



ORIGINAL PAPER

Direct Democracy in Romania after 1989: Particularities of the Formal-Legal and Practical Aspects

Valentina Marinescu*

Abstract

The problems of direct democracy are an extremely important subject of study by present-day political scientists, sociologists, and legal scholars. Its continuous relevance is closely connected with the dynamics of democratic processes taking place in the world and with the sensitivity of the existing democratic solutions constantly jeopardized by social, economic, or political conflicts. Not without significance is also the question of democratic solutions being in short supply in the world. In the case of Romania few theoretical approaches were made in order to explain the peculiarities of direct democracy in comparison with the classical ("canonical") models which exist in the Academic literature. The main methods of analysis used in the paper will be secondary analysis of social documents and a genetic method applied on historical and cultural events and processes which took place in Romania after 1989. In this paper the analysis will be structured on the following axes: 1. The analysis of the formal-legal dimension of direct democracy in Romania – this section will be focused on examining legal acts (Constitutions, laws) that determine the legislative reality investigated, in particular those regulating the functioning of the institutions of the people's assembly, referendum, citizens' initiative, and popular referendum (popular veto); 2. The review of legal acts related to the institutions of direct democracy in Romania. In the conclusions we seek to answer at the following questions: Whether and to what extent the forms of direct democracy are used Romania; Whether direct democratic institutions are an effective way in which the sovereign (the people) expresses its will in individual states, both at local and national level in Romanian case.

Keywords: *direct democracy, Romania, legal acts, formal-legal aspects of democracy, institutions*

* Professor, PhD, University of Bucharest, Faculty of Sociology and Social Work, Department of Sociology, E-mail: vmarinescu9@yahoo.com

Theoretical framework

The continuous relevance of direct democracy for various fields of scientific research (political sciences, sociology, legal studies) is closely connected with the dynamics of democratic processes taking place in the world and with the sensitivity of the existing democratic solutions constantly jeopardized by social, economic, or political conflicts. Not without significance is also the question of democratic solutions being in short supply in the world. Vast literature on the subject indicates that scholars try to meet the social demand by continuing to analyze the problems of direct democracy in the contemporary world (Butler and Ranney, 1978; Butler and Ranney, 1994). Of special interest to scholars were the following fields of research: 1. The implementation of solutions of direct democracy on the level of individual countries, in particular the United States of America and Switzerland; 2. The influence of institutions of direct democracy on socio-political life; 3. The challenges to direct democracy associated with globalization; 4. The use of new communication technologies in the sphere of direct democracy (Feld, Kirchgässner, 2000). The present article tries to fill a gap in the existing literature on direct democracy in Eastern Europe by focusing a specific case: the characteristics of direct democracy in Romania after 1989.

Instruments of direct democracy

According to the existing literature (Mény, Surel, 2002), the instruments that give citizens the right to be directly involved in the political decision making process are (Maduz, 2010): 1. “The referendum” – it refers to the situation in which “the vote of the electorate is required by the legal on an issue of public policy” (Maduz, 2010); 2. “The citizens’ initiative” – in this case, “the citizens initiate a vote of the electorate on a proposal outlined by them” (Maduz, 2010); 3. “The recall”. As an instrument of direct democracy it “covers the situation in which citizens are allowed to demand a vote of the electorate on the issue which pertains to the fact that an elected representative of them should (or not) be removed from the office before the end of his/her office’s term” (Maduz, 2010).

The Romanian case

Unlike the other East-Central European countries, where the transition from communist rule to democracy was the result of peaceful movements or negotiations around a round table, Romania experienced a violent change of regime in December 1989 (Datculescu, 1999). After the change of the political system in December 1989, the political system which function in Romania may be described as a representative democracy, governed by the directly elected President and Parliament (semi-presidential system), according to the provisions of the new Constitution (Camera Deputaților, 1991).

The research hypothesis

In the case of Romania few theoretical approaches were made in order to explain the peculiarities of direct democracy in comparison with the classical (“canonical”) models which exist in the Academic literature (Matsusaka, 2005). The paper will seek fill the existing gap and try to verify the following research hypothesis: “the use of instruments of direct democracy in the process of exercising power is an indicator of the political awareness of the Romanian society.”

