



Congress of Local and Regional Authorities of Europe
Chamber of Local Authorities

Congrès des pouvoirs locaux et régionaux de l'Europe
Chambre des pouvoirs locaux

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SECOND SESSION

(Strasbourg, 30 May - 1 June 1995)



OPINION

ON

THE DRAFT RECOMMENDATION No....
OF THE COMMITTEE OF MINISTERS
TO MEMBER STATES ON REFERENDUMS
AND POPULAR INITIATIVES AT LOCAL LEVEL

Rapporteur for the Opinion: Mr Diego SCACCHI, Switzerland

(approved by the Chamber of Local Authorities on 30 May 1995)

The Chamber of Local Authorities of the CLRAE,

A

1. Acting upon the request from the Committee of Ministers of the Council of Europe that the CLRAE should submit an opinion on Draft Recommendation No. R(95)... on referendums and popular initiatives at local level proposed by the CDLR;
2. Bearing in mind Resolution No. 2 on local referendums adopted by the European Ministers responsible for Local Government meeting in The Hague on 15 and 16 September 1993;
3. Recalling Resolution 101 (1978) of the CLRAE on the participation of the individual in local public life;
4. Bearing in mind that local authorities are those primarily concerned by this subject and that participation policies must be worked out, above all at local level, where there is the greatest awareness both of the limitations and of the many possibilities that exist;
5. Aware that a large group of citizens feels that there is a contradiction between their own desires and demands and the administrative actions of the authorities, and that there is a consequent pressure for further democratisation and for a greater involvement of the citizen in public affairs;
6. Stressing that in order to maintain and strengthen the democratic element in local government under these circumstances, a new and sustained effort must be made to involve citizens in the affairs of their local community;
7. Considering that local referendums and popular initiatives could be ways of encouraging or reviving citizens' interest and participation in the running of public affairs and could be useful complements to representative democratic procedures at local level;
8. Considering that in the majority of member States of the Council of Europe some form of legal provisions exist allowing the holding of local referendums, even though these provisions vary considerably as regards the subjects on which referendums may be organised, the conditions under which they may be held and the status of the referendum and its results;
9. Considering, however, that only in a very limited number of countries has this instrument of direct democracy formed an integral part of local self-government over a long period of time;
10. Bearing in mind that in a number of member States alternative means of promoting citizens' participation have been adopted, such as:

a) the decentralisation of certain government activities to the submunicipal level, e.g. through the institution of neighbourhood councils, which serve as a focus for co-ordinating the whole field of participation by reporting on the desires of their neighbourhood and transmitting them to the decision-making authorities;

b) the institution of the public hearing, which provides a direct contact between the authorities and the citizens by allowing the authorities to give information about the basis and possible effects of a chosen policy and by granting an instrument for the citizens to define their own position in all administrative measures;

c) the organisation of citizens' action groups or voluntary associations to campaign on specific issues, which through consultations with the authorities draw attention to problems, desires and views existing among the population;

11. Stressing that constant efforts should be made to foster the participation of foreigners and minority groups in the affairs of the local community, which should include *inter alia* their participation in neighbourhood councils, public hearings, action groups and consultative referendums;

12. Aware of the potential risks which local referendums might present, in particular by delegitimising the representative character of local institutions;

13. Accepting that the institutionalisation of local referendums and popular initiatives within the framework of regulations can be a suitable means of guaranteeing the proper use of these instruments of direct democracy and limiting their potential risks;

14. Stressing that the basic institution representing the general interests of the population at local level must remain the municipality, which, through its elected bodies, draws up general guidelines, policies, choices and priorities and acts as a mediating and unifying force in the local community;

15. **Takes note** of the Report drawn up by Mr Scacchi, (Rapporteur), which is appended to the present text and decides to submit same to the Committee of Ministers;

B

1. **Recommends** that the following amendments be taken into consideration when finalising Recommendation No of the Committee of Ministers to member States on referendums and popular initiatives at local level:

a) Paragraph 4 of the preamble should change as follows:

Considering that the local referendum may be seen as *one of the instruments* of direct participation ...

b) Paragraph 8 of the preamble should be replaced by the following two paragraphs:

Considering nevertheless that representative democracy, *functioning via democratically elected local councils or assemblies*, must remain the basis of local democracy, *and that referendums and popular initiatives cannot remedy defects in the democratic system itself*;

Considering that these instruments should be seen as supplementing and complementing the basic concept of democracy, which must itself remain founded on the principle of representativity;

c) Paragraph 10 of the preamble should read as follows:

Believing that the institutionalisation of local referendum and popular initiatives within the framework of regulations *can be* a suitable means of guaranteeing the proper use of these instruments of direct democracy and limiting their potential risks;

d) Insert a paragraph after paragraph 10 of the preamble as follows:

Considering nevertheless that in the process of institutionalisation these instruments need to be evaluated with reference to the legal and social structures of local communities in any given country;

e) Insert a paragraph after paragraph 11 of the preamble as follows:

Having regard to Opinion .. (1995) of the Chamber of Local Authorities of the Congress of Local and Regional Authorities of Europe;

f) Paragraph b. of the Recommendation should read as follows:

b. to lay down, if appropriate *and after duly consulting the relevant associations of local authorities*, a legal framework for referendums and/or popular initiatives at local level, by specifying the matters for which these instruments are admitted or forbidden, as well as the consultative or decision-making character of the referendums.

g) Add a new paragraph c. to the Recommendation as follows:

c. *To acknowledge that, in accordance with the principle of subsidiarity, such a legal framework is a matter for each State to regulate, and that harmonisation of European legislation in this field should be avoided.*

h) The last sentence of article I.5 should read as follows:

The final count yielding a positive or negative result should be explicitly indicated and published *in an appropriate manner, as laid down in the regulations.*

i) The first sentence of article II.2 should read as follows:

In principle, any subject within the competence of the local authority concerned may be submitted to a consultative referendum.

j) The first sentence of article III.2 should read as follows:

In principle, any decision or plan within the competence of the local deliberative body may be submitted to a decision making referendum.

k) A third paragraph should be added to article III.2 as follows (similarly to article II.2):

A question submitted to a decision-making referendum should take the form of a fully drafted proposal (single form) and may cover only one specific issue (single content). The wording must be sufficiently precise to avoid any ambiguity.

l) Article III.4 should read as follows:

The result of a decision-making referendum, whether positive or negative, shall normally be binding on the local authority, *subject to the provisions of the relevant regulations. In particular, the regulations may lay down a minimum turn-out level for results to be considered as valid.*

m) The first sentence of article IV.2 should read as follows:

In principle, popular initiatives may cover any subject within the competence of the local authority.

C

Appendix

The question of local referendums has already been dealt with extensively and frequently by the Council of Europe's Congress of Local and Regional Authorities. Since the CDLR's draft recommendation accords well with the tenor of its discussions and the conclusions it has adopted on several occasions, the Congress's general opinion on the text is positive. A few points need to be made, however, concerning the introductory part of the recommendation:

- 1) The Council of Europe is made up of states which vary greatly in their surface area, population and political structures. These differences extend to their local institutions. Consequently, while it must be acknowledged that introducing instruments of direct democracy is justified on certain conditions, these instruments need to be evaluated with reference to the legal and social structures of local communities.

- 2) It needs to be stressed, as the draft recommendation does, that "representative democracy must remain the basis of local democracy". It follows that referendums and popular initiatives cannot remedy defects in the democratic system itself. They should be seen as supplementing and complementing the basic concept of democracy, which must itself remain founded on the principle of representativity (except, of course, in very small communities - which should, in any case, disappear through a merger process).
- 3) A distinction must be made between referendums and initiatives. Generally speaking, a referendum involves allowing citizens who collect a certain number of signatures to submit a decision taken by the legislature to the judgment of all the voters. This is, to some extent, a negative measure, since it questions a decision taken by the community's representatives. The drawbacks mentioned in the draft recommendation, especially the danger that over-use of this instrument may delegitimise the local parliament and reduce its prestige, apply chiefly to referendums.

A popular initiative, on the other hand, allows a group of citizens to propose to the electorate that new regulations be adopted in various fields, or certain public works undertaken. To that extent, it is a positive means of action.

Popular initiatives are less open to demagogic manipulation and exploitation than referendums. Being positive, they cannot be launched solely by malcontents, who often act for reasons which have nothing to do with the issue being voted on. This greatly reduces the risk of the voters' decision being twisted to serve some unintended purpose.

- 4) It is obvious that referendums must be only one of the means used to involve citizens in the management of public affairs. There are other ways of securing direct participation: keeping the public informed, consulting them by holding meetings and debates on certain issues or public projects, setting up neighbourhood assemblies and committees, introducing the right of petition, involving members of the public in running certain facilities, etc.

These forms of participation can be far more effective in achieving local democracy than referendums.