the questions were formulated by citizen’s initiative without any subsequent control by the organs of the State and show that amending a Constitution in this way is undesirable” (para.50).*

B. Rule of law and stability of the law

1. Did the Constitution or a statute in conformity with the Constitution provide for the referendum?
 - The 1966 Constitution provide an All-Ukrainian referendum which is designated by the *Verkhovna Rada* or by the President (Article 72.1). The *Verkhovna Rada* designates an All-Ukrainian referendum on issues of altering the territory of Ukraine (Articles 73, 85.2). The President: 1) designates an All-Ukrainian referendum regarding the amendments to the Constitution with regard to Chapter I (“General Principles”), Chapter III (“Elections. Referendum”), Chapter XIII (“Introducing Amendments to the Constitution”) only on the condition that the amendments already were approved by the *Verkhovna Rada* according the procedure established by the Constitution (Articles 106.6, 156); 2) proclaims an All-Ukrainian referendum on popular initiative (Articles 72.2, 106.6). A referendum shall not be permitted in regard to draft laws on issues of taxes, the budget and amnesty (Article 74).

As concerns the subject of a referendum on people’s initiative, the Constitution itself neither defines its possible subject nor provides for a possibility to hold a consultative referendum. The Law “On All-Ukrainian referendum and local referendums as amended”

(No. 1286-XII as of 3 July 1991, and amended by No. 2481-XII as of 19 June 1992), which was adopted before adoption of the 1996 Constitution (and being never harmonized with it) was in force at the time when the President had issued a Decree No. 65/2000 on 15 January 2000, did not provide a legal basis for a constitutional or consultative referendum on the issues proclaimed by the President's Decree. In 2000, Ukraine was lacking a new law which could serve as a legal basis for holding referendums in conformity with the 1966 Constitution.

In this regard, the 2000 referendum proclaimed by the President was not in compliance with the legal system as a whole.

2. Were the “rules of the game” provided in advance (by the Constitution or another piece of legislation) or were they drafted on the occasion of the specific referendums?

- By the time of the 2000 referendum the law on referendums (adopted in the Soviet times) was not brought in compliance with 1966 Constitution and a number of issues submitted to the referendum were the exclusive subject-matter for the *Verkhovna Rada*'s jurisdiction.

C. Question(s) put to referendum

- There were six questions put to the 2000 referendum:

Question 1 (in fact, contained two questions be answered simultaneously): 1) on “whether the elected Parliament enjoys the people’s confidence”, and 2) on a proposal “to amend the Constitution introducing the possibility for the President to dissolve the Parliament in the case of a vote of no confidence at a national referendum”;

Question 2: on a proposal to amend Article 90 of the Constitution giving to the President the power to terminate the powers of the Parliament and to dissolve it “in case of failure to form a stable and operational majority within one month”;

Question 3: on limiting parliamentary immunity by deleting from Article 80 of the Constitution provisions safeguarding the independence of the Parliament;

Question 4: on a proposal to reduce the number of MPs from 450 to 300;

Question 5: on a proposal to replace a one chamber national parliament with a bicameral one;

Question 6: on a proposal to introduce the possibility to adopt entirely a new Constitution (replacing the existing one which was adopted by the Parliament in 1996) through a national referendum.

1. Was the vote on the adoption/abrogation of a specific constitution/legislative text? In the affirmative, on which text in particular? Or was the vote on question of principle/a generally-worded proposal?

- Vote on the second element in Question 1 was on amending Article 90 of the Constitution with the aim to extend the powers of the President to dissolve the *Verkhovna Rada* in the case of vote of no confidence to the Parliament expressed at a national referendum.

