Local Referendum – mechanism of the participative democracy

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Abstract

In this study we have theoretically and practically approached the institution of the local referendum. Therewith, the European life of Romania has compelled us to view aspects of the institution within the legislation and practice of other European states, such as France and Italy. We have found as appropriate this analysis due to the fact that the local referendum, whose involvement in the local or regional communities' life is more and more visible. In our country the local referendum benefits from a thorough regulation, even if the legislative frame in which the institution is framed is perfectible. In practice, in the last years a multiplication of the local referendums may be observed, in its forms prescribed by law, which proves that the young Romanian democracy has learned to use this mechanism of the participative democracy. The performed compared law analysis has allowed us to also make a comparison, outlined in the conclusions of the study, between what happens to the referendum in other European states, and how the Romanian people understood, through its legislator, to legislate the local referendum and especially how to apply it.

Keywords: semi-direct democracy, participative democracy, local referendum, local administration, types of local referendum

Introduction

1. *General references.* The local referendums are those organized within a territorial subdivision of a national state and concern a matter that interests almost exclusively that community. On a doctrine level multiple definitions of the referendum were elaborated, on this day unanimously accepted as a political-judicial-social phenomenon (see the recent Scottish referendum, out of which so many disputes, controversies, prognosis arose). Thus, *the referendum is the democratic proceeding through which the people manifests directly and independently its sovereignty, by the people's vote, over a precise matter of general interest, with national or local impact.*

The place occupied by the local referendums in the semi-direct democracy is very variable. As a general rule, we may state that, the more a state is decentralized, the more the local referendum has a preferential area of application. In order for the local referendum to play an important role, the notion of "local businesses" must be widely understood and the state authorities tutoring mustn't be very expansive (F. Hamon, 1995, p. 17). For example, the United States of America and Switzerland are the most trained states in the exercise of the local referendum, and, as no coincidence, they are the oldest federal states in the world. In the USA, since the half of the XIX century (year 1840) an emphasized vitality of the local referendums was reported, which generated a real platitude of its use (M. Paoletti, 1997, p. 27).

From a historical point of view, the direct democracy was first developed in the parishes, regions or districts, and only afterwards at a national level. At its origins, the democracy on a local level was developed under the form of direct democracy, thus the citizens directly participated to the decisions regarding the local communities. With the passage of time, the public tasks have become more and more complex and numerous, and the direct democracy gave place to the representative democracy. Within it, the citizens of a community named their representatives and only they made the decisions. Nowadays, the public tasks and the dimension of the parishes have known an ascending trend, which renders impossible the administration of the local communities under the form of direct democracy. Despite this evolution, the institution of the local referendum has been mentioned and even legislated in most of the representative democracies (J. Meylan, 1993, p. 45). However, the current legislative dedication did not arose easily; for example, in France, at the end of the XIX century, the government has explicitly forbidden the practice of the parish referendums (1889-1909), with the

argument that a parish is an administrative organization and not a component of political decision (M. Paoletti, 1995, p. 29). Only in 1971, the local referendum has been legislated, although with a limited object, namely only with the perspective of merging of the parishes (between 1971 and 1993, only 202 parish referendums were organized).

In the British constitutional order, instead, the institution of the local referendum never even existed as concept prior to Blair administration (1997), due to the fact that even the constitutional referendum represented a constitutional innovation (e.g. the referendum regarding the adherence of Great Britain to the European Economic Community from 1975), and their number (just four) proves the ignorance of the British constitutional system related to the referendum. Up to this moment, each referendum has been organized based on an ad-hoc legislation proposed by the government and approved by the Parliament (Kobori, 2009, p. 2-3). After acceding to power, the British government led by Tony Blair was implemented through the normative act by the White Paper *Modern Local Government: In Touch with the People*, a new system in which the local referendum found its place and utility. It could only aim the insertion of the elective system for electing the mayors directly, and the result of the referendum was a mandatory one (Kobori, 2009, p. 7), fact with no precedent in the Anglo-Saxon constitutional and administrative law.

The generalized acceptance of the institution of the local referendum was based on the three qualitative and defining components of the local democracy, which is administrative, representative and participative, the latter having the role to promote and implement the referendum on a local level. This, mostly because the contemporary democracies have the particularity that the principle of majority is transformed in that of legitimacy, thus resulting the attractiveness of the referendum.

Conceptually, the local referendum is the result of the interaction between the universal suffrage and the administrative power. This, by the result generated by it, will either strengthen the proposal or initiative of the local authorities, or block it. Due to its recommendation character – the legislative or decisional, or revoking referendums are rare, their purpose is not to reach a decision, but to demonstrate a point of view.

In the federal states, where the people are seen as divisible, the local referendums may be developed on different levels, but the favourable ground for this category is represented by the smaller communities, because the matters of interests that may occur are less complex than the national ones, and the questions asked may be more concrete: for examples, the building of an auto race track, of a stadium; contracting public loans for the development of the said infrastructure of the administrative – territorial unit; selling, concession, rental of some public property assets with a considerable or strategic importance for the municipality. In a state such as California, whose population reaches about 20 million inhabitants, the issues subjected to the referendum aren't that different from those that may incur on a federal level (F. Hamon, 1995, p. 18).

In the unitary states, instead, such as Romania, where the local communities don't have an autonomy range delimited by law, and the people are considered an indivisible entity, the local referendum occupy an isolated position in the system of the participative democracy.

Anyhow, the usage of the referendum on a local level has various forms, and on the level of its put into practice substantial differences may be found between the states and their legislations, as well as between the concrete ways of usage. The referendum may only be regional, only local, or both, without omitting that there are also categories that are exercised on intermediary levels of territorial statist organization. This depends on the types of territorial communities existing in a state. From another point of view, in some cases, the referendum gets near a trusting vote granted to an individual, which is more a plebiscite, and in others is no different to a simple pole.

