

**Seminar on the Participatory democracy
in central and eastern Europe today:
challenges and perspectives**

p r o c e e d i n g s

Vilnius, 3-5 July 1997

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I. OPENING SESSION

Chair: Mr Gunnar JANSSON

**Member of the Eduskunta of Finland,
Chair of the Committee on Parliamentary and Public Relations of the
Parliamentary Assembly of the Council of Europe**

Welcoming address: Mr Vytautas LANDSBERGIS
Speaker of the Seimas of Lithuania

General Rapporteur: Mr Andreas GROSS
Member of the National Council (Switzerland)
**Member of the Committee on Parliamentary and Public Relations of
the Parliamentary Assembly of the Council
of Europe**

Chair: It is both a pleasure and an honour for me to open this seminar in a country whose history offers so much food for thought, especially regarding the subject which will occupy our attention today and tomorrow. On behalf of the committee and of all those attending this meeting, I wish to thank the Lithuanian Parliament, and its Speaker, for their generous hospitality and for the working conditions provided.

I likewise thank all those who have accepted our invitation and I extend a special welcome to those who do not belong to any national delegation to the Parliamentary Assembly and are therefore not yet familiar with our procedures. The Parliamentary Assembly of the Council of Europe is the European assembly of the national parliaments and is therefore an unrivalled forum for the consolidation of our relations.

Mr Landsbergis, we have not forgotten your role as the representative of your country. You have defended its independence and have since become a very active member of our Assembly.

The defence and strengthening of pluralist democracy, along with the struggle for human rights, are among the priorities of our Organisation. But the Council of Europe has also embarked on fresh fields of activity: among them are the protection of social rights, health, culture, education and the environment and so on.

Within the Assembly, the Committee on Parliamentary and Public Relations is the body that concerns itself particularly with the way democracy works. In this context, it has taken an interest in the working of parliaments, in the role of the media and the new information and communication technologies and in the instruments of direct democracy. On this last topic, it adopted a resolution in April; the text is at your disposal. The preparatory report was based on a comparative study of the situation in 28 countries. The long and detailed discussion in the committee revealed the great complexity of the matter. The final text of the resolution is the

result of a large number of "adjustments" necessitated by the diversity of national traditions and experience in the 40 member states but, in contrast to what often happens in such circumstances, is not a reduction to the lowest common denominator. But Mr Gross, whose report puts forward options which in some respects are more radical, will perhaps have a slightly different point of view...

In any case, the subject is not exhausted. We have still to learn from one another and try to understand one another better: this will be the purpose of our discussions. I declare the seminar open.

Mr Vytautas LANDSBERGIS, Speaker of the Seimas of the Lithuanian Republic: Let me start by expressing the hope that the discussions you are about to embark on in our capital and in our parliament will be successful. The Seimas and Lithuanians are ardent supporters of participatory democracy. This concept has at all times guided our way during the dark periods we have gone through. Democracy for us was the road that beckoned us towards full freedom and independence. This is proved by events in the three Baltic states. I am sure you remember Black Ribbon Day in 1989, when a magnificent human chain was set up stretching from Vilnius to Tallinn. Those who took part had only one aim in their minds: to bring about that freedom and independence. In so doing, they were voicing the determination of their countries, just as they have done on other occasions, for example when they collected more than 500,000 signatures to a petition calling for the withdrawal of the Soviet army. This aim seemed unrealistic at the time but freedom and independence very soon became realities.

This was due largely to direct democracy. It was by a referendum in February 1991, for example, that 80% of voters opted for democracy and independence.

Through direct democracy we achieved representative democracy and succeeded in restoring Lithuanian independence and afterwards in liberating our capital and country by peaceful means. By making its voice heard, the people seized its right to be a nation.

I repeat that, today as yesterday, our lives are based fairly and squarely on faith in democracy as the only means of attaining security and stability. We are aware that only a democratic country can hope to obtain the support and protection of the international democratic organisations and the Atlantic Alliance.

We know about the problems confronting the democracies and are experiencing them ourselves in Lithuania. On all sides there is a crisis as regards confidence in democratic institutions and a climate of indifference on the part of the people towards the state. Grave difficulties may result. Freedom of choice is the basis of democracy and we must therefore study all the obstacles to that freedom. Representation may well remain a purely academic principle if serious efforts are not made to instal a genuinely democratic government after the elections. Is our administration working along democratic lines on behalf of the people or is it not? It is this question, which paradoxically I shall call the question of "democratic bureaucracy", that needs to be asked.

Democratic participation implies regular direct elections but the people must also be able to see that something is happening after those elections. Once invested with responsibility, elected representatives therefore have a duty to ensure that people can change something in their lives, in society, in the state. Citizens will participate if they are involved in these reforms, which

alone can give them confidence in the democratic state and encourage them to play their role as full citizens.

This is what we have struggled for since our liberation and what we must continue to struggle for: we have to create a civil society, a society of responsible citizens. We shall continue our efforts to this end and shall be pleased, today, to share our experience with the long-standing democracies, in which this process was not interrupted for many long years as it was in the Baltic states. This seminar will be invaluable to us and, once again, I therefore hope that you will have a searching and sincere debate.

Chair: In order to allow for the constraints on some of our participants, we are going to modify our agenda slightly by tackling the fourth item this afternoon when we have finished with the first. The other two items will be dealt with tomorrow. I myself have to leave Vilnius before the end of the seminar and Mr Bársony, Vice-President of the Parliamentary Assembly, has kindly agreed to take over from me.

Mr Andreas GROSS, General Rapporteur: I am very happy that we are meeting in Vilnius. This is only a first step, but democracy is a long engagement just like the one we have had to wage in the committee!

How is popular sovereignty to be developed? The question has been asked since the American and French revolutions. Representative democracy is the basis: it remains to be seen how more participation of the citizens can be added to it.

Why are we meeting in a Baltic state? Many Europeans are unaware that Estonia was a strong practitioner of direct democracy between the wars and that now the torch has been taken up by Lithuania. We are also meeting here because the new democracies face the challenge of striking a balance between representative and direct democracy. As Mr Landsbergis has said, the goal of Lithuania as well as of the other new democracies is to develop civil society; one means of doing so is to expand democratic participation of this civil society.

However, we must not ignore the risks involved in these methods. In Albania the international community under-estimated the danger of a plebiscite: through a referendum on the choice between a republic and a monarchy to be held at the same time as the elections for a new parliament, the former president was hoping to undermine the outcome of the elections and was hoping to become a kind of plebiscited king. We must not confuse a referendum, which enables consultation of the people by the people, with the plebiscite organised by the government. A plebiscite is, in fact, a feature of an authoritarian democracy.

All participants must feel free to speak, how power may be better redistributed!

II. WORKING SESSION I

Theme I: Participatory democracy in the Baltic states, before and after the communist regime

Chair: Mr Gunnar JANSSON,
Member of the Eduskunta of Finland,
Chairman of the Committee on Parliamentary and Public Relations of the
Parliamentary Assembly of the Council of Europe

Rapporteur: Mr Henn-Jüri UIBOPUU,
Professor at the University of Salzburg, Tallinn (Estonia)

Observations: Mr Rimantas DAGYS,
Vice-Chair of the Foreign Affairs Committee of the Lithuanian Seimas

Mr Tunne KELAM,
Deputy Speaker of the Riigikogu (Estonia),
Vice-Chairman of the Committee on Parliamentary and Public Relations of
the Parliamentary Assembly of the Council of Europe

DEBATE

Mr Henn-Jüri UIBOPUU, Rapporteur: A few days ago, some 5 600 miles to the east of Vilnius, an event took place which would not have taken place if a referendum had been organised: the return of Hong Kong to China. But the United Nations has always had a negative attitude towards referenda, if they have been unfavourable to decolonisation: this was the case in Cameroon, in Gibraltar in 1967 and in Mayotte in 1974 and 1976. In my view, plebiscite and referendum mean the same thing.

"The new constitutions have not been content with the mere statement of the fact of popular sovereignty, but have sought direct means of giving the people the power of exercising their sovereign rights": thus wrote A. Headlam-Morley in 1928 in *The New Democratic Constitutions of Europe*. With the establishment of democracy in the three Baltic states after the first world war, the keynote of the period was euphoria. The constitutions of these countries mentioned the people in their preamble, but that of Lithuania started with the phrase "in the name of Almighty God". Frequent consultation of the citizens was deemed to be educational, but this proved to be the case only in Estonia.

The Estonian Constitution of 1920 provided for a referendum in two cases. In the first case, 25,000 electors had the right to call for the organisation of a referendum concerning a law; if the referendum repealed a law which had just been passed by the National Assembly, the latter was dissolved. In the second case, amendments to the Constitution could be proposed by the people or the National Assembly.

One provision of the 1920 Constitution would be considered strange today: the insane, the blind and deaf-mutes were not allowed to vote.

The 1938 Constitution allowed a third of the deputies to demand a referendum; there again, if its result did not coincide with the decision of the National Assembly, the latter had to be dissolved.

Many referenda took place in Estonia between 1918 and 1940. Under the first, which was held on 17 and 19 February 1923, it was decided by 328,000 votes to 130,000 that religious instruction would be included in the school curriculum. In 1926 the demand for a referendum on compensation in the event of nationalisation was rejected on the grounds that the constitution ruled out referenda on "tax laws", a debatable interpretation.

During the political crisis between 1931 and 1934, a draft amendment to the constitution, tabled by the National Assembly, was submitted to referendum in August 1932 and rejected by 345,000 votes to 333,000, thus by a very small majority. It is not surprising that the National Assembly did not accept the results of this consultation.

In November 1932, the veterans (VABS) submitted a constitutional amendment on the declaration of a state of emergency. The National Assembly drew up its own bill, which was rejected by 330,000 votes to 161,000. Against a background of tension a state of emergency was proclaimed; finally the VABS version was approved by 416,000 votes to 156,000 on 14 October 1934; this result was subsequently described as a "bloodless revolution".

In 1936, the head of state, Konstantin Päts, organised a referendum authorising the President to convene Congress in order to draw up a new Constitution. Over 75% of voters endorsed the presidential proposal and the Constitution came into force in January 1938. So, although there were periods when Estonia was undemocratic, it returned to democracy through its own efforts; unfortunately, it was given little time to put the new Constitution into practice.

The Latvian Constitution of 1922 provided for a referendum in respect of amendments to the Constitution (Article 77) when a referendum is requested by 10% of the electors (Article 72). However, a referendum could be opposed by two-thirds of members of parliament.

Between the wars there were six attempts at a referendum, in particular concerning the Church, but all failed.

The first Lithuanian Constitution of 1922 gave the people the right to initiate legislation: the signatures of 25,000 electors were necessary; in order to propose an amendment to the Constitution, 10,000 signatures were needed (Article 102); such an amendment, once adopted by parliament, could be submitted to referendum if the President of the Republic, two-thirds of members of parliament or 50,000 electors so requested (Article 103). This Constitution was amended in 1928 but the articles on plebiscites were maintained.

During the period before the second world war, the Baltic states developed differently: Latvia and Lithuania became totalitarian states, while Estonia proceeded with a more democratic system.

On 23 August 1989, the 50th anniversary of the infamous Ribbentrop-Molotov pact, 1,500,000 people held hands from Tallinn to Vilnius to show the world that they wanted to shrug off the Soviet yoke. This event, which I term an "ad hoc plebiscite", is the best

manifestation of a popular referendum that has ever been; it was not greatly appreciated by the Soviets at the time! In 1991, after the collapse of the Soviet Union, it resulted in referenda in Estonia, Latvia and Lithuania, all asking the same question: "Do you want independence?" The results were crystal clear. In Estonia, the pro-Soviet communist party organised a counter-referendum asking the question: "Should an independent Estonia remain in the USSR?" As it was possible to vote without showing a passport, the results of the counter-referendum are not reliable.

In Latvia, 73% of electors voted for independence, although Latvians account for only 52% of the population: this means that Russian electors voted for an independent Latvia.

In Lithuania, the results were even more definite: over 90% voted yes! In October 1992, a referendum was organised on the new constitution, which was adopted by 77% of the voters. In August 1994, the opposition tried to organise a referendum in order to counter government policy but this referendum was declared null and void because of an inadequate turnout: only 36.5% of the 2,500,000 electors had voted. The aims of the opposition parties were to contest the legitimacy of the privatisations already carried out and to obtain compensation for those who had been financially affected by the introduction of the litas, but also to bring about early elections.

I would add that Article 105 of the 1992 Estonian Constitution allows for referenda. The people can thus demonstrate its will not only through elections but also by this means. When a law is passed by referendum, the President of the Republic must promulgate it immediately, although for a normal law the period is two weeks in order to enable, among other things, the constitutionality of the measure to be verified.

Of the three Baltic states, Lithuania is currently the one that has made the greatest use of the referendum. The other two states perhaps felt hesitant about direct democracy, but I believe that from now on they will make greater use of this procedure: doubtless less use than in Switzerland or Austria, but I feel we can look to the future with hope.

Mr Rimantas DAGYS, (Lithuania): I am proud to address this democratic assembly in the very chamber where the restoration of our independence was proclaimed in March 1990. I intend to take advantage of the opportunity to speak in our national language, something we are not allowed to do in Strasbourg.

The problems of participatory democracy may be common to the countries of western and central Europe, including Lithuania, but there are some which are peculiar to us. As the former will be fully covered by other speakers, I shall devote my attention here to the latter.

Here at home, people are becoming increasingly disappointed by representative democracy because most of the parties tend to forget their job of defending the public interest, thinking only of the elections and, frankly, seeking primarily to capture votes. This short-term view means a loss to democracy: citizens end up putting all the parties in the same basket, however different their electorates may be.

Also, although the development of new technologies makes access to information easier, a large

part of society even in the wealthy countries remains outside the decision-making processes and this generates scepticism about the new methods.

In Lithuania and, I believe, in the whole of central Europe, these problems are all the more acute because they are compounded by the difficulties of economic transition. Let me mention one or two of these difficulties.

First of all, radical reforms are accompanied by a form of coercion of part of society, since they result from the will of a political elite rather than from that of a majority. Owing to the weakness of the parties, agreement between political forces is necessary in order to ensure a successful transition, and the people who oppose it are often disappointed by the new democratic order because they do not see their interests represented. The reforms are also carried out at a rapid pace, whereas public attitudes are slow to evolve. A dangerous gap thus appears between the political elite and the ordinary voter. Let us not forget that it is only now that people are starting to learn how to behave properly under market conditions. Interest groups are only just beginning to form and, even though the different property concepts are gradually becoming clearer, only financial and business circles show a clear understanding of the nature of private interest. Industrial relations are extremely rudimentary as the trade unions are weak and disunited. NGOs, although numerous, are not really concerned about strengthening the various forms of internal solidarity.

Informing the public about current processes at home and abroad is also a serious problem. The Internet is only in its teething stage and, while independent newspapers have become more numerous, they are still little read; many of them simply reflect the opinions of the advertisers and sensational articles predominate over economic and political analysis. This helps to widen the gap between the elite and the ordinary citizen and, in my view, the only remedy is an "injection" of direct democracy.

Lithuania has accumulated extensive experience with referenda. Twelve attempts since independence are noted and public opinion has been able to express itself eight times by this means. It is clear however that our law on referenda is not favourable enough to the development of direct democracy. It is admittedly understandable that a vote by three-quarters of citizens is needed to amend Article 1 of the Constitution - "The Lithuanian state is a democratic republic" - but is an absolute majority really needed for other issues? What chance of success have these consultations, given that participation is tending to fall off and that, moreover, those opposed to a referendum encourage electors to abstain? Also, the time allowed for public debate is generally too short - in some cases only a month. Nor is it very easy to launch a popular initiative when 300,000 signatures, representing about 12.5% of the electorate, have to be collected in under three months.

Although the measures submitted to a referendum obtained a majority, the procedure led to a successful outcome in only three cases. On each occasion an agreement was reached on the subject between the main political forces.

Generally speaking, Lithuanians believe that a referendum helps them to influence decisions. It is clear, however, that the relevant legislation will have to be liberalised and a law on local referenda passed. Our parliament has understood the need for this and is preparing to remedy the existing shortcomings in order to strengthen participatory democracy. (*Applause*)

Mr Tunne KELAM, (Estonia): One of the characteristics of the Baltic states is their long-standing tradition of local self-government, including certain forms of local democracy. The populations of neighbouring villages were in the habit of meeting for mutual consultation. Even under foreign domination, we were thus able to decide how to organise our daily lives and this is one of the possible explanations for the success and peaceful nature of our struggle for independence.

But this was not the first time we had had independence. Mr Gross has said so and Mr Uibopuu has backed him up: thanks to the independence we enjoyed after the first world war, our states have been able to count themselves among the cradles of democracy. For half a century afterwards, however, we were prey to totalitarianism like the whole of central and eastern Europe.

On this point, let me say that Europe has experienced several forms of integration this century: one democratic form and two totalitarian forms - nazi and Soviet. The Baltic peoples were long deprived of any outlet for democratic expression, but no situation is never completely desperate: under communism, the people were still able to "vote with their feet". In 1944, for example, Estonians did what the East Germans were to do until the construction of the Berlin Wall: one in ten fled to the west.

Another widely used form of "participation" in political life was to abstain from all misleading manifestations of Soviet democracy: we absorbed the lesson of Solzhenitsyn, who called on people not to participate personally in institutionalised lying. We wanted to lie neither to ourselves nor to the outside world.

There was likewise the "cultural referendum". The three Baltic states have a vigorous tradition in this respect, as their languages were for a long time prohibited by the authorities. Without this "cultural referendum" repeated day after day, without this obstinate attachment to their own languages and cultures, the three nations could not have survived. The last of these referenda began in 1940 and lasted 51 years! If it has succeeded, we owe this particularly to our songs and to the festivals we organised.

Near the end of the Soviet regime a final, unrivalled form of participatory democracy made its appearance: I refer to the links established between our three territories despite the occupation forces and the KGB. An organisation was set up calling on the inhabitants of all three countries to act as independent citizens. The fact that the democratic West and the Council of Europe in particular never recognised our incorporation in the USSR removed a psychological barrier, but it was nonetheless a gesture of civic courage to join the citizens' committees, of which over a hundred were set up in 1989. Despite their Soviet passports and in the face of intimidation and a boycott by the official press, over 900,000 people registered as Estonian citizens in one year. Even communists joined them, somewhat later!

All this was followed in February 1990 by elections to the Estonian Congress: 90% of those registered took part and 465 members were elected by 1,200 delegates representing thirty parties, including the communist party, which obtained more than thirty representatives. The Russian "settlers" who had arrived under cover of the occupation and who declared that they wished to become citizens of an independent Estonia obtained 45 delegates. This initiative was copied in Latvia in May 1990, then in Georgia, Transcaucasia and other territories. This was

how democratic representation was set up for which there was no equivalent in the Supreme Soviets of the various republics.

We saw the final result of this process, rooted as it was in a mass initiative, during the crucial days of 1991 when the USSR and Estonia agreed on a mechanism for restoring our independence. A Constituent Assembly was formed and its work approved by a referendum in June 1992. This basic law therefore came into force about this time 5 years ago. The first democratic parliament was elected the following September.

This Baltic model is unique in my view. Our countries showed how democracy could be restored through various forms of direct democracy, in accordance with international law and by non-violent methods with no place for vengeance or rancour.

It might be a good idea to resort similarly to a referendum with regard to our candidature for the European Union. We have little time in which to prepare for this decisive deadline, but we have all recognised the existence in Europe of a disquieting gap between members of parliament and electors, and of a bureaucracy which impedes participatory democracy. International co-operation is nonetheless a fact. The Council of Europe in particular is irreplaceable as a meeting point for 40 countries. If all of them show themselves aware of their responsibilities and are capable of setting clear objectives, we shall doubtless overcome all the dangers stemming from this European bureaucracy.

