

THE 2015 REFERENDUM IN SLOVENIA

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Outline

- The Law on Changes and Amendments to the Law on Marriage and Family Relations was rejected by an almost two-thirds majority and in all eight constituencies.
- Although the National Assembly (the lower house of parliament) rejected a referendum motion, by a narrow majority (5:4) the Constitutional Court allowed a referendum to be held.
- The topic of the referendum was overwhelmingly presented as the choice between the protection of children on one side and as a question of marriage equality and inclusive society on the other.
- Despite there being 39 organizers of the election campaign, two campaign camps were clearly visible: a camp against the amendments under the slogan ‘Children Are at Stake’, and a camp in favor of the amendments under the slogan ‘It’s Time for Yes’.
- The voter turnout of 36.4% is among the highest at referendums in Slovenia in the last decade.

Contrary to 2014 when Slovenia was faced with several elections and one referendum, only one such an event happened in 2015; a nation-wide referendum on the Law on Changes and Amendments to the Law on Marriage and Family Relations. The amendments that had been passed in the National Assembly in March 2015 redefined marriage, and therefore allowed same-sex marriages, and such couples were granted the right to adopt children in the same way as other couples. The topic constantly attracted attention throughout 2015, albeit a referendum was only held in December. Given the content of the amendments, this is not surprising since the libertarian–authoritarian cleavage in Slovenia has been continuously prominent and, even more, it has frequently overlapped with other cleavages, like center–periphery, state–church, urban–

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rural, modernism–traditionalism, liberalism–conservatism (clericalism), and communism–anticommunism (Fink-Hafner 2012). In this way, the libertarian–authoritarian cleavage has been even stronger and led to large-scale polarization in the political arena as well as in society. The rights of homosexuals attracted huge attention and led to intensity of the cleavage already several years ago when the peak was reached by a referendum held in 2012. However, some important differences in the regulation of referendums have happened since.

After the 2013 changes to the referendum regulation, a referendum can only be held if 40,000 voters demand one. The 2015 referendum was the second one to be held under the rule that a referendum may reverse an adopted piece of legislation if the majority of valid ballots are against the passed legislation, but only if at least one-fifth of all eligible voters vote in that way. The new regulation also restricts the range of issues upon which a referendum may be held: referendums may not be held for laws concerning implementation of the state budget; emergency provisions for national defense and security or a natural disaster response; the ratification of international treaties; and unconstitutional affairs in human rights and other areas. Given such restraints, the government believed the potential referendum on the topic of the rights of homosexuals in 2015 would not be allowed.

Background

Socialist Slovenia was long a champion in terms of the rights of homosexuals in the area of former Yugoslavia, and at the end of the 1980s in the wave of new social movements indeed remained in step with developed Western European countries with the demand for legal equality of homosexual partnerships with heterosexual ones in terms of adoption of the law on registered same-sex couples (Krasovec & Ramet 2017). Also in democratic Slovenia the rights of homosexuals were put on the agenda, and the first Law on Registration of Same-Sex Civil Partnerships was prepared in 1998, although it was only passed in the National Assembly in 2005 under a center-right government, despite center-left governments having held power since 1992 (Kuhar 2006). However, the law does not provide homosexual couples with the same rights in terms of social security, health care, pension security, inheritance... as are given to heterosexual couples, nor the right for same-sex couples to marry (Krasovec & Ramet 2017).

The center-left government under Pahor (2008–2012) had sought to grant some of such rights to homosexual couples and, after three years of debates, finally decided to prepare a new draft Law on Marriage and Family Relations. The proposed law included two controversial provisions that triggered huge dispute

in society: one stating that marriage is a lifelong community of two persons of the same or opposite sex; and another that two same-sex partners may adopt a child. In particular, at the time the non-parliamentary center-right New Slovenia (NSi), together with civil society organizations closely connected with it, led the opposition to the proposed law, promising they would demand a referendum if such measures were to be adopted. NSi was supported by the center-right parliamentary opposition of the Slovenian Democratic Party (SDS) and the Slovenian People's Party (SLS).

