

# **Local referendums**

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## **I. THE LOCAL REFERENDUM AS AN INSTRUMENT ENABLING CITIZENS TO PARTICIPATE IN THE FUNCTIONING OF LOCAL DEMOCRACY**

1. Initially, democracy at the local level developed in the form of direct democracy; citizens participated directly in decisions concerning local government. As public responsibilities gradually became more complex and more numerous, direct democracy progressively gave way to representative democracy; citizens nominated their representatives who alone took the decisions affecting the community as a whole.

Nowadays, the scope of public responsibilities and, in most countries, the size of municipalities have grown to such an extent that the running of a local community by means of direct democracy is virtually impossible.

Despite this evolution, the institution of the referendum as an element of direct democracy has nonetheless been retained or introduced in several representative democracies.

2. Substantial differences exist between one State and another as regards the ways in which the referendum machinery is used; in certain cases, the referendum is very close to a vote of confidence, whereas in others, it is hardly distinguishable from a public opinion poll.

The plebiscite as an gesture of public confidence towards an individual (or limited number of individuals) has to be clearly distinguished from the referendum machinery, which culminates in a decision concerning a particular project or measure.

Public opinion polls often have the same aim as consultative referendums, i.e. to discover the general opinion of the population before a decision is taken. However, they differ from the latter in that they can be carried out by any body, be it public or private, usually only part of the population is consulted, and the organisers are not obliged to follow a strict procedure analogous to that laid down for elections.

3. In all democratic states, citizens are periodically called upon to elect their representatives within their respective local communities. If the voters are not satisfied with the administration of local affairs by the elected representatives, they can express their displeasure at the following elections.

The referendum in all its forms - for adoption, modification, abrogation, proposal, consultation - enables citizens to express their views directly on a question of substance. Hence it can limit and modify the actions of a regime of representative democracy.

Some people consider that the binding referendum, even though it may be confined to specific subjects, is incompatible with the concept of representative democracy. It in fact raises the citizens to the level of the highest decision-taking body. Even the results of a merely consultative referendum tend - in practice if not in law - to exert strong pressure on the elected representatives to act as the electorate wishes.

4. On the other hand, citizen participation in public life is not always considered to be satisfactory; disaffection on the part of the voters often becomes apparent during elections of their representatives at local or national level.

This disaffection is even more apparent when there is a question of involving citizens more or less directly in the planning and implementation of public activities with a view to improving all sorts of aspects of community life.

The existence of the referendum may be a means of encouraging or reviving individual interest in the satisfactory administration of matters of public concern.

5. Furthermore, recourse to the referendum machinery can be extremely valuable in the case of important issues with implications for the future and which lead to diametrically-opposed positions among the electorate - and especially where the views of the political parties have not been made clear at the time of the elections. It may be considered to be the most democratic method, making it easier to win acceptance of sometimes unpopular decisions from the majority of the population.

6. Viewed from this angle, the referendum can be considered a specific and practical procedure, whereby citizens exercise their right to participate in the running of public affairs -a right incorporated in the democratic principles common to all Council of Europe member States.

7. However, in order for the referendum machinery to be valuable and useful for the community, the use to which it is put has to be clearly defined and circumscribed, particularly as regards the issues which can be put to referendum, the right to initiate referendums, the conditions to be respected and the consultative or binding nature of the vote.

Both basic conceptions and actual practice in this respect vary considerably from one country to another. For this reason, the following part of the report will be devoted to an overview of the various national situations. This will be followed by an in-depth study of the use of referendums in Switzerland, the only country where this institution has formed an integral part of local democracy over a long period of time.

On the basis of the information concerning the various national situations, the last part will present some general considerations regarding the holding of referendums at local level.

## II. LOCAL REFERENDUMS IN LAW AND IN PRACTICE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE<sup>1</sup>

### 1. Statutory provision for holding referendums at local level

Most of the member States for which information is available have some form of legal provision permitting or in some cases prescribing the holding of local referendums. However, as will be seen below, these provisions vary considerably with regard to the possible topics of such referendums and the conditions under which they may - or must - be held, as well as in the status of the referendum and its results.

It seems that only a minority of member States have no legal provision for the holding of referendums within individual local authorities. This is the case in Belgium, Denmark, Greece and the Netherlands. In Belgium the constitution has been held to implicitly prohibit local referendums by making it clear that municipal or provincial councils are responsible for deciding matters of local interest. In Denmark, in the absence of any relevant provision in legislation, neither the local population nor a minority in the local council can demand the holding of a referendum. All these countries appear to place particular emphasis on the representative system, whereby it is the elected representatives who take the political decisions and must subsequently render account of their stewardship to the local electorate.

It is noteworthy, however, that in three of the countries in question local referendums are by no means unknown in practice. Thus in **Denmark** it is assumed that a local council may, without statutory provision and without seeking the approval of a higher administrative authority, decide by majority vote to obtain the opinion of the electors by holding a referendum on a consultative basis. In the **Netherlands** too, consultative referendums are organised.

The case of **Belgium** is a little more complex. The Council of State has declared that in so far as a consultation of the electors would in practice be likely to compel the local authorities, in the exercise of their responsibilities, to conform to the result of the vote, it would be incompatible with the constitutional provisions referred to above. However, with respect to the municipalities, the *Conseil d'Etat* did acknowledge the existence of a certain practice by which the municipal council organises consultative votes of the inhabitants on matters within its competence, provided that such consultations relate to matters on which it the council may judge it useful to be informed of the aspirations or tastes of the inhabitants and the result in no way binds the municipal authorities. If these conditions are respected, it is not held to be necessary to legislate in order to provide a legal basis for this practice.

Only in **Greece**, where the institution of the referendum exists at national level, is there no recourse to it at the level of the local authorities. There, preference is given to other forms of direct or indirect expression of opinion by the inhabitants, such as town meetings, assemblies of neighbourhood councils, etc. This gives the citizens the possibility to express their views on a consultative basis.

It may further be noted that the position in Belgium, Denmark and the Netherlands is similar to that of several German *Länder* which also have no legal provision for local referendums and to that of

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<sup>1</sup> *The special case of Switzerland is dealt with in the next part of the report.*



Norway outside of a narrow range of topics relating to schools. Moreover, in practice it is not essentially different from that of those countries which, as will be seen below, have legislative provisions authorising municipal authorities to carry out consultations of the local inhabitants. The most significant distinctions between European countries relate, rather, to whether referendums are held only at the discretion of the local council or may be initiated by citizens, and whether they are only advisory in nature or the result is binding on the local authority.

In these circumstances, those countries which have no specific legal provision for local referendums will not be given separate treatment in this part of the report.

## 2. How and by whom a local referendum may be initiated

Among the countries under consideration, a fourfold distinction may be made with regard to the means by which a local referendum may be brought about:-

- (i) It may be a matter for the local council alone;
- (ii) A certain percentage of citizens may take the initiative, but it is still up to the local council to decide whether the referendum should take place;
- (iii) If the necessary percentage of citizens takes the initiative, the referendum must be held;
- (iv) On certain subjects the law may make the holding of a referendum obligatory.

(i) As indicated above, in those countries which have no specific provision for local referendums, the latter can at most take the form of consultations of the local population at the discretion of the municipal council. Another example of this first category is provided by **Sweden**, where the Local Government Act contains the following provision:

"The assembly may resolve that, as part of the preparation of a matter to be discussed by the assembly, viewpoints are to be obtained from members of the municipality or the county council.

This can be done by means of a referendum, an opinion poll or some similar procedure. In this connection the municipal election committee may be engaged if its other activities are not impeded thereby."

In **France** too, where a law on the territorial administration of the Republic passed in 1992 provides for the consultation of the electorate at the level of the commune on matters within the competence of the latter, the initiative for such an procedure belongs solely to the mayor and the municipal councillors. The municipal council decides on the principle and the organisational arrangements for such a consultation either on the proposal of the mayor or at the written request of one third of the members of the council in communes of 3 500 inhabitants or more or the majority of the members in communes with less than 3 500 inhabitants.

The position in **Portugal** is similar. The direct consultation of local citizens can be initiated only by the deliberative and executive organs of the local authorities or by one third of their members. The electors cannot present proposals for the holding of a referendum. The council of the parish, municipality or administrative region concerned takes the final decision on whether to hold a

referendum on a matter within its competence. However, in parishes of less than 200 electors where the council is replaced by assemblies of the electors resident within the parish, there is no provision for referendums.

In **Spain**, legislative provisions for popular consultations are contained in the Law of 1985 establishing the basis for the Spanish system of local government. The mayor can take the initiative with the prior agreement of the majority of the municipal council and the authorisation of the national government (see also category (ii)).

The case of **Ireland** is a special one in that, while there are no general statutory provisions for the holding of referendums at local level, Section 5 of the Local Government Act 1991 provides that a local authority may represent the interests of the local community and to that end may "ascertain and communicate to other local authorities and public authorities the views of the local community in relation to matters as respects which those other authorities perform functions and which affect the interests of the functional area of the authority and the local community". This provision would enable a local authority to hold a local referendum on any matter coming within the scope of the section. No case is known to date, however, of any local authority using the provision for this particular purpose.

In **Italy**, a law of 1990 authorises - but does not oblige - local authorities to make provision in their constitutions for consultative referendums as a means of popular participation. Moreover, it states that in the procedure for the adoption of administrative acts having an influence on the legal situation of persons, "forms of participation of those concerned" must be instituted. Furthermore, the constitution of the local authority must provide for forms of consultation of the population and procedures for receiving requests, petitions and proposals of citizens, individually or in association, aiming to encourage action to better safeguard collective interests; it must also be guaranteed that they will be given due consideration. Provision may also be made for forms of popular consultation other than the referendum even at the request of a quorum of citizens on matters within the competence of the local authority.

A last example of local referendums held solely at the discretion of the local authorities themselves is furnished by **Norway**, where, however, there are very few matters in relation to which there is legal provision for referendums. One of these is a decision to change the structure of the primary schools in the municipality (e.g. amalgamating two or more school districts). In this case, a referendum may be initiated either by a decision of the municipal council (reached by simple majority) or by a decision of the school board (also by a simple majority).

(ii) An instance of the second category outlined above is supplied by **Finland**, where provisions concerning local referendums were added to the Local Government Act in 1990 and a special law laid down the relevant procedure. A minimum of 2% of those entitled to vote in a municipality, but not less than one hundred persons (fifty in a municipality of less than 4 000 people), can propose a motion to hold a consultative referendum about a subject within the competence of the municipality. The Municipal Executive Board has then to prepare the question of holding a referendum without delay for the Municipal Council to make a decision. The Municipal Council takes the decision by a simple majority. This kind of decision can also be made by the Council on its own initiative. One single inhabitant can also make a suggestion to the municipality, but the decision about bringing the case to the Council remains at the discretion of the Executive Board. The Council's decision about holding a referendum is not appealable.

In **Spain**, as mentioned in the first category, the initiative must normally be taken by the mayor, subject to majority decision of the municipal council and authorisation by the national

government. However, the law also establishes the right of residents to request the holding of a popular consultation. Only the Law in the Catalonian Municipal and Local Government System establishes a procedure for the citizens' initiative for a popular consultation.

In **Bulgaria**, the proposal to hold a local referendum is made by the municipal councils upon their own initiative, or by the committees of the municipal councils, municipal councillors, leaders of public organisations, the workforce of agencies and economic organisations, or upon the request of at least 10% of the electorate. The decision to hold the referendum is made at a municipal council sitting, specifying the form of the referendum. If the decision is negative, those who made the proposal must be notified and reasons given. In some cases a matter may be referred to a general meeting of the local population which decides by a simple majority of the total number of eligible voters.

(iii) Other countries may have a dual system whereby referendums either can be initiated by the local council (category (i)) or must compulsorily be held if requested by the necessary number of electors (category (iii)).

A case in point is **Luxembourg**, where Article 35 of the Municipal Law of 1988 provides for the organisation of referendums at local level. Here the municipal council may call upon the electors to express their views in a referendum on a matter of municipal concern. On the other hand, if a referendum is requested by one-fifth of the electors in communes of over 3 000 inhabitants or by a quarter of the electorate in the other communes, the council is obliged to organise it within three months.

The situation is similar in **Hungary**, where, under the Local Self-Government Act of 1990, a local referendum may be initiated by:

- a. at least one fourth of the municipal representatives;
- b. a committee of the representative body (council);
- c. the leadership of the local social organisation;
- d. a minimum number of electors laid down in a municipal by-law but which cannot be less than 10% or more than 25% of the local electorate.

The council is obliged to call a local referendum if it has been initiated by a number of electors corresponding to that laid down in the relevant municipal by-law. However, in villages of less than 500 inhabitants the representative body may refer the subject of the local referendum to the village meeting, under the condition that the decision of the village meeting shall be regarded as a valid decision by referendum if more than half of the electors are present at the meeting.

In **Slovakia** too the institution of the local referendum was introduced into the legal order by the Local Government Act of 1990. A referendum may be called by the local council on the initiative of members of the council or at the request of inhabitants during public meetings. However, the most common and correct means of initiating a local referendum is a petition signed by at least 20% of the electors (or, in the case of the splitting of a municipality, by 20% of the electors in the relevant part of the municipality). In this case, there is an obligation upon the municipal council to call the referendum.

In the **Czech Republic**, a law of 1992 on municipal elections and the local referendum provides that any citizen who has attained the age of 18 and is permanently resident in the municipality or in the district of the town may present a proposal for the organisation of a referendum. A proposal

may be lodged if it obtains the signatures of at least 30% of citizens in localities up to 3 000 inhabitants, 20% in localities up to 20 000, 10% in localities with up to 200 000 and 6% in those with over 200 000 inhabitants.

In **Germany**, the question of citizen participation by means of local referendum is dealt with very differently in the legislation of the various *Länder*. It receives the most comprehensive treatment in Baden-Württemberg, Brandenburg, Hesse, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia, which all have the institution of the "citizens' decision" (*Bürgerentscheid*). In the five new *Länder* a common legal basis for direct citizen participation is provided by the Local Government Act of 1990 of the former GDR, which remains in force until the new *Länder* have enacted their own local government legislation. Such amendments as have been passed so far do not affect the legal basis for citizen participation. In most of the *Länder* which make provision for local referendums, they are possible only at municipal level. Schleswig-Holstein is the only *Land* where citizens' decisions can also be initiated at the level of the *Landkreise*.

Local referendums in Germany can be initiated in either of two ways. The municipal council may decide on its own initiative (a procedure which is not possible in Hesse): this decision must be taken by at least the majority of the members of the municipal council (in Baden-Württemberg and Schleswig-Holstein two-thirds). Alternatively, the citizens may request a referendum by written application which, under the relevant legislation of the former GDR as well as that of Hesse and Schleswig-Holstein, must be signed by at least 10% of the local citizens. In Baden-Württemberg the signatures of 15% of the electorate are necessary, but the percentage required declines as the size of the population increases.