Chair: Thank you. Of the 15 members of the European Union, 13 have organised referenda and I therefore feel that the Baltic states should do likewise. However, there may be technical obstacles in existing legislation. For example, in Sweden as in Finland, only the consultative referendum exists: a "no" is always "no", but a "yes" can ultimately result in either a "yes" or a "no"! Why do things simply when they can be made complicated?

We can now start the general discussion.

Mr Francesco Enrico SPERONI, Senator (Italy): Mr Gross' report interested me greatly: I was unaware that the Baltic states were the forerunners of direct democracy.

I was an observer of the 1991 referendum on Estonian independence. As I belong to an independence movement, I am pleased to know that the three Baltic peoples were able to express themselves freely, something which is impossible in Italy as the Speaker of the Chamber of Deputies has banned the subject from being raised.

I should like some clarification from Mr Uibopuu. He says in his report that the transfer of a part of Lithuanian territory to another state would have to be approved by referendum. What happens when part of the territory wishes to become independent?

Mr UIBOPUU, Rapporteur: The consent of the Lithuanian population is required for any reduction in territory; on the other hand, I do not know whether an expansion of territory entails a referendum.

Chair: And in the event of secession with a view to independence?

Mr UIBOPUU, Rapporteur: The problem would be the same; it has arisen in the case of north-eastern Estonia, where the Russian population wishes to be linked to Leningrad.

Mr Rimantas DAGYS, Deputy (Lithuania): The articles in question appeared in the first Lithuanian Constitution. The prevailing historical context was different: the frontiers were unstable and Lithuania was in dispute with Poland and Germany. The government had to be prevented from carrying out, on its own, a partial transfer of territory.

Mr Andreas GROSS, General Rapporteur: Mr Kelam has said that Estonia practised direct democracy over a period of years. Why did Estonia alone follow this policy? Why, after 1991, did this practice develop only in Lithuania?

Mr UIBOPUU, Rapporteur: I am not well up on 19th century history but 1882 was undoubtedly an important date: it was in that year that Alexander III imposed Russian on the university; some Estonians changed religion and entered the administration. It seems that the *Aufklärung* prepared the Estonian population for democratic practice. Why was it imposed only in Estonia? It is for Lithuania and Latvia to reply. In any case, at the end of the 1930s Estonia embarked on the road to democracy thanks to President Päts.

Why Lithuania today? Emancipation began in 1988 in Estonia; afterwards came the turn of Lithuania, Latvia and Moldova. Lithuania has a tradition of representative democracy. Between the wars the existence of a large conservative rural population prevented the referendum from being used. A new situation arose after independence was restored in 1991. The influence of demography must also be stressed: 80% of the population is Lithuanian and there is no minority problem. This has enabled Lithuania to wage a more radical and political struggle than its neighbours.

Mr Tunne KELAM, Deputy Speaker (Estonia): There is a difference between the local roots of democracy and its manifestations.

In Estonia a great effort was made to educate the population before independence. Despite illiteracy, every peasant family subscribed to a national publication.

During the transitional period the population was intensively involved in the independence struggle through indirect referenda. This led to a certain exhaustion.

The 1992 referendum on the Constitution caused some nervousness: what would have happened if the electors had rejected it? Some were calling for a straightforward return to the 1938 Constitution; the forces of democracy refused because that constitution gave excessive powers to the Head of State. The fact is that a strong President can become a dictator and the risk was particularly great because we did not have much experience of democracy life.

After that referendum, the political institutions worked well; that is probably why it seemed unnecessary to have another referendum.

Mr Roy HUGHES, (United Kingdom): We definitely agree that democracy does not begin or end with elections; what is essential is the long-term participation of the citizens. In the United Kingdom, we are cautious about referenda, which do not really form part of our political tradition.

A word about the dissolution of parliament when its views do not agree with those of the population. There again our traditions differ. We support the "first past the post" system. This system has its defects, admittedly, but it makes for strong government. Citizen participation must not remain limited to the elections or referenda: it can be exercised in other frameworks.

I have to confess that I am Welsh, not English. The population of Wales is about that of Lithuania, namely around 3 million people. In the last century the Tsarist regime punished the use of the Lithuanian language: liberal Great Britain acted in the same way towards Welsh! The parallel could be taken further in the religious field: Welsh settlements were founded in Patagonia 130 years ago in order to escape religious persecution. We might therefore have the same claims as the Baltic states!

To conclude, there is no one way of participating in democracy; truth has various aspects. The only obligation is tolerance!

Mr UIBOPUU, Rapporteur: You mentioned that the Estonian Constitution provides for parliament to be dissolved if a motion put to a referendum is defeated. We must not forget that the population has been undergoing a very bad experience for the past 50 years! Everything suffers: the political parties, for example, have a very small membership. All our efforts must be devoted to putting democracy over to the population and finding other ways of involving people in decision-making: one of these ways is direct democracy.

Chair: My thanks to you all. We shall now go on to the next theme, which will be No. IV, as I said earlier. First, though, I shall give the floor to Mr Kuptsov, who wishes to question Mr Kelam. As Mr Kelam has had to leave, I feel Mr Uibopuu could speak for him.

Mr Valentin KUPTSOV, Member of the Russian Duma: We have been given a very detailed account of representative democracy in the Baltic states, with lots of background, but what about representation of the population of Russian origin? There are 79 different statutes.

Mr UIBOPUU, Rapporteur: The problem of the representation of the Russian-speaking population is a complex one, particularly in Latvia and Estonia. But this situation is not the fault of the Latvians and the Estonians: Russia is responsible for it. The 1991 nationality law provided that any person who was living in the Soviet Union on 1 September 1991 could obtain Russian nationality on request. Russia recognised the independence of the Baltic states on 26 August 1991, with the result that on 1 September these states were no longer in the USSR! The 110,000 Russian speakers who requested Estonian nationality were granted it. Nevertheless, it is true that there are non-Estonians in our country, stateless persons, but they can still elect representatives at local level provided they have been living in the country for at least five years.

While Lithuania has made more frequent use of the referendum, Estonia practices extensive local self-government. In this respect, the situation there is no different from that prevailing in Sweden or Finland.

Chair: That is correct; the right to vote at local level is no longer dependent on nationality in Finland and this will soon be the case throughout the European Union.

III. WORKING SESSION II

Theme IV: Historical and present challenges of participatory democracy

Rapporteur: **Mr Andreas GROSS,**
Member of the National Council (Switzerland)

Observations: **Mr Fernando PEREIRA MARQUES,**
Deputy (Portugal)

DEBATE

Mr Andreas GROSS, Rapporteur: If we are to measure the difficulties of direct democracy in central Europe or elsewhere and its chances of success, we need a theory. In my report I have outlined some ten arguments. They are the fruit of 20 years' work, in both politics and university teaching. However, we are not in the realm of exact science here: we must not examine the matter "from above" when, in direct democracy, everything must start "from below". Everything I am going to say is therefore open to discussion.

Certain persons have said here that democracy is a process of life-long learning. Additionally it should be said that we have to think about the democratisation of our democracies, of attempts to distribute political power among the greatest possible number of citizens, to convince them that they can take decisions by themselves and that politics does not inevitably mean relying on other people.

The idea of political democracy is a legacy of the French revolution: the Declaration of the Rights of Man and of the Citizen of 1789 essentially states that free citizens should observe only those laws which they themselves have directly or indirectly helped to shape, through the intermediary of their representatives or otherwise. Is democracy limited to that or not? This is the substance of our debate today.

Since the American and French revolutions it has been accepted that a Constitution is a proper Constitution - ie the basic law - only if it has been approved by the citizens. The Polish Prime Minister, for example, recently stated in the Council of Europe that his compatriots had had to give their opinion on the Constitution because a Constitution is made "by and for the people".

Just like democracy. Let me point out, however, that only 33% of Polish citizens took part in the referendum organised for this purpose. Yet the Constitution itself required a turnout of at least 50% before a future revision of the new constitution may come into force. Here, therefore, we see a contradiction which is directly related to the subjects that interest us in this seminar.

Since the French Revolution, moreover, parliament has been the sovereign expression of the will of people. But there always has been those who say that democracy is not just about

electing representatives and that citizens must also be involved in the preparation of legislation and give their views on basic issues. For it is the very essence of democracy to enable questions vital to democracy to be put to the people. There must be interaction between citizens and parliament; the latter gives its opinion and may submit counter-proposals but the people must have the last word if it so desires. Accordingly, in half the states of the United States and Switzerland, for example there exists a right of popular initiative: provided a certain number of signatures are collected, the people can be required to give its view even if government and parliament do not agree. You will find the details of these and less developed measures of all member states of the Council of Europe in the document prepared by the Council of Europe, which I have taken as a basis.

The heart of direct democracy therefore lies in public debate. This can often take months or even years. In Switzerland for example, there are subjects that have been debated for the past ten years and these discussions change both the persons, the problems and their perception and often open broader opportunities for new resolutions. You might say that they enable people to get to know and understand one another and the common problems better, and this opens up unheard-of perspectives. That is how democracies are constructed! This resource is particularly valuable in modern societies, which are frequently very heterogeneous: through these exchanges and these dialogues is forged an identity to which even disputes contribute, the worst danger for integration being the failure even to look at the other party. Direct democracy offers a communicative democracy, which produces an integrative factor, which modern societies so often need.

The experience of the new democracies demonstrates every day that democracy is a conquest. Even in a representative democracy it is necessary to struggle for one's rights: elected representatives do not willingly give up their power and they make concessions only in order to survive. Changes therefore occur only under pressure from the citizens and direct democracy is always wrested by a smooth, democratic force; it is not something that can be obtained "free of charge".

When these rights are used, a country's political culture is thereby modified, debate becomes more natural and the distance between politicians and citizens shrinks. Citizens understand one another better and feel they are part of the political process, while politicians feel obliged to win people over, to enter into a permanent dialogue with citizens. There is a resulting improvement in the thinking capacity and competence of all parties, especially the citizens. To prove it I would cite the situation in France and Denmark: thanks to the referenda on the Maastricht treaty, more is known about the European Union than in Germany or Britain, where it was parliament only that decided.

Direct democracy therefore creates a process of communication which can contribute greatly to

integration in countries marked by the totalitarian experience and therefore lack a civil cohesion. These procedures encourage the practice of democracy and the setting up as the strengthening of that civil society which President Landsbergis has just called for. It is thus no accident that the Baltic states have employed them.

The opponents of direct democracy constantly argue that the people are not ready for such an exercise. This seems to me to be tautological. You learn to swim only by jumping into the water and, likewise, it is by trying out direct democracy that a people democratically matures. Waiting will achieve nothing. In other words, the conditions are never really ripe for the effective introduction of direct democracy but, by starting to act as citizens, we are working towards establishing a society of enlightened citizens.

However, there are certain conditions, whether or not laid down by the Constitution, on whose existence the proper exercise of direct democracy depends. I refer to respect for the rights of minorities and human rights, which must be written into the Constitution itself. Human rights are not a matter for direct democracy, nor may we vote on the rights of a minority, for example. These must be excluded.

Federal and decentralised structures are favourable to direct democracy. It is certainly not an accident that Estonian tradition encouraged democracy in the 1920s. In Switzerland it has likewise been possible to argue that it was federalism that produced direct democracy and not the other way round. The development of the media and their pluralism are also favourable to a culture of democracy; on the other hand, the existence of press monopolies is a negative factor. Education is another necessary condition and there too the history of Estonia illustrates the value of this thesis perfectly.

I come now to the instruments of direct democracy. In Germany the terms "referendum" and "plebiscite" are used indiscriminately, but I consider it essential to distinguish clearly between them. "Plebiscite" should be used only when a consultation is ordered by the Head of State or of Government - perhaps even by parliament - in order to justify a policy or obtain a legitimacy which could not be acquired by ordinary means. That is why every dictator, from Napoleon to Hitler and Pinochet, has liked plebiscites. Discerning the difference between a plebiscite and a referendum calls for a certain, rather rare, sensitivity: public opinion can be caught napping and the people may fall headlong into catastrophe: witness the example of Albania.

In Switzerland, for example, parliament does not have the power to organise a referendum. More generally, Heads of State and of Government must be kept out of temptation's way. This is not the case, however, of France's proud democracy.

What happened this spring in Slovakia illustrates another difficulty of direct democracy: it is dangerous to leave the task of arranging the detailed organisation of a referendum to the arbitrary decision of a government. The decision-forming process must be kept for the citizens. In this particular case, although the Head of Government won the referendum, he cannot rejoice in his victory because he lost on the essentials. I should be pleased to discuss this with our Slovakian colleagues.

A word in passing about the referendum in Belarus. This was considered to be an abuse of direct democracy: here we must therefore talk of a plebiscite.

For a referendum to be useful, the conditions for holding it must not be too strict, a referendum must be practicable and the different positions must have equal chances. In Switzerland there is no equalisation or compensation procedure concerning campaign-resources as the access to the public sphere. These practical problems were extremely well resolved in California of the 60's and 70's but the Republicans put a stop to the process. In California and Colorado, the Supreme Court only intervenes when basic rights are infringed. Even the old democracies have weaknesses and can learn from the practices of other countries!

In conclusion, we must be prepared to think about direct democracy and must not forget that it can contribute to the liberation of citizens. We cannot be free if we do nothing. A referendum is therefore of great assistance.

Mr Fernando PEREIRA MARQUES, Deputy (Portugal): I shall begin by quoting a Swiss who is almost as illustrious as Mr Gross, Jean-Jacques Rousseau (*laughter*), who wrote in Chapter XV of the Social Contract: "The deputies of the people are not and cannot be its representatives; they are only its delegates. They can conclude nothing definitively: any law that the people has not ratified is null and void; it is not a law." However, Rousseau also wrote: "If there were a people of Gods, it would govern itself democratically; so perfect a government is not suitable for men." Taken literally, these assertions could lead to the conclusion that representative democracy is impossible. Let us not listen to the philosopher, so that it may not be said that, "It's Rousseau's fault" (*laughter*), and let us listen instead to Mr Gross when he states that it is possible to construct a democratic, equitable and functional system.

The criticism of representative democracy, of formal or bourgeois democracy, has led to the establishment either of Soviet-type "councilism" or of fascist-style corporatist organisation.

There must be no confusion between healthy criticism of parliamentarianism and criticism of representative democracy. It is in this framework that I interpret Mr Gross's proposal: in his view, representative democracy and direct democracy are not alternative systems; even less are they mutually contradictory. On the contrary, they form two systems which can and should supplement and combine with each other. I agree, the argument about the immaturity of citizens is not credible: in Portugal, until 1974, we got sick of hearing it as a justification for dictatorship!

Democracy is a complex process; not only the state but also society must be democratised. Rather than introduce mechanisms of direct democracy, we must create new forms of democratic participation and thus improve civic awareness. As Nobxerto Bobbio has stressed, the best indicator of democratic development is not the number of persons who have the vote but the number of non-political bodies in which every citizen can use that vote: school, the work place, neighbourhood associations, cultural, sporting and ecological associations, etc.

In the face of the perversions of teledemocracy and the illusions of participation created by the media, this aspect of democracy must be stressed as a social link. Mr Gross has rightly stressed the possible defects of a referendum; for this reason, it must be regarded as an extraordinary measure for extraordinary circumstances; making it the norm could even be harmful for democracy. The Swiss model cannot, perhaps unfortunately, be generally adopted!

The referendum is not the only possible instrument of direct democracy; in any event, the challenge confronting us as citizens and elected representatives is not to aim at a perfect but

impossible form of democracy but to make the greatest possible contribution to democracy in the complex societies in which we live.

Mr GROSS, Rapporteur: In Switzerland a referendum always leads to a decision. If recourse to a referendum depends on the authorities, I would call this direct democracy with a hint of a plebiscite: the appeal to the people is then only a form of legitimisation. What is important is that citizens should be able to propose a referendum themselves. We must not under-estimate the danger of putting forward a referendum which is not in the country's interest.

Mr Andras BÁRSONY, Deputy (Hungary): We must be aware of the boundaries between direct and representative democracy, but where exactly is the demarcation line?

In a referendum there are only two options, to say yes or no; an abstention is equivalent to a no. In a complex world, is it possible to make such a simplistic choice? Of course, one may ask the question: "Are you in favour of Nato?" but in my country, while there is general agreement on the principle, there are wide differences of view about the conditions and these cannot be covered by a referendum. There is therefore a limit to consultation by direct democracy; there should be a very clear demarcation line in the Constitution. In Hungary, 50,000 electors can request a constitutional referendum; budgetary and economic issues are excluded as this would damage the country's unity. But what period should be laid down for collecting signatures? Ten years? Will all those signing still be alive? Great precision is therefore needed.

I am not very happy with what Mr Uibopuu said about the unconstitutionality of a referendum on partitioning a country: in Switzerland, a canton which wishes to become independent can do so!

A clear distinction must be made between national and local referenda: this is the case in Hungary, where the dividing up of a town can be confirmed by referendum.

Chair: Your extremely interesting words remind me of a quotation from the Bible: "Therefore all things whatsoever ye would that men should do to you, do ye even so to them." (Matthew, 7, 12).

Mr Lubomir FOGAS, Deputy (Slovakia): I am here to study a subject which has many and various implications for me and am very happy to be staying in this country and in this capital, which has grown since my last visit.

Democracy is intertwined with history, which for us has a meaning. As they say it so well in Senegal, "When you don't know where you're going, look where you're coming from."

Chair: When you have lost your bearings in the middle of the ocean, you look aft.

Mr Lubomir FOGAS, Deputy (Slovakia): Direct democracy is not a gift of nature, it requires effort and learning. It is a continuous creation and is never perfect. We therefore cannot judge by reference to some theoretical perfection which we can only aim at as a distant goal but by reference to what that democracy is opposed to. Politics is not the art of taking indisputable

decisions. Moreover, it is the same with democracy as with health: you discover its virtues just when you are losing it!

There is a noticeable tendency to reduce democracy to the organisation of free elections and to the multi-party system. These are certainly necessary conditions but they are not sufficient. In particular, formal equality is only superficial unless it is accompanied by social equality. Direct democracy implies a social substratum. The right to vote loses much of its substance when citizens' horizons are limited to the satisfaction of their basic needs, when day-to-day survival dominates every other consideration. As Mr Pereira Marques has said, without solidarity direct democracy is purely theoretical. Here Slovak experience speaks volumes: the turnout was only 19% in the first referendum, and 10% in the second. It was the fault not of the citizens but of the governing class and social conditions.

However, I understand that tomorrow Mr Fico will expand on what Mr Gross has written at the end of his report on the consultation which took place in May.

Ms Zofia KURATOWSKA, Deputy Speaker of the Polish Senate: Since Mr Gross has referred to our constitutional referendum, I wish to say that Poland suffers from an absence of tradition in this field. The first consultation of this type did not take place until after the last war, in 1946: it was held in a very tense atmosphere under a totalitarian government under close surveillance by Stalin. Many were compelled to participate, others were persecuted. In short, the referendum was totally distorted.

A second referendum was organised ten years ago. Its subject was democratisation and investment funds but it was very badly prepared and the citizens had not been properly informed.

The Constitution was drawn up as the result of a compromise between the different political forces. The exercise was excellent in itself and the Constitution is relatively democratic but the final phase of the process also took place in a climate of tension. Before the referendum, right-wing groups - not represented in parliament - encouraged people to boycott the consultation by resorting to lies and all sorts of irrational arguments: their members had obviously not read the bill! Certain Catholic priests unfortunately joined in this deplorable campaign. Television programmes on the subject were quite inadequate. Polish society thus came to the referendum in total bewilderment and the proportion of abstentions was enormous. The people preferred to remain outside this war of the politicians. This clearly shows that a basically first-rate instrument, the referendum, can yield its best result only in an atmosphere of calm and conditions of unimpeachable honesty. The ways and means of organising a consultation must therefore be considered with extreme care. I hope that what happened in our country will never occur again either in Poland or elsewhere. This will mean educating the population in the area of referenda and democracy.