First of all, in an authentic form, the authentic local referendum is the one that influences the adoption or the rejection of an important project or decision for the local community, and its intrinsic purpose is to attribute legitimacy to the public decision. The themes of the referendum are extremely diversified, but generally they can be grouped as follows: territory improvement, statute of the parish, city or municipality, equipment purchase, waste disposal, local tax, transport and thermal, electrical, pluvial networks etc, environment and energy.

By the effects a local referendum produces, it places the local population in the position of upper power and it constitutes a mean of control over the actions of the chosen local representatives. Due to this, the local referendum expresses in the clearest way the dispute between the direct democracy and the representative one. Even if the institution managed to

impose itself on the legislative plan, in many democracies, as far as its application is concerned, it is still at the discretion of the local officials, which only use it when the political interests call for it.

In contradiction to the generalized passivity of citizens when it comes to the structure and administration of public activities, whose purpose is to improve the public life, the existence of the local referendum is a way to revive the citizens' interest for a better administration of the general interests. In this respect, the local referendum must be considered a concrete and practical procedure regarding the exercise of the citizens' right to participate in the administration of public affairs, right that belongs to the common democratic principles to all the member states of the Council of Europe. This opinion must also be kept despite the fact that most of the referendums are restricted to the alternative yes/no, and the freedom of the citizen is highly reduced: not only is his choice concentrated on what it is being proposed to him to vote, but he can only choose between the acceptance or the rejection of the municipality project.

Reported to the administrative law, the referendum is found at the confluence of several principles of the public administration: the principle of local autonomy, the principle of decentralization and the principle of citizenship consultation. By the referendum the citizens are associated to the decision process and they become co-decision makers in the matters of particular interest of the local community. The referendum instrument regarding administrative acts is being used in all the administrative systems, but only locally, not centrally.

Synthetizing, it may be said that despite the fact that the practice of the local referendums may engage certain disadvantages, a judicial appeal to this instrument is susceptible to enrich the local political life and to produce concrete judicial effects, for the decisional local referendum.

2. Compared law.

In Europe, only a minority of the member states of the Council of Europe doesn't foresee local or regional referendums: Belgium, Denmark, Greece, Lithuania, Latvia (countries members of the European Union), or Georgia, Turkey, Norway (countries that aren't members of the European Union). The local referendum is foreseen in the Constitution of state in Bulgaria, France, Italy, Hungary, Poland, Portugal, Russia, Romania and through special laws in Croatia, Estonia, Finland, Ireland, Malta, Sweden. Also, even if the local referendum is of constitutional order, certain states have set a legislation for its application: Albania, Bulgaria, Czech Republic, Romania, Portugal etc.

In Belgium¹, it was claimed that the Constitution itself forbids the local referendums, since it foresees that only the municipal or county councils are responsible for the decisions on a local level. In Denmark, the absence of the pertaining disposition in the legislation leads to the fact that neither the local population nor a minority of the local council may ask the organization of a referendum. In the Netherlands, the local referendums, the consultative type, are generally accepted and practiced. In Greece, where the national referendum is regulated, locally this instrument is not being used. In France, the law regarding the territorial administration of the Republic from 1992 foresees the peoples consultation at the level of the parishes for matters in their competence, the initiative belonging to the mayor or to the municipal counsellors. In Spain, the legislative dispositions that regulate the peoples consultation are found in the law regarding the local administration from 1985, and foresee that the initiative of the referendum belongs to the mayor, which needs the previous agreement of the majority of the municipal council and the authorization of the national Government. In Italy, a law dating 1990 authorizes, but does not oblige, the local communities to foresee in their statute dispositions regarding the consultative referendums as a mean of citizens' participation to the public life. In Germany, the issue of citizens' participation through referendum to the businesses concerning the community is treated in a very different manner in the legislations of the various Lands (for details, see chapter II of the Report of the Commission from Venice "The referendum in Europe – Analysis of the judicial rules of the European States").

As for the effects that it produces, in most states where legislative dispositions foresee the local referendum, it is states that it only has a consultative character (Finland, Italy, Norway, Spain). In these cases, the result of the consultation of the local population does not have a mandatory force for the municipal council, but this does not mean that it can neglect the clearly expressed result of the local population. In countries like Hungary, Czech Republic, Slovakia, German Lands, instead, the result of the referendum is being imposed to the local authorities, such that a positive referendum produces an

¹ For details, <http://www.e-democracy.md/files/elections/venice-code-good-practice-referendums-17-03-2007-ro.pdf>

equivalent of a final decision of the local or regional council. This result may either cancel a previous decision, either decides to put into practice a new project.

The institutionalization of the local referendums in the various national or regional legislations allows the setting of the fundamental and uniform rules, which guarantee the good usage of this instrument of peoples consultation, in order to avoid the organization mistakes.

The importance attributed to the local isn't casual or transient, in this regard the European Ministers responsible with the local communities, gathered in the Netherlands at Hague, at the 10th conference, have adopted in 1993 a Resolution over the local Referendums, meant to set a general frame, of principle and perspective, which should be the ground of the uniform evolution of this instrument of direct democracy, which activates and strengthens the principle of local autonomy.

Given the importance of the referendum, seen as an element of the semi-direct democracy, the concern for it was manifested also at the level European Union which, through a commission, the European Commission for democracy through law, has adopted in 2007 the Code of good practice in the matter of referendum¹. Within it, an attention was also given to the local referendum, being stipulated in the chapter 3 item 4 several rules with general character for the member states, out of which we remember: the right of each holder of the political rights to sign a referendum application; the setting of certain clear terms for signature gathering and of the precise number of signature; interdiction to remunerate out of private resources the signature gathering activity; the coerciveness of signature verification; the institution of a competent authority which may verify and correct, prior to voting, the errors that result from drawing the question or from its content.

These rules represent some sort of charter for a future European regulation of the local referendum, but currently it is reflected in a very diversified manner in the legislations of the member states, so that in practice, the forms of local referendum and the range of matters that it covers are extremely diverse.