Methodology

The main methods of analysis used in the paper were secondary analysis of social documents and the institutional-legal method applied on legal acts, historical recordings of the forms of direct democracy (people's assembly, referendum, citizens' initiative, and popular referendum-popular veto) that were used in Romania after 1989.

Instruments of direct democracy according to the Romanian Constitution

The new Romanian Constitution was adopted by referendum, on 8 December 1991 (Datculescu, 1999). On a turnout of 66%, 53% voted in favour of the new constitution (Datculescu, 1999). As regards the provisions of Romanian Constitution on the subject-matters of referendums and popular initiative one has to start from the fact that, according to Article 72, paragraph 3, line (c), the organization and fulfilling of the referendum is regulated through organic law. At the same time, Article 73 of the Constitution about the legislative initiative provides that (Camera Deputaților, 1991): "legislative initiative belongs to: the Government; every member of the Parliament; at least 250,000 citizens entitled to vote (coming from at least 1/4 of the counties, and at least 10,000 signatures per county or the city of Bucharest)". Article 90 of the same fundamental law of Romania provides that (Camera Deputaților, 1991): "The President of Romania, after consulting the Parliament, may ask the people to express its will, through referendum, in matters of national interest". In the Article 95 it is stated that (Camera Deputaților 1991): "The president may be suspended, in case of severe break of law, by the Parliament, through a decision taken by majority, after having asked the advice of the Constitutional Court. The suspension of the president has to be proposed by at least 1/3 of the number of deputies and senators. If the dismissal proposal is approved, in a maximum of 30 days there is organized a referendum for the dismissal of the President". Also, in the Article 146 provides that (Camera Deputaților, 1991): "The revision of the Constitution may be initiated: by the President of Romania at the proposal of the Government; by at least 1/4 of the deputies or of the senators; by at least 500,000 citizens entitled to vote (coming from at least 1/2 of the counties and at least 20,000 signatures per county or for the city of Bucharest)". And in Article 147 it is stated that (Camera Deputaților, 1991): "The proposal or project of revision of the Constitution must be adopted by Parliament with majority of at least 2/3 of the number of members of each House, or at least 3/4 of all members of Parliament (after the procedure of median), gathered in common meeting. The revision is final after being approved through referendum, organized in a maximum of 30 days after the adoption of the proposal/project of revision."

Other laws regarding direct democracy in Romania

If the Constitution had set the general framework of functioning the direct democracy in Romania the punctual legal acts which refers to the functioning of popular referendum (as instrument of direct democracy) were adopted later. In 22 February 1999 the Romanian Chamber of Deputies and the Romanian Senate adopted the "Law regarding the organization and fulfilling of the referendum", that was advanced for promulgation to the President of Romania. On 2 April 1999, the president Emil Constantinescu asked the Constitutional Court to analyze the constitutionality of a number of the provisions of this law. The Constitutional Court, in the debate held on 5 May 1999 decided that a part of these provisions were unconstitutional and sent the

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decision to the presidents of the Chamber of Deputies and of the Senate, in order to start the procedure of re-examination of the law. Only after one year, in 2000, the law was re-formulated and has been adopted by both Chambers of the Romanian Parliament and, subsequently, the President had promulgated it (Monitorul Oficial, 2000).