In **Austria**, similarly, the provisions vary from *Land* to *Land*. Referendums may be initiated in the main by the local council, with two *Länder* requiring a qualified majority of two-thirds. Three *Länder* provide for referendums to be initiated by written request signed by 25% (or 20%) of the citizens entitled to vote in local council elections. One *Land* provides for a referendum to be held upon notice of motion by the local inhabitants, provided it was tabled by no less than 25% of the citizens and such a motion has not been decided upon by the local council within the last year.

It has been mentioned above that in **Norway** local referendums are explicitly provided for only on an extremely limited number of questions. One of these, however, falls into category (iii) above, namely a decision to change the writing language (from *bokmål* to *nynorsk* or vice versa) in one of the primary schools in a municipality. In this case a referendum can be initiated - in the school district concerned, not in the municipality as a whole - either by a majority decision of the school board or by a request made by at least 25% of the persons domiciled in the school district and entitled to vote. In the latter case the municipality is obliged to make arrangements for a referendum.

(iv) Finally, there may be some matters on which the law itself requires the holding of a local referendum, without waiting for any party to initiate it. Thus in **Hungary** the representative body of a municipality must call a local referendum on the following matters:

- a) an initiative for amalgamating villages or for terminating such a union;
- b) an initiative to establish a new village;
- c) the establishment of a joint representative body or secession from a joint representative body;

- d) such matters as are determined by a local by-law.

In the **Czech Republic** a local referendum is compulsory when a municipality is to be split up: it must be held in the part which wishes to separate. In **Slovakia** too there is an obligation to call a local referendum on proposals to amalgamate, divide up or abolish a municipality; however, a referendum is also compulsory for the introduction or abolition of a public levy or local tax.

In **Ireland** the Local Government Act, 1946, contains provisions relating to the alteration of the names of streets, townlands, towns with town commissioners, urban districts, non-municipal towns and localities. In all cases the consent of not less than four-sevenths of the ratepayers concerned is required to an application being made to the appropriate authority or to the change of name being made. Pursuant to Regulations made by the Minister for the Environment, a plebiscite of ratepayers must be held to ascertain for the purposes of the above-mentioned Act whether not less than four-sevenths of the ratepayers of the area in question consent to the application (or change) being made. It appears that these powers are not used frequently.

In **Italy**, Article 132 of the Constitution lays down that the amalgamation of existing regions or the creation of new regions requires not only a law amending the constitution but also that the reform be requested by municipal councils representing at least one-third of the populations concerned, that the proposal be approved by a majority of these populations in a referendum and that the opinion of the regional councils be sought.

Finally, in the **German Land** of Bavaria, which otherwise has no legal provision for referendums, it is required that the citizens concerned be consulted about decisions concerning the names of municipalities or parts thereof. Moreover, in the case of incorporation of a *Kreis*-free municipality into a *Landkreis*, abolition of or alteration to the territory of municipalities or *Landkreise* or modification of the boundaries of districts (*Bezirke*), those citizens who are affected must be given an opportunity to express their views by secret ballot.

These cases confirm the *a priori* expectation that legally compulsory referendums should normally be reserved for changes in the institutional framework within which local or regional government takes place, as opposed to political issues arising within that framework, however important they may be.

### 3. The subjects on which referendums may be held

It has been observed in the previous section that in some countries the law may require the holding of a local referendum on certain matters. It remains to consider what provisions may be laid down in the relevant legislation as to those subjects on which local referendums are or are not permissible.

As one might expect, it appears to be a universal requirement, where referendums are permitted at all, that they should concern matters which are within the competence of the local authority concerned. Within this general limitation, some countries make no further stipulation about the matters which may be submitted to referendum. This is the case in particular in Italy, Luxembourg and Sweden. In France too, it is emphasised only that local referendums may concern strictly municipal affairs which are to be decided by deliberation of the municipal council.

In **Finland**, the scope is slightly wider. A referendum may be held on any subject decreed to

be within the competence of a municipality by paragraph 5 of the Local Government Act, provided the competence is not statutorily delegated to some other municipal organ than the council. However, it may also concern a subject on which the municipal council gives an opinion or takes an initiative but the final decision is taken by an authority other than the municipality (e.g. changes in municipal boundaries or road planning). In practice it is normally on this latter kind of issue that referendums have been held.

In **Slovakia**, it is stipulated that local referendums can be called on all matters which are considered by the municipal council to be "most important questions of community life and development".

In other countries, however, the relevant legislation specifies a number of local matters which may not be submitted to referendum. Thus in **Spain** no reference may be made to matters relating to local finances, while in **Portugal** the law excludes financial matters, those which are legally required to be resolved by the organs of the local authorities and those which have already been subjected to irrevocable decision. Similarly, in **Hungary**, a local referendum may not be called:

- to decide on the budget;
- on the by-laws determining the types of local taxes and their extent;
- on personal issues under the scope of the representative body.

The **Czech Republic** excludes the holding of a local referendum in particular

- on the budget of the municipality;
- on local taxes;
- on the election or dismissal of the mayor or his/her deputy, the municipal council or members of other bodies elected by the municipality;
- on matters which are decided by administrative procedure.

In **Austria**, in principle, only those matters may be subject to a referendum which concern the municipality's autonomous sphere of competence and relate to issues the local council intends to resolve upon or has already resolved upon. The election of local bodies, concrete personnel issues, fees and charges may not be put to such a popular vote. Some laws also exclude matters for which decrees have to be issued, decisions concerning certain individuals and manifestations of will by the local authority as the holder of rights under private law. The Vienna city constitution in addition stipulates that measures relating to basic and personal liberty rights which are protected by the constitution shall not be subject to referendums.

In **Germany**, citizens' decisions may take place only on so-called important municipal matters which qualify as such either in the light of legislative provisions or on the basis of a stipulation in the constitution of the municipality. Except in Schleswig-Holstein and Baden-Württemberg, the law lays down a negative catalogue of matters which may not be submitted to referendum:

- a. tasks carried out on the instruction of a higher authority and matters which by law are the responsibility of the municipal council itself or of the mayor;

- b. questions concerning the internal organisation of the municipal administration;
- c. the legal status of the municipal councillors, the mayor and the municipal staff;
- d. the budgetary regulations, municipal levies and the charges for municipal services and transport undertakings;
- e. the annual accounts of municipal enterprises;
- f. decisions in legal proceedings.

On the other hand, two *Länder* have drawn up a positive catalogue of matters which are eligible for referendums. In Baden-Württemberg, these include

- a. the establishment, substantial enlargement and abolition of a public institution or facility intended to serve the inhabitants as a whole;
- b. modification of the boundaries of a municipality or *Landkreis*;
- c. the introduction or abolition of neighbourhood elections;
- d. the introduction or abolition of the constitution of a district or locality.

In Schleswig-Holstein, the following are designated as matters which may be the subject of a local referendum:

- a. the assumption of new tasks which the municipality is not legally obliged to carry out;
- b. the establishment, substantial enlargement and abolition of a public institution or facility serving the local inhabitants;
- c. membership of consortia of municipalities responsible for functions falling under (b);
- d. territorial modifications.

Beyond the respective legislative provisions there remains a margin of discretion for each municipality to determine further important municipal matters.

In **Bulgaria**, the Local Self-Government and Local Administration Act specifies a number of issues which may be settled by means of referendums, including the creation and abolition of administrative and territorial units and decisions involving the sale of land outside the construction zones of settlements. However, referendums and general town meetings may also be held on other issues within the competence of the municipal council. They may also be organised on matters of concern to an individual settlement within a municipality, such as: building, reconstruction or modernisation of public works, cultural and other projects of local importance.

Finally, as has been noted above, both **Norway** and **Ireland** make positive provision allowing the holding of referendums only on a very restricted range of matters, although both countries also permit the discretionary holding of local referendums.

With the exception of these last two special cases, a comparison of the legislative provisions concerning admissible topics for local referendums reveals a general tendency to exclude not only matters of an administrative or personal nature but also questions relating to the municipal budget or local taxation.

#### **4. Other conditions relating to the holding of local referendums**

Apart from the question as to who may initiate local referendums and on what subjects they may take place, the legislation in some countries contains some further provisions concerning their organisation. Some of these provisions relate to technical details especially with regard to popular initiatives for the holding of a referendum (e.g. the elements to be included in a proposition for a referendum and the time-limits for formal decisions by the local council): these need not detain us in the present context. However, a few such stipulations are of more general interest and may be mentioned briefly.

Among those countries which have more than one level of local government, there are several - e.g. France, Germany (except Schleswig-Holstein) and Spain - in which referendums are possible only at the municipal level. In **Spain**, prior authorisation must be obtained from the Autonomous Community (regional government) and from the national government before a referendum is organised.

Some countries, e.g. **Luxembourg** and **Portugal**, not only specify that the question(s) put in a referendum must admit of clear affirmative or negative answers and not be couched in terms which suggest a particular response; they also provide for some form of supervision of the questions posed. In the case of Luxembourg, the Minister of the Interior may issue observations on the drafting, while in Portugal the question must be submitted in advance to the Constitutional Court.

In both **Germany** and the **Czech Republic** it is stipulated that motions for a referendum which seek a result that would be contrary to general legal provisions are inadmissible.

A number of countries lay down conditions concerning the general timing of referendums. Thus in **Finland** they cannot be held simultaneously with a local or national election. In the **Czech Republic**, they are not permitted during the first six months of office of the municipal council. In **France**, on the other hand, they are prohibited from 1 January of the year preceding the year of the general renewal of the municipal council, as well as during the election campaigns preceding elections by direct or indirect universal suffrage. Moreover, there must be a year's interval between any two consultations of the local population. The most common regulation is a prohibition on submitting the same issue to a second referendum within a specific period of time: in Hungary one year; in the Czech Republic two years; in most German *Länder* two years for a popular initiative (in Baden-Württemberg and Hesse three), unless the original referendum was initiated by the municipal council.

#### **5. The status of local referendums and their results**

In most of the countries where legal provision is made for referendums at local level, it is specified that they are of a purely consultative nature. This is the case in particular in Finland, Italy, Luxembourg, Norway and Spain. It also applies to those instances where the Irish Local Government Act of 1991 allows local authorities to "ascertain .... the views of the local community". In France too, the local referendum has the sole purpose of advising the municipal council on the state of local opinion before it takes its decision.



In all these cases it follows that the result of the consultation of the local population is not legally binding on the municipal council. This does not mean, of course, that it would not be politically difficult for the latter to ignore a clear result of a popular vote (see, however, the next section).

The situation is different in a few States - Hungary, the Czech Republic, Slovakia and those German *Länder* which have the legal institution of the citizens' decision. Here the result of the referendum is mandatory for the local authority. Not surprisingly, this legal status of the referendum coincides with the fact that a referendum may either be rendered compulsory by law or may be initiated by a given percentage of the electorate.<sup>2</sup> In Austria too, given the required majority vote, the municipal council's resolution is rendered effective or inoperative or the motion is adopted or rejected. It may be recalled, however, that both Finland and Luxembourg allow referendums to be initiated by the local citizens while maintaining the purely advisory nature of the vote.

In these countries, therefore, the effect of a successful referendum is equivalent to that of a definitive decision of the council. It may either cancel a measure already determined by the council or determine that a new project shall be carried out. If, on the other hand, the referendum is unsuccessful, the council may decide the issue as it sees fit. In order to ensure that the result of the vote is representative, some countries lay down a quorum: thus in Hungary a referendum, to be valid, requires a 50% turn-out. Similarly, the relevant German *Länder* specify that, for a citizens' decision to be successful, the necessary majority in favour must at the same time represent 25% (in Baden-Württemberg 30%) of those eligible to vote. It is also stipulated that a decision taken by referendum cannot be altered for two years (in Baden-Württemberg and Hesse three years) except by a citizens' decision.

## 6. The practice of local referendums

Of those countries which make provision for local referendums initiated by the citizens, most - the Czech Republic, Slovakia, Hungary, Luxembourg, Finland, Italy, Spain and certain Austrian *Länder* - have introduced this institution too recently to have accumulated much experience of its operation. Firm conclusions cannot therefore be drawn with respect to its advantages and disadvantages. Apart from the special case of Switzerland, described in the next chapter, only Germany has experience of such "citizens' decisions" over a considerable period of time, and even there it is only in Baden-Württemberg that it is not a recent innovation.

In this part of Germany the judgement passed on the practice of local referendums is clearly positive, in as much as they strengthen the rights of the citizens and in particular provide the possibility to correct a decision of the local authority by the direct will of the citizens. Since 1975 in Baden-Württemberg about half of the citizens' initiatives have met the conditions for acceptance, while in about two-thirds of the citizens' decisions called on the basis of such a popular initiative the outcome was favourable to the objective of the popular initiative. The most common topics of such local referendums were planning questions especially concerning public facilities. The existence of the institution of the local referendum is felt to bring about an opening of municipal policy-making

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*The result of the plebiscite of ratepayers which must be held in Ireland for alterations to names of streets, towns etc is also mandatory in that, if four-sevenths of the ratepayers do not consent, either the application for change of name cannot be made to the appropriate authority or the change of name cannot take effect.*

towards the citizen. The mere fact that a citizens' initiative has been announced or even is merely being considered may influence the decision of the municipal council.

It is noteworthy, however, that in Baden-Württemberg many popular initiatives, but also citizens' decisions fail to meet the formal conditions. For this reason there are sometimes calls to facilitate them, e.g. by reducing the quorum, extending the deadline for popular initiatives against a decision of the municipal council or expanding the sphere of so-called important municipal matters. On the whole, however, the reaction is cautious, stressing the need to ensure sufficient democratic legitimation of the decision reached by referendum as well as to maintain the overall political responsibility of the municipal council and avoid prejudicing its functional capacity, willingness to take decisions and readiness to pursue policies aimed at continuity and the long term.

A concern with the appropriate level of the threshold for popular initiatives for a referendum may also be observed in two countries - Finland and Luxembourg - which combine a system of popular motions with a purely consultative form of referendum. In Finland, it has been suggested that a certain percentage of the electorate should be able to bring about the holding of a referendum without the need for a majority decision by the municipal council. In Luxembourg, on the other hand, it is pointed out that if the quorum is too low, groups of citizens could impose a referendum relatively easily and that if there were too many referendums they could block the proper functioning of local government.

Experience in Spain shows that problems may arise as a result of a refusal to hold a referendum because of non-compliance with requirements (usually for being a matter outside the scope of local government): such a refusal can lead to a political reaction and initiation of legal action in the ordinary courts and in the Constitutional Court.

If we extend our survey to states which have consultative referendums initiated by the local council, several more countries provide some degree of experience with this institution.