Mr Massimo LUCIANI, Professor at the University of La Sapienza, Faculty of Political Science, Rome (Italy): I shall confine myself to two remarks which will probably not appear in the conclusions I shall submit tomorrow.

Mr Pereira Marques was sceptical about the possibility of distinguishing clearly between referenda and plebiscites. I can only agree up to a certain point. Political theorists and constitutionalists have been raising this problem for a long time but the criteria they have drawn

up do not completely satisfy me. In my view, it is a referendum when electors are called on to decide a question and can do so by deploying their intelligence and ability to think. It is a plebiscite, however, when they vote for a person under the influence of emotion, even if they are apparently being asked only to decide a question. What counts therefore is not so much the form as the result: the fact that the person in question is given additional legitimacy. It is therefore impossible to decide in the abstract whether one is dealing with a referendum or a plebiscite: the decision has to be taken case by case.

From the point of view of constitutional law, we can only try to ensure that a referendum does not become a plebiscite. The Italian constitution, for example, contains provisions authorising the former and ruling out the latter. How can slippage from one to the other be prevented? For a start, we can take away from the government the right to propose a plebiscite by reserving for the citizens the right to initiate a referendum - I believe that is what Mr Gross has suggested. There is admittedly no theoretical demarcation line, as I have said, but we are able to determine, from the political viewpoint, when the transition from one to the other occurs.

The second question is: whether a constitution must always be subject to popular approval. Even more than French tradition, American tradition since the pioneering era replies in the affirmative: a new constitution must clearly be legitimised by direct popular vote. The political forces represented in a constituent assembly may manage to reconcile the interests of the majority with those of the minority or minorities, but the fact remains that the majority of the people are liable to go back on such a compromise. And while this problem can be removed by retaining for the Constituent Assembly the right to decide on the content of the constitution, a second problem remains, as demonstrated by Italian history. In June 1946, Italians simultaneously elected their representatives to the Constituent Assembly and chose between the republic and the monarchy, but they never approved the actual text of the Constitution. Everyone thought he or she could say that the June vote legitimised the political forces which were to adopt this instrument. This was assumed for three reasons. First, the people had expressed their will by opting for the Republic backed by those forces; second, these parties could themselves claim direct legitimacy in that they had participated in the struggle against fascism and in the country's liberation. Third, it was they who represented, with the exception perhaps of the Church, the pluralist "fabric" of the epoch after twenty years of fascism. This assumption was attacked at the end of the 1980s and at the beginning of the 1990s. It is true, however, that this attack smacked more of a political effort to delegitimise than of a theoretical dispute.

Mr Sören LEKBERG, Deputy (Sweden): As has already been said, the Nordic countries are not very well up on these questions of direct democracy. For example, the Swedish Constitution contains no provisions on the subject. We certainly have referenda, but they are purely consultative. There is a problem here because citizens and even the parties believe these consultations are of a binding nature. There is thus some confusion in people's minds and we are trying to clarify the situation.

Listening to Mr Gross argue in favour of direct democracy, I said to myself that Switzerland was something of a model in this respect. To my mind, however, an important point is that Switzerland is in a permanent state of coalition government: in such a case, a form of communication is lacking between the Executive and the people which other democracies possess as a result of the competition established between government and opposition. Switzerland therefore had to introduce an additional channel of communication.

Mr Gross has also spoken about the abuses of direct democracy. He should add to his list the activities of specialised lobbies, which are so powerful in the United States.

Moreover, in most of our countries, we see a proliferation of opinion polls. Every month in Sweden no fewer than five institutes issue their analyses of the political situation! This fills the press, and the newspapers increasingly resemble racing journals. I should like to have the Rapporteur's opinion on this point.

Chair: Before giving the floor to Mr Gross, I should like to ask Mr Uibopuu to reply to the question put by Mr Bársony.

Mr Henn-Jüri UIBOPUU, Rapporteur: What subjects cannot be dealt with by referendum in Estonia? Under Article 106 of the Constitution, these are "questions relating to the budget, the state's financial obligations, the ratification and denunciation of international treaties, the introduction and ending of a state of emergency".

Why will Estonia not agree to a referendum on the action to be taken concerning land occupied by non-Estonians? I would first point out that, since 1989-90, the Russians have been in the majority in Tallinn. Now, it is quite obviously out of the question for us to surrender our capital! In addition, our frontier with Russia was fixed by the 1922 peace treaty, the treaty of Tartu. Another treaty is now ready: we are just awaiting Moscow's signature.

Narva, a frontier town, now has only 4% of Estonians - as against 40% in 1948 and 90% in 1945; at Kohtla-Järve, they number 20% and at Sillamäe only 3%. The result of a referendum would be in no doubt: this region would become Russian!

I shall take a deliberately provocative example: imagine that Germany had won the war and that two or three million Germans had settled in the Netherlands, Belgium and Denmark. Suddenly, 40 or 50 years after the war, the political situation is reversed and these countries ask the occupiers to leave, but the Germans reply: "No, we want to live here, we are the third generation."

Mr Andras BÁRSONY, Deputy (Hungary): No, it is not provocation. We cannot really consider that possibility for in history there are no "ifs". History is what it is. On the other hand, we have a duty to ask the most sensitive questions while paying heed to certain values, such as the right to a certain type of self-government, and looking ahead to the future since we have to think of the generations to come. We then cease to be crushed by the weight of the past. If you do not give people the right to decide their nationality on an equitable basis, population movements and conflicts will never end. Look at what has happened in Yugoslavia.

Chair: The European definition of democracy happens to be government of the people by the people!

Mr GROSS, Rapporteur: Mr Bársony is right; there are limits to direct democracy and the procedures must be exactly laid down; but do not forget that the people alone can limit its

power.

I am also in agreement with Mr Fogas, who says that democratic structures cannot be created in a state of poverty: witness the case of Albania!

I thank Ms Kuratowska for stressing the necessity for thorough discussion: if people feel that they are being deceived, they will not vote. This shows their maturity!

Mr Luciani, it is true that there is no watertight separation between a referendum and a plebiscite but there is little chance that a plebiscite will become a referendum if the leaders have an opportunity to take the initiative!

Mr Lekberg, Switzerland is a small country but a big world with lot of smaller worlds within it and therefore one that seems difficult to understand: its coalition governments are the fruits of direct democracy, not its cause! We may find Switzerland very puzzling but still consider direct democracy a good thing.

Opinion polls are only indicators; they will never be able to replace direct democracy; in surveys, the citizens are consumers; in direct democracy they are decision-makers, actors and subjects of politics, not just objects of politicians' decisions.

Chair: We will come back to the other questions tomorrow.

The sitting was adjourned at 6.35 pm.

IV. WORKING SITTING III

Theme II: Participatory democracy in other Eastern European countries

Rapporteur: Professor Ulrich HÄFELIN,
Zurich University (Switzerland)

Observations: Mr Robert FICO,
Deputy (Slovakia)

DEBATE

The sitting was opened at 9.10 am, with Mr Jansson, Chair of the Committee on Parliamentary and Public Relations, in the Chair.

Chair: We have been slightly delayed for reasons beyond our control. We will therefore start our agenda straightaway. I wish to welcome Professor Ulrich Häfelin, of Switzerland. Afterwards Mr Fico will take over from Mr Kelam, who has had to leave Vilnius early.

Professor Ulrich HÄFELIN, Rapporteur: I am very pleased to be attending this seminar. When I discovered the new constitutions of the East European countries two or three years ago, I was struck by the place which they gave to the popular vote and initiative. It is probably too soon to make any judgement about their practical value and we must also bear in mind that the new institutions were set up in difficult circumstances: economic, social and technical tensions are not very propitious to the implementation of democratic constitutions! In any case, the introduction of the referendum and popular initiative into constitutional law in order to give citizens the means to play an active role in politics can only be regarded as a step forward.

This reform entails guaranteeing the conditions for free political debate and putting people into a position to understand the problems in all their complexity and participate actively in seeking the best solutions. In this respect, I salute the Hungarian law under which questions to be decided via a referendum must be clearly formulated so that all citizens can answer them unambiguously.

The constitutions of Eastern Europe vary greatly as regards the questions which can be submitted to referendum. Certain constitutions are very general and refer to a popular vote on all questions of national interest. In most of them, the referendum concerns decisions falling within the competence of parliament - in other words, all legislative matters. On the other hand, questions of finance, the budget or amnesties are often excluded. But the breadth of the field covered by the referendum is not perhaps the most important aspect: what is vital, I feel, is that the citizens should be given clearly defined powers. How can they exercise such powers when this field covers "all questions of national interest" and when only the President can decide on the holding of a referendum?

It is a fact that the referendum is often used as an instrument of "confirmation": the Parliament or the President of the Republic may ask for a popular vote in order to give additional legitimacy to a decision. A referendum may also be employed when no clear majority emerges in parliament regarding a disputed question. A special type of referendum is the so-called "preliminary referendum" as it was provided for the elaboration of the new Constitution in Poland: in this case the referendum does not concern the adoption of a newly drafted Constitution, but is designed to give the people the possibility to express their opinion on certain basic questions of the planned Constitution. Similar is the "indicative referendum" of the Hungarian Law which allows in a general manner "the expression of opinion ensuring the contribution of the citizens to the decision-making of the parliament".

In my view, however, citizens should be able to play a more important role: I feel that the initiative for a referendum should be granted to a minority of members of parliament or to a certain number of electors. By this, of course, I do not mean just the right of petition, but actual power to impose such consultation. I also consider that the ratification of a new constitution or the adoption of amendments to the existing constitution implies a compulsory popular vote. Would it not be anomalous for a constitution to proclaim the sovereignty of the nation and to afford no possibility for a referendum on constitutional matters?

Another type of referendum much discussed in Switzerland is the "constructive" referendum. It has not yet been employed at federal level but has taken place in the cantons. Under the new constitution of the Bern Canton, for example, 10,000 citizens may request a referendum on a law passed by parliament and propose alternative wordings for certain sections of the law. Thus, when people vote, they can choose between parliament's wording and the version of the popular proposal. The advantage of this arrangement is that it counters some of the negative effects of referenda: citizens are not obliged simply to approve or reject a law, they can amend it. Clearly parliament must then have an opportunity to discuss the new proposal and give its opinion.

In most Eastern European constitutions, a referendum is only optional and is initiated by the President of the Republic, by the government or by a certain number of members of parliament or electors. With a few rare exceptions, it is parliament that takes the final decision to organise it. In the light of Swiss practice, I would say that, on the contrary, citizens should be able to propose such consultations without having to obtain the approval of parliament or of any other authority.

Certain constitutions require a specific turnout for the popular vote to be valid, while others are silent on this point. The Swiss Constitutional Law, as regards both federal and cantonal referenda, does not provide for any requirement of minimum participation; I am glad about this as the results are not so bad even if the turnout hovers around 40-50%.

A second instrument of direct democracy but one less used than a referendum is the popular initiative. In my opinion, the popular initiative has to be considered as the primary instrument of direct democracy. The number of electors required obviously varies widely from one country to another.

In Switzerland, at both federal and cantonal level, a popular initiative necessarily leads to a referendum. On the other hand, in most countries of Eastern Europe, it is essentially aimed at submitting a proposal to parliament, which is the ultimate judge of the action to be taken.

Organising a referendum or popular initiative raises numerous problems. Among other things, it must be verified that the constitutional conditions are met. Does citizen participation, does direct democracy, gain from being subject to monitoring by the Constitutional Court? This has been the case in Switzerland, the Federal Court having worked out a body of legal precedents concerning referenda which is proving extremely useful. I would therefore warmly recommend such monitoring by the courts, but it is clear that this can only be carried out satisfactorily if implementing conditions are clearly defined by the constitution or law. Any vagueness can only encourage political disputes and weaken the instruments of direct democracy. And these instruments must be developed if we are to make citizens participate more actively and promote a new political culture.

Mr Robert FICO, Deputy (Slovakia): As I have to leave at 10 o'clock I shall be unable to answer your questions, and I ask you to forgive me.

I congratulate Professor Häfelin on his presentation. The countries of Central and Eastern Europe have had to rebuild democracy in a few years, thereby accomplishing a task which took centuries in other states; if mistakes have been made, this is understandable in the circumstances!

Under the Czech Constitution of 1920, the referendum was limited to conflicts between government and parliament; the government had the right to submit a law rejected by parliament to referendum.

The Slovak Constitution at present distinguishes two types of referenda: one compulsory and the other optional. Article 93 provides that union with or separation from other states must be confirmed by referendum; a referendum may also be arranged at the request of parliament or of the President of the Republic on a petition signed by at least 350,000 citizens. Under Article 98, the result of a referendum is valid only if more than half of all registered electors took part in the vote and if the decision was taken by a majority of votes. A fresh referendum cannot be held on the same subject until three months have elapsed.

Slovakia has little experience in this field; the first significant attempt took place in 1994; on 22 October of that year a referendum on the financing of privatisation was held. However, the result was declared invalid as only 26% of registered voters took part.

The 1997 referendum was even more controversial. Originally 500,000 electors signed a petition demanding that the President of the Republic be elected by direct universal suffrage. Parliament wanted a referendum on joining Nato: the President of the Republic combined both questions in one referendum. This procedure gave rise to much debate and its constitutionality was challenged. The upshot was that fewer than 10% of the electors voted and the result was declared invalid.

The Slovak Constitutional Court was consulted and subsequently emphasised that power belonged to parliament but also to the people: it considered that a referendum could therefore amend the Constitution. Nevertheless, the Court stated that a positive result in a referendum was only a strong recommendation to parliament. It also noted that the text of the question on electing the President was incompatible with existing legislation.

The interpretation of this decision gave rise to the most varied comment; the majority of electors refused to take part in the vote. The Minister for the Interior was blamed for this situation.

To conclude, the referendum may easily become an instrument of political warfare between the parties and result in duping of the population. It is difficult, moreover, for the people to decide on a complex question: members of parliament themselves are often incapable of doing so! In any case, the law must be clearly drafted and preclude diverging interpretations.

In Slovakia, the population is not greatly in favour of another referendum!

Chair: No-one has so far spoken about the organisation of referenda.

Mr Valentin KUPTSOV, Member of the Russian Duma: I do not wish to ask a question but to make a statement.

This seminar is extremely interesting. And since we have been invited to speak frankly and openly, I wish to take this opportunity of making certain comments on democracy in Russia and the dangers which threaten it.

Democracy is still people power. Both in Tsarist Russia and under the Soviet regime democratic instruments existed. I have been a member of local and federal soviets: despite their shortcomings, these bodies were useful in enabling different social groups to be represented; they helped people to solve their problems even if quotas were fixed from above.

After the breakdown of the Soviet system we changed our legislation; we have a new Constitution and new institutions: for example, a new Duma was elected just a few weeks ago. Despite this, there is a noticeable crisis as regards confidence: in one region, the turnout was only 18%. One of the reasons for this lack of interest is that the people have no access to decision-making machinery: all decisions are taken by the President or by the head of the local executive! Our President has not appeared before the deputies since 1993. The government is no longer in the service of parliament, which is a very bad thing.

Russians have no longer had any confidence in the western democracies since the latter acquiesced in the siege of parliament. After six years, Russians, Ukrainians and Belarussians still do not have equal rights in the Baltic states.

It is not enough to introduce democratic procedures; it is also necessary to increase the power of the institutions which monitor those procedures. Observance of formal rules does not mean that a referendum is fair! The party in power enjoys considerable resources, particularly as regards access to the media. The ratio of the expenses incurred by Yeltsin and Ziuganov is one to a thousand! Under these conditions, the very concept of democracy loses all meaning.

In conclusion, procedures are not everything. Democracy must not act as a cover for totalitarian regimes; situations in which one person can initiate a referendum must be avoided. As regards the difference between a referendum and a plebiscite, international standards are essential.

Chair: Mr Fico has to leave: I shall therefore ask Professor Häfelin to comment.

Professor HÄFELIN, Rapporteur: It is very difficult to pass judgement on countries which are so different. The Swiss do not believe that everything would be fine if all states operated like theirs. The Swiss Constitution may have served as a model but it is not a cure-all. Our country also enjoys a considerable advantage in having a democratic tradition.

When it comes to improving democratic institutions, the way is long and varies from one country to another. Technology and informatics hold out advantages for democracy but also dangers.

Swiss democracy is closely linked to local democracy; it started at the grass roots and was only afterwards extended to the federal level. But since then the situation has changed considerably and we now have to take difficult decisions.

It is essential to have clear rules if we are to succeed. It is true that I am pleased about the clarity of certain provisions but I have to admit that others open the way to misinterpretations. If the President can decide to hold a referendum, it is not very democratic and may lead to difficult situations, particularly for the Constitutional Court, as has been seen in Slovakia. That country's court said yes and no at the same time, which I do not greatly care for ... in that specific case, one could not talk of a consultative referendum.

I am therefore in favour of extending the opportunities for the people to initiate a referendum directly, even though the approval of parliament is currently required in most countries. Even so, I am highly impressed by what has already been done, even if, as a result of tensions and the absence of a clear legal framework, conflicts cannot be contained, as they can in the long-established democracies.

Mr Andras BÁRSONY, Deputy (Hungary): You said that you were pleased that the Swiss Parliament is unable to intervene in a popular initiative. But the problem is not so much whether the initiative is constitutional as whether the question to be answered by the referendum is properly stated. If this is not so, the reply will nearly always be unclear. In Hungary, parliament satisfies itself that the required number of signatures has been collected and it then frames the question in a constitutional form. If the people responsible for the initiative do not accept this formulation, they may appeal to the Constitutional Court but the question must be clear if the reply is to be legally binding - on pain of allowing an impossibly tangled situation to develop. The role of parliament is limited to that: it does not decide on the content of the referendum.

Chair: For the past three years Austria, Finland and Sweden have been learning how the European Union is organised. Voters were accustomed to three levels - local, regional and national - but now they are having to familiarise themselves with a fourth level, the supranational. This takes time. I believe that the Finnish referendum was very favourable to the Union but if we had to do it again, if the people had to pass judgement on Monetary Union, I think that only 30 to 40% would now be in favour. People do not understand what is at stake and fear the disappearance of their national currency. Above all, however, they are saying to

their elected representatives: "It's not our job to bother with this business but yours, that's what you are paid for." Also, they are tired of voting: there have been five elections in my country in six months! You have to understand their reaction. But please forgive me for digressing!

Mr HÄFELIN, Rapporteur: I too support the gradualist approach: too many referenda in a country which has not had much experience with them does a disservice to the referendum. In Switzerland we have three or four on average every year, each of them dealing with two or more questions; we also have local and cantonal referenda. However, the majority of the population and most politicians would doubtless agree - here I defer to Mr Gross - that it is not too many. It is all a question of national experience and public debate.

In Switzerland, these consultations are an opportunity for lengthy discussion in the newspapers, discussions of a high level. The newspapers supporting each party even open their columns to representatives of other parties so that all sides of a question can be put before the public. Turnout is admittedly not very high, but as long as 30 to 40% of our citizens give their views on the questions put, not everything will go badly. It is certainly a pity that voters are not willing to make a greater effort but this is better than leaving the decision to parliament alone.

I shall conclude by singling out three general ideas. First, there must be clear rules. Each country must, like Hungary, introduce legislation on popular voting and the popular initiative instead of simply including general provisions in the constitution.

