

Towards a law on local direct democracy in Bulgaria

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Bulgaria – Historical Context

Bulgaria is located in South-Eastern Europe and occupies the North-Eastern part of the Balkan Peninsula. A country with a history stretching back thirteen centuries, rich in tradition and culture, that has traversed a long path through grandeur and decline, through wars and strife and the progress of society and science, to emerge as a European country with a democratic political system.

The Bulgarian kingdom was established in 681, by Asparuh, the first Bulgarian ruler, who entered a union with the native Slavs and concluded his first peace treaty with Byzantium. This was the official recognition of a new political entity – Bulgaria. Periods followed of exhausting wars, as well as of long peaceful years of rapid cultural and social growth.

Since the end of the ninth century Bulgarians have their own alphabet – the first alphabet of a language different from the three officially approved by the Church. The modern Cyrillic that is also used in Russia, Mongolia, and some other countries, is a descendant of the Pro-Bulgarian alphabet created by the brothers Cyril and Methodius. Today, Bulgaria is proud to „import“ the Cyrillic alphabet into the European Union.

What is significant in relation to the development of democracy in the country is that after the Second World War, from 1944 to 1989, Bulgaria was ruled by the Bulgarian Communist Party. Consequently there was a centralized government and a political system dominated by the Party apparatus. Moreover, democratic opposition was crushed, information and speech were censored, and agriculture and industry were nationalized. There were no civil rights and no civil society.

1989 marked the introduction of the democratic changes in Bulgaria. In 1991, following a period of social unrest and the adoption of a new Constitution, the first fully democratic parliamentary elections were held, won by the Union of Democratic Forces. Thus, Bulgaria chose the path towards Euro-Atlantic integration, democratic development and a market economy.

As a result of numerous efforts, negotiations, and transformations, Bulgaria has been a member of the European Union since January 1, 2007.

Procedures of Direct Democracy in Bulgaria

According to the new Bulgarian Constitution, approved by the Grand National Assembly in July 1991, Bulgaria is a Parliamentary Republic, which means that political decisions are made by parliament. Parliament exercises the legislative power. It consists of 240 members who are elected for a 4-year mandate through a system of proportional representation in 31

electoral regions¹. The Council of Ministers is the main organ of executive power, headed by the Prime Minister. The head of state is the President, who embodies the unity of the nation and represents the Republic of Bulgaria in its international relations.

The governmental system of Bulgaria consists of two major groups of institutions: institutions of *central government* (the Council of Ministers) and institutions of *local government*.

Local government is legally independent of central government in the sense that the central government is not authorized to issue specific orders to local authorities. However, fiscal decentralization is not yet accomplished which still makes the municipalities in practice dependent on the state budget.

Under the Constitution, the territory of Bulgaria is divided into 28 regions (each headed by a regional governor appointed by the central government) and 263 municipalities (consisting of municipal councils and municipal mayors). The municipal council is the body of local self-governance with jurisdiction over all settlements within the municipality. Executive power in the municipality is entrusted to the mayor. Both the mayor and the members of the city council are elected directly every 4 years.

According to Article 1, (2) of the current Constitution, „the entire power of Bulgaria shall derive from the people. The people shall exercise this power directly and through the bodies established by this Constitution“. This wording is a clear expression of the principle of popular sovereignty, which means that the people are the source and subject of power. There are two main ways in which the principle of popular sovereignty is realised. The first consists in the formation, through general elections, of the National Assembly and in the election of Municipal Councillors at the regional level. The second is the plebiscite on various issues of national or local significance.²

The Constitution also mentions national and local referendums, but the law which directly relates to the procedures for referendums and citizen initiatives in Bulgaria is the so-called *Referral to the People Act*³. It was passed in November 1996, seven years after the beginning of the democratic changes. However, what is proclaimed as a constitutional principle is considerably limited by the current Act. The Act details the direct participation of citizens in resolving matters of general state or local importance in four ways, i.e. through a national or local referendum, a public meeting of the population, or a petition. In February 2007, a new paragraph was added to the Act that obliges the municipalities to organize public meetings with the citizens in order to determine the conditions for the use of the common land. The new paragraph did not change the overall essence of the Act.

A *national referendum* is limited in scope. Citizens are not able to decide, through referendum, on a range of issues such as: constitutional amendments; matters falling within the competence of the Grand National Assembly; matters relating to the national budget and taxation; and in particular matters covered by the blank wording „and where the law has set a special procedure for resolving other matters“. All these issues fall outside the scope of the national referendum, the law-makers having considerably divested national referendums of their significance as an active vehicle for the effective consideration of important prob-

¹ For more information on Bulgarian Parliament visit: www.parliament.bg/?lng=en

² For a general overview see also Daniel Smilov, Bulgaria, in: Andreas Auer/Michael Buetzer, eds. (2001): *Direct Democracy. The Eastern and Central European Experience*, Aldershot, pp. 13-28.