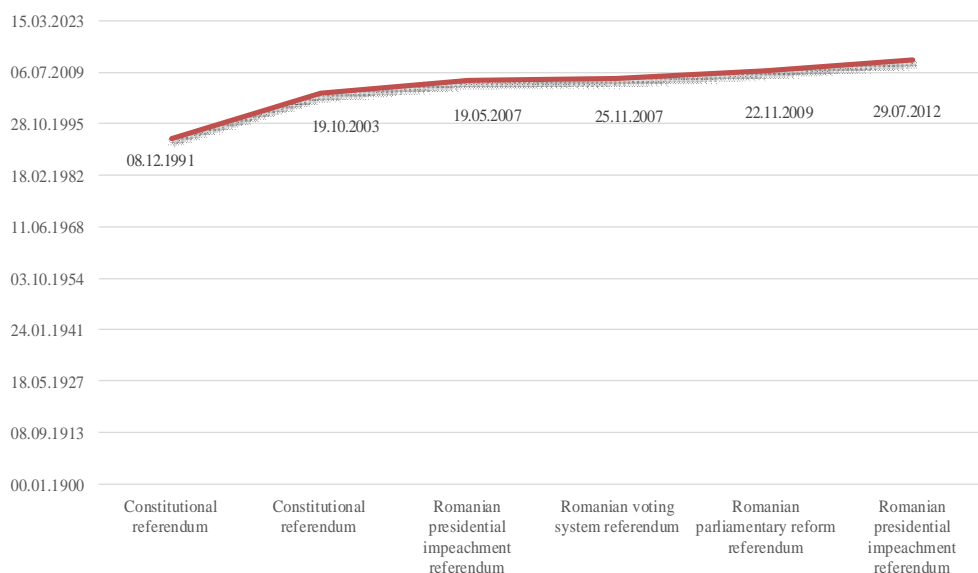
Alongside with the Law 3/2000 on the organization and holding of referendum (Monitorul Oficial, 2000) the general functioning of the direct democracy's instruments in Romania was also regulated by the Decree-Law 92/1990 for the election of the Parliament and of the President of Romania (Monitorul Oficial, 1990). According to the Decree-Law 92/1990 (Article 3) (Monitorul Oficial, 1990): "The Parliament of Romania constituted of the Chamber of Deputies and the Senate, as well as the President of Romania, are elected by universal, equal, direct and secret, freely expressed vote". In the same vein, instruments of direct democracy are put into function at the local level. The Law 215/2001 of the local public administration states in Article 5 that (Monitorul Oficial 2001): "The authorities of public administration, fulfilling the local autonomy in communes and cities are the local councils, functioning as deliberative authorities, and the mayors, functioning as executive authorities. [...]". The same Law (215/2001) provides in Article 13 that (Monitorul Oficial, 2001): "The councils of communes and cities are constituted of councilors elected through universal, equal, direct secret and freely expressed vote, under the conditions of the law regarding the local elections."

Subject-matters of popular votes in Romania

As stated in the Romanian Constitution (Camera Deputaților, 1991), the national referendum represents the form and means of direct consulting and expression of the sovereign will of the Romanian people in the following matters (Camera Deputaților, 1991): 1. problems of national interest; 2. dismissal of the President; 3. Revision of the Constitution on problems of national interest. But what may represent "problems of national interest", given the fact that it was not given a general definition of this broad term? During the years the debates in the public sphere had pointed out several problems which can be assessed as being "of national interest" in Romania's case: 1. There had been fervent debates regarding the revision of the Constitution in what concerned the parliamentary immunity. According to the Constitution (Camera Deputaților, 1991): "A deputy or a senator may not be arrested, searched or sent on trial, criminal or civil, without the agreement of the Chamber of Deputies, respectively of the Senate, after having been organized hearings on the matter". There existed various proposals for the revision of the Constitution, but the popular belief is that "members of Parliament take advantage of their position to avoid criminal or civil charges and trials" (Culic, 2000). 2. Another public debate regarded the possibility of revising the Constitution in the matter of the form of government – that is, Romania should be a republic or a monarchy? The debate was not so frequent in the last years but even at present certain monarchist groups would like to see King Michael 1 back on the throne of Romania. Also, certain public personalities suggested that there should be held a referendum regarding this issue.

Romanian national referendums

During the last twenty-six years there have been several instances in which referendum as an instrument of direct democracy was used in Romania.

Figure 1. Chronology of Romanian national referendums (1990-2016)

Source: Own compilation of the author

As can be noticed in the above Figure 1, one can differentiate two constitutional reforms (in 1991 and 2003), two referendums for the impeachment of the president (in 2007 and 2012), one referendum for the change of the voting system (in 2007) and a parliamentary reform referendum (in 2009).

Romanian constitutional referendums: 1991 and 2003

According to the general number of voters recorded at the national level in the moment of the referendums related to Constitution. Thus, according to the official data, there was an increase of 12% in the number of voters who approved the constitutional reforms in Romania: from 79.1% in 1991 to 91.1% in 2003. Thus, the first constitutional referendum was held in Romania on 8 December 1991 and led to the approval of the new constitution by 79.1% of voters (Datculescu, 1999). At the same time, the second constitutional referendum which was held in Romania on 18 and 19 October 2003 led to the approval of the proposed amendments to the constitution by 91.1% of voters.