Second, over-general questions on which discussion is difficult must be excluded. In Switzerland, we have three clearly defined instruments of direct democracy: for certain important issues, as constitutional amendments, the referendum is obligatory. In other cases, as regards especially legislative acts, the citizens can collect signatures in order to submit a decision of the parliament to a referendum. And finally, signatures can be collected for a clearly drafted popular initiative which will be followed by a referendum. We have no referenda on general principles which would have only a consultative character for the parliament and which would be open to any kind of interpretation.

Finally, it does not bother us to have to decide several questions on the same day, but it must be pointed out that each of them is settled by means of a separate ballot paper. Confusion is therefore impossible. In addition, we make a point of not combining a vote on a legislative or constitutional matter with a political vote or an election and there is no possibility, as in Estonia, of a win by the "noes" bringing about new elections. The political aspect would overshadow the other. A referendum therefore does not prejudice the position of parliament. For example, after the first world war, the electoral system was amended by means of an initiative which had been fiercely opposed by the government but parliament nevertheless survived. This type of vote cannot be interpreted as a vote of no confidence. However, in the new democracies - particularly the Czech Republic and Slovakia - this confusion between political and legislative issues has in fact occurred.

Chair: As Mr Häfelin mentioned the case in which a referendum could lead to the dissolution of the Estonian Parliament, I shall ask Mr Uibopuu to comment. I shall ask him at the same time to reply to Mr Kuptsov, who has again mentioned his concern about the situation of Russians, Ukrainians and Belarussians in Estonia.

Mr Henn-Jüri UIBOPUU, Professor at the University of Salzburg, Tallinn (Estonia): I have nothing to add to what I said yesterday concerning this last point. Regarding the first point, as I have also said, under Article 105 of the Constitution our parliament has "the right to submit a bill or other questions of national life to a referendum". If this bill "does not obtain a majority of the votes cast, the President of the Republic calls extraordinary elections to the Riigikogu". This rejection is thus equivalent to a vote of no confidence in parliament, which is normally elected for four years. If the people are not satisfied with the Riigikogu, they can cause it to be dissolved. This is a highly original provision, in my view.

Ms Tanja ESPE, Foreign Relations Consultant (Estonia): I should like to give some additional explanations in reply to Mr Kuptsov. Every state must be able to rely on a certain loyalty on the part of those living on its territory. This being so, the question of "non-Estonians" is one of citizenship, not nationality: Estonia has never made any distinction between nationalities, and ethnic Russians, Ukrainians and Germans have been able to become citizens of the first Republic of Estonia without any problem. Citizens of the Soviet Union have likewise been able to request Estonian citizenship - we have never forced anyone to do so - and have obtained it unconditionally since in doing so they were demonstrating their loyalty. In particular, they have never had to take a language test. However, many remain non-citizens because for various reasons they have preferred to wait.

Mr Francesco Enrico SPERONI, Senator (Italy): Must parliament be dissolved if the result of a referendum goes against the line it has taken? In Switzerland, the reply is no; in Estonia, yes. The question is very interesting but there can obviously be no single reply. It seems to me that a parliament which has gone against the will of the people is no longer legitimate, but the deputies - at least I hope so - made up their minds in good faith and without knowing what that will was. Accordingly, would not the simplest solution be to add to the question asked in the referendum a further question: "Do you wish parliament to remain or not?" The problem would be solved. It is conceivable that, while opposing a course recommended by parliament, the citizens might not desire it to be dissolved.

Chair: I would say that we can get some idea from those opinion polls whose proliferation so alarms Mr Lekberg.

Mr Henn-Jüri UIBOPUU, Professor at the University of Salzburg, Tallinn (Estonia): The members of our constitutional assembly sought a proper balance of power between parliament and the people. In addition, they permitted the President to dissolve the Riigikogu if the latter did not adopt the budget after two months' debate: another very special provision.

Mr Lavoslav TORTI, Secretary of the Committee on Interparliamentary Relations (Croatia): Mr Häfelin, I draw your attention to Article 1 of our Constitution: "In the Republic of Croatia, power derives from the people and belongs to the people as a community of free citizens having equal rights. The people exercises this power through its elected representatives

and by direct decision." You quoted Article 87 in your report but you ignored Article 135: "At least one-third of the members of the Sabor (our parliament), the President of the Republic and the government can take the initiative of proposing a procedure for association with other states. The preliminary decision concerning association is a matter for parliament, which will decide by a two-thirds majority of the votes of all its members. The decision on association of the republic is adopted by referendum by a majority of the votes of all electors (...) The referendum must be held within 30 days of the day on which parliament gave its decision." The same provisions apply to any "disassociation" or separation procedure.

The referendum of May 1991, through which 93% of Croats expressed their desire for independence, was organised on the basis of this Article 135. Parliament proclaimed the sovereignty of Croatia some months later, on 8 October 1991.

Chair: Thank you for these explanations. The Rapporteur was unable to quote all the constitutions of the states which are members of the Council: don't forget there are now forty!

Mr Andras BÁRSONY, Deputy (Hungary): If parliament is dissolved, elections must be organised. One of the drawbacks of direct democracy is that the people never vote against their own interests but always for lower taxes and higher expenditure. There is therefore some logic in constitutions: financial and budgetary questions are never submitted to referendum.

V. WORKING SESSION IV

Theme III: Participatory democracy and civil society

Rapporteur: Ms Auli KESKINEN,
Director of the Department of Research and Development
at the Ministry of the Environment (Finland)

Observations: Mr Francesco Enrico SPERONI, Senator (Italy),
Vice-Chair of the Sub-Committee on Participatory Democracy of
the Committee on Parliamentary and Public Relations of the
Parliamentary Assembly of the Council of Europe

DEBATE

Ms Auli KESKINEN, Rapporteur: Democracies need a long-term vision and alternative policies; this is true of Lithuania, for which a radiant future is opening up, as it is for all other European countries, which are calling for innovative solutions. Even Finland has been plunged into social change by the recession! Our parliament has accordingly set up a "Futures Committee", which has just issued its report. In its preface, Ms Uosukainen, the Speaker of Parliament, says that the future must be analysed in the light of the past. The report itself stresses that during periods of social transition parliaments are often left in the background and that they therefore endeavour to strengthen their role and revitalise their activities.

The state is in the midst of change: previously it was a provider of services; now it is trying to strengthen the economy. The stress is no longer placed on coercion but on knowledge and guidance. This process is unfolding in stages; there is no single road to democracy; it is, in fact, a learning process taking place in continuous interaction.

Representative democracy can become direct by becoming participatory or even deliberative: information technologies can provide citizens with all the data they need to take decisions.

For citizens, one means of intervening is the referendum. Unfortunately it is not the citizens who choose the subjects of the referenda.

In her 1992 book *Televote*, Professor Christa Slaton defines the concept of deliberative democracy; in her view, deliberation is made up of access to information and reflection. However, some researchers have their doubts: for them, the choice of subject is fundamental.

What are the pre-requisites for the development of democracy in civil society? First of all, everyone must be able to read and write - which raises the problem of illiteracy; secondly, everyone must have free access to information: text, image, sound, music etc; lastly, there must be cultural pluralism and interaction through the proper use of information networks.

Needless to say, research in these fields must be the object of sustained effort: for example, Finland has invested \$10 million in the areas of citizenship and the economy of the information society.

Humanity will not be able to effect the radical change which is crucial for a sustainable future without a dramatic increase in the intensity and quality of human communications.

Chair: Thank you. I notice that your report concludes with a very fine quotation from Keynes: "The difficulty lies not in new ideas, but in escaping from old ones."

Mr Francesco Enrico SPERONI, Senator (Italy): The science fiction books which I read in my youth presented a negative image of technology; today we are talking about televoting. New means of communication are emerging: telematics, informatics, etc. But one of the brakes on teledemocracy is the unequal distribution of computerisation: while 10% of the Swiss population has computers, Italy is nowhere near that point and could not consider telematic access to direct democracy, even though some experiments have already taken place.

Yet, this direct democracy, which has come to us from Greece after a detour through Switzerland, is not entering the electronic era without coming up against certain difficulties: what about confidentiality? Can we ask citizens to delve deeply into all the questions on which they have to voice their opinion?

In Italy, only the abrogative referendum exists but sometimes, by abolishing some laws, we create others. There is nothing to prevent parliament from indulging in instant legislation: thus, after one abrogative referendum, the Minister for Agriculture became the Minister for Agricultural Resources, and the situation remained unchanged.

In Italy, the Bi-cameral Parliamentary Committee has just finished its work on the new Constitution; its proposals will be examined by parliament and submitted to referendum. Besides the abrogative referendum, the new Constitution provides for a referendum to be proposed on the initiative of at least 800,000 citizens; the referendum may concern both bills and amendments. If parliament takes no decision within eighteen months, this new type of referendum will come into force automatically.

Chair: I told Mr Torti that the Council of Europe consisted of 40 states and thus of 40 constitutions, but only 39 of these are written; the remaining one is a famous unwritten constitution!

To my great regret I must leave this extremely fruitful seminar. Mr Bársony will take over in the chair. I thank you all and wish you bon voyage, particularly those who are leaving to observe the second round of the Albanian elections. We shall meet again on 5 September in Paris. (*Applause*)

Mr Andras Bársony (Hungary) replaced Mr Jansson in the Chair.

Mr Lorenzo ACQUARONE, Deputy Speaker (Italy): Mr Speroni has reminded us that direct democracy is of Greek origin: as it happens, the people met in the Agora to debate the sentencing of Socrates to death... (murmurs). More seriously, following in Mr Speroni's

footsteps, I wish to stress that every constitution can be improved. We Italians currently have only the abrogative referendum at our disposal.

I am here in my capacity as Deputy Speaker of the Chamber of Deputies, but I cannot forget that I am also a professor of public law. I am in favour of expanding participatory democracy: representative democracy cannot alone meet the need for citizen participation. Yet, modern technologies present dangers which have not been mentioned by the rapporteur. Do they preserve voting freedom and confidentiality? Mr Speroni is right to be anxious. Voting in a booth is perhaps old-fashioned but does provide guarantees on this point!

I am also concerned at the influence wielded over the less-educated masses by the new information media. Whoever has a major information medium at his or her disposal - I am thinking particularly of television - can influence the popular will; advertising permits many abuses. The American example is highly enlightening in this respect.

In Italy we possess three instruments of direct democracy; participation by the people in the creation of networks for the popular initiative, petition and referendum. The first two have not produced much of a result as the people can always be forestalled by a deputy who initiates a referendum. Referenda have, however, had a powerful impact on our society inasmuch as, apart from their frequent use at local level, they have often related to subjects which were of concern to society as a whole. They have shaped the institutions and, in the case of divorce and abortion, have been at the centre of lively debates on matters of conscience. Recourse to this procedure - which, I repeat, is still limited to the abrogative referendum - has increased inordinately in recent times, but public interest has waned as a result and, during the last consultation, turnout was very small. While a referendum can therefore serve democracy, an excess of referenda can damage it.

It may likewise be regarded as a good thing that there has been an inadequate turnout in the case of certain technical subjects, if we bear in mind that the people have already prevented -by referendum - the production of nuclear energy. Italy is now forced to buy electricity from its neighbours because of this purely emotive decision. Yet there are French power stations right on our frontiers.

The referendum is a means of strengthening civic awareness. Representative democracy is not sufficient and we are today witnessing a crisis in relations between the public and parliament. Regarding the major questions, however, let us not under-estimate the risks of things going wrong, as members of parliament themselves often lack the skills needed to take a decision.

Mr Roland ROBLAIN, Foreign Relations Section of the Belgian Senate: I should like to clear up some confusion about terms. Although this seminar is about "participatory democracy", it is mainly direct democracy that we have been hearing about both today and yesterday. Are the two terms therefore synonymous? It has also been stated that direct democracy can "damage" representative democracy, which implies opposition. A middle road would be to locate participatory democracy between representative and direct democracy. Ms Keskinen quoted in her report a definition by Benjamin Barber whereby participatory democracy is seen as a dialogue between elected representatives and citizens. I consider that direct democracy as we have referred to it does not comply with this definition: in a referendum, do we not simply shut ourselves up in a voting booth so as to put a cross beside a reply just as

we would put a cross beside a name in an election?

How then do the specialists define participatory democracy? Might it not be simply a pipe dream or an illusion? In that case we would be left only with direct and representative democracy or, in Ms Keskinen's words, "deliberative" democracy. Or would direct democracy be one aspect of participatory democracy among others?

Again, while we may justly denounce citizens' lack of motivation and the widening gap between them and the politicians, is it thought that all this can be cured by referendum? What about those who are excluded from the mainstream of society or marginalised? I feel that the solution would instead be to let the people speak, to harken to them, to step up the number of meetings - that would be participatory democracy.

Mr Andreas GROSS, General Rapporteur: I should like to stay with this question of the relationship between direct and participatory democracy. The latter seems to me to be richer in culture and democratic procedures than the former, which is gripped in a framework defined by the constitution and which allows the citizens to intervene only in the preparation of legislation. In my opinion, such direct democracy is only one aspect of participatory democracy. The latter also includes representative democracy, but it is necessary to add to it something which we have not talked about as it was not on our agenda: democracy in the work place, participation within the company, co-management. We could also bring in other societal values and talk about what happens in the churches and parties as democratic communities, as well as in a number of supra-national bodies. Wherever the citizen ceases to be an object and contributes to decision-making, and this does not happen only at state level or by virtue of the constitution, there is participatory democracy.

Mr Roy HUGHES, MP (United Kingdom) : The debate on electronic democracy and voting procedures is currently of considerable interest to the British Parliament, and has been especially so since the last general election. Voting in the House of Commons and, in particular, counting of the votes are taking up more and more time. Moreover, certain members of parliament are using the procedure to exert pressure on the government, so it is a subject to which we are devoting attention.

According to Mr Acquarone, the Italian people were ill-advised to reject nuclear power stations. On the contrary, the general welfare was at stake! The inhabitants of Chernobyl did not have that choice. The problem of nuclear safety is not very easy to solve, but to some extent I am inclined to congratulate the Italians on their decision.

Ms KESKINEN, Rapporteur: Without taking any pride in the fact, I would point out to Mr Speroni that the Finns use the Internet more than other Europeans: 55 out of 1,000 inhabitants are connected. And 35% have mobile telephones.

I think it would be premature to try to use the electronic networks for voting. On the other hand,

these networks can facilitate the provision of information, public debate and interaction between citizens and decision-makers. Yet let us not forget that every technology, neutral as it is in itself, involves risks when used - in this respect, a computer resembles, let us say, an axe. It is for the citizens to measure these risks and assume their responsibilities.

Regarding the distinction between participatory and deliberative democracy, I would say that both are forms of direct democracy but they are not the only forms. In present-day society, the role of the NGOs, for example, is all too often neglected. However, a growing number of people working in those organisations are asking to take part in decisions: channels permitting this should doubtless be established. Bear in mind that, in Finland, everyone is a member of at least five NGOs.

Chair: Your statement concludes the discussion on this last theme. I now ask the General Rapporteur to speak.

VI. CLOSING SESSION

General conclusions: **Mr Massimo LUCIANI,**
**Professor at the University of La Sapienza, Faculty of Political
Science, Rome (Italy)**

Closing remarks: **Mr Andras BÁRSONY, Deputy (Hungary)**
**Chair of the Political Affairs Committee of the Parliamentary
Assembly of the Council of Europe**

Mr Massimo LUCIANI, Professor at the University of La Sapienza, Faculty of Political Science, Rome (Italy): As Italian is one of the official languages of the seminar, I shall follow the example of Mr Gross, who spoke in German, and express myself in my mother tongue.

When one has to submit the conclusions of a meeting of this type, it is usual to maintain that it is an impossible exercise. I was no exception to the rule when I had to wind up the seminar on the democratic functioning of parliaments in Strasbourg but I have even stronger reasons for saying it today when the debate has been so varied and complex. All I can do is to try and lay down avenues for research and study.

There have been two parallel threads to this seminar. On the one hand, certain specific experiences have been analysed - those of the Baltic states and of the other countries of Central and Eastern Europe - and, on the other hand, questions of theory or general policy have been raised in connection with referenda and direct democracy.

I shall talk about the referendum in the general sense, drawing distinctions only when essential. I would first stress the need for monitoring and I am grateful to Mr Häfelin for stressing the case for clear rules on how the monitoring body must act. Such rules are all too often lacking. For example, Article 75 of the Italian Constitution simply prohibits referenda on, inter alia, budgetary matters and the ratification of treaties, but this provision did not prevent the Constitutional Court from ruling out, in 1978, in the interests of the uniformity of the relevant law, any referendum not only on a ratification law but also on a law involving the discharge of international obligations. It did the same thing in 1984 in regard to laws relating to execution of the budget or any financial question. This interpretation frustrates the intentions of the founding fathers of the Republic.

Who should carry out such monitoring? It appears that Mr Bársony would prefer parliament rather than the Constitutional Court to have this responsibility. But the Italian experience suggests otherwise. I believe there is no magic solution in this area and that it would be better to weigh carefully the various counter-arguments according to each country's experience.

I come to the second thread of this seminar and to more general questions. It has been asked

whether there should be a difference between the long-standing democracies and those countries which have only recently achieved pluralist democracy. Here I would stress the need for prudence even if, as Mr Gross has said, one only learns to swim by jumping into the water.

The attitude towards direct democracy during this debate appeared favourable in general, but I noted a tendency to place this form of democracy in fundamental opposition to representative democracy. In my view, a balance must be struck between the two - this is, in fact, one of the conclusions I drew from the Strasbourg seminar as one of the points in the resolution adopted by the Parliamentary Assembly on 22 April of this year: "... the Assembly invites the member states ... to improve their system of representative democracy by striking a balance between the exercise of responsibility of political power and the role of citizens in the decision-making process".

Much confusion has recently surrounded this debate. Among others, Mr Hughes' statement is significant: identifying the referendum with direct democracy, he blamed it for not being suitable for solving complex problems; it only allows a "yes" or "no" answer, some win and some lose and no compromise is possible. I feel this criticism does not really hit the mark. Representative democracy remains the foundation of pluralist democracy; direct democracy is only its complement, as stated in paragraph 6 of the Resolution of 22 April.

The principal function of direct democracy is to vitalise representative democracy; it allows questions to be put on the agenda which are not considered by parliamentary groups. As noted by Mr Dagys, a referendum must fill in the gap between the political elite and voters. Recourse to direct democracy need not be frequent if the political parties are prepared to pay heed to the concerns of citizens. If not, the voters themselves must be allowed to choose the subjects to be submitted to referendum.

Nevertheless, direct democracy should be employed within certain limits, bearing in mind that it can prove dangerous: paragraph 15.ii of Resolution 1121 invites member states "to regard all subjects as suitable for being submitted to a referendum, with the exception of those which call in question universal and intangible values ... and the basic values of democracy". In my view, the problem is actually less acute as regards human rights than for the rights of minorities.

Should voters be able to decide on budgetary questions? Max Weber maintained in *Wirtschaft und Gesellschaft* (1921) (*On Law in Economy and Society*) that the budget could not be the subject of a referendum. Carl Schmitt took up the theme in 1927; a provision to this effect appears in many European constitutions. This limitation seems to me to be reasonable: a referendum is a referendum!

I do not agree with Baltic constitutions which provide for parliament to be dissolved in the event of a negative result in a referendum: such a system is dangerous, since it gives the referendum a conflictual flavour and challenges parliamentary responsibility. From this point of view, the solution proposed by Mr Speroni is not convincing: parliament risks living under a perpetual threat of dismissal.

The idea that the referendum is a weapon that the people can use against the parties arises from a primitive view of democracy; as the Latins have known since Cicero and Livy, voting makes

for integration. A referendum changes the logic of the political struggle by enabling the will of the voters to be expressed directly.