As far as typical topics of such referendums are concerned, the most classic appears to be the amalgamation or splitting of municipalities or alteration of their boundaries (cases are reported in particular from Norway, Sweden, Finland, Denmark, the Netherlands, Spain and Bulgaria). This is perhaps a particularly appropriate subject for a referendum, concerning as it does not the content of local policy as formulated within the existing institutional framework in accordance with the principle of representative and responsible government, but the framework itself within which local politics is to take place. It may be noted that in Norway - the only country for which such information is available - a majority of the voters often opposes amalgamation, especially in rural municipalities which it is proposed to merge with an urban municipality.

Other matters commonly submitted to referendum are local planning issues (cited by Sweden), in particular use of land, road projects and the establishment of major facilities for the inhabitants (Denmark), as well as transport and environment policies (Germany).

Specific examples quoted include:

- in Belgium, plans for the restoration of a clock-tower; the creation of an economic expansion zone;
- In Bulgaria, issues of self-taxation for new projects;

- in Denmark, a new schools structure, the location of a centre for the elderly, the changing of the name of a parish;
- in the Netherlands, traffic-free town centres and closing-times for cafés and restaurants;
- in Norway, the location of the administrative centre of the municipality, the sale of alcohol within the municipality.

Relatively little information is available about the extent to which the local population in fact takes part in local referendums. Naturally, this will depend partly on the issue at stake and partly on national voting traditions. In Luxembourg, as for elections, participation is compulsory. Elsewhere, experience with local referendums is varied. In Sweden, there has been a problem of representativity when turn-out has been low. In Norway too the rate of participation has often been under 50% of those entitled to vote, while in Hungary local referendums have been affected by the same problem of widespread abstention as in the case of elections.

In Finland, on the other hand, a high percentage of the population has voted in local referendums, which suggests that the latter have succeeded in interesting them in municipal matters in a new way. Moreover, the division of opinion has not followed the traditional party lines. Those local authorities that have held a referendum feel that it has raised the profile of the municipality and the image of local democracy among the people.

Finally, it may be noted that, in spite of a number of problems, the overall experience of local referendums, where enough have been held to permit an assessment, is judged to be positive. Thus in Spain popular consultations have been found to clarify the strength of two opposing positions and facilitate resolution of controversial problems. It is significant too that the experience of consultative referendums has led several of those German *Länder* which have no legislative provision for citizens' initiatives and citizens' decisions to consider introducing them.

### III. THE MUNICIPAL REFERENDUM IN SWITZERLAND<sup>3</sup>

In Switzerland, the referendum system takes a specific form of its own, and it is frequently used.

The citizens' rights to participate in the decisions taken by public authorities and the practice of the referendum which constitutes one of those rights are not identical throughout the national territory. Switzerland is in fact a confederation of states (the cantons) which have almost exclusive powers and competences in regard to municipal organisation. Subject to certain inalienable rights guaranteed by the federal constitution, the cantonal constitutions may make provision for expressions of the popular will which are specific to each canton and may differ from one canton to another.

Owing to the variety within the referendum system in Switzerland, this state is a particularly interesting case in point, warranting a detailed presentation to shed light upon the situation existing in this country.

The following topics will be dealt with in turn:

1. The system of semi-direct democracy in Switzerland
  - a. the electorate
  - b. the machinery available
2. How citizens participate in municipal affairs
  - a. municipal powers
  - b. types of referendum
  - c. the legal bases
  - d. initiatives
  - e. the decision-making referendum
  - f. the consultative referendum
  - g. the referendum system: technical aspects
  - h. other aspects of the referendum system
  - j. the practice of semi-direct democracy at local level
3. Overall appraisal of the referendum system
  - a. positive and negative aspects
  - b. effects on local political life
4. General summing up and conclusion.

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<sup>3</sup> *Text drafted with the assistance of a consultant, Mr Jean Meylan*

## **1. The system of semi-direct democracy in Switzerland**

Apart from direct democracy which is now practised in only five cantons of Central and Eastern Switzerland (although it still exists in the vast majority of Swiss municipalities: see section b, below), semi-direct democracy is one of the basic components of the Swiss institutional order.

In contrast to representative democracy where people elect periodically the members of the deliberative and executive authority, leaving them to legislate and administer until the next elections, semi-direct (or referendum) democracy provides greater public involvement, notably the right to introduce proposals (the initiative) and the ultimate right to decision (the referendum). Let us now look at who has these rights (the electorate) and what machinery is available.

### **a. The electorate**

In the Swiss Confederation, those entitled to political rights in federal, cantonal and municipal affairs are defined in general terms in the Federal Constitution (Article 74), which lays down that all Swiss citizens, both men and women, over the age of 18 have the right to take part in elections and ballots. On the question of provisions for applying the right to vote at the lower levels of the Federal State, the same article also stipulates that the cantonal right is reserved for cantonal and municipal ballots and elections.

Hence, at cantonal level, apart from the above-mentioned rule on nationality and age, two or three cantons offer greater or lesser political rights at municipal level to resident foreigners on condition that they have established domicile for a certain length of time (often ten years) in the canton and have resided in the municipality (for a minimum of three months, in some cases reduced to thirty days). In this way, foreigners are allowed to take part in local referendums.

The requirement of a minimum time of domicile in a canton and residence in a municipality before being allowed to enjoy the relevant political rights is a rule which applies to all active citizens with the time length varying in accordance with cantonal legislation. Leaving aside a small number of them which have either very low requirements (for example, five days) or none at all, the most usual is three months which, moreover, is the maximum laid down in Article 43 of the Federal Constitution.

### **b. The machinery available**

The Swiss people have two institutional mechanisms for expressing their will : the initiative and the referendum. The initiative gives citizens the right to make proposals and the referendum is a procedure whereby a proposal already adopted by the deliberative body is submitted to the sovereign will of the electorate<sup>4</sup>. If the State is compared to a motor vehicle, the initiative is the accelerator while the referendum represents the brakes.

At federal level, there is the constitutional initiative which, seconded by the signatures of at least 100,000 citizens collected in 18 months, can propose the addition of an article to the Constitution, as well as the compulsory referendum on constitutional matters and the optional one on laws or orders of general scope which can be requested if signed by 50,000 citizens within a period of

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<sup>4</sup> *It may be noted that according to Swiss usage the term "referendum" has a narrower and more technical meaning than in most European countries.*

three months.

At cantonal level, citizens' rights are more extensive than at federal level.

First, there are the five States of Central and Eastern Switzerland where the people participate directly through the *Landesgemeinde*, an assembly open to all citizens.

For the others, in addition to the referendum which is compulsory (in all cantons on constitutional matters and even in some for certain laws) and that which is optional (on legislative matters) as well as the constitutional initiative, most also have the initiative on legislative matters and the majority have the financial referendum which forces any expenditure over a certain sum to be submitted to the electorate.

At municipal level, the situation is more complex. A distinction has to be made between two types of municipal organisation : the local parliament system and the system with a deliberative assembly open to all citizens, generally known as the municipal assembly.

The majority of cantonal legislations (20) have both systems, with the exception of four German-speaking cantons which have only the municipal assembly and two western cantons which have only the local parliament system.

The municipal assembly is the ordinary system in 23 out of the 26 cantons. The existence of a local parliament, an extraordinary system, is generally restricted to municipalities of a certain size (particularly towns) and remains optional, save for exceptional cases; certain cantonal legislations leave completely free choice to the local municipalities concerned and it is often subject to the demand of a minimum number of inhabitants or electors.

Some 85 per cent of Swiss municipalities have a municipal assembly, open to all citizens (this is true of the majority of small municipalities in Switzerland, since four out of five have a population under 2 000). While this type of organisation would seem adequate to ensure wide democratic expression, several cantonal legislations also offer the possibility of voting by ballot, at the request of a specified number of citizens.

With regard to the referendum *strictu sensu*, the majority of cantonal legislations provide for a compulsory referendum for items of a general nature (particularly on regulatory matters), it does not exist in the three cantons where the local parliament is the normal system, nor in four other cantons. Conversely, the optional referendum is allied with all the parliament systems. It should be noted here that in several cantons the institution of the referendum at local level was linked explicitly with the provision permitting the change from the system of an assembly open to all citizens to that of an elected parliament).

In addition to the ordinary type of optional referendum, some legislations also allow for a particular type, that is the referendum dependent on the decision of a specified proportion of parliamentarians (the majority of them or else a qualified minority, frequently, one third).

For the initiative, three different types can be distinguished, having different scopes, namely:

\* **The initiative-referendum** emanating from a minimum number of citizens - or even one citizen - and aimed at submitting to a popular vote the consideration of an initiative relating to the adoption,

modification or abrogation of a municipal regulation or order.

\* **The individual initiative** or request made by one or more citizens and taken into account immediately by the competent body without a prior popular vote (this is a right similar to the one currently practised in all parliaments).

\* **The popular initiative proper** or request made by a minimum number of citizens and submitted to a popular vote.

In actual legislative texts and practice, it is sometimes difficult to find these distinctions. It can, however, be found that the right to an initiative followed by a popular vote exists in any system with a local parliament. On the other hand, in the municipal assembly system this right generally corresponds to the individual initiative; in any case, almost half of the cantonal legislations also allow the popular initiative for the municipalities concerned.

For a complete view of the mechanisms available to citizens, at the three levels of the State - Confederation, cantons and municipalities -, there must be added to the popular referendum and the initiative, the right of petition, a demand of more general scope and application but without binding effect.

This right is expressly guaranteed by the Federal Constitution (Article 57) and reflected in the various cantonal constitutions. The petition is a request made to any authority, on any subject; it generally contains a proposal. This is a right that everyone has (including foreigners) and is not restricted to enfranchised citizens. But the petition is not binding on the authority, though the latter has to accept it; it is therefore legally much "weaker" than the initiative. An initiative which is not valid (for example, because it does not bear enough signatures) must be treated as a petition.

Because of its flexibility, this mechanism is undeniably useful and, even though it is not binding, its implementation, when it is signed by a significant number of people, is likely to have an influence and a result. It should be noted that sometimes a petition may take the place of an initiative when the latter is either non-existent or very restricted.

## **2. How citizens participate in municipal affairs**

In this part, we shall deal in turn with the different types of referendum and the legal bases, then with the different aspects of the initiative and the popular referendum governed by cantonal legislations, and finally with the practice of commitment of these two mechanisms.

First of all, however, the broad lines of the scope of municipal powers, to which the referendum system relates, must be described.

### **a. Municipal powers**

The municipal organisation dependent on cantonal law and the volume, content and scope of municipal powers can differ considerably from one to another of the twenty-six cantonal legislations. Without claiming to present a detailed inventory, it can be shown that in all the cantons the municipalities generally have responsibility for the following:

- Internal organisation (establishment of bodies, staff status and management)
- Administration of municipal assets (including disposal of property)
- Finance (including local taxation - essentially fixing of rates - and borrowing)
- Primary and secondary public education (particularly construction and maintenance of school buildings, engagement and remuneration - with participation of the canton - of teaching staff)
- Local police in the broad sense (public peace and order, traffic police, use of public areas, public health, business regulation, residence checks (contrôle des habitants), fire fighting, building checks)
- Social welfare (social services, administration of health insurance)
- Local spatial planning
- Infrastructure work (especially roads, water and sewer networks, civil protection installations)
- Environmental protection (including treatment of waste water, rubbish disposal)
- Public water and power distribution services
- Sports and cultural activities (installation of facilities and organisation of events).

To this basic list can be added other fields of competence vested in the municipalities, in accordance with the greater or lesser role accorded to them by each canton in the distribution of public responsibilities. In addition, the municipalities have an explicit or implicit general residual competence allowing them to take responsibility for all tasks - especially new or emerging activities - which are not the province of the higher authorities (canton or Confederation). This competence generates a whole range of optional tasks, in sectors as diverse as culture and leisure, local economic or social development (for example, aid to underprivileged or elderly persons, encouragement in the construction of low-cost housing).

The limitation of the scope of tasks vested in the municipalities and those that they could take on by virtue of general residual competence relates primarily to the use of the right to an initiative which can be applied, but to the exclusion of other responsibilities delegated by the State which tend to constitute a greater, and constantly increasing proportion, of local public activity.

In the exercise of municipal responsibilities, mention must also be made of the predominant role of the deliberative body whose competence extends to all decisions of a regulatory nature and all important administrative decisions, especially in local finance, such as approval of the budget and annual accounts, local taxation (especially, fixing of levels, special expenditure and disposal of property. In addition, it has a general power of supervision over the executive and the administration. This function is very important and relates particularly to the conduct of the referendum which relates to the to the deliberative body.

## **b. Types of referendum**



Here we shall present the different types of referendum, both to define the limits of the field of the survey and to clarify some of the terminology used as we proceed. We can therefore make a distinction according to both the purpose and the legal nature as enshrined in Swiss public law.

*i. Distinction according to purpose*

Here there are the referendum for adoption, the referendum for a modification, the referendum for abrogation, the referendum for a proposal and the referendum for consultation.

*a) The referendum for adoption (or popular referendum)*

The competent municipal authority (more specifically, the deliberative body) submits to the electorate a matter which it has debated and on which it has taken a decision; it does this - mandatorily where this is necessary or, most frequently, voluntarily - either of its own volition (if it is legally empowered to do so), or at the request of certain citizens, and specifically of a minimum number of them.

On principle, the matter in question is presented as it was approved by the municipal authority, without any amendment whatsoever. As a general rule, the question submitted to the electorate can be answered only by a YES or NO. The result - affirmative or negative - of the ballot is binding on the municipal authority which must give it appropriate follow-up.

*b) Referendum for a modification*

This is a request from the citizens which aims at changing an aspect of municipal organisation or activity. So it involves a proposal of adjustment of a particular existing circumstance. The consideration and/or the result of the request must be submitted to a popular vote for a final decision.

*c) Referendum for abrogation*

This concerns a request made by citizens which aims at the abolition of a municipal provision in force. The subsequent procedure is similar to that for the preceding case.

*d) Referendum for a proposal*

In this case, the citizens take the initiative of presenting an innovatory suggestion on a matter of municipal competence which is aimed at the development or improvement of some provision of the community concerned. The proposal is treated in the same way as in types b) and c). This type of referendum corresponds to the initiative mentioned in chapter 1, section b, p. 20.

*e) Referendum for consultation*

This is a different type of instrument because it does not have binding value but is essentially to provide an indication. By this means, the public's views are sought on a specific municipal activity. The authority which submits such a project or subject to popular appraisal is not bound by the results. Here, the question can be framed in a more nuanced manner than the simple YES-NO format (for example, in the form of several options) which allows a finer appreciation of the various opinions of the public, which may take in a broader range than the electorate (in particular, foreign residents).

This type of referendum is certainly very valuable for its capacity to orient municipal action (it

may also, where desired, be used instead of the referendum proper), particularly in the key phase of conception or design of a municipal proposal; but its scope is limited since it is not binding on the local authority which still has the final say.