Italy. The local or regional referendum also occupies an important place in the Italian democracy. The Italian constitution foresees, as a general regulation, in article 123, that the Statutes of the Regions regulate the referendum related to laws (abrogative referendum) and administrative provisions, as well as for the territorial alterations of the local communities. According to the articles 132 and 133 of the Constitution, the mergers, the scissions, as well as other territorial alterations of the regions, provinces or parishes require a direct consultation of the communities involved. The statutes of the ordinary regions and of those having a special statute (except for Sicily) foresee the possibility to submit the laws (thus a legislative referendum, which constitutes the most expressive form of the peoples' association to the legislative process, so that it is called to expressly pronounce itself in the matter of a law project that will eventually be adopted), the regulations and acts of the region of an abrogating referendum, in conditions similar to those foreseen nationally. The main difference between them derives from the fact that the regions cannot attribute new functions to the judicial power, to the courts. The rules of these referendums are contained in the statutes or in the special laws of each region.

The control of the regularity or of the admissibility of the referendum application is entrusted to some regional organs, generally to its presidential Council or Committee. On the other hand, even the Italian Constitutional Court has been called to pronounce itself in the case of the referendum from Sardinia about the location of foreign military bases, and by its decision clarified (decision nr. 256/1989) that the regional referendum may only aim matters of local interest and related to the local territory, not matters that aim the national interest. The regional consultative referendum can't have the importance assigned to the national one, considering that it only assumes the participation of the local people.

In the debate of the raised matters, the Court has also decided that the consultative referendums have nothing to do and are not part of the decision making process of the authorities that organized it. Nevertheless, they must be regarded as an expression of the political participation of the people, as the articles 2 and 3 of the Constitution foresee. This participation has an important political relevance and is appropriate for comparing the decision power of authority and the one of the community. Furthermore, this participation is also relevant for the assessment of the political responsibility related to the decisions that the authority wishes to adopt (Celotto A., 2012, p. 5).

Given the oscillation of the referendum, instrument found at the discretion of the local authorities, that may and will use only to their interest, The Constitutional Court also cleared some matters through the decision nr. 372/2004: the referendum is

¹ For the classic constitutional doctrine, the referendum is by excellency a democratic institution, a way to exercise the sovereignty of the people, while the plebiscite only presents aspects of democracy being the weapon of dictators or great demagogues.

part of the warrant entrusted to the Statute of the Regions, to whom it is permitted to regulate the use of the referendum, even by the legislative alteration of the institution, because the Regions may freely elect forms, proceedings and criteria of the people attendance within the democratic control mechanism for the decisions and resolutions on a regional level (Celotto A., 2012, p. 5). However, Regions have only made limited use of this power. In some cases, they have called abrogation referendums substantially identical to the national ones, with a modification of the validity quorum in order to grant a higher effectiveness.

Numerous regional statutes also foresee the possibility to proceed to consultative referendums. But the low number of regional referendums has left no important marks in the way of functioning of the Italian institutions.

Together with the regional referendum, it is regulated and more noticeable practiced the local referendum which, same as in the Romanian law, it is related to very important local matters: e.g. the settlement of an Italian – Yugoslav industrial area in Trieste, the construction of an incinerator in Cengio, closing the historical centre in Rome or Milan, or the adoption of the master plan of the city Pavia. All these referendums only had a consultative nature and may have as an object strictly matters that are part of the exclusive competence of the local authorities, and the legal frame for organizing the consultations is foreseen by the Law nr. 267/2000, article 8. The initiative of consultative referendums is usually attributed to a certain quorum of the members of the Councils or a percentage of the citizens.

For example, the Statute of the Municipality of Perugia (art. 20) provides that the Mayor is obliged to call the referendum (whether it is consultative, propositional or abrogative) on Municipal measures, when he or she is required to do so by a) the absolute majority of the Municipal Council, for the consultative referendum; b) the majority of two or more Councils of District or c) five thousand citizens (Celotto A., 2012, p. 9-10). Still, the law leaves out from the thematic area of the local referendum the matters related to taxes and duties, and can't take place on the day of the municipal or regional elections.

The Statutes also foresee that after the referendum is set, the municipality must restrain itself from making a decision related to the matter subject to consultation, except for the case when the decision aims a similar change to that foreseen by the referendum.

Statistics show that the local referendum doesn't have an important role in the democratic exercise of the sovereignty of the Italian people, probably due to its lack of force, which made it unattractive, even if there were referendums that generated a high degree of interest and of participation.

France. Traditionally a centralized state, France has started in the early 80s an ambitious reform of administrative decentralization, which in a first stage was limited to representation, being focused on the chosen ones, and subsequently produced an institutionalization of the participative democracy, which included as its main actors the local referendum (M. Paoletti, 2007, p. 56). This is the only way which brings together, between two local legislatures, by the vote of the majority, the participation function, alongside the decision one; in other words, in the referendum there is participation and decision, more precisely, participation to decision.

For a long time, this has been seen as being incompatible with the local democracy, fact proven by the resistance encountered in its enactment, even in the 90s; in the last 15 years, the French legislator has intervened four times (1992, 1995, 2003, 2004, through ordinary, organic and constitutional laws) in order to trace the usage procedure of the local referendum. This legislative feverishness is in contrast with the practice of the local referendums, rarely used, frequently controlled. The current local referendum has been legally outlined by the organic law from 2003 (year when, due to the constitutional reform, the local referendum has also been registered in the Constitution) and it is a decisional or a consultative one. Its organization may only be decided by the parish, department or regional executive for matters that are within its competences. According to the law, only the executive of a territorial community may propose to the deliberative gathering of the said community to submit a project regarding its attributions, which it exercises on behalf of the community. Thus regulated, the local referendum fully respects the presidentialism of the French local democracy (M. Paoletti, 1997, p. 59). The law also institutes a quorum of half plus one of the citizens registered on the lists, and the project is being adopted with the majority of the validly expressed votes.

Due to its initiator, according to the current regulation, the parish referendum appears as a decisional instrument all more effective for the mayor (the mayor's permit or the permit of the local majority is accompanied by the vote), as it controls its result (between 1982 and 1993 only 7 cases are signalled when the mayor's suggestion wasn't respected on voting), first from the aprioristic perspective of its release.