In conclusion, I do not believe that teledemocracy is a remedy, as proposed by Ms Keskinen. The electronic agora has nothing to do with the Athens agora! In electronic democracy there is an intermediary between the voter and the subject of the election; who decides the agenda, the timing of the choice, the wording of the question? Who decides what information should be circulated over the public networks? Besides the problem of an over-abundance of information, there is the problem of availability: not everyone has time to participate continually in electronic decision-making. Time is needed to obtain information and discuss matters - as Mr Gross and Mr Häfelin have reminded us; time is also needed for decisions to be implemented; they cannot be changed every day!

Thus, even if they become more mature, citizens seem likely to participate like Greek citizens; according to Aristophanes, they did not participate that much!

Again, is there any clear idea of the psychological mechanisms associated with the use of information networks?

Let us therefore expect from a referendum only what it can give; let us not demand too much of direct democracy and content ourselves with appreciating its advantages. Popular participation cannot be unlimited and unchecked, this "potestas absoluta" which has all too often been brought into conflict with "potestas ordinaria". Constitutionalism is a method of ensuring freedom and equality: that is why every constitutional decision calls for the most extreme prudence, with no fundamentalism, even parliamentary, being allowed!

The real solution is to strike a balance between apparently opposing ideas. (*Applause*)

Mr BÁRSONY (Chair): Why has such a seminar been organised? With the creation of the Council of Europe in 1949, Europe took a decisive step forward: our founding fathers wanted to give democracy every chance of succeeding throughout the continent. The enlargement of the Council, which now has 40 members, shows that their decision was justified.

Today we find ourselves at a new crossroads. It is widely agreed that democracy in Europe suffers from shortcomings; the purpose of this meeting was to try and identify the forms that democracy will take in the 21st century. Direct democracy, representative democracy, intermediate solutions, right of self-determination, right of secession; all these questions must be addressed by the Council of Europe, which is the conscience of the continent.

A number of speakers have stressed the need for political maturity on the part of citizens. In a country where civil society is weak or non-existent, direct democracy can co-exist with dictatorship; it is a means of destroying parliament, the democratic institution par excellence; a civil society is needed if there is to be direct democracy.

This seminar has been a success: Mr Gross will undoubtedly draw up an exciting report about it.

I wish, finally, to thank the Lithuanian Seimas and to express my gratitude to all those who contributed to the success of this event, held as it has been in the beautiful capital of a young democracy. Let us hope that the work we have done will enable us to find the best solutions for 21st century democracy! (*Applause*)

The sitting was closed at 12.50 pm.

VII. REPORTS

1. **Plebiscites in Baltic States** by Mr Henn-Jüri UIBOPUU,
Professor at the University of Salzburg Tallinn, Estonia
2. **Historic and present challenges of participatory democracy**
by Mr Andreas GROSS Member of the Swiss National Council,
Political scientist, Lecturer at the Universities of Marburg and Speyer, Head of the
Institute for Participatory Democracy in Zurich
3. **The instruments of direct democracy in the Central and Eastern European
countries** by Mr Ulrich HÄFELIN, Professor at the University of Zürich, Switzerland
4. **Participatory Democracy and Civil Society - Transforming Societal Decision
Making in the Information Age** by Director of the Department of Reseach and
Development at the Ministry of the Environment, Finland

COMMITTEE ON PARLIAMENTARY AND PUBLIC RELATIONS

Seminar on

**PARTICIPATORY DEMOCRACY IN CENTRAL AND EASTERN EUROPE
TODAY: CHALLENGES AND PERSPECTIVES**

Vilnius, 3-5 July 1997

Plebiscites in Baltic States

by

Mr Henn-Jüri UIBOPUU
Professor at the University of Salzburg
Tallinn, Estonia

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3. FINAL CONCLUSIONS

1. THE TIME BETWEEN THE WARS 1918 - 1940

Introductory Remarks

“The new constitutions have not been content with the mere statement of the fact of popular sovereignty, but have sought direct means of giving the people the power of exercising their sovereign rights.” These words written in 1928¹ can be taken as an introduction to our subject, because, in fact, this “popular euphoria” was very much the spirit of these days after the successful establishment of statehood and, after a very long period of foreign suppression and rule. Democratic thoughts were very popular in these times and found their expression also in the first Constitutions of the Baltic States². All three Constitutions referred in their preambles to the people, but the Lithuanian started with the words: “In the name of God the almighty” which should be understood in that sense, that because of piety the name of God was placed before the people³.

Some arguments in favor of a plebiscite⁴ have been its supposed educative value of the frequent voting of the citizens on particular measures of national importance⁵, but the practice which followed was only in Estonia in favor of this statement.

1.1. Estonia

The Estonian Constitution of 1920 provided for plebiscites in two cases:

25 000 voters had the right to demand a referendum on any specific law⁶, or on the passing, modification or repeal of any law. If the law passed by the National Assembly was repealed, the latter was ipso facto dissolved and new elections had to be held⁷.

1 Agnes Headlam-Morley: *the New Democratic Constitutions of Europe*, Oxford 1928, 132

² Estonia of June 15, 1920, **Riigi teataja** (henceforth: **RT**) **1920/113-114**; Lithuania of August 1, 1922, **Vydrausbes Zinios** **1922/100**; Latvia of February 15, 1922

³ H. Rolnik: *Die baltischen Staaten Litauen, Lettland und Estland und ihr Verfassungsrecht*, Leipzig 1927, 59

⁴ the present writer shall use the words: plebiscite and referendum synonymously

⁵ Headlam-Morley *op. cit.* 143

⁶ which had to be withheld from proclamation for a period of two months by virtue of § 30 of the Constitution

⁷ Art. 32 of the Constitution

Constitutional amendments could be initiated either by the people or by the National Assembly, they could only be passed by a referendum⁸.

A provision of the 1920 Constitution could today be regarded as somewhat awkward. The people who had legally been declared to be insane has no right to vote, the blinds, the deaf-mutes and the spendthrifts, if they were under guardianship.

In 1934 a Law on the election of the State Assembly and Referenda and Plebiscites was adopted⁹ together with an constitutional amendment, which, however, did not repeal the popular democracy as described above.

The 1938 Constitution provided for the right of one third of the delegates to the National Assembly also to demand a referendum. Again, if the decision of the Assembly did not coincide with the results of the referendum, the Assembly had to be dissolved and new elections to be held.

The right to plebiscites (referenda) was used in Estonia for the first time on February 17-19, 1923 on the question of religious instruction in schools. With 328 369 votes against 130 476 this question was decided to the effect that religious instruction was to be included in the school curriculum but participation was to be optional¹⁰. In 1926 members of the Social Democratic Party in the National Assembly proposed a referendum on the law providing indemnification for the nationalization of certain estates¹¹. This proposal, however, after being temporarily admitted, was rejected on the ground that § 34 of the Constitution excluded tax laws from matters subject to a referendum. This judgment was based on a rather broad interpretation of the term “tax laws”.

The next referendum took place already in the political crisis of the years 1931-1934. A draft constitutional amendment of the National Assembly, adopted on March 28¹² was submitted to a referendum on August 13-15, 1932 and was rejected by the electorate by 345 215 to 333 979 votes¹³. The position of some members of the National Assembly was described by an Estonian author as follows:

⁸ Art. 88

⁹ **RT 1934/5**

¹⁰ **Riigi teataja** (official bulletin) henceforth: **RT 1923/35**, cf. also: Eesti Vabariik 1918-1940, Lund 1968, 99

¹¹ **RT 1926/35**,. cf. also: S.v.Czekey: “Die Verfassungsentwicklung Estlands 1918 1928”, **XVI Jahrbuch des öffentlichen Rechts der Gegenwart** (henceforth: **JbdöRdG**) 1928, 13

¹² **Archiv der Gegenwart** (henceforth: **AdG**) 1932, 254

¹³E. Laaman, “Põhiseaduse kriisi arenemine 1928-1933” in: **Põhiseadus ja Rahvuskogu**, Tallinn 1937, 40; cf. also **AdG 1932**, 447

“Some members of the National Assembly were of the opinion that the draft would pass the referendum anyway... Others regarded it as a flying kite, as a psychological concession to the public feeling. After passing the draft in the Assembly, they stood aside and waited to see which way the wind was blowing.¹⁴”

It is not fully surprising that the Assembly did not accept the consequences of the rejection of the referendum of a law passed by the Assembly¹⁵. According to § 32 of the Constitution new elections had to be held if the people by referendum rejected a bill passed by the Parliament, but the President of the National Assembly, however, expressed the opinion, that a draft constitutional amendment could not be held as a law in the sense of § 32 of the Constitution. This interpretation of the wording of § 32 can hardly be called to be correct¹⁶. If the Constitution already provided for the dissolution of the Parliament *ipso jure* if an ordinary law failed to pass the referendum, *a fortiori* a rejection of a constitutional amendment should have brought about new elections¹⁷.

On 10 November 1932, the VABS¹⁸ submitted their constitutional amendment draft¹⁹, accompanied by more than 50 000 signatures to the Presidency of the National Assembly, but at about the same time the leader of the former Agrarian Party proposed that a constitutional amendment be drafted by a new Constituent Assembly especially elected for this purpose²⁰. Before the VABS draft, which, inter alia, included a provision that a state of emergency could be declared only in the case of war or of immediate danger of war²¹, could be submitted to a referendum²², the National Assembly, however, elaborated its own second draft²³, not without

¹⁴ *ibid*, 39

¹⁵ J. Uluots in **Põhiseadus ja Rahvuskogu** *op.cit.*,25

¹⁶ Laaman *op. cit.*, 42 and W. Toomingas: *Vaikiv ajastu Eestis*, New York 1961, 31

¹⁷for more details cf. from this author: “The Constitutional Development of the Estonian Republic”, **IV Journal of Baltic Studies** 1973, 16f

¹⁸ Vabadussõjalased (Veterans of the War of Independence)

¹⁹ **RT** supplement of December 9, 1932

²⁰ cf. Laaman *op. cit.* 39-41

²¹ **AdG 1933**, 1005

²² v. Czekey: “Die Verfassungsänderung in Estland”, 4 **ZaöRV** 1934, 586

²³cf. **AdG 1933**, 732with the reference to the fact, that the most important provision of this draft was the introduction of the office of the State President who would have the competence to convoke and to dissolve the Parliament and would have the restricted right to veto a bill.

again manipulating the Electoral Law²⁴. A referendum was held on this draft on June 10-12 1933. Although there was no substantial difference between this draft and the VABS-version, the draft once again failed, this time with a vast majority of 333 118 against and only 161 598 in favor²⁵. An Estonian author writes, that: "...with the failure of the 1933 plebiscite the life of the National Assembly became completely confused. Nobody knew what to do²⁶."

In the tense atmosphere that followed this referendum a state of emergency was proclaimed, all para-military organizations of political parties were outlawed and pre-publication censorship was imposed. But now not even the National Assembly could stop the VABS draft from a referendum, which finally took place on October 14-16, 1934²⁷. The results of the referendum surpassed all expectations. The VABS draft was accepted with 416 878 votes against 156 895 votes²⁸. This result was later called a "bloodless revolution"²⁹. After this referendum the supreme organs of the State resigned and a caretaker government was formed by Konstantin Päts, not before repealing the state of emergency. The period of four years that followed was called the "silent time"³⁰.

In 1936 the then acting head of State, Konstantin Päts initiated a referendum to authorize the Riigivanem³¹ to convoke a bicameral National Assembly with the task of either amending

²⁴The electoral Law of February 18, 1926 (**RT 1926/16**) ruled in § 37(1) that a constitutional amendment has passed if more than a half of the total electorate agreed to the draft (absolute majority). Before the 1932 referendum on the Assembly's draft this provision was modified by the National Assembly to make the participation in the referendum obligatory, with the proviso, that a simple majority of votes could pass the draft (**RT 1931/50**). Before the second referendum on the Assembly's second draft, this provision was again amended, this time requiring only 30% of the legal number of electors for passing the draft (**RT 1933/19**); cf. also: A.v.Csekey: "Die Verfassungsänderung in Estland", **IV Zeitschrift für ausländisches öffentliches Recht und Völkerrecht** 1934, 582ff

²⁵cf. Toomingas *op. cit.*, 42. E. Tatarin-Tarnheyden: "Autokratische Regierungen in Lettland und Estland und deren völkische Politik", 26 **Archiv des öffentlichen Rechts** 1934, 309, however quotes 333 107 and 161 595 votes respectively.

²⁶ Laaman *op. cit.* 42

²⁷after the National Assembly had once again modified the electoral law, now requiring again an absolute majority (**RT 1933/81**)

²⁸ **RT 1833/86**

²⁹ Laaman cited in Toomingas *op. cit.* 53

³⁰ vaikiv ajastu

³¹ verbally: State' elder, but in fact head of State

the 1933 Constitution or to draft a new one³². An overwhelming majority of 75,4% of those voting or 62,3% of the electorate approved the presidential bill³³. The Constitution elaborated by the Constituent Assembly, passed the Assembly on July 28, 1937³⁴ and promulgated by the acting President on August 17, 1937³⁵. It came into force on January 1, 1938.

The history of Estonia until the Soviet occupation on June 17, 1940 was, hitherto, full of referenda as an example of direct democracy. Although Estonia went through a period of non-democracy, as many European states³⁶, it returned to democracy thanks to its own initiative and to some statesmen. Unfortunately, there was little time left to implement the new constitution. The outbreak of World War II, the new dimensions of world politics perhaps influenced the Estonian decision makers to withhold a too rapid return to a multi-party system and to more liberalization.

1.2. Latvia

The Latvian Constitution of February 15, 1922 provided for a referendum in three cases. Art. 72 called for a referendum if the promulgation of a law has been postponed by the Saeima³⁷ and at least one-tenth of the electorate so desired. The referendum should not have taken place if the Saeima had put this law to vote once more and if not less than three-fourths of all her members were in favor of its adoption. Not submitted to a referendum should have been matters such as budget, loans, customs duties, railway tariffs, military service and questions of war and peace³⁸.

If the Saeima had modified the first, second, third or sixth Article of the Constitution, such amendments should have been submitted to a referendum in order to acquire the force of laws³⁹.

³² **RRT 1936/21**

³³ Klesment in: **Põhiseadus ja rahvuskogu** *op. cit.*77-78

³⁴ A. Mägi: "Põhiseaduse koostamise käik" in: **Põhiseadus ja Rahvuskogu**, 265

³⁵ **RT 1937/71**

³⁶6. **Herders Staatslexikon 1961** mentions Poland (1926, p. 311), Lithuania (1926, 866), Latvia (1934, 863) and, besides Germany and Italy also Portugal (1926, 404), Austria (1934, 45) and Rumania (1938, 996).

³⁷ Parliament

³⁸ Art. 73 of the Constitution

³⁹ Art. 77

The population of Latvia had also some rights concerning the amendment of the Constitution. According to Art. 78 not less than one-tenth of the electors had the right to submit to the President a fully elaborated scheme for a constitutional revision, or a bill, which should have been submitted to the Saeima by the President. In case that it should not have been accepted by the Saeima without substantial amendments, a referendum had to take place. If at least one-half of the electorate voted in favor of the constitutional amendment, it was adopted⁴⁰.

Between the wars, six referenda have taken place in Latvia⁴¹. A referendum on the legal status of the Riga Domchurch, on which the parliament decided negatively on July 22, 1931, failed however, like the rest of the referenda on September 5-6, 1931 because of lack of participation⁴².

1.3. Lithuania

The first Lithuanian Constitution of 1922 granted in its § 20 to 25 000 people, eligible for elections to the Seimas the right to initiate a law. The right to initiate a constitutional amendment had 50 000 eligible citizens by virtue of § 102 of the Constitution. §103 stipulated that if a constitutional amendment had passed the Seimas, three months after publication of the amendment, the President of the Republic, 2/3 of the deputies of the Seimas or, again 50 000 eligible citizens, could have demanded a referendum on the amendment. The amendment was invalid if at least 50% of the participants in the referendum voted against it and at least 50 % of the electorate had participated in it. Furthermore had a referendum to be held in case of diminishing of Lithuanian territory⁴³.

The Constitution was amended in 1928. § 4 remained as it was. § 102 became § 103 and § 103 became § 104. A new § 105 stipulated, that on application of the government or of 50 000 eligible citizens there should be a referendum on every law, either adopted or rejected by the Seimas. § 106 proclaimed, that within 10 days from the day when this Constitution entered into force, there had to be a referendum on the Constitution. The Constitution of February 11, 1938, did not provide for plebiscites any more⁴⁴.

⁴⁰ Art. 79

⁴¹personal information to the author by Prof. D.A. Loeber with reference to S. Silde: *Latvias vestura*, 432

⁴²J. Pabst, *Jahrbuch des Baltischen Deutschtums* 1995, 60; cf. also E. Tatarin-Tarnheiden: *Die Entesignung des deutschen Doms zu Riga im Lichte des modernen Staats-, Verwaltungs- und Völkerrechts unter Berücksichtigung der kirchenrechtlichen Grundlagen*, Breslau 1932,3-4

⁴³ § 4 of the Constitution

⁴⁴ **Vyriausbes Zinius 1938/608 N° 4271**

1.4. Conclusion

The time before World War II showed a different development in the Baltic States. Latvia and Lithuania turned quite soon to more totalitarian States and this left in fact no space for direct democracy. This was best demonstrated by the fact, that until 1940 no referendum took place, whereas Estonia, with the help of popular democracy, returned to a more democratic system. Still, in comparison with some totalitarian States, democracy was not completely missing there, but the sudden annexation by the USSR on June 17, 1940 ended any development, which could have brought them back to the path of government by the people, which they were at the beginning of their statehood in 1918-1919.

2. THE TIME AFTER WORLD WAR II

On August 23, 1989, at the occasion of the 50th anniversary of the illfamous Molotov-Ribbentrop Pact, which cleared the way for the Soviet Union for the occupation of the Baltic states in 1940, an event caught the attention of the world: the Baltic Chain. At 19.00 local time⁴⁵, which at that time was already in conformity with the geographical situation and not with the central-USSR-time of Moscow, roughly 1.000 km east of the Baltic area, more than 1,5 million Estonians, Latvians and Lithuanians, but also other nationalities such as Russians and even Austrians being haphazardly in Estonia demonstrated peacefully against the Soviet occupation and demanded the restoration of independence by standing from Tallinn throughout Estonia, Latvia and Lithuania to Vilnius hand by hand. They sang national songs, showed their national flags and symbols, but remained extremely peaceful in order not to provoke any resistance from the occupants. The Estonian national anthem was played through radio⁴⁶ and the demonstrators were asked to give each other the hand to demonstrate unity.

One aim of this demonstration was to draw the attention of the world to the fact, that by this time the Soviet Union had not yet recognized the existence of the secret protocol to the Molotov-Ribbentrop Pact⁴⁷. Some days before the Estonian delegates to the Supreme Soviet of the USSR sent a telegram to Mr Gorbachev demanding the immediate recognition of the mere existence of the secret protocol, but he refused to do so. The other aim was to show the USSR the determination of the Baltic people to strive for their complete independence. Although some peoples thought, that the organization of this event seemed to be somewhat crazy, it was in particular E. Savisaar in Estonia who, together with the Popular Front of Estonia⁴⁸ and Latvia⁴⁹ and the Sajudis in Lithuania succeeded in arranging the happening⁵⁰.

⁴⁵ which at that time already was in conformity with the time of Finland

⁴⁶ in Latvia and Lithuania there were the respective national anthems

⁴⁷ M. Laar/. Ott/S/ Endre, *Teine Eesti, Eesti iseseisvuse taassünd 1986-1991*, Tallinn 1996, 580

⁴⁸ ahvarinne

⁴⁹ Tautas fronts

⁵⁰ M. Laar *et. alii*, *op. cit.* 580

This carefully organized demonstration of the Baltic people clearly showed their persistence to end the Soviet yoke. This event is one of the most eminent examples of an ad hoc plebiscite ever known to the history on mankind. The author of this essay took part in the chain and could observe not only the joy of the people gathering in line for over 600 km., but also the Soviet concern showed by permanent flights of military airplanes over the entire chain.