## *ii. Distinction according to legal nature*

Of the various types described above, it can be seen that the first four constitute the expression of the will of the electorate, acting as a supreme decision-making body, whereas the fifth is ultimately only a kind of opinion poll applied to all citizens, not just to a sample of them.

Of the four types of "true" referendum, the constituent components and application procedure are described later. First, a semantic distinction must be made, which affects the terminology used subsequently in referring to Swiss practice.

Thus the referendum for adoption originates from the municipal authority which submits one of its decisions to the electorate for a verdict. This type is essentially the referendum which is dealt with more specifically below.

The referendum for a modification, referendum for abrogation and referendum for a proposal are essentially initiatives introduced by citizens. Because they have the same origin and, indeed, follow a similar procedure, they will be placed in a group under the generic term of initiative.

The referendum for consultation, however, which does not have to comply with the same strict constraints, must be considered more as a means of orientation than as a legal instrument. Such detailed examination of its forms and implementation procedure is therefore not required.

## **c. The legal bases**

In the Swiss Confederation, the various instruments for participating in local democracy are laid down in three main legal texts of cantonal law: the Constitution, the Law on municipalities, and the Law on political rights, to which is often attached an application regulation. (N.B. The law on municipalities and the law on political rights may vary in content from one canton to another).

The Cantonal Constitution lays down the principle of the institution of popular rights (initiative and referendum) to be applied at cantonal and municipal levels. It may sometimes contain more specific rules relating to municipal referendum mechanisms, notably to give them a firmer foundation or greater weight.

The Law on municipalities defines the framework of municipal activity and organization, including a reference to the popular rights applicable at this level - particularly, for the initiative and the referendum, the subjects and actions allowed or prohibited. In addition, the municipalities are entitled to draw up their own regulations, and the extent of this entitlement varies in accordance with the autonomy allowed by the canton concerned.

The Law on political rights specifies how these rights shall be applied in both elections and referendum ballots, at cantonal and municipal levels. The rules for the use of the popular initiative referendum generally come under this Law. Nevertheless, many cantons, especially according to the degree of autonomy they give to their municipalities, restrict themselves to general statements and leave it to municipal regulations to lay down more precise provisions in keeping with the specific

conditions in each place.

**d. The initiative**

*i. Subjects*

At municipal level, the initiative applies most frequently to the whole of local public affairs, or else to the adoption, modification or abrogation of a municipal regulation, or exceptionally to a restricted list of subjects allowed, or, again, in extreme cases, to a request for the introduction of the proportional system for the election of the municipal parliament. (An example to be noted here is that of the Canton of Vaud, which has a tradition of both radicalism and fundamentally representative democracy, that a cantonal initiative, launched by the socialist party, aimed at generalising the right of initiative in municipal affairs failed recently due to failure to collect enough signatures).

On a restricted list of subjects, we shall cite the examples of two very different cantons.

**First case (Fribourg).** The initiative may be invoked for:

- a) expenditure which can not be recovered in a single financial year or a contract which may incur such expenditure;
- b) a regulation of a general nature;
- c) the establishment of an association of municipalities or accession to such an association;
- d) merging of municipalities.

**Second case (Geneva).** The initiative may be invoked for:

- a) the construction, demolition or acquisition of municipal buildings;
- b) the opening or closing of municipal streets or tracks;
- c) municipal public works;
- d) studies on spatial planning on the territory of the municipality;
- e) the establishment of foundation of municipal interest under public or private law;
- f) social, cultural, sports or recreational activities and their facilities and installations.

These considerable differences reflect particularly the variations in the scope of municipal competence in different cantons.

With regard to the admissibility of an initiative, there are minimum general rules, in particular the fact that it must comply with legal and/or regulatory requirements, including relating to subjects contained on an exhaustive list or, more extensively, be restricted to matters under municipal competence. In addition, it may relate, in principle, to only one single issue (unity of subject): some legislations stipulate this explicitly while in the others it is implicit.

Two further specific measures should be mentioned which are laid down in certain cantonal

legislations and relate respectively to the initiative for abrogation and the initiative for a proposal: the rule prescribing a minimum length of application of an instrument (particularly a municipal regulation) before it can be subject to a request for abolition and the requirement to assess the cost, and, where relevant, to specify the means of covering it, for a proposed project.

### *ii. Form*

Most often, cantonal legislation vests in the municipalities (more precisely, in their citizens) the right to introduce an initiative which may take the form of a proposal in general terms or a fully drafted proposal, the one excluding the other (unity of form); more rarely, it must be couched in general terms only or, again, exceptionally, only as a fully drafted proposal.

The most significant example - and, moreover, the most frequent case - of a proposal already fully drafted relates to a local public works structure and, of an initiative couched in general terms, a proposal for the adoption of a municipal regulation.

### *iii. The initiative committee*

In most cantons, a single citizen can introduce an initiative; some legislations provide explicitly that a minimum, but small, committee (from three to ten enfranchised citizens) must be established.

The requirement for an initiative committee meets the general need for the municipal authority to have a qualified interlocutor for the entire procedure of the request, but more especially for the possible exercise of the right of withdrawal (see below, part vi, p. 28). If such a body does not exist, particularly because it is not legally required, a signatory (the only one or the first on the list - or even the second if this is not possible) acts as the interlocutor.

### *iv. Signatures*

In order to be accepted, the initiative must bear a minimum number of signatures of enfranchised citizens. This minimum generally ranges between 10 per cent and 20 per cent (exceptionally, 30 per cent for small municipalities in one canton). Sometimes there is provision for fewer than 10 per cent, notably for large towns.

Furthermore, the signatories must comply with certain formal requirements identifying them as citizens qualified to sign; these include indication of the surname, usual first name, year of birth, residence in the municipality, and sometimes, exceptionally, profession, all written legibly by hand.

Finally, it is often explicitly provided - or implicitly accepted - that signatures cannot be withdrawn after deposit of the initiative.

The collection of valid signatures demands great commitment by the promoters of the initiative and the optional referendum, especially in large towns. In view of the increasing difficulty, organisations or persons are sometimes paid to take this in hand. This practice, which is not prohibited by the law, began at national level (in particular, by a large firm), has and has spread to cantonal level and, in some cases, local level. It may constitute a danger of diverting the democratic exercise by involving money (see below, section h.ii, p. 40).

### *v. Procedure for deposit*

The most complex procedure which exists involves first the requirement for the initiator(s) or the initiative committee, where there has to be one, to submit to the municipal authority (the executive body, or the President of the deliberative body) the text of the initiative proposed and a copy of the list of signatures. If the request is recognised as valid (namely, if it satisfies the legal requirements), it is posted up on the municipal public notice board, or published in the official journal (*Feuille officielle*). From the time it is published or posted, there is a deadline for the collection of signatures which is usually 90 days.

But most generally, the procedure is simplified and, in particular, there is no time limit for the collection of signatures.

#### *vi. Withdrawal*

It is generally possible to withdraw an initiative once it has been deposited. For this, some cantonal legislations provide a specific withdrawal clause which must be cited on the list of signatures; but often withdrawal can take place informally. In any event, the proposer or a majority of the proposers (particularly the members of the initiative committee) must be in agreement with this form of action. Cantonal laws lay down a final withdrawal deadline which may vary from just before the ballot date is set to up to three days after this.

#### *vii. Treatment of the initiative*

Once the necessary number of signatures has been collected, the lists accompanying the initiative are deposited with the municipal secretary. The municipal executive can then carry out a check on the signatures, ruling out any which do not meet the criteria (especially indications which are illegible, incomplete, incorrect, duplicated, not handwritten, of persons not having civic rights or not residing in the municipality and not registered on the electoral roll). There is always a certain wastage which means that the proposers of the initiative leave a security margin by trying as far as possible to collect at least 10 per cent more signatures than the minimum required.

Once the check has been made, the initiative is transmitted from the executive body to the deliberative body. When it is a fully drafted proposal, the parliament may approve it without amendment, or reject it, when it has to submit it to a popular ballot and may also submit a counter proposal if this is deemed useful.

When the proposal is couched in general terms, it is usually first submitted to popular ballot to decide whether or not it will be taken into consideration. If the result is affirmative, the municipal authority (the executive body, then the deliberative body) prepares the proposal in accordance with the indications of the initiators. The question is then settled, subject possibly to a vote of ratification.

Several legislations provide for a simplified procedure whereby the municipal authority accepts the proposal and prepare it in due form or decide to reject it, giving the reasons. In the latter case, the initiative is submitted to a popular ballot: if the result is negative, it is shelved without further action and if it is affirmative, it is referred to the sender for appropriate action.

Consideration of the initiative by the deliberative body must be held within a limit which ranges from six months to one year. Where the decision taken leads to a popular ballot, this must be done within a period ranging from 120 days to one year.

### *viii. The popular ballot*

Procedures for the ballot are laid down by cantonal law or by municipal regulations. These concern particularly the place (in effect, the municipality of residence), the time (Sunday, with at least opening the evening before), the voting papers, the composition of the electoral bureau (with a minimum of three to five members, including the president, the secretary and one or more tellers). Voting is personal (or possibly by proxy in exceptional cases) and, in principle, at the polling station, with however the possibility of early voting or postal voting.

The voters vote YES or NO on the text of the initiative and/or the counter proposal. The result of the vote is by an absolute majority of valid votes cast, after deduction of spoilt or blank voting slips. Blank votes are those which have nothing written on them; spoilt votes include those which are not on official slips, are not completed in the same handwriting, bear something other than YES or NO or are illegible.

In the event of an initiative submitted with a counter proposal to a popular ballot, if both are accepted, the law provides the means of choosing one, particularly by taking account of the proposal which received the largest number of votes or of a subsidiary question on preference of one to the other.

The voting operations must be recorded in minutes in which the electoral bureau states the subject and date of the ballot; the number of voters registered, votes cast, blank votes, spoilt votes and valid votes; the number in favour and against and whether the proposal was accepted or rejected.

Where appropriate, the minutes also note:

- the decision taken by the bureau in application of the law;
- any complaints received by the bureau regarding the conduct of the voting procedure;
- comments made by any observers.

The final result, generally in the form of the aforementioned minutes, is published on the municipal public notice board, and perhaps also in the official journal (*Feuille officielle*).

### *ix. Appeals*

It is possible to appeal at various stages in the procedure, especially as regards refusal to accept an initiative, cancellation for non-compliance with the deadline for deposit or failure to collect enough signatures because of invalidation or other procedural defect, or objection to the conduct or the result of the ballot.

The appeal may be lodged by the proposers of the initiative, or by any citizen (or any person who has interests to protect), within a time limit fixed by the law, which may range from three to thirty days from the time of noting the objection. It must be lodged in writing and contain a brief summary of the facts, grounds and conclusions.

Appeals follow the administrative route, first to the prefect of the district, then to the cantonal government, or the legal route to the district administrative judge and then the administrative court. As regards problems of admissibility in particular, appeal may also be made to a cantonal constitutional court.

One or other of these bodies may declare the contested procedure cancelled (if this is a ballot, provided that the procedure concerned had a determining influence on the result), with the obligation to resume the process at the point where it was interrupted. Decisions on appeals must be given without delay. The law also has penal and disciplinary provisions applicable in accordance with the offences committed.

**e. The decision-making referendum**

At municipal level (as indeed at federal and cantonal level), there are two types of referendum: compulsory and optional. We examine below the main aspects, succinctly for the compulsory referendum, and in greater detail for the optional referendum which involves greater citizen participation.

*i. The compulsory referendum*

Nineteen cantonal States out of twenty-six have the compulsory referendum for certain decisions of the municipal authority, or deliberative body. It is activated automatically on subjects specifically set out in cantonal law and/or municipal regulations.

*a) Subjects*

Most of the cantonal legislations concerned provide that regulations for municipal organisation, particularly the various adjustments, must be submitted to a popular vote. The same holds good, less frequently, for decisions affecting the existence or integrity of the municipality (merging or division), and even less often for accession to inter-municipal unions, or on questions of local finance (in particular, adoption of the budget and determination of the rates of tax).

Furthermore, the municipalities most often have the right to submit to a compulsory referendum a much more extensive list of subjects to be specified in their implementing regulations. Fairly often this covers the basic system for building (building regulations and zone plans) as well as extraordinary expenditure exceeding a certain sum, and less often, the contracting of loans, property disposal, and even the adoption of the budget (often linked in the same package as the fixing of local taxes).

As an additional element, there must also be mentioned the possibility, offered by several cantonal legislations, for a referendum on inter-municipal matters by which the citizens of various communities which are partners in an association or union of municipalities are empowered to object to the decisions taken by its deliberative body.

*b) Other aspects*

The conditions and time restrictions for submission to a popular ballot, the methods for conducting voting procedures and any appeals on the matter are essentially laid down in cantonal legislation on the exercise of political rights, in accordance with provisions similar to those for the optional referendum.

*ii. The optional referendum*

The optional referendum is linked with any system of municipal organisation having a parliament. Decisions which can be subjected to it are in principle determined both by cantonal legislation and by the municipalities' own regulations. There are only a few cantons which leave their local communities no freedom in this regard.

*a) Subjects*

The decisions which may be submitted to an optional referendum are those of the deliberative body, excluding matters (chiefly management and administration) which are in the purview of the executive body.

In the range of subjects likely to be submitted to this procedure, Swiss practice shows that, in the widest extension, there are all the decisions of the municipal parliament, with the sole exception of those which are strictly personal (in particular, appointments and elections); at the other extreme, there is a restrictive list of decisions.

As an example of the restrictive type, there is the cantonal legislation of Fribourg which allows a referendum only on the following subjects:

- a) expenditure which may not be recovered in a single financial year or a contract which may incur such expenditure;
- b) a tax or other public contribution;
- c) the establishment of an association of municipalities or accession to such an association;
- d) the merging of municipalities;
- e) a regulation of a general nature.

As a general rule then, the scope of the referendum is very wide. Apart from the personal decisions mentioned above, however, exceptionally certain important measures, essentially the budget and the accounts are excluded and again, still on the question of the budget, although the referendum may be proscribed for global objections it is allowed for a particular head of the budget.

As other rules of exclusion from the general scope, we can note that it is impossible to hold a referendum against negative decisions which maintain things as they are or decisions of an urgent nature (which must be sanctioned by a specified majority of members of the local parliament, generally two thirds, three quarters or four fifths of votes cast); but these are instruments which are explicitly laid down only in a minority of cantons.



*b) Form*

When it is in objection to a action decided beforehand, whose presentation is thus predetermined, the optional referendum does not require a form comparable to the initiative, only a reference to the exact wording of the decision contested on each list open for signature.

*c) Referendum committee*

In contrast to the initiative, it is less often a requirement to establish a referendum committee; nevertheless, there is often the requirement to designate at least one interlocutor responsible for providing liaison with the municipal authority.

*d) Signatures*

The application for an optional referendum must collect a minimum number of enfranchised citizens' signatures, which is often the same as that needed for an initiative, or even fewer, but with a minimum threshold of five per cent. (See above, section d.iv, p. 27). The signatures must also comply with the same formal criteria as for the initiative.