- Vote on the second question was on amending Article 90 of the Constitution giving the additional power to the President to terminate the powers of the *Verkhovna Rada* and to dissolve the *Verkhovna Rada*.
 - Vote on Question 3 was on abrogation of paragraph 3 from Article 80 of the Constitution and thereby limiting the parliamentary immunity.
 - Vote on Question 4 was on amending Article 76 of the Constitution to reduce the number of MPs from 450 to 300.
 - Vote on Questions 5 and 6 were on questions of principle/a generally-worded proposal.
2. How long in advance was the referendum called?
- The 2000 referendum was called on 15 January and was held on 16 April 2000.
3. Please, give the precise wording or essential elements of the referendum. What was at stake?
- The precise wording of Question 1: “*Do you express a vote of no confidence in the Verkhovna Rada of XIV convocation and in this case you agree to amend paragraph 2 of Article 90 of the Constitution of Ukraine with the following text: ‘as well as in case of vote of no confidence in the Verkhovna Rada of Ukraine at an All-Ukrainian referendum which is the ground to dissolve the Verkhovna Rada of Ukraine?’*” [**at stake**: introduction of a legal basis for a vote of no confidence by the people in the *Verkhovna Rada*; extending the powers of the President; creation of a permanent source of instability in the system of power; undermining the balance of powers between Parliament and President by giving the President possibility to appeal to people in case of conflict between him and Parliament without giving a similar possibility to Parliament].
 - The precise wording of Question 2: “*Do you support the proposal to amend Article 90 of the Constitution of Ukraine with the following text in paragraph 3: ‘The President of Ukraine may terminate the authority of the Verkhovna Rada of Ukraine prior to the expiration of term, if the Verkhovna Rada of Ukraine has failed to form a stable and operational majority within one month or in case it has failed to approve within three months the State Budget of Ukraine prepared and presented in accordance with the established procedure by the Cabinet of Ministers’, what could be regarded as an additional ground for dissolution of the Verkhovna Rada of Ukraine by the President of Ukraine, as well as respectively amending paragraph 8(1) of Article 106 of the Constitution of Ukraine with the following text: ‘ as well as in other cases prescribed by the Constitution?’*” [**at stake**: nonconformity of the proposed constitutional amendment with international standards; extending the powers of the President by giving to him much discretion; undermining the balance of powers between Parliament and President].
 - The precise wording of Question 3: “*Do you agree with the need to limit parliamentary immunity of National Deputies of Ukraine and in this case with the deletion of paragraph 3 in Article 80 of the Constitution of Ukraine?’*” [**at stake**: curtailing of an important safeguard for the independence of Parliament].
 - The precise wording of Question 5: “*Do you support the need to introduce a two-chamber parliament in Ukraine where one chamber would represent the interests of regions of Ukraine and promote their fulfillment, and amending accordingly the Constitution of Ukraine and election legislation?’*” [**at stake**: risk of potential disintegration of Ukraine as a unitary State (proclaimed by Article 2 of the 1966 Constitution); concentration of the

President's power in case if the second chamber is appointed by the President similar to the models existing in a number of post-Soviet states; in the view of the Venice Commission, "[...] the setting up of a second risks being in contradiction with the reasons given for the referendum. The referendum was justified by the need to speed and facilitate the legislative process, whereas the existence of a second chamber necessarily slows it down"⁴⁴; "A main concern linked to the establishment of a second chamber in Ukraine would be that this may lead to a further weakening of the role of a – then divided – parliament in a system already characterized by strong executive, in particular presidential power"⁴⁵].

- The precise wording of Question 6: "Do you agree with that the Constitution of Ukraine should be adopted by an All-Ukrainian referendum?" [**at stake**: undermining the whole existing constitutional order which did not provide for the possibility to replace the Constitution of Ukraine in force by entirely a new Constitution; weakening the position of the *Verkhovna Rada* and strengthening the position of the President of Ukraine in similar way as it was done in some CIS countries: "developments in other CIS countries such as Belarus or Kazakhstan have confirmed that this possibility is likely to be abused to excessively strengthen the presidential powers"⁴⁶].

4. Was the principle of unity of content respected?

- No: the list of questions presented a combination of specifically-worded draft amendments for a constitutional referendum of binding nature with generally-worded proposals/questions in principle for a consultative referendum.
- The issue of the referendum on 10 February 2000 was submitted to the Constitutional Court on the initiative of 108 MPs (in accordance with Article 150 of the Constitution) claiming to declare the President's Decree No. 65/2000 to be unconstitutional as a whole. In its Judgment (27 March 2000)⁴⁷, the Constitutional Court has declared Question 1 and Question 6 unconstitutional and decided that, if the other questions are approved by the referendum, this is not equivalent to a direct amendment of the Constitution but that the State organs are obliged to consider these proposals and to take a decision on them in accordance with Chapter XIII of the Constitution on introducing amendments to the Constitution (what meant the inevitable participation of the Parliament in the amending process within the framework of two stages: first and the second readings). The Court, namely, declared the following:

"If approved by an All-Ukrainian referendum by people's initiative, the questions formulated in paragraphs 2, 3, 4, 5 of Article of the Decree of the President of Ukraine 'On calling the all-Ukrainian referendum by people's initiative' are binding for consideration and taking decisions according to the procedure established by the Constitution of Ukraine, in particular, by its Chapter XIII 'Introducing amendments to the Constitution of Ukraine', and by the laws of Ukraine".