³ Promulgated, State Gazette No. 100/22.11.1996, amended, SG No. 69/3.08.1999, effective 3.08.1999, amended and supplemented, SG No. 24/21.03.2006 and No. 13/ 09.02.2007

lems affecting large sectors of society. The number of actors who are permitted to propose a national referendum has been considerably restricted; the right of initiative lies with not less than one quarter of the MPs; the Council of Ministers; and the President of the Republic. There is, therefore, no possibility for a citizens' initiative, i.e. for Bulgarian citizens to initiate a national referendum. There is no legal provision for regular annual national referendums on matters of general state importance. A provision such as this would widen the regular participation of citizens in decision-making at the national level. Conversely, the regular invitation to citizens to take part in national referendums would deepen their interest in, as well as their sense of responsibility towards, state governance.

A *local referendum* is only held on matters of local importance which fall within the competence of the local self-governing authorities and whose referral to a referendum is explicitly provided for in the law. The law also defines those issues that may not be the subject of local referendums, namely: matters relating to the municipal budget and taxation within the ambit of the Local Taxes and Fees Act, or where „the law has established a special procedure for certain local matters“. Given the severely restricted subject scope of local referendums, the rare application of this instrument of direct democracy and the relative lack of interest of the people in using it is perhaps understandable.

The validity of both the local and the national referendum votes, until 2009, depended on a turnout quorum of 50 percent + 1 of the registered voters. In contrast, neither the parliamentary elections nor the local ones require a minimum turnout. The average turnout in the last three elections was 46.87 percent. Analyzing the quorum requirement and the turnout activity, we may conclude that the application of this referendum legislation was absolutely pointless. It is hard to expect much a higher turnout at a referendum (which is, in most cases, quite specific in topic and in the circle of people interested) than in national or local elections that generally concern all the citizens.

The central electoral committee and the municipal electoral committees are responsible for the organization and the conduct of the referendums, as well as for calculating the results. The procedures are as complicated and expensive as are the procedures for the elections. No deadlines are laid down for the execution of the referendum decisions.

Regulating Policies

If we trace the roots of social development in Bulgaria, it is quite clear that there is no lack of traditions of direct democracy in our country. The first law on direct citizen participation was adopted as early as the turn of the last century. This was the Appeals to the People on Municipal Affairs Act passed in 1909. The act was in force for 25 years. It enjoyed great popularity across the country and taught Bulgarians to participate directly in municipal government. Any citizen of a municipality could initiate an appeal!

The second Bulgarian law on appeals to the people was adopted during the government of Alexander Stamboliyski, in October 1922. It remained in force for only a short period of time, until March 1924, but was used for the conduct of the first national referendum in Bulgaria on 19 November 1922. The subject of that referendum was the guilt of ministers from the three previous governments in the wars declared and waged by Bulgaria, which led to two national catastrophes, in 1913 and 1918.

The third law on appeals to the people was adopted by the 26th National Assembly on 26 July 1946, after the Bulgarian Communist Party came into power. This was the Law on Appeals to the People for Eliminating the Monarchy and Declaring a People's Republic and for Convening a Constitutional National Assembly. This led to the second national referendum, which was held on 8 September 1946 with a turnout of almost 100 per cent. As a result of the referendum, Bulgaria, until then a monarchy, was declared a people's republic, with 92.72 percent of the votes „for“ and 4.37 percent of the votes „against“. However, the legitimacy of this referendum is still a subject of debate. The third national referendum was held 25 years later, on 16 May 1971, on the adoption of the Second Republican Constitution of Bulgaria, which was effective between 1971 and 1991. The Constitution was approved, with almost 98 percent of the votes in favour. These extremely high turnouts are explained by the fact that the people were forced to cast their votes under the threat of punishment.

Based on the 1971 Constitution, a fourth law on appeals to the people was adopted in 1983, which remained in effect until 1996, but not a single national referendum was held under it!

Since 1996, as mentioned above, the Referral to the People Act has been in force, but for a variety of reasons it does not function. First of all, no national referendum has been organized and held under it for the past ten years. As for the local referendums, they deal only with changes to the administrative division of certain settlements and municipalities rather than with issues of governance. There is also inadequate experience of holding general assemblies/public meetings. Whereas it could perhaps be argued that the failure to implement the law may be due to the low level of political activity on the part of the citizens, in most cases the reason lies in the weaknesses of the rules and in the onerous legal framework for implementing the various forms of direct democracy, especially at the national level.

