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Regional and Local People Consultation through Referendum

by

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N - 1



Abstract

The Author analyses the normative framework and the use of the referendum in Italy, at regional and local level. According to the Author, this level of the analysis could even be used as a preliminary phase for studying people's 'consultation' in general. For this reason, the article contains a brief digression on the development of local referendums in Italy, before and after the beginning of the Republican regime. The article also contains a brief description of three particular types of referendum, i.e. the regional referendum, the referendum for territorial modifications and the local referendum. The conclusion reached is that local and regional referendums are midway between the principle of representative democracy and the needs for direct democracy, and can therefore be a useful means in the study of the functioning of the referendum as a whole. This makes it crucial that the authorities take into account the results of the referendums when taking decisions. It is also concluded that the scenario of different referendums in Italy at local and regional level is very heterogeneous and requires clear rules and more widespread information among the population

Key-words

Italy, local/regional, referendum, direct democracy



It is to be preliminarily noted that the present issue develops between the traditional conflict between the direct and the representative democracy. In fact, it has been traditionally submitted that small local contexts could represent an ideal testing ground for the use and implementation of certain institutes of direct democracy. In particular, the first proposals in this direction have been submitted by the progressive movements, between the 19th and the 20th centuries.

1. The first legislative provisions

The first legislative provisions relating to the introduction of such institutes were contained in the norms by which the public services were attributed to the Municipalities and the Provinces. Art. 13 of the Law No. 103/1903, in particular, initially provided for a mandatory referendum for such attribution of services to the Municipalities (no referendum was, on the contrary, provided for the attribution to the Provinces). In any case, this provision was later modified by art. 10 of the Royal Decree No. 3047/1923, which provided that the referendum could only take place if there was opposition to the proposal of the Municipality Council, either by one-twentieth of the electors or by one-third of the members of the same Council.

A few years later, Royal Decree No. 2578/1925 (the Consolidated Law on the direct assumption of public services by the Municipalities and Provinces) provided a different procedure. After a favourable decision by the Provincial Government, when opposition is raised either by one-twentieth of the electors of the Municipality or by one-third of the members of the Municipality Council, the Resolution of the Council is subject to the vote of the electors resident within the Municipality, called to vote by public notice (published by the Municipal Government at least 15 days before the first call).

The constituents, according to the above provision, were called to vote either “YES” or “NO” on the issue relating to the direct assumption of the service by the Municipalities (again, the assumption of services by the Provinces was not subject to any referendum). If the result of the consultation was in opposition to the Resolution of the Municipal Council, the proposal for that direct assumption could not be made again for



three years, unless one-quarter of the electors requested to do so, following the specific procedures provided (in any case, the proposal could not be submitted again for one year after the voting).

2. The Constitutional Assembly

The members of the Constitutional Assembly mainly discussed the issues relating to the national abrogation referendum and agreed on the idea that the referendum in general – when used carefully and in specific circumstances – would have represented a very useful means for the direct expression of the will of the people. Other members underlined that it was useful and acceptable when local problems were at issue, because they were of direct concern for the citizens.

Nonetheless, doubts arose during the debate on how to regulate such means, and the solution finally selected was to delegate such choice to the Regional Statutes. The Constitution (art. 123), in fact, provides that the Regional Statutes regulate the referendum on laws and administrative measures and provides for popular consultation on the modifications of the territories of local entities.

3. Regional Referendum

During the 1970s, the Regional Statutes provided for the use and the discipline of the referendum, but substantially repeated what was stated in art. 123 of the Constitution. They introduced abrogation and consultative referendum, but the latter institutes were used very rarely.

The Constitutional Court, on the other side, provided an important clarification in relation to the binding nature of such institutes and relating to the types of issues which could have been submitted to the referendum; in fact, it was clarified that they could only relate to matters of local and territorial concern, not to national interests.

In this respect, the main case to which we must refer is the one concerning the referendum in Sardinia on the location of foreign military bases.

The Court clarified, in its Judgment No. 256/1989, that consultative referendums



are not binding from a formally legal point of view and are not part of the process for the expression of the will of the authorities that organize them. Nonetheless, they shall be considered as an expression of the political participation of the people, based on articles 2 and 3 of the Constitution. Such expression possesses, according to the Court, a strong political nature and is relevant for evaluating the strength of the public authority's will compared to that of the community. In addition, such expression is also relevant for evaluating political responsibility, in relation to the decisions that the authority is willing to carry out.