It should be noted that by the time of the referendum there were no applicable legislative rules for the implementation of its results.

5. Was the formulation of the question clear, in the sense that it was not misleading?

⁴⁴ CDL-INF (2000) 14, para. 29.

⁴⁵ CDL-INF (2000) 14, para. 30.

⁴⁶ CDL-INF (2000) 11, para. 48.

⁴⁷ CCU Judgment No. 3-pn/2000 (Case on All-Ukrainian Referendum, No. 1-26/2000).

- **Question 1 rates 1:** the wording was not clear; in fact it contained two questions (what was in contradiction with the principle of the unity of subject matter), depriving the people of the possibility to give different replies to the two questions; therefore, it was misleading. The Constitutional Court has declared Question 1 to be unconstitutional.
 - **Question 2 rates 1:** the wording was not clear and confusing; it proposed to give to the President the power to terminate the powers of the Parliament and to dissolve the Parliament, thus proposing to amend at the same time Article 90 (what was not mentioned in the Question itself) and Article 106 of the Constitution; the conditions of the proposed ground for dissolution the Parliament (“in case of failure to form a stable and operational majority”) were ill-defined; therefore, it was misleading. The Constitutional Court has declared Question 2 as admissible for the referendum.
 - **Question 3 rates 5:** it was clear in wording as concerns the subject – limiting parliamentary immunity through deletion paragraph 3 from Article 80 of the Constitution; however, the effects of the referendum on this issue was not clear (whether it was legally binding or consultative). The Constitutional Court has declared Question 3 as admissible for the referendum.
 - **Question 4 rates 5:** it was clear in wording as concerns the subject – reducing the number of MPs from 450 to 300 and amending Article 76 of the Constitution in this regard; however, the effects of the referendum on this issue was not clear (whether it was legally binding or consultative). The Constitutional Court has declared Question 4 as admissible for the referendum.
 - **Question 5 rates 1:** it was not clear for the voters in a number of fundamental elements as concerns the proposed reform of the Parliament by shifting to a bicameral system – nothing was said with respect of powers of the suggested second chamber, its composition, the mode of its formation etc.; the effects of the referendum on this issue was not clear (it could not be directly legally binding and it was highly problematic from the point of view as a question of consultative nature?). The Constitutional Court has declared Question 5 as admissible for the referendum.
 - **Question 6 rates 1:** its wording was lacking of clarity and confusing; giving the people the possibility to replace the 1966 Constitution in force by an entirely new Constitution was in contradiction with Chapter XIII (“Introducing Amendments to the Constitution”). The Constitutional Court has declared Question 6 to be unconstitutional.
6. Did the authorities act in a neutral way and provide objective information; were there allegations or findings of abuse of administrative resources?
- **Neutrality and objectivity of the public authorities rates 1:** the public authorities at all levels (national, regional and local) were heavily engaged in excessive, one-sided campaigning and favoring the positive result of the vote; opposing viewpoint was not admitted; the voters were not provided with the material from the proposal’s opponents; there were a lot of allegations of abuse of administrative resources on the side of the Presidential Administration as well as of controlled by the heads of regional and local state administrations which were subject to the President.

7. Were electors duly informed about the effects of the referendum? In particular, were they informed whether it was binding or consultative, and whether it would change by itself a legal text?
 - Electors were unduly informed on the effects of the referendum, which **rates 1**: until the Constitutional Court has released its Judgment (27 March 2000), it was not clear at all whether the referendum is binding or consultative, and whether it would change by itself a text of the Constitution; and even within the period of remaining 20 days (before the referendum took place on 16 April 2000) a number of procedural questions were still open, in particular, it was unclear whether following the referendum the results were automatically referred to the *Verkhovna Rada* or whether which of the institutions (State organs) had to submit a proposal to the Parliament.
8. Were electors able to answer the question asked by yes, no or to cast a blank vote?
 - For electors, it was easy to answer YES to all six questions. As concerns Question 1 – due to the fact that the *Verkhovna Rada*, as a rule, has very low levels of support in public opinion; concerning Question 2 – due to the same reason as in case of Question 1; concerning Question 3 – due to the fact the idea of limiting the parliamentary immunity generally is of high level support within the society; concerning Question 4 – because the idea of a smaller number of MPs is generally very attractive for voters due to its populist character; concerning Question 5 – due to complete lack of knowledge on the essence of the proposal and its positive or negative consequences for Ukraine's future; concerning Question 6 – due to propaganda during the campaign waged by the public authorities that the constitution-making totally belongs to the voters (but not to their representatives), in manipulative way referring to Article 5 of the Constitution (which states: "The right to determine and change the constitutional order in Ukraine belongs exclusively to the people and shall not be usurped by the State, its bodies or officials").

