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WHY FEAR OF RECALL FOR ELECTED OFFICIALS?

Abstract

Recall of elected officials as an important political and legitimate mechanism is becoming increasingly important throughout the world. Popularity of recall elections is becoming stronger with every passing day. "The right to recall of elected representatives", together with "the right of defending the electoral platform (the electoral programme)" are getting a key place in the fundamental structure of the universal democracy. When one person comes to power based on a "electoral programme or platform", that programme takes over the role of political agreement between the elected representative and the voters, whereas the elected representative, as every other party in any agreement, is obliged to respect what was agreed. The dilemma whether the universal democracy gives to the voters an "undeniable right" to decide to recall their elected representative if there is a reasonable doubt about his/her work, or even proves for misuse of his/her position, is constantly present within the expert circles as a topic for discussion. Therefore, the right to recall is permanently seen through the prism of this dilemma. Whether recall is a good democratic instrument that can, or should increase the political responsibility of the elected officials in the political system is a very frequently asked question.
The voters continuously express the need to get rid of corrupted politicians and the criminal government representatives. This conclusion is mostly present when their right to recall elected officials suspected or caught in criminal activity is explained. This is why the fundamental goal of the recall is to secure good governance in the country, offered through the possibility to remove the corrupted officials from the leadership in cases when they consciously misused the voters' trust.

Key words: *recall, elections, responsibility, democracy, good governance, legitimacy*

I. INTRODUCTION

1. The right to recall and the recall procedure in several countries

The right to recall is differently regulated in the legislations worldwide, like in the US, Canada, Venezuela, Philippines, Switzerland, British Columbia, etc. Besides these, there are many other countries who have tried to regulate the system of recall in a legal manner, because they saw the advantages the recall offers to the voters. These countries are: Sweden, New Zealand, Germany,

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the UK, etc. If we analyse in more details the recall procedures that exist in most of the countries, we will notice they all have several basic elements. For example, there are certain similarities between the recall procedure applied in the US, and the one applied in the UK, where it is regulated with a separate law (Recall of Elected Representatives Bill, 2012-13' of the UK).

The procedure for recall elected official within the framework of the federal US states or official at the local level starts with by filling out of a special statement of intentions, followed by petition for recall of a certain official. In addition, eight US federal states require the petition to be substantiated with evidence that certain specific conditions for initiating the procedure have been met.

Although in federal states of the United States, recall can only be used for elected officials within the federal units and at the local level, and not for federal elected officials, it seems that the use of this mechanism becomes extremely interesting to the wider public. With the recall procedure the citizens are directly involved in the governance and management with the political processes in the federal state. In the United States, the interest in the recall has intensified with the election of the actor Arnold Schwarzenegger as governor of California in 2003, when he initiated recall procedure against the former governor. Over the past 14 years, the governors of California and Wisconsin have faced few elections for recall from position, as well as the recall of another 22 state senators and hundreds of mayors, members of state councils, school board officials, and other elected officials[1].

Similarly in the United Kingdom, the recall begins at a time when the Speaker of the House of Commons informs the official who is concerned that conditions for initiating a procedure for his/her recall have been fulfilled. The next step is related to submitting a petition for recall signed by a "minimum number" of voters collected in a "specific time period". When the necessary signatures are collected, the process of their verification comes into play. After the

[1]Although US citizens cannot recall officials at the federal level, officials in the Federal Congress, or the President of the United States, the recall has great power at the local and at the level of federal states. Thus, in at least 29 US federal states there are specific rules that refer to the reasons and regulation of the very procedure for recall of locally elected officials, including mayors, members of local councils, etc., while in 19 states it is allowed to recall state elected officials as members of representative homes or governors in federal units. Each state that permits the recall has its own internal rules for managing the process.

Before a politician is removed from office, it is necessary to have a petition filed by a group of citizens who have previously collected a sufficient number of signatures of voters. The signatures must be verified, after which additional elections are organized.

Although the founding fathers of the US Constitution and the US federation debated the inclusion of a special provision for recall of officials in the US Constitution and of federal officials, it was ultimately decided to declare against the dismissal of federal elected officials. Thus, recall was not included in the US Constitution. Instead of recall, the Founding Fathers opted for the possibility for the Congress members to be removed through the expulsion mechanism, i.e. through a separate procedure of formal voting in which 2/3 of the Senate members or the House of Representatives should agree for the recall of one of their members.

It should be noted that only 20 congressmen have so far been removed by their colleagues, with 17 of them during the Civil War over allegations that they were "disloyal to the Union".

On the other hand, it should be mentioned that impeachment is also an instrument of control over the work of the holders of power. It is a legal process through which the President of the United States, the Vice President of the United States, or any federal governor can be removed from the elected office. The House of Representatives prepares the indictment against the official, and the Senate acts as a court, requiring a 2/3 majority of the senators to decide "for" the impeachment to be considered successful. For example, US President Bill Clinton was subjected to an impeachment by the House of Representatives, but it was not passed by the Senate, which left the President in office.

verification of the signatures, the mandate of the recall representative is emptied automatically and new additional elections are scheduled.

In India, the first recall elections occurred in 2008 when three local mayors, despite the recall procedure, were re-elected by voters in accordance with Chhattisgarh Nagar Palika Act, 1961.

The interest in the recall is growing in other parts of the world. For example, in Venezuela, Hugo Chavez, former president, faced recall elections, just like his successor Nicolas Maduro, who was only intimidated by the proceedings, but was not removed from his position. In the past few years, the president of Romania, the mayors of Warsaw and Lima, also faced, but survived the recall.

II. THE CONTENT OF THE RECALL

1. Reasons for initiating the recall procedure

There are various reasons for in favour of this instrument in each country. On the one hand, in transitional democratic states, the main reason for the application of the recall is the still strongly expressed need of the voters to feel that they have the final say in the management of the public policies and with the state. In countries with a traditionally expressed democratic tradition, recall is seen as an additional tool for the citizens to influence on the process of breaking or weakening certain interest groups with strong political or economic power in the country.