At the time, the government was confronted with economic difficulties, conflicts and instability within it and, therefore in an attempt to avoid another referendum (in 2011 it had already lost at four referendums), it modified the provisions of the draft law so that marriage was declared a lifelong community of men and women, and that two same-sex partners may only adopt a child if one of the partners was the child's biological parent (Krasovec & Haughton 2012). Although such amendments had been passed in the National Assembly in June 2011, opponents continued to push for a referendum. The center-left government demanded the Constitutional Court's opinion on whether, from the perspective of constitutionally-defined principles and the rights of citizens, such a referendum would be allowed. The Constitutional Court allowed the referendum to be held and very quickly the 'Civil Initiative for the Family and the Rights of Children' under leadership of Mr. Ales Primc collected the 40,000 signatures needed for the referendum to be called.

The referendum was held in March 2012 and the (by then former) government lost. The amendments were rejected by 54.5% of those voting at the referendum (the turnout was 30.3%). All former and current parliamentary parties were involved in the campaign. In addition, the Catholic Church was an active opponent of the Law on Changes and Amendments to the Law on Marriage and Family Relations. The predominant Catholic Church, along with the Muslim and Serbian Orthodox churches, had publicly called on voters to reject the law, while the Lutheran Evangelical Church endorsed it (Slovenia Times 2012).

Due to the considerable political turbulence and huge economic pressures in 2013 (see Krasovec 2016), not to mention that according to the legislation the National Assembly is obliged not to pass any law whose content would be in contrast to the will of people expressed at a referendum for a period of one year after the referendum was held, it was only in 2014 that the center-left government announced another attempt to ensure equal rights of homosexual couples. However, the draft law was finally sent into the legislative procedure

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by the left-oriented opposition United Left (ZL) coalition. And in many respects the developments seen in 2011 and 2012 were repeated.

The Law on Changes and Amendments to the Law on Marriage and Family Relations, alongside the ZL coalition, was fully supported in the National Assembly on 3 March 2015 by two government parties (the Modern Centre Party - SMC and the Social Democrats - SD). Also the opposition Alliance of Alenka Bratusek (ZaAB) supported the law, while only some MPs of the governmental Democratic Party of Retired Persons (DeSUS) did so. The centre-right parliamentary opposition (SDS and NSi) did not support it. Already in the 2011 parliamentary debates, a low level of deliberation was detected since a relatively high level of intolerance and low level of argumentation were revealed (Kuhar & Petrovcic 2015), and it seems the situation in this regard had not changed in the 2015 parliamentary debates on changes to the Marriage and Family Relations Law.

Despite only a small change being made to the Law on Marriage and Family Relations, it triggered great dissatisfaction among more conservative parties and persons in Slovenia due to its redefinition of marriage. According to the passed amendments, marriage was no longer defined as a union between man and woman but as a union between two consenting adults. Moreover, this small change also granted same-sex couples the right to have a chance to adopt children. Only a day after the amendments were passed, opponents had already started to collect voters' signatures to demand the calling of a referendum. At the end of March 2015, a majority of the National Assembly rejected a referendum motion initiated by a Church-backed conservative group, citing the 2013 changes to the Constitution prohibiting referendums on issues that address unconstitutional situations – namely with the passed amendments an unconstitutional situation, that is the inequality of homosexuals, would be eliminated (Slovenia Times 2015a) as well as by arguing that marriage is a human right that should not be subjected to a popular referendum (Surk & Chan 2015). In October 2015, the Constitutional Court disagreed with the National Assembly's decision and by a narrow majority of 5 judges to 4 (as was also the case in 2011 with the Court's decision) allowed the referendum to be held. Signatures of 40,000 voters to back the demand to call a referendum were quickly collected and 20 December 2015 was set as referendum day – just before Christmas, predominantly a family-oriented holiday.

The Referendum Campaign

In Slovenia, referendum campaigns (the same is with election campaigns) can officially start 30 days prior to polling and must finish 24 hours before polling.