Practice

In 2003, in order to verify in practice the soundness of the reasoning behind the requirements set by the existing law, Balkan Assist initiated, in cooperation with the municipal authorities, local referendums in two Bulgarian municipalities very different in terms of social, economic and demographic characteristics: *Elena*, a relatively small municipality (about 11,000 inhabitants), with a high unemployment rate (about 30 percent) and an underdeveloped economy, and *Sevlievo*, a typically-sized Bulgarian municipality (about 43,000 inhabitants), with a well-developed economy and a low unemployment rate (under 7 percent). Since we wanted to pose, for the referendum decisions, a question that referred to government, not to administrative division, the biggest challenge was to formulate the questions in compliance with the legal requirements. It emerged that the law does not allow the issues which are really important for both the local government authorities and the people of the two municipalities to be presented for decision in a local referendum. However, a compromise solution was found and the question presented in Elena referred to the establishment of a children's library in a municipal building, while the question in Sevlievo referred to turning one of the city centre streets into a pedestrian precinct. The referendum in Elena was initiated by a petition from the citizens. In three weeks, the citizens' initiative

group managed to collect 480 signatures in support of the local referendum – a considerable achievement in the opinion of our Swiss partners, who have extensive experience in this field.

In both referendums, the turnout rate was about 7 percent, the same turnout as in the first referendums in the Swiss Cantons of Lucerne and Zug held in 1905. Analysis showed that the majority of votes came from the most active (in the economic and demographic terms of the word) citizens of both municipalities – those who have more civil experience. It seemed that the other citizens would need some preparation and experience of referendums before they would take part. Such experience will be hard to gain in Bulgaria if referendum law continues to be poorly designed.

In 2007, two other local referendums – in the Kozloduy and Kresna municipalities – were held on questions of governance. Citizens in *Kozloduy* had to vote „for“ or „against“ the construction of a storage depot for low- and medium-level radioactive waste. The initiative committee was of the opinion that after the shutdown of units 3 and 4 of the Kozloduy Nuclear Power Plant, the population of the municipality faced a new economic reality, and the construction of a national radioactive waste storage facility within the Kozloduy municipal area would definitely restrict future options. In addition, the area produces high-quality cereal crops which had secured a place not only in the regional market, but also nationwide – (markets which might be lost if the waste facility were built). The referendum was held in February, but it was declared invalid, because only 5,146 people voted – slightly more than 28 percent of all the eligible voters.

The second local referendum in 2007 was carried out in the *Kresna* municipality, where the citizens had to answer the question: „Do you agree that the use of the drinking water sources for producing electric power should be halted?“ 2256 votes were cast (representing 44 percent of the electorate), 2155 of which (95.5 percent) supported the proposal. Only 101 votes were in favour of continuing to use the drinking water mains to produce electric power locally.

According to the existing legislation, the voter turnout in the two municipalities was not high enough for the referendums to be recognized as valid. However, both these examples show a very high level of political interest among the citizens and reveal a trend towards increasing the level of citizens' participation in the decision-making processes, especially on issues of local importance.

In early 2008, two more local referendums were held, the first being in the municipality of *Burgas*, one of the large Bulgarian municipalities on the Black sea. The question was: ‚Yes‘ or ‚No‘ to the construction of the Burgas – Alexandrupulos Oil Pipeline.⁴ The ‚No‘ argument was based on the potential threat of pollution of the Black Sea coast, endangering not only the people living there, but also the development of tourism – a major source of income in the region. The turnout was 27.9 percent (51,225 votes). Only 3.25 percent (1654 votes) supported the construction of the pipeline, with an overwhelming majority of the Burgas voters (49,552 = 96.75%) saying ‚No‘. Nonetheless, according to the current legislation, the will of the citizens is not sufficiently clear and the referendum is not ‚legitimate‘.

At the same time, the citizens of *Novi Khan*, a small village close to the capital, held the first „successful“ referendum in Bulgaria on an environmental issue, as was reported in the media. It was initiated by the collection of signatures by the citizens. The question was:

⁴ For this project an international contract was ratified by the Bulgarian parliament in 2007.

„Shall the radioactive waste depository near Novi Khan be immediately closed and liquidated?“ Approximately 65 percent of the local citizens participated. However, the people are still not convinced that the state, which owns the radioactive waste depository, will take the necessary steps. Actually, two years later, no steps were taken towards implementing the decision of the referendum. The official position is silence, but if one asks, the only answer would be that this is a national issue and it can not be solved by a local referendum.