In both cases, the recall follows the main line of thinking that citizens are or should be the last factor, the final arbiter who needs to decide whether elected officials should stay or should leave their positions. If citizens assess that elected officials are working and acting responsibly and do not abuse the office, which is valued as citizens' interest, then they will remain in positions. Otherwise, they will be forced to leave the office.

The theory also lists certain mitigating circumstances for implementing the procedure itself. New and advanced information technology facilitates the implementation of the recall procedure, internet accessibility for most of the citizens, the widespread e-mail communication among people, their daily involvement in social networks, "smart" phones that also facilitate their work all these are factors that act as wind in the back of the recall.[2]

Over the past few years, Europe saw a boom with recall of elected officials. One of the most remarkable was the procedure for recall of the mayor of Warsaw, in Poland, Hanna Gronkiewicz-Waltz[3], the local referendum on the recall of the mayor of Chisinau, the capital of

[2] These reasons are noted as important for the increased success in the implementation of the recall procedures. For example, it is believed that more than 50% of US officials who were recalled lost their functions as a result of the civic vote "in favor" the recall.

[3] The recall procedure was led by several opposition parties, several interest groups, and NGOs that tried to remove Hanna Gronkiewicz-Waltz from her office. The procedure was initiated by a non-governmental organization of the citizens of Warsaw by filing a petition against the increased price of tickets in public transport, and against the slow construction of the second line of the subway in Warsaw. These were the two key issues on which the procedure for recall of the mayor was based. It should be noted that the opposition in Poland even before the recall procedure was initiated it was preparing a ground for her removal, due to the fact that her party was a close coalition partner of the Prime Minister party. Although the referendum on the recall of the mayor of Warsaw failed due to the low voter turnout in the referendum, the withdrawal remains an important instrument for achieving direct democracy in Poland.

Moldova the 2015, law passed by the House of Commons on the proposal of then-British Prime Minister David Cameron that officially allowed the recall mechanism to enter the United Kingdom system. However, despite the legal solution, this country faced a complication of the very procedure that turned out far more complicated than what was originally conceived.

Several of the recall referendums that took place in Europe stirred the expert and wider public, as well as the international organizations, which intensified the need to open a public debate on the recall.

2. Direct democracy – term, content, tools

Democracy is usually considered in its two emergent forms - direct and indirect. Direct democracy is also known as a pure form of democracy, because the citizens directly participate in the decision-making process and in the creation of policies in the society and in the state[4].

On the other hand, the indirect or representative democracy is based on the principle of citizens' sovereignty where citizens transfer their sovereignty, that is, the right to rule to their elected representatives who, on behalf of the citizens, make decisions and create policies in the system. Direct democracy is usually accomplished through several basic instruments: a civil initiative, referendum, petition, and a national veto. Through these instruments, citizens vote directly and decide on issues of relevance to the community (if it comes to local issues), and for the state (if it concerns issues of national importance). Very often the notion of direct democracy is also used in the process of electing the electors in the Electoral College, which is the "choice" of the President of the United States, as well as in the procedure for recalling the elected representatives.

In a democracy, politicians are accountable first and foremost to the citizens who elect them, though often the links are tenuous. First, the elections can be a rather distant and limited accountability mechanism, second, politicians elected under the systems where citizens vote for party lists rather than individual representatives tend to be accountable first to their party leadership, and only secondarily to citizens, and, third, officials appointed to leadership positions by the government in power may feel they owe their allegiance to political decision-makers, with only a distant or diffuse sense of accountability to citizens.[5]

a. Historical references to the development of the forms of democracy

Historically, direct democracy has found its roots in the ancient city-states, as well as in their assemblies where only free citizens (not slaves, foreigners, and women) have been enabled to decide on issues of importance to governance and community life. These ancient congregations were later copied to the Swiss cantons and cities, as well as in the cities of the former American colonies and confederate states.

On the American continent, the first British colonies were formed by adopting new constitutions, or by adopting constitutional amendments ratified in a referendum, and these solutions later became part of the common law of the United States. On the other hand, the

[4] See: CDL(2012)050, Report on Democracy, Limitation of mandates and Incompatibility of political functions, on the basis of comments by Ms Gordana Siljanovska-Davkova (Member, "The Former Yugoslav Republic of Macedonia") Ms Tanja Karakamisheva-Jovanovska (Former Substitute Member, "The Former Yugoslav Republic of Macedonia"), p. 3-4, http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2012)050-e.

[5] See: Derick W. Brinkerhoff, (2001), Taking Account of Accountability: A Conceptual Overview and Strategic Options, March, 2001: http://www1.usaid.gov/our_work/democracy_and_governance/publications/ipc/wp-14.pdf.

principle of national sovereignty whose creator Jean Jacques Rousseau most appropriately proclaimed during the French Revolution was the principle upon which the indirect, i.e. representative democracy in Europe was created.

As a result of the influence of the French Revolutionaries, the elements of representative democracy were also taken over in other European countries, in Switzerland, Germany after the First World War, but also in the constitutions of the US federal states during the 19th century.

Modern democracy in Europe is a mixture of elements of direct and representative democracy that developed from the absolutist and feudal conditions as a result of the expansion of the people's right to vote and the right to their political representation in the institutions of the system.

The development of constitutions and of constitutionality, of civil rights, of the general voter's right, as benefits of many states after the First World War in Europe, are events that have created the principles of national sovereignty, freedom and political equality among people. These principles constitute the representative democracy.

During the 19th century in Europe these principles were altered as a result of the development of the Parliaments. In a number of countries, direct democratic instruments have been repressed as a result of the strengthening of representative democracy.