2.1. Estonia

In Estonia on March 3, 1991 the voters were asked to answer to the question: “Do you wish the reestablishment of self-government and independence of the Republic of Estonia.” 949 354, that is 82,86% of the 1, 144 309 registered voters participated, 737 964, i.e. 77,83% were in favor⁵¹ and only 203 199, i.e. 21,43% against⁵². The Estonian head of State, the chairman of the Presidium of the Supreme Council, Arnold Rüütel, who during a press conference expressed his satisfaction for the clear expression of the will of the population stated, however, that the results of the referendum were not legally binding. It has to be said, however, that the referendum took place under the supervision of 127 foreign observers, inter alia members of the British House of Commons who were very satisfied with the course of the referendum and its results, because, in their opinion, this showed clearly, that Soviet press was wrong in accusing Estonia of having a purely nationalistic minority leadership⁵³.

The results of this referendum were particularly significant, because they showed, that in many places more than half of the non-Estonian population were in favor of independence⁵⁴. The votes against came mainly from north-eastern Estonia with a vast majority of non-Estonian populace. In Sillamäe with approximately 95 % of non-Estonians, 89 % of the voters were in favor of an independent Estonia within the USSR⁵⁵.

The pro soviet Communist Party of Estonia organized from February 24 to March 3, 1991 an “anti-referendum”. The question of this alternative referendum was: “Should a sovereign Estonia remain part of the USSR?”. The results of this referendum are of no importance, since the participation in it was not regulated so that journalists present in Estonia

⁵¹ **Archiv der Gegenwart** (henceforth: **AdG**) **1991**, 35445

⁵² **Postimees**, 9.03.1991, Estonian Television on March 4, 1991, cf. also M. Laar *et alii*, *op. cit* 788

⁵³ M. Laar *et. alii. op. cit.*⁵³

⁵⁴ for an analysis of this referendum cf: R. Kionka: “Estonia says “Yes” to independence”, in 3 **Radio Liberty Reports 1991/1**, 25ff; R. Taagepera estimated their percentage at about 5%, M. Laar *op. cit.*

⁵⁵ *ibid.*

had voted in various places without being asked for their legitimization⁵⁶. Soviet TV, however, reported on March 17 of the difficulties which arose in regard of the preparation and carrying out of the voting, but also of an alleged success of the plebiscite⁵⁷.

After elaboration by a Constituent Assembly, established by the then Supreme Council of the Estonian SSR and elected at the beginning of September 1991 by the Supreme Council (30 members) and by the Estonian Congress, a "Shadow Parliament", elected by Estonians from Estonia and abroad (30 members) of a draft constitution, a plebiscite took place on this constitutional draft on June 28, 1992. The result was overwhelming⁵⁸ and the Constitution entered into force on July 3, 1992⁵⁹.

This Constitution provides for referenda as expression of the will of the populace in its § 56 and treats in its § 105 various referenda. The State Assembly has the right to forward a draft law or any question which concerns the life of the State to a referendum, in which the decision of the population is made by the majority of the participants. A law adopted in this manner has to be promulgated immediately by the President. Any decision adopted by a referendum is binding upon State organs.

An interesting provision is contained in § 105/4: if a draft law does not receive the majority of positive votes in a referendum, the President proclaims extraordinary elections of the Parliament. This can be regarded as a vote of non-confidence to the State Assembly, a very rare⁶⁰ but quite understandable constitutional stipulation, showing the predominance of the people over the Parliament, which was elected by the populace and thus confirming the constitutional stipulation of § 1 saying that all the supreme State power is vested with the people.

Some matters are excluded from referenda, such as: budget, taxes, State financial obligations, ratification or denunciation of international treaties, proclamation and denunciation of state of emergency and questions of defense of the State. Details of referenda are regulated in the Law on referenda of May 18, 1994⁶¹. Here the stipulation of § 163 of the Constitution is repeated, that constitutional amendments could be adopted also by referenda⁶². Chapter I and

⁵⁶ cf. e.g. **Päevaliht** of March 18, 1991

⁵⁷ **AdG 1191, 35445**

⁵⁸ of 669 080 registered voters participated 446 708, 407 867 were in favour, 36 147 against and 2694 voters were invalid

⁵⁹ **RT 1992/28** pos. 348

⁶⁰ such an example is not found in any of the European Union member States constitutions

⁶¹ **RTI 1994/41** Pos. 659

⁶² §8 of the said Law

XV could only be amended by referenda⁶³. Referenda should not be held in emergency or war situations, or if there are only three months left till the next elections of the Parliament⁶⁴. Whilst referenda on Constitutional amendments could only be initiated by at least one fifth of the members of the State Assembly and the President, other laws and questions of importance could be put to a referendum also on the decision of a member of the Parliament, Fractions and Commissions of the Parliament and of the government⁶⁵.

The Constitutional Chamber of the Estonian Supreme Court⁶⁶ was asked by the Legal Chancellor⁶⁷ to decide the question of local referenda, which were not provided for by § 105 of the Constitution. The Narva City Council decided on June 30, 1993 to organize a local referendum on the question of local autonomy and on the validity of several laws, such as the Language Law⁶⁸, the Law on Citizenship⁶⁹. The referendum was organized on July 16 and 17, but was contested by the Legal Chancellor. The Supreme Court found *inter alia*⁷⁰, that the Estonian Constitution does not provide for local referenda and does not mention a popular inquiry⁷¹.

Their results would not be binding upon State authorities, but could only describe the opinion of the people who have taken part in it. In accordance with § 154/1 of the Constitution, local self-governments regulate questions of local concern, and territorial autonomy would not be one of these. Since the Estonian Constitution does not refer to national-territorial autonomy, this autonomy would be consequently contrary to the spirit of the Constitution. For this reason is the decision of the Narva City Council of June 28 unconstitutional and thus *ipso jure* invalid, together with any act which might have applied or implemented them.

2.2. Latvia

⁶³ § 162 of the Constitution and § 2 of the said Law

⁶⁴ §4 of the said Law

⁶⁵ §8 (2) *leg. cit*

⁶⁶ Pohiscaduse järelvalve kohtukollegium

⁶⁷ Oiguskantsler

⁶⁸ of 18. January 1989, **ENSV Teataja 1989/4** Pos. 60

⁶⁹ of March 23, 1993, **RT 1993/34** Pos. 426

⁷⁰ Decision III-4/A-2/93 of 11 August 1993

⁷¹ rahvaküsitlus

As in Estonia, in Latvia a referendum was organized on March 3, 1991⁷². The population was asked to vote in favor of the question: “Are you for a democratic and independent State of Latvia?”. 87% of the voters participated in the referendum and 73,1% voted in favor⁷³. Only 25% were against. The results are insofar significant, as Latvians were at that time only 52% of the population - stationed Soviet troops not included - and a far more negative outcome was expected. In Riga, where Latvians formed 36% of the population, the 63% in favor of independence were even more significant.

The Latvian Constitution of 1922 had been amended on March 21, 1993⁷⁴ and contains now two new provisions concerning referenda. According to Art. 74 of the Constitution⁷⁵, a law which has been adopted by the Saeima and suspended in the matter set forth by Art. 72 of the Constitution, may be annulled by a referendum if the number of participating electors is at least one/half of those who participated in the previous Saeima elections and the majority had voted for the annulment of the said law. The same restrictions are now also included in Art.79 on constitutional amendments.

2.3. Lithuania

A law on referenda was enacted in Lithuania already on November 11, 1989⁷⁶. This was obviously due to the fact, that the last Lithuanian Constitution of 1938 did not contain any provision on referenda.

As a reaction to the bloody events in Vilnius in January 1991, the Lithuanian Parliament decided on January 18, 1991 to organize a referendum on February 9, 1991. The question was, whether the people would like Lithuania to exist further as a democratic and independent republic⁷⁷. The result was clearly in favor of Lithuanian independence: more than 90% of the population of Lithuania voted affirmatively, only 6,5% were against and 3% casted invalid votes. The participation was 84%. In Kaunas participated 91% of the voters and 96% casted affirmative votes. In Vilnius, where about 50% of the population were non-Lithuanians was the participation 73% and affirmative votes were 81%. In Salcininkai with a Lithuanian population of only 9%, of the 25% participants 58% voted in favor. The Lithuanian leader Landsbergis called the results as a very important argument for the prolongation of the fight for independence and affirmed, that Lithuania will not participate in the all-union referendum of the USSR to be held on March 16, 1991. As a consequence of the referendum, Iceland as the first

⁷²Decree of the Presidium of the Supreme Soviet of the LaSSR of February 12, 1991, **VVS LaSSR 1991/17/18** Pos. 117: o porjadke provedeniia oprosa shitelei Latvii

⁷³ **AdG 1991, 35445**

⁷⁴ **Valdibas Vestnesis, 1993/71**

⁷⁵ *see supra* at Fn 37

⁷⁶ **Valdibas Vestnesis LiSSR 1989/33** Pos. 445

⁷⁷ **AdG 1991, 35324**

state recognized Lithuania as an independent state. The Icelandic parliament voted on February 12, 1991 in favor of this decision and instructed the government to establish as soon as possible diplomatic relations with Vilnius. Moscow immediately withdrew her ambassador from Reykjavik and accused Iceland of intervention into internal affairs of the USSR⁷⁸.

Two referenda followed, one concerning the restoration of the institution of the President of the Republic of Lithuania⁷⁹, the other concerning unconditional withdrawal of the troops of the former USSR currently under the jurisdiction of the Russian Federation from the territory of the Republic of Lithuania in 1992 and compensation for the damage inflicted on Lithuania⁸⁰.

On October 25, 1992 a referendum on a new Constitution was held together with the elections to the Seimas. The draft Constitution was accepted with 77% majority to 23%⁸¹. The Art. 151 of the Draft provided that the Constitution shall become effective the day following the official promulgation of the results of the referendum if in the Referendum more than half of the electorate voted in favor of it.

The Lithuanian Constitution of November 6, 1992 stipulates in its Art. 4, that the People shall exercise the supreme power vested in them either directly or through their democratically elected representatives. Art. 9 stresses, that the most significant issues concerning the life of the State and the People shall be decided by referendum, which shall be announced either by the Seimas⁸² or if no less than 30 000 of the electorate so requests. Citizens of the Republic of Lithuania have the right to legislative initiative. 50 000 citizens may submit a draft law to the Seimas, which must consider it⁸³. Provisions of laws may also be adopted by referendum⁸⁴.

Constitutional amendments can also be initiated by no less than 300 000 voters⁸⁵. The provision of Art. 1 of the Constitution that the State of Lithuania is an independent democratic

⁷⁸ AdG 1991, 35325

⁷⁹ rejected, because of lack of sufficient number of participants, information provided for by Mr Rimantas Dagys of the Lithuanian Seimas during the CE conference on Participatory democracy in Vilnius on July 3, 1997

⁸⁰ approved with 90% of votes coming from 76% of voters who participated, source: Dagys *op cit*.

⁸¹ AdG 1992, 37271, Dagys *op. cit.* quotes 75% participation and 76% in favor with 21% against

⁸² Art. 67/3 of the Constitution

⁸³ Art. 68/2 of the Constitution

⁸⁴ Art. 69/2 of the Constitution

⁸⁵ Art. 147 of the Constitution

republic may only be amended by a referendum in which at least three-fourth of the electorate vote in favor thereof⁸⁶. Provisions of Chapter 1 (the State of Lithuania) and Chapter 14 (Amending the Constitution) may be only amended by referendum⁸⁷.

On August 27, 1994 the conservative opposition⁸⁸ tried to wreck the governmental policy by a referendum. The referendum, however, was invalid because of lack of participation. Only 36,5% of the approximately 2,5 million voters participated in the referendum, but only with a participation of at least 50% of the electorate, the referendum would have been valid and its results binding upon the government⁸⁹. The aim of the opposition party Sajudis under the leadership of V. Landsbergis was twofold. On one hand it challenged the legality of the privatization which had already taken place and on the other hand it tried to get compensation for citizens who have lost money in connection with the introduction of the Lithuanian Litas. Furthermore it tried to achieve early new elections⁹⁰.

The Parliament majority tried on October 20, 1996 a referendum with three questions:

- 1) Reduction of the number of Seimas members (Art. 55 of the Constitution);
- 2) A stable date in spring for the parliamentary elections (Art. 57 of the Constitution);
- 3) No less than half of the national budget should be allocated for social needs (Art. 131 of the Constitution).

The same day the opposition Homeland Union - Lithuanian Conservatives tried also a referendum on the question:

Should population's deposits be compensated for through fair privatization of state-owned property?

All four referenda failed because of lack of participation, since only 52% of eligible voters participated and only 74%⁹¹ to 63%⁹² casted affirmative votes, but more than half of the electorate's votes are necessary in order to consider the results of a referendum as positive.

⁸⁶ Art. 148/1 of the Constiltution

⁸⁷ Art. 148/2 of the Constitution

⁸⁸ Homeland Union-Lithuanian Conservatives

⁸⁹ **AdG 1994**, 39257

⁹⁰ *ibid*

⁹¹ last question

⁹² third question

On November 10, 1996 the Parliamentary majority again tried a referendum concerning a supplement to Art.47 of the Constitution, which was rejected because of only 40% participation and 43% positive votes casted⁹³. In addition to this, an insufficient number of signatures⁹⁴ was collected for four referenda in May 4,1994, October 11, 1995, November 15, 1995 and March 28, 1996⁹⁵.

We can conclude with regard to Lithuania that the instrument of direct democracy has played an enormous role during the first six years on re-established independence and statehood.

3. FINAL CONCLUSIONS

The Baltic States and their population have shown their maturity in rebuilding their statehood after almost 50 years of Soviet yoke. But only Lithuania has made extensive use of the instrument of referenda as expression of direct democracy. This is in sharp contrast to the times before World War II, when Estonia played the role of a fore-runner. Maybe this is a compensation for the lack of possibilities in Lithuania because of her relative early turn to a more dictatorial state. Still, it seems quite feasible, that the instrument of direct democracy will further develop also in Estonia and Latvia and be used also there more in the near future.

Maybe should the fact, that so many former Soviet citizens , who, by virtue of the Russian Law on citizenship of Winter 1991 were made stateless⁹⁶ , have in the meantime applied for Estonian citizenship also be regarded to a certain respect as plebiscite for Estonia by people who, because of lack of Estonian citizenship, are excluded from voting in regular referenda.

⁹³ information provided for by Mr Dagys

⁹⁴ less than 300 000 or about 12,5% of the whole electorate

⁹⁵ *ibid*

⁹⁶for more information on this question cf. by the present author: "Die rechtliche Stellung der Minderheiten in Estland" in:Frowein/Hoffmann/Oeter: Das Minderheitenrecht europäischer Staaten Vol. 2, Berlin 1994, 34f

COMMITTEE ON PARLIAMENTARY AND PUBLIC RELATIONS

Seminar on

**PARTICIPATORY DEMOCRACY IN CENTRAL AND EASTERN EUROPE
TODAY: CHALLENGES AND PERSPECTIVES**

Vilnius, 3-5 July 1997

**Historic and present challenges of
participatory democracy**

by

Mr Andreas GROSS

Member of the Swiss National Council

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1. The history of democracy is the history of the democratisation of societies and the history of all attempts to divide up political power as nearly as possible among all citizens, so that the power of a ruling elite of a society is reduced in order to enable and empower as many citizens as possible jointly to define their own future and in order to ensure that as few citizens as possible feel that they have no control over their own lives.

2. The basic idea of political democracy derives from an article in the French Declaration of Human Rights of 1789, whereby free citizens are required to comply only with those laws in whose enactment they themselves have played a direct or indirect part. Accordingly, representative democracy is an achievement and an obligatory and absolutely central part of any democratic system.

Since the time of the American and French revolutions, it can be claimed that the Constitution, at least as regards its status as the basic text of and essential framework for any legitimate political power, acquires its due validity if it has been approved by a majority of citizens. Referring to the Polish Constitution which has taken eight years to draft and which was adopted this spring, the Polish Prime Minister Wlodimierz Cimoszewicz last week in the Council of Europe called it "A constitution for the people and by the people".

3. However, sovereignty of the people is expressed not only in the opportunity to elect its Parliament. Citizens' participatory rights need not necessarily be limited merely to the right to elect their representatives. Since the second half of the 19th century in an increasing number of states and at all political levels, a variety of additional citizens' rights have been introduced, enabling the nation to have a direct say in the development of its constitution and legislation. These political rights of citizens, the right to vote on particular issues as well as the right to vote in elections together make up participatory democracy.

4. At the heart of participatory democracy is the right of a representative minority of all citizens - in Switzerland this stands at 2.2% of the electorate, in Italy around 5%, in Germany at Länder level 5-20% - at any time to put forward for a decision by all citizens any matter in the form of a proposal (popular initiative) for a change to the Constitution or legislation. Parliament discusses and takes a position on this citizens' proposal and in certain circumstances can put forward a counter-proposal. It must, however, leave the final decision to the citizens who express their opinion either by post or via the ballot box (referendum).

If a change to the Constitution is approved by parliament, it must be put to the people (obligatory referendum) and enters into force only when the majority of citizens participating in the referendum have voted in favour. If a law is passed by Parliament, it too must be put to the people if within a given time (in Switzerland, this is three months) a given proportion of the citizens (in Switzerland this is 1.1%) so demands ("optional referendum")⁹⁷.

⁹⁷An as yet unpublished paper by Hans Urs Will, adviser at the Swiss Federal Chancellery, "Volksrechte in den Staaten der Welt" (Citizens' rights throughout the world), Aarberg, March 1997, 59pp, gives a comprehensive overview of the principles of participatory democracy in the world's constitutions. For the 40 Council of Europe member states, please refer to the report by Silvano Mückli, Strasbourg, 1996.

5. The soul of participatory democracy lies in the public debates, lasting several weeks or even months, which take place in the greatest variety of places and at all levels of society and which precede a jointly taken decision. In these debates, which take place three to four times a year, citizens are given the opportunity to make their own political opinion owing to

the confrontation between their respective ideas.. They try to reach agreement on priorities, difficulties or important practical decisions and the course to be followed for the future of their country.

6. These examples of communication in which the members of society are able to express their views and the extraordinarily diverse and numerous discussions which take place help to bind together a culturally heterogeneous society. People who are very different one from another talk together on the basis of equal rights and equal opportunities and in this way gain a clearer understanding of themselves, society and prevailing political problems. They also learn how to express themselves politically, come face to face with other points of view and listen to and exchange ideas with people quite different from themselves.

7. As a result of the increased use of the rights of participatory democracy a transformation takes place in the political culture of a particular area. The political system is becomes, as it were, more permeable, citizens' involvement in decision-making is increasingly taken for granted, the relationship between politicians and citizens becomes more relaxed, contacts more frequent and more regular; politicians are able less and less to cut themselves off from the electorate since they regularly - currently in Switzerland every four months - and often for weeks on end have to spend time speaking with and to citizens (indeed setting up virtually a permanent dialogue) convincing them of the merits of their political choices.

The most important achievement of any culture in which participatory democracy is prevalent is the increased political competence acquired by citizens; as a result of the public and private discussions which take place before voting, they become well-informed about those areas for which legislation or reforms are to be voted on, and they become accustomed to reflecting on and discussing political questions and to thinking in political terms.

8. In this way, participatory democracy creates communicative and social processes which can contribute significantly to renewed integration and consolidation of a society which after long years of totalitarianism needs to rediscover and reshape itself. These processes encourage those forms of democratic debate, of the shaping of opinions and judgments, of individual commitment and joint action which are constitutive elements of civil society and a citizens' society.

