

# Informationen aus der Slowakei

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## Referendum and the fate of the EU constitutional treaty in Slovakia

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### Referendum in Slovakia

Slovakia's constitutional provisions on the use of a referendum have in part their roots in the era of the Czecho-Slovak Federation. The Czecho-Slovak Federation adopted its provisions for calling on a referendum in June 1991. Although initially there were suggestions for an array of subjects that could be scrutinized in a public plebiscite, the final provisions allowed for questions on the architecture of the federation and on the secession of one of the constituent republics whereby only the Czechoslovak federal assembly and national parliaments could initiate a referendum. Yet, during the dissolution of Czecho-Slovakia a referendum never took place.

The Slovak Republic adopted constitutional provisions according to which the country must hold a referendum on the entry into a state union and a referendum with the same question can only be held after the time lag of three years. In addition to this obligatory nature, a referendum in Slovakia can also be held on an important issue of public interest; budgetary questions, taxes and basic human rights and freedoms are excluded. A national referendum on an important issue of public interest can be initiated in two ways: either through a request tabled and approved by members of parliament or through a public petition supported by signatures of at least 350 thousand Slovak citizens. The President of Slovakia calls a referendum based on either a successful parliamentary request or a successful public petition. The result of a referendum is only valid if more than 50 percent of Slovakia's eligible voters take part. Since its establishment in 1993 Slovakia has organized six nation-wide referenda. Of these only one referendum was valid - on EU accession held on 16 – 17 May 2003.<sup>1</sup> All other referenda have been unsuccessful. Four plebiscites experienced an insufficient turnout. And the government

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<sup>1</sup> 52.15 percent of voters participated and 92.46 percent of those supported Slovakia's entry into the Union.

marred one referendum on controversial and very dubious grounds that a referendum cannot change the constitution.<sup>2</sup>

Indeed, the Slovak constitution is not very clear on the legal impact of a referendum. The constitution talks generally of declaring proposals approved by a referendum as laws. Yet, in the 1990s the Constitutional Court ruled that the Slovak parliament has to accept the referendum's outcome and the result of the plebiscite on Slovakia's entry into the European Union illustrated this point in a decisive manner since a huge majority of members of the Slovak parliament conformed to the will of the people and approved the accession treaty. Yet, it is also true that the members of the Communist Party of Slovakia did not vote in favor of approving the accession treaty. This keeps the issue of a binding result of a referendum somewhat open for future practices since there is no sanction for the MPs who do not vote in line with the results of a valid referendum.

In sum, apart from some lack of clarity of constitutional provisions on a referendum, there are other question marks about participatory democracy in Slovakia. There is no clear consensus on the role of direct democracy. More than anything else, referendum remains another bargaining tool of political parties. Slovakia's accession into the EU was a rare example of a cross-party political consensus. However, conflicts among political parties accompanied past unsuccessful referendums thereby contributing to a low turnout of voters since some political forces urged citizens to ignore the plebiscite, thus making the whole exercise invalid. Hence, the high quorum does – to some extent – distort political competition and citizens have a decreasing ability to control the course of public events.

In addition to nation-wide referendums Slovak local authorities and municipalities have organized many of their own plebiscites having often to do with territorial issues or mayoral mandates. However, there is no systematic record or analysis of these sub-national referendums opening, therefore, wide opportunities for future research.

### Referendum and EU Constitutional Treaty

The crux of the debate on whether Slovakia should or should not hold a referendum on the text of the Constitutional Treaty focused around the issue of whether the EU Constitution creates a state union or it does not. If the former were true, a referendum would be mandatory whereas. If the EU is not becoming a state, then a referendum does not have to take place but it can take place. Conversely, the arguments can be summed up in two parts.

On the one hand, some authors argue that the EU Constitutional Treaty equips the European Union with all doctrinally recognized features of a state union. Namely, it

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<sup>2</sup> The Meciar-led coalition government spoilt the referendum held in May 1997. The referendum covered four questions. The so-called unconstitutional question – according to the government - on the direct election of Slovakia's president was initiated through a public petition and enjoyed the support of opposition parties. The government argued that one could not change the constitution and allow for a public election of the country's president.

possesses the key institutional characteristics of a state, such as territory, citizenship and jurisdiction. In addition, the EU Constitution also charges the Union with fulfilling the functions of a state. Most notably, the EU Constitution provides for the protection of basic rights and freedoms (Charter of Fundamental Rights) and both internal and external security. Whilst the EU is by no means able to guarantee and carry out all functions related to security matters, it is an actor of its own with specific functions and corresponding institutional structures.