Shortly after gaining popularity, representative (participative) democracy received its critics who considered that this model of democracy lacked civic legitimacy and political responsibility. As a result of the criticism of the representative democracy, the use of the instruments of direct democracy got strengthened. Through them, the citizens wanted to restore the power of direct decision-making on matters of importance to the community and the state. With the help of direct democracy, citizens again regained power to be direct creators of local and state policies.

In modern days, direct democratic processes cannot function in isolation, separated from representative institutions. Precisely because of this conclusion, contemporary political theory analyzes the direct democracy in the context of representative democracy, and vice versa.

The final result of this mutual analysis is a significant challenge for modern countries, a challenge that brings very interesting results. Thus, for example, according to some theorists, when voters go out to vote in a referendum, they are not only voters "in favor" of the referendum question, but also "veto players". According to other authors, direct democracy can seriously underestimate the mechanisms of representative democracy, while, according to third, contemporary democracy focuses on the deliberate functions of the democratic public sphere and of the civil integration capacity in democratic processes.

3. The political nature of the recall

The recall is defined as a legal, political and legitimate mechanism that theory most often defined as a form of direct democracy. The common feature of all forms of direct democracy is that they are based on the direct, sovereign power of the voters, against the power of the elected representatives of the citizens. Hence, often in theory, direct democracy is practically in conflict with representative democracy where voters choose their representatives to make decisions on their behalf and for their account.

Unlike the representative, in direct democracy, voters decide independently and personally on specific issues and (non) implementation of specific policies.[6]

Also, the theory explains various, often controversial considerations as to whether the recall of all holders of public authorizations, that is, officials in executive and legislative bodies is justified or not.

According to some considerations, the recall procedure enters the institutional system of representative democracy, which is why its processes are not essential for debates related to direct democracy. According to this reasoning, the recall cannot be applied to the appointed officials in the institutions of the executive branch.

On the other hand, there are such considerations that say that recall is a mechanism by which voters get a direct opportunity to remove elected public officials from their elected position before the end of the mandate. Which means, according to these considerations, the primary question is whether recall can be applied only to directly elected officials, or also to those of the executive government.[7]

The recall as a mechanism is closely connected with the debate on the imperative mandate, that is, with the question of whether the recall of an elected official can be carried out if the imperative mandate is explicitly forbidden in the Constitution or in the laws of the given state.[8]

It is known that the constitutions of a number of countries **explicitly prohibit imperative mandate (Andorra, Article 53; Armenia, Article 66; Croatia, Article 74; France, Article 27 (In France, the imperative mandate has been traditionally banned since 1789 and the**

[6] There are numerous arguments that are attached to one, that is, against the forms of direct democracy, on the other hand. Supporters of direct democracy believe that it can greatly reduce the democratic deficit in the system, because voters lose trust and interest in traditional models of representative democracy. Supporters of direct democracy argue that with the return of political power in the hands of the voters, they, i.e. the citizens, will regain the lost interest and role in the system of governance, which will positively affect the increase in the legitimacy of democratic systems.

On the other hand, critics of direct democracy say that it weakens the power of representative democracy and gives too much power to the majority of citizens who can endanger the rights of minorities in society. Also, critics of direct democracy consider that many voters lack sufficient understanding and information about the decisions that need to be taken in a referendum, especially when it comes to certain complex and specific issues that require appropriate knowledge and more detailed information, such as related issues about constitutional changes, or the adoption of a new constitution.

Hence, voter education, as well as information provided through appropriate campaigns, can raise the capacity of voters to make good decisions on important issues that are the subject of decision-making through the forms of direct democracy.

[7] In the United States there are successful examples for recall of judges, mayors, and even senators in federal states congresses. Although recall is not a commonly used mechanism even in federal states where it is considered constitutional, there are still two examples that can be cited as successful. One is in North Dakota in 1921, and the second in California in 2003. If a sufficient number of signatures of votes from the particular constituency is collected, then the voting body is activated that at elections or in a referendum has they say on whether the elected / appointed official should be recall or not.

[8] No European state (apart from Ukraine) has imperative mandate and it is worth noticing that some former communist regimes have vigorously rejected attempts to re-introduce imperative mandate. Thus, in Lithuania, the Constitutional Court has ruled in a number of occasions that the mandate means that electors have no right to recall a member of the Seimas and his/her freedom cannot be limited by parties, or organisations that nominated them. **See more details: CDL-AD(2009)027, Report on the imperative mandate and similar practices, Adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009 on the basis of comments by Mr Carlos CLOSA MONTERO (Member, Spain), p. 4.**

Constitution of the Fifth Republic stipulates that "imperative mandates shall be null and void"); Germany, Article 38.1 (Members of the Bundestag shall not be bound by any order or instruction and shall act according to their conscience); Italy, Article 67; Lithuania, Article 59 – which refers to no restriction of representatives by other mandates; Romania, Article 69; Spain, Article 67.2).

Identical provisions like the French one have been incorporated in the constitutions of countries such as, Bulgaria, Cote dTvoire, Croatia, Denmark, Mali, Poland, Republic of Korea, Romania, Senegal and Spain, and in the Statute for Members of the European Parliament.

As already noted, the parliamentary mandate has a number of common features in countries that have prohibited the imperative mandate. To begin with, the parliamentary mandate is general. Many Constitutions explicitly state that parliamentarians do not represent their constituency or department, but the nation as a whole (Belgium, France, Turkey, Macedonia etc.). Some countries consider that MPs are elected to represent their constituencies (for example the United Kingdom), without, however, opting for an imperative mandate inasmuch as members are free to vote as they wish.