*e) Procedure for deposit*

Prior to the launching of the referendum, the decision taken by the deliberative body must have been published officially, at least on the municipal notice board. In this regard, a time limit is often laid down, either specifically prescribed by cantonal law (with a limit ranging from a minimum of three to a maximum of thirty days), or else the decision is left to the municipal regulations.

The citizens initiating the referendum are often required to declare it to the municipal authority before proceeding to collect signatures, but this obligation is not widespread. In fact, the procedure for deposit is usually simpler for the referendum than for the initiative, and is frequently limited to handing in the list of signatures within a specified time. This is most often thirty days and, exceptionally, goes down to twenty days. Different time limits are sometimes laid down in accordance with the size of the municipality, with longer time limits for the largest municipalities (particularly towns.)

*f) Withdrawal*

Once it has been lodged, the request for a referendum cannot generally be withdrawn and must follow its course until the final decision by the people.

*g) Treatment of the referendum*

As for the initiative, the signatures on the list handed in to the municipal secretariat are checked, in accordance with the same procedures and criteria. Once it is accepted that the request for a referendum has been accepted, the municipal executive body publishes it on the municipal notice board, or in the official journal (*Feuille officielle*). Sometimes it is also required to inform the cantonal authority.

Publication opens the way to the popular ballot which must take place within a limit ranging between thirty and one hundred and twenty days.

#### *h) The popular ballot*

The general procedures for the ballot on a referendum - whether compulsory or optional - are the same as for the initiative (see above, section d.viii, p. 29). The voters vote YES to show their agreement with the municipal decision contested and NO to reject the decision and to endorse the wishes of the citizens introducing the referendum. The result is dependent on an absolute majority of valid votes cast. If the outcome is in favour of the municipal decision, then it is enforceable immediately; if the vote goes against it, it is abrogated.

Apart from this usual decision between acceptance or refusal of an action, some municipalities - especially the towns - acting in the framework of their power to enact their own regulation, have introduced or are in process of introducing, the possibility of a vote with options on a subject for referendum.

This new procedure is too recent to allow any conclusions to be drawn from it. It is, nevertheless, an interesting departure designed to improve an institution which can chiefly be reproached with giving a choice only between YES and NO, which is sometimes made difficult by the nature of the subject in question.

#### *j) Appeals*

These are similar to those for the initiative (see above, section d.ix, p. 29), whether it is an optional or a compulsory referendum (in regard to the latter, only for an objection to the conduct or result of the ballot).

### **f. The consultative referendum**

At this point we must now return to the specific issue of the consultative referendum which, because of its nature - and particularly its non-binding result - could not be dealt with on the same level as the referendum for a decision presented above. First, we shall describe here the usage in the Swiss Confederation and then the general procedures of application.

In a country like Switzerland where the referendum mechanism is particularly highly developed, the consultative referendum cannot have the same significance as in a State where the institution of the referendum at local level is unknown or little used. This type of referendum is practised only exceptionally in Swiss municipalities, and is even proscribed by the cantonal legislations which do not accept such a procedure against decisions not yet taken or virtual actions.

Although there are some cases, they are exceedingly rare. In addition, their result amounts ultimately to no more than the expression of an intention or wishful thinking. A very recent example is that of a municipality in the canton of Berne which, subject to incorporation in another canton, asked its citizens to vote on their wish to remain Bernese. Although the result clearly favoured this action, it has no legal validity due to the lack of a legal provision for such a solution.

And yet, although its effects are limited, such a procedure, which may be valuable in certain circumstances, notably where there is no other mechanism for popular participation, cannot be dismissed without consideration. Some operational elements must therefore be identified, starting from simple questions: who can initiate this type of referendum? on what? when and how?

First, the nature of the initiator. In this case, in contrast to the referendum in the strict sense

which usually restricts the initiative to citizens, it is conceivable that the deliberative body, or indeed the municipal executive, might submit a subject to the appraisal of the people.

On the question of possible subjects, the field is vast - from matters of municipal competence to all other aspects of public life - as the criteria for admissibility are not hedged round with requirements as strict as for a referendum for decision.

With regard to the time when it can be initiated, this is linked to the need to resort to the procedure. It may be thought that, because of its flexibility of use, it can be useful, particularly for seeking the opinion of citizens at the initial stage of a proposal in order to test its relevance or opportuneness, as well as at a later stage of preparation, before the definitive conclusion.

Finally, the procedures for exercising it are also very flexible. Reference can certainly be made to the usual procedures for the referendum for a decision as described above (including publication of the disputed subject), but they are simplified to the greatest extent. In particular, there should be freedom for flexibility in the time limits imposed, the minimum number of signatures to be collected and their strict qualifications (for example, by admitting people living in the municipality who are not on the electoral roll), in the precise checks for admissibility or even in the requirement for there to be only one choice.

The general lesson to be learned from these considerations is the versatility of the instrument. However, as mentioned above, even though it may be useful for orienting municipal activities, it is defective in that it is not binding which means that it is not comparable in function to the referendum for a decision.

#### **g. The referendum system: technical aspects**

We have presented above the various procedures for conducting the initiative and the referendum at local level in accordance with cantonal and municipal legal provisions and regulations. We shall now assess the pertinence of the various solutions proposed for the different elements of the two mechanisms in the referendum system.

Before doing this, we must also be clear about who has the right to vote in a referendum at local level and about the legal bases of semi-direct municipal democracy.

##### ***i. Who has the right to vote in a referendum***

As we have seen, the general rule stipulating who has the right to vote in a local referendum contains four principal criteria: age, nationality, residence in the municipality and the time for which the person has been settled there.

The age criterion poses no problem as the provision is the same throughout the country.

On the other hand, the criteria of nationality is more sensitive. In fact, while many municipalities - particularly the urban ones - have a large foreign population, can this category (which contributes just like all the others to the local public purse) be excluded from the right to speak on municipal affairs through the initiative or the referendum? Some cantonal legislations (still a small minority) say they cannot, but they make a distinction between that and eligibility for a municipal function, which is not allowed. The question may in fact be asked again in a wider context once the European Community proposal to give its citizens the right to vote at local level has gone through. It

can, moreover, be said that the Swiss experience of participation by foreigners in the municipal referendum system is definitely positive, particularly in that their practice is very close to that of nationals, despite election turnout generally being much lower.

The criteria of being resident in a municipality undoubtedly makes sense. However, with the growing numbers - particularly in urban areas - who no longer live and work in the same place, there is an increasing number of people who are not really concerned by public affairs in their legal place of residence (this tends, in fact, to partly explain the trend towards a drop off in electoral participation: see section h.iii, p. 41).

The question may then be asked whether it should not be made possible for people to take part in a referendum in the community where their essential activities, particularly work, are based since that is where the decisions of the municipal authority may affect them significantly. This is doubtless a difficult problem, especially in regard to defining who would have such rights and how they would be exercised. A possible opening may already be perceived for the establishment, which exists in several cantons, of the referendum - or even the initiative - on intercommunal matters (see section e.ii.a, p. 31) which allows the citizens of different municipalities in partnership to express their views.

Finally, on the length of residence generally required in a municipality before being able to participate in its public affairs, the chief reason - that a certain time is needed to adapt to the local area - has some justification, especially for electoral matters where it is probably useful to know the candidates. As for the right to vote in a referendum, perhaps this should be granted immediately, in particular, the right to sign a request for an optional initiative or referendum. In fact, this question is dealt with positively by some cantons where access to local democratic procedures is immediate.

## *ii. The legal bases*

In Switzerland, rights relating to a referendum on municipal matters are enshrined in various legal instruments, of a constitutional (Federal and Cantonal Constitutions), legislative (cantonal laws on the municipalities and political rights) and regulatory order. The problem is knowing which provisions should be included in which texts.

It can be said from the outset that the overall response will certainly be different according to whether the State in question is centralised or federated.

In the former case, it might be assumed that there are uniform rules which place all the local municipalities and their citizens on a footing of equality in legal treatment; in the latter, the very fact that a broad degree of freedom is left in federal states implies considerable differences in situations. This is the case of the Swiss Confederation where the cantons are completely sovereign on the question of local authorities.

In this framework, the Federal Constitution cannot - though it should - contain a general provision on political rights and those entitled to them. Each Cantonal Constitution lays down its territorial organization, with the municipalities as the basic community; it also prescribes the ways in which citizens shall participate in local public affairs. In principle, the constitutional provisions should comply with general rules; they may be more or less developed according to whether the canton has a specific law on municipalities, or rather whether it is intended to give more weight to a provision by including it in the Basic Act.

On the matter of semi-direct local democracy, the Law on municipalities has to specify the

instruments available and the subjects which are covered by or excluded from their scope. The Law can delegate to the municipal regulations the power to define them more specifically, according to local conditions. This method is closely linked to the more or less extensive conception of decentralisation and the role of the municipalities. On this score, it can be said that Switzerland - at least its central and eastern areas - is an extreme case which can not claim to serve as a reference model for application in another context.

The Law on political rights, in regard to the municipal initiative and referendum, is essentially devoted to laying down procedures, both on the deposit and acceptance of requests and on their treatment, particularly the submission to a popular vote and its conduct until the final result. This type of Law is often accompanied by implementing regulations which specify in detail the various part of the procedure, unless these are already covered exhaustively in the legal text.

Although the subjects of this set of legal texts seem very specific, in actual fact there is a confusion of provisions which, according to the canton concerned, may be covered in one or another (especially the Law on municipalities or on political rights), without any obvious line of division. This is made even more complex by the widespread practice of delegation of power to the municipalities for their own regulations.

If we wished to try to perceive some logical system in this variety of solution, we could refer to the two systems of municipal organisation : the one - in a small minority - with a local parliament, for which the legal cantonal provision is more explicit and restrictive; and the other - much more widespread - with a municipal assembly, for which cantonal legislation provides only a relatively loose framework, leaving maximum freedom for local regulatory activity. Such a concept, which stems essentially from direct democracy considered as a fundamental value of the State, is peculiar to Switzerland and probably different to transpose anywhere else.

### *iii. Technical aspects of the initiative*

We have seen that the subjects concerned can cover a vast range, since the initiative applies most frequently to all matters of municipal competence; it is the optimal solution for exercise of the principle of popular sovereignty.

On the question of admissibility of a request, this should be subject to restrictions only regarding its legality, to the exclusion especially of any reference to its opportuneness. The question may be raised of which body should decide as to its admissibility: in Switzerland it is generally the municipal authority (more specifically, the deliberative body). It is possible to conceive that a judicial body might intervene, which would guarantee equitable treatment at once. Apart from the practical problems of implementing such a solution, it has to be stressed that the Swiss procedure offers enough remedies to satisfy equity.

The possibility there is of submitting an initiative in either of two forms (a fully drafted proposal or a proposal in general terms) gives it greater flexibility and effectiveness in accordance with the subject than there would be if there were only one or the other. In fact, making only one form possible for a limited list of subjects would be too restrictive a means of democratic expression (this is particularly so for a canton where the initiative has to be couched in general terms and can apply only to the drafting of a new regulation or the abrogation or amendment of a regulation in force for at least four years).

The requirement for an initiative committee is certainly useful in providing an authorised

interlocutor for the municipal authority, without this, however, being an essential condition. Fixing a minimum number of signatures is undoubtedly a necessary provision as the request made is thereby authenticated by a proportion of citizens who share the view of the initiators, originally a very small group. In this matter the problem is the threshold set: the higher this is, the harder it is to get the initiative under way; and if, in addition, the time limit for collecting signatures is relatively short, such a measure constitutes a definite restriction of this right. The solutions generally adopted in Switzerland - with a maximum of 20 per cent - seem acceptable, at least for small municipalities.

The procedure for deposit, an essential stage in the initiative, should be as explicit and as simple as possible, and should essentially consist of a minimum procedure, namely submission to the municipal authority of the proposed text and the list for registration of signatures.

The question of the time limit allowed for collection of signatures is crucial. This should be as long as possible, or even not fixed. A limit of 90 days, which is often adopted, may already cause problems, particularly in large towns with the number of signatures required. Lack of a time limit, although very liberal, is not an optimal solution since the lodging of the request would hang fire. The solution, then, is to find the right time which, moreover, should be reviewable on the basis of experience.

The facility of withdrawing an initiative is often connected with the requirement for a committee mentioned above. It is undoubtedly a judicious measure since it offers the chance to interrupt a procedure which it is pointless to pursue, particularly where the municipal authority has replied satisfactorily to the request.

In the treatment of the initiative, the first step laid down, after the completed lists have been handed in to the municipal secretary, is the checking of signatures by the administration. While the formal requirements regarding indications to be given by the signatories allow their electoral status to be checked and are therefore justified, nevertheless, they must be carefully verified to avoid a damaging refusal, hence the value of the existence of remedies on the subject which guarantee proper treatment.

Furthermore, the fixing of a time limit for consideration by the deliberative body is important; respect for democratic expression implies that a decision be taken as soon as possible, but adequate time must be available for serious study and a sound decision. For that, the usual solution adopted of from six months to a year is doubtless appropriate.

The submission of the decision to a popular vote afterwards should be done within a very short time, while leaving enough time for the campaign to take place. In fact, the situation differs between small municipalities and large towns, especially in the number of "actors" involved and the extent of resources available. In the time limit which ranges from 120 days to one year, the minimum laid down should be preferred, or else a midway solution adopted.

The popular vote must be organised so as to provide every chance for the electors to participate. The problem is more complex in large towns where there have to be many polling stations which have to stay open for a long period or else open for advance polling.

There is also the question of the composition of the electoral bureau which has to give the maximum guarantee of impartiality; in municipalities where there are different political parties they must all be represented.

With regard to the voting procedures, the general solution is that a blocked vote is used: the proposal submitted is either accepted or rejected. This system may raise problems of interpretation, particularly when a subject is rejected by the coalition of two contradictory opposites: one which finds the proposal unacceptable because it goes too far, while the other finds it does not go far enough.

Another problem is raised by the counting of votes. In her book on the referendum ("Le référendum": Que sais-je?, Presses universitaires de France, 1987), Mrs Michèle Guillaume-Hofnung raises a number of basic questions, namely: Should the results be assessed on the number on the electoral roll or on the number of votes cast? Should the blank votes be added to the votes against? Should abstentions be counted as being in favour or against? She also considers that only a high participation rate would give the right solution, but legal techniques are helpless in the face of failure to vote.

The usual solution in Switzerland is to take into account only votes cast, then to count valid votes in deciding whether the majority is for or against the proposal. Though it has the merit of clarity, this procedure can pose problems if there is a low turnout to the polls. What is the really representative value of the popular will for a decision taken by a small proportion of the electorate? (See section h.iii, p. 41, on this point.)