9. A frequent argument against the introduction of participatory democracy is that citizens lack the necessary "political maturity" which participatory democracy requires - and develops. However, without extensive participatory rights, citizens have no chance of acquiring this maturity. Just as the only way to learn to swim is to go into the water, the only way of becoming mature in democratic terms is to be given the opportunity to act democratically and embark upon the corresponding learning process.

In other words, whenever participatory democracy is introduced, the political conditions are always less than ideal; in order for them to improve in terms of an enlightened body of citizens, there is no other option but to make a start with participatory democracy.

10. There are, nevertheless, constitutional conditions and basic requirements which must exist and be complied with if participatory democracy is to be successful or improved. In particular these include the protection of minorities and human rights, federalist and decentralised state structures and balance of power, separation of powers, varied and pluralistic media structures, extensive and high-quality elementary and secondary education.

11. In the constitutive phase of free societies, in the transition from totalitarian political structures to pluralistic democracy there is always the risk that aspects of participatory democracy could be abused by the authorities. Here I am thinking in particular of the authoritarian variant of the referendum, the "plebiscite".

Plebiscites are when a popular vote is sought by a President or Head of Government, or in a somewhat diluted form by a majority of members of Parliament, in order to secure political legitimacy or a tactical political advantage which cannot be acquired in the normal parliamentary way. This can be particularly problematic if such a right is exercised by the President or Head of Government without being provided for in the Constitution. A blatant example of an authoritarian plebiscite which has little or nothing at all to do with democracy and participatory democracy occurred in recent months in Belarus⁹⁸.

To give another example: in late June in Albania, at the same time as the first round of the parliamentary elections, the President called a referendum on the restoration of the monarchy. His aim had much more to do with consolidating his own power rather than settling a controversial question, something which would be difficult to accomplish in this way, given the current situation in Albania.

12. There was a further example of the undesirable developments which can occur in young democracies in spring of this year in Slovakia. The time limits, formulation of questions, ballot papers, number and opening times of polling stations, counting procedures and many other matters must be laid down by legislation independently of the particular issue being voted on and must be meticulously implemented by the authorities independently of the point of view of the Government or President of the day.

In Slovakia, as late as the last few days immediately prior to the vote, the number of questions to be put to the electorate and indeed whether certain questions could be allowed was the subject of violent disagreement between the Head of Government, certain Ministers, the Constitutional Court, Parliament and the President. This was certainly no instance of an interference-free and fair process of informing citizens to enable them to be fully aware of the issues at stake. The result went accordingly and was damaging to all concerned, including democracy in general and participatory democracy in particular. The Frankfurter Allgemeine

⁹⁸Cf the opinion of the Council of Europe's Venice Commission (European Commission for Democracy through Law of 18 November 1996) - CDL-INF (96) 8.

Zeitung wrote: "The Referendum on direct election of the President foundered, as too did the popular vote on Slovakia's joining NATO. But the victory is so bitter that nobody in the country, not even the victors can take delight in the outcome. Meclar won but Slovakia lost." (26.5.97).

The first vote, on the direct election of the President, was a result of a popular initiative by 500,000 Slovaks. The second vote was in the form of a plebiscite initiated by the Government.

13. It is generally claimed that the democratic possibilities and the political value of participatory democracy depends on the quality of its procedures (eg quorums must not be set too high, or time limits too short, etc), the correctness and impartiality of how it is implemented, the fairness of debate and the equality of opportunities granted to the different points of view in the campaigning period in the run-up to the vote (media impartiality, no undue disparity in the allocation of resources, no discrimination against certain points of view, etc). Of course, as in other areas of human endeavour, it is not possible to reach perfection in creating the conditions for participatory democracy. But what is essential is to be prepared to constantly review its quality and to do all one can to improve it.

COMMITTEE ON PARLIAMENTARY AND PUBLIC RELATIONS

Seminar on

**PARTICIPATORY DEMOCRACY IN CENTRAL AND EASTERN EUROPE
TODAY: CHALLENGES AND PERSPECTIVES**

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**The instruments of direct democracy
in the Central and Eastern European countries**

by

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The subject of this report is to describe the institutions of direct democracy - especially the referendum and the popular initiative - as we find them provided for in the constitutional law of Central and Eastern European countries. The Constitutions of the Baltic countries with which the first report deals will be taken into consideration only for reasons of comparison.

I. Introduction

When studying the constitutional history of Central and Eastern European countries, we meet with some early contributions to the evolution of modern democratic constitutionalism. Two examples may show that. Poland adopted on 3 May 1791 the first written Constitution in Europe. And the constitution of Latvia of 15 February 1922 introduced the referendum and the popular initiative at a time when a great part of European Constitutions did not yet know either of them.

On the other hand it must be admitted that in the second half of the 20th century the countries of Central and Eastern Europe had, to a remarkable degree, not participated in the development and improvement of democratic constitutions. So much the more we are impressed by the considerable extent to which the new Constitutions of Central and Eastern European countries have introduced by now instruments on direct democracy.

The Constitutions of all Central and Eastern European countries declare in their "General Provisions" solemnly that the national sovereignty resides with the people. And most of them add that the people exercise this supreme power directly or through their elected representatives. This wording is followed also by Constitutions which, in fact, give the people very little room for direct decisions. We find this wording even in the Constitutions which entered into force without having been submitted to a popular approval.

In nearly all countries of Central and Eastern Europe constitutional regulations regarding the referendum or even the popular initiative can be found. In several countries special laws have been enacted which regulate the national and local referendum. As an example the Act on the Referendum and People's Initiative of 1 June 1989, amended in September 1990, of Hungary may be quoted.

A comparison shows that the provisions concerning the instruments vary considerably. And also the political function of these institutions - the relationship between the rights of the people and the power of the Parliament and of the Executive - produces widely different impressions.

The Constitution of the Czech Republic deserves special consideration. The Czech Constitution of 1992 did not introduce any kind of referendum or popular initiative. In its Article 2, Sect. 2 it is left open that "a constitutional law may specify when the people exercise State power directly". Up to now, this constitutional possibility was not used on the national level; on the local level the referendum is regulated by a Law of 1992, amended 1994.

II. The referendum

1. *Issues subject to the referendum*

The methods of defining the matters which are subject to a referendum follow a variety of ways.

A number of Constitutions use - in similar wordings - a very wide general clause by which all "matters of national interest" (Const. of Romania, Art. 90) or "the most important issues of State and social life" (Const. of Belarus, Art. 73) may be the subject of a referendum. Similar is the wording in the Constitutions of Moldova (Art. 75) and of Poland (Art. 125[1]).

Other Constitutions state that the referenda concern "decisions under the competence of the Parliament", as the Hungarian Referendum Act (Clause 4[1]) and similarly the Constitutions of Macedonia (Art. 73[1]) and Serbia (Art. 81[1]). The Estonian Constitution (§ 105[1]) combines the two methods and speaks of "draft legislation or other national issues".

Beside the amendment of the Constitution the legislative acts are thus in many countries the major topics of the referendum. The positive result of such a legislative referendum leads in these cases to the entering into force of a law. No other Central and Eastern European Constitution follows the model of the Latvian referendum which aims at annulling a law enacted by the Parliament (Const. Art. 74); the referendum in Latvia shows therefore some resemblance to the "abrogative referendum" of the Italian Constitution of 1948 (Art. 75).

The Croatian Constitution (Art. 87) deserves to be mentioned: The Parliament can organise a referendum on proposals for constitutional amendments; legislative acts and other questions of its competence; the President of the Republic can, in addition to these issues, organise a referendum on "any other question which he considers as important for the independence, unity and existence of the Republic".

Many Constitutions have laid down - in their Chapter on the amendment of the Constitution - special provisions governing the constitutional referendum which differ in some points from the referendum on legislative acts. The Slovenian Constitution distinguishes clearly between the "legislative referendum" regarding "questions which are governed by law" (Art. 90) and the referendum on constitutional amendments (Art. 170). There are, however, also Constitutions, as the Constitution of Bulgaria and the Constitution of the Czech Republic which do not demand a popular vote for constitutional amendments.

In the Slovak Republic the accession to a union with other States or the withdrawal from such an union is subject to a previous obligatory referendum (Const. Art. 93 [1]).

A special legal character has the so-called preliminary referendum which has various designs. This kind of referendum does not lead to the enactment of a legislative or constitutional act, but aims at preparing such an act by giving the people the possibility to express their opinion on a basic question of the planned act. The Polish Act on the Preparation and Voting of the Constitution of 1992 allowed to present important constitutional questions which the citizens could answer before the whole text of the new Constitution was drafted and presented for approval in the final referendum.

The Hungarian law opens in a general way the possibility that a referendum - the so-called "indicative referendum" - can concern "the expression of opinions" ensuring the "contribution of citizens to the decision-making of the Parliament" (Referendum Act Clause 4[3]).

According to an explicit provision in several Constitutions, certain issues, as for instance acts relating to taxes, budget, amnesty, ratification or denunciation of international treaties and state of emergency, cannot be the subject of a referendum.

In practically all Central and Eastern European countries, the referendum can also be called on the local level. Also the Czech Republic where there is no national referendum provides for a local referendum (Law of 1992, amended 1994). According to the Constitution of Poland (Art. 170) the local referendum includes even the dismissal of organs of local self-government established by direct elections.

2. Obligatory referendum

In the case of the obligatory referendum the Constitution stipulates that certain important issues can only be decided by a popular vote. The referendum will take place without prior initiative - of public authority or of the citizens - demanding the organisation of a popular vote.

This kind of referendum is not provided for by many Constitutions. In most countries we find only optional referenda, for the enactment of laws as well as for the amendment of the Constitution.

The obligatory referendum for all amendments of the Constitution represents rather an exceptional solution. We find it realized in Hungary (Referendum Act, Clause 7), Romania (Const. Art. 147[1]) and Serbia (Const. Art. 133).

The Constitution of Moldova (Art. 142 [1]) and Ukraine (Art. 156) follow the system as we find it already in the Baltic States Latvia (Const. Art. 77), Estonia (Const. § 162) and Lithuania (Const. Art. 148): Certain chapters of the Constitution - which obviously are regarded to be of highest political importance - can be amended only by an obligatory referendum, whilst for the articles of the other chapters the procedure of amendment is less demanding.

3. Optional referendum

The optional referendum is more frequent than the obligatory referendum. We find it in the Constitutions of nearly all Central and Eastern European countries. But there are considerable differences between the various models depending on who is entitled to initiate the referendum and who has the power to decide on the holding of a popular vote.

a. The right to initiate a referendum

In some Constitutions this right is entrusted at the same time to several subjects. In the spirit of a very open democratic process the constitutional law of Hungary entitles the President of the Republic, the Government, at least 50 members of the Parliament and at least 50.000 citizens to initiate a plebiscite (Referendum Act Clause 8 [1]). In the Republic of Belarus the President of the Republic, 450.000 voters and at least 70 deputies have this competence (Const. Art. 74 [1]).

In a similar way in other countries a certain number of voters are required: 300.000 voters in Lithuania (Const. Art. 33), 100.000 voters in Serbia (Const. Art. 81 [2]) and 350.000 voters in the Slovak Republic (Const. Art. 95).

How complex the initiation of a referendum may be can we learn from the Constitution of Latvia of 1922 (Art. 72): a law which the President of the State - at the request of not less than one-third of the members of the Saeima - has suspended shall be submitted to a referendum, if not less than one-tenth of the electors so request. However, the referendum shall not be taken, if the Saeima puts this law once more to a vote and if then not less than 3/4 of all the members are in favour of this adoption.

b. Decision on the holding of the referendum

The power to decide whether a referendum shall be organised or not is generally vested in the Parliament. Some countries demand for this decision a qualified majority. In Hungary the votes of 2/3 of the members of the Parliament are requested (Referendum Act, Clause 9).

However, in some cases this general predominance of the parliamentary majority is given up in favour of a minority: The Hungarian Parliament is obliged to decree a referendum, if it was initiated not only by 50.000, but by at least 100.000 citizens (Referendum Act Clause 10 [1]). The Constitution of Slovenia deserves also to be mentioned because it allows the political minority to make use of the instruments of direct democracy: the Slovenian Parliament must call a popular vote if this is demanded by at least 1/3 of the delegates or by 40.000 citizens (Const. Art. 90 [2]).

Some Constitutions entrust the power to decide on the holding of a referendum also to the President of the Republic. The new Constitution of Poland declares that the right to order a national referendum can be exercised by the Sejm or, with the consent of the Senate, by the President of the Republic (Art. 125[2]). A similar solution is laid down in the Constitution of Ukraine (Art. 72[1]). In Croatia we find parallel competencies of the Parliament and the President to decide on a referendum; but the constitutional power of the President is wider, since he can - in co-operation with the Government - call a plebiscite on all questions which in his opinion are important for the independence, the unity and the existence of the Republic (Art. 87[1 and 2]).

The presidential power to order a plebiscite has also in Romania a special importance. The Romanian Constitution - which to a certain extent follows the model of the presidential system of the French Constitution of 1958 - gives the President the right to order, after consulting the Parliament, on his own initiative a referendum on all matters of national interest (Art. 90). In the same way the Constitution of the Russian Federation assigns this power only to the President of

the Federation (Art. 84). A similar position seems to have the President of the Republic of Albania (Act on Referendum of 1994).

4. Conditions for the validity of the voting

Other than the regulations in Switzerland - where the number of citizens taking part in the voting has no influence on the validity of the results of the vote - the constitutional law of Croatia (Const. Art. 87[3]), Hungary (Referendum Act Clause 28[1]), Lithuania (Law on Referendum of 1989), Macedonia (Const. Art. 73[2]), Poland (Const. Art. 125[3]) and of the Slovak Republic (Const. Art. 98[1]) demand a certain minimum participation of voters: the result of the referendum is only valid, if more than the half of the number of citizens having the right to vote have participated.

The Constitutions of Estonia (§ 105[2]) and of Slovenia (Art. 90[4]) demand only that the majority of voters who participated in the voting were in favour of the proposal.

The Constitution of Latvia of 1922, as amended 1993, establishes a connection with the voters' participation in the last parliamentary elections; it demands that the number of participating citizens is at least one-half of those who participated in the previous Saeima elections (Art. 79[2]). A very unusual kind of reference to parliamentary elections can be found in the Estonian Constitution; it gives to the President of the Republic the right to declare extraordinary elections to the Riigikogu, if a bill which was submitted to a referendum did not receive a majority of votes in favour (§ 105[4]).

5. Legally binding character of the result of the referendum

The Central and Eastern European countries do not follow the system of the Finnish Constitution which confers to the referendum exclusively a consultative function (Constitution of 1919, as amended 1987, Sec. 22a). The Constitutions of Croatia (Art. 87[4]), Estonia (§ 105), Lithuania (Art. 69[4] and 71[3]), Macedonia (Art. 73[4]), Poland (Art. 125[3]) and Slovenia (Art. 90[1]) declare expressly that the decision of a plebiscite has a legally binding character and is binding on all State institutions. According to the Moldovan Constitution (Art. 75[2]) the results produced by a referendum have "supreme judicial power".

The Hungarian law distinguishes between two kinds of referenda with different legal effect: The "plebiscite called for in order to make a decision" produces binding results; the "plebiscite for the expression of opinions" will only "ensure the contribution of citizens to the decision-making of the Parliament" and is called "indicative referendum" (Referendum Act Clause 4[2 and 3] and Clause 11).

In order to reinforce the binding character of the referendum, some Constitutions establish a waiting period following the popular decision. If in Hungary a referendum has taken place, the Parliament is not entitled to decree within two years a referendum on the same issue (Referendum Act Clause 31[1]). In the Slovak Republic a waiting period of three years has to be observed (Const. Art. 99). In this connection also the Constitution of the Republic of Belarus may be quoted; its Article 77 demands that decisions adopted by referendum may be rescinded or revised only by means of a referendum.

III. The popular initiative

This primary instrument of direct democracy is well represented in the Central and Eastern European Constitutions. Most Constitutions which introduce the popular initiative have separate provisions for the procedure of legislation and of amending the Constitution.

According to these regulations the right of legislative initiative belongs not only to the members of the Parliament, the President of the State and the Government, but also to a certain number of citizens having the right to vote. The number of voters requested differs considerably from State to State and is as follows: Hungary 10.000 (Referendum Act Clause 18[1]), Latvia one-tenth of the electors (Const. Art. 65), Lithuania 50.000 (Const. Art. 68[2]), Macedonia 10.000 (Const. Art. 71[1]), Poland 100.000 (Const. Art. 118[2]), Romania 250.000 (Const. Art. 74[1]), Serbia 15.000 (Const. Art. 80[2]) and Slovenia 5.000 (Const. Art. 88).

The number of citizens requested for the right to propose an amendment of the Constitution is, as a rule, of course higher or even much higher: Belarus 150.000 (Const. Art. 78), Latvia 1/10 of the electors (Const. Art. 78), Lithuania 300.000 (Const. Art. 147[1]), Macedonia 150.000 (Const. Art. 146[1]), 200.000 (Const. Art. 141), Romania 500.000 (Const. Art. 146 [1]), Serbia (100.000 (Const. Art. 132) and Slovenia 30.000 (Const. Art. 168).

In comparison with the constitutional provisions in Switzerland - where the popular initiative leads necessarily to a referendum on the popular proposal, the legal position of those who present popular initiative in Central and Eastern European countries is rather weak: The people's initiative is only a proposal submitted to the Parliament; it has the same legal position as a proposal of a group of members of the Parliament or as a proposal of the Government. It is up to the Parliament to decide on the further steps of the ordinary legislative procedure.

IV. Final remarks

The picture which the Central and Eastern European democracies present today is fascinating. The margin opened by the Constitutions for the instruments of direct democracy is very wide.

The institutions of referendum and popular initiative can play a considerable role in the political life of these countries. They entrust the citizens with two different possibilities of political activity. Firstly, the referendum can be used as a confirmatory instrument: the Parliament, the President of the Republic and the Government may call a popular vote in order to further the democratic legitimacy of decisions of the Parliament or - indirectly - also of executive authorities. In this case the people may have a significant, but restricted political influence. Secondly, the popular initiative and the right to initiate a referendum can extend and deepen the process of democratic decision-making by vesting the political initiative in the people - including its minorities - and in parliamentary minorities. This second aspect of direct democracy which is more demanding and pretentious has to be considered as more important than the first aspect.

The efficient working of the mechanism of direct democracy can only be realized step by step. The reliable application of popular vote and popular initiative depends on several social and

political conditions, especially on the freedom of press and other media, on the free activity of political parties and on a certain readiness of the citizens to political participation. Direct democracy thus represents much more a part of the political culture of a country than the result of legal provisions.

For further information:

Constitutional justice and democracy by referendum, Strasbourg, 23-24 June 1995, Council of Europe 1996

Silvano Mückli, *Instruments of direct democracy in the member States of the Council of Europe*, Council of Europe 1996

COMMITTEE ON PARLIAMENTARY AND PUBLIC RELATIONS

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**Participatory Democracy and Civil Society -
Transforming Societal Decision Making in the
Information Age**

by

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SUMMARY

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*"We cannot solve the problems that we have created
with the same thinking that created them" Albert Einstein*

INTRODUCTION

Various points of view to the current global social transition period and the coming of the information age, both of which are characterized by an unprecedented global telecommunications and information networks explosion will be discussed. Our position is that the rapid diffusion of computers and connected networks of electronic means, the information and communications technology (ICT) will have even more profound impact than before on various social phenomena such as work, entertainment, business, education and, most important of all, democracy - how it is understood, exercised and developed. What is ready to be born, then, is "teledemocracy" - a new form of direct democracy promoted by the ICT and Information Networks. So far, information networks, as one part of "the Information Society," have mainly been dealt with by governments and enterprises from the technological point of view.