The results of the referendum could, moreover, influence the decisions to be taken in the future and the discretionary choices of the central bodies. In any case, it is necessary that the whole national electorate is called to decide on the main issues relating to general interest. The regional consultative referendum cannot have the same importance of the national consultative referendum, considering also that it only involves the regional population.

For the same reasons, specific limits are applied to the regional consultative referendums, in order to avoid the risk that they negatively influence the constitutional and political order of the State.

It is to be considered, furthermore, that after 1999, the new regional statutes provided a substantial widening of the role of the referendum.

The Constitutional Court, in its judgment No. 372 of 2004, clarified that the referendum is – according to the explicit provision contained in art. 123 of the Constitution – part of the mandatory content of the regional Statutes. Therefore, Regions are allowed to regulate the use of the referendum provided for in the Constitution, also modifying such institute, because the Regions can freely choose forms, ways and criteria for the participation of the people in the mechanisms of democratic control on the regional decisions and resolutions.

However, Regions have only made limited use of this power. In some cases, they have called abrogation referendums substantially identical to the national ones, with a modification of the validity quorum in order to grant a higher effectiveness (see the case of Tuscany). In other cases, regional Statutes have provided for consultative referendum, while only in the case of Lazio Region has a referendum been created by which the population can submit proposals to the Council, that the Council is then obliged to



examine.

Art. 62 of the Lazio Regional Statute provides that the same subjects which have the power to propose a referendum for abrogation can also submit a proposal for a regional law to be subject to a referendum. If the regional Council does not vote on the proposal within a year of declaring the admissibility of the referendum, the Presidency of the Region shall use its own decree to call a referendum on the proposal submitted.

Therefore, the Statute only allows the use of the referendum where the regional Council has been inactive, while it does not regulate cases in which the Council votes on a proposal submitted by the population, but with (possibly major) amendments. This *vacuum* makes it difficult to consider such institute as a proper form of *popular initiative*.

Anyway, a general look at the new regional statutes reveals a quite interesting scenario, especially in relation to the abrogative referendum. Concerning the acts, which can be subject to referendum, it is possible to see that in some regions they are administrative measures or regulations (Abruzzo and Marche), while in almost all the others it is also possible to ask for the abrogation of regional laws. As regards the subjects enabled to file a request for a referendum, they are generally a certain percentage of the population (e.g., 3.5% in Liguria or 4% in Calabria) or certain number of inhabitants (e.g. 10,000 in Umbria, 20,000 in Marche or 60,000 in Piedmont), or alternatively a certain number of local (provincial or municipal) governments (e.g. 2 in Calabria, 10 in Emilia Romagna and Lazio), while in some cases they represent a certain percentage of the regional population (as it is, e.g., in Marche, Piedmont and Abruzzo). Each regional statute provides for specific exclusions from the scope of referendums, such as the provisions of the statute itself (in all the regions), financial and budgetary laws, elections, and regulations concerning the functioning of the regional bodies, etc. The quorum to be reached is usually the majority of the citizens possessing the right to vote, while in some cases (Tuscany) it is the majority of the number of citizens who participated at the previous elections.

In relation to the consultative referendums, on the other hand, they are usually provided for creating new municipalities or for combining existing ones (Abruzzo, Lazio and Marche), while in other cases they relate to “proposals of specific interest for the local population” (Tuscany, Umbria and Calabria). Also in these cases, the subjects enabled to present proposals are, again, a certain percentage of the regional population and/or a



certain number of local governments, or the majority of the members of the Regional Council.

4. Referendum on territorial modifications

Art. 132 of the Italian Constitution regulates the procedure for the internal modifications of the Italian territory. In particular, it provides that the combining of existing Regions or the creation of new Regions (with a minimum population of 1 million inhabitants) can be decided through a Constitutional Law (i.e. a law approved through the special procedure provided by art. 138 of the Constitution), after the consultation of the Regional Councils, when it is requested to do so by a number of Municipal Councils which represent at least one-third of the population concerned and when the proposal is approved by the majority of such population through a referendum.

Similarly, Municipalities and Provinces willing to be separated from a Region and aggregated to another Region, can do so when such change is approved – through a referendum – by the majority of the population of the Provinces and Municipalities concerned, by means of a national law, after consultation of the Regional Councils.

According to art. 133, the modification of the provincial territories or the creation of new Provinces within a Region can be decided through a national law, after the proposal of the Municipalities and after consultation of the Region. The Region itself, after having consulted the population concerned, can create new Municipalities within its territory and modify their territories and names.