On the question of remedies, it is necessary to provide a range for all phases of the procedure. In principle, the judicial system would be the general option offering the best safeguard to citizens. Nevertheless, the Swiss system which combines administrative and judicial systems, in particular according to the nature of the decision contested, is no doubt adequate, particularly for practical reasons (including the establishment of better equipped and more appropriate machinery of the executive bodies concerned).

There remains the question of who is entitled to make an appeal (the optimal solution on this point would seem to be all citizens) and the time limit for treating the appeal, which should be as short as possible.

#### *iv. Technical aspects of the referendum*

In discussing the compulsory referendum and its procedures for implementation (particularly its automatic activation), we shall restrict ourselves here to one basic question: the merits of the mechanism, in general and in accordance with the subjects submitted.

In its "essence", the compulsory referendum is linked to the concept of sovereignty of the people which, at local level, underlies the ordinary system of the municipal assembly (see above, chapter 1, section b, p. 20). Nonetheless, even in this case because the municipal assembly is attended by only a fraction of the citizens and, all the more so where there is an elected parliament, it is considered necessary, in the greater part of the country, to submit decisions which are of particular importance to municipal life to the entire electorate. This may seem to be the acme of democracy but can pose serious problems for the role of the deliberative body. In fact, what is the value of a body whose function it is to make decisions and which then sees them submitted for final decision to another authority? Does this not mean that its activity is deprived of a good part of its meaning, and its members reduced to the mere function of studying and making proposals, similar to the members of a parliamentary commission? Such a practice could well seem heterodox for the supporters of the representative system, but it is no less firmly entrenched in a long democratic experience which has to be respected if not imitated.

The subjects submitted for compulsory referendum also raise questions. Although we can accept the relevance of allowing people to ratify certain fundamental decisions - those affecting the very existence of the municipality, or those which determine its organisation for a considerable time - must this also be the case for certain ordinary decisions (including the budget)? On this score, it would seem preferable to leave the initiative to the citizens who, if necessary, can use the optional referendum.

We must now examine some technical aspects, of the optional referendum, succinctly, as many of the procedures involved in it are the same as those for the initiative, described above. So we can leave aside the questions of a referendum committee, withdrawal, treatment, the popular and appeals, but should describe the methods of activation, which are specific to the optional referendum.

In fact, in contrast to the initiative, which can only be introduced by the citizens, the referendum can be activated by them, and most generally is, but may also sometimes be initiated by a specified proportion of the local parliament (see chapter 1, section b, p. 20). This process allows recourse to the electorate for a decision in the event of a decision approved, or indeed, rejected by a very close vote in the deliberative body. It is used in particular to avoid the campaign for signatures by submitting the topic in question immediately to a popular verdict.

This method has its value in exceptional cases - it also tends to short-circuit the possibility of an optional referendum - but it should be used sparingly, in particular not to affect the parliamentary function (See the comment earlier concerning the compulsory referendum).

As for the subjects accepted, we have seen earlier that all the decisions of the deliberative body can generally be subject to a referendum. Such an extensive concept is obviously the best for respect of democratic expression; nevertheless, it does pose some problems in terms of effectiveness, particularly for matters which could suffer from the delay implied in the referendum process. Here, the solution which is sometimes possible of stipulating urgency by a specified majority of the local parliament is an appropriate measure to remedy the disadvantage of the delay in application; once again, it should be resorted to only exceptionally.

Some cantonal legislations also provide for the exclusion of negative decisions. If this measure seems to be logical up to a point, it still causes problems because it excludes from the field of the referendum decisions which the electors ought to be able to contest. These are particularly proposals by the executive which are rejected by the deliberative body for which arbitration by the people would be appropriate, especially if the majority against was small.

The form of a referendum does not have to comply with the same constraints as the initiative (particularly conditions for admissibility). It should be sufficient for the intention of launching it to be known publicly and the collection of the necessary signatures to proceed immediately.

As for the initiative, and for the same reasons, it is necessary to fix a minimum number of signatures. It has been said that, generally, this is the same for the two mechanisms, sometimes with a smaller number, which may be justified, for example, by the fact that the time given for collection is often very short.

With regard to the procedure of deposit, there also has to be a time limit for the official publication of the decision subject to the referendum, the shorter the better. In this regard, the maximum of thirty days seems excessive for an action which does not involve any particular preparation of work.



As for the time for collecting signatures, this should not be extended immoderately, in order to avoid the municipal decision being left pending for too long. The limit generally set of thirty days is probably enough. In this matter, however, the difference of situation between small municipalities and large towns should not be underestimated. For the latter, such a deadline - often shorter - may present difficulties for citizens or referendum groupings which have to work hard to produce the contingent required, and sometimes do not succeed in view of the time limit. It could be said that a request which does not initially find sufficient popular support is not worth considering; this does not alter the fact that there is a danger of producing a regrettable violation of democratic expression.

#### **h. Other aspects of the referendum system**

Here, we should like to broach three particular aspects, which are undoubtedly important for the application of the instruments of semi-direct democracy, but are generally the subject of only rather restricted legal cover. These are information to citizens, financing of the referendum system and electoral participation.

##### ***i. Information***

Most of the cantonal legislations contain rules prescribing the availability or despatch to electors of specific documentation (voting papers, text submitted to the vote, explanatory message). As a special measure regarding publicity, it is often arranged that the number of notice boards for the proponents and the opposers is equal.

In small municipalities, information may be limited to a reminder of the content of the initiative or subject of the referendum, with a mention and explanation of the position of the municipal authority; the restricted size of the community concerned means that the citizens are more easily accessible and more directly involved, and therefore better informed about the matter in question.

Conversely, in the large municipalities (especially the towns), there is a much greater need for the widest possible dissemination of information. In addition to the legal prescriptions, municipal regulations and even the initiative of the municipal authority mean that explanatory papers are circulated. Custom has it that, where parties have been constituted (at least those represented in the local parliament), they can explain their point of view in the official brochure distributed to citizens, alongside the opinion of the municipal authority.

##### ***ii. Financing***

Exercise of the right to an initiative or to a referendum has a cost, which may be higher or lower, particularly in relation to the size of the community concerned and the type of subject in question.

Although most of the time there are legal or regulatory provisions which ensure that the cost of voting is paid for from the public coffers, in general there are no measures for contributing financially to the referendum system. Now, the resources needed are often considerable at the various stages of the operation.

There is, for example, first, the stage of collecting signatures (in general, this is by far the least costly, but there must at least be printed lists and an document explaining the purpose); and then afterwards, the principal phase of the voting campaign which may involve considerable expense as

publicity is needed to get the message across. In this respect, the situation is, of course, quite different according to whether it is a small municipality or a large town; in the latter case, only organisations having large resources available (particularly parties and groups) can afford such expense.

An increasingly common case in urban areas is that of a large construction project on which a referendum is held, particularly by the environmentalist movement which is tending to become quite strong in general but is often short of money; the campaign it wages is therefore very unequal in the face of the economic powers concerned.

A development such as this can mean, that there is the danger, restricting of the exercise of democratic rights. There is no doubt that money makes for discrimination. The growing cost of referendum campaigns, even at local level, also means people think twice, or even more, before embarking on such an operation.

This means that, contrary to the accepted idea, the referendum system - apart from that which is legally compulsory - is, on the whole, relatively infrequent (see section j, p. ) in view of to the number of subjects for which it is potentially open.

While it seems difficult to imagine measures of public financial aid for the practice of the initiative or the referendum (all the more so since the latter, when it is optional, most often goes against the expressed will of the municipal authority), we can at least wonder whether it would not be wise to lay down certain rules designed to make things more equal for the parties concerned. This is probably a topic which should be explored if we wish to give the referendum system its real, broadly popular dimension.

### *iii. Electoral participation*

The operation of submitting a subject to a popular vote, apart from the procedures mentioned above, elicits greater or lesser interest from the electorate which is reflected in the turnout for the ballot.

We shall give below (see section j, p. 42) a quantitative appraisal of the matter; but here we shall discuss participation - and its corollary of absenteeism - especially the legal issue, in connection with the referendum system.

Study of cantonal legislation shows that this civic activity is covered by very few provisions; occasionally there is a reference in a law, along with the right to vote, of the duty to vote - sometimes accompanied by a fine for failure to vote. Apart from these prescriptions, there are no specific measures governing or demanding participation in a ballot.

In fact, general practice shows that few ballots produce a large turnout of voters. Therefore, particularly for those where a very small proportion turn out (especially a number smaller the number of signatures required for acceptance of the request for a referendum), we may wonder about the value of a decision taken by a minority of the population, repeating the question asked by Mrs Guillaume-Hofnung (op. cit. above, section g.iii, p. 36): "Should a threshold be established below which the result of the referendum would not be taken into consideration?"

Indeed, whereas a quorum is needed to validate any decision of a local parliament, would it not be justified to do the same for the electorate? The solution generally adopted in Switzerland is rather to accept that the result is valid whatever the level of participation.

The tendency for civic action to decrease - which can be observed at all levels of the State - is likely to cast discredit on the referendum system, providing support for the suggestion of introducing a threshold; but the problem would be to set an appropriate level, particularly in order not to jeopardise the democratic exercise. Furthermore, it would be difficult to determine in rigid fashion, in view of the fact that the electors' commitment is directly linked to the subject concerned: we see, for example, that voting on local taxes attracts much greater support than any building proposal.

Should voting then be made compulsory (particularly in regard to the compulsory referendum) for decisions of particular importance? This is a wiser and more practicable method if we think of the basic decisions affecting the existence or organisation of the municipality. But there, too, we may wonder about the value of a forced vote in which the opinion expressed by a considerable proportion of the voters might be wrongly based.

Finally, it is difficult to solve the problem of the poor turnout by constrictive provisions, but perhaps incentive measures may serve (including information, consciousness raising and improvement of voting conditions), in the framework of a general effort to (re)valorise the electoral function.

#### **j. The practice of semi-direct democracy at local level**

Curiously, while the multiple legal and regulatory aspects of the initiative and the referendum are widely studied and commentated in a relatively large number of legal works, their practice has been very little studied, particularly in terms of statistical analysis. There are only a few partial inventories giving an idea of the extent to which semi-direct democracy is used in the Swiss municipalities.

For example, a survey conducted in 1981 by the office of socio-economic studies and statistics of the Town of Lausanne tried to measure the frequency and chief subjects of optional referendums and initiatives in 123 Swiss towns over some twenty years (1960-1981). Of the 123, 119 replied and of those 88 (74 per cent) had held popular ballots following an initiative or a referendum.

Sixty-eight towns in 16 cantons had had an optional referendum during the period in question, giving rise to 219 popular ballots of which 45 per cent had been in the last five years. In two thirds of cases, these had resulted in the decision previously adopted by the deliberative body being overturned.

As for the right to request an initiative, over the same twenty years this had been invoked 162 times in 46 towns in 18 cantons, including 61 times for the canton of Zurich. Of the 151 initiatives submitted to the vote, 44 per cent were accepted by the people. Also, as with the referendum, we note an increase in the practice over the last ten years.

The subjects concerned in one or other of the semi-direct democracy mechanisms are many and varied according to local circumstances. But among the most frequent there are planning of road and transport infrastructure, socio-cultural facilities, local taxation, municipal organisation (there were many initiatives aimed at establishing an elected parliament) or the various municipal regulations. Since the 1970s, town planning problems have tended to take pride of place.

A more extensive analysis made in one canton (Vaud) for the period 1951 to 1980 gave a better measure of the use of the optional referendum at municipal level.

In thirty years, the 120 or so municipalities with an elected parliament have registered 134

requests for a referendum; this seems low, even though a marked increase is noted over the latter period: 47 (35 per cent of the whole) between 1976 and 1980.

Again, it must be noted that these 134 requests involved 74 municipalities (of the 120 potentially concerned) of which 48 had a single case, 12 had two cases, 9 had three and 5 had eight. In the last five, there are four towns including the "capital" Lausanne which obviously had the largest number of referendums.

The subjects concerned were chiefly the demolition-construction-renovation of buildings (28 per cent of cases), planning of infrastructure (13 per cent), local taxation (11 per cent), regional planning (10 per cent) and purchase of buildings (10 per cent). Certain subjects such as construction work have always constituted a permanent target while others such as zone planning have been subject to popular contestation only recently.

As for the results of the voting following requests for a referendum, over half (53 per cent) ended up with municipal proposals being overturned, especially those concerning taxes and infrastructure planning.

Finally, other methods of exercising the municipal referendum have been studied more systematically for Lausanne (population 127,000), the chief town of the canton of Vaud, specifying in particular the "actors". (It should be noted that , in Lausanne, the signatures of 5,000 electors have to be collected - namely, 6 to 7 per cent of the whole - within 21 days to make a request acceptable).

Between 1923 (first case) and 1991, Lausanne had 21 popular votes on referendums: 9 between 1923 and 1948 and 12 between 1961 and 1991. A recent increase in the number of requests for referendums has been noted, with six during the terms of office of the last two legislatures (1982-1989).

With regard to the subjects concerned, we find:

Town planning	6	Price of public utilities	2
Municipal taxes	5	Public town transport	1
Construction projects	3	Salaries of municipal employees	1
Shop opening hours	2	Organisation of Olympic Games	1

During the period under consideration, a change in the subjects contested has been noted (essentially local taxes between the wars, town planning in the 1980s) and the groups involved, according to the evolution of the local political context.

The nine referendums between 1923 and 1948 occurred during a time of contest between the bourgeois coalition and the socialist party, in the framework of a majority electoral system: a "right-wing" coalition, essentially liberal, constantly held the municipal power, except for the "red" legislatures (1934-1937 and 1946-1949); when the bourgeois were in power the socialists called for referendums and vice versa.

Since 1950 and the advent of proportional representation in the local parliament, the socialist party has always been represented, but in a minority, on the executive. The requests for a referendum since then have come from movements not represented on the municipal authority (communists, environmentalists, the anti-nuclear lobby, tenants, "alternative" groups, etc.); but since the socialist party is not in sole power, the success or failure of referendums depends largely on its attitude during

the referendum campaign. Of the 12 ballots held between 1961 and 1989, two thirds resulted in the rejection of the municipal proposals concerned which mostly related to town planning.

Electoral participation (26 per cent on average with a range of 9.6 per cent to 65.9 per cent) came close to that recorded for cantonal referendum votes. Only two orders on taxation, in 1934 and 1938 (with 66 per cent and 54 per cent) and, in 1988, the great plan for organising the 1994 winter Olympic Games (with 46 per cent) mobilised an appreciable proportion of electors. The vote with the lowest turnout (9.6 per cent) was for a referendum launched in 1967 against the municipal regulation on shop opening hours and that ballot registered fewer votes than there were signatures on the request.

These few statistics, supported by other partial analyses of local experiences, show that less than 50 per cent of the electorate usually turns out but the number is closely linked with the amount of interest elicited by the subject.