Representative democracy is in crisis. Indeed, a growing number of observers agree that this few hundred year old idea and practice of democracy does not work so well any more in societies where an increasing number of people can gain more and more information on various social and political issues by having access to the ICT and vast amount of information. Thus large segments of the population are now and more so, in the future able to form personal educated opinions on common issues.

Many people have grown impatient with their governments which they see minding only narrow interests rather than fulfilling the major task of representative democracy, which is taking care of the citizens' common good. In modern societies, many people want to shift from being "the governed" into having "self government." They want to become actors in society instead of being mere subordinates. They want to have more power and control to conduct their own life as they want. The ubiquitous information networks and ICT of the future will be a readily available tool by which people can easily empower themselves, but only if they grasp the opportunity.

Public discussion on teledemocracy and the societal perspective of ICT is gradually gaining momentum. Information networks can and should be used for societal dialogue. Networks can be the new tool to enhance and reformulate the ways and ideas how democracy will be developed and executed in societies. The continued public discourse on the democratic potential of the information society must be encouraged - for example, on whose terms it will be developed and what effect the networking of people can have on their lives.

1. DEVELOPMENT OF DEMOCRACY

In general, democracy is a dynamic process that has many features and development phases. There is no "right way" of executing democracy in a community. The communities must find alternative ways of democratic decision making that will suit them through extensive and continuous interaction. Democracy is actually a life-long-learning process. The current

representative democracy can be transformed to a process that has features and elements of the direct democracy. This can happen through various developing phases using the participatory and deliberative processes. The **new future democracy** that exploits ICT and information networks in ensuring the same level of information and knowledge to all citizens will be a hybrid of various strategies. In systems thinking, one can describe this new concept to be a **network of information and people joining in the decision making process on deliberative basis**. In the following figure the alternative development phases are shown. The global scale will produce new interconnections among people and cultures in an unprecedented way in the future.

Figure 1. A Model Outline for New Democracy Building Process

It is important to see the difference between political **reform** and **transition**. The reform means actually that political procedures are modernized by using new technology but the power structures will remain unmoved. The transition means that societal power is redistributed and thus, more and more actors come into play. The necessary condition to this is of course access to information and task allocation in the society in a way that leaves room for citizen's personal decision power to be used for governing her/his own life.

2. PARTICIPATORY DEMOCRACY

The development phase of democracy that is called participatory is very well defined in Barber (1984). Participation of "ordinary" citizens in the societal and political decision making processes in the representative democracy is channeled through voting. When some of the issues are discussed and decided upon using dialogue between citizens and political representatives, the procedure is called participatory.

There has been various experiments on participatory democracy, especially in the USA. Professors Ted Becker (1986) and Christa Slaton (1992) have conducted several in Hawaii, Canada and some other countries. However, European developments have really gained momentum only after the introduction of the Information Society in mid-1990's and boosted by the explosion of Internet. The Parliamentary Assembly of the Council of Europe was the first European parliamentary institution to highlight the possible developments of the information society at the Seminar on *Electronic democracy* organised at the French Senate on 23-24 March 1995 by its Committee on Parliamentary and Public Relations. The futures oriented conference on the issue of democracy development and ICT was held in Munich, Feb. 1997, with then title: "Internet and Politics". In Finland, there was the first book on teledemocracy published by the author and a group of colleagues in 1995 (Keskinen 1995). The international discussion on teledemocracy is today happening in the web, in particular in the "teledemocracy home page" in <http://www.auburn.edu/tann> (TANN = Teledemocracy Action News & Network).

2.1 Direct Democracy

New development in political science and democracy is focusing on direct democracy, which can be described as "a process where citizens together make societal decisions based on dialogue on equal terms". It differs from representative decision making in that every citizen participating is exercising her/his own personal power. One example of a method of direct democracy is referendum. However, most referenda today are not manifesting direct use of individual citizen power, because the alternatives used in the process are not chosen by the citizens (see the example). In practice, various mixtures of direct and representational approaches are used. Participatory and deliberative approaches can be denoted as direct procedures. Direct democracy movement that raises its head everywhere most likely will lead to various mixtures of different approaches (see Figure 1). However, representative democracy as such can be developed, too. New ideas of using lot or random sample in selecting political

decision makers are introduced by Dr. Slaton and Dr. Barber (see Slaton 1992 and Barber 1984).

2.2 Munich Conference

In his speech at the Munich conference Dr. Benjamin Barber, who is the prime expert on enhanced, or strong democracy presented one of the most profound questions that has to be widely discussed, the question of will, desire for change, saying: "without a will towards a more participatory and robust civic system, why should technologically enhanced politics not produce the same incivility and cynicism that characterize politics on the older technologies, radio and television, for example?"

Barber states that technology can assist political change but only if there is a genuine political will to make it happen. I think it is important to note that in history, the power structures have changed mainly two way, either the structures have corrupted from inside and collapsed or there has been a revolution outside the structures resulting to a collapse. But the third alternative that we now call for, namely the **voluntary reallocation of power** for the benefit of citizens steered society, is very challenging indeed. It would really need a new kind of understanding of shared societal power to be a worthy goal. I would like to argue that now is the time that this new understanding can have a practical chance with the help of new global ICT and Internet. However, many scientist, though they see a fair chance for new thinking to be spread around the globe, remain unmoved and cynical. Why should those who have the power, voluntarily let even part of it go? What would be the motivation? Would those with power somehow be enlightened by new philanthropy? Would they feel very noble by doing so? Have noble feelings ever fed people? Barber says: "If then technology is to make a political difference, it is the politics that will first have to be changed".

According to one participant, Douglas Schuler, who runs a city network in Seattle, USA, in teledemocracy the possibility for participants for **agenda setting** is the major component and new asset. Using the Net, it is easy to find other people who share one's view, start the discussion and set the agendas together for further debate and deliberation, also together with experts and decision makers and thus, have an impact on issues at hand from the very beginning.

2.3 Deliberative democracy

A dictionary definition of to deliberate is: To consider carefully and at length; To consider reasons and arguments so as to reach a decision; To think about or consider carefully. Dr. Barber argues in his book "Strong democracy" (1984) that participatory democracy means, not only "**the right to speak**" but also, and specifically, "**the right to be heard**". This I think can be considered as one of the necessary conditions for participatory democracy.

Professor Christa Slaton, who describes the development of democracy in the USA in her book: Televote (1992) elaborates later after the Munich conference about the contents and concept of deliberative democracy. She explains that "there is a debate in the USA about what deliberative democracy is. When Vince Campbell (1974) developed Televote in the 1970s and we (Slaton and her team) revised it in 1978, we said we were obtaining informed and deliberated public

opinion. What we meant by deliberated is that people were given facts, arguments, and options and were encouraged to talk with others about the topic. We asked them to take some time to think about it and then give us their responses. We believe that access to information, discussion with others, and time to think add up to deliberation.”

2.4 Teledemocracy & direct democracy

Teledemocracy means the use of modern information and communications technology (ICT) as instruments to empower the people of a democracy to help set agendas, establish priorities, make important policies and participate in their implementation. In a word, true teledemocracy is the use of ICT to give the public leverage in self-governance. Put another way, it is the use of ICT to help transform modern representative democracies into more participatory democracies.

In systems terms teledemocracy is a complex, dynamic, nonlinear and multivariate phenomenon. That is why it should be emphasized that there is no "one truth" or "right way" to develop teledemocracy but that many peoples' initiatives and personal understanding are necessary elements of the process. A lively interaction between development ideas and viewpoints is essential to produce a truly democratic information society that is most likely to produce the greatest benefits for the broadest base of that society.

How can information networks be used for transforming the decision making processes for the new citizens society? To start with, it is necessary to ask how new ICT can be exploited to serve the transformation of the decision making processes. The transformation actually means three major systematic and organizational changes, namely **opening, networking and user-pull**. The aim is a **winwin decision making strategy** which is based on "all parties win" instead of the now commonly used zero-sum game.

What does the opening of decision making mean? It consists of increasing interaction between the parties concerned, change of the total societal case handling process so that the initial phase, the agenda setting and the preparatory phase are handled in open arenas. Basically it means a change of the paradigm of participation, a change in regard of citizen as a proactive societal actor. Thus it will decentralize decision making power and empower the citizens.

Networking the decision making presupposes that the opening development approach is adopted. The decision processes are then moved to local arenas and an interactive dialogue throughout the processes is conducted. The aim is to build a holistic view and insight as an interactive process jointly between the nodes of the societal networks and a winwin strategy is followed. The actors must rethink the networked actions and task allocation and form new codes of conduct. The process needs new understanding of actors' rights and obligations and proper exploitation of the ICT.

User-pull concept means that the development and implementation processes of ICT must be user pulled instead of technology pushed. Technology has been developed mostly by the technology's own development pressures and challenges whereas the user needs and user's views on what should be developed and what for and how are not discussed. The development should be driven by the needs of people using the products and services .

All in all, all these methods described above lead to the conclusion that **teledemocracy is one model for deliberative democracy.**

2.5 Porous decision making

In the following figure 2 there is a the Porous decision making model described. Porous is another way to describe that the ordinary governmental decision making procedure can be opened and networked so that citizens have access to the process all the way through the case life cycle and that the process is porous in the way that information "leaks" to and fro between citizens and administrative decision makers. Thus it is possible to reform and eventually to transform the current decision making model. Today, the citizen only has two alternatives, approve the decision or make official complaint through conventional bureaucracy.

Figure 2. Porous decision making

3. DELIBERATIVE & PARTICIPATORY

Some scientists are wary in using the participatory concept, since it has the undertone of allowing someone to participate into a process that one has not the right to by default. But this can not be the case. The decision power on a person's own life is given to the person by her/his citizen constitutional rights. So every citizen owns a certain amount of sovereign decision power by default. Representative democracy actually "collects individual decision power units to a cluster and transfers it over to a representative after the result of a voting process".

A very basic understanding of citizen freedom is, that this collection/transfer is executed **on a voluntary base through a set of mutually agreed rules**. This is not always true even in the most "liberal democracies" today. One indication is, that for example voting is considered in Finland as a duty instead of as a right. Another is, that citizens and political decision makers have lost contact with each other. Citizens do not find ways to or they do not believe they can influence any political process, and politicians, once given the "cluster of decision power units of certain citizens", do not reflect the needs of those citizens in the decision making processes. There remains the eternal question: what does a representative decision maker actually represent? Therefore, I would prefer the deliberative democracy to be used instead of participatory.

Professor Slaton goes on in explaining the US debate on deliberative democracy : "Then there were foundations and academics that came up with models of face-to-face discussions that argued that it is not deliberated opinion unless those giving their opinions are meeting face-to-face. It is the anti-technology crowd that argues the only way to advance democracy is to build community through face-to-face meetings. Professor James Fishkin wrote a book a few years ago called Democracy and Deliberation (1991). In that book he argued that for opinion to be deliberated, persons have to meet face-to-face with others who disagree with them. The personal interaction is where the deliberation comes in".

Slaton explains further: "While I think there is great merit in face-to-face interaction, I maintain that deliberation can occur without face-to-face. Technology has some advantages at times over face-to-face. It is sometimes less intimidating, sometimes it is more equalizing in that a person's thoughts are what counts (not one's dress, looks, ability to speak well, gender, race, etc.). I prefer not to take a stand that one is better than the other (face-to-face vs. utilizing technology in the privacy of one's home). Both have advantages and weaknesses. But I run up against what I believe are elitists who claim their method is superior and the only way to go. I think they do not recognize or understand the power differential in face-to-face settings between men and women or between rich and poor or between the highly educated and the poorly educated. One may have equal opportunity to speak but does one have equal chance of being heard? (see Barber 1984). I just came from a conference that had 50% women speaking. Yet when questions were raised or comments were directed towards the speakers from the audience, the women speakers

were virtually ignored. It reminded me of Keskinen (the author) on the panel with the group of German men in the Munich Conference. She had important information to share - knowledge they did not have and needed, yet they ignored her. The moderator did nothing to draw more information from her. So I think we glamorize too much what is accomplished in some face-to-face situations". Based upon this reasoning I also think it is important not to rely on one method of interaction alone but use different methods and thus give room for different personal preferences.

4. DECISION METHODS

The development of methodology for deliberative decision making has been slow and sporadic. In representative democracy the methods have been **the consensus and bargaining in addition to coercion**.

Professor Slaton's book Televote has inspired for new methods replacing or complementing the **consensus method**. For a long time now, representative democracy has been based on efforts to reach a consensus. This has many times in practice meant futile yes/no-debate or bargaining: "let's do according to your liking here, and then according to my liking there".

Consensus building however, is not the only method for trying to reach common understanding and decisions. I especially favor the idea of winwin method, where interactive dialogue is used for building new understanding and new ideas for how to make decisions where all actors concerned can win, in other words, the idea of a win-win method that can be described as a "both/and method replacing the either/or method".

In a **winwin method**, the discussions and interaction between different actors will mean, that the original dispute will **evolve** to something other, and actors participating would learn new things about the other actors and would be able to create new innovative alternatives for solutions. In such a process it can happen, that more than one alternative can be chosen - this would mean getting rid of "right or wrong" debate and accepting the approach that "this and that and even that one over there" alternatives are possible at the same time. The winwin based decision method can thus be called evolutionary. This is what Hazel Henderson describes in her book: Building a Win-win world (1996).

Slaton describes yet another process called **Problem/Possibility Focuser** in her Televote. There, the process does not strive for consensus, but instead seeks to clarify the agreements and disagreements surrounding a specific issue, where the aim is to develop ideas to settle disagreements. In futures research, there are similar processual methods, for instance **Futures Workshop**, created by Robert Jungk (1987), where the idea of finding alternative ways of settling disputes and forming new solutions is pursued by interactive groups of people. The main aim is to create new future images in a win-win-fashion to ensure that different values could be taken into account when future actions are planned.

5. IDEAL DELIBERATIVE PROCESS

Professor Jim Dator (1979) has reviewed a vast amount of futures studies literature in the 1970s and synthesized four distinct futures into which all that literature fit: 1. Decline and Collapse, 2. the Disciplined Society, 3. Continued Growth and 4. the Transformational Society. These are further discussed in Becker (1986). Dator prefers the fourth scenario, the Transformation Society, which is an evolutionary process, deliberately dynamic, forever in a state of change. Becker explains that at the heart of this scenario is technology. It will be a de-massified (targeted) individualized society wherein information is a key commodity and is available to all. This is what we today call as the **information society**. In this scenario it is expected that technologies designed to facilitate citizen participation in governmental decision-making will steadily evolve, as well as the nature of the government itself. Becker concludes then: "Citizens could have total access to the same information which their representatives use to make law, accessing it through home or community computers.

Through this information, as well as citizen- and government-produced television programming and community discussion groups, citizens might formulate their options and opinions on laws and policies, and vote on regular basis. - In this final scenario, teledemocracy and the future are one."

5.1 Ideal decision making models

In the following I will characterize how the ideal deliberative and direct democracy combined with the representative democracy could work. It is of course necessary in practice to follow an evolutionary path in democracy development like for instance presented in figure 1. There are naturally various practical actions that can be taken but the ideal democratic society would work on the following strategies:

- * The citizens set the values, aims and joint codes of conduct together in a process that aims to multivalued winwin-solutions instead of a zerosum -game.
- * The citizens set agendas, make initiatives, take care of the preparatory phase of the matters at hand according to their joint prioritization, and make the decisions together
- * Citizens arenas steer the national and local development, study and organize studies for experts on subjects of their own choice and select the actors who carry out the decisions (task allocation)
- * Citizens needs will be brought into the open for further processing by properly exploiting the best technology of ICT

In addition, citizens need to discuss, innovate and decide on various issues on the development, like what kind of matters and affairs need representational processes and to what degree can the individual citizen give away her/his citizens decision and participation rights? What kind of matters need direct/deliberative democracy? What kind of matters need several types of democracy interactively? How can citizens choose their degree and methods of participation in practice? Will the passive citizens have the same rights and how will these be ensured? What methods and processes are needed for enabling winwin-solutions?

5.2 Example: Referendum

As an example of what the various transitional phases of democracy could mean I will elaborate the common case of referendum. In the following Table the phases of a referendum process are categorised.

Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
Agenda setting: About what will the opinion poll be organized? What for? The aim: binding or recommendatory?	What will be asked? Background research and results disseminated, dialogues, discussions, learning processes, developing the alternatives needed for the Phase 3	What are the alternatives for the referendum?	What are the methods used in referendum? Technical solutions, alternative tools for opinion giving?	Referendum process	Presenting and disseminating the results, public dialogues and debates	Decisions based on the results, other actions or recursion starting from Phase 1.

The questions here are then: where do the citizens participate? How? Who will coordinate the processes? In the case of deliberative and direct democracy citizens will participate through all phases starting from Phase 1. In participatory democracy they will participated in Phases 2 and 5 and 6 and in representative democracy only in Phase 5.

SUMMARY

Development of democracy has throughout the history been from "the power of few" to "the power of many", from oligarchy to pantocracy/policracy. The overall systematic change seems to be well described by the bifurcation curve known in the theory of chaos. Chaotic processes are not without order, however, there is rather the question of a new, not preordained order to be found in such processes (see for example Gleick 1987). This is but only one illustration of democracy development. Slaton has used the analogy of quantum theory in her democracy development descriptions. **Democracy is an evolutionary process, not a steady state system.** Democracy in any society is a life long learning process for all citizens in constant interaction with the process environment, and thus it is never "ready".

The liberty of agenda setting (see figure 2: Porous decision making) is probably the most difficult part of the decision making procedure, because political issues to be handled within any democracy are initiated by the politicians and governmental procedures. **The enhanced deliberative decision making throughout the case handling process is easier to be motivated by realizing that the wider dedication of citizens to an issue is reached the easier it is to get the actual decision to be approved by the citizens.** Even here however there is a deep gap and lack of trust still existing between politicians and citizens - politicians think that citizens are ignorant and citizens cannot see how they could participate and how their opinion could be made heard and taken into consideration by the politicians. **So in the end what we need is the interplay of two processes: one - the desire and motivation to change and two - the appropriate tools for information creation and communications.**

Ultimately, it can be concluded that information networks have vast potential for aiding citizens to realize critical political transformations - not just reforms. This will mean a re-distribution of political power and "empowering of citizens" - the coming of a new form of a citizens' society, one where the ordinary citizen can play a major role in helping decide in what kind of society he/she should live now and in the future.

Actually what we are facing now is a paradigm shift for democratic decision making, that is originated from the global challenges of sustainable development, unemployment and other major social problems and it can be stated as follows:

"Humanity cannot make the sweeping change that are required for a sustainable future (for example in consumption patterns, energy and transportation policies, the redesign of communities, international relations and much more) without a dramatic increase in the intensity and quality of human communications.

In summary, a new understanding should dawn that citizens can and should take an active role in socio-political decision making in order to make life better for themselves and their communities. This can be done by employing more of the new electronic means at citizens' disposal. Another major message is that the technology is already there - and is rapidly getting easier to use for everyone to capture, employ and develop, if they want to use it. But one must remember, the structures, technologies or institutions do not make decisions, we human beings make the decisions, we citizens live in our communities, we must decide where to aim and what kind of futures to pursue and work for. New ways of innovative thinking is therefore called for, but it is as J. Maynard Keynes has said:

"The difficulty lies not in new ideas, but in escaping from old ones".

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**COMMITTEE ON PARLIAMENTARY AND PUBLIC RELATIONS
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Seminar on

**PARTICIPATORY DEMOCRACY IN CENTRAL AND EASTERN EUROPE
TODAY: CHALLENGES AND PERSPECTIVES**

Séminaire sur

**LA DEMOCRATIE PARTICIPATIVE EN EUROPE CENTRALE
ET ORIENTALE AUJOURD'HUI: DÉFIS ET PERSPECTIVES**

Vilnius, 3-5 July/juillet 1997

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