Table 1. Romanian constitutional referendums: 1991 and 2003

	1991		2003	
	Choice	Votes%	Choice	Votes%
For	8,464,624	79.1	3,947,212	81.36
Against	2,235,085	20.9	784,640	16.17
Invalid/blank votes	248,759	–	119,618	2.46

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Total	10,948,468	100	4,851,470	100
Registered voters/turnout		67.3		26.51

Source: Nohlen, Stöver, 2000; Dinita, 2012

At a closer look, the turnout proved that instead of getting stronger in time, this instrument of direct democracy had become weaker. In other words, from the total of 67.3% registered in 1991 twelve years later only 25.5% voters were present in the referendum day of the Constitutional reform (Dinita, 2012). The decrease in turnout had had important impact on the results for another type of referendum in Romania: the presidential impeachment referendums.

The Romanian presidential impeachment referendums: 2007 and 2012

In early 2007, president Traian Băsescu was proposed for impeachment by the members of the opposition parties in the Parliament for allegedly unconstitutional conduct. As a result of the impeachment vote by the parliament, president Traian Băsescu was suspended from his function as president on April 19, 2007 and a national referendum was held on 19 May 2007 to decide by popular vote whether to dismiss the president (Asociația ProDemocrația, 2008). The question printed on the ballots was (Asociația ProDemocrația, 2008): “Do you agree with the removal of the President of Romania, Mr. Traian Băsescu, from office?”. The question was modified to include the name of the president even though article 9 in the law of referendum (Asociația ProDemocrația, 2008) already established the content of the question without names of presidents. With 75.06% of the total persons who voted on the referendum day the president remained in function. On 29 July 2012 a second referendum on impeaching the Romanian President took place (Romanian Academic Society, 2012). It was organised after the Parliament’s vote of impeaching president Băsescu at the beginning of July 2012 (Romanian Academic Society, 2012). Voters were asked the question (Romanian Academic Society, 2012): “Do you agree with the dismissal of the President of Romania, Mr Traian Băsescu?”. In the day of the vote – July 19, 2012 – the general turnout was of 45.92% with a ±3% error margin (Romanian Academic Society, 2012). This was based on data from 2,889 of the 18,242 polling stations (Romanian Academic Society, 2012) and it did not take into account the special electoral lists for citizens voting outside their residence area (especially those on vacation throughout the country), unmovable and abroad (Romanian Academic Society, 2012). Due to the fact that the turnout was less than 50% the results of the 2012 referendum were declared invalid (Romanian Academic Society, 2012) and the president Traian Băsescu remained in function until the presidential elections of 2014.

Table 2. The Romanian presidential impeachment referendums: 2007 and 2012

	2007		2012	
	Choice	Votes%	Choice	Votes%
Yes	2,013,099	24.94	7,403,836	88.70
No	6,059,315	75.06	943,375	11.30
Total votes	8,135,272	100.00	8,459,053	100
Registered voters/turnout		44.45		46.24

Source: Romanian Academic Society, 2012

The issue rose by the provisions of the Referendum Law 3/2000 (Monitorul Oficial 2000) as regards the necessary number of votes in the turnout proved that the instruments of direct democracy has to be further refined at the national level in Romanian case.

Direct democracy at the local level

As a specific form of democracy, local democracy enclosed also elements of direct democracy and one element of this kind is “the principle of consultation of citizens on matters of local interest which takes the shape of local referendums” (Soós, Tóka, Wright, 2002). The local referendum is based on the following thesis: The principle of consultation of citizens on matters of local as a component of local autonomy “gives the right to local collectivities to intervene directly in the administration at the local level in the same way as is the case with the national issues” (Dragoş, Neamţu, 2007). From a theoretical perspective (Devas, Delay, 2006), the local referendum as an element of direct democracy “empower the local communities to intervene directly in resolving issues of local interest, to change representatives and/or elected persons in order to protect the ininterest of the community as a whole” (Dragoş, Neamţu, 2007; Devas, Delay, 2006).