Evaluation

The activities and projects of the Balkan Assist Association in the area of citizen participation and local self-government all indicate that Bulgarians do not suffer from a deficiency of activity and willingness to take part in deciding common issues and problems, particularly at the local level. However, our legislation hinders rather than facilitates the application of the tools of direct democracy.

First of all, it provided no possibility for the citizens to initiate a national referendum. Second, the high thresholds for initiating local referendums and the turnout quorum stultify initiatives. At the local level, there was the theoretical possibility for citizens to initiate a referendum. To do so, however, it was necessary to have a petition signed by at least one-quarter of the voters, i.e. for a municipality with around 20,000 *voters* (not 20,000 citizens – the size of most municipalities in Bulgaria), it is necessary to collect a minimum of 5,000 signatures. Moreover, this one-quarter of the voters does not serve as a guarantee that the municipal council will approve the proposal; this requires the signatures of more than half of the voters; only then will the municipal council not be able to reject the outcome of a local referendum.

The powerlessness of citizens to voice their will on significant issues is yet another serious reason for the almost complete lack of attractiveness of referendums. It is clear that some of the issues that are most significant for the citizens, dealing not only with their concerns, but also with their money, cannot be decided by referendum. On the other hand, legalistic clauses like: „issues for which there is a specific procedure provided by other laws“ are a real trap for direct democracy. Expertise in and interpretation of all those laws present a challenge for lawyers, let alone the citizens. In addition to that, the onerous and expensive procedures can discourage even the most open municipal authorities from encouraging direct citizen participation.

Developments

Direct democracy is an essential element of the activities of the Balkan Assist Association that distinguishes the Association from all the other organizations in Bulgaria. The goal of Balkan Assist is to adapt to the experience of other countries in direct democracy (to Bulgarian conditions) and to improve Bulgarian legislation so as to bring it closer to the citizens. This is part of the project „Referendum and Citizens' Initiative“, which was launched in 2002 and is supported by the SDC (Swiss Development and Cooperation program).

In 2003, a working group of the Association developed proposals for amendments to Bulgarian legislation and practice based on the results of analyses of the legislation of dif-

ferent countries, as well as on the referendums held in the towns of Sevlievo and Elena. These proposals were summarized in a detailed draft proposal for amendments to the Referal to the People Act drawn up by a working group of Balkan Assist's members. The chairmen of two parliamentary committees – the Committee for Legal Affairs and the Committee for Local Government, Regional Development and Development of Public Services – presented it to the National Assembly. Apart from this, two other alternative proposals were made for amending the same act. After the first reading, the three versions were amalgamated into a single draft, which was presented to Parliament in November 2003.

It was not until June 2004 that this draft was considered by the Parliament. During the debates, there was no political will to provide more opportunities for citizen participation in government, no understanding of direct democracy, even a fear of it and a nostalgia for the past. As a result, the members of parliament did not reach an agreement and no amendments were adopted. This was the end of the work of the 39th National Assembly on the subject of direct citizen participation. Nevertheless, we continued with our demand for a new and effective Law on Referendums, aiming now at the 40th National Assembly.

After a series of meetings and consultations, working with experts from NGOs, municipalities, the media and institutions, we finally have the draft of a brand-new law for direct citizen participation in government. We were counting on the support and assistance of the Committee for Legal Matters, in the person of its chairman, in order to get the draft law onto the parliamentary agenda. It was important to us in the process of the elaboration of this act that we had the support of many municipal authorities which recognize the advantages of direct democracy, as well as the partnership of the National Association of Municipalities in the Republic of Bulgaria (NAMRB), the Bulgarian Media Coalition (BMC), the National Association of the Secretaries of Municipalities in the Republic of Bulgaria, the Association of Municipal PR Specialists, regional associations of municipalities and other NGOs, media, and citizens. This gave us the courage to carry on the public debate, to work in close relationship with our partners in other European countries, and to insist on the improvement of the legislative framework for direct democracy in Bulgaria and in other countries.

In February, 2008, after a number of amendments, discussion meetings and conferences, the draft Act was presented to Parliament by the Chairman of the Legal Affairs Committee and a group of MPs from different political parties. In brief, the principal suggestions in this Act were:

1. A statutory possibility for the citizens to initiate a referendum on the national level.
2. A possibility to initiate a national referendum following a decision by 1/10 of the city councils in the country.
3. Lower thresholds for initiating referendums:
 - For a national referendum: 150,000 signatures;
 - If 300,000 signatures of Bulgarian voters are collected, a national referendum becomes obligatory;
 - For a local referendum: a decrease in the signature quorum for an initiative from 1/4 to 1/20 of the citizens having the right to vote;
 - If the signatures of 10% of the electorate are collected, a local referendum must be held.