D. Initiator of the referendum and opinion of Parliament

1. Was the referendum:
 - Mandatory (the Constitution or a statute provides that the text has to be submitted to the referendum)?
 - Neither the Constitution nor a statute provided that in case of the 2000 referendum the text had to be submitted to it.
 - Held at the request of an authority (the President, the Government, the Parliament, a minority of parliamentarians, regional or local entities)?
 - The referendum was called by the President "on people's initiative" in such political environment when public in large had no doubt that the President and his Administration were those who constructed and conducted such a "people's initiative".
 - Held at the request of a section of the electorate (including following a popular initiative).

– It is a commonly recognized fact that the idea of a referendum on popular initiative was only formally used by the President as an instrument of manipulation. Indeed, it was a clear case of using the referendum by the Head of the State through a manipulated request of a section of the electorate to circumvent Parliament.

2. If the text was put to the vote at the request of an authority other than Parliament or of a section of the electorate, was Parliament able to give a non-binding opinion?
- The *Verkhovna Rada* was not in the position to take any decision on the text which was put to the vote before the referendum took place.

E. What was the outcome of the referendum

- According to the official results, 81.15% of those having the right to vote took part in the referendum and majorities between 80% and 90% approved the four remaining proposals submitted to referendum: Question 2 has got YES of 85.9% of those who has voted; Question 3 has got YES of 90.2% of those who has voted; Question 4 has got YES 91.1% of those who voted; Question 5 has got YES of 82.9 of those who voted⁴⁸.

F. Effects of the referendum

I. Legal effects

1. Was the referendum legally binding or consultative?
- According to the Constitution and the law in force, the referendum could not be either legally binding or consultative. Its legal effect was expressed by the formula declared by the Constitutional Court, that in case of positive vote on proposals contained in Questions 2, 3, 4, 5 they “*are binding for consideration and taking decisions*” by some organs (there was a clear lack of legal certainty with regards to whom it concerned), but “*according to the procedure established by the Constitution*”.
2. If the referendum was on a question of principle or otherwise generally-worded, what were the next steps in case of positive vote?
 3. If the referendum was on a specifically-worded draft amendment to the Constitution, was implementing legislation enacted, and what was its content?
- After the referendum took place, under the circumstances of legal uncertainty the two confronting political sides have found the solution having recourse to the constitutional procedure for amending the Constitution prescribed in Article 154 of the Constitution. Both the President himself and 152 MPs (constitutional procedure gives the right of legislative initiative for this case only to the President or one third of the MPs) – submitted their own draft laws to the *Verkhovna Rada* which contained formulas on amending the Constitution in line what has got a positive vote at the referendum. However, the

⁴⁸ The results of the referendum (<http://www.cvk.gov.ua/ows-doc/doc-ref/rez.htm>)

President's draft contained the proposals for constitutional amendments approved during the referendum in reply to three of the four questions. Those three were on a specifically worded draft amendment to the Constitution. With respect to the fourth one (a question of principle: on introduction of a second chamber) the President has not included any proposal in his draft but has set up a Commission of experts with the task to prepare a concrete proposal on this issue. This Commission was also given the task to prepare the changes in the ordinary legislation required as a result of the referendum. The draft of the Deputies contained the proposals on amending the constitution with regard to positive reply to all four questions. In accordance with the Constitution both drafts were submitted to the Constitutional Court for opinion as to their conformity with Articles 157 and 158 of the Constitution. The Court had no objections against the draft submitted by the President, but the Court has blocked the draft of the Deputies declaring some the proposals unconstitutional, incomplete and not ripe for consideration. On 13 July 2000 the President's draft got 251 votes in the *Verkhovna Rada* in the first reading. Not less than 300 votes required in the second (final reading) for amending the Constitution which had to be held at the next session. However, the *Verkhovna Rada* has failed to approve the proposed amendments with the required qualified majority (not less than 300 votes).