Legal framework of the direct democracy at the local level in Romania

In Romania the organisation of local referendum is regulated through Law 3/2000 regarding the organization and holding of a referendum, the same law that regulates the organization of national referendums (Monitorul Oficial, 2000). Article 13 of this law states that (Monitorul Oficial, 2000): “(1) Issues of particular interest in the territorial administrative units and territorial-administrative subdivisions of municipalities may be subject to the residents’ approval by local referendum in the condition of this law. (2) A local referendum can be organized in all the villages and towns of the commune or city or only in some of them. If the referendum is at the county level, it can take place in all municipalities and cities in the county or only some of them that are directly concerned”. In the next article (Article 14) of the same general law (Law 3/2000) it is provided that (Monitorul Oficial, 2000): “(1) The issues subject to referendum shall be determined by local or county councils, as appropriate, on a proposal from the mayor or the president of the county council. (2) All citizens are called upon to decide “yes” or “no” on the question submitted to referendum, deciding by majority of votes cast at the respective administrative-territorial unit”.

General issues of the Romanian direct democracy at the local level

As in the case of putting in function instrument of direct democracy at the national level one can notice the existence of some issues raised by the use of those instruments at the local level. Thus, according to opinion pools made in the last twenty-six years, in general, Romanian population believes it does not have a significant say in the decisions taken at local level. The general attitude towards local administration and local government was and remains one of high distrust. People feel and frequently complaint that the local administration and local government are unwilling or unable to satisfy their requests or wishes. After the accession of Romania at the European Union as a full member (2006) the use of direct democracy’s instrument at the local level was more frequent than in the past (Coulson, Campbell, 2013). Much more, in recent years, especially in rural areas or small localities, there often take place popular consultations,

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where are discussed public matters and are made decisions affecting the whole population (Baldersheim, Illner, Wollmann, 2013). There also has been an increase in the number of cases when different political personalities suggested that the public will should be consulted in taking decisions affecting the local population (Baldersheim, Illner, Wollmann, 2013). One such instance in which direct democracy's instruments were involved was the case of anti-fracking movements in Romania 2013-2016.

The use of local referendum – the Pungesti case study

At the end of 2013 and in the first months of 2014 in Pungesti village (Vaslui County) a protest movement ("revolt") took place after Chevron obtained a building permit for the location of first derrick for shale drilling in Vaslui County (Vesalon, Crețan, 2015). Three years later – in March 2016 – a referendum on "local interest's issues" was organised in Pungesti (Vesalon, Crețan, 2015). Although the results of the referendum are still under debate in Court (Vesalon, Crețan, 2015), the Pungesti case showed some strenght and weakness of the Romanian direct democracy's instruments at the local level.

Chronology of the Pungesti movement

On 14 October 2013 a manifestation of the people from Pungesti against Chevron started with 150 protesters. At the beginning of the action the protesters had only blocked the access of Chevron machineries to install the derrick near the village (Goussev, Devey, Schwarzenburg and Althaus, 2014). In short time, after four days, the actions had taken a more dramatic shape: more than 500 villagers of Pungesti and surrounding localities, joined by activists from other parts of Romania, formed a human shield in front of the Chevron outlets (Goussev, Devey, Schwarzenburg and Althaus, 2014). After several clashes with the police and gendarmes, the protesters installed tents and set up a place of "continued protest" (Goussev, Devey, Schwarzenburg and Althaus, 2014). A TV channel – TV Pungesti – was set up on the place (Goussev, Devey, Schwarzenburg, Althaus, 2014) and it covered the protests from Pingesti all day long (24 hours per day), reaching in one month around 75,000 views on the Internet (Goussev, Devey, Schwarzenburg and Althaus, 2014). About one month later, despite the fact that Chevron representatives announced the suspension of works in the area, the civil conflicts have re-emerged (Vesalon, Crețan, 2015). The protest had lead again on violent clashes between the protesters and the gendarmes, the protesters blocking again the road and trying to obstruct the access of Chevron equipment on the concessioned land (Goussev, Devey, Schwarzenburg and Althaus, 2014). Referring to the events from December 2013, Maria-Nicoleta Andreescu, executive director of the Helsinki Committee Association for the defence of human rights in Romania, had declared (Vesalon and Crețan, 2015): "There are important signs that indicate that the gendarmes' actions were at least abusive if not illegal. It is very clear that by restricting the access of the press in the area the authorities did not allow the public to be informed". As a result of ongoing protests which had covered one week, on 8 December, Chevron announced that it has suspended the work in this area (Vesalon and Crețan, 2015).