On the other hand, the critics of this view point out that it is too rigid. They argue that the debate is framed too strictly within the existing legal doctrines and offer a perspective whereby the EU Constitutional Treaty is a qualitatively different source of law than modern constitutions of nation-states. They also stress that European integration is not a linear process. Rather the EU is built on the basis of an ongoing conflict between intergovernmental and supranational approaches. However, no matter which one of these two trends has had an upper hand, the decisive players have always been the member states of the Union. Although some competencies have been moved to the level of the EU, countries that form the EU decide the rules for such moves. In the Union there is no independent sovereign in the form of a single political nation. Rather, even if the Constitutional Treaty is ratified, the European Union will derive its legal personality from member states. Hence, the language one uses for commonly known realities of individual nation states may not readily apply to an entity such as the European Union.

Hence, one can very much question whether the EU does indeed possess the characteristics of a state. First, while one could perhaps talk of the territory of the EU as the sum of member states' territories, this does not seem that apparent. Most visibly, the euro and the Schengen regime as crucial features of a homogeneous legal and political space of the EU do not apply equally across the Union. Moreover, the Constitutional Treaty talks of a whole range of territories of member states where EU law either does not apply or applies partly. The sheer complexity of exceptions to the rules and overlapping ties between the states inside and outside the EU confirm the treaty basis governing relations between countries rather than the existence of a dominant source of some central and uniform state power. Second, while the Constitutional Treaty broadens the freedoms of an individual person to the space of the whole Union, member states remain the source of legitimacy of the EU's architecture. Third and finally, the European Union is not united on the basis of some sovereign state authority but on the basis of a strict conformity with the principle *pacta sunt servanda*.

While it is undeniable that the essential features of the European Union reveal certain formal traits typical for states, there are equally numerous characteristics that distinguish the Union from a state. Hence, the EU and its legal and political system span across international and intrastate features.

Following on from this conclusion, it is important to state that article 7 of the Slovak Constitution distinguishes among three different acts:

1. entry into a state union (paragraph 1),

2. standard international treaties (paragraphs 3-5),
3. a specific international treaty that transfers the execution of some rights and laws to the level of the European Communities and the European Union. The ratification of such a treaty requires a 3/5 majority of all members of the Slovak parliament – the same majority that is needed for an amendment of the country's constitution (paragraph 2)

Therefore, those who argue that the EU Constitutional Treaty does not create a state union, point to article 7, paragraph 2 of the Slovak Constitution as the basis for domestic ratification of the EU Constitution. A referendum in this case is not obligatory. It may, however, still take place.

### Ratification of the EU Constitutional Treaty in Slovakia

Drawing on the expert debate, from very early on the vast majority of politicians indicated a clear preference for the ratification procedure in parliament.<sup>3</sup> The largest opposition party SMER (Direction) led by Robert Fico and another opposition force - Vladimir Meciar's Movement for Democratic Slovakia (HZDS) – have also thus far communicated their respective preferences for a parliamentary approval. On the other hand, only one coalition party with Euro-skeptic leanings – Christian Democratic Movement (KDH)<sup>4</sup> – supports a national referendum on the grounds that the EU Constitution creates a state union. At the same time, precisely on the grounds of this qualitative change in the nature of the Union the KDH is also opposed to the adoption of the EU Constitutional Treaty. Outside the Slovak parliament, a small Euro-skeptic Civic Conservative Party (OKS) has been vocal both in its opposition to the Draft Constitutional Treaty and in its request for a national referendum about the new treaty.