As regards the provision contained in art. 132 of the Constitution, it should be noted that the implementation law (see articles 44 ff. of the Law 352 of 1970) has made the procedure substantially more difficult by interpreting the concept of “population concerned” – which shall be consulted in order for the modification to be approved – as meaning the whole population of the Region.

The Constitutional Court, in its judgment No. 334 of 2004, stated as follows. Considering that the referendum provided by art. 132 aims at verifying that the population of the local authorities concerned actually approves the modification, it shall be concluded that the proposal for the referendum can only be approved by that population and not by



representatives of other population. The reform of the discipline aimed at avoiding that the majority of a population, which is not directly concerned by the territorial modification, could oppose or void the intention of the communities willing to become independent or to be aggregated to other Regions.

In any case, the will of other populations is adequately and sufficiently protected and represented in the following phases of the procedure. Considering that the positive outcome of the referendum only has a merely consultative nature, it does not bind the national legislator, which has discretion on the decision relating to the territorial modification. Furthermore, considering that the procedure for the approval of the national law includes consulting the Councils of the Regions concerned, this is a phase that will allow for evaluation and for local interests to be represented, whereas they conflict, entirely or partially, with the decision taken on the modification. Therefore, the acquisition and the examination of the opinions of the regional Councils have a strong influence on whether the law on territorial modification is approved.

As regards art. 133, relating to Provinces and Municipalities, a referendum is provided as mandatory but not binding (note that the article also provides for Municipalities to change their name). See in particular the case of the Municipality of Ascea, in Campania Region. The Constitutional Court clarified, in its judgement No. 237/2004, that, even if the principle concerning the change of the name of the Municipality has never been tested in court, the wording of art. 133, second paragraph, does not allow the exclusion of the referendum procedure in such an hypothesis (because it is regulated together with other cases of modifications, where the referendum shall apply). According to the Court, this happens because such hypothesis relates to the name of the Municipality, which is one of the main elements of a local community's identity.

5. The local referendum

The local referendum was substantially developed in the late 1970s, in relation to very important local issues, thus causing the evolution of the so-called *atypical referendum*. In this phase, very important referendums took place, such as the one relating to the location of the Italian-Yugoslavian industrial zone in Trieste, the location of the major energy plants



(Muggia and Lodi), the construction of the incinerator of Cengio, the closure of the historical centres of Rome, Milan and Bologna and for the master plan of Pavia.

What shall be underlined, in relation to such referendums, is that the procedures substantially varied from one case to the other, though all of these referendums only had a consultative nature.

The Regional Administrative Court for Lazio, in its judgment No. 824/1986, stated that the Municipal Councils have the standing to call a consultative referendum on general issues concerning the citizens, in order to assess the will of the electorate and to use the outcome as one of the elements for the decisions of the Council itself. In such way, intervention by private citizens is allowed in the administrative process, an intervention that shall be favourably considered by the administration because it allows a more careful assessment of the interests concerned, through the consultation of the community.

The general provision relating to such referendum is contained in art. 6 of the Law No. 142/1990 (now art. 8 of Consolidated Law No. 267/2000), which states that the Statutes of the Municipalities shall provide for methods of consultation of the population and procedures for citizens to file applications, petitions and proposals aimed at better protecting the collective interests and shall provide the guarantees for their prompt examination. Referendums can also be called after being proposed by a sufficiently high number of citizens. It is nonetheless clarified that such consultations and referendums can only relate to matters forming part of the exclusive competence of the local Authorities and cannot be held simultaneously with local elections.

It can therefore be noted that in the wording of the law of 2000, the legislator demonstrated more *favour* towards the institute, by providing that the referendum shall not only be of consultative nature and by referring to the Statutes for the regulation of the referendum. The types of referendum allowed, therefore, are the ones with consultative nature, referendums containing proposals, and deliberative, abrogative, territorial, confirmative and oppositional referendums. In addition, it is only stated that referendums cannot be held simultaneously with local elections, thus allowing them to be held together with national, regional and European elections (in order to encourage the participation of the citizens). Nonetheless, the referendum can only refer to matters included in the local Authorities' competences.



A very interesting referendum is the one regulated by the Statute of the Municipality of Perugia (art. 20), which provides that the Mayor is obliged to call the referendum (whether it is consultative, propositional or abrogative) on Municipal measures, when he or she is required to do so by a) the absolute majority of the Municipal Council, for the consultative referendum; b) the majority of two or more Councils of District or c) five thousand citizens.