The only case in which something similar to "imperative mandate" exists is the German Bundestag, in which members of the Länder governments may be recalled by these same governments (Article 51.1) and additionally, the votes of each Land must be cast as a block (Article 51.2). It must be noticed that the German constitution prohibits "imperative" mandate in the Bundestag (Article 38.1).[9]

In Germany only the Länder of Brandenburg and Sachsen, and the Land of Schleswig-Holstein has adopted this fully fledged direct democratic variant. The other Länder have put down a "tamed" version of the recall procedure by reserving the right of initiating the recall procedure to the local council which decides with a qualified majority vote of its members, while the local electorate is restricted to finally vote on the recall motion as adopted by the council. In this variant of the "recall" procedure it is a kind of mix of the representative democratic and the direct democratic principles.[10]

In international practice, there are two institutions that are somehow related to the notion of imperative mandate in the way in which it has been understood contemporarily in some European countries. These institutions are the recall in USA and the termination of mandates because of change in party affiliation.[11]

Recall elections are the kind of elections by which voters can seize the given function before the end of the office of the official. Voters become the main factor in giving and taking away public office, which practically minimizes the influence of parties, on the one hand, and increases the influence of the electorate on elected representatives, on the other.

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[9] The members of the Bundestag are not elected but appointed by the Lander. Their mandate is imperative to the extent that it is not the individual members who decide how to vote but the Government of the Land as a collegial body. It follows that voting rights in the Bundesrat are exercised in practice by the Lander and not by the individual members representing them in the Bundesrat.

[10] See: Hellmut Wollmann, "The direct election and "recall" of the mayors in Germany: From representative democracy-based to direct democracy-based local leadership", Humboldt-Universität, Berlin, http://www.uio.no/english/research/interfaculty-research-areas/democracy/news-and-events/events/conferences/2013/Programme/wollmann-direct-eleciton-of-mayors-draft.25.12.pdf. p.16.
Between 1995 and 2006 some 36 recall procedures led to the destitution of the sitting mayor. Detailed data and analyses see: Fuchs, Daniel, (2007), Die Abwahl von Bürgermeistern-ein bundesweiter Vergleich, KWI-Arbeitshefte, Uni Potsdam, https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/deliver/index/docId/1497/file/kwi_ah_14.pdf.

[11] Ibid, p.

When they know that they can be recalled, elected officials are more concentrated to work in the interest of the citizens of their constituency, or in accordance with their conscience, and not according to the party directives.

In some legal systems, citizens are allowed to launch an initiative by collecting a certain number of signatures in order to have a certain issue on the agenda of a government session, or on the agenda of a parliamentary session. These civil proposals are usually reviewed by the authorities without the possibility of putting them on a referendum. Although similar, this procedure is, in fact, different from the recall procedure.

Usually, the number of signatures required to initiate recall procedure should be in proportion to the number of votes the official has received at the last election for the selected function. If the required number of valid signatures is collected, then the procedure is continued in the second phase, i.e. first on a referendum goes the motion for recall on which voters declare with "in favor" or "against" directly on the ballot, and second, if the majority of voters declare "in favor" the recall, then the election of their deputy may be done either by way of a "second question" on the very ballot for recall on a referendum, or through further election.

4. Different explanations for the reasons for recall

Recall is a mechanism by which elected officials are more closely related to voters who have chosen them in those positions. There are two explanations in this context.

The first explanation is based on the fact that elected politicians are agents, mediators of voters, due to which politicians are obliged to perform their obligations in a consistent manner that is in line with the will of the voters in their constituencies. Accordingly, the elected representatives should not be subject of an initiative for their recall only on the basis of a spoken word, expressed opinion on how he/she believes that it is best to act in the community he/she represents, but only on the basis of committed or not committed (when they were obliged to) actions and activities from the position of the elected seat.

On the other hand, the theory is inconsistent when it comes to the system of representative governance, according to which members of parliament represent their constituencies, but at the same time they also represent the state and the national interests.

In many constitutions in Europe it is envisaged that MPs are free to make decisions in Parliament and to decide based on their own beliefs when representing citizens, with imperative mandate being banned.

The second explanation is more practical because it starts from the need to remove corrupt, incompetent and lazy officials from the elected position, especially if their function has a fixed mandate for which the voters voted. When the mandate is envisaged to last for a longer period of time, and with that there is evidence that they have practically abused the position, the recall is considered a useful tool.

Here we should mention the two basic theoretical models for elected officials. According to one, still known as the trustee model, elected officials are selected according to their knowledge, wisdom, and experience. They are empowered by voters to make decisions according to their best judgment and conscience. The second one is the delegate model according to which elected officials are obliged to keep an eye on the interests and wishes of the voters in their constituency.[12]

[12] See: Turpin, C. (2002), British Government and the Constitution, (London: Butterworths LexisNexis).

Both models have their own positive and negative characteristics, although in the last few years the delegate model is considered to be more meaningful. The recall serves as a stumbling block to the delegate model. Despite the more and more frequent claims that citizens elect and respect wise and educated politicians, at the end they vote and appreciate responsible and responsive electoral candidates.

The most commonly mentioned reasons for the recall are the following: 1. Misuse of office and authority (in case of bribery and corruption), 2. unethical behavior in the service (unprofessional and irresponsible performance of the job), or 3. failure to perform official duties (for example, not fulfilling his/her obligations)[13].