4. If the referendum was on a specific (draft) law, what was its effect? Adoption, abrogation of a law?

- NA

II. Political effects

1. Was the position of the authorities at stake?

- The referendum called by the President has put the position of the *Verkhovna Rada* at stake. In particular, if the required qualified majority (not less 300 Deputies) for constitutional changes could be reached during the final voting (in the second reading) in the atmosphere of a strong pressure of the President on Parliament (what was clearly in place at that time), the *Verkhovna Rada* was at risk to be dissolved. Additionally, in the future, a different political regime with a weak parliament and a very strong president could be installed.

2. In the affirmative, did this lead to early elections?

- No, the referendum and its implementation did not lead to dissolution of the Parliament and calling early elections even in the case when the *Verkhovna Rada* has refused to consent with the constitutional amendments presented by the President as implementation of the results of the referendum on people's initiative.

G. Role of the judiciary

Was the judiciary involved in the referendum procedure and, in the affirmative, in what sense?
In particular:

1. Was this intervention obligatory or did it take place on appeal?

- The intervention of the judiciary was not obligatory and took place on appeal of MPs to the Constitutional Court on the issue of the constitutionality of the President's Decree to call a referendum.
2. Did it intervene before or after the vote?
 - The Constitutional Court has released its Judgment No. 3-pn/2000 just almost three weeks before the vote took place on 27 March 2000).
 3. Did it address the formulation of the question and/or the content of the text submitted to the people's vote?
 - Yes.
 4. Did the constitutional court exercise a control of constitutionality of the question submitted to referendum?
 - At that time the Constitutional Court did not have the power to exercise control of constitutionality of the question submitted to referendum. (But the Constitutional Court in its Judgment No. 3-pn/2000 expressed the view that in case of the 2000 referendum either the Central Election Commission or the President themselves could exercise a control of constitutionality of the question submitted to referendum). However, taking the negative experience of the 2000 referendum as a lesson, on 2 June 2016 the Constitution of Ukraine was amended by giving the Constitutional Court the power to exercise control of constitutionality of the question submitted to referendum on people's initiative (Article 151 as amended).

H. Role of the electoral management body

Was any other authority, such as the Central Electoral Commission, requested to address the formulation of the question? If so, what was the status of their advice?

- In accordance with the Law "On All-Ukrainian referendum and local referendums as amended" (No. 1286-XII as of 3 July 1991, and amended by No. 2481-XII as of 19 June 1992), the Central Electoral Commission had not any powers with regard to the formulation of the question submitted to referendum, as well as any other authority either.

I. Quorum and turnout

1. Was there a turnout quorum or an approval quorum?
 - Yes.
2. What was the turnout?
 - The number of those having the right of vote constituted 36 629 926 voters. The number of those who participated in voting constituted 29 728 575 (81.15%).

J. Role of international actors

1. Did international actors (including the European Union) take a position on the issue submitted to referendum?
 - Yes. The issue of the 2000 referendum in Ukraine was on the agenda of the PACE and the Venice Commission.
2. In the affirmative, what was the form of their intervention?
 - The Venice Commission has produced two opinions: "On Constitutional Referendum in Ukraine"⁴⁹ and "On Implementation of the Constitutional Referendum in Ukraine"⁵⁰

K. What lessons might be learned from this referendum?

- The 2000 referendum in Ukraine appeared to be a manifesting example of case when a democratic instrument of a national referendum ("on popular initiative") was used by the executive (in particular, by the President) with the definite undemocratic purpose: to circumvent Parliament and thereby to install a strong presidential regime. In case of its successful result, Ukraine could be easily transformed into a country with autocratic political system, very similar to those that were established as a result of referendums on adoption new constitutions and exist nowadays in some other post-Soviet states (in particular, such as Russia, Belarus or Kazakhstan).
- The crucial role in preventing the negative shift of Ukraine's political system to autocracy was played by the *Verkhovna Rada* (the Parliament) when it has refused to consent with the constitutional amendments presented by the President as implementation of the results of the referendum "on people's initiative".
- The Constitutional Court has not performed as independent organ of constitutional jurisdiction. While finding two questions submitted to referendum unconstitutional, it has failed to declare the President's Decree unconstitutional as a whole in a clear case of lacking applicable legislative rules for the calling and the implementation of any national referendum (constitutional, consultative, or on popular initiative).
- The lack of clear legal regulation for calling, holding and implementation of referendum on people's initiative and the absence of a judicial control of constitutionality of the question submitted to referendum was taken as a lesson of negative experience resulting in amending the Constitution in 2016 with the provision according to which since then the Constitutional Court is authorized to exercise such a control.