In general, it can therefore be said that the practice of semi-direct democracy at municipal level in Switzerland, considered globally, has tended to expand in recent times, especially with more frequent use of the optional referendum. In the end, however, with regard to the mass of decisions taken by the municipal authority, very few subjects are submitted to a popular vote through an initiative or an optional referendum, except for the compulsory referendum which is prevalent throughout German-speaking Switzerland. The matter is therefore much less extensive is generally believed.

### **3. Overall appraisal of the referendum system**

In this last chapter, we shall look at two elements: first, the positive and negative aspects of the referendum system and, secondly, its effects on local political life.

#### **a. Positive and negative aspects**

If we wish to identify the advantages and defects of the referendum system and its overall practice, we must also distinguish the elements which are specific to each instrument - the initiative and the referendum.

##### *i. The referendum system as a whole*

The positive aspects which can be identified are: the full and complete commitment of citizens in local public life, the final power of decision they have, the continuous supervision of municipal activity by the people and, more generally, the educational and integrating role of the institution.

The direct commitment of the citizens is the very essence of the referendum system of democracy as compared to the representative system. The electors - and not only the elected representatives to whom power of decision has been delegated for a specified time - are potential actors in the political game at all times. This tends to avoid a gulf or divide between the municipal authority and the people, particularly in preventing decisions which do not comply with the will of the majority.

The power of final decision which is in the hands of the citizens allows the bases for a municipal proposal to be laid and favours its later implementation, especially in forcing the costs involved to be admitted.

Finally, the educational role, learning about democracy and its practice at the most accessible level - in the municipality - is an indisputable virtue of the referendum system. To this is added the faculty to interest citizens in public affairs and its capacity to integrate them in local society (in this regard, a link can be seen between the existence of the referendum - and even more so the initiative - and the absence or at least less frequent use of modes of public expression of protest such as demonstrations or strikes).

As for the negative aspects, two principal ones can be pinpointed concerning the cumbersome nature of the process and the removal of responsibility from the elected representatives, and a further ancillary one which affects relations with other local communities.

In fact, others reproach the delays and cost involved in the referendum system. That objection is partly justified, truer for the first point than the second which can have the opposite result of avoiding needless expense.

The loss of responsibility by the elected representatives, linked with the decision-making powers of the executive and deliberative bodies, is inherent in the very logic of a system where the people are the supreme authority. As already mentioned above in connection with the compulsory referendum (see section g.iv, p. 38), this weakening in the role of the representatives could be regretted; but is this a real defect? Is not the important thing really to ensure the best possible exercise of democracy?

Another point which must be mentioned is the possible harmful effect a referendum and particularly an initiative can have on another local community, especially in the matter of town planning or infrastructure.

## *ii. The initiative*

On the positive side, the initiative encourages innovation, allows the introduction of new topics of reflexion and original movements and thus enriches public debate in general.

With regard to innovation, it was stated earlier that, in contrast to the referendum which tends to be a brake, the initiative is an accelerator of public action. It may result in innovative proposals from citizens which the municipal authority had not yet envisaged or undertaken. This contributes to the development of the local community, particularly its facilities, in accordance with the needs and interests of the population or a significant part of it.

The introduction of new themes for consideration and future action also leads in this direction, especially what are called "social problems". Even if this is often a concern which far exceeds the municipal context (including protection of the environment, social welfare, the integration of minorities or the disadvantaged), they may still have an important impact at local level. Furthermore, the initial treatment is often done by the basic community, in application of the general residual power vested in the municipality; on the environment, for example, some towns adopt a pilot role by taking measures first of all against noise and air pollution, treatment of waste water or rubbish disposal, often at the initiative of the citizens.

The introduction of original movements is also a positive factor. Outside the traditional parties, especially those having a part in the municipal power, the referendum system - and more especially the initiative - allows the emergence of very diverse groupings which can propose all kinds of new ideas

or measures. Especially in the large towns, there has been action by tenants to construct low cost housing, by anti-nuclear groups for the use of other forms of energy, by environmentalists for consideration of environmental problems, by young people for leisure facilities, by the residents of certain districts for anti-noise and vehicle pollution measures and by users for improved public transport. The action of some of these groups was casual and they were short-lived but others have gained a strength and permanence which have warranted them a true role as actors in local politics. This is especially true of the environmental movement which sprang up in the 1970s and has become a true party which, in the 1980s and 90s, is increasingly recognised as a partner in municipal power and has even taken on leadership functions.

Finally, the right to introduce a popular initiative leads to enrichment of the public debate, resulting in both the extension of themes and the emergence of original movements as mentioned above.

The process does not, however, have nothing but advantages; obviously that would be too much to hope for. Among the negative aspects, there are two main ones which are the danger of inconsistency and lack of continuity in municipal action and the disturbing effect of short-lived, small groups.

The danger of inconsistency occurs particularly at the higher levels of the State when the request to introduce new legislative provisions could upset the rational institutional order. That may also occur at local level when popular proposals go against a general line of development (notably in regional planning). To this is added the possible lack of continuity in municipal action which could find itself embarked on a line not in keeping with its duly considered plans or deprived of the resources to carry them out, especially by the effort needed to implement a suggested proposal to the detriment of more fundamental work.

As for the disturbing effect of short-lived small groups - which in fact relates to the referendum as much as the initiative - it is the negative side to the positive commitment of original movements. In fact here, what can cause trouble in the municipal structure more than anything else is ill-considered action without real basis, by groups of citizens, which, through a combination of circumstances, lead to the success of requests which, in the long run, are harmful to the local community and particularly to its social unity. Measures of this sort might be those intended to exclude a particular category of the population, provisions which did not receive the agreement of a majority of residents but are often approved in a vote through a poor turnout of voters. It is not a question here of giving precise examples but of thinking of certain social problems on which there is bitter controversy (such as drugs or immigration). The exercise of popular rights in these domains, even if it is to defend a principle firmly, would be likely to lead to regrettable excesses or abuses.

### *iii. The referendum*

In terms of advantages and disadvantages, a distinction must be made between the compulsory referendum and the optional referendum. The former can be dealt with speedily as, by its nature, it does not depend on a request from the citizens and hence their vices and virtues.

The compulsory referendum has the principal and specific benefit of submitting important decisions to the approval of the electorate, without the effort and expense of collecting signatures by the opposers of a municipal decision. Apart from this, it does not appear to have any particular advantage over the optional referendum.

As for the defects of this procedure, apart from the extra delay caused by extending the process, two in particular can be indicated: the difficulty for citizens of really understanding a complex proposal and the danger of taking responsibility away from the elected representatives.

Certain subjects submitted to a compulsory vote are often complicated and difficult: there are, for instance, zone plans and various detailed regulations, primarily those relating to municipal organisation. There where it is already difficult for a local parliament composed of "amateurs" to really understand all the aspects and the implications of such projects which often require a great deal of preparation by the executive but also by the municipal administration, it is all the more so for ordinary citizens who are, in addition, reduced to global acceptance or rejection without the possibility of amendment. This fact should not, however, cast doubts on the legitimacy or the value of the compulsory referendum on the essential subjects mentioned earlier (see sections e.i.a, p. 30 and g.iv, p. 38).

In order to remedy as far as possible this difficulty of understanding, the local authority must supply enough clear and objective information as a basis for the electors' choice; this is to be considered as a duty and not merely an empty wish.

The other notable defect, that of taking responsibility away from the elected representatives, has already been discussed. It remains to stress that the optional referendum would appear adequate in many cases for ensuring democratic expression, without the same infringement as its obligatory counterpart on the decision-making role of the local parliament.

For the optional referendum, the list of advantages and disadvantages is very much longer.

In regard to the positive aspects, it permits wide popular consultation, sets aside inappropriate or untimely measures, contributes to safeguarding minorities and, in general, forces a compromise to obtain the broadest possible consensus.

Offering people the opportunity to express the will of the majority corresponds to a certain extensive conception of democracy, thereby giving municipal decisions a legitimacy which cannot be contested.

Arresting the course of an ill-conceived or unwelcome proposal is undoubtedly of benefit to municipal affairs. Often, the fact of sending the project back to the drawing board results in a more appropriate and even less expensive solution. It also prevents unconsidered following of fashion and the facile approach and the production of prestige projects while neglecting people's most immediate needs.

On the question of defence and promotion of minorities, the referendum system allows fractions or categories of people - particularly those not represented in the deliberative body or who do not belong to the dominant currents of local society - to explain their points of view which, otherwise, would be largely ignored. That is a fundamental and permanent option of Swiss political practice in a federal State which must take into account a mass of cultural, linguistic and other diversity.

Finally, the encouragement to compromise is a corollary of the referendum, with undoubted advantages but also the disadvantages outlined below. In fact, the process acts at all stages of preparation of a proposal: its designers and implementers (especially the executive and its administration), then the decision-makers (the deliberative body) have constantly in mind the possibility of popular contestation, with all the consequences of seeking a solution acceptable to a



majority of citizens. Indeed, various socio-economic groups do not hesitate to threaten to request a referendum to try to influence the process in the direction of their interests, behaviour which may present danger for the correct use of democracy at all levels of the State.

As for the negative aspects, the optional referendum causes delay in carrying out a project, favours corporatism and "districtism", weakens proposals by the practice of compromise and, finally, makes innovation difficult.

The argument of the delay caused by the referendum is commonly invoked by its adversaries, and also by the municipal authority and, sometimes, by groups interested in the immediate implementation of a decision. It is undoubtedly an objection worthy of consideration, as delay often entails extra cost. But the importance of this disadvantage should not be exaggerated since, as we saw above (sections e.ii.e and e.ii.g, p. 32), the delays in implementation and the final settlement of a referendum are fairly short in order not to cause too much damage.

Considering the referendum as linked to corporatism is certainly justified as this instrument can serve as a means of intervention and pressure by socio-professional interests where they do not have or have exhausted other possibilities (including direct contact with the local authority - executive and administration - or representation in the deliberative body). It is also true that there is frequent use in the large municipalities by groups of citizens (especially property owners) from a particular sector or district. The referendum system offers to one and all the possibility of asserting their views which, at least in their eyes, are legitimate; hence reproaching it with over encouraging the interests of particular categories or individuals is going too far.

The weakening of projects by the practice of compromise resulting from the referendum is a valid objection. It is clear that the municipal authority takes more precautions, especially by a more attentive study of the ins and outs of the question, with that sword of Damocles hanging over its head. However, even though this entails supplementary cost and delay, is it a bad thing to try to find a solution which satisfies the greatest number? Obviously, that may possibly put a stop to ambitious projects, but a certain political courage, based on solid and credible reasons, has a good chance of putting through a wide-ranging proposal, despite the threat of referendum which, in any case, there is often hesitation in carrying through.

It is true that innovation is made difficult by the referendum which, contrary to the initiative, provides a weapon for conservatives and stick-in-the-muds. This can be seen clearly at national level where various measures for social progress have been systematically countered by use of the mechanism. It is also true at local level, but to a lesser degree as the procedure applies essentially to administrative decisions of which many are not very innovatory. Nevertheless, the referendum is a brake, but does not any vehicle - like any body - need to have a safety mechanism when needed?

## **b. Effects on local political life**

Here, it is a question of appraising the consequences of the referendum system on various public bodies and private groups which participate in one way or another in local public life, namely, on the one hand the electoral body or the deliberative and executive bodies and on the other the parties and other organisations. This study must take into account the size of the municipality and the type of instrument in question - initiative or referendum.

### *i. The electorate*

As we have seen, this is the supreme decision-making body and, furthermore, the one which most often activates the referendum process.

In small communities with a municipal assembly open to all citizens the popular initiative - like the optional referendum, when the process is provided as a supplement - is used only exceptionally. By this fact, use of one or the other may indicate a critical situation, including lack of confidence in the local authority - that is, the municipal executive - with the possible consequences of resignation of some or all of its members.

In the large municipalities with elected parliaments, the popular initiative expresses the expectations and needs of the people or a proportion of them. The aim is to draw the attention of the local authority to a theme or particular subject and/or to push it to take specific action. The effects depend on the reply given and whether or not it satisfies the request. In any event, as the citizens are the final arbiters the municipal authority has to provide a proposal acceptable to the majority, or it will lose their confidence which could prejudice its re-election.

Certain initiatives, moreover, concerning highly emotive subjects (for example social problems such as drugs or immigration) are very likely to cause tension and confrontation which would have a more or less lasting effect on the unity of local society.

The referendum in its compulsory form involves the electorate only in participation in the ballot and its immediate results (the decision taken) and later results (the follow up given); in its optional form, a tiny minority of the citizens are concerned as sponsors of a request and a larger number as signatories. In this case, the effect on the electorate results first from the greater or lesser impact of the request which may lead to favourable or unfavourable mobilisation - with its consequent split of the population - in the first stage of the procedure (collection of signatures), then its participation in the ballot and the result.

It should be noted that as a general rule the referendum relates to questions of a more "technical" than "emotive" type and that it is therefore less likely to cause a great social disturbance; any possible "incidents" are quickly resolved and forgotten.

As an ancillary, it must be noted that the electorate is not the entire population. Certain categories of people (especially foreigners) are excluded from the referendum in particular and from politics in general. The exercise of democracy of which they are deprived may eventually cause them frustration and particularly involve them by its implementation which subjects them to the effects without having been involved in the decision. As an example, there is particularly the adjustment of local taxes which the holders of civic rights are often required to approve by a compulsory referendum, or at least an optional referendum.

## *ii. The deliberative body*

In small municipalities where the deliberative body amounts more or less to the citizens' assembly, the consequences of a particular referendum process, if it is accepted, are similar to those described in section b.i, p. 49.

In the municipalities with elected parliaments, the popular initiative may awake elected representatives who are slumbering, especially those belonging to an overwhelming majority. In large towns, the system of representation plays a considerable role in the exercise of both the initiative and the referendum. The majority system tends to incite the opposition to use the electorate to protest

against the reigning power; we cited earlier the example of Lausanne prior to 1949 (see chapter 2, section j, p. 42). The proportional system, by making all the main parties and political movements take part in the deliberative body, reduces by as many the potential requests which will then be made by groups which are much more marginal and often short-lived.

The referendum in its compulsory form removes from the local parliament the supreme decision while leaving it the power of prior amendment; in the optional form, it is an appeal against one of its decisions, while having already pushed it to a compromise. In either of these cases, the deliberative body loses part of its role and might feel devalued, but there is at least the advantage of reducing to its proper level the potential vanity of any local elected representative. Apart from this slight infringement, the effects of the referendum are positive rather than negative, as explained at length above (see section a.iii, p. 47).

### *iii. The executive body*

To the elected executive body there must be added the administration under it, which is responsible for preparing proposals and is, therefore, equally sensitive to the referendum process.

In small municipalities and in large towns, the executive body must bear in mind the popular initiative as well as the referendum at all stages of its work.

The initiative serves as a pointer for municipal action and is particularly useful when the municipality is under the domination of a clique or of one party, but even then success is not assured.