Despite the fact that Chevron stopped its work in the area, Pungesti had become a symbol of the Romanian anti-globalisation movement, alongside with Rosia Montana. Thus, protests of solidarity with the "Pungesti revolt" took place in Bucharest, Cluj-Napoca, Timișoara, and Sibiu (Kadar, 2014; Vesalon, Crețan, 2015). The media coverage of the "Pungesti revolt" and accompanying movements was impressive and last more than two years.

The local referendum in Pungesti

In October 2013 the Pungesti local council agreed to hold a local referendum about “the use or banning of shale gas exploration and exploitation in the commune” (Ziare.com, 2016a). Furthermore, “one of the Pungesti local councilors demanded that the resignation of the mayor has to be added to the questions asked for the referendum” (Ziare.com, 2016a). In the meantime, representatives of the Chevron Company announced, on 17 October, that they will suspend work on shale gas exploration in Siliştea, Pungesti commune. The statement mentions that the company’s priority is (Ziare.com, 2016a): “To conduct these activities in a safe and environmentally responsible manner”. Despite the fact that Chevron had ceased to operate in the Vaslui County, a referendum was held in Pungesti on March 20, 2016 on the issue of the dismissal of the mayor in office, since he was held responsible with the agreement between local administration and Chevron Company. The referendum had registered a turnout of 34.3%, of which one third voted for the dismissal of the mayor in office. The result has caused new tensions within the community due to low turnout of the vote and the regulations regarding the necessary results to validate a local referendum.

According to the law, the local referendum is regulated in Romania both by the Referendum Law (Law 3/2000) and the Local Government Act (Law 215/2001). To be more specific, while the first law (Law 3/2000) provides that the referendum is valid if it participates in at least 30% of people registered in permanent electoral lists, the second one (Law 215/2001) requires a quorum of 50% plus one from the total constituency in order to validate a local referendum. At present the final verdict concerning the results of the local referendum in Pungesti are still under Court’s debate (Ziare.com, 2016b).

Conclusions

As the existing data and the present analysis suggests, direct democracy is a real instrument in Romania especially at the national level. In this case direct democracy is used mainly as a “weapon” in political battle and not as a structural way of expressing people’s empowerment. At the same time, at the local level, one can notice signs of grass-roots movements which used instruments and methods of direct democracy but the general image of it at this level is still weak and fragmented. Also, the present analysis and the set of data we used did not allow us to conclude that we can speak about the use of instruments of direct democracy in the process of exercising power an indicator of the political awareness of the Romanian society. As a result, the research hypothesis was not confirmed by the set of data and our analysis.

Directions for future research

The double result of the Romanian presidential impeachment referendums (2007 and 2012) raised several questions. One of them is if in the Romanian context the tensions between parliament, government and president, which are likely to occur in semi-presidential arrangements, favour or not the use of presidential impeachment as a method of dealing with political conflicts. A possible answer is that although the Romanian semi-presidential system is predisposed to conflicts between the president, parliament and government especially when the head of state has to carry out his/her mandate while having to deal with a hostile parliamentary majority, we can not point to a strict causal relationship between the tendencies of the semi-presidential form of government and the practice of presidential suspension (Dimulescu, 2010). At the same

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time there, there is a clear need for more comparative analysis at the European and international (world-wide) levels to offer a more comprehensive answer at the above-question. There are also several questions that have to be addressed in the next step of the research: 1. What are the relations between the national and local levels of exercising direct democracy in Romania? In this case, we assume that there is a clear need for a mixed approach (local vs. national) to explain the peculiarities of the referendums in Romania. 2. What is the impact of the process of accession of Romania to the European Union on the development of direct democracy in this country? To answer this peculiar research question more comprehensive and in-depth analysis at the regional (Eastern-European) and continental (European) levels are needed.

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