* * *

COMMENTS on the 2014 Crimean referendum (as a specific case)

A. Short description

⁴⁹ CDL-INF (2000) 11, 31 March 2000.

⁵⁰ CDL-INF (2000) 14, 16 October 2000.

- The referendum in Crimea took place on 16 March 2014. It was designated on 27 February 2014 by the *Verkhovna Rada* of the Autonomous Republic of Crimea (ARC) initially to be held on 25 May 2014. However, very soon the date of the referendum was changed twice: a new date was defined for 30 March, but later it was changed again – for 16 March 2014. Two questions were put to the referendum (supposed to be legally binding) in order to define the status of Crimea which at the moment was an integral part of Ukraine: 1) on restoration of the 1992 Constitution of Crimea, 2) on annexation of Crimea to Russia.
- The referendum was organized and conducted with the assistance and support of Russian troops and pro-Russian paramilitary units (“kazak detachments”). After pro-Russian groups in unmarked uniforms seized the building of Crimean regional parliament, deputies of the the *Verkhovna Rada* ARC were forced by local militiamen (“*opolchentsy*”) and Russian marines to vote join Russia. The referendum was used to serve to “confirm” that decision. Units of Ukraine Armed Forces and Ukrainian law-enforcement agencies did not any action in the process.
- On 24 February 2014 the *Verkhovna Rada* ARC has hold an extraordinary meeting in its premises captured by armed people. One point was put on the agenda of this meeting, namely, on calling a referendum to be held on 25 May 2014 with one question to be put on it: “Autonomous Republic of Crimea is an independent state which accedes to Ukraine on the basis of treaties and agreements (yes or no)”. There a number of witnesses that the Deputies of the *Verkhovna Rada* ARC were forced to come to the meeting by armed “*opolchentsy*”. So, the referendum was held during a Russian military takeover of Crimea and was not internationally recognized.
- On 6 March 2014 the *Verkhovna Rada* ARC by its Resolution No. 1702-6/14 “On calling Crimean referendum” has decided to put to the referendum two questions which differed from that one what was on the agenda of the meeting on 24 February.
- As it was announced by the organizers of the referendum, annexation of Crimea to Russia was supported by 96, 77% of those who took part in the vote⁵¹ with an 83,1% voter turnout⁵². However, at the website of Human Rights Council of the Russian President there was very shortly information that not more than 30% of the voters took part in the referendum and only 50% from those who participated have supported the annexation⁵³. *Mejlis*⁵⁴ announced that not more than 40% took part in the vote⁵⁵.
- From the start of preparation for referendum and on there were about 30 000 Russian troops in Crimea.
- The official date of Russian military intervention into Crimea (aggression) is defined by the *Verkhovna Rada* of Ukraine as of 20 February 2014⁵⁶.
- Following the referendum, on 17 March 20014 the *Verkhovna Rada* of ARC declared the independence of Crimea from Ukraine and requested to join the Russian Federation. On the same day, Russia recognized the Republic of Crimea as a sovereign state.

⁵¹ <http://www.rada.crimea.ua/referendum/resultaty> (in Russian)

⁵² <http://rt.com/news/crimea-referendum-results-official-250/>

⁵³ Putin’s Human Rights Council Accidentally Posts Real Crimean Election Results; Only 15% Voted For Annexation // Forbes (<http://www.forbes.com/sites/paulroderickgregory/2014/05/05/putins->)

⁵⁴ *Mejlis* is one of the highest self-governing bodies of Crimean Tatars.

⁵⁵ Voter turnout at pseudo-referendum in Crimea was maximum 30-40 percent – *Mejlis* (<http://ukrinform.ua/eng/news>)

⁵⁶ Resolution of the *Verkhovna Rada* of Ukraine No. 337-VIII, 21 April 2015.

B. Rule of law

- In accordance with Article 73 of the 1996 Constitution of Ukraine, "Issues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum".
- The Law of Ukraine "On All-Ukrainian referendum" (as of 2013) provided that altering the territory of Ukraine is a subject of an All-Ukrainian referendum (paragraph 3(2) of Article 3) and did not provide for a local referendum.
- Any referendum held by the local authorities of Crimea without the express authority of Ukraine is unconstitutional and illegitimate.