In sum, only parties that might resist the adoption of the Constitutional Treaty clearly fancy a referendum. Since most political forces are in favor of adopting the Constitutional Treaty, they do not wish for further complications brought about by a possible referendum and foresee a relatively smooth vote of approval in Slovak parliament. Since the government did not approach the Slovak constitutional court with a request to provide an interpretation on the whether the new EU treaty creates a state union or not, the decision to go for a parliamentary approval is essentially a political one. It reflects the prevailing political opposition in the Slovak parliament to a national referendum echoing concerns about Slovakia's bad experience with past unsuccessful referenda. Many politicians also argue that since the contents of the EU Constitutional Treaty do not represent a fundamental qualitative change from the existing treaties, a referendum is not necessary. Others point to the questionable ability of voters to decide and say that Slovak

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<sup>3</sup> Representatives of Slovak Democratic and Christian Union (SDKU), Party of Hungarian Coalition (SMK) and Alliance of a New Citizen (ANO) expressed their respective opposition to a referendum during the meeting of the National Convention on the European Future of Slovakia held in June 2003.

<sup>4</sup> In the course of domestic negotiations on government's position for the IGC the KDH ministers demanded that Slovakia rejects the inclusion of the Charter of Fundamental Rights in the Constitutional Treaty. KDH's opposition to the Charter stems principally from a conservative definition of family and its outright rejection of abortion. According to some KDH politicians the Charter could in the future pave the way toward EU-wide legalization of homosexual marriages or abortions.

public would not understand the intricacies of the Constitutional Treaty. In short, politicians, unlike in the case of Slovakia's accession to the EU and the corresponding accession treaty of huge complexity and of some 5 000 thousand pages of texts, are today unwilling to initiate a referendum on the Constitutional Treaty.

A referendum on the EU constitution could still take place if Slovakia's public gathers at least 350 thousand signatures and initiates a national plebiscite on the latest EU treaty. If this happens, one can expect that many politicians rejecting a referendum on various grounds today may be forced to change their tactics. After all, perhaps the biggest single obstacle for adoption of the Constitutional Treaty offers a scenario whereby a referendum is successful (more than 50 percent of eligible voters participate) and the majority of voters reject the treaty.<sup>5</sup> In such a case, according to current constitutional provisions the Slovak parliament should accept the referendum's outcome and at least three years must elapse before the country holds a new referendum with the same question. However, the likelihood of the aforementioned outcome is extremely low for two reasons. One, there is no widespread movement to organize a public petition to gather the necessary number of signatures and even the parliamentary KDH has not actively sought a successful petition. Second, most parliamentary political parties are keen to ratify the EU Constitutional Treaty early in 2005, so there is little time to mobilize the public to initiate a referendum on this issue. In conclusion then, at the end of 2004 it seems virtually certain that a referendum on EU Constitutional Treaty will not take place in Slovakia. At the same time, a parliamentary approval of the EU Constitution by 60 percent of MPs appears likely since only the Christian Democratic Movement and the Communist Party of Slovakia are at the moment apparent candidates for voting against the adoption of the new treaty.

#### Public Attitudes on a referendum and EU Constitution

To complete this summary of essential information on participatory democracy in Slovakia and the context of the EU Constitutional Treaty, let me complement the aforementioned information with a set of public attitudes. The outcome of the polls indicate a certain – but not a decisive - preference for a referendum. They also illustrate limited knowledge of the EU Constitutional Treaty, on the one hand and a good degree of support for the Constitution, on the other hand. Hence, perhaps another evidence why both the controversy over the latest EU treaty and the mobilization of the public in Slovakia in this matter remain limited.

A public opinion research in the fall of 2004 tackled three main issues.<sup>6</sup> First, the ratification procedure: 43 percent of those asked supported a ratification through referendum, 26 percent supported a ratification in the Slovak parliament, 24 percent were indifferent when it came to the question of the ratification procedure and 7 percent could not answer the question.

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<sup>5</sup> If the referendum is successful and the majority says 'yes', voters approve the treaty. If the turnout is below 50 percent and referendum is thus invalid, the parliament can proceed to vote on the treaty as if a referendum had not been held at all.

<sup>6</sup> *Ústav pre výskum verejnej mienky* (Office for research of public opinion), October 2004.

Second, the knowledge of the constitutional treaty: only 2 percent of those asked said that they knew the text of the treaty well, 19 percent said that they had a perfunctory knowledge of the treaty and 77 percent said they did not know the treaty at all.

Third, whether the constitutional treaty should be the basis of integration and cooperation among member states: 40 percent said yes, 18 percent were against, 23 percent were indifferent and 19 percent could not responsibly answer the question or did not have a definitive view.