5. Historical background of the recall

The origin of the recall can be found in ancient Athens, in the institute "ostracism" that the Athenians used as a tool by which free citizens-members of the Agora were entitled to vote to exile certain individuals from the community for a period of 10 years when they did not abide by

[13] **Specific grounds for recall are required in only eight US federal states**:
1. Alaska: Lack of fitness, incompetence, neglect of duties or corruption (AS §15.45.510), 2. **Georgia**: Act of malfeasance or misconduct while in office; violation of oath of office; failure to perform duties prescribed by law; willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed. Discretionary performance of a lawful act or a prescribed duty shall not constitute a ground for recall of an elected public official. (Ga. Code §21-4-3(7) and 21-4-4(c)), 3. **Kansas**: Conviction for a felony, misconduct in office, incompetence, or failure to perform duties prescribed by law. No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured. (KS Stat. §25-4301), 4.**Minnesota**: Serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office of a serious crime (Const. Art. VIII §6), 5.**Montana**: Physical or mental lack of fitness, incompetence, violation of oath of office, official misconduct, conviction of certain felony offenses (enumerated in Title 45). No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct. (Mont. Code §2-16-603), 6.**Rhode Island**: Authorized in the case of a general officer who has been indicted or informed against for a felony, convicted of a misdemeanor, or against whom a finding of probable cause of violation of the code of ethics has been made by the ethics commission (Const. Art. IV §1), 7.**Virginia**: Neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office, or upon conviction of a drug-related misdemeanor or a misdemeanor involving a "hate crime" (§24.2-233), 8.**Washington**: Commission of some act or acts of malfeasance or misfeasance while in office, or who has violation of oath of office (Const. Art. I §33).
Source: National Conference of State Legislatures, July 2011.
Recall Provisions in State Constitutions and Statutes: Alaska – Const. Art. 11, §8; AS §15.45.510-710, 15.60.010, 29.26.250-350, **Arizona** - Const. Art. 8, §1-6; Ariz. Rev. Stat. §19-201 – 19-234, **California** – Const. Art. 2, §13-19; CA Election Code §11000-11386, **Colorado** – Const. Art. 21; Colo. Rev. Stat. §1-12-101 – 1-12-122, 23-17-120.5, 31-4-501 – 31-4-505, **Georgia** – Const. Art. 2, §2.4; Ga. Code §21-4-1 et seq., **Idaho** – Const. Art. 6, §6; Idaho Code §34-1701 – 34-1715, **Illinois** - Const. Art. 3. §7, **Kansas** – Const. Art. 4, §3; KSA §25-4301 – 25-4331, **Louisiana** – Const. Art. 10, §26; La. Stats. Ann. §18:1300.1 – 18:1300.17, **Michigan** – Const. Art. 2, §8; Mich. Election Law §168.951 – 168.975, **Minnesota** – Const. Art. 8, §6; Minn. Stat. Ann. §211C.01 et seq., **Montana** – Mont. Code § 2-16-601 – 2-16-635, **Nevada** – Const. Art. 2, §9; Nev. Rev. Stat. §294A.006, Ch. 306, 539.163 – 539.183, **New Jersey** – Const. Art. 1, §2(b); NJ Rev. Stat. Ann. § 19:27A-1 – 19:27A-18, **North Dakota** – Const. Art. 3, §1 and 10; ND Century Code Ann. §16.1-01-09.1, 44-08-21, **Oregon** – Const. Art. 2, §18; Or. Rev. Stat. §249.865 – 249.880, **Rhode Island** – Const. Art. 4, §1, **Virginia** - Va. Code §24.2-233, **Washington** – Const. Art. 1, Sec. 33-34; Wash. Rev. Code §29A.56-110 et seq., **Wisconsin** – Const. Art. 13, §12; Wis. Stat. Ann. §9.10.

and did not obey the internal regulations of the community. On the other hand, the analogy between these two categories cannot be considered appropriate because of the fact that ostracism was a measure of removing any person from the city, and not just the elected officials.

Historically, the recall can most be associated with the English and the Swiss sources where this mechanism was placed in the context of the English "right of petition" against the King, as well as through the use of the instrument of no confidence vote in the cabinet in the House of Commons. The recall is often associated with the practice of the English governments to demand the dissolution of the House of Commons in order for the citizens of the elections to be able to directly state the issues of national importance.

According to other sources, this instrument is most closely associated with the Swiss cantonal system of removal of elected officials, which is initially part of the Swiss custom law, although it later became a formal part of the law of several Swiss cantons.

In the United States, the recall was first practiced in the 17th century, in the so-called colonial period. The first record of its application was recorded in the laws of the General Court of Massachusetts, the General Court of the Massachusetts Buy Colony in 1631, from where it later expanded to other colonies. Article 5 of the Articles of Confederation and Perpetual Union gave the legislative bodies of the Confederate States an annual appointment of their special delegates to the Confederal Congress who were entitled to recall elected Members of Parliament if they decide that there are grounds for doing so.

However, a corresponding, equivalent provision of this sort was not included in the federal Constitution of the United States of America of 1787 due to the concern of the founding fathers of the Federation that with such a constitutionally established right the designated delegates could gain the power to recall members of Congress without the will of the citizens. They thought that this situation could lead to the so-called "Slave" position of the elected congressmen in relation to the appointed delegates, without the opportunity to rise above such a position and to take into account the interests of the nation.

By the beginning of the 20th century, as the progressive movement in the United States developed, the recall was significantly implemented. One of the main differences between the recalls in the 17th and 18th century and those in the 20th century, was that the initial version often included the dismissal of elected officials in federal legislatures, while in the 20th century the rule that citizens have the right to initiate recall by collecting signatures.

This new method of American soil was first applied locally in Los Angeles due to citizens' concerns about the increased power of local politicians. Their power was increasing in proportion to the increase in business and money. The more money and businesses local politicians had, the greater the abuses of the elected functions and positions were. It was precisely because of this conclusion that it was necessary to establish and apply a mechanism for stopping such actions. An example is the Southern Pacific Railroad adopted in 1903.

This project was popularly called “The grand bounce”. From Los Angeles, the recall was later adopted in the state of Oregon in 1908, California in 1911, as well as in Arizona, Colorado, Nevada, and Washington in 1912.

With the first wave of its adoption in the early 20th century, some more characteristic examples of recall could not be seen in other federal states of the United States, although the idea itself became very popular.