C. Questions put to referendum

- The precise wording of the questions put to the referendum (as it was decided by the *Verkhovna Rada* ARC in its Resolution No. 1702-6/14) was the following:
 - *Are you in favor of the reunification of Crimea with Russia with all the rights of the federal subject of the Russian Federation?* [at stake: violation of the territorial integrity of Ukraine]
 - *Are you in favor of the restoration of the 1992 Constitution of the Republic of Crimea and the status of Crimea as part of Ukraine?* [at stake: preservation of territorial integrity of Ukraine].
- It was requested that the answer should be given only to one question and only as "yes". If in the ballot paper there would be answers to two questions, the vote would be recognized as invalid. The referendum ballot itself did not give voters an option to say "NO". The both choices provided for independence of Crimea from Ukraine.
- The Constitutional Court of Ukraine, on the joint appeal of the Acting President of Ukraine, the Chairman of the *Verkhovna Rada* of Ukraine and the Authorised Human Rights Representative of the *Verkhovna Rada* of Ukraine (Ombudsperson), declared the Resolution of the *Verkhovna Rada* ARC No. 1702-6/14 unconstitutional and void.

D. Initiator of the referendum

- The referendum was held formally at the request by the regional legislature of the Autonomous Republic of Crimea (the *Verkhovna Rada* of the Autonomous Republic of Crimea) and by the local government of the city of Sevastopol (both territorial subdivisions of Ukraine).

E. What was the outcome of the referendum

- The announced results of the referendum were the following:
 - "reunification of Crimea with Russia with all the rights of the federal subject of the Russian Federation" supported 96,77 % of the voters;
 - "restoration the 1992 Constitution of the Republic of Crimea and the status of Crimea as part of Ukraine" supported 2, 51% of the voters.

- It was announced that those having the right to vote constituted 1 533 208 (100%) and those voting constituted 1 274 096 (83.1%).

F. Effects of the referendum

- Russia has recognized the referendum referring to a precedent of recognition of unilateral proclamation of independence of Kosovo⁵⁷.
- The next day after the referendum, on 17 March, the *Verkhovna Rada* of Crimea asked the Russian Federation to admit Crimea as a new subject with the status of the Republic. On the same day the President Putin issues a decree formally recognizing Crimea as an independent state. On 18 March, the Russian, Crimean, and the Sevastopolian leadership signed the Treaty on the Adoption of the Republic of Crimea to Russia, which on 19 March was recognized by the Constitutional Court of the Russian Federation to be in compliance with the Russian Constitution and was ratified by the Russian Federal Assembly on 21 March.

G. Role of the judiciary

- The intervention of the Constitutional Court of Ukraine in this case is authorized by Article 137 (paragraph 2) of the Constitution of Ukraine which provides that for reasons of nonconformity of normative act of the *Verkhovna Rada* of the Autonomous Republic of Crimea with the Constitution of Ukraine and the laws of Ukraine, the President of Ukraine may suspend normative acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea with a simultaneous appeal to the Constitutional Court of Ukraine in regard to their constitutionality. On 6 March 2014, the Acting President of Ukraine has issued a Decree No. 261 "On suspending the Resolution of the *Verkhovna Rada* of the Autonomous Republic of Crimea No. 1702-6/14 dated as of 6 March 2014" and simultaneously addressed the Constitutional Court of Ukraine while challenging constitutionality of Resolution No. 1702-6/14.
- On 14 March 2014 (before the vote) the Constitutional Court of Ukraine has issued its Judgment declaring the Resolution No. 1702-6/14 unconstitutional and void.
- The Constitutional Court of Ukraine does not exercise control of constitutionality of the question submitted to local referendum.

H. Role of the electoral management body

- The Central Electoral Commission or any other authority is not authorized to address the formulation of the question put at local referendum.

I. Quorum and turnout

- There were no referendum rules on stating a threshold number of votes needed for the result to be enacted⁵⁸.

⁵⁷ Lavrov: If West accepts coup-appointed Kiev govt, it must accept a Russian Crimea (<https://www.rt.com/news/lavrov-crimea--ukraine-wesr-181/>)

⁵⁸ Is Crimea's referendum legal (<http://www.bbc.com/news/world-europe-26546133>), BBC News (13 March 2014).

J. Role of international actors

- In the Opinion, produced on 21 March 2014, the Venice Commission has found the referendum to be illegal under both Ukrainian and Crimean Constitutions and not compatible with international democratic standards, in particular, with European constitutional principle⁵⁹s.
- On 27 March 2014 UN General Assembly (Sixty-eighth session) adopted Resolution 68/262 on “Territorial integrity of Ukraine”, in particular, stating the following:

“The General Assembly,

...