It is true that through the legislative alteration from 2004 (Law from August 13) the citizens were also given the right, hard to capitalize, to generate a referendum on a certain theme. More precisely, in a parish, 5% of the citizens registered on the election lists, and in the other communities, 10%, may ask the deliberative gathering to register on the agenda and to pronounce themselves over the issue for which the consultation through referendum is intended; but, as we have *supra* shown, the decision to organize the referendum also belongs to the deliberative gathering of the said territorial community.

In this legal context, in practice, the decision process is usually a process of reproducing the predetermined and by the mayor desired decision, not one of its transformation (M. Paoletti, 2007, p. 132). The practice of the parish referendums proves that these usually have aimed matters that have engaged local finances: equipment purchase (for example means of transportation), solving the waste issues (serious expense for a small or medium place). This due to the fact that the mayors, active subjects of the procedure, have chosen to strengthen their decision by citizens' association, owed to the value of the investment that will engage the parish in the future and will determine a growth of the local taxes, in order to cover the investment.

Thus, the French local referendum is decisional if its initiator is the local, department or regional executive, and consultative when being initiated by its citizens, but in this case the organization agreement expressed by the local deliberative gathering is necessary. Concluding, the French political culture is marked by a flagrant paradox: if nationally the referendum is admitted as an instrument able to define the public issues to be solved, locally, the usage of the procedure remains scattered.

Spain. The construction of the new Spanish political system has been mostly influenced by two factors that have blocked a more flexible enactment of the referendum. First the Franco regime used the plebiscite¹ in order to strengthen its power, which drew a general suspicion related to the referendum and second, the political parties have felt threatened by any type of decision making, such as the referendum, thus they limited its regulation, so that it could not be used.

Regionally, all the Autonomous Communities have introduced in their own laws the citizenship legislative initiative, which excludes the issues not found under their competence and those related to taxing. According to the law, the reform of the fundamental laws (the Statute of autonomy) within the four autonomous regions that have gained full autonomy (Basque Country, Catalonia, Galicia, Andalusia) must always submit a mandatory referendum (B. Kaufmann, M. Dane Waters, 2004, p. 113). Locally, in a few municipalities facultative referendums may be organized, which must respect the following requirements: the referendum may only aim matters in the competence of the municipality and of local interest for residents; it may only aim local taxing; the initiative must be approved by the majority of the municipal council; the mayor may organize the referendum only after it gains authorization from the central government, which must also be requested. Certain Autonomous Communities have developed their referendum legislation; for example, in Catalonia, even the citizens may request the organization of a referendum, and the petition must be signed by a part of the residents having the right to vote (between 5% and 20%) and is subjected to the approval by the municipal council and by the central government.

Norway. Norway has a long tradition of the local referendums; locally, the direct peoples initiative has only aimed two matters, namely the selling and purchase of alcohol, and the choosing of the language in primary school. In the municipal laws, the words referendum and initiative are absent, but several municipal councils have organized consultative referendums, the casuistry indicating at least a referendum per year regarding the municipalities merging. Between 1970 and 2000 at least 514 local referendums were organized, meaning a percentage of 16 every year, and the issues of alcohol and of the language in schools hold by far the primacy (75%); other issues subjected to the referendum aimed environmental protection, the place territory or its identity: name and degree (city or parish) ((B. Kaufmann, M. Dane Waters, 2004, p. 101).

Sweden. Municipally, the direct democracy is found on an ascending trend as usage. The recent initiatives from the city of Kalix, when the citizens were asked how high may the local taxes be and how should the money be spent, have been highly appreciated nationally and have attracted suggestions that other municipalities should also proceed the same. According to the legal provisions in this matter, a simple majority of the local council (kommunfullmäktige) may start a referendum with no limitation regarding the theme and the matter subjected to consultation, nor regarding the moment when it should be

¹ Law nr. 3/2000 regarding the organization and development of the referendum, published in the Official Gazette, *Parte I nr. 84 from 24.02.2000*, in force since 25.03.2000

organized. This provision has been introduced in the municipality law in 1977 and has remained unchanged. Together with the referendum at the initiative of the authority, the law also foresees the right to referendum initiative of 5% of the citizens having the right to vote (full name, address and signature of each of them will be verified) that must address themselves in writing to the local council, the latter being the organ deciding if it will organize or not the requested referendum (B. Kaufmann, M. Dane Waters, 2004, p. 116). If it decides the organization of the referendum, the local council will set the questions and time of the referendum. Since 1977 about 80 referendums were organized, all at the initiative of the authority, most of them aiming the territorial limits of the municipality, and the others aimed the infrastructure (roads and bridges). Regarding the referendums at the citizenship initiative, 90% of them have been rejected by the local councils, for the reason that either the issues was already solved, either it is too complicated or too simple and is not worth engaging the costs for organizing a referendum.

3. The local referendum from Romania.

The law nr. 3/2000 regarding the organization and the development of the referendum¹ foresees in the article 2 paragraph 2 that the local referendum may only concern „issues of particular interest for the administrative – territorial units”. This means that the object of the referendum is very wide and not even exemplifies the local issues of particular interest. These issues are set, at the proposal of the mayor, of the president of the regional council, or of a 1/3 of the number of local or regional counsellors, by the local or regional councils (article 14 paragraph 1 of the law nr. 3/2000, altered).

Regarding its release, out of the interpretation of the provisions of the law nr. 3/2000 it results that the Romanian local referendum is generally a facultative one. The only situation of local referendum, *mandatory* in its development, is regulated by the article 13 paragraph 3 of the law and it concerns the alteration of the territorial limits of parishes, cities and counties. Thus, the legislative bills or proposals will be filed to the Parliament only after previous consultation, through referendum, of the citizens from the said administrative – territorial units. This is a classic object of the local or regional referendums, even if the final decision will be taken centrally: Croatia, Estonia, Hungary, Russia, Netherlands, Switzerland, Italy, Portugal etc.

Regarding its effects, the local referendum is a consultative one, and is developed out of the initiative of the mayor or of the president of the regional council, accompanied by the councils, but its result is one that compels the local authorities.