The propositional or abrogative referendums can only be proposed on measures within the competence of the Municipal Council and cannot relate to the following subjects: appointments or decisions relating to individuals, contributions and subsidies, budget, loans, taxes, administrative sanctions and measures relating to the employees of the Municipality, the Statute, the Regulation of the Council, and administrative acts bound by national or regional laws.

The consultative referendum cannot be called on measures relating to taxes and tariffs and cannot take place together simultaneously with provincial, municipal or district elections.

The Statute provides that, after the referendum is called, the Municipality shall abstain from deciding on the same issue as that of the referendum, unless it makes substantial modifications to the subject in the same direction expressed by the proposed referendum.

The abrogative and propositional referendums are valid if the majority of the electorate takes part in the voting and are considered to be passed if gaining the majority of favourable votes

If the consultative referendum has a positive outcome, the Municipal Council is obliged to discuss the issue of the referendum in the course of its first session. If the propositional or abrogative referendum has a positive outcome, the Municipal Council is obliged to adopt the measures for the implementation of the will of the constituents. The assessment of the legality and admissibility of the referendum is carried out by the Institutional Affairs Committee, which shall decide within 30 days.

In lieu of the analysis of the Statutes of the Italian Municipalities it is possible to conclude as follows. There are many different types of referendum but most of them (more than 90%) are of a consultative nature. The initiative is usually attributed to a certain quorum of the members of the Councils or a percentage of the citizens. The constituents



are the residents of the local territory (age limits are set at 16 or 18 years) and the subject of the referendum is limited to local matters, while taxes and appointments are excluded.

It shall be noted that very (too) often the assessment of the admissibility of the referendum is attributed to political bodies (the Municipal Council) and only in some cases to specific guarantee bodies.

As regards the effects of the referendum, it shall be noted that they usually only create a political influence, while attempts have been made to create an obligation on the Municipal Council to decide on the issue.

In any case, the local referendum has not acquired an important role yet, probably due to its lack of binding nature, the lack of interest and participation by the population. Nonetheless, some referendums have had a very important significance in the last decades, for example the one in Rome (15 June 1997) in relation to the privatization of the Centre for the Production of Milk, or the one in Bologna, in 1997, when the issue was the relocating of the main station. In any case, while the referendum has been used several times, the participation of the population was very low (see also the case of the referendum in Livorno, of November 2010, concerning the construction of a new hospital).

Participation of 28/11/2010 H 22,00			
Summary			
	Males	Females	Total
Registered	66,256	74,234	140,490
Voting	13,880	14,437	28,317
% of the Registered	20.94%	19.44%	20.15%
Aged 16-18 years			
	Males	Females	Total
Registered	1226	1081	2307
Voting	304	271	575
% of the Registered	24.80%	25.07%	24.92%



Foreigners	Males	Females	Total
Registered	3736	4736	8472
Voting	117	226	343
% of the Registered	3.13%	4.77%	4.05%

6. The future role of the local referendum: conclusive remarks

In conclusion, it is possible to observe that the local and regional referendums may have a very important role in the study and analysis of the relationship between the citizens and the public authorities. This happens because they are located – together with the institution of referendums in general – midway between the principles of representative democracy and the needs for direct democracy. In other words, the local level is very useful for studying how a referendum works because it can represent a very important instrument for the dialogue between the citizens and the institutions. For this reason, it is of crucial importance to guarantee that the results are followed by the authorities; therefore, in order to make sure that local and regional referendums are working and effective, it is necessary that the public institutions that organize them pay attention to the will expressed by the population when consulted by means of referendums.

Secondly, it is possible to note that Italian authorities at all levels have paid much attention to the discipline of regional and local referendums, thus creating a wide set of rules, mechanisms and requirements, which are different from one system to another. Nonetheless, it is necessary to note that, despite a much more massive use of computer systems in the last years, the visibility of “local” referendums is still too low, as is – consequently – the participation of the people. A valid example is the referendum relating to the new line No. 8 in Rome. The voting procedure was online. 83% of the constituents voted “Yes” but only 3,600 inhabitants, out of 2½ million, took part in the vote i.e. 0.15% of the electorate. Therefore, it seems also important to reinforce the role of such instruments through a more thorough and extensive involvement of the population when they take place.



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