Noting that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 was not authorized by Ukraine,

...

1. *Affirms* its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders;

...

5. *Underscores* that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol;

6. *Calls upon* all States, international organizations and specialized agencies not to recognize any **alteration of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum** and to refrain from any action or dealing that might be interpreted as recognizing any such altered status⁶⁰.

- On 19 December 2016 the UN General Assembly (Seventy-first session) in its Resolution 71/201 on “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)” has “condemned the temporary occupation of part of territory of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol – by the Russian Federation” and “reaffirmed the non-recognition of its annexation”⁶¹.
- The PACE, in its Resolution No. 1988(2014) of April 9, 2014 strongly condemned “the authorization of the Parliament of the Russian Federation to use military force in Ukraine, the Russian military aggression and the subsequent annexation of Crimea, which is in clear violation of international law, including the Charter of the United Nations, the Helsinki Final Act of the OSCE and the Statute and basic principles of the Council of Europe”⁶². In addition, the PACE stated that “**the outcome of this referendum and the illegal annexation of Crimea by the Russian Federation therefore have no legal effect and are not recognized by the Council of Europe**”⁶³.

⁵⁹ CDL-AD(2014)002.

⁶⁰ A/RES/68/262. Territorial integrity of Ukraine.

⁶¹ A/RES/71/205, 19 December 2016.

⁶² PACE Resolution 1988 (2014), para.14.

⁶³ PACE Resolution 1988 (2014). para.16.

- The PACE, in its Resolution 1990 (2014) of 10 April, 2014 considered that “the actions of the Russian Federation leading up to the annexation of Crimea, and in particular the military occupation of the Ukrainian territory and the threat of the use of the military force, the recognition of the results of *the illegal so-called referendum and subsequent annexation of Crimea into the Russian Federation* constitute, beyond any doubt, a grave violation of international law, including of the United Nations Charter and the Organization for Security and Co-operation in Europe (OSCE) Helsinki Final Act”⁶⁴.
- The PACE, in its Resolution 2034 (2015) of 28 January 2015 condemned “illegal annexation of Crimea and its continuing integration into the Russian Federation”⁶⁵ and urged the Russian authorities to “reverse the illegal annexation of Crimea”⁶⁶.
- The PACE, in its Resolution 2063 (2015) of 24 June 2015 has reiterated its position with regard to “the Russian intervention resulting in [...] the illegal annexation of Crimea”⁶⁷ and called upon the Russian authorities to “immediately reverse the illegal annexation of Crimea”⁶⁸.
- The PACE has referred to “the illegal annexation of Crimea by Russian Federation” in its Resolution 2112 (2016) of 21 April 2016⁶⁹, Resolution 2132 (2016) of 12 October 2016⁷⁰, and in the Resolution 2133 (2016) of 12 October 2016 has “reaffirmed its position that the annexation of Crimea by the Russian Federation [...] violate[s] international law and the principles upheld by the Council of Europe”, as stated by the previous PACE Resolutions⁷¹.
- On 3 May 2017 Ministers’ Deputies (CM), in its Decision adopted at 1285th meeting, “underlining that the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) by the Russian Federation challenges peace and democratic security in Europe:
...
 1. reiterated their condemnation of the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) by the Russian Federation, and stressed that it constitutes a violation of international law and cannot form the basis for any alteration of their status”⁷².

K. What lessons might be learned from this referendum?

- As the 2014 pseudo-referendum in Crimea and its effects are directly linked with the subsequent annexation of Crimea into the Russian Federation being not internationally recognized, this issue as a challenge to existing international order, peace, democracy,

⁶⁴ PACE Resolution 1990 (2014), para. 3.

⁶⁵ PACE Resolution 2034 (2015), para. 3.

⁶⁶ PACE Resolution 2034 (2015), para. 4.1.

⁶⁷ PACE Resolution 2063 (2015), para 3.

⁶⁸ PACE Resolution 2063 (2015), para 8.2.

⁶⁹ PACE Resolution 2112 (2016), para 1. .

⁷⁰ PACE Resolution 2132 (2016), paras. 2 and 4.

⁷¹ PACE Resolution 2133 (2016), para 2.

⁷² CM/Del/Dec(2016)1285/2.1bisb. 3 May 2017.

the rule of law and security in Europe should remain on the agenda of international institutions finding the appropriate means cope with it.

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