The only type of *decisional* local referendum is the one that concerns the mayor's dismissal or the dissolution of the local or regional council.

Related to the legal classification, a conclusion that may be drawn is that the local referendum is not only a way of solving an issue of high interest for the community, but at the same time it constitutes a political act that strengthens for the citizens, members of that community, the feeling that they form the „people” with an autonomous existence (F. Hamon, *op. cit.*, p. 18). For example, the inhabitants of the municipality of Mangalia have participated in a referendum on the 10th of June 2012, the same day as the local elections, being asked if they agree to the annulment of the contract with the heating and hot water C.T. company. The referendum was validated because 56,73 % of the individuals with the right to vote were present and, out of them, almost 80 % agreed to the annulment of the contract. The new local administration, resulted following the elections, took into consideration the opinion of the inhabitants and annulled the agreement with C.T., currently the heat supply being ensured by a company held by the Local Council.

3.1. The general type local referendum

In the local referendums first the facultative referendum regarding particular issues is registered, foreseen by the articles 13-14 of the law nr. 3/2000. Thus, particular interest issues from the administrative – territorial units and the administrative – territorial subdivisions of the cities may be subjected, under law conditions, to the approval of the inhabitants, through the local referendum. The text does not indicate not even as example these particular interest issues. Such a referendum has as an object the consultation of the local population regarding the production of carcinogen substances in a factory of formaldehyde on the territory of the city of Sebeş (the question was: “Do you agree to the production of carcinogen chemical

¹ Law nr. 351/2001 regarding the approval of the Plan of national territory improvement - Section IV The places network, published in the Official Gazette, Parte I nr. 408 from 24.07.2001

substances on the range of the city of Sebeș?"), organized in September of 2007, and had a negative result: out of the 25.414 citizens with the right to vote, only 6.956 were present to voting (27,37%), out of which 6.794 voted „no”.

This means that the legislator, in the virtue of the fundamental principles that institute the local autonomy, has granted a wide freedom to the leading local forums in choosing which matter of interest for the community becomes, in certain conditions, an issue of particular interest. Additionally, in its initiator's vision, this issue requires, for its solution, the organization of a referendum, whose result will legitimate the solution adopted by the local public authority. A recent and famous example is given by the exploitation of the shale gas in certain areas from Romania (parish Pungești from the county of Vaslui in 2013, or the city Mangalia in 2012), which created very fierce debates due to the necessity of environment protection, sensitive matter and of maximum interest for any community, regarding which the local councils appreciated that is absolutely necessary the consultation of the inhabitants.

Although the legal text uses the term of "inhabitants", creating a certain ambiguity, it must interpreted as being a synonym to that of "citizens", that are resident or live on the territory of that administrative – territorial unit. Only those citizens may participate to the referendum, as they are authorized through their territorial belonging, and the legal argument also results from the provisions of the article 20 paragraph 1 of the law, which says that the citizens resident in another place than that in which they live may request the mayor of that place, in case of organization of a local referendum, to register them on additional lists; 3 days prior to the date set for the referendum no more registrations are made on those lists.

The law foresees that the local referendum may be organized in all the villages and places composing the parish or the city or only in some of them, directly interested. The issued subjected to the local referendum are set by the local or regional councils, according to the case, at the mayor's proposal, namely at the proposal of the president of the regional council or of a third of the number of local counsellors, of the regional counsellors respectively. Starting from this provision, it may be concluded that the initiator of the local referendum may only be the local or regional council, the proposal coming from it (1/3 of the number of the local or regional elected individuals) or from the representative of the administrative – territorial unit, mayor or president of the regional council.

Thus it results that the promoter of the referendum is an official subject, fact that seizes the proceeding in free conditions; in other words, if a group of citizens is being mobilized in a great number in order to initiate a referendum on a certain theme, it does not have the possibility to start the proceeding, because the law does not allow it. This censorship in part embezzles the purpose of the local referendum, namely the consultation of the inhabitant population in a matter of particular interest.

Of *lege ferenda*, this provision must be altered, meaning the inclusion amongst the initiators of the referendum of a group of citizens, estimated in a certain percentage (5% or 10%, so that the limit isn't prohibitive), in order to widen the spectrum of its starting and to put it at the easy and palpable disposition of the citizens, so that it does not stay at the discretion of the local authority, which will only promote it when it has an interest in legitimizing its decisions. For example, in such a way, the group of citizens will be able to also start referendums on themes regarding which they would have another position than that of the local authorities, that may be such compelled to withdraw or modify its projects (the year or the time period in which they would develop major sewage works, the opportunity to pitch certain driving arteries, rather than others).

Only such, with this type of initiator included in the germination phase of the procedure, the local referendum strengthens its purpose. Besides, the system of the "initiative" is an extremely popular institution in the United States.

In the current regulation, the local referendum is biased. If the official subject, for example the mayor, personally controls the initiative and choses to start a local referendum on a clear theme, rarely opposable to its ideas or projects, will fix the development frame: the time of its organization, the referendum question and the terms in which is drawn up, as well as the possible answers.

The interest of the local public authority, politically invested and politically influenced in the hierarchy of the party of which is part, is the one that dictates if and on which theme a consultative local referendum is being organized. Thus, a pertinent example is given by the decision of the Constanta Regional Council nr. 179, adopted at the end of June, regarding the approval of the organization of the referendum on the matter of citizens consultation regarding the dissolution of the territorial administrative unit – Constanta region, which was challenged in court by the prefect of the region. The Court of Constanta has the Prefect's request and tried to deprive the citizens of the region of Constanta of their fundamental right to be consulted and to express, by free vote, the options regarding the future of this administrative – territorial unit.

Regarding the object of the local referendum, the question is if that high interest issues exists and really interest the said community, influencing its life, and, based on this importance, also the mobilization dose may be established. Among the quantification criteria of the referendum object, we enunciate: the theme of consultation is a debatable subject in the said community?; is there an association that has any connection to the particular interest issue? (for example, on the premises of the alarming increase of the number of street dogs, the issue of their euthanasia is being risen); if previously were filed petitions on the referendum theme, or if public debates existed?; were there manifestations related to the high interest theme? The answers to these questions, that have an exhaustive character, grouped, classify the theme as being useful, pertinent and conclusive for the community or, on contrary, that it may not be the object of a local referendum, being an isolated incident, or a matter of interest for a minority of the said community etc.