Referendum campaigns remained largely unregulated until 2007. The last amendments to the Elections and Referendum Campaign Act were passed in 2013 and, among other changes, donations from companies were ruled out, while donations from individuals of up to 10 times the average monthly salary are still allowed, and parties are still permitted to make transfers from their ordinary bank accounts to special referendum accounts. The Act sets the spending limit in referendum campaigns to EUR 0.25 per voter. Since there was a total of 1,714,055 voters at the time of the referendum, each campaign organizer was allowed to spend up to EUR 428,513. How much money was actually spent by each organizer will only be revealed in a few months when the reports are delivered to the Court of Auditors. Given the limitation on the finances allowed to be spent in line with the regulation on the financing of campaigns, the observation by Hocevar (2015) that the campaigns were mainly conducted *via* the Internet is not a big surprise.

In the end, 39 parties, associations, movements and individuals participated in the campaign. All parliamentary parties participated, while the government supported the law but did not participate in the campaign (Irish Times 2015). One reason so many parties, associations, movements and individuals participated in the campaign is that public radio and TV are obliged to provide time for the presentation of standpoints and views of all campaign organizers; in such a way, they assured free-of-charge media access for the presentation of their views nation-wide (Hocevar 2015). Nevertheless, two campaign camps were clearly visible: a camp against the amendments was active under the umbrella of the 'Children Are at Stake' group co-led by Mr. Ales Primc, a man with experience from the 2012 referendum, while a camp in favor of the amendments was united under the slogan 'It's Time for Yes'.

During the campaign, both camps also received some international back-up; the Yes camp received an endorsement from Human Rights Watch which joined a large chorus of Slovenian human rights NGOs calling for marriage equality. 'The right to marry is a fundamental right, as is the right not to be discriminated against, and same-sex couples should not be denied the right to marriage equality' (Slovenia Times 2015b). On the other hand, Pope Francis addressed Slovenian pilgrims during a general audience at St. Peter's Square in the Vatican. He told them to 'communicate my gratitude to the entire Church in Slovenia for its efforts for the benefit of the family. I wish to encourage all Slovenians, especially those in public capacity, to preserve the family as the basic unit of society' (Slovenia Times 2015b). The Slovenian Catholic Church was again very active in supporting the No camp and its leader, the Archbishop of Ljubljana, Mr. Stanislav Zore called on all religious men to fulfil their civic duty and reject the

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Law on Changes and Amendments to the Law on Marriage and Family Relations since ‘we are experiencing an attempt to redefine a family as undermining the foundations on which we stood as a Church and as a society’ (in Hocevar & Kapitanovic 2015).

The referendum campaign of the Children Are at Stake group was mainly organized around calls to assure the rights of children and future of families, for example: ‘we are going to decide on rights of children and on the fate of family life’. On the other hand, the It’s Time for Yes group called for the ‘right of a child to be adopted in the most suitable environment’ and ‘for an extension of rights to all, which will simultaneously not alter our rights’. Due to huge mobilization of people in both camps, the campaign was even more intense than the one in 2012.

Results

On 20 December, after a very heated and often intolerant campaign and debates 394,482 people or 63.5% of all who voted were against the amendments, with a turnout of 36.4%. The amendments that had been passed would be voted down according to the referendum regulation of 2013 if at least one-fifth of all eligible voters had also voted that way. According to the size of the electorate, this quorum was 342,811 voters. The results showed the No camp had succeeded in preventing the enforcement of the Law on Changes and Amendments to the Law on Marriage and Family Relations since 23% of the whole electorate had voted against it.