6. The modern version of the recall

Today, 19 US federal states practice recall of the elected state officials. Additionally, several other states apply this mechanism at municipal or regional levels of government. Except at the level of federal units where recall is applied, at federal level, within the federal organs of the United States, recall cannot be applied, because the US Constitution does not allow it as a mechanism.[14]

Except in the United States, this mechanism has also found its way into constitutional systems that are under direct influence of the American system, such as Japan, Taiwan, and the Philippines at the local level, as well as in countries where there is a need for strengthening democracy and direct involvement of citizens in the processes of government, such as in Kyrgyzstan, Venezuela, etc.

In countries with the Westminster Parliamentary system, recall is applied in British Columbia, Canada, and there is also a proposal for its limited application in the United Kingdom in response to a scandal over the abuse of parliamentary funds by MPs covered by the Parliament's budget[15].

In the United States, 19 federal states practice the method of recall the elected state officials. Additionally, several other states apply this mechanism at municipal or regional levels of government. Although almost all US states that apply the recall use the referendum as a mean of determining whether a particular official really needs to be recall. In Virginia the recall is initiated by voters, based on a pre-trial procedure known as a "recall trial", or by an individual judge, or by a jury.

If the recall is initiated and the number of collected signatures is sufficient under the law, the success of the recall ranges around 50%. This relatively high percentage is indicative given the fact that only those proposals that have considerable support and money given by certain political powers have a chance to succeed.

[15] The power of citizens to recall MPs who are not according to their liking is determined by the right of petition that has been used as a tool on several occasions in England in order to serve as a form of direct responsibility of lawmakers in front of voters. The MP who does not perform his duties in the manner he promised in the campaign will be recalled before the expiration of the mandate for which he was elected. The new system requires the Committee on Parliamentary Standards to first issue a request for initiating a procedure against an MP, mostly due to certain financial irregularities committed by that MP. In that case, and only then, the petition should be given for the collection of signatures by the voters in the constituency of the MP within a period of eight weeks. This petition must be supported by evidence that the MP has committed financial misuse of budget funds (as established as a fact by his fellow parliamentarians), or by a court with pronounced detention for more than 21 days. If 10% of the electorate in the electoral district signs the petition, then the petition is presented to a parliamentary committee that can accept or reject the petition. If the petition is successful, then the parliamentary term is considered to be completed, and a decision is made for announcing additional elections to that constituency from which the recalled MP is coming. According to many experts in the field of the British Parliamentary Democracy, the entire recall system is yet another example of how a direct democratic experiment, as popularly the recall is called, is controlled by the Parliament and practically it fails to achieve the goals it has set up. By law, MPs may face a petition for recall if he/she is convicted in the United Kingdom of a 12-month jail term or less, or if the House of Commons ordered his/her suspension for at least 21 days (or at least 28 calendar days). Under current rules, MPs who received prison sentence more than 12 months automatically lose their mandate. If one of these conditions is met, then the constituency of the MP has the possibility to collect signatures for a recall petition, for convening additional elections. Also, the law contains rules on how much money can be spent during an election campaign, a step taken because of the concern that wealthy lobbyists can dominate the campaign to fill vacant seats for questions such as tax laws, or the issue of abortion. The petition must be available in four polling stations in the constituency, and be available to any voter who has reached the age of 18. The petition can be signed either by mail, either personally, or through a proxy. The petition is open for signature eight weeks. Critics of the recall law believe it was too mild, and was postponed/delayed due to its non-acceptance by the Conservatives. More than 70 MPs from all parties have signed a law on an alternative to the recall proposed by Tory Zach Goldsmith, which requires 5% of the electorate to send a note of desire to recall their MP, 20% of the electorate is required to convene additional elections. The same rights would apply to both local officials and members of national parliaments. The recall as an instrument is

Australia for the first time allows the recall following an initiative of the Australian Labor Federal Conference held in 1912, though with an insufficient number of votes to enter the general platform. The idea of introducing the recall was rejected in 1915 by the same party, and the justification of this act was that the recall would cause an unfair political treatment that would flow from the "political passion to the tears of the honest man holding up the honest views on issues which, later in the investigation, can prove to be fair and just, but it will be too late to correct the mistake." And once again in 1919, the recall was not accepted as a mechanism by the ALP and its federal conference, to finally be accepted as a mechanism with the General Platform in 1924.

In very rare cases, the recall has a broader meaning which refers to the recall of ministers in governments regarded as elected officials by parliamentarians, with an obligation to early announce and hold new parliamentary elections. Where ministerial dismissals occurred, elected representatives in the Parliament were elected to multi-mandate constituencies with a proportional election system, which meant that the individual recall of the officials was virtually impossible and impractical. Also, this kind of recall was practiced even in cases when the function was related to a fixed mandate obtained at elections where the legal body did not have a way, or there was a very limited way to cause its own dissolution.

Examples of such forms of recall are difficult to find in practice. It is a very rare phenomenon, even in those countries that are considered champions of direct democracy. Such a system theoretically exists in Switzerland at the cantonal level, although there is no information whether and how successful it was in its application since the 19th century to the present. Also, at least on a theoretical level, this phenomenon is foreseen in Liechtenstein.

On the other hand, collective recall was a popular mechanism at the state and local levels in Germany during the Weimar Republic as a means of putting a political end to the ruling political elite. Today, this mechanism is allowed only in several German state constitutions, although it can be noted that it has been applied only once.

The recall of local governing bodies is permitted today in Japan, and although such a collective recall rarely occurs, the system still recognizes it as an instrument.