In Great Britain for example, that has a tradition in the matter of the local referendum similar as a starting phase with the inland one, had a referendum organized by the citizens in St. Osyth and Wivenhoe, Essex, which held parish referendums on whether or not genetically modified (GM) crops should be allowed in their parishes, despite the fact that the GM crops issue was a major national concern (Kobori, 2009, p. 13).

The history of the local referendum developed in Romania, and not exclusively, indicates a majority of the referendums developed in difficult contexts: as moments, but especially as theme. An eloquent example is given by the multiple local referendums initiated on the territory of Romania regarding the controversial issue of shale gas exploitation, many of them being blocked by the prefect's offices; thus generating a real judicial conflict amongst the local authorities: local councils and prefect's office.

3.2. The mandatory local referendum

Adjacent to this form of facultative local referendum, there are also two mandatory forms: when the alteration of the parishes territorial limits is being aimed, and when the degree at the said place is being aimed.

In the first case, the law projects or the legislative proposals regarding these territorial alterations are filed to the Parliament for adaptation only after the previous consultation of the citizens from the said administrative – territorial units, through referendum. Thus, the expression of the will of the local population is a previous mandatory condition to seizing the Parliament in this matter (article 13 paragraph 3 of the law nr. 3/2000). The law does not foresee what happens when the citizens don't want the alterations of these territorial limits; given the importance of the peoples' will, it may not be ignored, the Parliament may not surpass it, so that it should reject the alteration proposal subjected, but which has been rejected by the local population. To proceed the other way, and give course to the bill of law or to the legislative proposal would mean to empty the referendum of its purpose, inadmissible conception.

Another form of mandatory local referendum is also foreseen in a special law, law nr. 351/2001 regarding the approval of the national territory improvement, altered and completed several times¹, which, in the article 3 foreseen, as a general rule, that the passage of the places from one range to another is made by law, at the proposal of the local councils, respecting the main minimum quantitative and qualitative indicators foreseen in the appendixes to the law. Thus, any alteration in the statute of the place, for example from city to municipality, may only occur after consulting the population, by referendum. Also, the administrative – territorial units that are re-established are delimited and marked, territorially, based on the old existing borders at the time of their dissolution and according to a cadastral plan set by the initiator and authorized by the regional office of cadastre and real estate publicity. The authorized cadastral plan is submitted to public consultation, by *local referendum*, and after approval will be integrant part of the approving law for the establishment of the new administrative – territorial unit (article 5¹). For this purpose, the local councils submit to the consultation of the population, by local referendum, together with the decisions to establish the administrative – territorial units and the cadastral plans of their territorial delimitation.

In conclusion, it may be noticed that for the matters that concern the establishment of cities, parishes, the alteration of their territorial limits, the local communities are sovereign in taking the decisions. We appreciate that direct democracy in such cases gets and efficient and appropriate application and is useful in deciding the matters of local interest of this type.

¹ Law of local public administration nr. 215/2001, republished in the Official Gazette, Parte I nr. 123 from 20.02.2007, in force since 23.05.2001

3.3. The enforcement local referendum

Along these forms of local referendum, the law nr. 215/2001 regarding the local public administration, republished¹, restrictively enunciates the mandatory local referendums concerning the revocation of the mayor's warrant (article 70), dissolution of the local council (article 55) or of the regional council (article 99), that may be produced following a referendum.

According to the law, the referendum for the dismissal of the mayor has a revoking character and, if it is drawn a request in this matter, it is mandatory to organize the referendum whose effect will be a decisional one, which will have as a result either the mayor's dismissal either he will remain in its position. This type of referendum is one of the peoples' initiative and has a local character, because it involves only the population residing in that administrative – territorial unit.

More precisely, the article 70 foresees that the mayor's warrant ceases following the result of a local referendum having the object his dismissal, organized by law, according to the procedure foreseen by the article 55, paragraphs 3-7 of the law. The referendum for the ceasing of the mayor's warrant is organized following the grounded request, filed in this matter to the prefect by the inhabitants of the parish, of the city or of the municipality, following the fact that the mayor disregarded the general interests of the local community or due to the lack of exercise of the attributions concerning him, according to the law, including those that he exercises as a representative of the state.

The procedural stages are the following: the quasi-generalized appreciation that the mayor disregarded the general interests of the local community or that he did not exercise his attributions, according to the law, including those that he exercises as a representative of the state; the drawing of the express request, by the inhabitants of the parish, of the city or of the municipality, for the ceasing of the mayor's warrant, request that will be filed to the prefect; the request must be grounded and will contain the surname and name, date and place of birth, series and number of his ID card and the holograph signature of the citizens requesting the organization of the referendum; so that the referendum may be organized the request must be filed in writing, by at least 25% of his inhabitants with the right to vote, and this percentage must be met in every place composing the parish, city or municipality; a commission named by the order of the prefect will be responsible for organizing the local referendum, composed by a representative of the local and regional council and by a judge of the court of law in whose jurisdiction the concerned administrative – territorial unit is found, and the secretary of the commission is part of the prefect's institution (the expenses caused for the organization of the referendum are supported from the local budget).

In 2010, for example, following the analysis of the request of a group of citizens from Cernavoda, the prefect has started the proceedings for organizing a referendum in this city, having as object the dismissal of the mayor. Due to the fact the for more than two years both the Cernavoda City Hall and the Regional Council have abstracted themselves from the obligation to appoint a representative that was to be part of the referendum organization commission, the prefect has sued them in order to determine them to respect the law. The Court of Constanta pronounced itself in the file 487/118/2012, through which the Prefect of the Constanta Region has requested the application of fines to the mayor of the city of Cernavoda and to the president of the Regional Council, worth 20% of the gross minimum wage on economy, per delay day, each, for the non-execution of the civil decision 1522/CA/30.11.2011 pronounced by the Court of Appeal in Constanta in the file 2951/118/2010. The Court has decided to compel the two to pay the fine until the actual execution of the decision, meaning until the appointment of the representatives that were to be part of the Commission for the referendum organization regarding the dismissal of the mayor of the city of Cernavodă (<http://www.prefectura-ct.ro>).