Table 1: Results of the 2015 referendum

Date of referendum	20 December 2015
Electorate	1,714,055
Referendum question	Do you agree that the Law on Changes and Amendments to the Law on Marriage and Family Relations passed by the National Assembly (ZZZDR-D) on 3 March 2015 should be implemented?
Totals votes cast	623,541 (36.4%)
Total valid votes	621,133 (99.6%)
Valid votes in favour	226,651 (36.5%)
Valid votes against	394,482 (63.5%)

Source: Official Gazette of Slovenia, 13/2016 (19.2.2016)

Several analyses were made after the referendum. One cluster of them dealt with the pattern of voter behavior (yes/no vote) throughout Slovenia. As the

results show, in all eight constituencies (*volilna enota*) the law was rejected, the lowest percentage against the law being recorded in the center (in the Ljubljana-Centre constituency), and the highest in the east of Slovenia (in the Ptuj constituency). The situation is a little different if we look at the second tier of constituencies (*volilni okraj*) since the law was “only” rejected in 74 out of 88 of them (Slovenian Electoral Commission 2015). A closer, more spatial analysis of the referendum results (yes/no vote) at 3,113 polling stations in Slovenia was made by Tiran (2016) who found that there are two worlds in Slovenia, separated both spatially and in terms of values. People living in rural areas are, on average, very conservative and have a traditional view on the family and rights of homosexuals, while people in cities have a moderately conservative to predominantly liberal attitude to these questions (Tiran 2016). The finding that Slovenia is divided along rural-urban lines is indeed not new, although it is surprising that this divide is so distinctive and has deepened in relation to the 2012 referendum results (Tiran 2016).

The second cluster of analysis dealt with the question of whether the referendum results indicate a shift in the Slovenian political arena. It seems this is not the case since after the referendum an analysis of a public opinion research center revealed that the mobilization of voters who otherwise do not support center-right parties and would never vote for the SDS or NSi had been crucial to the success of the No camp; even 110,000 votes more against the law in comparison to the 2012 referendum came from supporters of governmental parties (Hocevar & Potic 2015). Zorko (in Hocevar & Potic 2015) therefore evaluated the No camp campaign as strategically very well prepared and implemented; this camp namely ‘managed to mobilize and convince grandparents that their grandchildren would be taken away from them if the law was adopted and something happened to their parents’. According to Zorko, ‘within the Yes camp the main problem was the limited mobilization capacity of the ZL coalition as a front-runner of the Yes campaign, as well as the fact that parties of the governmental coalition indeed were not actively involved in the campaign, even though they supported the law’.

Conclusions

After the referendum results were published, the No camp co-leader Mr. Primc expressed his ‘hope that no one would understand the results as a defeat, while it is true that such a result is a victory for our children’. On the other hand, his political spirit was given encouragement since after the referendum victory he announced his more active involvement in party politics, and directly also mentioned the possibility of establishing a new, Christian party even though NSi clearly identifies itself as such a party. NSi, however, issued a statement that the

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referendum results were definitely a huge defeat for the government, while the PM Miro Cerar, leader of the SMC, estimated that the results cannot be seen as a sign of non-confidence in the government. Taking into account Zorko's above-mentioned statement on the inactivity of governmental parties in the Yes campaign camp, this may well be true.

The parliamentary ZL coalition, as the formal initiator of the Law, accepted the results, while insisting that the violation of human rights and discrimination against minorities cannot be allowed. At the end of the referendum day the No camp announced that efforts would be made to update the existing law on same-sex partnerships. Indeed, in January 2016 the Children Are at Stake group presented its own draft law on same-sex couples' rights, involving an expansion of the rights of same-sex couples, but not marriage equality. According to Mr. Primc, the draft law equalizes the legal status of homosexual couples with those of heterosexual couples, the only exception being the adoption of children and fertilisation with biomedical help. The ZL coalition was very critical of that draft law and evaluated that discrimination against same-sex couples is continuing and the ZL could not accept the proposed solutions (24ur 2016).

Under these circumstances, someone can expect that in the future an additional attempt to grant homosexual couples the same rights as held by heterosexual couples will emerge. Based on the two cases (in 2012 and 2015), and in the circumstances of the re-traditionalization of society (Kogovsek Salamon in Vukelić et al. 2015; Tiran 2016), heated debates can again be expected in that event.

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