4. Eliminate the requirement for a 50% + 1 turnout for legitimate national or local referendums (there is no quorum required in local and national elections).
5. Broaden the scope of allowable issues for referendums:
 - All the issues within the jurisdiction of the National Assembly may be the subject of a national referendum, and thus directly decided by the citizens.
 - All the issues within the jurisdiction of City Councils may be the subject of a local referendum, and thus directly decided by the citizens.
6. Introduce a time limit for the collection of signatures for initiating a referendum by the citizens: up to three months for both national and local referendums.
7. Regulate the information campaigns, with equal possibilities for both positions.
8. Create regulations for facilitating referendums with regard to organisation and technically:
 - Enlarge the voting units and decrease the number of the commission members;
 - The possibility to vote on more than one question in the same referendum;
 - Voting with one ballot instead of two different ones – one – for „yes“ and one – for „no“
 - The possibility for voting to take place over a weekend (two days in a row).
9. Specific deadlines for conducting referendums:
 - At the national level – not earlier than two or later than four months following the day of the promulgation of the decision by the National Assembly;
 - At the local level – not earlier than 45 days or later than 60 days following the decision by the City Council.
10. Specify deadlines for the implementation of the referendum outcome.

The draft was reviewed and approved in three of the Parliamentary Commissions: the Legal Affairs Commission, the Regional Development and Local Government Commission, and the Civil Society and Media Commission.

After a lot of controversial debates where no clear positions were displayed it was finally approved in July, 2009.⁵ Unfortunately, it was modified severely during the debates to pander to the different parties' interests. Its very title given by the MPs speaks of a deep misunderstanding of the essence of direct democracy: they called it „*Act on direct citizen participation in the state authority and local government*“. According to the new Act, national referendum can already be initiated by the citizens but only after collecting 500 000 signatures in three months. The referendum is only valid when the voters are at least as many as the turnout in the last parliamentary elections. The scope of the national referendums is still quite restricted and adequate public debates before the referendum conduct are not provided for. The procedure is still quite heavy and expensive which discourages even those authorities who are eager to apply it.

As far as the local referendum is concerned, the new Act is more favourable. The scope has been broadened, allowing most of the issues within the competency of the Municipal council, to be a subject to the referendum. However, municipal budget and local taxes are still outside this scope. Paradoxically, no financial issues can be decided with the direct participation of the tax-payers – either at national or at local level. Another limitation still existing in the new legislation is the quorum required for the validity of the local referen-

⁵ Thanks to Prof. Atanas Slavov, Sofia, for additional information.

dum decision. Although the thresholds for initiating referendums have been considerably decreased (1/20 of the registered voters can submit a proposal to the Municipal Council; when 1/10 of the voters have signed, the referendum is obligatory), the proposal subject to the local referendum is only approved when the turnout was not less than the turnout in the last local elections and more than half of them voted „Yes“.

Still, there are some new instruments that were introduced in the new Act that encourage citizen activity and direct participation. The new Citizen Initiative option allows a group of citizens to start collecting signatures and ask the Municipal Council to decide on specific issues of local significance (an agenda initiative). The City Council, the mayor or whoever the addressee of the local citizen initiative, are obliged to review the proposals submitted and announce their decision and the measures taken within a months time. This possibility did not exist in the former legislation, and it provides for the initiation of public debates on matters that the people or specific citizen groups consider important. And thus – participate directly in the set up of the local agenda.

Getting the draft Act approved and implemented was an essential component of the portfolio of activities aimed at the real implementation of direct democracy in Bulgaria and at overcoming the mistrust of direct democracy in the public institutions and political parties. The draft reflected the position of various social groups in Bulgarian society. In the way that these groups worked together to make it a reality, it is a model of a transparent process and a consensual approach. The Act was aimed as a contribution to improving the political culture and citizen participation in society and to overcoming the crisis in the Bulgarian political system. In addition, the new political situation resulting from Bulgaria's EU membership also imposed more democratic practice at both local and national levels, bearing in mind that European legislation and the Lisbon Treaty also provided for such possibilities at the pan-European level. If Bulgarian citizens are expected to be adequately equipped to work with the European mechanisms of direct democracy, they need to gain experience of using direct democracy tools at home. And this can be achieved only by securing and implementing a new, functional and democratic act for direct citizen participation in local, regional and government.

Although not in its best shape, the new Act is all the same a step forward to a more qualitative direct democracy environment. The efforts of the organizations, experts and citizens were not all the way in vain. They will still continue in the future to work for a better understanding of the constitutional right of the citizens to be the major force, the engine of the democratic government of Bulgaria.