Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1704 (2005)[1]

Referendums: towards good practices in Europe

Parliamentary Assembly

1. Referendums represent a long-standing political tradition in a number of Council of Europe member states; in others, the participation of citizens in the decision-making process through referendums is a more recent achievement, coinciding with their passage to pluralist and representative democracies.

2. The Parliamentary Assembly considers referendums as one of the instruments enabling citizens to participate in the political decision-making process; it also recognises the essential contribution of organised civil society in the framework of participatory democracy.

3. Despite differences in historical development, scope, frequency and impact, in recent years the recourse to referendums in Council of Europe member states as a whole has shown an upward trend. This is partly due to the high number of referendums that have been held to introduce constitutional changes in eastern European countries since the late 1980s. The main explanation for this increase, however, is the organisation of referendums within the European Union integration process: between 1972 and 2003 the citizens of twenty-three countries cast their vote on fundamental stages of European Union integration in forty-one national referendums.

4. This upward trend will continue over the next two years. In fact, the national referendums organised in the context of the ratification of the European Union Constitutional Treaty may be the greatest European popular vote of all times: 250 million people in at least ten countries will be called to state their agreement or disagreement over the most ambitious project of European integration so far conceived. The political weight of this popular vote will also be unprecedented, as the negative stand of the electorate of one country could affect the ratification of the treaty in all the others. Likewise, the position of European Union members on the membership of a candidate country will be decided, in some cases, by national referendums;

5. Being convinced of the complementarity between direct and representative democracy, the Parliamentary Assembly recommends the use of referendums as a means to reinforce the democratic legitimacy of political decisions, enhance the accountability of representative institutions, increase the openness and transparency of decision making and stimulate the direct involvement of the electorate in the political process. Complementarity between direct and representative democracy implies that referendums should not be considered as an alternative to parliamentary democracy and should not be misused to undermine the legitimacy and primacy of parliaments as legislative bodies.

6. In this context, the Assembly recalls the activities of the Integrated Project "Making democratic institutions work" and, in particular, the Conference on the Future of Democracy in Europe (Barcelona, 17-19 November 2004) which defined citizen participation as a priority area for the Council of Europe and expressed support for the further development of innovation in the field of direct democracy, notably referendums. In addition, the Green Paper commissioned by the Secretary General of the Council of Europe in the framework of the same project recommends that the Council of Europe draft a handbook on referendums and popular initiatives.

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1. Assembly debate on 29 April 2005 (16th Sitting) (see Doc. 10498, report of the Political Affairs Committee, rapporteur: Mr Elo). Text adopted by the Assembly on 29 April 2005 (16th Sitting).

7. The Assembly fully endorses this three-fold approach. First of all, reiterating the position expressed in its Resolution 1353 (2003) on the future of democracy : strengthening democratic institutions, the Assembly believes that the recourse to referendums should be encouraged as a way to reinforce the democratic process in Council of Europe member states and bridge the distance between the electorate and the decision makers.

8. Secondly, bearing in mind that even in democratic states on some occasions referendums have been used to legitimise undemocratic policies, the Assembly agrees that the Council of Europe should promote good practices on referendums with a view to reducing any possible abuse, including the risk that this instrument be used to circumvent the principle of the rule of law or to undermine the legitimacy of representative institutions.

9. The promotion of good practices on referendums should include the elaboration of guidelines addressed to Council of Europe member states as well as the dissemination of examples of best practice, the provision of technical assistance and the implementation of co-operation activities. In this respect, the Assembly recalls that the Council of Europe has already produced guidelines on local referendums, appended to Recommendation No. R (96) 2 of the Committee of Ministers to member states on referendums and popular initiatives at local level, as well as on constitutional referendums, with guidelines adopted by the European Commission for Democracy through Law (Venice Commission) at its 47th Plenary Meeting (6-7 July 2001). The Venice Commission is currently working on the possible elaboration of general guidelines on referendums.

10. The Assembly also recalls previous Council of Europe documents which should be considered for the elaboration of guidelines and the promotion of good practices, in particular Assembly Recommendation 1516 (2001) on financing of political parties, Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, as well as the guidelines adopted by the Venice Commission on financing political parties (2001) and on legislation on political parties : some specific issues (2004).

11. Finally, the Assembly shares the conviction that through the promotion of good practices on referendums, the Council of Europe should assist its member states in devising a better response to the challenges posed by participatory democracy in modern societies. In this regard, two innovations immediately stand out for their urgency : on the one hand, the extension of the right to vote in local referendums to immigrants legally residing in Council of Europe member states, in analogy with the efforts deployed by the Council of Europe in bringing its member states to grant the right to vote in local elections to legal immigrants, in compliance with the 1992 Convention on the Participation of Foreigners in Public Life at Local Level; on the other hand, the introduction of the possibility of holding referendums at all the levels in which policy decisions are made, be it local, regional or national.

12. Confirming its previous positions, the Assembly highlights that direct popular participation in the decision-making process requires the electorate to be adequately informed about those matters to be decided upon, as well as about the democratic decision-making process in general. With these considerations in mind, the Council of Europe should reinforce its activities on media awareness and education for democratic citizenship, also in the context of the elaboration of good practices on referendums.

13. The Assembly therefore recommends that the Committee of Ministers :

taking into account previous Council of Europe work in this field as well as the ongoing work of the Venice Commission, draw up a recommendation to member states containing guidelines on referendums, which should refer to :

a. the need for a clear national legal framework for holding referendums ;

b. who can initiate a referendum, with a clear indication that popular initiative should always be possible ;

c. the referendum campaign, including provisions on the registration of campaigners, funding of the referendum campaign and safeguards for pluralism ;

collect and disseminate examples of good practices on referendums, placing particular emphasis on the recognition of voting rights of immigrants who have been legally and habitually resident in Council of Europe member states for a given time and on encouraging the plurality of levels at which referendums can be organised ;

among its activities, give priority to media awareness and education for democratic citizenship and include these issues in its examples of good practices on referendums ;

when necessary, set up assistance and co-operation programmes to help one or more member states in the implementation of good practices on referendums ;

continue to encourage the recourse to e-voting, in compliance with its Recommendations Rec(2004)11 on legal, operational and technical standards for e-voting and Rec(2004)15 on electronic governance ("e-governance") ;

call on Council of Europe member states to :

a. *sign and ratify the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level ;*

b. *introduce the possibility of holding referendums at local, regional and national level and inform the electorate of this possibility through appropriate means ;*

c. *grant the right to vote in local referendums to foreigners who have been residing legally in their country for a period of five years, by analogy with the provisions on participation in local elections contained in the Convention on the Participation of Foreigners in Public Life at Local Level ;*

d. *ensure that their electorate has the means at their disposal to make informed and balanced decisions and is made aware of the political importance of its vote in all referendums submitted to it, including the next referendums on the European Union Constitutional Treaty and on the issue of the Union's enlargement ;*

invite the European Union to make greater use of instruments of direct democracy in its decision-making process and, in this context, conduct a feasibility study on the introduction of a European Union referendum.