From the given case may be noticed how easily the start of a sanctioning referendum may be blocked by the concerned authorities, having a political interest, and that the legislation must be adapted, in the sense of its orientation towards the actual application of the citizens right to demand the organization of a local referendum for the mayor's dismissal.

The participation of a judge, in his quality of representative of the judicial power, in this commission, is meant for the guarantee of the commission's impartiality, as well as for law observance.

The referendum is valid if to voting at least half plus one out of the number of inhabitants having the right to vote were present to voting. The mayor's warrant ceases prior to term is in this matter half plus one out of the total number of the

¹ Normative acts that should be altered would be the Law nr. 3/2000, Law nr. 215/2001.

validly expressed votes were pronounced in this matter, meaning if an absolute majority is reached, which is deducted from the participation quorum.

Article 55 paragraph 1 and article 99 paragraph 1 of the law nr. 215/2001, republished, institutes the possibility to dissolve the local or regional council, either in full law, either through the local referendum. Obviously, the difference between the two types of referendum is generated by their spread, determined by the administrative – territorial division that exists in Romania, meaning that one concerns a parish, a city or a municipality and the other a county. Part of the conditions and the procedure stages that concern the ceasing of the mayor's warrant are also regulated for the local or regional council: file of the request, by the inhabitants of the administrative – territorial unit, for the dissolution of the local or regional council, request that will be filed to the prefect; the request must be grounded and will include the surname and name, date and place of birth, series and number of the ID card and the holograph signature of the citizens requesting the organization of the referendum; in order for the referendum to be organized, the request must be filed in writing, by at least 25%, for the local council and 20%, for the regional council, out of the number of citizens having the right to vote registered on the election lists of the administrative – territorial unit; for the organization of the referendum for the dissolution of the local council will be responsible a commission named by the order of the prefect, composed out of a representative of the prefect, a representative of the mayor, of the local and regional council, and a judge of the court of law in whose jurisdiction the concerned administrative – territorial unit is found, and the secretary of the commission is ensured by the institution of the prefect; instead, for the organization of the referendum for the dissolution of the regional council a commission composed out of the prefect, a representative of the regional council named by the decision of the regional council and a court judge will be responsible, and the secretary of the commission will be part of the prefect's institution;

The referendum is valid if to voting were present at least half plus one of the total number of the inhabitants with the right to vote; therefore, the law institutes a participation quorum, that consists of 50% plus 1 of the number of the active inhabitants. The activity of the local or regional council ceases prior to term if in this matter pronounced themselves at least half plus one of the total number of the voted validly expressed, meaning if an absolute majority was reached, which is deducted from the participation quorum;

Hence, there are two major differences between the referendum for the dissolution of the local council and for that of the regional council: the initiative quorum (25% for the dissolution of the local council, 20% for the dissolution of the regional council), and the composition of the commission which is responsible for the organization of the referendum.

3.4. Procedural rules

As a general procedure, the article 16 of the law nr. 3/2000 foresees that the object and the day of the local referendum are set and brought to public knowledge at least 20 days prior to the day of its development.

The local referendum may only be organized one day, that may only be a Sunday.

In all cases, the citizens are called to pronounce themselves through "YES" or "NO" in the matter subjected to the referendum, deciding with the majority of the votes validly expressed at the level of the said administrative – territorial unit. The participation quorum is the general one, written in the article 5 paragraph 2 of the law, meaning at least half plus one of the number of individuals registered in the permanent election lists. If the quorum of the referendum isn't met, the referendum will not be validated.

The public awareness of the day of the referendum will be made by any mean of mass information.

The prefect is the one supervising the organization and development of the local referendum, including the observance of the terms for realizing the activities foreseen in this law. He will inform the Department for Local Public Administration within the Ministry of Public Position (nowadays, this ministry has changed its name, but, generically, it is the Ministry of public administration) within 24 hours since the reception of the decision of the local or regional council through which the organization of the local referendum is set. The Ministry of Public Position will inform the Government on the result of the local referendum.

Neither the law nr. 3/2000, the referendum frame law, nor the law nr. 215/2001, institutes an administrative or judicial organ which is authorized to control the way in which the local referendum proceeding was respected, as it is the Constitutional Court for the national referendum. In order to cover these gaps, we think that such a control should be granted to a judicial organ, which is presumed by the law as being objective and impartial, and not to an administrative organ. An argument for

this position is being constituted by the fact that the local public administrative authorities, mayor, local or regional council intervene in various stages of the procedure: for the local referendums, giving penalties, it is the said organs that are concerned, therefore they are excluded *ab initio*, and for those foreseen by the law nr. 3/2000, according to the object of the referendum, various political or economic interests may incur, which would alter the objectivity of these organs. Besides, even the political nature of these positions would negatively influence the control. Out of the judicial authorities, the competency must devolve upon the judicial courts, and among them, according to the territorial competence, to the regional court. Thus, *lege ferenda*, the control of the legitimacy of the local referendum should be entrusted to the court that functions in the territorial circumscription where the procedure was developed¹.

4. Conclusion

The referendum, with reference to the local one, is the sole procedure of participation that associates, thanks to voting, the positions of the citizenship participation to those of decision making. However, it does not produce a final decision, except for the decisional local referendum, as it is the enforceable one foreseen by the Romanian law.

The synthesized analysis of compared law that I have made proves that the Romanian regulation in the matter of local referendum is sufficiently developed, compared to those of the European legislations. The young Romanian democracy knew to take and insert in a solid manner this instrument of participative democracy, over which the scepticism of its lucrateness still exists. Besides, the recent initiatives of local referendums organized prove that the Romanian people, divided in local communities, wants to become a co-participant to important administrative issues that influence his life (for example, environment issues, such as the extraction of shale gas, and not only limited to territorial alteration of the administrative – territorial units).