III. THE RIGHT TO RECALL - DEBATE "IN FAVOR" AND "AGAINST" RECALL

1. Arguments in favor of the right of recall

As arguments in favor of recall, there are frequent considerations that suggest that elected representatives in the decision-making process become marginalized due to lack of competence for the function they hold, as well as due to lack of ethics in their work. The electorate most often elects the representatives on the basis of a particular party platform or program without knowing the individual abilities and capacities of the elected politicians. Very often, the elected

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conceived to give voters the power to keep those MPs whom they perceive as honest, and to get rid of the MPs who do not work in their interest.

representatives do not adhere to the party program when they enter the office, but work according to their own interests and views. For this reason, the recall of the elected representatives should exist as a mechanism for removing the politicians who have defected in their work, and who do not take into account the interests of the electorate that has elected them.

It is considered that the right to recall the elected representatives should be a protective mechanism from corrupt politicians, as well as from criminalized holders of political power. Supporters of this model believe that if voters have the right to elect officials for officials, then they should have the right to recall them. The system of recall of the MPs should be so set in a way to force the elected officials to act, to work in the interest of the constituencies in the electoral district in order to ensure the security of their position. This relationship will strengthen the individual and collective political responsibility of the elected officials towards its electorate, and will in the long run also strengthen the overall political responsibility of the system in the country.

On the other hand, voters' right to recall a certain elected official should also affect the reduction of election campaign costs, as candidates know that they can be recalled at any time. It is a mechanism by which practically the voters get the right to get rid of the wrong decisions and the bad politicians long before the expiration of the politician's mandate. In this sense, the electorate will no longer have an obligation to tolerate incompetent politicians and wait for their mandate to pass, and then remove them from position.

The next argument in favor of the recall, and in that sense of direct democracy, is that it gives the voters an opportunity to continually make independent democratic decisions about who and how they are governed by, given that with the representative democracy, they only one opportunity in three, four, or five years to decide and to elect their representatives on elections. The representatives elected in this manner then take over the control and decision-making in the system, and citizens who do not have the right to recall them remain without a concrete opportunity to decide against their elected representatives if they do not exercise the power in the manner in which they promised to perform it.

According to supporters of the recall, this mechanism leaves room for voter control over the work of elected officials throughout the entire mandate. On the other hand, the recall, when used irresponsibly, can be abused as a tool by the political parties in the battle against their political competitors.

One of the main advantages for the voters to have the opportunity to initiate early elections is to improve their involvement in the democratic processes, as well as to have the ability to hold early elections when it is most needed due to the mistakes made by the ruling majority.

2. Arguments "against" the right of recall

The key argument against the recall is that its frequent use can lead to a so-called process of "surplus of democracy" that jeopardizes the independence of the elected representatives. The recall can seriously discourage the politicians in the process of making their own decisions, or in taking unpopular political steps that can be unpopular in the short term, but in the long run they can prove to be correct.

The recall can stop the process of the elected politicians acting according to their own conviction and their own opinion, which can seriously harm the political processes and cause standstill.

Recall may also cause destabilisation of the government in the country. The recall can be misused by various interest or pressure groups who might's undermine selected politicians not to take certain steps and not to make certain decisions because of the danger of being recalled by the citizens. It is known that a lot of money is involved in this game there is a lot of blackmailing and corrupt deals.

The recall often underestimates the representative democracy and suppresses the qualities of the elected politicians and in that way reduces the overall democratic capacity in the country. The supporters of this mechanism say that the recall aims to serve as a tool for disciplining elected officials, that is, a tool that should increase the political responsibility of elected representatives when making political decisions. This thesis of the supporters of the recall procedure is also used by their opponents as a counter-argument, since the opponents believe that the recall can completely undermine the trust of the electorate in the elected representatives, as well as in representative democracy as whole.

Practically, by allowing the possibility to use the recall as a tool to distract the official from his function, a system of distrust and fear is built in which the elected officials will be afraid to make unpopular, but sometimes necessary political decisions precisely because of the danger that hangs above them that they can changed at any time.

The theory lists several serious remarks on the expenses of the recall. These include: the role of the money; the costs necessary to initiate the recall; the instability and ineffectiveness of the government; and the use of election petitions as a political "weapon".

The money plays the dominant role in the process of recall and the civic-initiated referendum. The collection of signatures, in the opinion of many, has become a professional activity. It is considered that the success of any petition for recall dominantly depends on collecting signatures, which is actually related to how much money is invested in that process. The recall campaign itself is often used to politically discipline the political competitors, since it can be initiated with a promise to stop when the government acts in a "proper" way. This wording can increase the influence of wealthy corporations over the government.

The first step to overcome this problem is to forbid the use of paid signatures and to make their collection a punishable offense. It should be noted that in the United States attempts to ban paid signatures were rejected as unconstitutional, although on the other hand, the Australian Supreme Court had a different attitude. According to this Court, the ban on professional collecting of signatures must be balanced by the mechanisms for easier collecting of signatures and for effective involvement of volunteers in that process. There are also proposals for filling of online petitions.

The entire electronic petition system may also have serious failures in protecting the voters from possible abuses of their electronic signature, especially in cases where voters have the same name and surname.

Another reason against the recall is also related with the large costs associated with the conduct of the procedure itself. These costs should be added to the costs for organizing additional elections, then for organizing a referendum, or for organizing completely new parliamentary elections. The costs for the candidates, the parties, as well as for the administrative bodies responsible for conducting the whole procedure should be also taken into account.

Another reason attributed to the recall is the possible instability and inefficiency of the government that can be caused during the recall procedure. This inefficiency is mainly associated

with the populist diversion of the government or other authorities, the abandonment of certain reform efforts due to the danger that any of the elected officials may be recalled.
It is for these reasons that the introduction of a fixed mandate is justified, which provides room for the officials to act responsibly in the interest of the public.
The opponents of the recall are supporters of the fixed mandate that, in their view, can put an end to the processes of destabilization of the current government, as well as to the speculations related to the constant calls for early elections.

Also, a recall problem may also occur in the case of an election system based on party lists. Hence, a logical question is how compatible is the recall with the proportional election system. If the electoral system is a majority one with a single mandate electoral constituency, then the recall is not a problem. But if the electoral system is a proportional one with closed party lists, then the things get complicated.