The referendum in its compulsory form finally is of little concern to the executive body, except in its ultimate decision which obviously must be applied whatever it may be; in its optional form, the effects are much more varied according to the different phases of the proposal concerned. Already during preparation, the threat of a possible referendum tends to channel over-reaching ambition; if a request for a referendum is accepted, the executive body is reduced in principle to following the normal course and awaiting the final result with which it must comply. Often, however, it engages actively in the voting campaign, publicising its views with greater or lesser determination and objectivity.

A problem may arise when the decision of the electors is particularly against the proposal. In a small municipality, this may even cause the resignation of one or more of the elected representatives, or even all of them. In large towns, a negative vote, even a sweeping one, only exceptionally causes that result. Only repeated failures, the indication of a considerable deterioration in the political climate, could bring about a change, but this tends to occur at the next municipal elections. Finally, the referendum is such a "normal" mechanism that it is not a means of overturning the authority in power; otherwise, its use, which is frequent in the compulsory form, would mean that each subject rejected (and this occurs frequently with the budget) would be an invitation to resign!

### *iv. The parties*

By definition, the parties and other political movements are important actors in the referendum process. While they barely exist or have a very small direct role in the small municipalities, they play a full part in the process in the large towns. First, a distinction must be made between the parties which participate in municipal power and those which do not: the former rarely or never use the referendum process, unless exceptionally on an eminently electoralist basis; the latter are enthusiastic and convinced users of it and the most experienced and frequent of them establish a reputation for it. The

environmental movement in particular has thoroughly understood and made good use of it which has enabled it (in some twenty years) to alter its image from a bunch of "gentle dreamers" to that of an organisation of respectable and responsible people, after a series of successful initiatives and referendums at all levels of State, but particularly at local level.

It should be noted also that even parties participating in the municipal power, represented in the deliberative or even the executive bodies as minorities, may also resort to this means of influence or action to strengthen their position until they gain a majority. This is particularly the strategy currently used by the socialist party whose commitment is often necessary, alongside the weaker groups, to ensure the success of a referendum.

The initiative is essentially used by outsider parties or movements which, the more marginal or fugitive they are in character, the more active they are in this area. Their proposals are rarely successful unless they manage to gain the support of stronger social forces (particularly certain socio-professional organisations such as trade unions); but at least they benefit from the publicity which satisfies them for the time being. Other groups already better known and better established (for example, the environmentalists in the 1980s) are strong enough to carry their requests through on their own.

As for the referendum, in its compulsory form, the parties are committed to the voting campaign either as participants in power and defending the municipal proposal or as outsiders who might be for or against according to the subject concerned; in its optional form, the "non-governmental" parties are often the proposers of the referendum, contesting those who have taken a decision in the local parliament.

Finally, semi-direct democracy allows political movements which are originally in opposition to gradually integrate into the system of power until sometimes they reach a point which, according to its extent, will make them less inclined to resort to popular approval.

#### *v. Other organisations*

Here there are, first, the socio-professional or economic groups and then the associations of all kinds.

In small municipalities, there are few organisations of this type, apart from a few local sports and cultural clubs.

In towns, on the other hand, there is a range from socio-professional groups (trade unions and employers' organisations) and economic groups (including associations of business men, property owners, tenants consumers) to cultural, leisure and sports clubs.

The initiative can be launched by any organisation interested in sponsoring a proposal; some examples have been cited above (see section a.ii, p. 45). If such a proposal is successful, apart from the development experienced by the local community, it also has the effect of strengthening the group concerned, both in the eyes of the public and for its members.

For the referendum in its compulsory form, a variety of organisations is likely to take part in the voting campaign, in accordance with the subject in question, in order to assert and impose their views; in the optional form, the range of groups potentially concerned is even larger in view of the much wider field of the instrument.

The effects for the local community of success in contesting a municipal proposal and achieving its rejection are described earlier (see section a.iii, p. 47) and, for the victorious organisations, are similar to the success of an initiative.

#### **4. General summing up and conclusion**

Study of the Swiss referendum system and its exercise at local level show its great diversity and complexity resulting essentially from the federal structure of the State and of the sovereignty of the people applied to a greater or lesser degree according to canton. This provision means that the referendum and the initiative are mechanisms in ordinary use in Switzerland as they are nowhere else - at least in Europe - and which are fundamental parts of national political culture and hence not easy to transpose as they are to another context.

However, certain lessons of more general value can be learnt from this practice: the advantages of semi-direct democracy for the defence and promotion of minorities, the prevention and correction of abuse and excesses in municipal power and the affirmation of the supremacy of citizens in public life can be mentioned in particular.

With regard to the debate on representative democracy as against democracy through referendum which are often presented as being mutually exclusive, the Swiss experience shows that the two can exist side by side, in different doses from canton to canton on the basis of their particular traditions and sensitivities. This confirms the affirmation made in 1931 by the French jurist Carré de Malberg who considered that the referendum and parliamentarism are not irreconcilable.

The disadvantages of the system outlined above must not, however, be concealed nor the question of its vitality and relevance in present times.

A living institution is one capable of evolving and, particularly, like a tree, of putting forth new branches which bear the best fruits. The changes made in several cantonal legislations which have recently introduced the popular initiative on municipal matters or the possibility of a ballot with options shows a facility of adaptation to the needs of contemporary society.

We may, however, query the perhaps over extensive use of the referendum procedure for a country like Switzerland which is faced with considerable problems and time limits, including participation in a Europe which is uniting. Will it not be condemned in the long run because it is not conducive to effective and speedy decision making? The reply to this fundamental question must take into account the general opinion of the citizens and also of the different levels of the State.

The view of the majority of people is certainly a desire to safeguard for as long as possible an institution to which they are profoundly attached. At federal level, this does raise some problems for making decisions quickly enough on proposals affecting the future of the country, including possible accession to the European Community. At cantonal level, and especially at municipal level, this constraint is less important, especially since most of the subjects submitted to the ballot, by their essentially regional and local nature, would remain within the competence of the cantons and the municipalities, and so would be subject to referendum at those levels.

As it stands, there seems no reason to cast fundamental doubts on the system of semi-direct democracy and we may reasonably expect it to continue, with some adaptations.

#### **IV. CONSIDERATIONS REGARDING THE HOLDING OF REFERENDUMS AT LOCAL LEVEL**

An evaluation of the diverse experiences of various member States of the Council of Europe concerning the conditions and restrictions of the use of local referendums indicates that these can form a positive element of direct democracy. However, to ensure a fair and effective use of this machinery, a number of important considerations must be borne in mind.

- i. An institutionalisation of local referendums in national or regional legislation allows basic uniform rules to be laid down guaranteeing the proper use of this instrument of popular consultation and avoiding defects of organisation.
- ii. Some issues do not lend themselves to a popular vote: the choice of yes or no, for or against, involves a risk that various shades of opinion among the public will not be properly expressed. Moreover, the lack of intermediate proposals may oblige voters to oppose a project with which they basically agree, simply on account of certain provisions which, in a parliamentary-type situation, could easily have been modified.
- iii. The over-simplification of a complex question which may sometimes be entailed by the referendum process, may lead to incoherent results without an overall vision of all the local problems and needs.
- iv. The precise wording of the question(s) is very important. Some form of control is desirable to ensure that it is neither confusing nor tendentious but neutral and objective.
- v. Apart from those countries where voting is compulsory, every effort needs to be made to ensure an adequate turn-out. If participation is too low to constitute a representative sample, even a positive result will not provide an adequate support base for the proposed measures.
- vi. Willingness to participate will diminish and the referendum will be neither fair nor effective if the inhabitants are given inadequate information concerning the issue at stake, especially where complex and technical problems are involved.
- vii. On the other hand, the mere fact of holding a referendum in itself increases public discussion about the matter in question.
- viii. A referendum is a relatively cumbersome procedure; its organisation takes time and, like all democratic institutions, costs money. Such considerations argue against allowing too frequent a recourse to this instrument.
- ix. By the same token, excessive recourse to referendums can hinder the efficient management of the municipality in the medium or long term.
- x. In order to avoid illegitimate interference and particularly to prevent local blocking of decisions taken at a higher level in the wider interest, the subjects which can be submitted to referendum must relate to matters for which the local authority is responsible in accordance with the principle of subsidiarity.
- xi. Nevertheless, recourse to referendums may involve the risk of obtaining different results on an

identical subject in neighbouring municipalities, which might then lead to deadlock situations, especially in the field of physical planning.

**With respect to consultative referendums in particular:**

xii. In most cases, only those persons are entitled to take part who can vote in local authority elections: in many countries this means only citizens. Failure to consult the other residents of the municipality, who may be numerous, is a serious drawback in democratic terms, which is hardly justified by the convenience of being able to use the existing electoral register.

xiii. Politically, though not legally, even a purely consultative referendum may normally be expected to oblige the local authority to follow the opinion expressed by the electorate. However, in Finland it seems that, in their decisions about an initiative to merge with another municipality, local councils have departed more than was expected even from fairly clear-cut referendum results. This clearly tends to diminish popular trust in the importance and usefulness of referendums of a consultative nature.

**With respect to binding referendums:**

xiv. This type of referendum elevates the citizens to the position of a higher authority and is an undoubted form of control over the actions of the elected representatives. It allows citizens to participate in local political life outside election periods. The existence of this instrument brings pressure to bear on the legislative and executive bodies throughout the mandate of the elected representatives, not just during the run up to the next election, since it is possible that any action which goes against the will of the majority of the citizens can be rescinded.

xv. On the other hand, it also results in a decrease in the accountability of the local representatives at elections, since although they must account for their management of the local authority as a whole, they cannot be held responsible for the consequences of decisions taken by referendum.

**With respect to popular initiatives:**

xvi. A popular vote initiated by the citizens themselves plays a vital educational role, in that it presupposes a direct and substantial commitment on the citizens' part to seeking a satisfactory solution, acceptable to the majority, to a local problem. This type of referendum undoubtedly encourages public debate and the evolution of ideas closer to the views of the majority of citizens.

xvii. The qualifying conditions for popular initiatives must be sufficiently strict to prevent small minorities from compelling the holding of referendums.

xviii. If there is disagreement between the organisers of a popular consultation and the authorities concerned, particularly on the admissibility of a question submitted to popular decision, it is essential that there should be an independent, and perhaps judicial, authority which can give a verdict on the legitimacy and admissibility of the application within a reasonable time limit.

xix. The considerable cost is an inhibiting factor on the promotion of popular initiatives. It seems hard to conceive of public financial support, particularly as the initiative for a popular vote is often aimed against decisions taken by local authorities. Nevertheless, if the holding of referendums is to have a genuine democratic dimension, the parties concerned ought to be guaranteed some equality as regards the expenditure necessary to inform citizens about the problem at issue.



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Provided that the points described above are taken sufficiently into account, and in so far as citizens are invited to express their views on a question which falls within the competence of the local authority concerned, the request should

- .       concern an important issue which will be decisive for the future in the long term;
- .       concern a decision affecting a large majority of citizens which it would be hard to reverse; or
- .       relate to fundamental principles underlying citizens' lives.

The referendum may be considered as a justifiable institution of direct democracy, in that it makes all citizens directly aware of their responsibilities and may be conducive to the settling of strongly contested situations.

Although the practice of local referendums may involve certain drawbacks, judicious recourse to this instrument can enrich political life at local level.

## APPENDIX

### **Resolution on local referendums adopted by the 10th Conference of European Ministers responsible for Local Government**

The Ministers attending the tenth session of the Conference of European Ministers responsible for Local Government in The Hague on 15 and 16 September 1993,

Having discussed the reports submitted by the Spanish Minister for Public Administration and a member of the Government of the Swiss canton of Vaud;

Considering that:

- local referendums may be a means of encouraging or reviving citizens' interest and participation in the running of public affairs and, provided that certain principles and conditions are respected, can be a useful complement to representative democracy procedures at local level;
- consultative referendums can also offer a possibility to foster the participation of foreigners in public life at local level, as called for in article 4 of the Council of Europe convention on this matter;
- the practice of local referendums, however, presents a number of potential risks (for example, cumbersome nature of the process, risk of delegitimising the representative character of local institutions, difficulty in expressing choices in a subtle way, possibility of contradictory decisions by contiguous authorities on a matter of common interest) which it is important to avoid;

Noting that in the majority of member States of the Council of Europe some form of legal provisions exists which permits, or in some cases prescribes, the holding of local referendums, but that these provisions vary considerably with regard to the possible topics of such referendums, the conditions under which they may - or must - be held, as well as the status of the referendum and its results;

Aware 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;

Are of the opinion that

- a. as regards the legal context:
  - the institutionalisation of local referendums by regulations is one of the appropriate ways of guaranteeing the proper use of this instrument of direct democracy and diminishing its potential risks;
  - such regulations could list the subjects on which local referendums may be held, the

procedures concerning the holding of referendums, the possibility - or obligation - to group several referendums on a same date and the mechanisms aimed at controlling legality in the use of this instrument, including the legal status of their results;

- b. as regards the subjects on which referendums may be held:
  - local referendums should be organised by the local authorities only on questions which fall within their sphere of competence or affect essential local interests, which concern a majority of local citizens, relate to principles and rules of certain importance for citizens' lives or which might have irreversible implications for the future;
- c. as regards the right of initiative:
  - the possibility of popular votes initiated by the citizens themselves favours the emergence of new topics of discussion, thereby enriching public debate, and plays a vital civic role in that it presupposes a direct and substantial commitment on the part of citizens to seeking a satisfactory solution to a local problem;
  - popular initiatives, however, can lead to inconsistency in municipal action, and the qualifying conditions (minimum number of signatures collected within the prescribed time-limit, favourable decision by the controlling authority on the legitimacy and admissibility of the application) must be sufficiently strict to prevent small minorities from compelling the holding of popular votes;
  - popular initiatives are relatively cumbersome and expensive procedures and excessive recourse to them, because of the resulting costs and delays, may hinder the good management of the local authority;
- d. as regards the status of local referendums and their results:
  - consultative and binding referendums are procedures of a different legal nature, in so far as the latter elevates the citizens to the position of a higher authority and is an undoubted form of control over the actions of the elected representatives;
  - politically the differences are not so important, as it may normally be expected that, even in a consultative referendum, a local authority will follow the opinion expressed by the electorate, failing which citizens' trust in the importance and usefulness of referendums of a consultative nature will diminish;
  - the laying down of a minimum turn-out for the results to be considered as representative or mandatory is therefore of the utmost importance for the success of consultative and binding referendums respectively, as instruments of direct democracy;

Recommend that the Committee of Ministers instruct the CDLR to continue its assessment of the advantages and disadvantages of different forms of citizens' direct participation in local decision-making and, more specifically, in the organisation and management of local public services and to consider the advisability of preparing draft guidelines (if necessary including variants) concerning the creation, the limits and the mechanisms of the application of referendums at local level.