Such as any regulation, also that concerning the Romanian local referendum is perfectible, especially as far as its initiator is concerned, that must mandatorily be the citizen. In the matter of the local referendum foreseen by the various European legislations a variety of points of views may be found, legislatively expressed or not (for example, in Ireland there are no judicial norms that allow the organization of a local or regional referendum), which denotes a discordance of its institution and application. In fact, the local/regional referendum is and will be highly influenced by the political – administrative system in which is legislated and where it manifests itself, but we found as appropriate the outline of some general ruled from which the member states of the EU shouldn't derogate. And a first step would be the coerciveness of its regulation in all the member states, wither directly in the constitution, either in an important law. It is understood that to each state the freedom to conceive a system of co-participation to the local administrative life should be granted, according to the state structure and to its traditions and customs. It is important that the local referendum is regulated.

Anyway, the local level of exercise of the referendum is illustrative in order to show to what extent there is a way of political dialogue between the citizens and the local authorities. But, to render it more efficient, it is crucial that the warrantee that the municipalities will respect the result of the local or regional referendum, exists (Celotto, 2012, p. 12). It may also be noticed that the legislators (e.g. Romanian or Italian) have given a lot of attention to the regulation part of the local referendum, creating an entire system of substantial and procedural norms, different from a system to another.

The case of the referendum shows that despite the political profit that the mayors may extract, these are hostile during the warrant to this remarkable multiplier of legitimacy, fact which proves their lack of trust in the universal vote, more precisely in the result of the referendum, which gets out of their political control. This effective participation in the local businesses is perceived as a danger to the representative democracy, feeling that is clearly experienced in case of the local referendum, as against the national one (M. Paoletti, 1997, p. 133). However, in time, it would be a benefit if this reserve regarding the referendum would be surpassed, in its whole but especially as for the local one is concerned, whose utilities we found as indisputable in the current businesses of a community. And the local administrative power would have a real control mean, fact that would determine it to be more cautious and more attentive to the interest of citizens.

Finally, in the current stage of the vision over it, legislatively reflected, the local referendum isn't a support element of the local administrative system, which is fully representative, nor it presents itself as a procedure which allows to choose an option out of the two, based on public debated. However, it may be used as a palliative meant to consolidate the

¹ Presentation on the Findings from the National Survey on Bullying and Violent Extremism in the Education System in Albania. 2017. Founded by the European Union, Implemented by the Council of Europe and ISOP. pp.19. Retrieved from <https://rm.coe.int/168070c3be>

representation. In the future, this institution still has a long way to go, but the current European democracies know about its existence, and the danger to become caduceus is definitively eliminated.

References:

- [1] Auer A., Malinverni G., Hottelier M., **Droit constitutionnel suisse, vol. I, L'État**, Staempli Editions SA, Berna, 2000
- [2] Butler D. and Ranney A., **Referendums Around the World**, Washington DC, American Enterprise Institute, 1994
- [3] Caciagli M., Uleri P.V. a.o., **Una prospettiva comparata per valutare le consultazioni referendarie**, in „Democrazie e referendum”, Editura Libri del Tempo Laterza, Roma, Bari, 1994
- [4] Celotto A., **Regional and Local People Consultation through Referendum**, Perspectives on Federalism, Vol. 4, issue 1, 2012
- [5] Denquin J-M., **L'impact du référendum sur la vie politique**, in „Le référendum en Europe. Bilan et perspectives (Actes du colloque organisé les 28-29 janvier 2000 à la Maison de l'Europe de Paris)”, Editura Harmattan, Paris, 2001
- [6] Hamon F., **Le référendum. Étude comparative**, L.G.D.J., Paris, 1995
- [7] Iorgovan A., **Tratat de drept administrativ, vol. I**, București, Editura C.H. Beck, 2006
- [8] Kaufmann B., Waters M. D., **Direct democracy in Europe**, Editura Carolina Academic Press, Durham, North Carolina, 2004
- [9] Kobori M., **Referendums in Britain and Japan: Turnouts, campaigns, and systems**, in Ritsumeikan Law Review, 2009
- [10] Kund F., **Referendumul local**, in Revista de drept public nr. 3/2004
- [11] Leigh, I., **The Changing Nature of Local and Regional Democracy**, in *The Changing Constitution*, by J Jowell and D Oliver, (Oxford: Oxford University Press, 2011)
- [12] Meylan J., **Le référendum local en Suisse et en Europe. Modalités, pratiques, perspectives**, Editura Association suisse pour le Conseil des Communes d'Europe, Lausanne, 1993
- [13] Paoletti M., **Le référendum local en France**, in Documents d'études n° 1.21.2007, Le référendum, Documents réunis et commentés par Francis Hamon
- [14] Paoletti M., **La démocratie locale et le référendum, : analyse de la démocratie locale à travers la genèse institutionnelle du référendum**, Editura Harmattan, Paris, Montreal, 1997
- [15] Suksi M., **Bringing of the people, A Comparison of Constitutional forms and Practices of the Referendum**, Editura Martinus Nijhoff Publishers, 1993
- [16] Uleri P. V., **Referendum e democrazie**, Editura Il Mulino, Bologna, 2003
- [17] Qvortrup M., **A comparative study of referendums, government by the people**, Manchester University Press, 2002, Manchester and New York
- [18] **Referendum in Europa** – Analysis of the judicial ruled of the European States, report adopted by the Council of the democratic elections, with the occasion of the 20th reunion (Venice, 20th of October 2005) and by the Commission in Venice, with the occasion of the 64th plenary session (Venice, 21-22 October 2005)
- [19] Law nr. 3/2000 published in the Official Gazette nr. 84 from 24th of February 2000, altered and completed
- [20] Law nr. 351/2001 regarding the approval of the Plan of national territory improvement, altered and completed
- [21] Law nr. 215/2001 regarding the local public administration, republished in the Official Gazette nr. 123 from 20th February 2007