IV. CONCLUSION

As we have seen from the above mentioned, there are obvious differences between the imperative mandate, on the one hand, and the recall, on the other. Although similar, these two institutes are essentially different. The recall has similarities with the imperative mandate, yet they are not identical. While the imperative mandate is forbidden in the Western democracies, the recall, as we have seen, is used in several of them.

When recall is initiated as a result of specific reasons, it may and should be viewed irrespectively of the imperative mandate. The recall is a political process, while the imperative mandate is a legally (constitutional) established category. If the Council of Europe documents are followed, as well as the national constitutions of the member states, a decisive ban on introducing (in some countries a return) to an imperative mandate can be noted.

But, on the other hand, because of the differences that can be observed between the two institutes, **such a decisive ban on the application of a recall is not stipulated, which implies that recall can be accepted as a useful democratic institute only if it is properly dimensioned in the system, and if it exists within the framework of well-defined reasons for its activation.**

These reasons should certainly not violate the active and passive dimension of the right to vote, nor the European standards related to the right of the elected person to act in accordance with his own opinion and the opinion in the interests of the community/state.

This is also in context of the Article 3 of the European Charter of Local Self-Government where is stipulated that the concept of local self-government relies **on the right and ability of local authorities, exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population**.

In more concrete terms, this means that the local authorities should be elected by the people and, as a pre-requirement, the people should enjoy the right to freely elect the local leadership, that elected local authorities should enjoy the legal and practical possibility of regulating and managing, on their own, the public affairs of the local community.[16]

[16] See: CDL-AD(2017)021, European Commission for Democracy through Law (Venice Commission), Turkey opinion on the provisions of the Emergency Decree Law N° 674 of 1 September 2016 which CONCERN THE

On the other hand, it should be noted that the Parliamentary Assembly of the Council of Europe in several resolutions and recommendations has stood against the recall of the representatives of the citizens and by the political parties.[17]

At present, imperative mandate *stricto sensu* and recall in the state level are unknown in practice in Europe. Moreover, there are very few countries among the Council of Europe member states which have legislation giving the power to political parties to make members of the elected bodies resign if they change their political affiliation. The mechanisms of control of individual representatives proposed in the Serbian or Ukrainian cases cannot be equaled to 'imperative mandate' which is a practice forbidden in virtually all European countries. These mechanisms come closer to the Paunovic and Milivojevic v. Serbia Judgment[18] model of 'party administered mandate' which is or has been characteristic in some African countries with the objective of preventing massive turn round of voters' decision by means of party switching.

EXERCISE OF LOCAL DEMOCRACY IN TURKEY Adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017) on the basis of comments by Mr Richard CLAYTON (Member, United Kingdom) Ms Regina KIENER (Member, Switzerland) Mr Jan VELAERS (Member, Belgium), http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)021-e, p. 17.

[17] On 25 June 2008 the Assembly adopted Resolution 1619 (2008) entitled "State of democracy in Europe. The functioning of democratic institutions in Europe and progress of the Assembly's monitoring procedure", which stated, inter alia: "... constitutional and legislative provisions providing for the recall of peoples' representatives by the political parties (the so-called 'imperative mandate') should be abrogated in the Russian Federation, Serbia and Ukraine; ... the recall of peoples' representatives by the political parties (the so-called 'imperative mandate') is unacceptable and contrary to the principles of the rule of law and the separation of powers."

On 23 June 2010 the Assembly adopted Resolution 1747 (2010) entitled "State of democracy in Europe and the progress of the Assembly's monitoring procedure", which stated, inter alia: "... the Assembly urges ... the Parliaments of the Russian Federation, Serbia and Ukraine to abrogate constitutional and legislative provisions providing for the recall of peoples' representatives by the political parties (the so-called 'imperative mandate') ..."

On 25 January 2012 the Assembly adopted Resolution 1858 (2012) entitled "The honouring of obligations and commitments by Serbia", which stated, inter alia: "9.4. [The Assembly] congratulates Serbia for adopting, in 2011, the Act on Altering and Amending the Act on Election of Members of Parliament of the Republic of Serbia in accordance with the Joint Opinion of the European Commission for Democracy through Law (Venice Commission) and the OSCE/ODIHR, which has brought the system of allocation of mandates in the parliament into line with European standards; it abolished the 'party-administrated mandates' and the 'blank resignations', as requested by the Assembly in its Resolution 1661; ... The Assembly notes, however, that the Serbian Constitution still contains a provision allowing for "imperative mandates"; ... 9.10. [The Assembly] therefore calls on the Serbian authorities to: 9.10.1. eliminate from the constitution the provisions establishing the imperative mandate of members of parliament; ... "

The Venice Commission adopted an Opinion at its 70th plenary session (document CDL-AD(2007)004 of 19 March 2007), the relevant part of which reads: " ... [Section 2 of Article 102 of the Serbian Constitution] ... states that 'Under the terms stipulated by the Law, a deputy shall be free to irrevocably put his/her term of office at the disposal [of] a political party upon which proposal he or she has been elected a deputy'.

It seems that its intent is to tie the deputy to the party position on all matters at all times. This is a serious violation of the freedom of a deputy to express his/her view on the merits of a proposal or action. It concentrates excessive power in the hands of the party leaderships."

The Report on the Imperative Mandate and Similar Practices adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and by the Venice Commission at its 79th Plenary Session (document CDL-AD(2009)027 of 16 June 2009) reads, in so far as relevant, as follows: "3.2.1. Obligation of Members of the parliament to resign if they change their political affiliation – the case of Serbia. ...

[18] https://www.legal-tools.org/doc/cc623d/pdf.

The Venice Commission has consistently argued that losing the condition of representative because of crossing the floor or switching party is contrary to the principle of a free and independent mandate.